



## Ombudsman’s Determination

Applicant Dr Y  
 Scheme NHS Pension Scheme (**the Scheme**)  
 Respondents NHS Business Services Authority (**NHS BSA**)

### Outcome

1. Dr Y’s complaint against NHS BSA is partly upheld. To put matters right, NHS BSA shall pay Dr Y £500 for the significant distress and inconvenience its maladministration will have caused him.

### Complaint Summary

2. Dr Y has complained that NHS BSA incorrectly calculated his Scheme Pays election in December 2013. Having only discovered this error in 2016, NHS BSA was unable to amend the figures and confirmed that he was unable to reclaim the relevant Annual Allowance charge.
3. In addition, he has complained that these errors have caused him considerable stress and anxiety, for which he has not been adequately compensated.

### Background information, including submissions from the parties

4. 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.
5. On 20 September 2013, NHS BSA issued a ‘Final Pension Savings Statement’ (**the 2013 Statement**) to Dr Y. It showed the following Pension Input Amounts:

<i>Pension input period</i>	<i>Pension input amount</i>	<i>Annual Allowance</i>
01/04/2011 to 31/03/2012	£104,156.38	£50,000

#### **Assessment for the Previous Three Pension Years (where applicable)**

<i>Pension input period</i>	<i>Pension input amount</i>	<i>Annual Allowance</i>
01/04/2010 to 31/03/2011	£41,389.60	£50,000
01/04/2009 to 31/03/2010	£39,674.30	£50,000

01/04/2008 to 31/03/2009    £56,711.98                      £50,000

6. A note at the bottom of the 2013 Statement said:

“The pension savings statement has been produced based on information supplied by the relevant NHS Employing Authority, Clinical Commissioning Group, or NHS Connecting for Health.”

7. NHS BSA has since confirmed that this was categorised as a final statement and not a provisional one as Dr Y’s employer had provided all the information required to calculate his ‘final’ position using that information.

8. Based on this information, NHS BSA calculated Dr Y's Annual Allowance charge (**AAC**) for 2011/12 as being £17,610.14, which needed to be paid to HM Revenue and Customs (**HMRC**), as his Pension input amount had exceeded the Annual Allowance (**AA**).

9. On 18 November 2013, Dr Y’s accountant wrote to him. He explained about the ‘Scheme pays’ facility and enclosed a completed application form for Dr Y to submit to NHS BSA if he wished to go down that route. He explained that there was a strict deadline of 31 December 2013 by which the completed application had to be with NHS BSA. He said:

“Once final figures are known the figures on the Scheme Pays Election can be amended at a later date but the election cannot be revoked.”

10. On 3 December 2013, Dr Y provided a ‘Scheme Pays’ election form to NHS BSA. This confirmed that he required NHS BSA to pay the £17,610.14 to HMRC. This was accepted and confirmed by NHS BSA on 16 December 2013.

11. ‘Scheme pays’ is a voluntary mechanism by which the AAC can be paid out of a pension scheme, with the member’s benefits being actuarially reduced, rather than by the member personally. This has the advantage of the member not having to find additional funds to pay the charge. At the time of Dr Y’s AA assessment, it was a requirement for voluntary scheme pays to have an AAC of more than £2,000. This has since been removed.

12. NHS BSA has said that at the time Dr Y’s Scheme Pays election was accepted the original calculation was not checked. For his part, Dr Y says he accepted the figures in good faith.

13. In early 2016, Dr Y's accountant contacted NHS Pensions with a query regarding the Lifetime Allowance.

14. On 19 February 2016, following a request from Dr Y, NHS BSA provided an Annual Allowance Savings Statement (**the 2016 Statement**) for 2011/2012. The figures shown were as follows:

<b>Pension Input Period Start</b>	<b>Pension Input Period End</b>	<b>Annual Allowance</b>	<b>Growth (Pension input amount)</b>
01/04/2011	31/03/2012	£50,000	£77,661.31

Details of NHS benefit growth in your 'carry forward' years are shown below

01/04/2010	31/03/2011	£50,000	£35,689.62
01/04/2009	31/03/2010	£50,000	£41,061.38
01/04/2008	31/03/2009	£50,000	£60,773.16

15. The 2016 Statement did not quote an AAC but said:

“You need to take action to work out whether you have a tax charge to pay.”

It also said:

“Paying the correct level of tax is your individual responsibility. [NHS BSA] is unable to give you advice on your personal tax circumstances, or undertake any tax liability calculations for you.”

16. Notes included with the 2016 Statement said that a revision to the AAC did not give NHS BSA authority to amend the Scheme Pays election.
17. The deadline for making changes to the Scheme Pays election for 2011/2012 expired on 31 July 2016.
18. In late 2017, Dr Y’s accountant identified that the AAC calculation provided with the 2013 Statement was incorrect. The correct figure was £2,206. Dr Y submitted a revised Scheme Pays Election form.
19. On 11 January 2018, NHS BSA wrote to Dr Y to acknowledge that it had received his amended Scheme Pays Election form on 20 December 2017, and that he had requested that the Scheme pay the AAC on his behalf. It confirmed that for the tax year 2011/12 the charge was £2,206, however his request was rejected as the deadline of 31 July 2016 for any amendment had not been met.
20. Following this, NHS BSA contacted HMRC to enquire what could be done in terms of the overpayment: whether it could be reclaimed, rebated or retrieved via some other mechanism.
21. HMRC confirmed that the overpayment could not be reclaimed in this way because the request was made outside the deadline for such requests. It said Dr Y would need to resolve this with HMRC himself.

22. On 19 August 2018, Dr Y asked NHS BSA if he could reclaim the overpayment via his AAC. On 22 November 2018, NHS BSA confirmed that none of these options would be possible and there was nothing further it could do to assist.
23. Due to ill health Dr Y decided that he could not pursue his claim further at that time.
24. By May 2019 his health had improved and so his accountant contacted NHS BSA which informed him that the error could not be corrected. At this stage, it appears that NHS BSA did not refer Dr Y to his rights under the Scheme's Internal Dispute Resolution Process (**IDRP**) nor were any other avenues suggested to him if he remained dissatisfied.
25. In April 2020, Dr Y's accountant had cause to complain about a different matter regarding Dr Y's pension and was then advised that, if Dr Y was still unhappy with the decision regarding his Scheme Pays election, he should complain through the IDRPs.
26. Dr Y complained to NHS BSA under stage one of the IDRPs, on 3 December 2020.
27. NHS BSA responded on 29 January 2021. It rejected his complaint and said that:-
  - There was a strict time limit set by HMRC for a member to ask for the amount of the AAC to be changed. The scheme administrator must receive the request no later than the 31 July following the end of the period of four years to which the liability relates. In this case that would be 31 July 2016.
  - This was confirmed on the NHS BSA website in the Scheme Pays Election Guide.
  - It was required to deduct a "just and reasonable amount" from his pension in respect of the AAC and to not do so would make future pension payments unauthorised with significant tax penalties as a result.
  - As Dr Y was sent a revised AA statement on 19 February 2016 he had more than five months to review his position.
  - He had not asked NHS BSA to clarify or provide any additional information at the time.
  - Dr Y could ask HMRC to amend his self-assessment and tax liability, but as this was beyond the four-year limit HMRC would have to make the decision on whether to refund any overpaid AAC which would allow NHS BSA to amend his benefits accordingly.
  - Having reviewed the position it recognised that it had made an error in the provision of an incorrect AA statement, but this had been rectified with the provision of a revised statement before the end of the deadline. It apologised for the error but concluded it was unable to offer any compensation.

28. Dr Y emailed NHS BSA, on 28 February 2021, and said that he wanted his dispute to be viewed as an appeal. He provided additional information in support of his case.
29. NHS BSA replied on 11 March 2021. It said that as he had submitted his complaint under IDRPs, it had to be considered as such under Section 50 of the Pensions Act 1995. It confirmed that payment of his AAC had been made to HMRC within the appropriate timescale and pointed out that if it had not done so Dr Y would have received correspondence from HMRC regarding late payment.
30. In answer to Dr Y's complaint that it had not informed him of the 31 July 2016 deadline, NHS BSA said that tax was the responsibility of the individual and is administered by HMRC. Tax information could be found on the HMRC website.
31. Dr Y appealed under stage two of the IDRPs on 13 April 2021. He said that:-
  - Calculation errors had significantly disadvantaged him financially and caused him distress over three years.
  - He noted that the Scheme Regulations allowed for ex gratia payments in instances where errors had been made.
  - The errors in the calculation of his AAC were identified by his accountant, in late 2017, following which he had requested a revision to the Scheme Pays amount.
  - In 2018, he had taken the matter up informally without resolution.
  - In May 2019, the distress caused him to develop sleep deprivation which was the first sign of a possible relapse of bipolar disorder, from which he had suffered for some time, and so he felt he could not take his appeal further.
  - The 2016 Statement failed to highlight to him that the figures were substantially different to those issued in the 2013 Statement. The 2016 Statement had only been issued because his accountant had requested it.
  - The Pension Input Amount figures differed, not just for 2011/2012 but for all four tax years included. This confused him, but he trusted certain individuals within NHS BSA and was confident that the AAC calculation in the 2013 Statement was correct.
  - The 2016 Statement did not, at any stage, communicate the 31 July 2016 deadline to him. Moreover, there was no indication that NHS BSA recognised a need to revisit the Scheme Pays payment. It appeared that NHS BSA was itself not aware of the 31 July deadline.
  - He wanted his Scheme Pays election to be reduced from £17,160.14 to £2,206.00 and to be reimbursed for the over deducted recovery from his benefits.

32. NHS BSA responded to his complaint on 6 July 2021. It said that:-

- It was not aware of Dr Y's overall AA position and was not authorised to provide financial advice.
- Dr Y had not queried the information it had provided at the time.
- It was required to pay the amount confirmed on Dr Y's election to HMRC, that is £17,160.14.
- It had previously confirmed that it could not reduce Dr Y's Scheme Pays election as the amendment request was received after the deadline of 31 July 2016.
- As it had not been possible to recover any money from HMRC, NHS BSA had no option but to deduct the £17,160.14 plus interest from the value of his benefits. Should HMRC return any overpaid AAC, the interest applied and the recovery would be reduced and any over deducted recovery returned to Dr Y.
- It offered a payment of £250 as compensation for any distress and inconvenience caused by the error in its original calculation of the AA charge.
- It understood that individuals could approach HMRC to ask about reclaiming overpaid tax after the deadline. It suggested that Dr Y or his financial adviser approach HMRC directly to enquire about this.

33. Dr Y's position:-

- Since he had left the Scheme on 31 March 2012, he accepted the 2013 Statement for what it said, namely a "Final Pensions Savings Statement".
- If he had been provided with the correct calculations in September 2013, he would have personally paid the £2,206 payment directly to HMRC in 2013, since this figure was only slightly above the minimum figure of £2,000 at which Scheme Pays elections can be applied for.
- At his retirement on 31 May 2018, NHS BSA compounded the primary error by applying an interest payment of £3,343.96 to the £17,610.14, resulting in a total deduction of £20,954.10 from his pension.
- The NHS BSA Scheme Actuary had confirmed that this resulted in a reduction of £3,192.60 from his lump sum payable on 31 May 2018, and a further reduction of £1,064.20, in the first instance, from his annual pension.
- Since his decision to apply for a Scheme Pays election in 2013 was based on calculations by NHS BSA that were completely inaccurate, and as he would never have contemplated making that election if he had been provided with the correct figures in September 2013, then he submits that the Scheme Pays election was null and void.

- It must have been clear to NHS BSA that the figures in the 2016 Statement were substantially different from those issued in September 2013, but it failed to highlight them to him. Moreover, this letter was sent only because his accountant had requested a statement for years 2012 to 2015.
- The sole reason for the rejection of his claim by NHS BSA is that the letter of 16 February 2016 gave him time to inform HMRC of the revised AA figures before the HMRC deadline of 31 July 2016. However, NHS BSA never communicated this deadline to him. Moreover, NHS BSA gave him no indication of a need to revisit the 2013 Statement and signed-off Scheme Pays election.
- In the stage two IDR response of 6 July 2021, NHS BSA suggested that his accountant contact HMRC to ask them to accept the amended payment. However, he had already done this and NHS BSA had also already done this in January 2018, when HMRC rejected the amendment.
- Given the significant prolonged health harm and impact on him, and the fact that he had to undergo the stress involved in going through the complaint process, he believes that significant compensation is also now appropriate.

34. NHS BSA's position:-

- As Dr Y's Scheme Pays election met the monetary requirements and was submitted within the deadline it remained a valid election.
- A further Pension Saving Statement, dated 19 February 2016, confirmed a corrected and reduced Pension Input Amount of £77,661.31. Dr Y's accountant had asked for a current Pension Saving Statement and while this was being calculated an error was noted in the previous statement.
- A revision to the AAC did not give NHS BSA the authority to amend a Scheme Pays election regardless of whether the amount of the AAC increases or decreases.
- On 31 July 2016, the legislative deadline for making changes to a Scheme Pays election for 2011/12 expired. NHS BSA has no discretion to vary this legislative deadline. Confirmation of the legislative deadline for amending Scheme Pays elections is available on the NHS BSA website as part of the information about Annual Allowance, as well as on HMRC's website.
- NHS BSA did not approach HMRC about the requested amendment to the Scheme Pays election. This was because HMRC allows a scheme to inform it of the initial Scheme Pays election and any amendment received by the scheme within the legislative deadline. HMRC does not provide an "appeals process" for schemes to apply for a return of monies on a member's behalf after the legislative deadline.

- NHS BSA believes that Dr Y had sufficient time to amend his Scheme Pays election for 2011/12 following the revision of his Pension Saving Statement for that year, dated 19 February 2016, and before the deadline for the amending the election, 31 July 2016. Dr Y was aware of the deadline as this was confirmed on NHS Pensions and HMRC's websites, NHS Pensions had prompted him to check the tax he had paid and he had been informed of the time limit by his accountant.
- The money paid out to HMRC for a Scheme Pays election is effectively a loan from Scheme funds. HMRC confirms the Scheme Administrator must make a recovery from a member's benefits or the Scheme Pays election will become unauthorised. As HMRC has not returned any monies to the Scheme this is based on the election Dr Y originally requested plus interest. The amount of the recovery from Dr Y's benefits has been correctly calculated on the amount paid to HMRC for his Scheme Pays election.
- If the legislation allowed NHS BSA to recover the funds from HMRC it would do so and amend the cost of the recovery of the Scheme Pays election. Unfortunately, HMRC does not provide for any exceptions to the legislative deadline including the health problems detailed by Dr Y or his work for the NHS.
- In the stage two IDR response Dr Y was asked if he would contact HMRC. This was because HMRC can return incorrectly paid tax. Where the "retention of tax would be unconscionable" then the overpaid tax may be returned. However, NHS BSA does not know if this would apply to Dr Y and cannot appeal to HMRC on his behalf.
- Dr Y has not informed NHS BSA if he, or a representative, has approached HMRC about the overpaid AAC and, if he has, whether it will return this money either to the Scheme or to him directly.
- NHS BSA is not authorised as financial advisers and cannot approach HMRC on Dr Y's behalf, but it will provide any assistance possible to allow HMRC to identify the payment and return the excess if allowable.
- Should Dr Y and HMRC confirm the return of an excess AAC to the Scheme then NHS BSA will revise the cost of the Scheme Pays election accordingly and return any over deducted pension and lump sum to Dr Y as soon as possible.
- Should the payment be made directly to Dr Y, he should contact NHS BSA directly with a copy of the confirmation and further consideration will be given to his Scheme Pays election position.

## Adjudicator's Opinion

35. Dr Y's complaint was considered by one of our Adjudicators who issued an Opinion on 18 April 2023 (**the Opinion**) in which he concluded that there had been maladministration on the part of NHS BSA. The Adjudicator's findings are summarised in paragraphs 36 to 49 below.



36. Dr Y had referred to a further error in his annual pension which occurred in April 2020. However, this was rectified in November 2020 to Dr Y's satisfaction and so the Adjudicator did not consider it in the Opinion.
37. In negligent misstatement cases, such as this, parties in a close relationship where one party (perhaps with special skill and knowledge) assumes responsibility towards the other party, may find that the law will impose a duty on the first party to ensure that information it gives to the other party is accurate and reliable. Where the information is inaccurate or unreliable in some material respect, the party assuming a responsibility towards the other party will be in breach of that duty. If the breach causes financial loss to the party who has reasonably relied on the information to their detriment, and that loss is reasonably foreseeable as a consequence of the breach, then the loss is recoverable in damages.
38. In a claim for negligent misstatement the applicant must prove, on the balance of probabilities various elements. For pension schemes most elements will be satisfied, that is: there was a duty of care; it was reasonably foreseeable that the information provided would be relied upon and there was a breach in that the information was incorrect.
39. In Dr Y's case, there was no dispute that an error had occurred in the calculation of Dr Y's AAC as shown in the 2013 Statement. The Adjudicator considered this to be maladministration.
40. It was also clear that Dr Y had relied on this information in submitting his Scheme Pays election. As the correct AAC figure was only slightly more than the £2,000 monetary limit for being able to elect to use Scheme Pays, the Adjudicator considered it more likely than not that, had Dr Y known this at the time of his election, he would not have chosen to go down that route.
41. However, as a matter of general law, any party seeking financial compensation for negligent misstatement must, once they become aware of the misstatement, take reasonable steps to reduce or limit their financial loss. This is known as the duty of mitigation. If the party seeking the compensation fails to take those steps, the damages which a court (or the Ombudsman) may award them may be reduced.
42. The Adjudicator considered that Dr Y should have been reasonably aware in February 2016 that the AAC calculation for 2011/2012, as shown on the 2013 Statement, was probably incorrect. This was because, as Dr Y himself had pointed out, the figures were significantly different to those on the 2013 Statement. While the 2016 Statement did not quote an AAC figure, the fact the Pension Input Amounts were so different should have put Dr Y and his accountant on alert and yet it appeared that Dr Y had done nothing to question the position.
43. It was entirely possible the 2016 Statement would not have been issued had Dr Y's accountant not requested it, but that did not alter the fact that having received it he appeared to have not taken action. As Dr Y and his accountant had requested the

2016 Statement, it was reasonable to expect that, having received it, they would pay particular attention to it.

44. The 2016 Statement did not refer to the fact that the deadline for making changes to the Scheme Pays election for 2011/2012 expired on 31 July 2016. However this information was available on both the NHS BSA website and the HMRC website. Regardless, the position could have been queried with NHS BSA by Dr Y or his accountant.
45. The 2016 Statement did make clear that Dr Y had to take action to work out whether he had a tax charge to pay and that paying the correct level of tax was his responsibility.
46. The stage two IDRPs response said that NHS BSA's understanding was that individuals could approach HMRC to ask about reclaiming overpaid tax after the deadline. It suggested that Dr Y or his financial adviser approach HMRC directly to enquire about this. Dr Y had said that his accountant and NHS BSA had approached HMRC with no success. NHS BSA had explained why it was unable to do so, and it is correct that HMRC will usually deal only with the individual in such matters. So it may be that an approach from Dr Y personally would prove more successful. The Adjudicator noted that NHS BSA had offered to assist as best it could with this.
47. While the Adjudicator sympathised with Dr Y's concern that pursuing his case would have exacerbated his ill health, he considered that there were ways around this: for example by employing his accountant to pursue matters on his behalf; or possibly to the extent of giving his accountant or a friend or family member power of attorney to act on his behalf if necessary.
48. The Adjudicator also considered the way in which NHS BSA had dealt with Dr Y's case. Dr Y appeared to have wanted to deal with it in a professional 'colleague to colleague' manner, but in the Adjudicator's view, it was nonetheless reasonable to expect NHS BSA to have referred Dr Y to the Scheme's IDRPs in August 2018 when it became clear that there was nothing further it could do to help. NHS BSA had failed to do so until April 2020 thereby unnecessarily extending the length of time taken to deal with Dr Y's complaint. The Adjudicator considered this also to be maladministration.
49. So, while the Adjudicator's view was that Dr Y and his accountant could and should have done more to mitigate the position regarding the overpaid AAC, he considered that NHS BSA's maladministration had caused Dr Y significant distress and inconvenience for which he should be compensated.
50. NHS BSA accepted the Adjudicator's Opinion but Dr Y did not and the complaint was passed to me to consider. Dr Y has provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the following additional points raised by Dr Y and his accountant.

51. Dr Y says that, based on the Adjudicator's conclusion that NHS BSA made a negligent misrepresentation, rescission of the original Scheme Pays Election contract (including under Section 2(1) of the Misrepresentation Act of 1967) or damages are appropriate. Under either remedy, Dr Y believes that he would be entitled to:

- a). repayment of the reduction in the lump sum payable on 31 May 2018 of £3,192.60; and
- b). repayment of the reduction in the pension of £1,064.20 per annum from 1 June 2018 going forward

which he says would put him in the position that he would be in but for NHS BSA's negligent misrepresentation and his reliance thereon.

52. Dr Y's accountant refers to the Adjudicator's statement that the Scheme Pays Election form had to be submitted by 31 December 2013. He says that his understanding is that the legislation required the Scheme Pays Election for 2011/12 to be submitted by 31 July 2013 at the latest. It was extended as the notification was only sent to Dr Y in September 2013.

53. The fact that the deadline technically and against legislation was missed would seem to suggest to him that the Scheme Pays Election should have been rejected but was not.

54. In addition, had the correct figures been produced, Dr Y would have paid the Annual Allowance tax personally so not to affect his pension nor attract a punitive interest charge.

55. With regard to distress and inconvenience, Dr Y argues that this should be categorised as severe in his case. He has provided details of his medical history, which I will not go into here, and says that this issue has impacted negatively on his and his wife's health and enjoyment of the five years of their retirement. He says that NHS BSA's unwieldy informal and formal complaints processes and loss of confidentiality have been humiliating.

56. Furthermore, he believes there will almost certainly be an ongoing impact on both his mental and physical health.

57. He also asserts that NHS BSA failed to understand his distress and inconvenience and that he has been required to provide intimate details of his mental and physical health to a number of NHS BSA employees. Furthermore, he estimates that he has spent 400-500 hours in pursuing his complaint.

## Ombudsman's decision

58. I agree that NHS BSA made a negligent misstatement in the 2013 Statement and that Dr Y relied on this information in submitting his Scheme Pays election.
59. However, as explained in paragraph 41 above, there was a duty on Dr Y to mitigate his loss once he became aware of the position. This duty to mitigate applies whether a claim is made by way of negligent misstatement or a claim under the Misrepresentation Act 1967<sup>1</sup>.
60. I agree with the Adjudicator that Dr Y, and his professional adviser (i.e. his accountant), should reasonably have been aware of the misstatement from the time they received the 2016 statement which showed significantly lower Pension Input Amounts to those contained in the 2013 statement on which the Scheme Pays election was based.
61. There were clear warnings contained in the 2016 statement to the effect that Dr Y needed to take action to work out whether he had a tax charge to pay and that paying the correct level of tax was his responsibility. Dr Y was also professionally advised. Notes included with the 2016 Statement said that a revision to the AAC did not give NHS BSA authority to amend the Scheme Pays election.
62. Had Dr Y or his accountant taken action at the time it would have become immediately obvious that the previous tax calculation of £17,160.14 was incorrect. And yet they did not do so and it was not until late 2017 that the accountant calculated the correct figure of £2,206.
63. HMRC's Pensions Tax Manual (**PTM**) sets out the time limit for a member to ask the pension scheme to change the amount of the annual allowance charge that they want it to pay. Prior to 6 April 2022 the scheme administrator must have received the member's request no later than the 31 July that follows the end of the period of four years from the end of the tax year to which the member's liability relates<sup>2</sup>.
64. Dr Y and his accountant had until 31 July 2016 in which to request that NHS BSA change the Scheme Pays election but failed to do so. By the time they did make the request, almost two years later, the deadline had long passed.
65. I find that Dr Y failed to take reasonable steps to reduce or limit his loss. Consequently I do not agree that he should receive the redress he is seeking as set out in paragraph 51 above.

---

<sup>1</sup> See, for example, Lord Browne-Wilkinson, dealing with fraudulent misrepresentation, in *Smith New Court Securities v Scrimgeour Vickers* [1996] UKHL 3: "The plaintiff must take all reasonable steps to mitigate his loss once he has discovered the fraud".

<sup>2</sup> PTM056440 - Annual allowance: tax charge: scheme pays: amended member notices

66. Dr Y's accountant has said that legislation required the Scheme Pays Election for 2011/12 to be submitted by 31 July 2013 at the latest. It was extended as the notification was only sent to Dr Y in September 2013.
67. Ordinarily the deadline for giving a Scheme Pays notice is indeed 31 July in the year following the year in which the tax year to which the annual allowance charge relates ended. In this case that would be 31 July 2013. However, the PTM states that in certain circumstances this deadline can be extended<sup>3</sup>. The relevant excerpt from the PTM can be found in the Appendix.
68. In Dr Y's case, because the pension savings statement was provided to him in September 2013 he had to notify NHS BSA before the end of the period of three months, beginning with the day on which NHS BSA gave him the pension savings statement due to the change in his Pension Input Amount, that is December 2013.
69. I am satisfied that the Scheme Pays Election was submitted within the permitted timescale and I do not agree that it should have been rejected.
70. Dr Y has explained in detail his health issues, including a summary from his GP, and has said that he has expended a significant amount of time pursuing his complaint. I acknowledge that this will have taken its toll on him. He was clearly an exceptionally dedicated and busy consultant prior to his retirement and this issue may not have been at the forefront of his mind. However, while I have considerable sympathy for his position, I cannot allow that to detract from the fact that he had ample opportunity to correct the position, and possibly still does, but failed to take it.
71. I also ought to note that under delegated authority my office found the complaint to be in my jurisdiction and not 'out of time'. The time limit for bringing a complaint to my office is, subject to some discretion, three years from the date of the act that gave rise to the complaint, or three years from the "earliest date on which that person knew or ought reasonably to have known of its occurrence"<sup>4</sup>.
72. In this case, the act occurred on 20 September 2013 (the issue date of the flawed 2013 Statement). Clearly, Dr Y did not know of the error at that time but, in my view, for the reasons given above, Dr Y ought reasonably to have known about the error on 19 February 2016 when he received the 2016 Statement. On that basis the complaint should have been received by my office in early 2019 – when it was in fact received in September 2021<sup>5</sup>. Had I decided to uphold Dr Y's complaint on the merits, I would have been minded to revisit jurisdiction, and for the reasons set out in this paragraph, may well have concluded it was made 'out of time'.

---

<sup>3</sup> PTM056430 - Annual allowance: tax charge: scheme pays: deadlines

<sup>4</sup> Regulation 5(2), The Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996.

<sup>5</sup> Indeed, even if Dr Y argued that time started from the later date his accountant approached NHS BSA to update his scheme pays election in December 2017 (as referred to in paragraphs 17 and 18 above), three years would still have elapsed in December 2020.

73. I now turn to an award for distress and inconvenience. Dr Y points to his medical condition as a reason why any award for distress and inconvenience should be at the higher end of the scale. I am not a medical expert, but it appears to me from the evidence provided by Dr Y's GP that much of his health issues were either pre-existing or are immaterial to his case. Certainly, I am not persuaded that his condition was worsened by NHS BSA or that it is reasonable to expect NHS BSA to have taken different action because of it.
74. I find that the grounds for distress and inconvenience are the failure of NHS BSA to have handled his case efficiently by making clear the complaint process at an earlier stage. I consider that the appropriate award for this is £500.

### **Directions**

75. Within 28 days of the date of this Determination, NHS BSA shall pay £500 to Dr Y in recognition of the significant distress and inconvenience its maladministration has caused him.

**Dominic Harris**  
Pensions Ombudsman  
15 December 2023

## Appendix

### **PTM056430 - Annual allowance: tax charge: scheme pays: deadlines Notice given to the scheme administrator by the member**

The member must notify the scheme that they wish to use 'Scheme Pays' (a 'Scheme Pays' notice) and there is a deadline for giving the 'Scheme Pays' notice.

Ordinarily there is a '31 July' deadline for giving the 'Scheme Pays' notice but, in certain circumstances, the notice deadline is either brought forward or extended.

#### **31 July notice deadline**

The member must give a 'Scheme Pays' notice by 31 July in the year following the year in which the tax year to which the annual allowance charge relates ended.

For example, if the member wants their scheme to pay their annual allowance charge for the 2022 to 2023 tax year then they must tell their scheme no later than 31 July 2024.

The notice must be given to the scheme administrator of the pension scheme concerned.

The member cannot notify the scheme that they wish to use 'Scheme Pays' before the end of the tax year in which the annual allowance charge arises.

This 31 July deadline applies in all cases unless the member's circumstances mean the notice deadline is either brought forward or extended.

...

#### **Notice deadline extended**

The 'Scheme Pays' notice deadline is extended for a pension scheme when the following applies:

- the member is given a pension savings statement for a tax year
- the pension savings statement is given:
  - on or after 2 May in the year following that in which the tax year in question ends, and
  - before the end of the period of 6 years beginning with the end of the tax year in question
- the scheme administrator is required to give the member that pension savings statement because of a change to the member's pension input amount in relation to the pension scheme for the tax year due to either:
  - the scheme administrator receiving additional information from a third party (see [PTM167500](#))
  - a change to the pension scheme rules (see [PTM167600](#))

CAS-79201-Y3D1

- as a result of that change to the pension input amount, the member is able to use 'Scheme Pays' in relation to the pension scheme for the tax year in question.

Then the member must notify the scheme before the earlier of the following:

- the end of the period of 3 months, beginning with the day on which the scheme administrator gives the member the pension savings statement due to the change to the member's pension input amount
- the end of the period of 6 years beginning with the end of the tax year in question.