

## Ombudsman's Determination

Applicant	Dr S
Scheme	NHS Pension Scheme <b>(the Scheme)</b>
Respondent	NHS Business Services Authority <b>(NHSBSA)</b>

## Outcome

1. I do not uphold Dr S' complaint and no further action is required by NHSBSA
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Dr S has complained that NHSBSA failed to carry out his instructions to transfer his benefits out of the Scheme before the deadline of 6 April 2015, and that the information received from NHSBSA was consistently inaccurate and incomplete.
4. Dr S also says he has incurred professional fees in attempting to complete his transfer, and as a result of NHSBSA's failure to act, he has now been deprived of flexibility in managing his pension.

## Background information, including submissions from the parties

5. In November 2014, Dr S received correspondence from NHSBSA, informing him that the Scheme was changing from April 2015. Dr S was identified as a member who may be directly affected by these changes.
6. Dr S was a member of the 1995 Section of the Scheme and, due to the upcoming changes, he would automatically be transferred to the new scheme in April 2015, unless he transferred to the 2008 Section of the Scheme.
7. Additionally, under the new Pensions Freedom Legislation, members would not be able to transfer out from an unfunded Defined Benefit **(DB)** public sector pension scheme, into a Defined Contribution **(DC)** arrangement, from 6 April 2015.
8. On 28 January 2015, Dr S completed a transfer request form. He ticked the box to confirm he was still an active member of the Scheme.

9. On 4 February 2015, Dr S' Independent Financial Advisor (**IFA**) contacted NHSBSA to advise them of Dr S' intention to transfer out of the Scheme. NHSBSA then received two Cash Equivalent Transfer Value (**CETV**) request forms from Dr S. Fidelity FNV PP was named as the receiving arrangement on the first form, whilst the receiving arrangement on the second form was listed as 'Unknown'.
10. On 9 February 2015, NHSBSA wrote to Dr S' IFA in response to the CETV requests, and explained that it was not in a position to issue a guaranteed CETV statement as Dr S was still an active member of the Scheme, and Dr S would first need to opt-out of the Scheme. NHSBSA also included in its letter, information regarding the restrictions that would be applied to pension transfers from 6 April 2015.
11. On 27 February 2015, NHSBSA received a call from Dr S' IFA regarding the CETV requests. As Dr S was still an active member of the Scheme, NHSBSA were only able to supply a hypothetical CETV at that time, and the IFA was informed Dr S would need to opt-out of the Scheme before Dr S could be considered eligible to transfer out. The IFA was also advised NHSBSA was experiencing high volumes of transfer requests, and these were all being dealt with in chronological order from the date of receipt.
12. On 11 March 2015, Dr S wrote to NHSBSA stating he had been unable to complete and return the TV18 transfer form as required, as he had not been provided with one. Dr S said this had been due to the delays on the part of NHSBSA, in producing a guaranteed CETV. As a result, Dr S requested that his letter, in which he gave his authority to transfer, was accepted in lieu of the TV18 form. Dr S concluded that, should the actual form be received in time to finalise the transfer, it would be completed and returned.
13. On 18 March 2015, Dr S formally elected to opt-out of the scheme, signing and returning the relevant SD502 form to NHSBSA. Elections to opt-out of the Scheme are effective from the first day of the next pay period (i.e. the first day of the following month). Therefore, Dr S' opt-out would only be effective from 1 April 2015.
14. On 23 March 2015, NHSBSA provided Dr S and his IFA with a CETV estimate. NHSBSA confirmed in its covering letter, enclosed with the estimate, that it could not provide a guaranteed CETV at that time. Only when Dr S' opt-out became effective would the Scheme be able to issue a guaranteed CETV.
15. On 24 March 2015, Dr S' IFA emailed NHSBSA to make a complaint. The IFA argued that the entire transfer process had not been explained clearly and the information provided was misleading. The IFA said that having completed the Guaranteed Annuity Transfer Out request form, this had been returned with instructions that a different form must be completed as Dr S was still an active member of the Scheme. Upon following these instructions, the required TV18 form had not been provided with Dr S' CETV estimate. The IFA added that, much to their frustration, they had now been informed they must complete the original transfer out request form, and that

under the legislative timescale, it could take up to 3 months to provide with a guaranteed CETV.

16. It was Dr S', and his IFA's opinion that they had done all they could to transfer out of the Scheme, but they had been subjected to a number of delays resulting from a confusing process. Dr S' IFA requested confirmation from NHSBSA that Dr S' request to transfer would be honoured, saying if it was not, they would be seeking compensation.
17. On 27 March 2015, a new CETV request form was received by NHSBSA from "Funds Network", asking that the transfer value of Dr S' benefits be paid into the Fidelity Retail Pension Scheme. This arrangement was a Self-Invested Personal Pension (**SIPP**) operated by Fidelity. NHSBSA confirmed in a telephone call with Dr S' IFA that his election to opt-out from the Scheme was in progress and the CETV request from Funds Network had been received.
18. On 1 April 2015, Dr S' IFA called NHSBSA's customer contact centre. The IFA states she was told that (on 24 March), the discharge forms had been faxed to her and the originals had been posted to herself and Dr S. The IFA says she was told, after confirming the forms had not arrived, they would be faxed over again in the next 24 hours.
19. On 4 April 2015, Dr S wrote to NHSBSA to complain that not only were the discharge forms promised by 2 April, but the faxed forms were not received. Additionally, although the IFA had been assured they could return the relevant forms by fax, the machines were not accepting and sending the documents. Dr S concluded that he wished for NHSBSA to accept his letter as authority to proceed with the transfer; if not, he expected to be compensated by the Scheme for "promises" not being fulfilled.
20. On 9 April 2015, in a telephone call to NHSBSA, Dr S' IFA was informed that the Scheme had no record of anything being received since 31 March 2015, when Dr S' IFA emailed to chase a response to his complaint.
21. On 1 May 2015, Dr S formally complained to NHSBSA through the Scheme's Internal Dispute Resolution Procedure (**IDRP**). Dr S stated that, due to NHSBSA's poor administration, he had been unable to complete the transfer process within the given time frame. As a result, the deadline of 6 April 2015 had passed and therefore he could not transfer his benefits into his chosen DC arrangement with Funds Network. Dr S concluded that this had caused him a financial loss, and he was now prevented from flexibly managing his pension. Dr S requested that NHSBSA make a concession to allow him to complete the transfer, and compensate him for administrative negligence.
22. On 1 July 2015, Dr S' complaint was not upheld under Stage 1 of the IDRP. The decision letter stated that NHSBSA was required to follow a specific process in transferring benefits out of the Scheme. By the time Dr S elected to opt-out on 1 April

2015, NHSBSA had insufficient time to complete the transfer. NHSBSA responded to Dr S' comments that the IFA had been informed the necessary documentation would be provided by fax, and could be returned in the same format, stating it could find no evidence to support that claim. Dr S appealed the stage 1 decision.

23. On 2 September 2015, NHSBSA issued its Stage 2 IDRP response upholding the stage 1 decision. They reiterated the eligibility criteria for transferring benefits out of the Scheme, and NHSBSA went on to confirm that as a result of Dr S' paperwork to opt-out of the Scheme being received on 18 March 2015, it did not become effective until 1 April 2015. It was, therefore, not possible to issue guaranteed statement of entitlement (CETV), and to obtain the completed discharge forms prior to 6 April 2015. NHSBSA concluded it was now no longer possible to authorise the transfer, as it has no discretion over the Scheme Regulations.
24. Dr S wrote to this organisation on 5 November 2015, to complain about NHSBSA. He stated that NHSBSA had provided both himself and the IFA with incorrect and inaccurate information regarding the transfer out process and, it did not advise him at any point that there was insufficient time to complete the transfer. If he had been notified of this, he would not have sought to proceed, and as a result, would not have incurred the cost of professional advice. Dr S concluded that he has been disadvantaged in that he has no flexibility in managing his pension, and he therefore believes compensation is due on the basis that NHSBSA poorly managed the transfer process and delivered a sub-par customer service.

## **Adjudicator's Opinion**

25. Dr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by NHSBSA. The Adjudicator's findings are summarised briefly below:
  - Dr S was aware of his status as an active member in the Scheme. He, and the IFA were informed on 9 February 2015, that he would first have to leave the Scheme before a guaranteed CETV could be issued. However, he did not complete the opt-out form to leave the Scheme until 18 March 2015. It is not NHSBSA's responsibility to encourage members to leave the Scheme or give advice on the consequences of opting out.
  - NHSBSA is not obliged to chase members for the relevant opt out documentation, and although, as a result of an increased demand for transfers, NHSBSA may not have delivered the expected standard of customer service, the overall delays in completing the transfer-out request were not the responsibility of NHSBSA.
  - Although, Dr S is now unable to complete a transfer out to his chosen DC scheme, he has not suffered an actual financial loss as a result. He still retains his deferred

pension benefits in the Scheme and it is still possible to transfer to another DB scheme (which in turn may allow him to transfer out to a DC scheme).

26. Dr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Further comments were provided by the IFA who is representing Dr S, which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, but I will for completeness, add some of my own comments in response to the IFA's recent email dated 7 December 2016.

### **Ombudsman's decision**

27. The IFA has, in my view, produced no new evidence to support Dr S' case. Reference has been made to existing points and these are summarised below:
- Dr S does not dispute that the time frame for completing the transfer was limited, however he has stated that NHSBSA offered promises which were relied upon, namely the transfer was being effected and then it was not met.
  - Dr S contends that the customer service from the NHSBSA administration team was not fit for purpose and that unreasonable difficulties were experienced when attempting to contact the administration team regarding his transfer. Particular reference is made to mailboxes being full; fax machines not working; telephone answerphone messages working but then saying 'please hang up'. The IFA said it was not unreasonable to assume at least one method of communication was in operation, and the IFA reiterated that they were promised transfer forms and were then told they could be faxed back to NHSBSA.
  - Dr S has requested reimbursement of the IFA's fees and other time related costs, which he says he would not have incurred, had he been provided with the correct information regarding the timescales in completing the transfer.
  - Dr S' IFA has also stated that the Adjudicator's suggestion that Dr S could still transfer his pension benefits to an alternative DB scheme, which does allow transfers to a DC scheme, is unrealistic.
28. At the heart of Dr S' complaint is a fundamental dispute over claimed promises that his transfer would be made by 5 April 2015. However, there is no evidence of promises being made to that effect, and it was unrealistic, in my view to assume a guaranteed CETV would be quoted in time before the deadline.
29. It is not my role or that of my organisation to comment on whether the operational services offered by the NHSBSA administration team are "fit for purpose". One expects an organisation as large as NHSBSA to have sufficient communication channels in place in order that members or their IFA's can communicate effectively. NHSBSA has already explained that if making contact with them was difficult at this

particular time it was because it was a very busy period and the 5 April deadline fell over the Easter period. That is not an unreasonable explanation in my view.

30. However, it does seem the Customer Contact Centre, in late March 2015, did inform the IFA that option forms would be faxed but then they were not faxed. I cannot agree that constitutes a firm promise, but it was certainly misleading and not the level of customer service that NHSBSA should be providing. It seems the real reason option forms were not faxed was because, at the time, Dr S was still a contributing scheme member and had not opted out of the Scheme. At best it was an oversight and poor service but that is not the same as maladministration where it results in an actual financial loss. Although, I agree it was poor service, possibly unprofessional, it did, in my view, make no material difference to the final outcome.
31. Dr S and the IFA have also stated there was a promise that the faxed documents could be returned by the same method. There is no evidence of that and I am of the opinion that NHSBSA would only be prepared to action a signed / dated original document, not a faxed copy.
32. As explained above, it would not have been possible for Dr S to return forms to NHSBSA by fax, therefore any problems with sending faxes would have had no effect on the overall transfer process. Further, on receipt of Dr S' transfer application pack, NHSBSA sent an email, dated 25 February 2015, which advised that:

*"Due to the volume of transfer requests we are dealing with, we ask that you do not issue reminders via email or phone call as this makes our response times longer."*

Whilst I agree, the level of difficulty in contacting NHSBSA at that time was higher than usual, Dr S had been notified that NHSBSA was experiencing a high demand for transfers and should have reasonably allowed for such issues.

33. Dr S was informed on numerous occasions of the requirement to opt-out of the Scheme before a guaranteed CETV or Statement of Entitlement could be issued. Even if he himself was unfamiliar with the timings of this, his IFA should have been aware that opting out was the main priority in order that a transfer could then be effected. The IFA was aware of this in early February 2015 but Dr S only opted-out from the Scheme with effect from 1 April 2015.
34. Because Dr S did not officially opt-out until mid-March, he was only eligible to receive a guaranteed CETV from 1 April 2015, when the opt-out was finalised. I cannot determine with any certainty if any customer contact centre staff raised Dr S' expectations regarding the timescale to complete the transfer, However, I do not consider it reasonable to expect that NHSBSA would be in a position to obtain final salary information and calculate the guaranteed CETV all within the remaining 5 days, particularly given that NHSBSA only found out on 27 March 2015 that Dr S wanted to transfer his benefits to the Fidelity SIPP. Furthermore, the Easter bank holiday weekend fell within that period, and as NHSBSA had a statutory obligation to

provide this information within 3 months it seems highly unlikely a transfer was ever going to happen.

35. Dr S has requested reimbursement of his IFA fees and other time related costs, which he says he would not have incurred, had he been provided with the correct information regarding the timescales in completing the transfer. I am making no direction on this because it was the personal choice of Dr S to appoint an IFA. In any event, it is my view that Dr S was supplied with sufficient information regarding the transfer process and, given that he did not initiate the transfer until February 2015, and taking into account the high volume of transfer requests NHSBSA were processing during that period, it was always a possibility that the transfer may not complete in time.
36. The IFA stated that the Adjudicator's suggestion that Dr S could transfer his pension benefits to an alternative DB scheme, which would then allow a transfer to a DC scheme, was unrealistic. That was a personal view expressed by the Adjudicator and although, it is not unreasonable to assume that an individual might find themselves moving from public to private sector I accept that the number of open DB schemes in the private sector is dwindling and very few would accept a transfer in. However, the Adjudicator's comment makes no difference to my finding in this matter. What is important is the sequence of events in Dr S applying for a transfer from the Scheme and allowing sufficient time for the process to be completed before the 5 April 2015 deadline..
37. To sum up, whilst I agree that Dr S has not received the level of service he had otherwise expected from NHSBSA, it was the late application by Dr S to opt-out of the Scheme which meant that his transfer out could only be processed from 1 April 2015 onwards. As a result, there was insufficient time in which to process his transfer and this was not the fault of NHSBSA.
38. Therefore, I do not uphold Dr S' complaint.

**Anthony Arter**

Pensions Ombudsman  
29 December 2016