

Ombudsman's Determination

Applicant	Mrs E
Scheme	NHS Pension Scheme (the Scheme)
Respondent	NHS Business Service Authority (NHS BSA)

Outcome

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

Complaint summary

3. Mrs E's complaint concerns NHS BSA being unable to commute her pension into a trivial lump sum. Mrs E argues that she was told by NHS BSA that this would not be possible, so chose to take her pension early.

Background information, including submissions from the parties

4. In February 2015, Mr E made an application for early payment of her deferred pension. Her pension became payable from 5 February 2015.
5. On 17 February 2015, Mrs E called NHS BSA to enquire about whether she could commute her pension into a lump sum.
6. On 18 February 2015, NHS BSA tried to contact Mrs E to inform her that she was unable to commute her pension until age 60. NHS BSA says it left a message on Mrs E's answer phone, although this is disputed by Mrs E.
7. On 23 February 2015, Mrs E called NHS BSA again to enquire whether it was possible to commute her pension. On this occasion, Mrs E says that she was categorically told that this would never be possible. The call note states:

"Advised member not eligible for trivial commutation as not 60."
8. The Finance Act 2004 (**the 2004 Act**), sets out the conditions for trivial commutation. On 6 April 2015, the Government introduced legislation which amended the 2004 Act, lowering the age when a member of a pension scheme could commute their pension into a trivial lump sum, from 60 to 55. The legislative change was not retrospective,

meaning that any member who applied for trivial commutation prior to 6 April 2015, was subject to the previous conditions, one of those being that the member needed to be aged 60 or over. The full set of conditions post amendment can be found in the appendix.

9. On 19 May 2017, NHS BSA received a letter from Mrs E again asking whether it was possible to commute her pension. Mrs E called NHS BSA on 23 June 2017 and was informed that her request had been passed to the relevant team to respond. Due to a delay in responding to Mrs E, she called again on 25 July, 8 August and 30 August 2017.
10. On 8 September 2017, NHS BSA wrote to Mrs E and said it may be possible to commute her pension in a trivial lump sum and asked her to fill out two forms before it could process her request for trivial commutation. Mrs E completed the forms and returned them to NHS BSA. Included in the forms, Mrs E also mentioned that she wished to commute her pension as she was at risk of losing her house due to mounting debts. The letter also provided details of Mrs E's pension and how much she would receive under trivial commutation:-
 - Annual pension of £504.09, which had been in payment from 5 February 2015
 - Pension commencement lump sum of £1,626.01
 - Trivial Commutation Lump Sum of £12,379.91
11. On 15 September 2017, NHS BSA wrote to Mrs E and said that she was unable to commute her lump sum. It explained that whilst it was possible for members to trivially commute their pension from the age of 55, the payable date of the benefit must be on or after 6 April 2015. As Mrs E's pension commenced on 5 February 2015, it was not possible to commute her pension into a trivial lump sum.
12. On 13 October 2017, Mrs E wrote to NHS BSA to complain under its Internal Disputes Resolution Procedure (**IDRP**) regarding the fact that it would not commute her pension.
13. On 24 November 2017, NHS BSA issued its IDRP 1 response. It confirmed that its letter of 15 September 2015 correctly stated that the legislation in place at the time she took her pension in February 2015, did not allow her to commute her pension, and it was unable to implement the change reduction in trivial commutation age retrospectively.
14. On 24 January 2017, after Mrs E appealed the IDRP 1 response, NHSBSA issued its IDRP 2 response. It reiterated that it was unable to retrospectively apply the change in legislation to enable trivial commutation of her pension. In addition, it also pointed out that Mrs E received a copy of the "NHS Pension Scheme retirement booklet" when Mrs E opted to take her benefits early in February 2015. The booklet provided the criteria that had to be met for trivial commutation, namely that this could be considered if she was over the age of 60. NHS BSA also noted that she was advised

similarly when she called on 23 February 2015. However, it apologised if its letter of 8 September gave her the impression that she could trivially commute her pension.

15. Mrs E did not agree with NHS BSA's response so brought her complaint to this Office, and made the following points:-
- She is suffering severe financial hardship and may lose her home hence she wants to commute her pension. Her pension of £504.09 per year does not allay her financial difficulties.
 - When she first approached NHS BSA to take her pension early in February 2015, she asked whether, in the future, it would be possible to take the entirety of her pension as a lump sum. Mrs E's recollection of the phone call is that she was categorically told that she would never be able to do this, and she could only take a 25% tax free cash lump sum.
 - If she was told that there would be a small chance in the future that she would be able to commute her pension, she would not have opted to take her benefits early.
 - After the age for trivial commutation was lowered to 55, she reapplied to commute her benefits and was told what her lump sum would be, only to be told this was not possible.
16. NHS BSA provided its formal response to this Office and was asked whether it would award Mrs E £500 for the distress and inconvenience caused by giving Mrs E the impression that she could commute her benefits in a trivial lump sum in September 2017. NHS BSA did not believe a payment of £500 was warranted as Mrs E should have already been aware that this was not possible.

Adjudicator's Opinion

17. Mrs E'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 below:-
- No recording exists of the conversation that took place between NHS BSA and Mrs E in February 2015, so the Adjudicator could not say with any certainty exactly what Mrs E was told.
 - However, even if Mrs E was told that she would never be able to commute her benefits in the future, the legislation which amended the 2004 Act and lowered the trivial commutation age from 60 to 55 only came into force on 6 April 2015 and was not retrospective. As a result, Mrs E's pension could not be commuted into a trivial lump sum until age 60, as she took her pension early in February 2015.
 - The Adjudicator did not believe that the distress and inconvenience suffered was significant, so a payment of £500 was not warranted.

18. Mrs E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs E provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs E for completeness, set out below:-
- Mrs E has a witness who can confirm her side of the telephone conversation with NHS BSA in February 2015, where she was told that she would never be able to commute her pension into a trivial lump sum.
 - She is suffering severe financial hardship and she is at risk of losing her home.

Ombudsman's decision

19. The basis of Mrs E's complaint is that she was told by NHS BSA that she would never be able to commute her pension at any point in the future, so on this basis she chose to take her pension early instead. Mrs E says that if there was any chance that her pension could be commuted in the future, she would have waited until it was possible to do so.
20. It is hard to ascertain exactly what NHS BSA told Mrs E throughout February 2015, as there are no call recordings. The call notes show that Mrs E enquired as to whether she could take her pension as one lump sum, and that she was told by NHS BSA that she would not be able to trivially commute her pension. This is shown in the call note which says. "Advised member not eligible for trivial commutation as not 60". At the time, this was correct advice, as the age for trivial commutation was 60. It was only later in April 2015, that this age was reduced to 55.
21. I appreciate that Mrs E is willing to provide a witness to say what was stated at that time, but that would by her own admission only shed further light on her side of the conversation. Whilst I do not dispute Mrs E's recollection of what she was told, NHS BSA denies it; and, there is no evidence to support her claim. The call notes, described above, also do not assist with my analysis. Therefore, on the balance of probabilities, I cannot say that Mrs E was categorically told that she would never be able to commute her pension in the future.
22. However, even if Mrs E was told that she may be able to commute her benefits in the future, I am not certain that she would have opted against taking her pension early and commute her benefits instead. The call notes show that she was interested in commuting her benefits, however Mrs E would not have been aware that the legislation would change in the future to allow her to take her benefits as one lump sum, so she may have opted to take her pension early anyway.

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23. Moreover, the legislation that came into force on 6 April 2015, to amend the 2004 Act is not retrospective. As Mrs E took early payment of her benefits from February 2015, she is not able to commute her pension at the moment. I realise this comes as a disappointment to Mrs E, given that she is in receipt of a small pension, and I sympathise with her situation.
24. Finally, turning to non-financial loss, I agree that the distress and inconvenience caused by NHS BSA, by giving Mrs E the impression that she may be able to commute her benefits, was not significant as this was never guaranteed, so no award is warranted.
25. Therefore, I do not uphold Mrs E's complaint.

Anthony Arter

Pensions Ombudsman
30 January 2019