

## Ombudsman's Determination

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

### Outcome

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

### Complaint summary

2. Dr T's complaint concerns NHS BSA's refusal to pay him a refund of the contributions he paid to the Scheme during his period of membership.

### Background information, including submissions from the parties and timeline of events

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. The Scheme is governed by the National Health Service Pension Scheme Regulations 2015 (**the Regulations**).
5. On 15 December 2016, Dr T was sent a contract of employment (**the Contract**) by Great Ormond Street Hospital for Children NHS Foundation Trust (**GOSH**).
6. On 19 December 2016, Dr T became an employee of GOSH. It auto-enrolled him in the Scheme.
7. In February 2017, pension contributions were first deducted from Dr T's pay. These were remitted to the Scheme.
8. On 1 November 2018, Dr T changed his employer to the University Hospitals Bristol NHS Foundation Trust.
9. On 31 December 2018, Dr T opted out of the Scheme.

10. On the same day, Dr T applied for a refund of the contributions he had paid to the Scheme.
11. NHS BSA notified Dr T that he was not eligible for a refund of contributions as he had more than two years' qualifying service.
12. Dr T complained under both stages of the Scheme's Internal Dispute Resolution Procedure (**IDRP**). He believed that he was entitled to a refund of his contributions. He maintained that his service was under two years as he did not join the Scheme until the first contributions were deducted from his pay in February 2017.
13. Dr T's complaint was not upheld. NHS BSA said that:-
  - Dr T had been automatically enrolled in the Scheme by his employer on the date his employment started.
  - Dr T was not entitled to a refund of his contributions as he had more than two years' qualifying service.
14. On 15 October 2019, Dr T emailed GOSH. He asserted that he did not start paying contributions to the Scheme until February 2017. So, this was the date that he joined the Scheme.
15. On 31 October 2019, GOSH emailed Dr T. It acknowledged that contributions were not deducted from his pay until February 2017. However, it said that arrears in respect of his basic pay, for the period 19 December 2016 to 31 January 2017, were paid to him in February 2017. He paid pension contributions on these arrears. So, his pension record was correct in showing 19 December 2016 as his start date for pensionable service.

## **Adjudicator's Opinion**

16. Dr T'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 Adjudicator noted that Dr T disputed the date his qualifying service in the Scheme commenced. Dr T said that this was in February 2017, when pension contributions were first deducted from his pay. The Adjudicator was not persuaded that this was the case. He took the view that Dr T's qualifying service started when his employment with GOSH began on 19 December 2016. At this point, his employer auto-enrolled him in the Scheme, as required by legislation.
  - It is normal for there to be a delay between when a member joins a scheme and when contributions are first deducted from the member's pay.
  - The commencement of qualifying service was not, in the Adjudicator's opinion, postponed until the first contributions had been deducted.

- In the case of Dr T, contributions were not deducted from his pay until February 2017. These contributions were backdated to 19 December 2016. In the Adjudicator's view, backdating his contributions in this way was appropriate given that Dr T's qualifying service commenced on 19 December 2016.
  - The Regulations were prescriptive and did not allow NHS BSA to exercise any discretion. In the Adjudicator's opinion, under the Regulations and pension legislation, Dr T was not entitled to a refund of his contributions. This was because his qualifying service from 19 December 2016 to 31 December 2018 did not amount to less than two years.
  - The Adjudicator noted that guidance about qualifying membership and eligibility for a refund was available on NHS BSA's website.
17. Dr T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
18. Dr T provided his further comments which do not change the outcome. In summary, he said:-
- He was not informed until it was too late that, to be eligible for a refund of contributions, his qualifying service had to be less than two years. In particular, the Contract did not mention this fact.
  - NHS BSA should take responsibility for its failure to communicate this information to him. Providing this information on its website was inadequate. It should refund his contributions to him.
19. I note the additional points raised by Dr T, but I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

20. Dr T disagrees with NHS BSA's refusal to grant him a refund of contributions from the Scheme.
21. For the reasons given by the Adjudicator, Dr T's qualifying service exceeds two years. NHS BSA is required to administer the Scheme in accordance with the Regulations and the fact that Dr T's qualifying service exceeds two years means that he is not entitled to a refund of contributions. NHS BSA is not permitted to exercise any discretion in this respect.
22. In the Contract, Dr T was notified that his appointment was pensionable and that, unless he opted out of the Scheme, contributions would be deducted from his pay. In addition, he was told where he could obtain a copy of the Scheme guide. I also note that further information on the Scheme is available on the Scheme website which includes guidance in relation to eligibility for a refund of contributions.

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23. The provisions of the Scheme are lengthy and, in some areas, complex. It is not feasible for these to be included in the Contract. Dr T had been directed to where he could have obtained additional information in relation to the Scheme, and I find that this was adequate. Should he have wished to investigate the provisions of the Scheme, including his eligibility for a refund of contributions, then this information was readily available to him.
24. I do not uphold Dr T's complaint.

**Anthony Arter**

Pensions Ombudsman  
28 February 2022