

Ombudsman's Determination

Applicant	Dr K
Scheme	NHS Pension Scheme (the Scheme)
Respondents	NHS BSA (NHS BSA) Primary Care Services England (PCSE)

Outcome

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

Complaint summary

3. Dr K has complained that NHS BSA failed to provide him with appropriate information when he made enquiries regarding a transfer to another pension scheme.

Background information, including submissions from the parties

4. Around June 2015, Dr K discussed his retirement planning with his independent financial adviser (**IFA**). Following this, he attempted to obtain a pension projection from NHS BSA's online service but it was unable to give him access to this service.
5. On 7 December 2015, Dr K requested a pensions statement from NHS BSA. It sent this to him on 11 April 2016.
6. On 9 May 2016, Dr K wrote to NHS BSA complaining that its delay in sending the above statement meant that he had missed the opportunity to review his financial situation with his accountant for the year ending March 2016. He said he would make a claim for future financial loss.
7. On 7 July 2016, NHS BSA responded to the complaint under stage one of its Internal Dispute Resolution Procedure (**IDRP**). NHS BSA said:-
 - It was evident that Dr K had requested a statement in December 2015 and chased this in February, March and April 2016.

- Regrettably, NHS BSA had been unable to process estimate requests within its usual timescales. This was due to an unprecedented increase in work volumes due to the statutory requirement to provide annual allowance statements.
 - Further, NHS BSA had erroneously sent Dr K an annual allowance statement in September 2015 when this was not the statement he had requested.
 - It was noted that Dr K would forward a bill for his financial losses, but there were no provisions within the Scheme's regulations which would allow it to pay compensation to a member. Nonetheless, NHS BSA would consider this once received.
 - NHS BSA had provided a lower than expected level of service and the matters raised would form part of an ongoing initiative to improve service.
8. Dr K did not escalate this complaint to stage two of the IDRP.
9. On 19 September 2016, Dr K signed an NHS BSA transfer request form.
10. On 7 December 2016, NHS BSA sent Dr K an estimated cash equivalent transfer value (**CETV**).
11. In January 2017, Dr K contacted PCSE asking it to confirm that his pension records had been updated for the 2015/2016 tax year. PCSE acknowledged this and advised that it would respond by 26 March 2017.
12. On 22 January 2017, Dr K asked NHS BSA to clarify why the pension figures in his 2014 statement were higher than his 2016 statement, with the forecasts being £39,975.14 and £38,973.78 respectively. He also said that he had been under the impression, from figures in the 2014 statement, that he was soon to breach the Lifetime Allowance (**LTA**), yet the 2016 figures did not suggest this.
13. On 4 April 2017, NHS BSA replied saying that as Dr K was self-employed, his records were updated after the submission of his end of year tax certificate. It said when it issued Dr K's Individual Protection 2014 (**IP2014**) statement, it had estimated his previous year's pay. It was then notified of the actual amount, which was significantly lower and rectified this in subsequent statements.
14. On the same date, Dr K chased PCSE. It replied on 27 April 2017, asking him to provide his type 2 annual certificate, or other supporting documentation for the 2015/2016 tax year.
15. On 4 May 2017, Dr K contacted NHS BSA asking about the forms needed to effect an outgoing transfer. He was told that as he was still an active member of the Scheme, a guaranteed CETV statement could not be provided. It was explained that, in order to opt out he would need to arrange closure of his membership with payroll provider PCSE.
16. On 16 May 2017, Dr K emailed PCSE saying he understood that it was basing his projected pension on his final year's pensionable earnings, rather than an aggregate

of the last three years. His income for the last year was less than the previous year; and, had he been informed of this method of calculation, he would have maintained his income at the higher level.

17. On 26 May 2017, Dr K wrote to NHS BSA reiterating his concerns. In summary, these related to delays in providing requested projections causing him to miss HMRC deadlines in April 2016 and 2017, NHS BSA's calculation methodology, and having to query figures, which caused further delays. He said after completing his discharge forms he was advised to stop making contributions into the Scheme. He said he had only recently been told that the Pension Schemes Act 2015 no longer allowed the transfer in question. Furthermore, he was now in a position where he was unable to make further contributions into the Scheme; and, NHS BSA ought to have informed him about restrictions on transfers when he began making enquires.
18. On 18 July 2017, NHS BSA responded to Dr K's concerns under stage one of its IDRP. His complaint was not upheld. NHS BSA said:-
 - Dr K's transfer request application was received in September 2016 and he was sent an estimated CETV in December 2016. A statement of entitlement with option forms could only be issued where the receiving scheme was known and the individual was no longer a contributing member.
 - The Pension Schemes Act 2015 restricted transfers out of unfunded defined benefit public service schemes, except to other defined benefit schemes. From 6 April 2015, transfers were not possible where the receiving scheme was a defined contribution scheme which provided flexible benefits.
 - The transfer request form asked those completing it to confirm they had read the leaving early and transferring out guide. This clearly stated the aforementioned restriction. A transfer to another defined benefit scheme was, however, permitted.
 - At the time of issuing Dr K's IP2014 statement, his pay was estimated using the previous year's pay figure of £108,715.79. Dr K's employer subsequently notified it that the actual figure was £36,742.15.
 - Dr K said he had been misadvised regarding stopping his contributions, however, it did not appear that NHS BSA advised him to do this. Instead, Dr K had been told that if he wished to proceed with a transfer out, then certain posts which remained open would need to be closed.
 - In terms of Dr K's correspondence regarding requests for benefit statements and Individual Protection queries, these had all been addressed.
 - NHS BSA appropriately processed Dr K's transfer application and estimate request based on the information available at the time.
19. On 4 August 2017, Dr K wrote to NHS BSA explaining that he wished to appeal the stage one decision and made the following points:-
 - He was not advised that he had to stop contributions at the point he received the estimated CETV in December 2016.

- He was also not made aware that a transfer to a defined contribution scheme was not possible. The rules around this were unclear and not in the spirit of pension freedoms.
- In terms of the disparity between figures in his 2014 and 2016 statements, his financial planning was made on the basis of the higher figures, resulting in his decision to reduce his level of contributions so as not to breach the LTA.
- Having now opted out of the Scheme, he would suffer financially as a result of not contributing, and could no longer make further contributions to maximise his pension.

20. On 4 October 2017, NHS BSA responded under stage two of the IDRP. The key points were:-

- An application for IP2014 normally required a specific valuation of benefits as at 5 April 2014. The form to request this valuation was available on its website, together with information and guidance in relation to this.
- NHS BSA first received a CETV request through Dr K's IFA in a letter dated 19 August 2016. On 22 August 2016, NHS BSA referred the IFA to the transfer application pack on its website. The letter also included details of the Pension Schemes Act 2015.
- A completed CETV request was received on 26 September 2016; at that time, Dr K was still an active member of the Scheme and the request indicated the receiving scheme was unknown. An estimated CETV was therefore provided on 7 December 2016.
- NHS BSA had not provided incorrect information. In relation to the estimated benefit statements Dr K had received in 2014 and 2016, these were not intended for the purposes of applying for IP2014. These were based upon the latest information available on record. Although there were delays in responding to Dr K's query, this did not prevent him from seeking an appropriate IP2014 valuation.
- Dr K was at liberty to request a specific IP2014 valuation from NHS BSA at any time up to 5 April 2017 and guidance had been available on the website since this protection was introduced.

21. Dr K subsequently referred his complaint to this Office.

22. On 15 December 2017, NHS BSA provided its formal response. It said:-

- As a self-employed GP, Dr K was a 'practitioner' member of the Scheme, so his benefits were based on a percentage of his uprated pensionable earnings throughout his NHS career, known as 'career average' benefits.
- From 1986 to 1996, Dr K worked in non-practitioner employments and accrued final salary benefits; from 2002, he was employed in practitioner posts. It was more beneficial to calculate all his benefits on a career average basis, therefore the final salary basis did not apply.

- Pension records for practitioner members are submitted via a self-assessment form to the PCSE team. Members have until 28 February of the following tax year to submit them. PCSE then updates NHS BSA with this information. This means annual earnings updates for practitioners are dependent on the timely submissions of self-assessments from individuals and PCSE. For this reason, annual pensionable earnings updates for Practitioners can be up to a year or more in arrears. Dr K did not submit his 2013/14 self-assessment information until after 1 September 2015, so he would have been aware that NHS BSA had not been notified of his current level of earnings.
 - NHS BSA took steps to inform members of the restrictions in 2015, as soon as the information became available, by way of a news item on its website. It was also routine procedure to include this information with transfer related correspondence.
 - In early May 2017, Dr K requested that NHS BSA provide election forms to pay a transfer value and was told that he must leave the Scheme before a guaranteed CETV could be provided.
 - On 8 May, Dr K said he had left the Scheme but NHS BSA replied on 23 May 2017 saying he was still showing as an active member. Dr K had made a complaint about this to PCSE, and this appeared to be ongoing.
 - Dr K's initial transfer enquiry was made more than a year after the Pension Schemes Act 2015 became effective. NHS BSA had no discretion to enable a transfer.
 - It remained open to Dr K to transfer to a scheme which met the legislative requirements, or re-join or continue in active membership in the Scheme.
23. On 6 January 2018, Dr K said that NHS BSA had failed to meet deadlines for responses which had "led to the protracted nature of their deliberations." He said as a result, he had not made contributions to the Scheme and was seeking financial compensation for this. He also wanted NHS BSA to allow him to transfer his benefits under the Scheme to a defined contribution scheme.
24. On 9 March 2018, the Adjudicator emailed Dr K to ask if his complaint with PCSE was ongoing.
25. On 10 March 2018, Dr K replied saying that his complaint with PCSE had now been resolved but his main complaint against NHS BSA remained.

Adjudicator's Opinion

26. Dr K's complaint was considered by one of our Adjudicators who concluded that no further action was required by NHS BSA or PCSE. The Adjudicator's findings are summarised briefly below:-

- Although Dr K was of the opinion that NHS BSA should make an exception in his case and allow him to transfer to a defined contribution arrangement, the rules in question did not provide any discretion for this to happen.
- Restrictions on transferring from unfunded public sector defined benefit schemes came into effect from 6 April 2015. Dr K said he discussed transferring out with his IFA when he turned 55 in June 2015. Therefore, any perceived delays by NHS BSA did not actually cause Dr K to lose the opportunity to transfer as, by this point, the restrictions had come into force.
- Dr K said he expected NHS BSA to notify him of the restrictions in question when he started the process to transfer out, which he said began in 2015. However, Dr K signed NHS BSA's transfer request form in September 2016, which was his first clear action in his decision to transfer out. It was not reasonable for Dr K to expect NHS BSA to personally notify him of transfer restrictions before this date.
- In regard to whether NHS BSA should have notified Dr K of the transfer restrictions when it received his completed transfer request form, it did not appear that Dr K had made NHS BSA aware that he planned to transfer to a defined contribution scheme at this point. In the form, he indicated that the receiving scheme was not yet known.
- Dr K had also complained that the incorrect figures cited in his June 2014 statement caused him and his IFA to believe that he was exceeding the LTA and led to his decision to limit contributions to the Scheme. However, NHS BSA had stated that benefits were based on figures available at year ending 31 March 2013 and that for the purposes of the estimate, it assumed that he continued to earn the same amount in the following two years as he did in 2013. Therefore, these figures were an estimate using the information available.
- NHS BSA's process of using estimated figures in the absence of actual ones was not unreasonable or unusual. Further, Dr K could have clarified this point, either through NHS BSA or his IFA, before making such a decision.
- NHS BSA was correct in telling him that he would need to opt out of the Scheme before a guaranteed CETV statement could be provided or a transfer processed. This was not misinformation. It was unfortunate that Dr K had opted out of the Scheme on the false understanding that doing so would enable him to transfer to a defined contribution arrangement but NHS BSA had not told him this was an option. Accordingly, no administrative errors were made on the part of NHS BSA.

27. NHS BSA accepted the Adjudicator's Opinion and PCSE provided no further comments.

28. Dr K did not accept the Adjudicator's Opinion and made the following comments:-

- No explanation had been provided on the "exceptional circumstances" that would allow for a transfer to a defined contribution arrangement. He should be allowed to do this without penalty.

- He had discussed the receiving scheme section of the form with NHS BSA and was told to leave this blank until the CETV was processed, which implied that a transfer to a defined contribution scheme was still feasible.
 - There was no apology or recompense for NHS BSA missing their statutory timescales for response. NHS BSA had at one stage pointed to an unprecedented increase in work volumes; however, the delays experienced were from 2015 to the present day.
 - NHS BSA had said it would consider his financial losses but this did not transpire. He wished to have this clarified.
 - The whole matter could have been avoided if NHS BSA had notified him or his IFA at the outset that the transfer was not allowed.
29. The Adjudicator at this point asked Dr K to provide further detail on the discussion in which he was told to leave the receiving scheme section of the transfer request form blank. She also asked Dr K to specify the delays he had experienced.
30. Dr K provided this information and, following this, the Adjudicator asked NHS BSA if it could investigate the specific instances identified.
31. NHS BSA provided its response on 25 April 2018. It said that audio recordings of telephone calls were only retained for six months but, where relevant, brief written notes of calls were retained. From the call notes it provided, there was nothing to suggest Dr K was told a defined contribution transfer was possible. Further, in terms of the additional delays Dr K had outlined, NHS BSA's records did not correspond with these. In regard to compensation, NHS BSA did not consider that Dr K had suffered a financial loss, as regardless of any shortcomings in service, the transfer Dr K was seeking was not available. Further, in terms of opting out of the Scheme, this was Dr K's decision and he was at liberty to re-join.
32. The Adjudicator contacted Dr K and passed on all of the information NHS BSA had provided, which included notes it held on telephone calls. She said there was insufficient evidence that NHS BSA had made any administrative errors so she would not be able to make a recommendation for financial or non-financial loss.
33. Dr K replied saying:-
- It seemed unfair that audio recordings were only maintained for six months, meaning it was not possible to verify who said what.
 - Calls were made on the dates for which NHS BSA had no record and he was told that he would receive a call back from NHS BSA which never materialised. Further, he was told to leave the receiving scheme blank.
 - In his previous statement he had not estimated the consequential losses but had made the suggestion that an average of annual salaries for the "lost" years should form the basis of any compensation.

34. The complaint was then passed to me to consider. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Dr K for completeness.

Ombudsman's decision

35. I agree that NHS BSA's actions did not cause Dr K to lose the opportunity to transfer, as he began contemplating this after the transfer restrictions came into force.
36. Dr K believes that NHS BSA ought to have informed him of the restrictions much earlier in the process, however I cannot identify a point when NHS BSA, in the knowledge that Dr K wished to transfer to a defined contribution arrangement, misadvised him, or that it misled him by omission.
37. Dr K has said that NHS BSA should have told him on 2 November 2016, when he explained by telephone his intention to transfer to a defined contribution scheme, that this would not be permitted. He further notes that this would have been NHS BSA's second opportunity to do so, the first being when it received his transfer request form. However, none of the call notes from this time period corroborate NHS BSA being aware of the receiving scheme. It is also of significance that Dr K did not name the receiving scheme in his transfer request form, hence, there is no written record of Dr K's intentions at that time. Dr K says NHS BSA specifically advised him to leave the receiving scheme details blank but the call records do not support this. In any case, had there been evidence that Dr K was misinformed, the appropriate remedy would not be to allow the transfer as this would not have been permitted by the Pension Schemes Act 2015 legislation.
38. Dr K is also unhappy that incorrect figures in his 2014 statement led him to stop making substantive contributions into the Scheme so that he would breach the LTA. However, the estimate makes reference to the fact that assumptions have been used, and gives possible reasons for NHS BSA not having more up to date information.
39. I understand that Dr K opted out of the Scheme in order to allow for the transfer, before learning that this would not be possible. NHS BSA acknowledges it said he would need to opt out before any transfer could be progressed and maintains that this was correct information. In the absence of evidence that it knew of his intended receiving scheme when it said this, I cannot make a finding that it misadvised him.
40. In terms of delays and poor service on the part of NHS BSA, the main delay supported by evidence concerns the pension forecast Dr K requested in December 2015 and received in April 2016. However, although unfortunate and understandably frustrating for Dr K, and I accept, it may have caused some distress and inconvenience, in my view it does not amount to an administrative error which caused significant distress and inconvenience. I am aware that Dr K has outlined a number of instances where NHS BSA delivered a poor service, but these have not been substantiated.

41. In respect to Dr K's purported financial loss resulting from this delay, he has suggested that an average of annual salaries for lost years should form the basis of any compensation. However, when establishing what financial loss has been suffered, I would expect there to be a direct causal link between the maladministration alleged and the consequences or events which ensued. Dr K has not set out what the consequences of the delay were, either in escalating his complaint through the IDRP, or in the complaint brought to my office. Accordingly, I do not find that NHS BSA could reasonably be expected to make Dr K an offer in these circumstances.
42. Therefore, I do not uphold Dr K's complaint.

Anthony Arter

Pensions Ombudsman
29 June 2018