

Ombudsman's Determination

Applicant	Miss R
Scheme	NHS Pension Scheme (the NHS Scheme)
Respondents	NHS Business Services Authority (NHS BSA) SAUL Trustee Company (SAUL)

Outcome

1. I do not uphold Miss R's complaint and no further action is required by NHS BSA or SAUL.

Complaint summary

2. Miss R has complained that SAUL and NHS BSA would not agree to allow her to transfer her benefits from the Superannuation Arrangements of the University of London (**the SAUL Scheme**) to the NHS Scheme.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. On 5 June 2017, Miss R joined the SAUL Scheme which was a defined benefit arrangement.
5. On 22 June 2020, Miss R began working for the NHS and joined the NHS Scheme which was also a defined benefit arrangement. She then became a deferred member of the SAUL Scheme.
6. On 10 October 2020, Miss R contacted SAUL and asked for a transfer quotation.
7. On 26 October 2020, SAUL issued an illustration of a Cash Equivalent Transfer Value (**CETV**).
8. On 28 December 2020, Miss R sent an email to NHS BSA and asked how she could transfer her benefits to the NHS Scheme and how much additional service her SAUL Scheme benefits would enable her to purchase.

9. On 29 December 2020, NHS BSA sent an email to Miss R and said it needed an illustration of a CETV before it could answer her questions. To apply to transfer benefits into the NHS Scheme she needed to complete the transfer-in pack that it would provide to her.
10. On 21 January 2021, Miss R contacted SAUL and requested an illustration of a CETV as the previous one was due to expire.
11. On 22 January 2021, a new illustration of a CETV was sent to Miss R with a total value of £21,078.82.
12. On 29 January 2021, Miss R emailed SAUL and said that she had been provided with an NHS Equalisation form (**the Equalisation form**) in the transfer-in pack from NHS BSA that needed to be completed. This form required SAUL to confirm that the transferring benefits had been equalised and that SAUL would indemnify the NHS Scheme for any shortfall if it later transpired those benefits had not been equalised.
13. SAUL responded to say that it was not willing to sign such a form and attached an extract from its own transfer documentation to be forwarded to the NHS BSA. It provided the following information:

“Equalisation - Benefits payable under SAUL comply with the requirements of the Equal Pay Article of the Treaty of the Functioning of the European Union, with the possible exception of those provisions of the Scheme that deal with the calculation of GMPs. These, in common with all formerly contracted-out schemes, are based on unequal State Retirement Ages.”
14. SAUL also advised that it had previously made a transfer to the NHS Scheme where it had accepted the transfer of benefits from the SAUL Scheme for another member. The circumstances of the other member were not dissimilar to Miss R’s and NHS BSA did not ask for the Equalisation form to be completed as part of that particular transfer.
15. On 18 February 2021, Miss R telephoned SAUL and said the transfer had not gone ahead yet.
16. The same day SAUL emailed NHS BSA and provided further information about the transfer, but it did not complete the Equalisation form.
17. On 1 March 2021, NHS BSA sent a letter to Miss R stating that the transfer could not go ahead as SAUL had not signed the required Equalisation form.
18. On 18 March 2021, Miss R sent an email to NHS BSA and said she had telephoned a long time ago and was told it did not need any more information in order for the transfer to go ahead. She also explained that her second illustration of a CETV was due to expire soon and could she have an update as to what was happening.

19. On 22 March 2021, NHS BSA sent an email to Miss R and said it had sent her correspondence on 1 March 2021 advising that it could not accept her benefits from SAUL.
20. The same day, Miss R sent an email to the SAUL email address she normally used and advised that the transfer application had been rejected by NHS BSA. Miss R also sent an email to benefits@saul-admin.info, which she thought was the appropriate email address to raise a complaint. She said she was unhappy that she had not been provided with information regarding what was happening with her transfer and SAUL would not allow her transfer to go ahead.
21. On 23 March 2021, NHS BSA contacted SAUL to ask for the Equalisation form to be completed for the transfer to proceed. SAUL responded by return and advised that it was happy to send a letter confirming its stance on equalisation but that, based on legal advice, SAUL would not be completing the Equalisation form.
22. Also on 23 March 2021, NHS BSA sent an email to Miss R and said that in order for it to be able to accept a transfer SAUL would need to guarantee to top up the transfer payment should this be needed in the future. The Equalisation form would need to be completed if the transfer were to go ahead.
23. On 24 March 2021, Miss R sent an email to NHS BSA and said in summary:-
 - She asked for a copy of the letter that was sent on 1 March 2021 as she had not received this.
 - She had not been provided with any clear guidance on how the process worked for people applying for themselves. She wanted to raise a formal complaint as there had been such poor communication. She had been told that NHS BSA had all the information it required and then the transfer still did not go ahead.
24. On 30 March 2021, SAUL received a response from NHS BSA saying it could only accept equalised benefits from ceding schemes, and if they guaranteed to make good any possible future equalisation deficiencies. It also stated that its complaints team were now dealing with the issue.
25. On 14 April 2021, SAUL sent a letter to Miss R which advised that it had supplied all the information that NHS BSA had requested. It could not guarantee to make additional payments in the future, but it had told NHS BSA that this should not be necessary as Miss R had not accrued benefits during an unequalised period. Her current illustration of a CETV was guaranteed until 22 April 2021, but should she wish to investigate transferring in future, it would provide a revised illustration of a CETV free of charge. The letter also provided information on how to make a complaint.
26. On 23 June 2021, the NHS BSA contacted SAUL and said that Miss R's transfer was rejected as SAUL had not confirmed that it was prepared to pay a top up in the future

due to any outstanding equalisation issues. The recent Goodwin¹ ruling determined survivor benefits should now be equalised for male spouses of female members and this was the type of issue the request for equalisation and potential future top up payments was referring to. If SAUL was able to change its position, could it contact NHS BSA.

27. On 24 June 2021, SAUL sent an email to NHS BSA and said that the transfer quote documentation confirmed that all benefits payable from SAUL complied with the requirements of the Equal Pay Article of the Treaty of the Functioning of the European Union. However, it would not provide any assurances that top up payments would be made for Miss R.
28. On 19 October 2021, Miss R sent an email to NHS BSA and said she had not received the letter dated 1 March 2021 and she was unhappy that the transfer had not completed.
29. On 15 December 2021, NHS BSA sent an email to Miss R and said:-
 - In common with other Public Service Pension Schemes the NHS Scheme took a decision in 2003 that it would not accept transfers from other occupational schemes unless they were willing to indemnify the NHS Scheme against any future claims in relation to the equalisation of benefits post 1990.
 - SAUL was not willing to indemnify the NHS Scheme, so the transfers team rejected the transfer in line with this policy.
 - However, it understood her disappointment regarding this, and as the policy had been in place for some time, it had asked for a review of the policy. This review was being considered by the Department of Health and Social Care and their legal advisors.
30. Miss R brought her complaint to the Pensions Ombudsman (**TPO**) who said she needed to complete the Internal Dispute Resolution Procedure (**IDRP**) for both schemes. Miss R informed TPO that she had already raised a complaint with SAUL via email on 22 March 2021 using the email address benefits@saul-admin.info.
31. On 4 February 2022, SAUL sent a letter to Miss R and said following contact from TPO it would look at her complaint under its IDRP. It said in summary:-
 - the email address benefits@saul-admin.info was not one that it recognised or had ever used and so it did not receive her original complaint.
 - Its understanding of her complaint was that she was not provided with enough clear information throughout the process of transferring her SAUL benefits and

¹ The Goodwin ruling also known as Mrs Goodwin v Department of Education was an employment tribunal that identified that male survivors of opposite-sex marriages and civil partnerships are treated less favourably than survivors in same-sex marriages and civil partnerships.

she was unhappy that the transfer to the NHS Scheme did not take place as SAUL was not prepared to complete the Equalisation form.

- Having reviewed the end-to-end process it did not believe that there had been maladministration by SAUL. All of her requests for information were dealt with in a timely manner by SAUL. SAUL had clearly explained both to her and NHS BSA that it was unwilling to complete the Equalisation form. SAUL's long-standing position, based on legal advice, was that equalisation paperwork for receiving schemes would not be completed. Instead, SAUL provided the relevant information to receiving schemes in a standard text that SAUL's legal advisors had approved.
 - SAUL had engaged with NHS BSA on a number of occasions to try and enable the transfer of benefits to go ahead. This included explaining that SAUL had paid previous transfers out to the NHS Scheme for other members similar to Miss R without the need for this particular NHS form to be completed; and explaining that the period she was in the SAUL scheme should, in any event, make such a form irrelevant.
 - It had liaised with its legal advisors in relation to the Equalisation form and they made the following two points:
 - If there were legal changes that in the future meant the transfer value had been underpaid and SAUL were required to top it up, this would be reviewed at that time. Based on this, SAUL believed that a form of this nature was not necessary to create an obligation.
 - The Equalisation form was not clear on whose say so a further payment would fall due. The form did not specify who would decide that equalisation had been inadequate and the circumstances in which it would be payable. As such, signing up to a potentially free-standing obligation to make further payment in respect of the member did not seem a reasonable request.
 - Should the NHS BSA change its policy on insisting that transferring schemes needed to complete this particular form then it would be more than happy to restart the transfer out process for her.
32. On 12 February 2022, Miss R sent an email to SAUL and said that she had used the email that was shown in the SAUL Scheme benefits guide. She attached a photograph of the booked and said it showed that she should use the benefits@saul-admin.info email if she was no longer paying into the SAUL Scheme. She would like her complaint escalated to the next stage.
33. On 29 April 2022, SAUL sent a letter to Miss R and said in summary:-
- Its stance regarding the Equalisation form had not changed. However, if the NHS BSA could agree to a more reasonable approach, it could restart the transfer process.

- On further review, it understood that the benefits@saul-admin.info email address was indeed used until the end of 2016 when it was replaced with a new email address, gen@saul.org.uk, which had not changed since. Emails sent to the former email address received an automated response informing the sender their email was undelivered.
- The current gen@saul.org.uk email address had appeared in relevant correspondence with members, in certain scheme documents and on the SAUL website since 2017. It had provided a link to the complaints process in its letter dated 14 April 2021 which directed her to use the gen@saul.org.uk email address.

34. Following the complaint being referred to TPO, NHS BSA provided further submissions.

NHS BSA's submissions

35. The NHS Scheme and other public service pension schemes, would only allow a transfer in from another occupational pension scheme if the transferring scheme has confirmed that:-

- Benefits have been equalised; and
- The transferring scheme would indemnify the NHS Scheme for any shortfall if it later transpired those benefits had not been equalised.

36. Further details of this policy are in Appendix one to this Determination.

37. As this policy had been in place for some time, it wanted to be sure that the policy did not conflict with any new legislation. This meant there was a delay in responding to Miss R's complaint while its legal advisors reviewed this issue. The review had been completed and the position remained unchanged.

38. Although SAUL confirmed that benefits were equalised it would not provide any assurances that top up payments would be made in respect of any deficiency in equalisation.

39. It understood Miss R was disappointed that her benefits from the SAUL Scheme could not be transferred to the NHS Scheme. However, when considering whether to accept a transfer, as a public service pension scheme the NHS BSA had to mitigate risks to public funds, whilst applying the rules of the NHS Scheme, any other legislation, and the usual principles of rationality and fairness

40. Section 143(1)(a) of the NHS Pension Scheme Regulations 2015 allowed the scheme to reject a transfer where the conditions required by the scheme manager are not met, (reproduced in Appendix two). NHS BSA rejected the transfer in from the SAUL Scheme on this basis.

Adjudicator's Opinion

41. Miss R's complaint was considered by one of our Adjudicators who concluded that no further action was required by NHS BSA or SAUL. The Adjudicator's findings are summarised in paragraphs 42 to 49.
42. Miss R had complained that SAUL and NHS BSA would not agree to allow her to transfer her benefits from the SAUL Scheme to the NHS Scheme. SAUL had said that NHS BSA had allowed other transfers in other situations similar to Miss R's.
43. The Adjudicator noted her role was to look at the circumstances of Miss R's complaint and assess the matter on its own merits. To uphold Miss R's complaint, the Adjudicator would have to conclude that there had been maladministration by either SAUL or NHS BSA.
44. NHS BSA's policy was not to accept a transfer in without an indemnity either through the Equalisation form or a guarantee of top up payments and it was not prepared to make an exception to that policy in Miss R's case. Section 143(1)(a) of the NHS Pension Scheme Regulations 2015 allows NHS BSA to reject a transfer where the conditions required by the scheme manager were not met. In the Adjudicator's view, NHS BSA's decision not to accept the transfer was not maladministration.
45. SAUL had taken legal advice that supported its decision not to complete the Equalisation form or provide an assurance of a top up payment if needed. In the Adjudicator's view, SAUL could not be compelled to give an indemnity and so its decision was not maladministration. As both parties did not agree to the conditions of the transfer then Miss R was unable to transfer her SAUL Scheme benefits to the NHS Scheme. In the Adjudicator's opinion the failure of the transfer to take place was not through maladministration by either NHS BSA or SAUL.
46. The Adjudicator also considered the service that Miss R received from NHS BSA and SAUL. Both parties had communicated with Miss R and each other to explain their stance regarding the transfer. NHS BSA and SAUL had also contacted each other directly to discuss Miss R's situation. In addition, NHS BSA had carried out a review of its policy and the need for the Equalisation form or a guarantee to provide a top up payment. In the Adjudicator's view there were occasions when Miss R was not completely clear about what was happening with regard to her transfer. However, this was because the transfer was not going ahead and was outside the usual transfer process rather than due to any maladministration by either party.
47. There was a delay in Miss R receiving a complaint response from SAUL when she used an email address that was no longer in use. In the Adjudicator's view, as SAUL had provided up to date information about the complaint process in April 2021 there had been no maladministration.
48. Miss R's complaint response from NHS BSA was also delayed while the policy regarding the provision of indemnities was reviewed. In the Adjudicator's opinion, NHS BSA could have made it clearer to Miss R that this was the reason the complaint

response was delayed so that Miss R's expectations were managed more appropriately. In the Adjudicator's view the failure in communication was poor administration rather than maladministration.

49. The Adjudicator understood that Miss R would have found the process of having her transfer rejected difficult but, in the Adjudicator's opinion, there had not been any maladministration by either party.
50. Miss R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Miss R said that the Opinion was disrespectful, irrelevant, and incorrect however she has not provided any further information to support her comments. I note what Miss R has said but it does not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

51. To be able to uphold Miss R's complaint I need to find that there has been maladministration by NHS BSA or SAUL. I have reviewed what happened and I agree with the Adjudicator that SAUL was not obliged to fill in the Equalisation form and, in particular, provide an indemnity that a 'top up' payment would be made. Similarly, NHS BSA were at liberty to refuse the transfer.
52. I also agree that there were times when communication with Miss R regarding this issue could have been clearer, but I do not find that there was maladministration.
53. I understand that Miss R has found the process of trying to transfer her pension benefits frustrating and she has not received the response she would have liked from the Adjudicator. However, this did not mean that the Adjudicator had reached incorrect conclusions or had been disrespectful to her.
54. I do not uphold Miss R's complaint.

Dominic Harris

Pensions Ombudsman

24 November 2024

Appendix one: European Court of Justice rulings about equalisation of benefits (non-Guaranteed Minimum Pension) and transfer values

Background

The European Court of Justice ruled that, since the Barber Judgment of 17 May 1990, men and women must have equal rights to join occupational schemes and pensions earned from service must be equal for men and women.

The Barber Judgment established the equal-pay-for-equal-work Article 119 (now Article 141) of the Treaty of Rome that if an occupational pension scheme does not contain an equal treatment rule it shall be treated as including one. This means that if a scheme member of opposite sex is employed in similar work, or work of equal value, then the benefits to both sexes must be the same, unless the scheme trustees/managers can prove that the inequality is due to a factor that is not gender related.

A further European Court ruling [Coloroll Pension Trustee Ltd v Russell] established a further principle in relation to pension transfers

If in the future, it turns out that transferred benefits had not been equalised for membership from May 1990, the receiving scheme is liable for the cost of equalising them.

Where a scheme accepts transfers of benefits from occupational pension schemes [of membership post May 1990] and it later transpires that the benefits were not equalised, the receiving scheme may be liable for making up any shortfall.

In common with other Public Service Pension Schemes the NHS Pension Scheme took a decision that it would not accept transfers from other occupational schemes unless they were willing to 'indemnify' the NHS Pension Scheme against any future claims in relation to the equalisation of benefits post 1990. The 'indemnity' is provided through the completion of form TV83 or the provision of a written statement that:

- Benefits have been equalised for membership post 1990, and
- If this proves not to be the case the sending scheme will make up any deficiency

Appendix two: NHS 2015 Pension Scheme Regulation

143 Acceptance of transfer value payment

(1) The scheme manager may accept an application under regulation 141 from member (M) unless—

(a) such conditions as the scheme manager requires are not met; or (b) paragraph (5) applies.