

## Ombudsman's Determination

Applicant	Miss L
Scheme	NHS Pension Scheme ( <b>the Scheme</b> )
Respondent	NHS Business Services Authority ( <b>NHS BSA</b> )

## Outcome

1. Miss L's complaint against NHS BSA is partly upheld. To put matters right, NHS BSA shall pay Miss L £500 in respect of the significant distress and inconvenience caused by NHS BSA's maladministration.

## Complaint summary

2. Miss L has complained that NHS BSA recorded incorrect information about her membership of the Scheme. She was then prevented from accessing her Total Reward Statement (**TRS**), which meant she was delayed in obtaining information about her benefit entitlement.
3. Miss L also complained that she was led to believe that she could only obtain a capital value by requesting the payment of her Scheme benefits.

## Background information, including submissions from the parties

4. On 25 September 2019, Miss L emailed NHS BSA. She explained that she had been employed by Gateshead Primary Care Trust and was a member of the Scheme between July 2012 and March 2015. She said that she had been unable to access details of her pension via the NHS website. She requested that NHS BSA provide the membership information she was seeking and asked how she would go about accessing her online records.
5. On 26 September 2019, NHS BSA responded to confirm that it had located Miss L's pension record. It said that as she had contributed to the Scheme for less than two years, she was eligible for a refund of her contributions. It provided details of the relevant form to complete if she wished to pursue this option.

6. Miss L replied on the same day to explain that she had benefits in another pension arrangement which she intended to take as a trivial commutation lump sum payment. She asked for the capital value of her benefits in the Scheme. She explained that she had been unable to access her TRS online, so requested further information in relation to her membership of the Scheme.
7. On 27 September 2019, NHS BSA responded to set out that as Miss L had less than two years' service, it would not produce a pension statement for her. It reiterated that she may be eligible for a refund of her contributions.
8. Miss L replied on the same day. She explained that she did not wish to receive a refund of her contributions. Given that her intention was to commute her other pension, she needed to know the value of her benefits in the Scheme. She also requested the relevant forms to take her Scheme benefits as a trivial commutation lump sum, as she believed she met the criteria.
9. NHS BSA responded on the same day. It provided Miss L with details of how to obtain a cash equivalent transfer value. It explained that if she had less than two years' pensionable service in the Scheme, she would not be entitled to receive benefits in the form of an annual pension or trivial commutation. It again said that she could receive a refund of her contributions and gave details of how to request this.
10. On 30 September 2019, Miss L emailed NHS BSA to highlight that she had been employed by the NHS from July 2012 to February 2015, a period of roughly two and a half years. She asked NHS BSA to check its records and for it to provide a copy of her membership statement.
11. NHS BSA responded on the same day to apologise for the confusion and confirm that Miss L had been a member of the Scheme from 9 July 2012 to 1 March 2015, so more than two years. It said her record should have shown as being a deferred pension and would be updated accordingly. It advised that this should be completed within 15 working days.
12. On 17 October 2019, Miss L emailed NHS BSA to say that she had not received a response to her request for the capital value of her benefits in the Scheme. She was unhappy with the delay and said it was preventing her from proceeding with the trivial commutation of her other pension. She asked for details in relation to her Scheme membership and how she would be able to access her TRS. She also requested the forms to request the trivial commutation of her Scheme benefits.
13. On 24 October 2019, NHS BSA responded to confirm that Miss L's pension record had been updated and apologised for the previous error. It confirmed that her request for further information had been passed to its 'estimates team', who would contact her in due course.

14. On 1 November 2019, Miss L emailed the Information Governance department of the Scheme. She said that she had previously made a Subject Access Request for all her personal information, held in relation to the Scheme. She had received a response from the Information Governance department on 25 October 2019, but it did not contain the information she needed to calculate her pension entitlement.
15. Miss L explained that she had been trying to access her TRS online, but the system did not recognise her details. She intended to take her benefits from the Scheme as a trivial commutation. She had already obtained information for her other pension, but needed to establish the value of her Scheme benefits in order to proceed. Miss L asked for details of her membership and reckonable pay.
16. On 1 November 2019, the Information Governance department emailed Miss L to advise that it had referred her query to NHS BSA.
17. On 8 December 2019, Miss L wrote to NHS BSA to register a complaint. She said it had been 76 days since her initial request for information, but she had not been provided with an adequate response. She was also unhappy that NHS BSA had originally indicated that she had less than two years' membership of the Scheme. She requested that NHS BSA provide the following information:
  - her pension membership statement;
  - the capital value of her benefits in the Scheme;
  - the forms to request the trivial commutation of her benefits; and
  - details of how to access her TRS online.
18. On 10 December 2019, NHS BSA issued a pension statement to Miss L. It set out that she could be entitled to an annual pension of £763.85 if she were to retire at the Scheme's normal retirement age (**NRA**). This was an estimate based on the information it held, including Miss L's reckonable pay of £16,240.43 and Scheme membership of 2 years 236 days. It confirmed that she was employed by Gateshead Primary Care Trust from 9 July 2012 to 31 March 2013 and by NHS Property Services Ltd from 1 April 2013 to 1 March 2015. It advised that her exact pension entitlement could not be confirmed until an application for benefits was made.
19. On 20 December 2019, Miss L wrote to NHS BSA, enclosing her completed AW8P form and a request for payment of her benefits by trivial commutation. She believed she was entitled to a gross lump sum payment of £15,277 which, in combination with her other pension benefits, was within the limit for commutation. She asked NHS BSA to confirm that she was eligible for trivial commutation and requested the forms that would be required for this to proceed.
20. On 2 January 2020, NHS BSA acknowledged receipt of Miss L's pension request form AW8P. This form was to claim her deferred benefits from the Scheme.

21. On 18 January 2020, Miss L emailed NHS BSA to say that she had requested the additional forms for the trivial commutation of her Scheme benefits. She was yet to receive a response, so asked that this be actioned as soon as possible. She also requested the capital value of her Scheme benefits, because she needed this information to commute the benefits she held in her other pension arrangement.
22. On 23 January 2020, NHS BSA wrote to Miss L. It apologised that she had initially been given incorrect membership information and confirmed that her correct membership was 2 years and 236 days. It acknowledged that she had requested a pension benefits statement on 18 October 2019, but this had not been provided until 10 December 2019. It said this was an unreasonable length of time and apologised for the delay.
23. NHS BSA explained that the benefits statement gave an estimate of Miss L's pension entitlement at age 65, because this was the NRA for the 2008 Section of the Scheme. It said it could not confirm the capital value until her retirement benefits had been calculated. It estimated that if she were to retire at the Scheme's NRA, she could receive an annual pension of £763.85. If she were to commute her benefits before reaching the NRA, the pension value would be actuarially reduced. NHS BSA considered that under this scenario the capital value of Miss L's Scheme benefits would likely fall within the commutation limit. It was unable to confirm this until the value of all of Miss L's pension benefits was known. This amount would need to be below £30,000 in order to qualify for trivial commutation.
24. On 27 January 2020, Miss L emailed NHS BSA. She said she had originally contacted NHS BSA to obtain the capital value of her Scheme benefits, in order to commute the benefits in her other pension arrangement. She was concerned at NHS BSA's statement that it would apply an actuarial reduction if she were to commute her Scheme benefits prior to the NRA. She referred to the Scheme's online factsheet for trivial commutation. Her understanding was that the commutation value would be 20 times the annual pension payable without any actuarial reduction. She believed she should be entitled to a commutation value of 20 times her estimated annual pension of £763.85, which would be £15,277.
25. Miss L said she had still not received the necessary forms for the trivial commutation of her Scheme benefits. She requested these forms be provided as soon as possible and asked for details of the Regulations that allow for the actuarial reduction of trivial commutation lump sum payments.
26. On 28 January 2020, Miss L emailed NHS BSA. She acknowledged that NHS BSA had indicated that the value of her Scheme benefits would fall below the trivial commutation limit, but she had specifically requested the capital value of her benefits. She noted that the NHS Pensions website directed members to put a request to NHS BSA in writing if they wished to obtain a capital value.

27. On the same day, NHS BSA wrote to Miss L to acknowledge receipt of her retirement application. It confirmed that her reckonable pay was £16,240.43 and she had been a member of the Scheme for 2 years and 236 days. It detailed three options for payment of Miss L's benefits, which were as follows:-
- An annual pension of £373.19 and a lump sum payment of £2,487.98 (**Option 1**).
  - A trivial commutation lump sum payment of £12,803.29 (**Option 2**). NHS BSA advised that 75% of this amount would be subject to income tax.
  - If Miss L wished to convert her Scheme benefits to a trivial commutation lump sum, after first giving up the maximum amount of pension for a pension commencement lump sum payment, she could receive £8,237.79 (**Option 3**).
28. NHS BSA's letter enclosed the relevant forms for Miss L to indicate her chosen benefit option. It advised that if no response was received within 28 days, it would automatically default to Option 1.
29. On 29 January 2020, NHS BSA wrote to Miss L to acknowledge receipt of her correspondence of 27 January 2020. It confirmed that her case had been registered and a full response would be provided as soon as possible.
30. On 4 February 2020, Miss L returned the benefit option forms to NHS BSA, confirming her wish to proceed with Option 2.
31. On 12 February 2020, NHS BSA wrote to Miss L to acknowledge her request to receive the trivial commutation lump sum. It confirmed that a payment of £12,803.29 would be made to her bank account. It provided details of how it calculates a member's pension using their reckonable pay and membership length, as well as the actuarial reduction that may be applied for retirement before the NRA.
32. On the same day, NHS BSA sent a separate letter to Miss L to advise that the capital value of her benefits in the Scheme would use 1.1% of her lifetime allowance. It apologised that it had not responded on this point in its previous correspondence.
33. On 16 June 2020, Miss L submitted a complaint to NHS BSA under the Scheme's Internal Dispute Resolution Procedure (**IDRP**).
34. On 25 August 2020, NHS BSA issued its stage one IDRP response. It apologised that it had originally told Miss L she did not have the required two years' membership of the Scheme to commute her benefits. It acknowledged that it had failed to respond to her requests to gain access to her TRS and apologised for the distress and inconvenience caused. Both of these aspects of Miss L's complaint were upheld by NHS BSA.

35. NHS BSA said that if the information was required by a third-party pension provider and the member put their request in writing, it was able to provide a capital value for a member's Scheme benefits. It does not require that a member apply for payment of their pension before it will provide a capital value. It apologised that it had previously provided Miss L with misleading information on this point.
36. NHS BSA explained that Miss L's reckonable pay figure of £16,240.43 was based on information supplied by her previous NHS employers. It set out how this information was used to calculate her annual pension entitlement and trivial commutation lump sum. It confirmed that commuted benefits were subject to an actuarial reduction if taken prior to the Scheme's NRA of 65. So, it considered that Miss L's payment of £12,803.29 was correct and it did not uphold this aspect of her complaint.
37. On 5 September 2020, Miss L wrote to NHS BSA. She was unhappy that it had advised, in its correspondence of 23 January 2020, that it was unable to provide a capital value for her Scheme benefits. She said she had not applied for her retirement benefits at the time, but subsequent correspondence from NHS BSA had given the retirement options. It then stated that if she did not reply within 28 days, she would be given the default Option 1. She therefore had to proceed with Option 2 as her preferred choice.
38. Miss L said she had yet to receive details from NHS BSA about the Regulations which state that an actuarial reduction for early retirement should be applied to a trivial commutation lump sum. She considered that the basis for valuation of an individual's uncrystallised benefits was Section 212 (6) of the Finance Act 2004. She has since referred to the HMRC Pensions Tax Manual PTM063500 and PTM134500, which gives further guidance on the Finance Act 2004. She believed this guidance supported her position that an actuarial reduction should not have been applied to the benefits she commuted from the Scheme. Extracts from PTM063500 and PTM134500 are shown in Appendix 1 and Appendix 2 of this Determination.
39. Miss L said she was still unhappy that NHS BSA had recorded incorrect information about her membership of the Scheme. She noted that NHS BSA had not offered an award for the distress and inconvenience this had caused her, as well as the further inconvenience caused by being unable to access her TRS.
40. Miss L considered that her reckonable pay in 2015 was £16,123.21. She said that NHS BSA had not applied any increase for inflation in the subsequent years. She believed that the reckonable pay used to calculate her pension entitlement should have been £17,395.37. From this she considered that her annual pension would have been £767.30, which would have provided a lump sum for commutation of £15,346. She asked NHS BSA to explain how it had determined her reckonable pay figure and for a breakdown of its calculation of her trivial commutation lump sum.
41. On 9 September 2020, NHS BSA wrote to Miss L to acknowledge receipt of her request for a stage two complaint response under the Scheme's IDR. It said it would issue a response within 40 working days.

42. On 20 October 2020, NHS BSA wrote to Miss L with its stage two complaint response. It acknowledged that her membership of the Scheme had been recorded incorrectly and was then corrected on 30 September 2019. It had committed at this time to providing Miss L with an estimate of her pension entitlement, but this was not issued until 10 December 2019.
43. NHS BSA said that in December 2019, Miss L had asked for the capital value of her benefits and for the relevant forms to proceed with the trivial commutation of those benefits. Miss L returned the completed AW8P form on 30 December 2019 and requested the commutation of her benefits. She followed up her requests on 20 and 27 January 2020. The payment of Miss L's trivial commutation lump sum was authorised by NHS BSA on 12 February 2020.
44. NHS BSA explained that it was correct to have applied the actuarial reduction for early retirement to Miss L's benefits. This is because her final pension was based on her actual entitlement at the time of crystallisation, rather than the prospective entitlement if she were to retire at the NRA. The trivial commutation lump sum of £12,803.29 was derived from Miss L's final pension and NHS BSA considered that it had been correctly calculated.
45. NHS BSA then explained that as Miss L did not accrue three years of Scheme membership, her reckonable pay was the yearly average, based on her length of service and salary during this period. It set out how it had calculated her reckonable pay of £16,240.43 and explained that responsibility for the accuracy of salary information lay with NHS employers. It considered that Miss L's reckonable pay figure was correct on the basis of the information it had been given by her previous NHS employers. If she believed her salary had been recorded incorrectly, it advised that she should contact those employers.
46. NHS BSA confirmed that the cost of living adjustment only applied to Miss L's period of service between 1 April 2013 and 31 March 2014, because she left her NHS employment before the adjustment on 6 April 2015. Her reckonable pay was used to calculate her benefit entitlement and a pension increase was then added after this calculation had been carried out. This was to avoid what it termed 'double indexation', where inflation was factored into both the reckonable pay and the pension entitlement. It said that its calculation of Miss L's pension entitlement had considered the increase for inflation, as per Sections 2.A.7 and 2.A.11 of the Regulations for the 2008 Section of the Scheme (**the Scheme Regulations**). It provided a breakdown of the calculation to support its position.

47. NHS BSA explained that when Miss L originally enquired about the capital value of her Scheme benefits, it had directed her to the factsheet on the NHS Pensions website. This set out the criteria to qualify for trivial commutation and the basic formula for determining the capital value. NHS BSA was uncertain why Miss L had continued to request a capital value, given that she had been provided with the necessary information to calculate this for herself. It explained that prior to the crystallisation of Miss L's Scheme benefits, the estimated capital value was her unreduced pension entitlement. When it received Miss L's formal request to take her benefits before the NRA, it applied the actuarial reduction which, in turn, affected the capital value.
48. NHS BSA concluded by partly upholding Miss L's complaint, specifically in relation to the incorrect information it had provided about her membership of the Scheme. It apologised for this error. It did not consider that the information it issued in response to her subsequent enquiries had pressured her into commuting her benefits, because by that point she had indicated it was her intention. NHS BSA did not uphold this part of Miss L's complaint. It offered her the option to return her lump sum payment, in order to reapply for her benefits at a later date.

#### **Miss L's position**

49. NHS BSA falsely recorded her membership of the Scheme for over five years. It does not seem appropriate that system markers are recorded by call handlers and that membership dates are not worked out automatically by the system.
50. Her initial request for access to her TRS was made on 26 September 2019 and further requests were made on 17 October 2019 and 8 December 2019. She had signed up to the Government Gateway in 2018 but was unable to log on to her account. This was because NHS BSA had incorrectly marked her record as 'unclaimed benefits', rather than a deferred member of the Scheme. The NHS Members Charter states that if an Annual Benefit Statement cannot be provided through the portal or an employer, NHS BSA will provide an Annual Benefit Statement on request. Their target for this is to respond within five working days of receiving a request, against a statutory target of 40 working days. This timescale was not met and she never received access to her TRS.
51. She was led to believe that she would have to claim her pension from the Scheme to find out the capital value of her benefits. NHS BSA subsequently confirmed that this was not necessary. It apologised for having provided misleading information on this point but did not inform her of the capital value of her Scheme benefits.



52. The NHS Pensions website indicates that if a capital value is required to proceed with the trivial commutation of another pension, it will be provided if a request is made in writing. However, NHS BSA's complaint response asserted that it would have been possible for her to determine the capital value. She had been unable to use the calculator on the NHS Pensions website because it required information from her TRS, to which she did not have access. NHS BSA's statement also contradicts the information on the website that a capital value will be provided on request. It appears that NHS BSA is placing the requirement on individual members to make these calculations, rather than provide the information itself. This raises the possibility of errors being made by members who miscalculate their capital value, which could lead to further issues.
53. When she submitted her AW8P form in December 2019, she enclosed a covering letter with a request to commute her benefits from the Scheme. She had not fully completed the form, because she did not wish to claim her deferred benefits at that time. NHS BSA then responded, not with an estimate of her trivial commutation lump sum, but a form detailing the benefit options and a statement that it would default to Option 1 if no response was received within 28 days. She therefore had no choice but to proceed with Option 2 and the commutation of her benefits. She was led to believe that submitting the AW8P form would result in her being able to consider the figures before proceeding, but she was not given the option to cancel the decision after submitting the form.

### **NHS BSA's position**

54. It has acknowledged that it incorrectly communicated Miss L's membership of the Scheme. This was due to an incorrect marker on its system, rather than the miscalculation of her service history.
55. It provided confirmation of Miss L's membership history and an estimate of her pension entitlement on 10 December 2019. Miss L returned her pension application form and requested the trivial commutation of her benefits on 30 December 2019. It set out the options for payment of Miss L's deferred pension benefits in its correspondence of 28 January 2020.
56. It authorised payment of Miss L's trivial commutation lump sum on 12 February 2020. There was no requirement under the Scheme Regulations for it to provide further estimates after her benefits were paid, so from that point onwards, she would not have had access to the TRS. As Miss L has claimed her benefits under the trivial commutation legislation, it is no longer possible to provide a capital value, because her benefits have been exhausted from the Scheme.
57. It considered that the information it provided in Miss L's pension estimate was sufficient for her to have determined the capital value she was seeking. Information about the calculation of the capital value of pension benefits is presented on the NHS Pensions website.

58. It offered Miss L the opportunity to return her trivial commutation lump sum and effectively cancel her application for benefits from the Scheme. It did not consider that an award for distress and inconvenience was appropriate in this case.

### **Adjudicator's Opinion**

59. Miss L's complaint was considered by one of our Adjudicators, who concluded that there was maladministration and further action was required by NHS BSA. The Adjudicator's findings are summarised below:-

- The HMRC Pensions Tax Manual guidance PTM134500 details the formula for the valuation of uncrystallised pension benefits, as stated in Section 212 of the Finance Act 2004. The purpose of the formula is to provide a general basis on which to value uncrystallised pension benefits when an individual is considering trivial commutation.
- The Tax Manual guidance PTM063500 explains that it is the responsibility of the scheme in question to determine the actual amount paid to the member by trivial commutation. This amount may not be the same as the value attributed by the prescribed formula shown in PTM134500.
- For the payment of Miss L's benefits, NHS BSA said her entitlement was calculated in line with the Scheme Regulations. An actuarial reduction was applied to reflect that Miss L took her benefits before reaching the NRA. The Adjudicator's view was that NHS BSA had followed the correct procedure.
- The Adjudicator's view was that NHS BSA's provision of incorrect information to Miss L, in respect of her Scheme membership, amounted to maladministration. NHS BSA also failed to enable Miss L to access her TRS.
- Miss L's uncertainty around the capital value of her Scheme benefits arose because of NHS BSA's lack of response to her original enquiries. NHS BSA did not provide a value until Miss L had submitted the AW8P form to claim her benefits. Although Miss L had previously indicated her intention to commute her benefits, this committed her to a timeframe which may not have been her preference. The NHS Pensions website had stated that a capital value would be provided upon request. The Adjudicator's view was that NHS BSA's failings on this point amounted to maladministration.
- The Adjudicator recommended an award of £500 be paid to Miss L in recognition of the distress and inconvenience she was caused by NHS BSA's maladministration.

60. Miss L did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Miss L provided further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Miss L below:-

- The actuarial reduction should not have been applied to her trivial commutation lump sum. It should have been calculated on the basis of the formula stated in PTM134500, ignoring any actuarial reduction. She cited the Local Government Pension Scheme Administrators Guide, which she believes includes similar guidance to that applicable to the Scheme.
- She agrees that NHS BSA had to attribute a value to the pension being commuted. However, she considers that all conditions for payment are contained in the Scheme Regulations. Paragraph 2.J.5 (3) states that the lump sum must be calculated by the Secretary of State, in accordance with advice from the Scheme actuary, and not NHS BSA.

### **Ombudsman's decision**

61. Miss L wanted to investigate taking a trivial commutation lump sum. To be a trivial commutation lump sum, the value of Miss L's pension rights under all registered pension schemes must not have been more than £30,000, so she set about obtaining a capital value of her rights in the Scheme. This was not a smooth process, and she has complained about how her enquiries have been dealt with.
62. Miss L eventually took a trivial commutation lump sum from the Scheme. However, she noted that an actuarial reduction, to reflect early payment, had been used in the calculation of the actual lump sum she received. She argues that should not have been the case and points to the formula set out in the Section 212 of the Finance Act 2004, also explained in paragraph PTM134500 of HMRC's Pensions Tax Manual, as being the basis on which the calculation must be made. This includes commentary that, in making such a calculation, "where the amount of the immediate benefit would be reduced because the member had not reached a specified age, the benefit should be calculated assuming the member has reached the specified age..." meaning that the lump sum paid to her should not have been actuarially reduced.

63. A trivial commutation lump sum can only be paid in certain circumstances. If it does not meet the necessary criteria, the payment may attract tax charges. As I have already set out, one such requirement in the tax legislation is that the member's rights across all schemes are not more than £30,000. The tax legislation (the Finance Act 2004, as then explained in the Pensions Tax Manual) sets out a consistent way in which to calculate whether that threshold has been met. It includes the reference pointed to by Miss L, which I agree indicates that an actuarial reduction is not to be applied for the prescribed valuation process. However, the formula is used to derive a value for uncrystallised pension benefits on the given nomination date, and then whether the combined pension benefits do not exceed £30,000, when valued on the prescribed basis. The purpose of this process is to determine whether an individual is eligible for trivial commutation, not the amount that will actually be paid if trivial commutation is subsequently taken.
64. This approach is confirmed in PTM063500 of the Pensions Tax Manual, which sets out that "it is for the scheme to attribute a capital value to the pension benefit being commuted. **The amount of lump sum actually paid may not necessarily be the same as the value attributed to those benefits as valued on the nominated date on the prescribed basis. What matters is that the benefits were valued on the prescribed basis for commutation limit purposes, did not in aggregate with rights beyond the scheme exceed the commutation limit on the nominated date** and the payment otherwise satisfies the conditions for a trivial commutation lump sum" (my emphasis).
65. Miss L has referred to the Scheme Regulations, which state that the lump sum must be calculated by the Secretary of State, in accordance with advice from the Scheme actuary (Regulation 2.J.5(3)). She argues that this does not allow an actuarial reduction to be made. I disagree. In my view this provision allows considerable latitude in deciding what the lump sum payable from the Scheme might eventually be, provided the calculation is made in accordance with advice from the Scheme actuary.
66. She also points to the fact that any payment made under this Regulation must comply with, amongst other things, the requirements of the Finance Act 2004, and in particular, paragraph 7 of Schedule 29 to the 2004 Act and trivial commutation lump sums for the purposes of Part 4 of that Act. She argues that this reference effectively incorporates the calculation of the lump sum found in the Finance Act 2004, which by extension means that it should ignore any actuarial reduction for early payment. I disagree. Rather, in my view this is merely a reference to the fact that the eventual payment must amount to a trivial commutation lump sum for the purposes of the Finance Act 2004 (for which to be the case, the capital value of all of the member's pension rights, calculated on the prescribed basis for the purposes of that calculation only, must not be more than £30,000). Accordingly, I find that NHS BSA was entitled to apply an actuarial reduction to Miss L's benefits, as a result of her decision to retire before the Scheme's NRA.

67. While I do not agree that Miss L has suffered a financial loss, I do find that she was caused distress and inconvenience by NHS BSA's maladministration of her enquiries about her benefits in the Scheme. This included the initial provision of incorrect information about her Scheme membership, a lack of response to further enquiries, failure to provide a capital value upon request, and failure to facilitate access to the TRS. I consider that an award of £500 is sufficient acknowledgement of the significant distress and inconvenience that Miss L has suffered.
68. I partially uphold Miss L's complaint.

### **Directions**

69. Within 28 days of the date of this Determination, NHS BSA shall pay £500 to Miss L in respect of its maladministration, which has caused Miss L significant distress and inconvenience.

### **Dominic Harris**

Pensions Ombudsman  
11 April 2023

## **Appendix 1: HMRC Pensions Tax Manual extract**

### **“PTM063500 - Member benefits: lump sums: trivial commutation lump sum**

#### ***Amount of payment***

It is for the scheme to attribute a capital value to the pension benefit being commuted. The amount of lump sum actually paid may not necessarily be the same as the value attributed to those benefits as valued on the nominated date on the prescribed basis. What matters is that the benefits were valued on the prescribed basis for commutation limit purposes, did not in aggregate with rights beyond the scheme exceed the commutation limit on the nominated date and the payment otherwise satisfies the conditions for a trivial commutation lump sum.”

#### ***“Valuing uncrystallised rights***

Section 212 and paragraph 9 schedule 29 Finance Act 2004

Any rights the individual holds under any registered pension schemes that have not crystallised for lifetime allowance purposes must be included in the pension rights valuation for trivial commutation purposes. This will include any uncrystallised rights that the member wishes to commute.

The way to value these uncrystallised rights depends on the type of arrangement holding those rights.

PTM134500 explains how the value of these uncrystallised rights is calculated for each type of arrangement.

For the avoidance of doubt, there is no distinction for the above purposes between rights that have accrued direct in an arrangement and those that have been transferred in. The term ‘uncrystallised rights’ includes all the member’s uncrystallised rights under the arrangement.”

## Appendix 2: HMRC Pensions Tax Manual extract

### **“PTM134500 - Valuing uncrystallised member rights in a defined benefits arrangement or a collective money purchase arrangement**

Section 212(6) Finance Act 2004

For defined benefits arrangements or collective money purchase arrangements, the value of a member’s uncrystallised rights on the valuation date is represented by the formula:

$$(RVF \times ARP) + LS$$

RVF = the relevant valuation factor in accordance with section 276 Finance Act 2004. This will be 20 unless HMRC has agreed to the use of an alternative valuation factor greater than 20 (see PTM088620).

ARP = the annual rate of pension the member would be entitled to if they became entitled to the actual payment of benefits on the valuation date.

LS = the amount of any separate lump sum (that is, not provided by commutation) the member would be entitled to if the member had an actual right to the payment of the lump sum on the valuation date.

For both the annual rate of pension (ARP) and the amount of the lump sum (LS) it should be assumed:

- where the amount of the immediate benefit would be reduced because the member had not reached a specified age, the benefit should be calculated assuming the member has reached the specified age, and
- the member is deemed to be in good physical and mental health.”