

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 February 2016

Public Authority: NHS Business Services Authority

Address: Stella House
Goldcrest Way
Newburn Riverside
Newcastle upon Tyne
NE15 8NY

Decision (including any steps ordered)

1. The complainant requested information on pension transfers. The NHS Business Services Authority (NHSBSA) confirmed that they did not hold any further information. The complainant considered that more information must be held by NHSBSA. The Commissioner's decision is that NHSBSA does not hold any further information in this case. The Commissioner does not require NHSBSA to take any steps.

Request and response

2. On 2 July 2015 the complainant requested the following information:

'How many completed CETVs were returned to you requesting transfer of funds between 16th of February 2015 and 6th of April and on what date the funds were transferred to QROPS annuity schemes in each case. I need this information preferably in a tabular form. I do not need any names or individuals details or any other sensitive information.'

3. On 30 July 2015 NHSBSA responded and provided some of the information explaining that

'You will notice from the information that dates of transfers are only partly held. Where the date of transfer is not held "null" appears in that column. The reasons for this are being looked into and an explanation of this is still being sought from our in-house subject matter expert. This explanation will be provided to you as soon as it is available.'

4. On 31 July 2015 NHSBSA explained that there had been no payments after 6 May 2015 as on this date NHS Pensions became aware that HMRC had written to all overseas to request confirmation that they still met the requirements to be a Qualifying Recognised Overseas Pension Scheme (QROPS) / Recognised Overseas Pension Scheme (ROPS).
5. There was a new legal requirement that the scheme rules would not allow benefits with UK tax relief to be paid earlier than age 55 unless on health grounds.
6. This meant that the published QROPS list on which NHS Pensions relied when making a transfer payment, may also have included schemes which did not meet the requirements to be a ROPS. In view of this, NHS Pensions had no alternative but to suspend all overseas transfer payments until the position could be clarified and to minimise the risk of unauthorised payments, which may result in tax charges for both the member and the NHS Pension Scheme of up to 70% of the transfer value.
7. On 1 August 2015 the complainant requested an internal review:

'I am not at all happy with your explanation. Your explanation do not explain why it is showing as Null in that specified period. There were numerous completed CETVs received by NHSBSA between 16th of February and 6 th of April this year and I know from other sources transfer of funds did take place to QROPS in that period. You are withholding this information from me willingly and showing it to me as null in your information table. This is unacceptable.'

8. NHSBSA sent the outcome of its internal review on 27 August 2015 and confirmed that all the information held relating to the request had been provided. NHSBSA provided a further explanation:

'The 'NULL' stated in the Date Paid column in the information provided to you shows that the calculations have not yet been made and therefore no payment transferred to QROPS annuity schemes.'

I have included a copy of the letter we issued to scheme providers involved in a proposed overseas pension transfer. This shows that we sought clarification from these providers as to whether they would be responding to the information notice issued by HMRC. The transfer was cancelled we did not receive a response by 17 June 2015.

HMRC have further details on their website as follows:

List of Recognised Overseas Pension Schemes notifications
<https://www.gov.uk/government/publications/list-of-qualifying-recognised-overseas-pension-schemes-qrops>

The criteria for an overseas scheme to be included in the above list can be found at

<http://www.hmrc.gov.uk/manuals/ptmanual/ptm112100.htm>

Scope of the case

9. On 28 August 2015 the complainant wrote to the Commissioner and after providing further documents the case was accepted on 16 October 2015. He considered that more information must exist.
10. The Commissioner has considered whether section 1 of FOIA was applied correctly in this case. This is with respect to the information provided as 'NULL' for some of the dates in the date paid column in the spreadsheet showing the transfer of a NHS Pension Scheme benefits to a Qualifying Recognised Overseas Pension Scheme (QROPS) in the period 16 February 2015 to 6 April 2015.

Reasons for decision

11. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
12. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.
13. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
14. As is the practice in a case such as this, the Commissioner asked NHSBSA a number of questions to establish if further information is held.
15. In response to the Commissioner's questions about the location of the information, NHSBSA confirmed that it did not hold any further recorded information falling within the scope of the request.
16. NHSBSA explained that the spreadsheet provided a list of 1615 elections to proceed with a transfer of a NHS Pension Scheme benefits to a

QROPS. Some of these had dates in the right hand column (from 8 April to 6 May 2015) showing that the transfer payment had been completed.

17. Payment is made to those schemes whose name either appeared on the published QROPS list (now known as the ROPS list), at the time of payment or whose name didn't appear, but had been confirmed via HM Revenue & Customs as a scheme which had confirmed it satisfied the requirements to be a QROPS.
18. The rest (1448 cases) showed 'NULL' showing that, at the time of the request in July 2015, a transfer payment had not been actioned and completed.
19. The letter from the NHSBSA to the complainant on 31 July 2015 explained that there had been no payments after 6 May 2015 as there was a new legal requirement from HMRC and all payments had been suspended.
20. NHSBSA also provided a copy of the letter that was issued to scheme providers asking if they would be responding to the information notice issued by HMRC and cancelling the transfer if a response was not received by 17 June 2015.
21. The Commissioner asked NHSBSA a number of questions to establish what searches had been carried out for information falling within the scope of the request.
22. NHSBSA stated that the searches had retrieved all the information pertinent to the request. 'The NULL entries provided to the requester in answer to his request for information refer to transfer requests that had not been actioned within the timeframe of the request for information (i.e. between 16 February 2015 and 6 April 2015) and therefore there was no date of transfer to provide, hence NULL was recorded.'
23. As the complainant's request was for the numbers of payments made and the transfer dates, the Commissioner challenged NHSBSA for an explanation as to why some transfer requests (from February, March and April 2015) were progressed when others were not.
24. As background, NHSBSA provided a list of information required in order for NHSBSA to consider whether a transfer can be made. This included 5 sets of forms, a QROPS certificate to confirm that the QROPS had informed HMRC that it met the conditions to be a Recognised Overseas Pension Scheme (ROPS) and SWIFT payment details.
25. NHSBSA explained that transfer requests are handled in date receipt order although the list on the spreadsheet seems to contradict this. NHSBSA provided reasons why a transfer payment may not be made:

- All option forms not returned, incomplete or completed incorrectly
 - All other forms not returned, incomplete or completed incorrectly
 - Scheme does not satisfy due diligence requirements
 - Member withdrew election to proceed with transfer before payment made
 - Option forms were returned outside the 3 month guarantee period
26. NHSBSA provided reasons why a transfer payment may have been made out of date order:
- Member approaching normal pension age – payment must be made before a member reaches normal pension age
 - Case approaching statutory timescale for payment which is within 6 months of the guarantee date of the statement of entitlement (this is the guaranteed cash equivalent transfer value or CETV)
 - The case was subject to a complaint or being considered under NHS Pension's Internal Dispute Resolution (IDR) procedure
27. NHSBSA explained that these are generic reasons why a payment may have been progressed or not in date order.
28. The Commissioner accepts that these reasons explain, in a general way, why some payments are made earlier than date order or why some payments may have been delayed.
29. The Commissioner understands that this is in addition to the specific reason why all payments were suspended after 6 May 2015 while the new legal requirement from HMRC was satisfied.
30. The Commissioner has contacted the complainant and understands that the complainant considers further information may be held, but the Commissioner can only consider what was held at the time of the request. The Commissioner suggested to the complainant that given the explanations above as to why 'NULL' was recorded at the time of the request it may be that a fresh FOIA request to NHSBSA would provide a different response.
31. In conclusion, the Commissioner can only consider the FOIA request dated 2 July 2015 which led to this complaint to the ICO. Having considered NHSBSA's responses to the Commissioner's investigations, the Commissioner is satisfied that, on the balance of probabilities, NHSBSA complied with section 1 of FOIA by providing the complainant with all the information within the scope of the request that was

available at the time of the request. The Commissioner does not require NHSBSA to take any steps.

Right of appeal

32. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

33. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
34. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Pamela Clements
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