

## Ombudsman's Determination

Applicant	Ms P
Scheme	NHS Pension Scheme (the <b>Scheme</b> )
Respondent	NHS Business Services Authority ( <b>NHS BSA</b> )

## Outcome

1. I agree that part, but not all, of this complaint should be upheld. To put matters right NHS BSA should pay Ms P £500 in recognition of the distress and inconvenience caused by providing misleading information in their email of 29 April 2015.
2. My reasons for reaching this final decision are explained in more detail below.

## Complaint summary

3. Ms P's complaint against NHS BSA is she disagrees with their decision not to transfer her benefits to an overseas pension scheme. She says that NHS BSA approved the transfer before changes were made to legislation and therefore NHS BSA should honour the original transfer request.

## Background information, including submissions from the parties

4. Ms P is a deferred member of the Scheme.
5. In October 2014, Ms P made a request to transfer her deferred benefits to an overseas pension scheme on Her Majesty's Revenue and Customs (**HMRC**) list of Qualifying Recognised Overseas Pension Schemes (**QROPS**).
6. On 14 November 2014, Ms P was provided with a Cash Equivalent Transfer Value (**CETV**) statement and by 26 February 2015, she had provided all of the paperwork to NHS BSA to process her overseas transfer request.
7. Two changes occurred in pensions legislation with effect from 6 April 2015 which had an impact on Ms P's transfer request.
8. First, members of unfunded occupational schemes were only allowed to transfer to other defined benefit schemes. NHS BSA accepts that they received all of Ms P's

documentation before these changes took effect and therefore it does not limit her transfer out of the Scheme under this change.

9. Second, the Pension- Age Test was introduced in relation to overseas schemes. This test required confirmation from overseas schemes that benefits would not be paid to members prior to age 55 (except in cases of ill-health early retirement). HMRC wrote to all of the schemes on the QROPS list, as of 6 April 2015, asking them to confirm by 17 June 2015 if they met the Pension- Age Test. Those that did not were no longer included on the newly published Recognised Overseas Pension Schemes (**ROPS**) list from July 2015 (the QROPS list continued to be published between April and 17 June before being suspended and renamed on 1 July 2015). Payments made to overseas schemes that did not meet the new Pension- Age Test would be at risk of being classed as an unauthorised payment with subsequent tax charges being levied at the member and the transferring scheme. Ms P's chosen overseas scheme was on the QROPS list up until 17 June.
10. Ms P's representative contacted NHS BSA on 29 April 2015, and requested an update on the progress of the transfer. A reply was received the same day:

“...We are currently experiencing a backlog in payments due to the 6<sup>th</sup> April deadline for TV18 applications.

Please accept our apologise [sic] re this and be assured your request is being dealt with.

We are aiming to start making TV18 payments mid June.

All payments will be made within the 6 months time limit.”
11. The six month statutory time limit to complete the transfer ended on 13 May 2015 (this is six months after the CETV dated 14 November 2014).
12. Ms P received a letter dated 12 August 2015, informing her that the transfer would not be made which resulted in her complaining to NHS BSA and ultimately this Service.
13. Ms P has said she provided all of the necessary paperwork to allow the transfer prior to the April 2015 legislative changes and therefore her transfer should be allowed to proceed. She relies on the email from NHS BSA on 29 April, to show that the transfer had been approved and confirmation that the monies would be transferred to her chosen provider within the 6 month time limit.
14. In summary, NHS BSA's position is that they were unable to finally process Ms P's transfer due to the suspension of the QROPS list by HMRC. Following legal advice and guidance from HMRC, NHS BSA decided that the receiving scheme must be included in the new ROPS list on the date the transfer payment is made, and that all conditions required by HMRC are met. Ms P's receiving scheme has not been on the new ROPS list at any time since July 2015.

## **Adjudicator's Opinion**

15. Ms P's complaint was considered by one of our Adjudicators who concluded that further action was required by NHS BSA. The Adjudicator's findings are summarised briefly below:
- NHS BSA failed to complete the transfer within the statutory six month time frame and this can be considered as maladministration, however, the events of 6 April 2015 superseded any delay after 13 May 2015.
  - It was maladministration that Ms P had been provided with misleading information in the email of 29 April 2015. This raised her expectations that the transfer was proceeding and that payment would happen within the statutory time frame. NHS BSA failed to make clear to Ms P that the receiving scheme was being questioned about its eligibility to accept a transfer and that there was a possibility that the transfer would not go ahead. NHS BSA ought to have properly checked the status of Ms P's transfer request prior to contacting her. The Adjudicator reached the view that this maladministration should be recognised with a payment of £500.
  - However, the main part of Ms P's complaint is about the ability to transfer to her chosen overseas provider. NHS BSA have not refused the transfer, it is just that the receiving scheme no longer qualifies to allow them to transfer. NHS BSA made the decision to suspend overseas transfers in April 2015 on the basis of legal advice and it is reasonable that in having sought such advice, that they relied on it.
  - Ms P has not suffered an actual financial loss, as she is still a deferred member of the Scheme and will be entitled to her benefits at retirement. Her only perceived loss is that she cannot have all of her benefits invested in one scheme.
16. Ms P did not accept the Adjudicator's Opinion and the complaint was passed to me to consider (although NHS BSA agreed with the Opinion and the payment of £500). Ms P provided her further comments many of which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Ms P for completeness.

## **Ombudsman's decision**

17. Ms P originally accepted the Adjudicator's Opinion with the caveat that she should get assistance from NHS BSA in finding a suitable overseas scheme (on the ROPS list) that would allow the transfer. NHS BSA have correctly argued that it is not their role to do this – not only can it be considered as advice (which they are, appropriately, not regulated to provide), but if they were to do so it exposes them to a possible future liability should something go wrong with Ms P's benefits in the receiving scheme.

18. Ms P now argues that the amount of £500 to recognise the distress and inconvenience caused is insufficient. While I note Ms P's comments relating to the amount of time spent pursuing her complaint, I do not award such payments based on the proportion of time spent or what a professional might charge for the same work. Instead, the amount reflects that Ms P was provided with incorrect information that raised her expectations. I therefore agree with the Adjudicator that the amount of £500 is adequate compensation for this.
19. NHS BSA, have at the last hurdle, pointed out that legislation in the country she resides allows for pension schemes to pay benefits before age 55 in certain circumstances (not just ill-health). Therefore, even if a receiving scheme were to change its rules to restrict the payment of benefits before age 55 to ill-health only, overriding legislation would still make the scheme invalid from a UK perspective. NHS BSA's previous position had been that there was always the option that should a scheme appear on the ROPS list (and meet the other due diligence tests), then a transfer would be allowed. However, NHS BSA's email of 7 June 2016, has taken that small hope away from Ms P. I empathise with Ms P's frustration at this (and believe that NHS BSA ought to have raised this argument earlier in the complaint, as it again raised Ms P's expectations), it does not change the outcome of her complaint – the receiving scheme is not on the ROPS list and NHS BSA are within their rights to "suspend" the transfer. It is not in the interest of the Scheme, or Ms P as a member, to risk an unauthorised payment and a possible tax charge of 70% of Ms P's benefits.
20. NHS BSA agreed that they received all of Ms P's documents prior to the legislative changes restricting transfers out of unfunded occupational schemes. Therefore, there is still the option for Ms P to transfer out of the Scheme to another personal pension arrangement in the UK that may give her the flexibility that she requires in order to transfer abroad. I must stress that neither this Service nor NHS BSA are in a position to provide advice and, if she ever considers such action, then she must seek independent financial advice before making any decisions.
21. Therefore, I partly uphold Ms P's complaint.

## **Directions**

22. I direct that within 28 days of the date of this determination, NHS BSA pay Ms P £500.

**Anthony Arter**

Pensions Ombudsman  
24 June 2016