

Ombudsman's Determination

Applicant	Mrs K
Scheme	NHS Pension Scheme (The Scheme)
Respondents	NHS Business Services Authority (NHSBSA)

Outcome

1. I do not uphold Mrs K'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. Mrs K's complaint is that NHSBSA has rejected an application to transfer her Scheme benefits to a defined contribution pension scheme.

Background information, including submissions from the parties

4. Mrs K has a deferred pension in the Scheme.
5. Mrs K previously requested and received a Cash Equivalent Transfer Value (**CETV**) from the Scheme, dated 7 July 2013.
6. On 25 March 2015, her representative made a telephone call and wrote to NHSBSA requesting a transfer of benefits to a new personal pension with Liverpool Victoria (**LV**). The letter included fully completed transfer request forms, a copy of the previously calculated CETV from July 2013 and stated Mrs K's intention was to transfer out in full.
7. On 18 April 2015, NHSBSA wrote to Mrs K and explained that from 6 April 2015 the Pension Schemes Act 2015 (**the Act**), prohibited transfers out of the Scheme to defined contribution pension arrangements which provide flexible benefits.
8. On 15 May 2015, Mrs K's representative wrote to NHSBSA to appeal this decision and to make a complaint. The representative argued that the request to transfer was made before the Act came into force and was therefore valid under Section 68(8) of the Act. The representative also explained that one of the Scheme's call handlers had said that members merely had to register an interest in transferring prior to 06 April

2015, and that a further “grace period” was available following the cut-off date to complete existing applications.

9. On 17 July 2015, NHSBSA responded to the complaint under Stage one of the Scheme’s Internal Dispute Resolution Procedure (**IDRP**). NHSBSA explained that the change in law had resulted in a substantial increase in requests to transfer. NHSBSA had decided to deal with transfer requests in date order and “would only provide a CETV figure if the request was received within a reasonable timeframe.”
10. NHSBSA added that an application to transfer was not valid without the submission of a TV18 form, and then only after the provision of a CETV that was within the guarantee date. As it did not receive Mrs K’s request until 27 March 2015, “it was not possible to complete Mrs K’s transfer request before 6 April 2015.”
11. On 7 October 2015, Mrs K’s representative wrote to dispute this view. He asserted that Mrs K had received a CETV previously and decided to transfer her benefits “regardless of any change to the previous estimate.” The letter also reiterated the point that they had been told that NHSBSA was honouring requests to transfer made prior to the cut-off date.
12. The letter asked for the complaint to be considered under IDRP Stage two. It also queried the date of the last successful transfer request NHSBSA processed and whether any other transfer requests had been actioned subsequently.
13. On 26 October 2015, NHSBSA confirmed that it could find no evidence of the representative’s telephone conversation referenced in the complaint. It also explained that staff had received “detailed guidance” on transfer queries and apologised if the position on a member receiving a CETV before being able to transfer had not been made clear.
14. NHSBSA explained that it had sought detailed guidance from HM Treasury in advance of the transfer ban. NHSBSA stated that this guidance was clear about a transfer being a two-step process. NHSBSA further explained that it did not set a specific deadline for processing transfer requests. In view of the “unreasonably short period of time in which to facilitate a transfer of pension benefits” it denied Mrs K’s transfer request as it could not be completed before the Act came into force.

Adjudicator’s Opinion

15. Mrs K’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 below:-
 - In its IDRP Stage two response NHSBSA states that Regulation M2 of The National Health Service Pension Scheme Regulations (1995) (**the Rules**) only obliges it to provide a CETV within three months of a request being made.

- NHSBSA agrees it received Mrs K's request on 27 March 2015. The Adjudicator calculated there to have been no more than five working days between receiving the request and the deadline (due to the Easter Bank holiday starting 3 April 2015).
- The time taken, as set out in sequence of events detailed in Mrs K's complaint, is therefore significantly shorter than the period NHSBSA is obliged to provide a CETV. Mrs K's transfer request allowed an insufficient number of working days for NHSBSA to produce a CETV and for Mrs K to adequately consider her options.
- NHSBSA was undoubtedly dealing with a high volume of transfer enquiries prior to 6 April 2015. Although it did not specify a cut-off point, the Adjudicator did not consider it unreasonable for NHSBSA to refuse Mrs K's request to transfer based on there being no prospect of her completing the transfer process before 6 April 2015.
- The Adjudicator understood the reasons why Mrs K believes she made a valid application to transfer her pension prior to 6 April 2015. However, Section 94(1) of The Pension Schemes Act 1993 is clear on the point that:

"A member of a pension scheme who has received a statement of entitlement under section 93A acquires a right to take the cash equivalent shown in that statement in accordance with this Chapter."
- In order to acquire this right, the statement of entitlement must contain details of the CETV at the guarantee date. This guarantee date must be between the date of the member making the request to transfer and the date the statement is provided to the member (Section 93A (4) parts a and b). Mrs K was not in receipt of a CETV in March 2015 that met the relevant criteria and had not therefore made a valid application to transfer.
- The basis upon which CETV's in the Scheme were calculated could have changed significantly between July 2013 and March 2015. This could have made a significant difference to the value of her benefits and might have influenced her decision to transfer. It would not be possible to make an informed decision to transfer out of the Scheme without an up to date calculation.
- The Adjudicator understood why Mrs K is disappointed by the loss of expectation of being able to transfer her benefits, however this did not, in his view, justify a finding of maladministration against NHSBSA.

16. Mrs K did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs K provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs K for completeness.

Ombudsman's decision

17. Mrs K's representative specifically references the explanatory note to Section 68 of the Act in support of the argument that she should have been allowed to transfer her pension out of the Scheme. Particularly that:

"The restriction will not apply where a member has already made an application under section 95 of the Pension Schemes Act 1993 requiring the trustees or scheme managers to use the member's cash equivalent to transfer to another scheme before 6 April 2015"
18. However, this caveat is only applicable in situations where a member has made an application to transfer. The fact that Mrs K contacted NHSBSA stating an intention to transfer her benefits is not the same as making an application. Submitting an application to transfer out of the Scheme is a two-stage process.
19. The process involves a member obtaining a current CETV and then submitting a TV18 form, before the end of the CETV's guarantee date. As Mrs K had not obtained a CETV or submitted a TV18 form in advance of the deadline of 06 April 2015, I find that she did not make an application to transfer.
20. Mrs K's representative also argues that the transfer form appears to have been revised by NHSBSA in March 2015 and it is unreasonable for it to provide the form and then enforce the Scheme's 3 month deadline for producing a CETV. However, the Rules do not oblige NHSBSA to produce a CETV in less than 3 months. Mrs K submitted her request to transfer only 5 working days before the deadline. Therefore, I find that it was reasonable for NHSBSA to refuse a transfer request in view of the limited time Mrs K and her representative allowed.
21. Furthermore, as a professional financial adviser, Mrs K's representative ought reasonably to have been aware of the deadline and advised Mrs K of it in advance. Particularly if it had always been her intention to transfer out of the Scheme.
22. Mrs K's representative also believes that other transfers out of the Scheme were completed after the deadline and wanted to know the date of the last successfully completed transfer. However, I do not consider that the circumstances of other transfers are relevant to Mrs K's complaint. The outcome of Mrs K's case turns on its particular circumstances and timeline. It ultimately rests upon the fact that Mrs K did not make a valid application to transfer out in advance of the deadline of 6 April 2015.

23. Therefore, I do not uphold Mrs K's complaint.

Anthony Arter

Pensions Ombudsman
20 November 2018