

Ombudsman's Determination

Applicant	Ms R
Scheme	NHS Pension Scheme (the Scheme)
Respondents	NHS Business Services Authority (NHS BSA)

Outcome

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

Complaint summary

2. Ms R has complained that NHS BSA has refused to refund the contributions she made into the Scheme. Ms R says she is entitled refund as she was a member of the Scheme for less than two years.

Background information, including submissions from the parties

3. On 1 April 2017, Ms R became a member of the Scheme.
4. On 8 April 2019, Ms R completed an SD502 form which was required by NHS BSA to opt out of the Scheme.
5. On 9 April 2019, Ms R's employer received the completed SD502 form and Ms R was opted out of the Scheme with effect from 31 March 2019.
6. After she was opted out Ms R requested a refund of the contributions she had made into the Scheme as she believed that her membership was for a period of less than two years and so she did not qualify for a deferred pension.
7. NHS BSA rejected this request under Regulation 72 of the Health Service Pension Scheme Regulations 2015 (**the Regulations**) which states: -

"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.”

8. Ms R complained to NHS BSA as she was dissatisfied with the decision not to award her a refund of her contributions. She felt that her membership in the Scheme was for a period of less than two years and so it did not satisfy the two-year criteria set out in the Regulations.
9. NHS BSA responded to Ms R and did not uphold her complaint. It maintained that her membership in the Scheme qualified for a deferred pension and as such it could not award a refund of her contributions.
10. Ms R continued with her complaint under stages one and two of the Internal Dispute Resolution Procedure (**IDRP**). NHS BSA maintained at both stages of the IDRP that Ms R did not qualify for a refund of her contributions under the Regulations as her membership in the Scheme was for exactly two years, from 1 April 2017 to 31 March 2019.
11. On 14 December 2020, NHS BSA provided its formal response. It said:-
 - Ms R’s employer states that she commenced employment on 12 May 2015 but opted out of the Scheme immediately. In March 2017, she made a request to rejoin the Scheme which commenced from 1 March 2017.
 - On 8 April 2019, Ms R completed an ‘SD502’ form which is to be completed if a member wishes to opt out of the Scheme. This was received by her employer on 9 April 2019.
 - Ms R was opted out of the Scheme with effect from 31 March 2019.
 - NHS BSA received a request for a refund of contributions from Ms R however this was rejected as “sufficient membership to qualify for pension benefits existed” under the Regulations.
 - Ms R disagreed that she became a member of the Scheme from 1 March 2017 and says instead this was 1 April 2017. The employer had agreed to amend this start date.
 - In its stage two response, NHS BSA has said that even after Ms R’s start date was amended to 1 April 2017, she was still not able to claim a refund of contributions. This is because the period of 1 April 2017 to 31 March 2019 is exactly two years.
12. Ms R did not accept NHS BSA’s response and provided the following further comments:
 - “...logic dictates that it [her service] falls just short of 2 years. If a person was born in April, they are not considered a year older in March, the date in April must pass for a year to have passed”.

- She did not believe the refunding of her contributions to be unlawful.
- The value of her pension is worth more to her now than it would be if it were to be paid in instalments of around £27 per month at her Normal Retirement Date (NRD).

Adjudicator's Opinion

13. Ms R'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 Finance Act 2004 (Specified Pension Schemes) Order 2019, SI 2019/1425 (Section 150(3) and (4) Finance Act 2004), states that a pension scheme is a public service pension scheme if it is:
 - Established by or under an Act of Parliament
 - Specified in an order made by the Treasury, or
 - Approved by a Minister of the Crown or an appropriate UK, Scotland, Wales or Northern Ireland government body or department.
 - Ms R was a member of the Scheme, which is a public service arrangement, governed by the Regulations. As the Scheme is a regulation-based arrangement, NHS BSA has no authorisation to apply its own discretion (other than where specifically stipulated in the Regulations) or to deviate from the Regulations.
 - The Adjudicator appreciated that there were some issues with Ms R's start date in the Scheme, but this had since been rectified and it was agreed by all parties that Ms R had been a member of the Scheme from 1 April 2017 to 31 March 2019. This was a period of two years, although it was acknowledged that Ms R has challenged this assertion.
 - Regulation 72 of the Regulations states that a person qualified for an NHS pension if they attain "at least 2 years qualifying service".
 - Regulation 22 states that qualifying service can be defined as a member's "...pensionable service", which in turn is defined in Regulation 20 as "a period of service in which a member contributes to this scheme".
 - Regulation 40 states that a member is only entitled to a refund where he/she "does not qualify for benefits under Regulation 72".
 - In the UK, the financial year runs from 1 April to 31 March for the purposes of government financial statements. Whereas for personal tax purposes, the fiscal year starts on 6 April and ends on 5 April of the next calendar year.

- The Adjudicator explained that while the fiscal year does not apply to this circumstance, it further demonstrates how time is counted and used for official purposes. Many pension schemes use the financial year 1 April to 31 March.]
 - The Adjudicator felt it was clear that Ms R has qualified for a deferred pension from the Scheme and was no longer entitled to a refund of the contributions that she had made.
 - Ms R had a period of leave during the time that she was a member of the Scheme. Under the Regulations, any pay for that period of leave is classed as “qualifying service” unless stipulated otherwise. This covered any sick leave.
 - In order for a complaint to be upheld, maladministration must be identified, and the Adjudicator’s view was that there had been no maladministration by NHS BSA.
14. Ms R did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. I agree with the Adjudicator’s Opinion. Ms R did not provide any further comments for me to consider.

Ombudsman’s decision

15. Ms R is unhappy as she feels that she should qualify for a refund of contributions as her service does not meet the necessary criteria under the Regulations for a deferred pension.
16. Ms R has argued that the period 1 April 2017 to 31 March 2019 is not two full and complete years so she is entitled to a refund of the contributions she has made into the Scheme. Ms R uses an example of age, whereby a person is not considered a year older until the actual date of their birthday and not the day before. I do not agree with Ms R’s logic in her example. If a person is aged 20 on 1 April they have 12 months aged 20 until midnight on 31 March of the following year. On 1 April they are aged 21, not 20 and so commence the next year of 12 months with that day counting as a part of the new 12 months. They are certainly a year older and became so at midnight on 31 March, a full 12 months..
17. Ms R has been provided with a full explanation of the eligibility criteria that must be met in order for a member to qualify for membership in the Scheme. Ms R satisfies the necessary criteria as set by the Regulations. This is because her membership within the Scheme was for an exact period of two years.
18. Neither I nor NHS BSA can apply discretion to the Regulations. I do not consider that there has been any maladministration on the part of NHS BSA in relation to its decision not to give Ms R a refund of her contributions.
19. I do not uphold Ms R’s complaint.

CAS-50110-Q2G8

Anthony Arter

Pensions Ombudsman

14 July 2021