

Ombudsman's Determination

Applicant	Mr S
Scheme	NHS Pension Scheme (the Scheme)
Respondent	NHS Business Services Authority (NHSBSA)

Outcome

1. I do not uphold Mr S's complaint and no further action is required by NHSBSA.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr S's complaint against NHSBSA is about their refusal to allow him to transfer his benefits to his chosen provider due to restrictions that came into effect on 6 April 2015.

Background information, including submissions from the parties

4. Following the changes in legislation that took effect from 6 April 2015, members of unfunded public sector occupational pension schemes were not allowed to transfer their benefits to a defined contribution or a flexible access pension scheme after this date. However, they could still transfer their benefits to defined benefit schemes.
5. Mr S was employed by the NHS, but had left service on 18 October 2002. Therefore, he had deferred benefits under the Scheme.
6. On 12 March 2015, he requested a cash equivalent transfer value (**CETV**). The request did not specify the intended receiving scheme.
7. On 18 April 2015, NHSBSA wrote to Mr S informing him that it was not possible to process his transfer due to the restrictions that came into effect as from 6 April 2015. They explained that from 6 April 2015 transfers were not possible where the receiving scheme is a defined contribution scheme which provides flexible benefits.

8. Mr S made a complaint to NHSBSA about their decision not to allow him to transfer his benefits from the Scheme. His complaint, which was dealt with under the Scheme's internal dispute resolution procedures, was not upheld. NHSBSA said: his request while indicating that the transfer was to a UK pension arrangement did not specify the name of the intended receiving scheme for a transfer payment to be made; members must first have sight of a guaranteed CETV statement and the original transfer election form (TV18) must then be completed, both by the member and the receiving scheme, and returned to NHSBSA within the three month guarantee period; they have a statutory obligation to provide a statement of entitlement within three months of a request being made; and their processes comply with the provisions of the Pensions Act 1995, which allows up to six months to make a transfer payment.
9. Mr S has confirmed that the pension arrangement to which he wished to transfer was a defined contribution arrangement.

Adjudicator's Opinion

10. Mr S's complaint was considered by one of our Adjudicators who concluded that no further action was required by NHSBSA. The Adjudicator's findings are summarised briefly below:
 - While it is accepted that NHSBSA have a statutory obligation to provide a statement of entitlement within three months, in reality they should be able to issue this within a few weeks of a request for a transfer. However, Mr S's request for a CETV was made on 12 March 2015, which meant that in a period of just over three weeks NHSBSA had to calculate and issue a guaranteed CETV to him and he had to return to them a TV18 form which he and the receiving scheme had completed. It was not considered that a period of just over three weeks was long enough for this process to be completed.
 - Mr S's request was made in a period when NHSBSA had received a large number of similar requests for CETVs, due to the 6 April 2015 deadline. Therefore, it was not reasonable to expect them to have to provide him with a statement of entitlement before 6 April 2015.
 - Even if there was a delay on the part of NHSBSA in dealing with Mr S's request, there is no evidence to show that he has suffered a financial loss as a result of it. He still has deferred benefits under the Scheme and will be entitled to these benefits at retirement. His only perceived loss is that he cannot transfer his benefits. There is no evidence to show that if his benefits had been transferred to the intended pension arrangement, they would be higher than the deferred benefits under the Scheme.

- Mr S did not give NHSBSA the name of the intended pension scheme he wished to transfer to. Therefore, they could not have known whether the intended pension scheme was a defined benefit or defined contribution scheme. Nevertheless, they informed him that he could not transfer his benefits to the intended scheme.
 - NHSBSA should have asked Mr S whether the intended scheme was a defined benefit or defined contribution scheme, before informing him that he could not transfer his benefits. The fact that they did not do so is maladministration. However, the intended scheme was a defined contribution scheme and therefore he could not have transferred his benefits to it.
11. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr S for completeness.

Ombudsman's decision

12. In response to the Adjudicator's Opinion Mr S says:
- His financial adviser advised him that similar work had been completed for other people who wanted to transfer out of the Scheme, and his financial adviser was able to identify the appropriate scheme and return the appropriate paperwork, duly completed, to NHSBSA in a timely manner.
 - NHSBSA had failed to notify him of the changes in legislation that took effect from 6 April 2015. Had they done so earlier he would have made his request for a transfer earlier.
 - He has suffered a loss of choice. He had intended on moving into a draw down arrangement and he believes that his losses over 5 years, from age 55 to age 60, are significant. He is unable to access his retirement funds until he is 60 and this means that he has lost the option to invest his pension funds over this period of time. He had intended to use his pension funds to purchase buy to let properties and to use the income as a pension.
13. I have carefully considered the points made by Mr S and set out my comments below:
- I do not doubt that Mr S's financial adviser had dealt with a number of transfers out of the Scheme in a timely manner. However, it does not mean that these other transfers were made around the same time as Mr S's request. They could have been made earlier. Moreover, the fact that NHSBSA may have managed to fulfil some transfer instructions within an unusually short timescale does not mean that they could reasonably be expected to fulfil them all.
 - NHSBSA say that in the months leading to 6 April 2015 deadline, they had placed appropriate notifications on their website and endeavoured to process requests for

transfer statements as quickly as possible in the limited timeframe. Therefore, NHSBSA had notified members months in advance of the deadline date of the changes.

- While I do not dispute that Mr S may have suffered a loss of choice, I am not persuaded that it was due to any maladministration by NHSBSA. Moreover, he has not demonstrated that he has suffered a financial loss as a result of not being able to transfer his benefits out of the Scheme. In particular, there is no evidence about the property purchases which could have been funded with draw down and no evidence to demonstrate that the pension he will receive from the scheme will be worth less in totality than the income he could have achieved by alternative investment methods.

14. Therefore, I do not uphold Mr S's complaint.

Karen Johnston

Deputy Pensions Ombudsman
13 September 2016