

## Ombudsman's Determination

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

### Outcome

1. I do not uphold Ms 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. Ms N complains that NHS BSA provided her with misleading information and refused her request to transfer into the Scheme, on Public Sector Transfer Club (**Club**) terms.

### Background information, including submissions from the parties

4. On 17 October 2016, Ms N joined the Scheme.
5. On 26 September 2017, Ms N telephoned NHS BSA to enquire about transferring a deferred benefit from the Tyne & Wear Pension Fund (**the Fund**) into the Scheme.
6. On 16 October 2017, Ms N requested a guaranteed Cash Equivalent Transfer Value (**CETV**) quote from South Tyneside Council (**STC**), in its role as an administering authority for the Fund.
7. On 17 November 2017, NHS BSA received a CETV quote from STC.
8. On 30 November 2017, NHS BSA wrote to Ms N requesting she complete the Scheme's transfer application form.
9. On 18 December 2017, NHS BSA wrote to Ms N stating it was cancelling her application to transfer as she was outside the 12-month deadline to complete a Club transfer. Ms N telephoned the same day to query this with NHS BSA. She says she was previously told that a Club transfer might be possible. NHS BSA agreed it would investigate her application further.

10. On 8 January 2018, NHS BSA received a completed transfer application form from Ms N.
11. On 2 February 2018, NHS BSA sent a further letter to Ms N informing her that she could not now transfer on Club terms as she was outside the 12-month deadline, but a non-club transfer was possible. NHS BSA also asked Ms N to arrange for STC to fill out its Part B transfer form so it could consider if a Club transfer had been unfairly delayed by STC.
12. On 9 February 2018, in response to a telephone call, a representative of NHS BSA emailed Ms N. The representative said;

“We have not refused your transfer in to [sic] the NHS scheme we need further information before we can decide if the correct guidelines have been met to allow a Club transfer. Should the correct guides not have been met the transfer will still be allowed but must be on Non-club terms”.
13. On 27 February 2018, Ms N called NHS BSA to request an update on her transfer. NHS BSA’s record of the call states that its representative informed Ms N that she could not now complete a Club transfer.
14. After confirming the date Ms N requested a CETV from STC, NHS BSA wrote to Ms N on 28 February 2018. It confirmed that Ms N was not eligible for a Club transfer as she had not elected to proceed with the transfer within 12 months of being eligible to join the Scheme. NHS BSA said it received Ms N’s completed transfer application after the deadline, but it would allow Ms N a non-Club transfer because she enquired about transferring before the deadline.
15. On 28 March 2018, Ms N complained under the Scheme’s internal dispute resolution procedure (**IDRP**). Ms N said she had received incorrect information on numerous occasions from representatives of NHS BSA, and this had caused her to miss the deadline to complete a Club transfer. Ms N said NHS BSA should exercise discretion and allow her pension transfer on Club terms.
16. On 21 May 2018, NHS BSA provided its Stage 1 response. It apologised and upheld Ms N’s complaint in respect of the conflicting information she received from its representatives. However, NHS BSA also said that as Ms N’s signed election was not received before the end of the 12-month eligibility period, she could not transfer on Club terms.
17. On 31 May 2018, Ms N asked for her complaint to be considered under Stage 2 of the IDRP. She said NHS BSA had admitted its failings and it was not fair for her to suffer “financial hardship” due to its maladministration. She also argued it was within NHS BSA’s discretion to allow a Club transfer.
18. On 2 July 2018, NHS BSA provided its Stage 2 IDRP response. It maintained that a Club transfer was not now possible under the Regulations. However, NHS BSA had

taken Ms N's September 2017 telephone call as an expression of interest and exercised its discretion to offer Ms N a non-club transfer instead.

## **Adjudicator's Opinion**

19. Ms 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 below:-

- An application for a Club transfer must be made within 12 months of joining the Scheme.
- Members must be in receipt of a CETV for an application to be made. This is a reasonable policy to ensure members know the value of a pension entitlement before they make an irreversible decision to transfer.
- As Ms N initially telephoned NHS BSA on 26 September 2017, the Adjudicator did not agree that Ms N could reasonably have expected to complete a Club transfer in the 21 days between telephoning NHS BSA, and reaching the deadline.
- Ms N had to correspond with NHS BSA on several occasions and this caused her nominal distress and inconvenience. However, it fell below the level where an Ombudsman would likely direct NHS BSA to make an award for non-financial injustice.
- NHS BSA exercised its discretion to allow Ms N a non-Club transfer by taking her September 2017 telephone call to be an expression of interest. It is NHS BSA's discretion to allow Ms N a non-Club transfer and, in the Adjudicator's view, it was a reasonable resolution.

20. Ms N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms N 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 Ms N for completeness.

## **Ombudsman's decision**

21. In her comments, Ms N maintains that she received "systematically incorrect information" from representatives of NHS BSA. She argues that she relied upon the information provided by NHS BSA's representatives and cannot be expected to understand the Scheme's "complex" Regulations. I do not expect Ms N to be an expert on pensions. However, Ms N's transfer can only be calculated in accordance with the Regulations. Specifically, Regulation 142 of the NHS Pension Scheme (2015) states that:

- (1) An application under regulation 141—
  - (a) must be in writing;

(b) must specify the scheme or arrangement from which the transfer value payment is to be made and the anticipated amount of the payment;

(c) must be made before—

(i) the end of the period of one year starting on the day the member (M) becomes eligible to be an active member of this scheme; and

(ii) M attains normal pension age;

(d) if the scheme manager so requires, may be made only if M has requested a statement of entitlement; and

(e) must meet such other conditions as the scheme manager requires.

22. Ms N contacted NHS BSA to start the Club transfer process 21 days before the deadline, and did not submit a valid application before it elapsed. In view of the limited time available, Ms N could not have reasonably expect a Club transfer to be achievable. Having reviewed the evidence, I am also satisfied that NHS BSA investigated whether any delays outside Ms N's control delayed her application. Ultimately, Ms N did not meet the requirements set down in the Regulations, and cannot now complete a Club transfer into the Scheme.
23. Ms N says that if the correct position had been explained to her from the outset, or during the process, then she would never have pursued the matter. However, NHS BSA wrote to Ms N in February 2018, stating the applicable requirements under the Regulations, and its reasons for not allowing a Club transfer. The correct position is also explained in the Scheme's transfer application pack. I appreciate that Ms N was disappointed to ascertain that a Club transfer was not possible. I also understand that Ms N contacted NHS BSA to query the position on several occasions and that she found the mechanics of the process confusing. However, I find that as Ms N did not meet all the requirements of Regulation 142, she is not entitled to a Club transfer, and NHS BSA has not made an error.
24. Although by its own admission, NHS BSA provided Ms N with inconsistent information, I do not consider its effect on Ms N to be so significant as to warrant an award for non-financial injustice. Consequently, I find NHS BSA's apology to be sufficient based on the facts.
25. NHS BSA has stated that Ms N can complete a non-Club transfer into the Scheme. If Ms N would like to proceed with this option, then she should contact NHS BSA directly.
26. I do not uphold Ms N's complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
19 August 2019