

Ombudsman's Determination

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

Outcome

1. I do not uphold Mr N'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 N has complained that NHSBSA will not allow him to transfer his benefits from the Tesco Pension Scheme to the Scheme.

Background information, including submissions from the parties

4. Mr N began employment with NHS on 4 October 1983, he became a member of the Scheme on 4 October 1985.
5. On 9 March 2002, Mr N also started working for Tesco plc, and became a member of the Tesco Pension Scheme.
6. Mr N continued paying into both pension schemes until 21 November 2015, when Mr N was informed that the Tesco Pension Scheme was going to be closed.
7. On 5 February 2016, Mr N was advised that he had three options following the closure of the Tesco Pension Scheme. He could either become a deferred member and receive benefits when he reached retirement age, receive a possible full cash commutation, or transfer his benefits to another scheme.
8. Mr N contacted his NHS Employer at the time and asked about transferring his benefit into the Scheme. Mr N was advised that he could transfer his benefit and was also referred to NHSBSA for more information. He was also told that he could find further information on the NHS website.

9. The website said a normal condition for transferring benefits into the Scheme is that requests have to be made within twelve months of joining the Scheme. However, the website went on to say that if the person was working in concurrent employment and the request was made within twelve months of the concurrent employment ceasing, then they may be able to transfer his benefits into the Scheme. As Mr N met the latter requirement, on 25 February 2016, he gave authority for the transfer to happen.
10. On 21 April 2016, NHSBSA wrote to Mr N and said he did not meet the requirements to transfer his Tesco Pension Scheme benefit into the Scheme. Therefore, his application was rejected.
11. Mr N queried why the website said he was able to transfer. He was advised that the website was incorrect and would be amended. However, it was explained that the NHS Pensions Regulations 1995 (**the Regulations**) clearly laid down the following:

“Member’s right to transfer accrued rights to benefits to the scheme

N1.—(1) Within 12 months after joining the scheme, a member in pensionable employment may, in writing, request the Secretary of State to accept a transfer payment in respect of the member’s rights under another occupational pension scheme, a personal pension scheme, or a buy–out policy (but not in respect of rights under a scheme that is approved by the Commissioners of Inland Revenue by virtue of section”.

Consequently, Mr N was not able to transfer his benefits into the Scheme because his request to do so was not within twelve months of him joining the Scheme.
12. Dissatisfied with the response from NHSBSA, Mr N complained through both stages of the Scheme’s internal dispute resolution procedure (**IDRP**). NHSBSA remained of the view that he was unable to transfer his benefits from the Tesco Pension Scheme into the Scheme.
13. As a result, Mr N brought his complaint to the Pensions Ombudsman to be independently reviewed.

Adjudicator’s Opinion

14. Mr N’s complaint was considered by one of our Adjudicators who concluded that no further action was required by NHSBSA. The Adjudicator’s conclusions are summarised below:-
 - Mr N had been a member of the Scheme from 4 October 1985, and tried to transfer his benefits from the Tesco Pension Scheme in February 2016. There is no dispute that this is more than twelve months since he joined the Scheme. Therefore, in line with the Regulations, Mr N is not eligible to transfer his benefits from the Tesco Pension Scheme into the Scheme.

- Mr N found information which said he would be able to transfer his benefits from the Tesco Pension Scheme to the Scheme, if he was in concurrent employment. However, the request had to be made within twelve months of the concurrent employment ceasing. The information was incorrect and NHSBSA acknowledge that it was incorrect and amended its website and the transfer-in guide. The misleading information would have raised Mr N's expectations, but the Regulations will always override any other information. So, NHSBSA made the right decision to comply with the Regulations.
 - In relation to Mr N's dissatisfaction about the length of time it took for his complaint to be dealt with by NHSBSA, the Adjudicator concluded that the time taken was not unreasonable. On every occasion Mr N contacted NHSBSA, it responded and provided corrected information.
 - Mr N has not suffered a financial loss from the incorrect information, he will still receive his benefits from the Tesco Pension Scheme.
15. NHSBSA accepted the Adjudicator's Opinion and did not make any further comments.
16. Mr N did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mr N provided his further comments which do not change the outcome. Mr N said the following:
- he does not agree that NHSBSA dealt with his complaint in a timely manner;
 - he does not agree that he has not lost out financially, he could have transferred to a high interest savings account, had he not seen the misleading information and waited to transfer into the Scheme; and
 - he considers that he should be paid compensation for the misleading information on NHS's website.
17. I agree with the Adjudicator's Opinion, and I will only respond to the key points made by Mr N for completeness.

Ombudsman's decision

18. Mr N is dissatisfied that NHSBSA has said he is not able to transfer his benefits from the Tesco Pension Scheme to the Scheme.
19. The Regulations that govern the Scheme set out what NHSBSA must do in administering the Scheme. Regulation N1 states that within twelve months of becoming a member of the Scheme, a request can be made to transfer other benefits, into the Scheme. Read another way, a request to transfer-in that is made twelve months after the member joined the Scheme, will not be accepted. Mr N had been an active member of the Scheme for over 30 years before he applied to transfer

his other benefits into the Scheme. NHSBSA's decision to refuse the transfer request is in accordance with the Regulations.

20. I appreciate that Mr N has been dealing with this matter since February 2016, and the final stage two IDRPs letter was issued on 11 January 2018. But, I consider it only took this length of time because Mr N was raising further queries and NHSBSA was looking into these. I do not consider that NHSBSA has taken an unreasonable length of time to deal with the number of queries Mr N has raised.
21. Mr N believes he should be compensated, because of the incorrect information held on the NHS website. Mr N has said he would have moved his funds from the Tesco Pension Scheme to a high interest savings account had he known that it was not possible to make the transfer. I do not believe that NHSBSA can be held responsible for Mr N's decision not to transfer his Tesco Pension Scheme benefits into a high interest saving account as soon as the transfer was denied by NHSBSA 21 April 2016.
22. Further, I do not accept that Mr N has suffered significant distress and inconvenience. I agree the information on the website was misleading and caused some frustration for Mr N. But, even after the Regulations were explained to Mr N, he still chose to continue with his complaint. I believe NHSBSA has acted appropriately in amending its website and explaining to Mr N why he could not transfer his Tesco Pension Plan benefits into the Scheme.
23. I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
9 November 2018