

Ombudsman's Determination

Applicant	Ms N
Scheme	NHS Pension Scheme (the Scheme)
Respondent	NHS Business Services Authority (NHS BSA)

Outcome

1. Ms N's complaint is upheld and, to put matters right, NHS BSA should (1) reimburse Ms N in respect of any financial loss she has incurred, and (2) pay £500 for the significant distress and inconvenience she has suffered.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Ms N complains that NHS BSA, the Scheme manager, incorrectly accepted funds from a personal pension in March 2013, before discovering its error and returning them in May 2015, which has caused her a financial loss.

Background information, including submissions from the parties

4. In January 2013, Ms N joined the Scheme.
5. Ms N later decided to transfer the benefits of a personal pension plan (**PPP**), she had with Skandia (now referred to as **Old Mutual**) to the Scheme.
6. In March 2013, Old Mutual wrote to NHS BSA, confirming that funds totalling £78,390.06 had been transferred to NHS BSA.
7. In November 2014, a firm called PensionLite, acting on behalf of Ms N, requested a Cash Equivalent Transfer Value (**CETV**) of her benefits under the Scheme. This was provided. PensionLite queried why no crystallised benefits were shown. NHS BSA then discovered that the sum transferred from the PPP had been accepted in error.
8. In May 2015, NHS BSA wrote to PensionLite and stated that: -
 - When the benefits of the PPP were transferred to the Scheme, they had been crystallised already, so NHS BSA should not have accepted them.

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- To resolve this matter, NHS BSA had paid to Old Mutual the original sum of £78,390.06 and a CETV of £11,703.08, making a total of £90,093.14.
 - If it had included the “erroneous membership credit” from the incorrect transfer in the CETV calculation, the total payment would have been £83,000.92.
 - The amount paid to Old Mutual was about £7,000 more than would have been paid if the CETV calculation had included the transfer from the PPP; therefore, it would not be inappropriate to pay interest on top of that amount.
9. In June 2015, PensionLite wrote to NHS BSA, explaining why it believed NHS BSA should compensate Ms N for loss of investment growth. The key points were: -
- This matter only related to the transfer of the PPP from Old Mutual; Ms N’s service in the Scheme was irrelevant.
 - NHS BSA had incorrectly brought up Ms N’s “erroneous membership credit”; this membership credit should not have been allowed, as the CETV of benefits that should not exist is irrelevant. NHS BSA ought to have rejected the transfer from the PPP, as it was made clear that the benefits were all crystallised.
 - If the benefits of the PPP had been left with Old Mutual, at 1 June 2015 they would be worth more than £88,500. In addition, PensionLite had incurred various costs, for which it expected reimbursement.
10. In January 2016, NHS BSA responded under stage one of its internal dispute resolution procedure (**IDRP**) and is summarised below: -
- It was upholding part of Ms N’s complaint, as it should not have accepted the transfer of the PPP. To put this right, it had paid: £78,390.06, the amount incorrectly transferred, and £11,703.08, the CETV representing Ms N’s correct membership in the Scheme. It paid this amount to Old Mutual in May 2015.
 - The IDRP was free of charge, so it did not agree to reimburse PensionLite for its costs in bringing Ms N’s complaint.
11. PensionLite responded to NHS BSA with the following points: -
- The PPP, if left invested with Old Mutual, would have grown to £88,500. So Ms N was not in the correct position, in spite of NHS BSA’s payment.
 - PensionLite had spent an unreasonable amount of time trying to resolve the complaint, and was given incomplete information about NHS BSA’s complaint process.
12. In March 2016, NHS BSA responded under stage two IDRP. The key points were: -
- Its transfer team calculated the CETV ignoring the amount transferred in error, which came to £11,703.08.

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- It later received a transfer form confirming Ms N's wish to transfer. It calculated (1) the CETV including membership credit purchased by the incorrect transfer with (2) the CETV excluding that amount. The second calculation resulted in the higher amount of £90,093.14, which was paid to Old Mutual.
 - It apologised that PensionLite had had to spend time and money resolving this issue, but the circumstances were unusual, and NHS BSA lacked experience in this matter, hence it was not resolved more quickly.
 - The total transfer amount was higher than if the membership credit bought by the erroneous transfer payment had been retained, not including tax.
 - It proposed to pay Ms N £847, the interest due on the original transfer value. It did not agree to pay further compensation.
13. In April 2016, NHS BSA sent its formal response to this Office. The key points were: -
- The incorrectly transferred amount had been returned to Ms N, together with her correct entitlement under the Scheme.
 - It offered to consider any evidence PensionLite could provide about the growth Ms N could have achieved, if the sum had remained invested with Old Mutual.
14. This Office forwarded NHS BSA's submission to PensionLite. PensionLite had nothing further to add to its previous submission.

Adjudicator's Opinion

15. Ms N's complaint was considered by one of our Adjudicators, who initially concluded that no further action was required by NHS BSA. In summary, he said in the absence of further evidence as to the loss Ms N had suffered, NHS BSA's offer to pay her for the loss of interest incurred, whilst the funds were held with it, was reasonable. NHS BSA agreed; PensionLite disagreed. It provided further evidence of the losses Ms N had incurred, in the form of its own calculations based on the current value of the investments Ms N had held within the PPP as at March 2013.
16. Ms N's complaint was reconsidered by the Adjudicator. He concluded further action was required by NHS BSA. His findings are summarised briefly below: -
- NHS BSA acknowledged that it should not have accepted the funds from Old Mutual. The Adjudicator said, as this had been accepted, the only issue left to decide was what the redress should be.
 - NHS BSA should carry out a loss calculation, using information from Old Mutual if necessary, to establish the difference, if any, between the value of her pension investment that Ms N had transferred to NHS BSA, and the value of her investment if Ms N had left it invested in the same funds with Old Mutual.

- In the absence of evidence to the contrary, on the balance of probability, it was more likely that Ms N would have left the PPP investments in the same funds.
- NHS BSA's error in accepting the funds amounted to maladministration. So it should pay Ms N £500 for the significant distress and inconvenience that this has caused. NHS BSA's complaint handling could also have been better. However, no further award was justified in the circumstances. This was because, whilst there was evidence that Ms N's representative had to make numerous phone calls, and send several emails, to try and resolve this matter, the Scheme's IDRPs were free of charge for members wishing to bring complaints. Moreover, NHS BSA reminded Ms N that the Pensions Advisory Service (**TPAS**) could provide her with assistance at any stage of her dispute. There would have been no charge to her for this.

17. NHS BSA did not accept the Adjudicator's Opinion. And, whilst Ms N's representative did accept the Opinion, she considered that an additional award was justified for poor complaint handling. NHS BSA provided its further comments which do not change the outcome. I agree with the Adjudicator's second Opinion, dated 31 October 2017, and I will therefore only respond to the key points made by NHS BSA for completeness.

Ombudsman's decision

18. NHS BSA says Old Mutual should be jointly liable for the value of any investment loss suffered by Ms N, as it had a responsibility to ensure no unauthorised payments were made. Whilst it is true that Old Mutual should not make any unauthorised payments, given the clear wording in the exchange of correspondence between Old Mutual and NHS BSA, the onus was on NHS BSA to establish that it could accept the funds from Old Mutual, without breaching any applicable regulations.

19. In this particular case, the evidence indicates that there was sufficient information available to NHS BSA that the PPP benefits were crystallised. Old Mutual's letter to NHS BSA dated 12 March 2013 stated: -

“Further to your confirmation that you can accept the transfer for this client, we have sent an electronic payment for the transfer value of £87,390.06 to your nominated bank account.”

20. The letter included a document “Collective Retirement Account - Transfer Statement”, which made clear that £78,390.06, being 100% of the transfer value, was crystallised. Even if it had not previously been clear to NHS BSA that the funds were crystallised, which in any case is disputed by Ms N's representative and Old Mutual, it would have been reasonable for NHS BSA to have queried this at the time. The funds could then have been returned before any investment losses were incurred.

21. I have considered the document “Skandia Investment Solutions: Transfer-out discharge form”, which included the following declarations: -

“I understand that payment of a pension transfer amount can only be made where the receiving scheme is eligible to receive a pension transfer payment under HM Revenue & Customs rules.”

“I understand that the payment will not take place until Skandia MultiFUNDS Assurance Limited receives satisfactory assurances from the Receiving Scheme that it is eligible to receive a pension transfer payment under HM Revenue & Customs rules.”

“Is the Receiving Scheme a Registered Pension Scheme under Section 2, Part IV, Finance Act 2004, or a Qualifying Overseas Pension Scheme and willing and authorised to accept pension transfers?” [“Yes” box has been ticked]

22. In my view, the first two statements cannot be relied upon to protect NHS BSA from the consequences of accepting funds that are not, in fact, acceptable in the Scheme. They can, however, be used to justify returning such funds, which is what should have happened. NHS BSA has ticked “Yes” next to the third statement, and I believe it was reasonable for Old Mutual to assume that this meant the transfer could be accepted into the Scheme.
23. The document headed “Form B Notes: Important NHS Pension Scheme Details, – to be sent and read together with Form B” included the following notes:

“The Scheme will only accept transfer payments including any equivalent pension benefits... provided they... do not include the remaining balance of the fund following a drawdown of a lump sum from the previous fund.”
24. There is some doubt over whether Old Mutual received this document, which is the only document which specifically covers the type of funds Ms N intended transferring to the Scheme. However, in my view this does not change the outcome of the complaint. Clearly, as with the above mentioned statements, NHS BSA would be within its rights to rely on this statement as a basis for refusing to accept funds that cannot be accepted, or indeed when returning such funds. However, NHS BSA cannot rely on the statement as a defence against claims for losses arising from its incorrectly accepting such funds. It is for NHS BSA, not the transferring scheme, to ensure, in accepting a transfer that this is done in accordance with the Scheme regulations and statute.
25. Finally, a higher award has been requested by PensionLite because, in its view, the complaint handling by NHS BSA was poor. However, whilst PensionLite’s fees may be higher than they otherwise would have been due to poor complaint handling, it was not necessary for Ms N to incur this additional cost, because free assistance was available to her from TPAS, of which she was aware. Similarly, I do not believe that a higher award for non-financial loss (distress and inconvenience) is appropriate in this case. This is because, whilst the complaint handling could have been better, I do not find that the distress and inconvenience which Ms N has suffered is at the extreme end of the scale given that PensionLite was dealing with the matter on her behalf.

26. Therefore, I uphold this complaint.

Directions

27. Within 21 days of the date of this Determination, NHS BSA shall: -

- (i) Obtain a loss calculation from Old Mutual, and pay Ms N any difference between (1) the value of her benefits as at March 2013 when they were accepted by NHS BSA and (2) the value of the same benefits as at May 2015 when they were returned to Old Mutual, assuming they remained invested in the same funds as at March 2013.
- (ii) Obtain a loss calculation from Old Mutual in respect of the investment return to date on any loss identified in (i) above had the investment return been invested from May 2015 to date, assuming it had remained invested in the same funds as at March 2013.
- (iii) Payment under (i) and (ii) above will take into account monies already paid to Ms N by NHS BSA in respect of the financial loss caused by reason of acceptance of the transfer in March 2013.
- (iv) Pay Ms N £500 for the significant distress and inconvenience which she has suffered.

Anthony Arter

Pensions Ombudsman
8 December 2017