

## Ombudsman's Determination

Applicant	Mr N
Scheme	NHS Pension Scheme ( <b>the Scheme</b> )
Respondent	NHS Business Services Authority ( <b>NHS BSA</b> )

### Outcome

1. I do not uphold Mr N's complaint and no further action is required by NHS BSA.

### Complaint summary

2. Mr N has complained that two months of pension contributions were automatically deducted from his earnings without his authority. He says that the deduction has left him in financial difficulty and asks for the contributions to be refunded.

### Background information, including submissions from the parties

3. 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.
4. On 28 October 2008, Mr N became a member of the 2008 Section of the Scheme.
5. On 28 February 2014, Mr N opted out of the Scheme after five years and four months of active membership. His membership in the Scheme was deferred to his normal retirement date (**NRD**).
6. Automatic enrolment was introduced in 2012 and requires employers to automatically enrol workers into a pension scheme. The Pensions Act 2008 (**the Act**) and subsequent regulations set out the detailed requirements. Automatic enrolment was phased in between 1 October 2012 and 1 April 2017 for employers in existence on 1 April 2012.
7. With effect from the "automatic enrolment date", each employer must make arrangements to enrol a "jobholder" aged between 22 and State Pension Age (**SPA**) who has "threshold earnings" into an automatic enrolment scheme.
8. The automatic enrolment date for each jobholder will be the earliest of:

- the employer's staging date\*, if the jobholder meets the above criteria on that date;
- the jobholder starting work and meet the qualifying criteria; or
- the jobholder meeting the criteria sometime after he/she starts work.

\*The first date from which an employer must automatically enrol all their eligible jobholders into a qualifying scheme is called its "staging date".

9. An employer must automatically re-enrol certain workers approximately every three years where they have left active membership. Scheme membership must begin on this automatic enrolment date although the employer has six weeks to complete the necessary processes.
10. The employer needs to assess new workers and monitor existing workers on an ongoing basis for change in status in order to automatically enrol those who become eligible jobholders.
11. The employer must also provide the scheme administrator with specific "jobholder information" no later than six weeks after the automatic enrolment date. Specified "enrolment information" must be provided by the employer to the jobholder, also no later than six weeks after the automatic enrolment date.
12. Broadly, the same information requirements apply on re-enrolment.
13. An employee who has been automatically (re-)enrolled can subsequently opt out by giving notice within a one month period, in which case any member and employer contributions must be returned. The opt out period starts from the later of the following dates for an occupational pension scheme:
  - the date the jobholder is given the enrolment information; and
  - the date on which the employer made arrangements for the jobholder to become an active member.
14. On 1 July 2019, Mr N was automatically enrolled into the 2015 Section of the Scheme and employee contributions were deducted from Mr N's salary.
15. On 31 August 2019, Mr N opted out of the Scheme.
16. Mr N complained under both stages of the Scheme's Internal Dispute Resolution Procedure (**IDRP**). He said that he was not given "the statutory six weeks' notice" of his automatic enrolment and that two months of pension contributions had been taken "unlawfully" from his salary.
17. Mr N's complaint was not upheld as NHS BSA said that it had acted in accordance with the Act and the NHS Pension Scheme Regulations 1995 (**the Regulations**). The Regulations state that a member is only allowed a return of contributions where there

is less than two years' qualifying membership. Mr N has five years and four months qualifying membership in the 2008 Section, and therefore has more than two years' membership in the Scheme.

18. It also said that Mr N will not be entitled to a return of contributions following any future automatic enrolment unless he opts out before the date that the contributions are deducted from his salary.

## **Adjudicator's Opinion**

19. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by NHS BSA. The Adjudicator's findings are summarised below:-

- The Regulations allow a return of contributions to be paid only if the member who has opted out has less than two years' qualifying membership. Mr N has five years and four months of previous qualifying membership in the 2008 section of the Scheme and therefore is not eligible for a refund.
- The Act introduced a duty for employers to 'make arrangements by which a jobholder becomes an active member of an automatic enrolment scheme with effect from the automatic enrolment date'.
- Legislation is prescriptive and does not allow for an employer to exercise discretion. On the available evidence, Mr N satisfies the criteria for automatic enrolment as outlined in the Act, and NHS BSA had a clear obligation to make the necessary contributions into the Scheme. So, Mr N had been correctly enrolled.
- Mr N had a responsibility to manage his financial affairs, including his retirement benefits, appropriately. This meant checking his payslips or ensuring that he understood the Scheme rules.
- Mr N did not opt out of the Scheme for two months after deductions were made and so the Adjudicator's view was that NHS BSA should not be held responsible for any failing by Mr N to monitor his earnings.

20. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments which do not change the outcome. He said that:-

- He was not informed that he had been automatically enrolled into the Scheme or that contributions would be deducted from his salary.
- On realising that he had been automatically enrolled, he opted out of the Scheme. However, deductions were again taken the following month, which he considers to be "theft".

21. I note the additional points raised by Mr N, but I agree with the Adjudicator's Opinion.

## **Ombudsman's decision**

22. Mr N said that he was not informed about automatic enrolment and that contributions have been deducted from his salary unlawfully.
23. Legislation stipulates that all employers must enrol eligible staff into a workplace pension scheme. Notification about automatic enrolment is also the responsibility of the relevant employer. It is unclear whether Mr N's employer issued the notification but, in any event, NHS BSA cannot be held responsible if the employer failed to do so.
24. Mr N was enrolled into the Scheme on 1 July 2019 and opted-out on 31 August 2019. Had he checked his payslips he would have been aware that contributions had been deducted and could have taken action sooner to prevent further contributions being deducted.
25. Mr N has said that contributions were deducted after he had opted out of the Scheme. This was because at the point Mr N opted out the payroll for that month had already been run, and the relevant deduction processed.
26. The Regulations allow a return of contributions to be paid only if the member who has opted out has less than two years qualifying membership. Mr N has 5 years and 4 months qualifying membership in the 2008 Section, and therefore he is not entitled to a refund of contributions from the Scheme. NHS BSA has confirmed that Mr N will not be entitled to a return of contributions following any future automatic enrolment unless he opts out before the date that the contributions are deducted from his salary.
27. I do not uphold Mr N's complaint.

**Anthony Arter**

Pensions Ombudsman  
7 March 2022