

Ombudsman's Determination

Applicant	Mr L
Scheme	NHS Pension Scheme (the Scheme)
Respondents	Aviva; NHS Business Services Authority (NHS BSA)

Outcome

1. Mr L's complaint is upheld against NHS BSA, but not against Aviva. To put matters right, NHS BSA shall make good any financial loss it has caused Mr L. In addition, NHS BSA shall pay Mr L £500 for the significant distress and inconvenience it has caused him.

Complaint summary

2. Mr L has complained about the delay in the transfer of his pension funds from Aviva into the Scheme.
3. He has claimed that he suffered a financial loss as a result of the delay, as the transfer value which was paid in March 2022 was significantly lower than the value he had been quoted in January 2022.

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 5 January 2022, Mr L received a transfer pack from NHS BSA, the Scheme's administrator.
6. On 10 January 2022, Mr L sent a letter with the transfer paperwork to Aviva, as the transfer pack from NHS BSA included a request for information and forms to be completed by the transferring scheme. It was received by Aviva on 13 January 2022.
7. On 14 January 2022, Aviva sent the completed forms to Mr L. It also provided a transfer quotation and discharge forms which needed to be completed by Mr L and NHS BSA. The transfer value was quoted as £18,495.39.

8. On 15 January 2022, Mr L sent NHS BSA his formal transfer application including the discharge forms provided by Aviva. These were received by NHS BSA on 19 January 2022. The discharge forms stated that NHS BSA must enclose:-

“a copy of the scheme’s HMRC registration document or screen print from HMRC Pension Schemes Online (Portal or Gateway).”
9. On 27 January 2022, Mr L received: an estimation from NHS BSA of the credit the transfer of his pension funds would purchase in the Scheme, the completed discharge forms from Aviva, and its own discharge forms. It also included, according to NHS BSA, a screen print of the HMRC Pension Schemes Online (Portal or Gateway).
10. On 31 January 2022, Mr L completed and sent both sets of discharge forms to Aviva, so that it could complete the transfer payment to the Scheme which Aviva received on 3 February 2022.
11. On 9 February 2022, Aviva noticed that it had not received a copy of NHS BSA’s HMRC registration documentation or a screen print. It contacted NHS BSA the same day by email to request a copy or screen print.
12. On 28 February 2022, Mr L contacted NHS BSA for an update as he had not received confirmation that the transfer had been finalised. NHS BSA informed him that it had not heard from Aviva.
13. On the same day, Mr L contacted Aviva for an update and expressed his concern about the decreasing fund value. Aviva informed Mr L that it was still waiting for the HMRC registration documentation from NHS BSA and advised that he should contact NHS BSA as it needed the documentation to proceed with the transfer. Mr L requested proof from Aviva that it had contacted NHS BSA about the HMRC documentation on 9 February 2022.
14. On 1 March 2022, Aviva logged his complaint and also sent Mr L a copy of the email sent to NHS BSA on 9 February 2022.
15. On the same day, Mr L contacted NHS BSA to enquire about the HMRC registration documentation that was requested by Aviva. He also raised a formal complaint with NHS BSA.
16. On 2 March 2022, NHS BSA wrote to Aviva and provided copies of the discharge forms and a screen print from HMRC Pension Schemes online; it was received by Aviva on 7 March 2022.
17. On 9 March 2022, Aviva initiated the disinvestment of Mr L’s pension funds.
18. On 14 March 2022, the transfer was completed by Aviva and the amount of £17,307.27 was paid to the Scheme.
19. On 18 March 2022, NHS BSA received the transfer value payment from Aviva.

20. On 31 March 2022, Aviva provided its first response to Mr L's complaint. It upheld the complaint and offered £50 as compensation. It admitted that it should have kept Mr L better updated on the progress of the transfer and its requirements.
21. Mr L responded to Aviva on 2 April 2022, and said he was dissatisfied with its offer.
22. On 4 April 2022, Aviva provided its second response to Mr L's complaint. It said it did not believe the transfer could have been completed any sooner and that it had acted appropriately.
23. On 13 April 2022, NHS BSA provided its Stage One response under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). It did not uphold Mr L's complaint.
24. Mr L remained unhappy with the response and invoked Stage Two of the Scheme's IDRP.
25. On 21 April 2022, NHS BSA wrote to Mr L confirming the pension credits he received as a result of his transfer.
26. On 6 June 2022, NHS BSA provided its IDRP Stage Two response. It did not uphold Mr L's complaint.
27. On 17 June 2022, Mr L brought his complaint to The Pensions Ombudsman (**TPO**).

Summary of Mr L's position:

- Aviva and NHS BSA caused delays to the transfer of his pension funds.
- Aviva did not clearly set out its requirement for the HMRC registration documentation. It also failed to follow up its email from 9 February 2022, when it did not receive a response from NHS BSA.
- NHS BSA did not provide the HMRC registration documentation, which was requested in the discharge forms it received on 19 January 2022.
- As a result of the delay, there was a substantial drop in the value of his pension funds. He wanted to be put back in the position he would have been in had the delays not occurred.

Summary of Aviva's position:

- The completed discharge forms were received on 3 February 2022. The HMRC registration documentation, which it had previously requested, was not included with the forms. It required this information before the transfer request could be processed.
- It sent an email to NHS BSA on 9 February 2022, when it realised the HMRC registration documentation was not included.

- It should have followed up with NHS BSA on 1 March 2022, when it did not receive the HMRC registration documentation. Its normal process was to allow 14 working days to respond to email requests, before requesting information again.
- It does not believe that the transfer could have been completed any sooner as it did not receive the HMRC registration documentation from NHS BSA until 7 March 2022. It completed the transfer on 14 March 2022, which was well within its normal timescales.
- It agreed that it should have communicated better with Mr L in terms of updates and its requirements. It offered £50 as compensation for the distress and inconvenience caused.

Summary of NHS BSA's position:

- It does not agree that it caused delays to the transfer of Mr L's pension funds. It provided a screen print from HMRC Pension Schemes Online with the discharge forms that were issued on 27 January 2022. According to its records, the screen print was included in the email to its printing team, which carried out the printing and posting of the documentation.
- It does not have records of receiving the email that was sent by Aviva on 9 February 2022. As it did not receive the email, it could not action the request. It does not consider this to be maladministration as it could not process something of which it was unaware. Even if it had responded to Aviva's email, there is no guarantee that the transfer would have been completed before 23 February 2022.
- It acted promptly and provided Aviva with the information it needed the next day, after being contacted by Mr L about the HMRC registration documentation.
- In line with The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (**the Regulations**), it is allowed a period of two months to provide an estimation of the credits the transfer of pension benefits will purchase. It provided the estimate of pension credits within eight days, which was well within its normal timescales.

Adjudicator's Opinion

28. Mr L's complaint was considered by one of our Adjudicators who concluded that there had been maladministration which had potentially caused Mr L financial loss. The Adjudicator's findings are summarised below:-

- On the balance of probabilities, the Adjudicator was of the view that NHS BSA failed to print and post the HMRC registration documentation to Mr L, which was maladministration. Although NHS BSA's records show that the information was included in the email to its internal printing team, it was unable to provide any

proof that it was in fact printed and posted to Mr L. Aviva and Mr L have both confirmed that they did not receive the HMRC registration documentation.

- NHS BSA issued the estimation within eight days of the pension credits that Mr L could purchase with the transfer. The Regulations require that NHS BSA provide an estimation of the credits the transfer of pension funds will purchase within two months, and it is apparent that this was done well within this timescale.
- Mr L said that Aviva did not clearly set out its requirements for the HMRC registration documentation. As NHS BSA did belatedly action Aviva's request for the documentation, it was the Adjudicator's view that this did not cause any material difference to the final outcome, and that Aviva's actions in this instance did not amount to maladministration.
- NHS BSA has said that it did not have any record of receiving an email from Aviva on 9 February 2022, where it requested the HMRC registration documentation again. As it was confirmed that the email was sent to the correct email address it was the Adjudicator's view that, on the balance of probabilities, the email was received by NHS BSA. It was the Adjudicator's opinion that it would be reasonable to assume that correctly addressed correspondence would reach its intended destination.
- NHS BSA's failure to action Aviva's email request from 9 February 2022 was maladministration. The Adjudicator said that it was clear that the transfer of Mr L's pension would have been completed sooner had NHS BSA provided the HMRC registration information with the initial transfer package that was issued on 27 January 2022 or in a timely manner after the receipt of the email request from Aviva on 9 February 2022.
- Aviva would have received all of the necessary documentation for the transfer to be completed on 3 February 2022. This would have allowed the transfer to have been completed by 16 February 2022, as opposed to 14 March 2022, and so the Adjudicator said that NHS BSA should establish whether Mr L has been disadvantaged as a result of the delay.
- It was the Adjudicator's view that Aviva's failure to follow up its email of 9 February 2022 was not maladministration and that it did not cause a delay which resulted in financial loss. Aviva has said that it normally allows 14 working days to respond to emails before sending a request again. Aviva has agreed that it should have followed up with NHS BSA on 1 March 2022, when it did not receive the HMRC registration information. The Adjudicator said that Aviva's failure to follow up its email did not have a material impact on the final outcome, as Mr L contacted Aviva before its normal timeframe had expired and he was then informed that Aviva was still awaiting the HMRC registration documentation.
- The Adjudicator was of the opinion that the distress and inconvenience caused was significant. In taking this view, the Adjudicator considered that there were two

instances of maladministration for which NHS BSA was responsible. The Adjudicator also recognised that NHS BSA did act quickly to provide the HMRC registration when it was made aware that it was still outstanding.

- To put matters right, the Adjudicator recommended that NHS BSA should contact Aviva and request that it calculate the value of the transfer payment on the basis that the required HMRC registration documentation had been received on 3 February 2022 and the transfer paid on 16 February 2022. NHS BSA should then calculate the notional pension credits that the transfer payment from Aviva would have purchased and compare this with the actual pension credits received and pay the difference to make up the shortfall, if any. It should also make a payment of £500 to Mr L in recognition of the significant distress and inconvenience caused.

29. NHS BSA did not accept the Adjudicator's opinion and the complaint was passed to me to consider. It provided further comments in response to the Opinion. In summary:

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- It does not agree that there was an unnecessary delay or that it should be responsible for a fall in the value of Mr L's investments in another pensions scheme due to market forces or world events.
- It does not agree with the conclusion that it did not include the HMRC registration documentation with the pack that was posted to Mr L.
- The Regulations allows a pension provider a period of two months in which to provide a transfer in credit estimate. Even taking into account the alleged lack of response by NHS BSA to the email of 9 February 2022, the HMRC registration was received by Aviva by 7 March 2022, which was still well within the two-month timescale that NHS BSA had to issue the original estimate.
- It does not consider it logical that the conclusion is that it is guilty of maladministration when it responded promptly on two occasions and the transfer was completed within two months.
- If the NHS BSA had taken until 18 March 2022 to issue the estimated transfer in credit, it would have been issued after the invasion of Ukraine. It does not believe there would be a case against the NHS BSA for a delay in these circumstances.
- The drop in the fund value was not a result of the delay, it was a result of market forces, or world events. NHS BSA cannot be held responsible for investment gains or losses that are outside of its control. In addition, transfer values for defined contribution funds are not guaranteed, and it is normal that fund values vary from day to day.
- Mr L believes if NHS BSA had responded to the email from Aviva of 9 February 2022, the payment would have been made before 24 February 2022. However, this assumes NHS BSA would reply immediately to Mr L's emails and that Aviva

would make payment within that 15-day period. These are assumptions based on an unreasonable timescale in which an organisation has to respond to a query.

- It does not agree that significant distress and inconvenience has been caused. There should be no penalty imposed on a scheme where transfer payment was received within the timeframe given to issue an estimate.

30. I have considered NHS BSA's further comments, but they do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

31. I agree with the Adjudicator that on the balance of probabilities, NHS BSA failed to provide the HMRC registration documentation with the transfer-in credit estimation pack that was issued to Mr L on 27 January 2022. Although NHS BSA has provided evidence that it did include the documentation in an email to its printing team, it has been unable to provide evidence that it was in fact printed and sent to Mr L and Aviva. Mr L did receive the transfer pack, however, he and Aviva have both confirmed that the HMRC registration documentation was not included with the pack. I therefore find that it is highly likely that it was not included with the transfer-in credit estimation pack, and I agree with the Adjudicator that it was maladministration on the part of NHS BSA.

32. NHS BSA has suggested that the fall in transfer value was a result of factors outside its control. While I agree with this in general, NHS BSA was responsible for a delay in the completion of the transfer which exposed Mr L's Aviva benefits to market volatility for longer than necessary. Had the transfer been completed by providing the necessary documents as intended, it is likely that Mr L's transfer value would have been higher. Had NHS BSA provided the HMRC registration documentation on 27 January 2022 the transfer would have undoubtedly been completed sooner than it was.

33. NHS BSA's failure to action Aviva's email of 9 February 2022 caused further delays to the transfer of Mr L's pension. It has been confirmed that Aviva did send the email to the correct address, and I agree with the Adjudicator that it would be reasonable to assume that correctly addressed correspondence would reach its intended destination. I find on the balance of probabilities that it is likely that NHS BSA did receive the email from Aviva on 9 February 2022. It was maladministration that it failed to provide the requested HMRC registration documentation on receipt of the email.

34. I recognise that NHS BSA has said that it did, in any event, provide the HMRC registration documentation well within the regulatory two-month timescale, and that it would not be logical to conclude that NHS BSA is guilty of maladministration, when NHS BSA responded promptly on two other occasions.

35. Meeting the statutory timelines is often not deemed sufficient to excuse a pension provider from presiding over unnecessary delays causing financial loss. In the same way, just because a member is able to make a case that they have incurred financial loss, it does not automatically equate to that being due to excessive delay effecting the transfer – the transfer may have taken place at the earliest reasonable opportunity, but a sudden fall in markets may crystallise a loss.
36. I do not find that the transfer took place at the earliest reasonable opportunity in this instance nor did NHS BSA act in a way that was in Mr L's best interest. NHS BSA's failure to provide the HMRC registration documentation in a timely manner, caused unnecessary delays to the transfer of Mr L's pension. The correct remedy, in any situation involving delay would be for the member to be put back in the position they would have been in had the delay not occurred. I therefore find that it would be reasonable for NHS BSA to establish whether Mr L was disadvantaged as a result of the delay caused by its maladministration.
37. Upon reviewing the sequence of events, I find that, but for the maladministration, the transfer of Mr L's pension would have completed on 16 February 2022 as opposed to 14 March 2022. Aviva would have received all of the necessary documentation for the transfer to be completed on 3 February 2022, had NHS BSA included the HMRC registration documentation with the transfer pack that was issued to Mr L on 27 January 2022. I find that NHS BSA must take responsibility for this delay and establish whether Ms D has been disadvantaged as a result.
38. I do not find that Aviva has committed any maladministration. I agree with the Adjudicator that Aviva's action did not have a material impact on the outcome as Mr L enquired regarding progress before the expiry of Aviva's normal timeframe to follow up information requests. It completed the transfer of Mr L's pension in a timely manner, once it had received all of the necessary documentation.
39. Our awards for non-financial injustice are an award in recognition of the inconvenience and distress that the respondent has suffered. NHS BSA was responsible for two errors which caused delays to the transfer of Mr L's pension. I agree with the Adjudicator that NHS BSA's maladministration caused Mr L to suffer significant distress and inconvenience. In recognition of this, NHS BSA shall pay Mr L £500.
40. I uphold Ms D's complaint.

Directions

41. To put matters right, NHS BSA shall, within 28 days of the date of the Determination:
 - (i) establish with Aviva the actual pension credits the transfer purchased and compare it with the notional pension credits that the transfer would have purchased if there had been no delay. This calculation should be carried out on the basis that the required HMRC registration documentation would have

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been received on 3 February 2022 and that the transfer would have been paid on 16 February 2022.

- (ii) pay any reasonable administration fee should Aviva charge a fee for carrying out the above calculation;
- (iii) pay Mr L £500 total directly for the significant distress and inconvenience he has experienced.

42. If a shortfall of pension credits is identified, NHS BSA shall pay the cost of purchasing additional pension credits required to make up the shortfall within 14 days of receiving the confirmation in writing of the sum required.

Anthony Arter CBE

Deputy Pensions Ombudsman

2 September 2024

Appendix

The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013

Part 4

Transfer credits

14 - (1) The information listed in Part 4 of Schedule 3 must be given in accordance with this regulation.

(2) Subject to paragraph (3), the information must be given to any member or prospective member who makes a request for it.

(3) Paragraph (2) does not apply where the request mentioned in that paragraph is made less than 12 months after the last occasion on which such information was given.

(4) The information must be given within two months of the date the request is made.