

**PENSION SCHEMES ACT 1993, PART X****DETERMINATION BY THE DEPUTY PENSIONS OMBUDSMAN**

|                   |   |
|-------------------|---|
| <b>Applicant</b>  | Dr Mark Wilkinson                                 |
| <b>Scheme</b>     | NHS Pension Scheme                                |
| <b>Respondent</b> | NHS Business Services Authority ( <b>NHSBSA</b> ) |

**Subject**

Dr Wilkinson complains that NHSBSA wrongly refused to allow a transfer of his University Superannuation Service (**USS**) pension rights into the NHS Pension Scheme (**NHSPS**) when he returned to NHS employment in March 2006.

**The Deputy Pensions Ombudsman's determination and short reasons**

The complaint should not be upheld against NHSBSA. Although I have no reason to doubt that Dr Wilkinson had wanted to transfer his USS pension rights to the NHSPS back in 2006, I am not persuaded that his failure to do so at the time can be attributed to any shortcomings on the part of NHSBSA to provide him with adequate information about the new transfer procedure.

## DETAILED DETERMINATION

### Relevant Legislation

1. The NHSPS Regulations 1995 specify time and age limits by which members must request and complete the payment of a transfer value into the NHSPS. They stipulate that:

“NI: Member’s right to transfer accrued rights to benefits to this Section of the scheme

Within 12 months after joining this Section of 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...

(3)...the Secretary of State shall not accept the transfer payment if:

(a)...the member joins this Section of the scheme, or requests the Secretary of State to accept the transfer payment, after reaching age 60...

UI Extension of time limits

In any particular case, the Secretary of State may extend any time limit mentioned in these Regulations.”

### Material Facts

2. Dr Wilkinson’s date of birth is 19 May 1950.
3. He accrued 5 years 363 days of (non-continuous) pensionable service in the NHSPS whilst working for the NHS between April 1968 and February 1981. He subsequently transferred his accrued NHSPS benefits to the USS in October 1981.
4. Dr Wilkinson returned to NHS employment in September 1985. He completed Form SS10 for NHSBSA in order to re-join the NHSPS. Dr Wilkinson specified on this form that he was previously a member of another pension scheme and wished to transfer those pension rights to the NHSPS.
5. NHSBSA notified Dr Wilkinson in June 1986 that they had received a transfer value payment from the USS for him and he had been credited with an additional 10 years 179 days of pensionable service in the NHSPS. Dr Wilkinson says that he did not receive this letter at the time and only became aware of its existence in April 2013 after NHSBSA had sent him a copy.

6. Dr Wilkinson left the NHS again in August 1986 in order to work for King's College London School of Medicine (**KCLSM**).
7. In October 1986, USS informed NHSBSA that Dr Wilkinson had requested a transfer of his accrued NHSPS pension rights to the USS. This transfer was completed in July 1987.
8. On 1 March 2006, Dr Wilkinson's contract with KCLSM was transferred to Guy's and St Thomas' NHS Foundation Trust as part of a strategic move.
9. Following the transfer, although Dr Wilkinson's job was essentially the same, he had to leave the USS however and re-join the NHSPS. The re-joining process was, by now, fully automated and it was no longer necessary for him to complete Form SS10. This meant that Dr Wilkinson could no longer notify NHSBSA that he wished to transfer his previous pension rights to NHSPS using this form.
10. Dr Wilkinson completed a new staff appointment form showing that:
  - he wished to be a member of the NHSPS; and
  - he had not yet been provided with a copy of the latest scheme booklet.
11. Dr Wilkinson says that he only first became aware that his accrued USS pension rights had not been transferred to NHSPS in February 2011 after receiving a benefit statement from NHSBSA. He thought that this transfer had taken place around September 2006 and informed NHSBSA accordingly. When NHSBSA replied that they had not received this transfer request, Dr Wilkinson tried to establish why.
12. In his letter dated 22 March 2011 to NHSBSA, he said that:
  - USS did not inform him of his transfer value or the requirement to specifically request a transfer of his USS pension rights to NHSPS in 2006;
  - when he re-joined the NHSPS, he was consequently unaware that most of his pension rights were still in the USS;
  - he thought that his USS pension rights had been automatically transferred to the NHSPS as part of the strategic move (and that this would have been covered in his agreement for his post to be transferred);
  - he had negotiated the purchase of added years in the scheme based on this belief;

- for his previous transfers of pension rights between NHSPS and USS, he was not required to take any action and had no reason to expect that the one in 2006 would be any different; and
  - he would therefore like to transfer his USS pension rights into the NHSPS (under the Public Sector Transfer Club terms) now.
13. NHSBSA informed him in their letter of 24 March 2011 that they had rejected his late transfer application because it was made outside statutory time limits (i.e. not within 12 months of his re-joining the NHSPS). They also said that:
- a transfer into or out of the NHSPS was not an automatic process; and
  - a member had to express his/her wish to transfer in writing to them before they could proceed with it.

### **Summary of Dr Wilkinson's position**

14. NHSBSA did not automatically provide him with annual benefit statements and only did this on request.
15. He did not receive a copy of the latest NHSPS booklet on re-joining NHSPS in 2006 for reference. He was therefore unaware of the significant changes which had been made to the transfer process since his last transfer of pension rights into NHSPS some 20 years ago. In particular, he did not know that he now had to specifically request a transfer into the NHSPS within 12 months of re-joining the scheme.
16. As administrators of the NHSPS, NHSBSA are ultimately responsible for ensuring that he received adequate information about the scheme (in particular, its rules and deadlines) when he re-joined in March 2006 in order to comply with the Occupational Pension Schemes (Disclosure of Information) Regulations. Asking his employer to disseminate this information by providing a copy of the scheme booklet and making it available on their website does not absolve them from their duties under these regulations.
17. In 1985 he was only required to indicate on Form SS10 that he wished to transfer his USS pension rights into the NHSPS and the administrators of the two schemes then co-operated to finalise the transfer. Under the new transfer procedure, he is now required to obtain a transfer value quotation and send it to NHSBSA (together with a completed application form). NHSBSA would then

provide him with a transfer credit quotation for approval before completing the transfer process.

18. His previous transfers between the two schemes provide compelling evidence that he would have sought a transfer of his USS pension rights to NHSPS in 2006 if he had been supplied him with adequate information about the new transfer process. In 2006, he was below the Normal Retirement Age (**NRA**) of the NHSPS, i.e. age 60.
19. In late 2005, he had enquired about the prospect of remaining in the USS rather than re-joining the NHSPS following his transfer to Guy's and St Thomas' NHS Foundation Trust. When he was told that this would not be possible, he sent an e-mail dated 17 November 2005 to Guy's and St Thomas' NHS Foundation Trust which said:

“...it looks as if there is nothing I can do to remain on the USS scheme if I transfer to the Trust, so I will have to accept that. Can you please make arrangements for the transfer to go ahead?

And please can someone tell me when and from whom I get my back pay?”

Guy's and St Thomas' NHS Foundation Trust responded as follows:

“It's a pity about the pension.

Regarding back pay this will come from KCL...

Finally regarding your transfer...I need the following:

From you:

Preferably a copy of your job plan...

Proposed transfer date...”

He had reasonably believed that he had triggered the transfer of his USS pension rights to NHSPS by sending the e-mail of 17 November.

20. It would have been advantageous for him to transfer under the Public Sector Transfer Club terms. The only reasonable conclusion for him not doing so at the time is that NHSBSA failed to provide him with adequate details of the transfer procedure and time limits in order for him to do so.
21. When he enquired about purchasing added years, NHSBSA should have provided him with information about his previous and prospective service in NHSPS before and after the purchase. The only information given to him at the time concerned the number of years he could purchase by contributing at the

maximum permissible rate. If he had received such information, he would then have noted that his USS pension rights had not been transferred into NHSPS and taken appropriate action to rectify this.

22. He had wrongly assumed based on his experience of a previous transfer from USS to NHSPS that the procedure was “hassle free” and would be triggered by indicating to his employer of his wish to transfer in his e-mail of 17 November 2005.
23. NHSBSA are ultimately responsible for ensuring that he received the NHSPS booklet and put in place an adequate procedure which showed that such information is actually issued to him. His statement that he did not receive the booklet should be accepted as he represents the disadvantaged party here.

### **Summary of NHSBSA's position**

24. There is no evidence to corroborate Dr Wilkinson's statement that he had requested a transfer of USS pension rights to NHSPS around September 2006.
25. NHSPS is the largest centrally administered public pension scheme in Europe. Effective administration of the scheme requires successful and timely interaction between them and NHS employers. The role of NHS employers in administering the NHSPS is therefore crucial and one of their duties is to provide new/returning members with relevant information about the scheme on their behalf. If for whatever reason this does not happen in Dr Wilkinson's case, there was extensive NHSPS material available to him on their website for reference. Furthermore Dr Wilkinson could have enquired why he had not been provided with a copy of the booklet at the time he completed the new staff appointment form to show that he had not received it yet.
26. Guy's and St Thomas' NHS Foundation Trust have confirmed to them that NHSPS booklets were issued to all new staff (including Dr Wilkinson). They have no reason to doubt that his employer therefore had met their disclosure responsibilities.
27. Dr Wilkinson also had access to relevant information about transferring pension rights on the USS website and in USS documentation.
28. Dr Wilkinson was clearly aware that a formal transfer procedure existed between NHSPS and USS having used it twice prior to 2006. Having been away from NHS employment for nearly 20 years, he should realistically have expected

that some procedures/timescales for this procedure might have changed over time, the first significant one being that it was no necessary for him to complete Form SS10.

29. Having no facility provided in which to request a transfer of his USS pension rights to the NHSPS in the same way as in 1985, Dr Wilkinson should have queried this by either contacting them or Guy's and St Thomas' NHS Foundation Trust.
30. When Dr Wilkinson applied to purchase additional years' membership of the NHSPS in 2007, he confirmed on his completed application form that he had read the NHSPS booklet "Increasing Your Benefits". In their opinion, Dr Wilkinson could only have found out about this option from the scheme booklet.
31. Irrespective of how he learnt about the availability of added years, the evidence is clear that Dr Wilkinson had contacted his employer's pension department during 2006/07 and it had therefore been open to him to request information about the transfer process at the same time.
32. In their view, Dr Wilkinson's e-mail of 17 November 2005 to Guy's and St Thomas' NHS Foundation Trust only suggests that:
  - he had looked into the possibility of remaining in the USS after his employment contract was transferred; and
  - he accepted that the transfer of employment should proceed after concluding that there was nothing which he could do to remain in the USS

He did not instruct them to arrange for a transfer of his USS benefits to the NHSPS in his e-mail.

33. Although Guy's and St Thomas' NHS Foundation Trust referred briefly to Dr Wilkinson's pension in their response, they were only commenting on the fact that he could no longer remain an active member of the USS.
34. In a club transfer, it is the receiving club scheme that bears the cost of providing a membership credit under club terms rather than on the less favourable cash equivalent (non-club) terms. The 12 month time limit ensures that the receiving club scheme is not obliged to accept unreasonably large liabilities at some point in the future. In Dr Wilkinson's case that liability is greater as his membership

with the USS commenced before 1 June 1989 and as such was not subject to the earnings cap and on transferring would remain uncapped.

35. As there is no evidence to suggest that they failed to make Dr Wilkinson sufficiently aware of/denied him access to information about the time limits associated with the transfer procedure, they do not consider it justifiable to apply discretion in his case and permit his late transfer application from the USS.
36. In any case, Dr Wilkinson is now over 60 and the NHSPS Regulations 1995 stipulate that they can no longer accept a transfer payment from the USS for him.

### **Conclusions**

37. It is clear from the evidence that Dr Wilkinson had not yet been provided with a copy of the NHSPS booklet at that time he completed the new staff appointment form to join Guy's and St Thomas' NHS Foundation Trust from 1 March 2006.
38. Dr Wilkinson asserts that he did not receive a copy of the scheme booklet at any time after he re-joined the NHSPS in 2006 for his reference. His employer has refuted this assertion by saying that they would have issued this booklet to him. Neither party has been able to provide any evidence to corroborate their statements. I am therefore prepared to accept that, on the balance of probabilities, one was most likely given to Dr Wilkinson after his employer had processed the new staff appointment form (which he used later to find out the about the "added years" option). Even if as Dr Wilkinson claims, his employer did not do this, I consider it not unreasonable to expect that he would then have requested a copy in order to find out more about the benefits of re-joining the NHSPS.
39. In any case, I concur with the view expressed by NHSBSA that Dr Wilkinson ought to have been aware of the existence of a formal transfer procedure at the time he re-joined the NHSBS. He had already used it twice prior to 2006 and it is most unfortunate if the circumstances surrounding his transfer of employment from KCLSM to Guy's and St Thomas' NHS Foundation Trust led him to mistakenly assume that his USS pension rights would be transferred automatically as part of the strategic move.



40. Dr Wilkinson also asserts that his e-mail of 17 November 2005 to Guy's and St Thomas' NHS Foundation Trust provides strong evidence that he had triggered the commencement of the transfer process of his USS pension rights to NHSPS. I do not however share his conviction. When his e-mail is read in conjunction with the response received from his employer, it is clear to me that the "transfer" being discussed refers to a transfer of employment rather than pension rights. Guy's and St Thomas' NHS Foundation Trust requested details of his job plan and not details of his USS pension rights in relation to this "transfer".
41. Furthermore Dr Wilkinson in my opinion ought to have recalled that it was NHSBSA and not his employer who dealt with his previous transfer of pension rights and directed his latest request to NHSBSA. If he had done this, NHSBSA would then have informed him of the new transfer procedure in force which he had to follow in order for the transfer to proceed.
42. Although I have no reason to doubt that Dr Wilkinson had wanted to transfer his USS pension rights to the NHSPS back in 2006, I am consequently not persuaded that his failure to do so at the time should be attributed to any shortcomings on the part of NHSBSA to provide him with sufficient information about the new transfer procedure.
43. I do not therefore consider that there has been any maladministration on the part of NHSBSA to now refuse a late transfer of his USS pension rights into the NHSBSA under the Public Sector Transfer club terms applying in 2006.
44. I do not uphold Dr Wilkinson's complaint.

**Jane Irvine**  
Deputy Pensions Ombudsman

13 October 2014