

## Ombudsman's Determination

Applicant	Dr E
Scheme	NHS Pension Scheme ( <b>the Scheme</b> )
Respondent	Great Western Hospitals NHS Foundation Trust ( <b>the Trust</b> )

### Outcome

1. I do not uphold Dr E's complaint and no further action is required by the Trust.

### Complaint summary

2. Dr E has complained that Liaison, the third-party payroll provider for the Trust, incorrectly refunded her pension contributions to her. She says Liaison should repay the contributions to her pension, instead of requiring her to do so.

### Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the main points. I acknowledge there were other exchanges of information between all the parties.
4. On 21 November 2019, Dr E submitted a SD502 form (**the Form**) to Liaison, while she was employed by the Trust. The Form was submitted as Dr E wished to opt out of the Scheme, ceasing future pension contributions.
5. On 5 December 2019, Liaison incorrectly processed a refund to Dr E of all her pension contributions for the period she was employed by the Trust.
6. On 6 December 2019, Dr E emailed Liaison to notify it of the error.
7. Also on 6 December 2019, Liaison emailed Dr E to apologise for the error and asked her to return the incorrectly refunded amount to it. Liaison provided her with the necessary bank account details to do so. The figure Dr E was asked to return did not take into account tax relief on the pension contributions.
8. On 7 December 2019, Dr E emailed Liaison and said she was unable to pay the money back at that time, as a large amount of tax had been deducted from what she had been paid and she could not afford to return the full amount.

9. On 11 December 2019, Liaison emailed Dr E with the correct amount to return, taking into account tax relief.
10. Dr E has said it has never been established how the error occurred or whether it was due to computer issues. She feels Liaison should pay back the incorrectly returned contributions to her pension without her having to make any repayment.
11. The Trust has said Dr E can either return the incorrectly refunded pension contributions or leave it as a refund of contributions issued.
12. NHS Business Services Authority (**NHS BSA**), the administrator for the Scheme, has confirmed details of Dr E's pension contributions to the Scheme. It has said Dr E first joined the Scheme in 2009 and her membership has continued since then in various employment periods. It also said, where accumulation of membership in an employment period extends beyond one month before the opt out election becomes effective, the membership becomes subject to the Scheme Regulations (**the Regulations**) in terms of continuity of membership. It also said the only circumstance under which pension contributions can be refunded is where a member leaves the Scheme with less than two years' overall membership (see Appendix One).

## Adjudicator's Opinion

13. Dr E's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trust. The Adjudicator's findings are summarised below:-
  - Dr E has been asked to repay the same amount she incorrectly received. While this error is maladministration, Dr E has been given the option of returning the incorrectly refunded amount, which would put her back into the position she would have been in had the error not occurred.
  - As Dr E had been working for the Trust for more than one month and had more than two years' overall membership of the Scheme, under the Regulations, she is not entitled to a refund of pension contributions.
  - It is inequitable to require Liaison to repay the incorrectly refunded pension contributions to reinstate Dr E to the Scheme. To do so would unjustly enrich Dr E in that she would have had the benefit of the refund of contributions and Scheme membership for the same period.
  - No evidence has been provided to show that Dr E's pension contributions were returned to her other than as a result of a computer error. While this was regrettable, she was not entitled to receive the refund and cannot keep the refunded amount and claim pension benefits for the same period of service.
  - NHS BSA has a legitimate right to contact Dr E about repaying the pension contributions, as the Regulations do not allow for a refund of contributions in Dr E's circumstances.

14. Dr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Dr E provided her further comments which do not change the outcome. In summary, she said:-
- No explanation was provided as to why a distress and inconvenience award was not considered.
  - She has lost several months of pension contributions through no fault of her own.
  - She had to take time off work to go to the Citizen's Advice Bureau (**CAB**) to get help and had to work for an additional period in order to compensate the time it took. It was the CAB who spotted that the calculations from Liaison were wrong, leading to months of frustration in 2019.
  - The complaint was against the Trust and Liaison, but this was not considered as a joint complaint which it should have been.
15. I note the additional points raised by Dr E, but I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

16. Dr E believes her complaint should have been a joint one, against Liaison and the Trust. The Trust is responsible for the actions of its third-party payroll provider. The Trust's formal response to Dr E's complaint addresses the actions of both Liaison and the Trust. I am satisfied that the complaint has been correctly addressed and that the actions of both parties have been considered.
17. Dr E submitted the Form to Liaison on 21 November 2019, electing to opt out of the Scheme. At the time Dr E was employed by the Trust she was a member of the 2015 Section of the Scheme and subject to the Regulations (see Appendix Two).
18. The Regulations are prescriptive and do not allow the Trust to exercise any discretion. Dr E had been working for the Trust for more than one month and had more than two years' overall membership of the Scheme when she submitted the Form to Liaison. So, under the Regulations, she is not entitled to a refund of pension contributions.
19. Dr E must return the incorrectly refunded pension contributions if she wishes to be credited with the relevant period of Scheme membership. If, as Dr E has suggested, Liaison was to repay the incorrectly refunded pension contributions, she would have the benefit of the refund of contributions and Scheme membership for the same period, which would be unjust.
20. On 5 December 2019, Dr E incorrectly received the refund of all her pension contributions while she was employed by the Trust. On 6 December 2019, Dr E contacted the helpdesk to notify it of the error. By 11 December 2019, Dr E had been told how much she needed to return, when taking into account tax relief on the incorrectly refunded pension contributions. So, irrespective of who noticed the error

regarding the refund or the amount she was first asked to return, there were five days between the error occurring and Dr E being provided with a resolution that would put her back into the position she would have been in had the error not occurred.

21. I acknowledge there has been maladministration and that Dr E has suffered some inconvenience as a result of the incorrectly refunded pension contributions. However, as a resolution was provided so soon after the error had occurred, I do not consider she has suffered significant distress and inconvenience such that a payment in this regard is warranted.
22. Dr E has stated that she has lost out on pension contributions. However, she is only being asked to return the same level of contributions incorrectly returned to her. This means there will have been no financial loss once Dr E returns the contributions.
23. The Trust and Dr E should liaise with each other about how the incorrectly refunded pension contributions should be returned to the Scheme. This will restore Dr E's pension to the correct position had the error not occurred.
24. I do not uphold Dr E's complaint.

**Anthony Arter**

Pensions Ombudsman  
4 July 2022

## **Appendix One**

### **Extract from the Regulations**

#### **The National Health Service Pension Scheme Regulations 2015**

##### **40 Eligibility for refund**

(1) Contributions made by a member (M) must be repaid to M if—

- (a) the 1993 Act condition applies; or
- (b) the short service condition applies.

(2) The “1993 Act condition” is that—

- (a) Chapter 2 of Part 4ZA of the 1993 Act applies to M [*see below*]; and
- (b) the repayment is made in accordance with that Chapter.

(3) The short service condition applies if—

- (a) M does not qualify for benefits under regulation 72 \*\*

##### **Pension Schemes Act 1993 Part 4ZA Transfers and Contribution Refunds**

(1) This Chapter applies to any member of an occupational pension scheme to which Chapter 1 applies (see section 69(3)) if—

- (a) his pensionable service terminates before he attains normal pension age, and
- (b) on the date on which his pensionable service terminates—
  - (i) the three month condition is satisfied, but
  - (ii) he does not have relevant accrued rights to benefit under the scheme.

##### **\*\*72 Qualifying for retirement benefits**

A member is qualified for retirement benefits under this scheme if—

- (a) the member has at least 2 years' qualifying service; or
- (b) a transfer payment otherwise than from another occupational pension scheme has been accepted in relation to the member.

## **Appendix Two**

### **Extract from the Regulations**

#### **Schedule 4**

#### **Opting Out and Re-joining**

#### **Regulations 15 & 16**

##### 1 Opting out of the scheme

(1) A person who does not wish to, or who no longer wishes to, participate in this scheme may opt out of the scheme at any time by giving notice in writing to the person's employing authority and the person will cease to be an active member of the scheme on the date the notice takes effect.

(2) A notice referred to in sub-paragraph (1) takes effect—

(a) from the first day of the pay period immediately following its receipt by the employing authority;

or

(b) where a later date is specified in the notice, from the first day of the pay period following the pay period in which the specified date falls.

(3) A person who opts out of the scheme under sub-paragraph (1) within one month of commencing NHS employment is to be treated as never having been included in the scheme in respect of that opt out and, if applicable, any contributions made by, or on behalf, of that person for the period before the opt out took effect must be repaid.