

Ombudsman's Determination

Applicant	Mr Y
Scheme	NHS Pension Scheme (the Scheme)
Respondent	NHS Business Services Authority (NHSBSA)

Outcome

1. I do not uphold Mr Y'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. Mr Y has complained that NHSBSA are not willing to allow him to transfer the contributions he made into the Scheme to a private pension arrangement with Prudential. He says that if a transfer to a scheme offering flexible access is not allowed he will have lost out on the employer's contributions made on his behalf while in the Scheme.

Background information, including submissions from the parties

4. Bedford Hospital NHS Trust (**Bedford**) initially offered Mr Y the role of 'Cancer Performance & Quality Co-ordinator for Cancer Services', via email on 25 February 2013.
5. Subsequent to the relevant background checks being satisfactorily completed Mr Y commenced permanent, pensionable employment with Bedford on 1 April 2013.
6. On 12 April 2013, Bedford issued Mr Y with his 'General Contract' and a 'Principle Statement of Particulars'. The General Contract confirmed the roles, effective start date, location and details of any previous NHS aggregated service, for annual leave and sickness purposes.
7. The Principle Statement of Particulars explained that Mr Y's contract of employment was subject to the terms and conditions outlined in the 'Agenda for Change NHS Terms and Conditions of Service Handbook', a copy of which could be obtained from his manager, the Bedford intranet page, or the Human Resources Department.

8. The Principle Statement of Particulars also detailed, among other things, the following information regarding Mr Y's pension entitlement:

"4. Pension Scheme

The NHS Pension Scheme is currently under consultation and further details will be issued to you in due course. Pension rights and contributions shall be dealt with in accordance with the provisions of the NHS Superannuation Regulations.

...

Details of the Scheme are available in the guide which can be obtained from the Human Resources Department."

9. On 23 August 2013, Bedford sent Mr Y an unrelated letter headlined 'Confirmation of your membership of the NHS Pension Scheme'. This letter informed Mr Y of the recent legislation change regarding automatic enrolment. Mr Y was also directed to the NHSBSA website where he could obtain a copy of the scheme guide, general scheme information and answers to a series of frequently asked questions.
10. On 18 September 2013, Mr Y met with the Cancer Lead Manager and resigned from his post as Cancer Performance & Quality Co-ordinator for Cancer Services.
11. The Cancer Lead Manager liaised with the Human Resources Department that day and received confirmation that Mr Y's resignation could be treated as being effective immediately (18 September 2013).
12. Taking into account Mr Y's four week notice period this meant his pensionable employment ceased on 15 October 2013. A letter to this effect was passed to Mr Y by hand on 18 September 2013.
13. On 18 November 2014, NHSBSA wrote to Mr Y to explain that as it had been 12 months since he left employment, and he had only accrued 198 days reckonable service, the only options available to him were to transfer his benefits or apply for a refund of his scheme contributions. A form SD73 was also enclosed. The eligibility criteria for a transfer was not included.
14. On 3 December 2014, Mr Y wrote to NHSBSA stating his intention to transfer his benefits to a personal pension plan held with Prudential. NHSBSA then confirmed the transfer process to Mr Y on 23 February 2015.
15. Mr Y completed the necessary transfer application form on 25 February 2015. On this form Mr Y confirmed that the date he joined Prudential was 3 January 1998.
16. On 16 March 2015, NHSBSA declined Mr Y's request to transfer on the basis that he did not satisfy the transfer eligibility criteria set out in the scheme regulations and detailed in the 'Leaving early and Transferring Out' booklet (i.e. that he had not joined the receiving pension arrangement within 12 months of leaving NHS employment).

This was reiterated in a letter to Mr Y on 3 June 2015. The booklet was said to be “available” when he left service.

17. Mr Y complained under both stages of the Scheme’s Internal Dispute Resolution Process (**IDRP**).
18. The IDRP Stage 1 decision issued on 13 June 2016, reiterated the information provided on 16 March 2015, and did not uphold Mr Y’s complaint on the basis that he did not meet the transfer eligibility criteria. NHSBSA also confirmed that it was the responsibility of the employer, in this case Bedford, to provide Mr Y with the relevant scheme literature, both when he joined and left employment. This scheme literature would have provided Mr Y with full information regarding his pension rights and the available options.
19. On 19 October 2016, NHSBSA issued its IDRP Stage 2 response. The response sought to make a clear distinction between the roles and responsibilities of both the employer and the pension scheme administrators. According to NHSBSA it is the responsibility of the employer to:

“...provide all of the required information regarding options once a member ceases contributing into the Scheme, and NHS Pensions relies on the employers and the members themselves to ensure that they are aware of the options available to them. The NHS website also holds a wealth of information regarding options for members. I would also add that on taking up membership of the NHS Pension Scheme your employer should have provided you with a Guide to the Scheme.”
20. The same letter also provided a clearer definition of the provision Mr Y was said to not satisfy:

“...options included either claiming refund of your less than 2 years contributions, or you may be able to transfer into a new pension scheme if;

 - You joined the present scheme within 12 months of leaving NHS Pension Scheme, and
 - You apply for the transfer within 12 months of joining the new pension scheme”

As such, NHSBSA said Mr Y does not qualify for a transfer.

21. Not satisfied with NHSBSA’s response, Mr Y brought his complaint to this office.

Adjudicator’s Opinion

22. Mr Y’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:-

- Mr Y's complaint has been brought against NHSBSA, as the scheme administrator, and not his former employer, Bedford. As such it is necessary to consider NHSBSA's actions only.
- The relevant scheme literature detailing the available options was available from a number of different sources including, but not limited to, the staff intranet, the Human Resources Department, or Line Management.
- This scheme literature was made widely available to ensure all members had equal access to valuable scheme information. Had Mr Y availed himself of this information he would have had a fuller picture of his pension rights and entitlements.
- The terms and conditions of Mr Y's contract, issued on 12 April 2013, made it clear that his pension entitlement would be subject to the "NHS Superannuation Regulations". Mr Y was therefore made aware shortly after his employment started that further information was available regarding his pension entitlement.
- If Mr Y was in any doubt regarding these regulations or his entitlement he should have pursued his queries through the relevant channels. In any event, Mr Y made monthly contributions each month between April and October, he must therefore bear some responsibility for not fully exploring his pension entitlement.
- Mr Y's request to transfer did not satisfy either (i) or (ii) of Regulation 2.F.4 (6) (The National Health Service Pension Scheme Regulations 2008 – see the Annex for full details). The pension arrangement Mr Y wished to transfer to was first taken out in 1998 and his transfer request was made after the 12 month window.
- The responsibility for providing Mr Y with the Leaving early and Transferring Out booklet lay with Bedford and not NHSBSA, who cannot therefore be blamed for any shortcomings on the part of Bedford.

23. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y provided his further comments which are summarised briefly below:

- He was not provided with the necessary scheme information to make an informed decision regarding the contributions he made into the Scheme. As a consequence of this, his only option now is to receive a refund of his contributions.
- Other than his General Contract and Principle Statement of Particulars, he did not receive scheme information from Bedford or NHSBSA. He was, therefore, not provided with the necessary information to make informed decisions.
- As he received no information regarding his pension scheme, Mr Y assumed he had qualified for a pension payable from his 65th birthday. As he resigned after only six months he knew that his short period of service would only entitle him to a small pension. As such, he believed he did not have any choices to consider and had "no reason" to look into his pension in any more detail.

- Once he was notified that he did not qualify for a deferred pension, and in the absence of any meaningful scheme information, Mr Y says he immediately took steps to protect the valuable employer's element of his pension by requesting a transfer to his personal pension plan with Prudential.
 - He did not receive the Leaving early and Transferring Out booklet mentioned by NHSBSA in the IDRPs responses. He believes he did not receive this booklet because his resignation was accepted the same day it was tendered. His resignation acceptance letter was therefore hand delivered to him before he left the office.
 - It would seem that NHS pensions are set up to ensure that it does not have to pay their significant contribution to members that do not know their correct entitlement. To say that the employer is responsible and that NHSBSA are not, seems to be an evasion of responsibilities to employees.
 - The relevant information regarding options and entitlement should have been provided by NHSBSA before the "12 month window expired".
24. I agree with the Adjudicator's Opinion, and I will therefore only respond to the key points made by Mr Y for completeness.

Ombudsman's decision

25. As part of the Adjudicator's investigation NHSBSA explained that it was Bedford's responsibility to provide Mr Y with a Scheme booklet when he joined and a Leaving early and Transferring Out booklet when he left. This booklet would have explained the options available to Mr Y once he left the Scheme and provided the timescales involved.
26. In support of this, NHSBSA has provided a copy of the "NHS Pension Scheme Employer's Charter - Your roles and responsibilities in locally administering the NHS Pension Scheme" (**the Charter**).
27. This Charter, setting out employer responsibilities, was circulated to all sponsoring employers within the NHS and states that providing a copy of the "Scheme booklet to Scheme members on employment" was to be classed as a "main undertaking".
28. The Charter gives each Authority considerable freedom on how it meets its various responsibilities. No centralised checklists or suggested processes were provided.
29. Mr Y says he did not receive any Scheme literature, other than his General Contract and Principle Statement of Particulars, at any point either during or after his employment with Bedford.

30. Neither Bedford nor NHSBSA are able to confirm that any scheme literature was issued to Mr Y. However, while this represents a failing to provide or disclose information and may amount to maladministration, consideration must be given as to whether the information was easily available from other sources and whether it was reasonable for the member not to have accessed those sources.
31. The Principle Statement of Particulars, which Mr Y does not dispute receiving, made it clear that the Scheme was subject to the “NHS Superannuation Regulations” and that further information was available upon request. As such, it is reasonable to say Mr Y should have been aware that he was not in possession of all the relevant information available to him and that he could have taken steps to remedy this. That he did not do so is regrettable, he was, however, also made aware in, August 2013, that the relevant Scheme information was available online via the NHS website. As such Mr Y cannot argue that he was precluded from looking into his pension entitlement independently.
32. Mr Y has suggested he had no need to look into his pension entitlement as he had received no information and therefore “assumed” he qualified for a small deferred pension, about which he would be notified in due course. However, I can see no basis on which he could reasonably base this assumption. In general, the vast majority of occupational defined benefit pension arrangements are subject to the rule that a period of two years reckonable service must be attained to qualify for a pension.
33. Although Mr Y might argue he did not receive any scheme information, the fact remains a pension represents a significant and far reaching financial investment. Consequently, it is to be expected that a person should carry out such due diligence in order to satisfy themselves of their basic entitlement.
34. Mr Y has also argued that he was only notified of his options in November 2014, some 13 months after he left service. By which stage he had already missed the opportunity to transfer his accrued pension contributions to another arrangement. Unfortunately, while I sympathise with Mr Y, this argument appears to misunderstand the relevant Scheme regulation (Regulation 2.F.4 (6)).
35. The proposed transfer was to a personal pension plan taken out with Prudential in 1998. As such, even if Mr Y had received the necessary information earlier his transfer would not have been allowed as the Prudential arrangement did not satisfy the relevant criteria.
36. Mr Y has brought his complaint against NHSBSA, the Scheme administrator, only and not his former employing authority, Bedford. The distinction between the two is of paramount importance to this complaint. Ultimately, NHSBSA are obliged to administer the Scheme in accordance with the Scheme Regulations and other relevant legislation. It has no discretion in this regard. NHSBSA has correctly applied the appropriate Scheme Regulations in this case.

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37. Therefore, I do not uphold Mr Y's complaint.

Anthony Arter

Pensions Ombudsman

18 September 2017

Annex

The National Health Service Pension Scheme Regulations 2008

2.F.4 Applications for transfer value payments: time limits

(6) In respect of an applicant who falls within regulation 2.F.1(4) -

(a) in the case of an application that requires the guaranteed cash equivalent transfer value payment to be made to a registered occupational pension scheme or a registered personal pension scheme, an application under paragraph (1) may only be made if-

(i) the applicant became a member of that scheme not later than the end of the period of 12 months beginning with the day after the date on which the member ceased to be in the pensionable service in which the rights accrued ("the leaving date"), and

(ii) the application is made not later than-

(aa) the end of the period of 12 months beginning with the day on which the applicant became a member of that scheme, or

(bb) if the applicant became a member of that scheme on or before the leaving date, the end of the period of 12 months beginning with the day after the leaving date.

(b) in any other case, an application under paragraph (1) may only be made before the end of the period of 12 months beginning with the day after the leaving date.