

Ombudsman's Determination

Applicant	Dr D
Scheme	NHS Pension Scheme (the Scheme)
Respondents	NHS Business Services Authority (NHSBSA)

Outcome

1. Dr D's complaint is upheld to the extent that she has suffered distress and inconvenience and, to put matters right, NHSBSA should pay her £500 compensation.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Dr D's complaint against NHSBSA is that it failed to provide a cash equivalent transfer value (**CETV**) of her benefits in the Scheme before the government deadline. This prevented her from transferring her pension to a money purchase arrangement and has significantly affected the financial security of her children.

Background information, including submissions from the parties

4. Below is a brief chronology of key events:
 - 29 October 2014 – Dr D wrote to NHSBSA and said that she had received information about her health, which necessitated a review of her pension options. She requested an estimate of her pension benefits at age 60; a guaranteed Statement of Entitlement of CETV and details of ill health early retirement.
 - 22 December 2014 – NHSBSA issued an estimate of benefits to Dr D. It did not provide details of the CETV.
 - 16 January 2015 – Dr D wrote to NHSBSA again and requested a CETV. She said she knew a transfer value is “normally only provided to members that had left the Scheme” but asked for “an exception to be made in this instance”. She also sent a signed, completed transfer out application form.

- 24 January 2015 – NHSBSA sent an acknowledgement to Dr D's transfer out application form. It said it aimed to provide the information requested within four weeks but that this could take longer. It said that the statement of entitlement (a guaranteed CETV) is normally issued within three months of an application. The letter included a note highlighted as "important" which said regulations expected to come into force on 6 April 2015 would restrict transfers out of unfunded defined benefit public service pension schemes. As a result, properly completed forms should be received no later than 5 April 2015. NHSBSA's letter did not say exceptions could not be accommodated and it did not point out that Dr D was still an active member.
 - 27 February 2015 – Dr D's independent financial advisor called NHSBSA regarding her application for an update. He was informed that it was being calculated.
 - 16 March 2015 – Dr D called NHSBSA regarding her application to transfer out.
 - 27 May 2015 – NHSBSA issued an estimated CETV to Dr D.
5. Dr D complained to NHSBSA about its failure to issue the CETV before the April deadline, despite her chasing it, and that it ignored the content of her letters. In its responses, NHSBSA agreed that Dr D's initial request for a CETV was in October 2014 and that the relevant team was not informed of her request at that time. It apologised to her for this mistake. NHSBSA said the provisions of the Scheme only gave members who had left the Scheme an entitlement to request a transfer. A member who is still contributing to the Scheme does not have statutory right to transfer. As a result of this, NHSBSA was not able to comply with Dr D's request for a guaranteed CETV. It went further to say there was "an unreasonably short period of time in which to facilitate a transfer", given the circumstances and in order to comply with all the relevant legislation requirements.
6. NHSBSA concluded that it had correctly applied the regulations governing the Scheme and, in asking it to make an exception for her as an active member, Dr D had asked it to exercise a discretion it did not have under the Scheme regulations. It has accepted that the administrative process could have been "timelier" but maintains that it was, and still is, unable to provide a guaranteed transfer value.
7. Dr D brought her complaint to our service. She maintains that NHSBSA did not inform her at any stage that her request for a guaranteed CETV was not possible while she was an active member, or that her request had been declined. Dr D says its letter of 24 January 2015 did not clarify the matter for her and she thought her request was being dealt with. Dr D believes she has been clear about her requirements from the outset and throughout the enquiry. On the contrary, NHSBSA has failed in its duty to understand her or it has chosen to ignore her request.

Adjudicator's Opinion

8. Dr D's complaint was considered by one of our Adjudicators who concluded that further action was required by NHSBSA. The Adjudicator's findings are summarised briefly below:
- It was not possible for NHSBSA to issue Dr D a statement of entitlement as the Scheme regulations do not allow it to be issued to active members. There was no maladministration by NHSBSA in this regard.
 - The guidance notes accompanying the transfer out application form, which Dr D completed, included a note which said that a statement of entitlement could not be provided until the member had left the Scheme.
 - Dr D was aware of her status as an active member but she asked NHSBSA to make an exception in her case. As NHSBSA do not have discretion in this regard, it should have informed Dr D that an exception could not be made and that a guaranteed CETV could not be issued while she was an active member.
 - As NHSBSA did not inform Dr D of this but sent her a standard acknowledgement instead, it created an expectation for Dr D that her application was being processed. The Adjudicator found that this amounted to maladministration.
 - Despite the maladministration, Dr D has not suffered an actual loss as she is still entitled to benefits in the Scheme. In addition, as she is still an active member of the Scheme, the value of her benefits will continue to increase.
 - Dr D has suffered significant distress and inconvenience caused by the delays by NHSBSA and the loss of expectation. She should be compensated for this, so NHSBSA should pay her £500 as compensation.
9. Dr D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Dr D provided her further comments 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 Dr D for completeness.

Ombudsman's decision

10. Dr D does not accept that she has not suffered an actual financial loss as a result of her inability to transfer out of the Scheme. Dr D asserts that her benefits in the Scheme cannot be limited to her alone and, as the Scheme pays survivor benefits, her children have suffered a very real and damaging loss.
11. Dr D provided a table outlining "approximate death benefits" due to her children from the Scheme and compared it those due from a money purchase arrangement. She concluded that whilst the Scheme would pay a £200,000 death in service benefit and a dependant's pension of £43,750 (based on £8,750 per annum payable for five years), she would not receive a "return of fund". On the other hand, her children

would receive £700,000 as a return of fund (paid tax free to age 75) with a money purchase arrangement. Accordingly, the loss to her children is £456,250.

12. Dr D would like NHSBSA to put her children in the position they would have been in had she been able to transfer her pension. She would like NHSBSA to either allow her to transfer out as she previously requested, or fund an appropriate life policy to cover the death benefit deficit that has been created.
13. I do not dispute that Dr D had a genuine reason for wanting to transfer her benefits out of the Scheme. However I find no maladministration by NHSBSA which has prevented her from doing so.
14. NHSBSA, as the administrator, must follow the regulations governing the Scheme when carrying out its functions. Regulation M1 of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300) gives a member who has left pensionable employment, the right to transfer out of the Scheme. Dr D never had a statutory right to transfer as she had not left pensionable employment. This position was made clear in the guidance that accompanied the transfer out form.
15. Dr D's initial contact with NHSBSA was by a letter dated 29 October 2014 where she asked for a statement of entitlement (among other things). She mentioned having to review her pension options because of information she had received regarding her health. She did not expressly refer to an exception being made for her in this initial letter. Mention of this came in her subsequent letter of 16 January 2015. Had NHSBSA's response of 24 January 2015, expressly informed Dr D that it did not have discretion to grant her request, she would then have had to make a series of decisions and applications to acquire a right to transfer to a particular scheme. There is no guarantee that the necessary applications to opt out of the Scheme, request a statement of entitlement, and apply for a transfer value payment to a specific scheme or arrangement, would have been completed before the 5 April 2015 deadline. There was a window of approximately ten weeks which, on the balance of probabilities, I do not find would have been sufficient, even assuming that Dr D would in fact have chosen this course of action. This is especially given the increased timescales that NHSBSA were operating within due to the high volume of transfer requests.
16. I am also unable to agree with Dr D's calculation of the amount of her loss. There are several unknown variables surrounding what benefits would be due from a money purchase arrangement in the event of her death. Market fluctuations and the commercial aims of providers mean it is unlikely that a capital sum would be guaranteed by providers for any length of time. Tax may also be due depending on the prevailing rules at the time the payment becomes payable. This degree of uncertainty makes Dr D's assumed loss a speculative loss and not an actual loss.
17. I do not see that Dr D was misinformed by NHSBSA as she knew the correct position when she made her initial request to it and I do not find that their actions deprived her of a right to transfer out. In these circumstances I can see no maladministration by NHSBSA which can be shown to have caused actual financial loss.

18. NHSBSA did not respond to Dr D's initial communication of October 2014 and her subsequent request of January 2015. In sending the acknowledgements that did not clarify its position regarding a possible exception, it created an expectation for Dr D which the scheme rules required to be disappointed. In the circumstances of this case, it is right that NHSBSA should compensate Dr D for the distress and inconvenience caused. I agree with the recommendation of the Adjudicator.
19. Therefore, I uphold Dr D's complaint to the extent that she has suffered distress and inconvenience.

Directions

20. Within 28 days of the date of this determination, NHSBSA should pay Dr D £500 in compensation.

Karen Johnston

Deputy Pensions Ombudsman

31 August 2016