

Ombudsman's Determination

Applicant	Mrs S
Scheme	NHS Pensions Scheme (the Scheme)
Respondent	NHS Business Services Authority (NHS BSA)

Outcome

1. I do not uphold Mrs S' complaint and no further action is required by NHS BSA

Complaint summary

2. Mrs S' complaint is that she would like to claim a larger lump sum than she originally applied for, but NHS BSA is refusing her request, due to the time taken for her to make it.

Background information, including submissions from the parties

3. Mrs S' pension benefits from the Scheme were put into payment from June 2016. In her application for benefits, Mrs S had selected a tax free lump sum amount of 7.5% of her pension fund.
4. In September 2016, Mrs S' former employer informed NHS BSA that Mrs S' pensionable pay needed to be adjusted. As a result, NHS BSA issued a revised award notification letter to Mrs S on 13 September 2016.
5. On 14 November 2017, Mrs S called NHS BSA asking to amend her tax free lump sum figure to the maximum level of 25% of her pension fund.
6. On 4 December 2017, Mrs S confirmed this request by email to NHS BSA. In this email Mrs S said NHS BSA had told her by phone that, in order to increase the lump sum amount, her pension figures would have to be recalculated, which would result in lower monthly payments.
7. On 15 December 2017, NHS BSA responded to confirm that, as her pension was already in payment, she should include the words 'I agree to repay any overpayment' in her request.

8. On the same date, Mrs S emailed NHS BSA agreeing to repay any overpayment of pension.
9. On 15 February 2018, NHS BSA responded, saying that in order to claim a larger lump sum, Mrs S was required to make the request within one calendar month of receiving an award notification letter. NHS BSA concluded that it could not comply with Mrs S' request, because it was made over a month after the revised award notification letter had been issued.
10. On 1 March 2018, Mrs S wrote a complaint letter to NHS BSA. In summary, this letter said:-
 - Mrs S had phoned NHS BSA numerous times from 4 November 2017 onwards about her claim for a larger lump sum payment. However, it was not until she called on 23 February 2018 that NHS BSA confirmed that her request would not be accepted, due to the delay in responding to the award notification letter that had been issued on 13 September 2016.
 - The award notification letter was sent to a property Mrs S had lived in before moving to France in June 2016 and it was never received.
 - Mrs S was not allocated an address in France until summer 2017 and she could only have provided a very general address before she had retired, therefore post was received intermittently.
 - Mrs S had been unfairly treated by NHS BSA, despite following all their instructions, and she was falsely led to believe that the higher lump sum request would be honoured.
11. NHS BSA responded by letter, dated 19 March 2018, and said:-
 - Mrs S' initial pension payment was due from 1 June 2016, but after her employer notified it of some changes, a revised award letter was issued on 13 September 2016.
 - Any request for an amendment to the benefits needed to be made within one calendar month of being put into payment, which would have been on 13 October 2016, due to the updated information from the former employer.
 - Mrs S had provided change of address details on 17 February 2016 and that was the last change received, until 14 November 2017, when Mrs S informed NHS BSA of her new address in France, at which point her records were updated.
 - It was Mrs S' responsibility to provide details of any changes to her personal details.

- NHS BSA recognised that Mrs S' request should have been acknowledged in a timelier manner, for which it apologised. It further apologised for any conflicting information Mrs S may have been given during the phone calls.
12. On 26 March 2018, Mrs S invoked stage 1 of the Scheme's internal dispute resolution procedure (**IDRP**) with an email citing the following reasons for her dissatisfaction:-
- No mention was made in NHS BSA's letter of 19 March 2018 of the emails she had received requesting a revised letter of request in order to process her request.
 - All communications with NHS BSA had led her to believe that her request was being processed.
 - As she did not receive NHS BSA's letter of 13 September 2016, the details contained within it were unknown to her and, as a result, they were not applicable.
 - Mrs S also asked for her lack of an address following her move to France to be considered. She said that she could not have anticipated changes or that further correspondence would have been issued by NHS BSA after her pension was settled in June 2016. Additionally, she had experienced personal challenges that were a priority over checking her pension details after moving to France.
13. On 21 May 2018, NHS BSA responded to Mrs S' complaint. It explained that the Scheme's regulations state that a member may only choose their lump sum at the time they retire and there is no provision for that decision to be revised later. Discretion could only have been applied where a member had made a genuine mistake or where they had made contact before their first pension payment was made. However, when Mrs S made her request for a larger lump sum on 14 November 2017, this was several months after her pension had gone into payment. NHS BSA noted that it had not been informed of Mrs S' new address until December 2017. The complaint was not upheld.
14. On 22 June 2018, Mrs S invoked stage 2 of the IDRP saying that her request made in November 2017 had been delayed by complications with her move to France.
15. NHS BSA's response letter dated 10 September 2018 concluded that:-
- Mrs S' completed pension application form was received on 12 March 2016 and she was paid a pension income from 1 June 2016 with a lump sum of £10,377.77.
 - Mrs S moved to France around the same time as written notification of this was sent to her. However, NHS BSA was not aware of this change of address and it has no record of the notification being returned. Equiniti, the NHS BSA agent at that time, also wrote to Mrs S confirming the pension payment date but there is no record of this notification being returned either.
 - On 4 July 2016, Mrs S' former employer informed NHS BSA that her pensionable pay had increased. Consequently, her retirement benefits were recalculated. A

new award notification letter was issued to the address given by Mrs S in her application form.

- NHS BSA believed Mrs S received confirmation of her new address in France on 6 March 2017 but she did not inform it of the address change until November 2017, when she requested a larger lump sum.
- Information about exchanging pension income for a larger lump sum was provided when Mrs S completed her pension application form. Additionally, the 'Ask us?' section of the Scheme's website allows members to ask questions, which prompts relevant articles to be displayed. If Mrs S had raised a question about changing her mind about the lump sum amount, details would have been provided about the time limits for such requests.
- Due to the long delay between issuing the award notification letter and Mrs S contacting NHS BSA with her request to amend payments, it was not possible to revise her pension benefits and the complaint was not upheld.

16. Mrs S complained to us, saying:-

- The increased lump sum she was promised by phone, should be honoured.
- She was disappointed with the service provided by NHS BSA in correspondence about her complaint.
- She did not feel like she was being listened to properly by NHS BSA during telephone conversations.
- NHS BSA's refusal to allow a larger lump sum has caused her financial difficulties, leading to distress and inconvenience.

Adjudicator's Opinion

17. Mrs 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:-

- NHS BSA had no reason to suspect that the address details it held for Mrs S were incorrect, as she had signed a declaration that the details provided in her application form were correct and that she would notify NHS BSA of any changes immediately. In the Adjudicator's opinion, it was reasonable for NHS BSA to issue correspondence to the address Mrs S had given and to assume she had received it.
- Mrs S should have contacted NHS BSA as soon as she knew she was to leave her address in June 2016. Her payments from the Scheme started from 1 June 2016. In the Adjudicator's view, Mrs S ought to have recognised that she was

receiving payments into her bank account. She could reasonably have been expected to express any concerns soon after the first payments were issued, but that did not happen in this case.

- The Adjudicator recognised that Mrs S may not have known immediately following her move to France what her new permanent address would be but, in the Adjudicator's opinion, it was her responsibility to make NHS BSA aware at the earliest opportunity that she had left her old address. Allowances might then have been made for the difficult circumstances she found herself in, regarding the receipt of post.
 - Mrs S said that she could not have anticipated changes, or that further correspondence would have been issued by NHS BSA, after her pension was agreed. However, it is standard practice, and indeed necessary, to issue written notification of the retirement benefits.
 - The evidence shows that Mrs S' request was made over a year after her pension benefits came into payment. Therefore, the Adjudicator was not persuaded that she has suffered significant distress and convenience by not being allowed to increase her lump sum, due to her delayed request.
 - If Mrs S required guidance on how to notify a change of address or on making a request for a lump sum increase, she could have found this on the Scheme's website. Further, the information contained within the application form explained how to increase the lump sum amount.
 - The Adjudicator noted Mrs S' comments about her disappointment over the level of service provided by NHS BSA in their written correspondence and over the phone, but this did not alter the Adjudicator's opinion that it was reasonable for NHS BSA to reject her request for a larger lump sum. Mrs S made the request after the deadline of one calendar month, as set out in the Scheme rules.
 - The Adjudicator also noted Mrs S' comment about the phone call she had with NHS BSA on 4 November 2017, but formed the opinion that there is no evidence to confirm that Mrs S was guaranteed an increase to her lump sum in this call. In any event, any such misinformation given in a phone call would not give a member an entitlement to an increase in lump sum.
18. Mrs S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs S 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 S for completeness.
19. Mrs S says that NHS BSA has not presented any reasons for its initial responses in December 2017, when it asked her to revise the wording of her request in order to consider her claim for a larger lump sum. She argues that she passed on all the information that was requested by NHS BSA at that time.

20. Mrs S also says that the follow up calls she made to NHS BSA were to assess the progress of her claim and that in one of these conversations it was confirmed that her request had been granted. Mrs S added that she was informed that her request was still being worked on during another call.
21. Mrs S commented that it was harsh that any misinformation, which may have been provided by NHS BSA over the phone regarding her claim, did not convey entitlement to it.
22. Mrs S argues that, although she received confirmation of her new address in France during March 2017, the house numbers and street signs were not erected until much later in the year, therefore she was not receiving post. However, Mrs S accepts that it was her responsibility to make NHS BSA aware of these circumstances earlier than she did.
23. Mrs S said that she has experienced distress and inconvenience, caused by NHS BSA refusing her claim for a larger lump sum, as she has suffered from financial hardship, resulting from this decision.

Ombudsman's decision

24. There is no evidence of an agreement made between Mrs S and NHS BSA over the phone that her claim for a larger lump would be granted. Therefore, I cannot accept Mrs S' comment that she had received confirmation of this, as evidence in support of her complaint. Mrs S felt it was harsh that any misinformation, which she said had been provided by NHS BSA did not convey entitlement to her claim. However, NHS BSA has reasonably declined Mrs S' request, on the basis that it was not made in accordance with the Scheme rules.
25. Mrs S has acknowledged that it was her responsibility to inform NHS BSA of any change of address earlier than she did. I recognise that she may have had difficulty in receiving mail, due to the lack of house numbering and street signage in the area she moved to. However, this does not mitigate the fact that NHS BSA was not informed that Mrs S had left her previous address, until several months after the event. NHS BSA cannot reasonably be held liable for Mrs S not communicating this information as soon as her circumstances had changed.
26. I am not persuaded that NHS BSA's refusal to accept Mrs S' request for a larger lump sum has caused her significant distress and inconvenience. Mrs S took more than one year to make the request for an increase to her lump sum. Even if Mrs S did not receive the award notification letter in June 2016, she would have known that she had started to receive payments into her bank account. If she had concerns about the level of payment, she ought to have questioned this at that time.
27. I do not find that NHS BSA is responsible for Mrs S' delayed request to increase her lump sum amount, and I do not find NHS BSA's rejection of the request to be maladministration.

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28. Therefore, I do not uphold Mrs S' complaint.

Anthony Arter

Pensions Ombudsman

8 July 2019