

## Ombudsman's Determination

Applicant	Mr N
Scheme	NHS Pension Scheme ( <b>the Scheme</b> )
Respondent	NHS Business Service Authority ( <b>NHS BSA</b> )

## Outcome

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

## Complaint summary

3. Mr N's complaint is that NHS BSA have refused his application for Permanent Injury Benefit (**PIB**).

## Background information, including submissions from the parties

4. Mr N applied for PIB in April 2014. His psychological illness arose due to bullying at work while employed by the NHS, and resulted in his incapacity to perform his role. As such his employment was terminated in 1999. Mr N says that his symptoms have been permanent since 1999 and will continue to be so until at least his normal retirement age (**NRA**), age 65, making him unable to work. He understands this makes him eligible for PIB.
5. NHS BSA turned down Mr N's application for PIB and did not uphold his appeal at stage one or two of the internal dispute resolution procedure (**IDRP**). NHS BSA accepted that Mr N suffered from a temporary period of anxiety and depression which was wholly or mainly attributable to his NHS employment and led to his incapacity to work in 1999. However, NHS BSA submits that this psychological illness was no longer causing incapacity to work by 2002, meaning that it is not permanent and therefore there is no permanent loss of earnings ability (**PLOEA**).
6. NHS BSA went on to say that, based on the opinions of its medical advisors (**MA**s), the ongoing psychological symptoms that Mr N is experiencing are not wholly or mainly attributable to his NHS employment but instead can be attributed to a series of events that took place after termination of Mr N's employment in 1999.

7. The MA noted that Mr N has been able to complete two university courses and concluded that these showed functional ability to enable a return to work and have provided a higher level of education which would enable him to receive greater remuneration than he was earning in his previous NHS role. The current symptoms can be attributed to stressors caused by his application for ill health retirement, a legal claim due to his employment issues, his university courses and his son being bullied.
8. Mr N disputes that his current symptoms are caused by factors other than his NHS employment. He says that his treatment continued until 2006, not 2002 when NHS BSA says he was capable of returning to his employment. He then waited for further treatment which was started again in 2013. Mr N says that the education courses were suggested to support his treatment.

### **Adjudicator's Opinion**

9. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by NHS BSA. The Adjudicator's findings are summarised briefly below:-
  - The Adjudicator explained that it is not the role of the Ombudsman to review the medical evidence and come to a decision of his own as to Mr N's eligibility for payment of benefits under the National Health Service (Injury Benefits) Regulations 1995. The Ombudsman is primarily concerned with the decision making process. Medical (and other) evidence is reviewed in order to determine whether it supported the decision made. The issues considered include: whether the relevant rules have been correctly applied; whether appropriate evidence has been obtained and considered; and whether the decision is supported by the available relevant evidence.
  - However, the weight which is attached to any of the evidence is for NHS BSA to decide, including giving some of it little or no weight. It is open to NHS BSA to prefer evidence from its own advisers; unless there is a cogent reason why it should not, or should not without seeking clarification. For example, an error or omission of fact or a misunderstanding of the relevant rules by the medical adviser. If the decision making process is found to be flawed, the appropriate course of action is for the decision to be remitted for NHS BSA to reconsider.
  - NHS BSA has accepted that the illness that led to termination of Mr N's employment in 1999 was wholly or mainly attributable to his NHS employment. The outstanding dispute is whether that condition has been permanent since 1999 and will continue to be so up until NRD, and whether he has suffered a PLOEA as a direct result.
  - Three separate MAs have considered Mr N's application. Each MA reached the same outcome, in that Mr N's condition was wholly or mainly attributable to his

NHS employment in 1999, however his ongoing symptoms are not attributable to his NHS employment and no PLOEA has been suffered. Slightly different rationales have been presented by the MAs to support their opinions. In summary, the MAs concluded that Mr N's condition was temporary and that he recovered sufficiently to complete two further university courses, supporting that he was capable of employment. In addition, the courses provided Mr N with qualifications which would enable him to secure a better paid job than his previous NHS role. As a result, it was concluded that Mr N had not suffered a PLOEA as a direct result of the illness arising from his NHS employment.

- Mr N has said that the courses were undertaken upon recommendation from his psychologist, in order to divert his depressive and obsessive behaviour. While this, from a layperson's perspective, appears to be a reasonable and logical explanation no evidence has been provided to support this claim. Mr N also maintains that he has been on constant medication since 1999 and that he was in treatment between 1999 and 2005, contradicting the MA's claim that he was successfully treated by 2002.
  - Nevertheless, the Adjudicator did not find any fault with the MAs' reports or opinions. Each provided explanations to support their opinion which were based on the medical evidence. Mr N's disagreement with the opinions does not necessarily mean they are flawed. Mr N started his university access course in 2001 and completed his undergraduate degree in 2004. It seems reasonable that this can be converted to the ability to return to employment. The medical reports from 2004 suggest that Mr N's intention in enrolling in the Master's Degree course was to enhance his future career prospects.
  - Mr N was on medication during his university courses, yet this does not mean that his condition was not treated, or being controlled, sufficiently to enable return to employment. It was the MAs' opinions after reviewing the medical information that the condition had improved to enable completion of university courses and that this supports the view that he could have returned to employment.
  - The MAs' opinions were reviewed by NHS BSA and their opinions were accepted. The Adjudicator found no errors in the process of considering Mr N's PIB application. NHS BSA is able to prefer the opinion of its MAs over that of Mr N or his doctors as long as there is no cogent reason why it should not. No error has been found in NHS BSA's approach.
10. Mr N requested that his case be passed to me to consider. Mr N reiterated his point that the university courses were completed upon recommendation from his psychologist and the majority of the work was completed in the comfort of his own home.
11. Mr N's comments do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr N for completeness.

## **Ombudsman's decision**

12. While Mr N's claim that the university courses were undertaken after a recommendation from his psychologist seem reasonable, no evidence to support this has been provided. Regardless of this, I am not persuaded that, even if this evidence was provided, it would support Mr N's case. From a layperson's perspective it seems reasonable that treatment in the form of university courses would be encouraged to facilitate a return to work in the future. Indeed, the evidence that I have seen suggests that this is the very reason that Mr N pursued the Master's Degree course with the intention of enhancing future career prospects.
13. I note that Mr N states that the majority of the work for the university courses was completed in his own home. Nonetheless, the fact that Mr N withstood the stressors associated with completing a number of university courses could indicate that he may be, or may have been, able to return to some kind of employment. It does not appear unreasonable to me for the MAs to draw the conclusions that they have.
14. I acknowledge that it would have been a disappointment to Mr N for the MAs not to agree with his own understanding of his medical condition, and his medical professional's opinion of his condition. However, a difference in medical opinion is not sufficient for me to uphold this complaint. I cannot see that NHS BSA have acted in maladministration, nor that the MAs have not followed the correct process.
15. Therefore, I do not uphold Mr N's complaint.

**Anthony Arter**

Pensions Ombudsman  
15 December 2017