

Ombudsman's Determination

Applicant	Dr U
Scheme	NHS Pension Scheme (the NHSPS)
Respondent	NHS Business Services Authority (NHS BSA)

Outcome

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

Complaint summary

2. Dr U has complained that:-
 - He has suffered the loss of a missing personal private pension fund of £121,520.19 and the weekly payment of £224.00 for over six years since 2013 when he retired.
 - His annual pension from the NHSPS was incorrectly calculated as £2,189 per annum whereas it should be £4,563 per annum.
 - The NHSPS only covers occupational pension and does not include a personal pension to which over £100,000 of National Insurance Contributions (NICs) were paid between 1997 and 2017 and which remain unaccounted for.
3. He asks that NHS BSA pay him a lump sum of £120,000, being 25% of the pension pot he believes has accrued together with six years back payments totalling £71,232.00. He would also like to be able to transfer his private pension to Legal & General.

Background information, including submissions from the parties

4. 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.
5. Dr U's date of birth is 28 October 1948. He was a member of the 1995 section of the NHSPS. The NHSPS is governed by regulations; the regulations relevant to Dr U's case being the National Health Service Pension Scheme Regulations 1995 (**the Regulations**).

6. NHS BSA records show that he first joined the NHSPS in 1999/2000. Dr U does not appear to contest this.
7. Dr U says that since he started working in the UK, he has only worked for the NHS, either directly or through locum agencies, such as Medacs, JCJ Locum and UMR. NHS BSA keeps the records of the direct roles and the locum agencies keep their own records.
8. Dr U retired and took benefits from the NHSPS just before reaching age 65. An electronic Application for Retirement Benefits showed that:
- his last date of employment was 6 August 2013;
 - the calculation was partly based on information constructed by NHS BSA as the relevant employer had been unable to provide exact details;
 - NHS BSA had contacted Cwm Taf NHS Trust, but without success; and
 - he had elected to receive the maximum additional lump sum possible.
9. An award letter dated 25 October 2013, from NHS BSA to Dr U said:
- “Thank you for your application for your retirement benefits. Your benefits are explained in the enclosed Statement and ‘Key Notes’.
- Please read your statement and key notes carefully. If you have any questions about the **calculation** (original emphasis) of your pension or lump sum, ring the member helpline number shown at the top of this letter.”
10. The enclosed Statement showed the following elements:-

Total Pensionable Pay	£41,479.01
Total Pensionable Pay used for protected or deferred element of Scheme membership up to 30 September 2004	£49,350.01
Total membership at date of retirement	7 years 137 days
Pension	£4,562.74
Less pension commuted	£896.25
Total pension payable from 7 August 2013	£3,666.49 a year
Lump Sum	£13,688.20
Lump Sum from pension commuted	£10,755.04
Net Lump Sum payable on 7 August 2013	£24,443.24

11. Details of NHS BSA's membership records for Dr U are shown in Appendix 2.
12. Dr U has provided a copy of a bank statement which confirms that he received £24,443.23 into his account on 1 November 2013. The payment reference was 'JIMB NHS MNTHLY A'.
13. In February and June 2014, NHS BSA received notification from University Hospital Birmingham NHS Foundation Trust (**the Trust**) that Dr U wished to resume active membership of the NHSPS. NHS BSA declined his further membership application and confirmed to the Trust that this was not possible due to Dr U's retirement in 2013 and the Trust was instructed to return any contributions it may have collected to Dr U.
14. It appears that in 2017 Dr U faced several issues with regard to his pension.
15. He says that, in July 2017, a pension figure of £31,602 was generated, he believes by NHS BSA, and added to the pension shown on his tax code notice. This created a tax liability of approximately £5,000.
16. A tax code notice from HMRC for 2017/2018 shows Dr U as having a Personal Allowance of £4,754, less the State Pension £4,527 and less an adjustment to rate bands of £31,829 giving a net figure of £31,602 to be added to wages, salary or pension. The adjustment to the rate bands was because Dr U had more than one job or pension and HMRC estimated that some of his income was liable to higher rate tax.
17. Then, in August 2017, his pension credit was stopped because it was claimed he was entitled to receive a private personal pension of £224.00 per week. He was shocked to learn that he had a personal pension that paid him this amount. This appeared to be generated by Pension Capital (**the Pension Capital**) of £121,520.19 which he had been entitled to since 7 August 2013
18. Dr U believed the Pension Capital had been built up through contracted out NICs paid between 1997 and 2017. He says that, following a search through documents sent to him by HMRC, he discovered that the contracted out NIC scheme was managed by NHS BSA.
19. NHS BSA says it had received no further communication from any party until March 2019, when Dr U contacted it about his benefits in payment.
20. On 21 October 2019, NHS BSA wrote to Dr U to confirm that his pay and tax figures since 2013 had been as follows:

Tax year beginning 6 April	Tax code	Pay	Tax
2013	0531L	£2,188.17	£ -
2014	0587L	£3,758.82	£ -

2015	0647L	£3,807.83	£ -
2016	0657L	£3,810.86	£ -
2017	0697L	£23,061.05*	£3,372.80
2018	001278L	£3,955.77	£ -

* HMRC Schedule dated 1 April 2020 shows £3,846 being from NHS pension.

21. Dr U also said that he had benefits transferred in to the NHSPS in 2003/2004. NHS BSA responded on 22 October 2019 to say that it held no record on file of a transfer, apart from a transfer in from NHS Northern Ireland which was credited to his pension record and included in his pension benefits.
22. In late 2019, Dr U employed the services of a financial adviser, the Retirement Line, in an attempt to locate what he called his private pension, which he said had been created by contributions taken from his salary. He said that, from information supplied by Middlesbrough Council, he believed this private pension may have been secured with Capita. He said that he had only worked for NHS hospitals, either directly where he contributed to the NHSPS, or indirectly through locum agencies, principally Medacs Global Group and Plus US Medical.
23. He said that between 1997 and 2017 he had 17 years of NICs but only seven of those were accounted for by NHS BSA. The remaining ten years were paid into a private pension which he suspected was held by Capita.
24. He said that hospitals paid him through the agency and from his salary the agency took contributions which it would then pay into his private pension. Retirement Line responded to say that it had spoken to Capita, but it had been unable to trace any record of Dr U. It suggested that Dr U contact Capita directly. Further, it had spoken to Plus US Medical which had said that it only made one payment to Dr U, in 2017, and that there was no pension contribution made.
25. In February 2020, Dr U contacted Retirement Line again to say that the pension pot, that he thought was with Capita, was in fact locked within HMRC/DWP as NICs.
26. On 17 February 2020, Dr U complained to NHS BSA about his pension under stage one of the Internal Dispute Resolution Procedure (**IDRP**). He said that he had been underpaid since he retired in 2013 and that there was pensionable service missing between July 2000 and February 2002.
27. On 8 March 2020, Dr U wrote again to NHS BSA. He said that it had never briefed him about the NHSPS after more than five years of keeping his pension. He compared this with Aviva and Legal & General which, he said, not only advised their customers but “also provide them with a 2-3 yearly statement.”

28. He said that this was important, even more so because NHS BSA had kept his Pension Capital of £121,520.19 since 7 August 2013, which generated a tariff of £224 per week. This tariff had not been paid to him. In addition to correcting his pension amount and paying him arrears, he said he was also claiming the weekly tariff of £224 per week from 24 January 2014 to 27 December 2019. He added that Middlesbrough Council had told him that from 27 December 2019 the weekly tariff increased from £224 per week to £463 per week. He submitted a copy of a Council Tax Reduction sheet from Middlesbrough Council as evidence of the £463 per week tariff based on a capital sum of £121,520.19.
29. In an email dated 23 March 2020, Medacs confirmed that it had never made any deduction from sums paid to Dr U in relation to pension provision. It had only deducted NICs and tax which it had paid to HMRC. However, it added:
- “We understand from the information provided by the Pension Service that you may have a private pension with Capita and we hope that the Pension Service will be able to assist you in tracing any such pension and that in addition you may have an NHS Pension as a result of payments made by the NHS in any role you undertook whilst contracted directly to them.”
30. NHS BSA responded to Dr U's complaint on 15 May 2020. It explained the calculation basis of his benefits. It also said:-
- It had enclosed a letter it had sent to him, dated 2 September 2002, which confirmed that his break in service was approved, but that the membership was not pensionable as the employment was with an agency, in this case Medacs, and not a direct NHS employer.
 - It had also enclosed a letter dated 10 September 2002 which stated that Dr U's employment with South Tees Trust was not pensionable as the employer had confirmed that Dr U had opted out of the NHSPS. Therefore, pension contributions were not deducted between 22 November 1999 and 30 September 2004.
31. Dr U wrote to NHS BSA On 20 May 2020 to complain under stage two of the IDRP about the pension he was receiving from the NHSPS. He said that NHS BSA had made a mistake in 2013, when he first started receiving his pension, and that his pension had been underpaid since.
32. NHS BSA responded on 13 July 2020. It said that its role was to compile and maintain an overall membership history from the data provided by employers. It did not have access to payroll records and only received information about an employee for those periods in which they are an active member of the NHSPS.
33. It provided a generic explanation of contracting-in and contracting out of the State 2nd Pension Scheme (**S2P**), pointing out that proof of employment was not proof of scheme membership. However, it said that the contracted-in/contracted-out history of a NHS worker could indicate whether they were participating in the NHSPS, although

it did not provide confirmation of continuous unbroken membership for any given period.

34. It said that pensionable pay was defined as the highest year's pay earned in the last three years of pensionable NHS employment.

The Regulations specify the highest year's pensionable pay as the better of:

- The pay earned in the last year of pensionable employment, ending on the day NHS employment cease; or
- The pay earned in either of the two consecutive years immediately preceding the last year.

35. It continued by explaining the preservation of benefits following breaks in membership of more than 12 months as follows:

"Where a break in membership of more than 12 months occurs, benefits earned the membership periods prior to the break are preserved using the highest of the last three years pensionable pay earned before the break as described above.

For the period following the break, the highest of the last three years pensionable pay earned in that period applies.

Where separate periods are preserved due to breaks in membership, retirement benefits are calculated using whichever of the following methods is more beneficial:

- Benefits calculated separately for each preserved period, based on the pensionable pay values applicable to each (cost of living increases are also applied), and then added together or
- Benefits calculated based all membership and the highest of the last three years pay at the latest date of leaving retirement.

The above comparisons serve to protect the value of the benefits earned prior to the break in membership."

36. NHS BSA said its records of Dr U's membership on which his retirement benefits were based were as follows:-

ID	Period	Membership	
01	22/11/1999 to 30/06/2000	0 years 221 days	
02	11/02/2002 to 03/10/2002	0 years 235 days	
03	14/10/2002 to 04/02/2003	0 years 114 days	Membership (A)
04	06/05/2003 to 05/08/2003	0 years 092 days*	
05	11/08/2003 to 02/11/2003	0 years 084 days	

06 10/05/2004 to 30/09/2004 0 years 144 days

Total (A) 2 years 60 days (890 days)

* Membership transferred from NHS Northern Ireland

01/10/2004 to 31/07/2007 Break in membership

07 01/08/2007 to 31/10/2007 0 years 092 days

08 18/02/2008 to 17/08/2008 0 years 181 days

09 15/09/2008 to 09/04/2009 0 years 207 days

10 10/04/2009 to 05/10/2009 0 years 179 days Membership (B)

11 04/01/2010 to 15/08/2011 1 years 224 days

12 03/01/2012 to 04/07/2012 0 years 183 days

13 01/08/2012 to 06/08/2013 1 years 006 days

Total (B) 4 years 342 days (1802 days)

Total membership overall (A+B) 7 years 137 days (2692 days) = (C)

37. As there had been a break of more than 12 months between Membership (A) and Membership (B) NHS BSA had performed separate benefit calculations for each period of membership using their respective final salary values and added cost of living increases. It had then compared the sum of these calculations with a calculation based upon all periods (C) and Dr U's final salary at retirement. The benefits paid were based upon whichever method gave the higher benefit values.

38. Dr U's highest year's earnings in Membership period A to 30/09/2004 were £49,350.01 The cost of living factor to be applied was 1.3066.

39. His highest year's earnings in Membership period B to 06/08/2013 were £41,479.01 The cost of living factor to be applied was 1.0147.

40. Dr U's retirement benefits payable at 7 August 2013 was therefore:

For Membership period A = $\text{£}49,350.01 \times 890 / 29200 \times 1.0366 = \text{Pension } \text{£}1,965.34$

For Membership period B = $\text{£}41,479.01 \times 1802 / 29200 \times 1.0147 = \text{Pension } \text{£}2,597.40$

A+B = Total Pension of £4,562.74

Alternatively, C = $\text{£}41,479.01 \times 2692 / 29200 \times 1.0147 = \text{Pension } \text{£}3,880.23$

Therefore Method (A+B) was more beneficial.

41. It said Dr U's standard retirement benefit entitlement at 7 August 2013 was therefore a pension of £4,562.73 plus a Lump Sum of £13,688.22.
42. However, records showed that Dr U had elected to commute some of his pension for the maximum lump sum which gave him a reduced pension of £3,666.74 together with a maximum lump sum of £24,443.20.
43. A letter from Dr U dated 16 March 2021 confirmed that he had a break in membership between 30 September 2004 and 1 August 2007.
44. Dr U has denied that he requested the commutation of some of his pension for an additional cash lump sum. On 25 May 2021, he wrote to East Suffolk & North Essex NHS Foundation Trust, which was his employer at the time he retired, to request a copy of any forms that he completed at the time, or what information was passed to NHS BSA.
45. Dr U has submitted a screenshot of the HMRC website showing his PAYE tax summary (the summary) for 6 April 2020 to 5 April 2021. This said, "You recently updated your details" and showed a private pension sum of £4,218 from the NHS Pension Scheme, State Pension of £4,949 and Non Coded Income of £121,520. The summary showed his tax-free income as -£4,446 and his estimated income tax as £1,832.
46. On 16 July 2020, Dr U wrote to the PAYE and Self-Assessment Section of HMRC. He said that not all his NICs had been paid to the NHSPS as it was only his occupational pension provider. He said that two schemes had been maintained with HMRC/DWP and one with NHSPS.
47. He explained that the first scheme, which he called 'State Pension 1', represented Category A and C NICs which had been paid from 1997 to date. He said this scheme paid him a pension of £93.15 per week.
48. He said that the second scheme, which he called 'State Pension 2', which was also classed as a 'Private Personal Pension' represented Category D contracted-out NICs which had been paid for 17 years. He said that he had received no payment from this second scheme; rather a lump sum of £120,000, which equated to 25% of £480,000, was reinvested as 'Capital Savings and Investment' (**the investment**) on 7 August 2013. He said that the investment generated a tariff of £224.00 per week.
49. Dr U said it was not until 20 August 2019, when HMRC informed Middlesbrough Council of the investment, that he had realised it existed.
50. On 21 July 2020, NHS BSA wrote to Dr U to say that the lump sum of £24,443.23 paid to him on 1 November 2013 was the maximum lump sum he was entitled to receive from the NHSPS and that no further lump sums were payable.
51. On 22 July 2020, Dr U wrote again to NHS BSA. In this letter he complained about its use of the £120,000 lump sum as the investment. He said that the lump sum of £24,443.23 was an allowance and used to mask the true lump sum of £120,000. He

complained that NHS BSA had not handled his pension and benefits well for the following reasons:-

- It did not brief him on the size of his pension pot in 2013 when he retired at the age of 65.
- It did not brief him in 2015, after two years of pension payments, at the time it declined the payment of contributions by University Hospital, Birmingham.
- It did not brief him when he reached 70 years of age about the size of his pension pot except to say that it did not provide a personal pension.

52. On 30 July 2020, in response to a message from HMRC to say that he could not cancel his State Pension, Dr U emailed HMRC and NHS BSA. He said:

“I have never requested HMRC to cancel the basic State Pension but only queried the Personal Pension which the NHS Pensions Scheme has denied taking from yourselves (HMRC). The NHS Pension Scheme did not provide a personal pension but only an Occupational pension.

My contracted NICs which formed the contribution toward my Personal Pension Scheme totaled (sic) over £60,000.

I have only queried which Personal Pension provider was the amount paid to?

I would like to know the Personal Pension provider to enable me to draw on it after 7 years of retirement.

And also collect the lump sum appropriately calculated from the Personal pension pot size and also begin to collect the annuity.

I need all of the above sorted out with the utmost urgency as pensions are my only source of livelihood”.

53. Dr U emailed NHS BSA on 7 August 2020 to say that he believed his pension had been so wrongly calculated that he had asked for the total amount of annual pension payment of £49,000 from 2013/2014 to 2019/2020 together with the cash lump sum of £24,442.23, be returned once the proper calculation of his pension and the pension pot size had been disclosed to him.
54. Dr U wrote again to HMRC on 6 August 2020 and used online forms on 2 September and 7 September 2020 to request a refund of NICs. HMRC responded on 9 September 2020 to say it had already explained to him that these had been paid correctly and no refund was due.
55. On 7 October 2020, HMRC wrote to Dr U to explain how NICs worked. In a paragraph which has been highlighted by Dr U, HMRC said:

“From the Tax year 1999 until 2013 you were contracted-out. You believe that we have deducted NICs and not passed them to your NHS Pension provider. We do

not pass your Class D NICs to your Pension provider, your employer sent less NICs to us (HMRC) and the difference was paid directly into your NHS Pension, together with any Pensions contributions paid by yourself and your employer. Any query you have about your NHS pension needs to be dealt with by them.”

56. On 8 December 2020, Dr U wrote again to HMRC. He said that he wished to query the “non-coded income” figure of £121,520 which he believed to be incorrect. He said that to the best of his knowledge he had never received such a sum. He said that he had thought that the most likely source was something to do with his pension fund but, if so, he had been unable to trace it despite extensive efforts.
57. On 16 February 2021, Dr U wrote to NHS BSA querying the tax codes that had been applied to his pension since he retired in 2013. He asked NHS BSA to seek clarification from HMRC to ensure that his pension payments were correctly paid from 2013 to date.
58. On 22 April 2021, HMRC wrote to Dr U in reply to a letter from him dated 28 January 2021. It said:

“I can confirm that, during the following periods, you were not a member of the State Earnings Related Pension Scheme (SERPS). You were paying lower contracted out rate Class 1 National Insurance contributions instead of paying full rate contributions towards an Additional Pension (AP) from the state.

- 1) Period 6 April 1999 to 5 April 2005 while you were a member of the Health Service scheme
- 2) Period 6 April 2007 to 5 April 2013 again while you were a member of the Health Service scheme.

...

Your contracted out National Insurance Contributions (NICs) were paid to the state, not to the Health Service scheme. Your Health Service pension is based on any contributions paid by you and your employer into that scheme...

Your National Insurance account does show contributions paid in the 1997/98 and 1998/99 years but your employer notified contracted in rate National Insurance ie (sic) your employer told us you were not a member of the Health Service scheme in these tax years.”

59. NHS BSA's position:-

- Members' standard retirement benefit entitlement in the 1995 Section comprises of:
 - an annual pension based on 1/80 of final salary for each year of membership; and
 - a retirement lump sum of three times the annual pension.

- NHSPS members retiring from 2008 onwards have the option to exchange some of their annual pension for a bigger lump sum (up to the maximum tax free amount set by HMRC, which is 25% of the Capital Value of the retirement benefits).
- Under this provision every £1 of pension exchanged secures £12 additional lump sum.
- The Capital Value is the value placed on members' NHSPS benefits by HMRC and is calculated by multiplying the pension element by 20 and adding the value of the lump sum.
- In his retirement benefit application Dr U elected to exchange sufficient part of his pension to secure the maximum retirement lump sum allowed.
- NHS BSA's view is that Dr U's retirement benefit entitlement has been correctly assessed and that the benefits in payment to him are in accordance with the retirement benefit application he made.
- A check of the amounts paid to Dr U since 2013 revealed that an overpayment, totalling £1,321.30, had occurred in 2018. This was an isolated error arising from a change of pensioner payroll services to a new provider.

60. Dr U's position:-

- Dr U says he has always complained of the poor NHS pension to start with and it was during the complaints he got to know that the pension contributions by the Colchester General Hospital were handled by the Suffolk and Essex NHS Trusts.
- He did not have any documents to sign nor did he speak to anyone in the Hospital about the pension, but because of his deplorably low £300 per month NHS pension compared to £500 per month which doctors of his grade receive, he has continuously telephoned the NHS BSA. It was at that time he learned that not all the pension contributions from the Colchester General Hospital or the part NHS contributions from the QEH, Birmingham were credited to his pensions account with the NHS.
- At the end of his contract from 1 August 2013 to 6 August 2013 with the Colchester General Hospital, it appeared that HMRC/NHS BSA had already closed his account on 5 April 2013 without informing him.
- The amount of the pension contributions (employee and employer) paid to his NHS account were not disclosed to him at the end of the 2013 tax year. He had then started the QEH, Birmingham contract on 3 January 2013 and ended on 31 July 2014. All the contributions, both pension and NIC, paid by the QEH, Birmingham were not paid into his pension account and remained with the NHS BSA unaccounted for. This formed the figure of £5000 disclosed to him over the telephone by NHS BSA.

- NHS BSA claimed that at the time it determined his pension, it had not got all records of his employment, and the commutation was done in January 2020 rather than 2013.
- So NHS BSA using a pension figure of £3,666.73 instead of £4,562.71 to justify its incorrect lump sum of £24,443.20 is unfounded. He cannot afford to sacrifice £895.99 per annum for a pension of less than £400 per month.
- The NHS BSA has made a catalogue of errors with his pension calculation and he has had to write and telephone it since 2018 to make the necessary corrections.
- Since NHS BSA works on instruction from the HMRC, the issue of the tax code of 25 July 2017 involving £31,602 has not been resolved by HMRC/NHS BSA.
- He says he understands the NHSPS is not a proper pension and that it can retain his occupational pension even though he retired in 2013. NHS BSA says it is not a private pension provider, but only provides an occupational pension, and yet HMRC says it was in receipt of the contracted out NICs.

Adjudicator's Opinion

61. Dr U'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 NHSPS is governed by the Regulations. NHS BSA must operate the NHSPS in accordance with the Regulations. It has no discretion in this.
 - NHS BSA is responsible for the administration of the NHSPS, and in doing so it relies heavily on its relationship with employers, both in providing it with timely and accurate data and in ensuring relevant information is provided to the members. While it must be recognised that there may be occasions when errors occur, NHS BSA has no way of checking whether the information it is being sent is correct or not.
 - The evidence showed that Dr U's benefits were calculated based on the earnings and service record from 22 November 1999 to 6 August 2013 held by NHS BSA.
 - Throughout each year there were gaps between his various periods of pensionable service. As Dr U had said, this may well be when he was employed via an agency rather than directly with the NHS, but the fact remained that during these periods he was unable to be a member of the NHSPS. The result was that when the periods of his membership of the NHSPS were totalled up they came to 7 years and 137 days.
 - In particular, there was a gap of almost three years in Dr U's membership between 30 September 2004 and 1 August 2007. As a result, his benefits were calculated using the better of two methods as explained in Appendix 3 below.

- This break in service was confirmed by the schedule of contracted-out NICs (see Appendix 1) which could only have been payable while he was an active contributory member of the NHSPS.
- With regard to Dr U's service during the period 6 May 2003 to 5 August 2003, this was membership transferred-in from NHS Northern Ireland, and, as can be seen from the schedule of pensionable service (see Appendix 2), the full reckonable service of 92 days had been included in the 7 years and 137 days used to calculate his pension.
- The salary figures used in the calculation of his pension had to be manually calculated, based on the records held by NHS BSA. These appeared not unreasonable based on his pensionable pay history (see Appendix 1).
- Dr U had often referred to the amount of contribution both he and his employers had paid towards his pension. However, as this was a defined benefit arrangement the pension contributions were not directly relevant to the calculation of benefits. The key elements in determining benefit entitlement were earnings and service.
- Dr U seemed to have also confused contributions with pension in the calculation of his 'standard lump sum' which was three times the annual pension and was not related to contributions.
- With regard to Dr U's election to commute part of his pension for an additional tax-free cash sum, it had not proved possible to locate the form he would have signed at the time. But NHS BSA had on file the electronic notification it had received confirming that this was Dr U's choice. NHS BSA must act on the information it was provided with by the employer and so it was not unreasonable for NHS BSA to have commuted part of his pension and paid it as a lump sum.
- Furthermore, the statement issued with NHS BSA's letter dated 25 October 2013 had made it clear that £896.25 pension had been commuted for an additional lump sum of £10,755.04 and the bank statement provided by Dr U showed that the full amount of £24,443.23 was paid to Dr U's bank account on 1 November 2013.
- Dr U had not queried this at the time and, in fact, it was not until March 2019 that he had raised the issue with NHS BSA, by which time he had been receiving the reduced pension for over five years.
- Regardless of whether he had requested the additional cash sum, he had received the correct benefits calculated in accordance with the Regulations. There was no evidence to show that NHS BSA had done anything wrong in paying Dr U these benefits.
- In 2014, Dr U had applied to re-join the NHSPS as an active contributory member. NHS BSA had declined his further membership application and confirmed to his

employer that this was not possible due to Dr U's retirement in 2013 (see Appendix 3) and it was instructed to return any contributions it may have collected to Dr U. Whether it had done so was unclear, but this was not NHS BSA's responsibility. If Dr U had any doubts about this, he should take this up with his employer at the time.

- Dr U had also complained about contributions he said were paid to a private pension arrangement. He had referred to his "2nd pension as maintained by the Health Authority Pension Services, Middlesbrough Council, and the NHS PE being Dr U's employer since 07/08/2013 paid from 06 April 2021".
- There was no evidence of there being a second pension. Dr U seemed to believe this was funded by Category D NICs, but these were the reduced rate contributions paid during the periods when Dr U was contributing to the NHSPS to reflect the fact he was contracted out of the second tier (SERPS and S2P) of the state pension scheme. They did not go into a second pension scheme but were counted towards his basic state pension.
- Dr U's belief may have been further based on a misinterpretation of HMRC's letter of 9 September 2020 which referred to reduced NICs being paid (because he was contracted out) into a private pension between 1999 and 2013. But this did not mean a separate personal pension, it meant a private pension scheme, in this case the NHSPS, as opposed to the state scheme. This was reinforced in the following paragraph where it confirmed he was contracted out through the NHSPS from 6 April 1999 to 5 April 2013.
- That was not to say that Dr U did not have a personal pension arrangement, he may well have. However, it had nothing to do with NHS BSA, or the contracted out contributions as he believed. If he did have a personal pension arrangement, he would have had to complete an application form; and he would almost certainly have received benefit statements and other correspondence. But there was nothing in what he had submitted to support this.
- Regarding the application of PAYE tax codes, NHS BSA could only use what HMRC told them and it was not for it to question HMRC about the code, only Dr U could do that.
- With regard to the pension figure of £23,061.05 in 2017, NHS BSA said that on 11 September 2017, it was instructed by HMRC to apply a previous pay amount of £19,215 and previous tax amount of £4368.44 to Dr U's NHS pension, which resulted in the inflated figure for the P60 dated 2017/2018.
- NHS BSA said that it usually received previous pay/previous tax figures from HMRC at the start of the pension but in this case, it was a few years into the payment of Dr U's pension. NHS BSA was notified by HMRC to apply this figure to the pension so as to include other earnings from other jobs/pension within the P60

year. The information was fed electronically so involved no intervention from NHS BSA.

- It appeared that Dr U continued to work after 2013 when he started to receive his NHSPS pension. So that may well have contributed to the additional sums added to his income for tax purposes, but again this would be something for him to take up with HMRC.
- In summary, Dr U is in receipt of a pension from the NHSPS which, based on the evidence available, had been calculated correctly using his total pensionable service of 7 years and 137 days and pensionable salary. This included the contracted out equivalent to his state pension reflecting the fact that he paid reduced NICs for that period. His NHSPS benefits were clearly set out for him in NHS BSA's letter of 25 October 2013 and the evidence, much of it provided by Dr U himself, showed that those benefits have been paid correctly.
- Dr U is also in receipt of the basic state pension based on his total basic NICs paid over 17 years. This is not the full state pension as, to qualify for that, he would have had to have paid NICs for 30 years. In addition he is in receipt of a S2P pension reflecting the higher rate of NIC he paid during the period when he was not an active member of the NHSPS.
- Whether or not Dr U is entitled to some form of personal pension, perhaps based on contributions paid during those periods when he was employed through agencies, was not clear. The evidence suggested not. In the Adjudicator's experience such agencies would not deduct contributions and pay them to a private pension arrangement, and both Medacs and Plus US Medical had confirmed that they did not do so. It would be up to the individual to make such arrangements, in which case Dr U would have completed an application form, would have received documentation at the outset of the plan and would have received at least annual statements. Dr U had been unable to evidence any of this.

62. Dr U did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Dr U provided his further comments which do not change the outcome.

63. Dr U provided copies of documents that were already on file and which related to:

- his income tax;
- his Class A contracted in NICs history;
- the history of his earnings and contributions paid to the NHSPS; and
- a schedule supporting a claim for a refund of NICs between the figure Dr U says was collected and the amount shown on HMRC's website.

64. He says that the fact my jurisdiction does not include DWP, HMRC, Middlesbrough Council, and NICs was not sufficient reason not to uphold his complaints.

65. He also says that some of the communication of the Citizens Advice Bureau, Middlesbrough, corroborated his evidence.
66. He maintains that there are clear areas of discrepancy in evidence between DWP, HMRC and Middlesbrough Council regarding who took custody of his Category D contracted out NICs. He says that these are unaccounted for and that neither NHS BSA, nor the DWP, has taken responsibility for the funds contributed from 1997 to 2017, even if such contributions were at the reduced rates.
67. I agree with the Adjudicator's Opinion and note the additional points raised by Dr U.

Ombudsman's decision

68. As the Adjudicator made clear in his Opinion, those aspects of Dr U's complaint relating to the State Pension Scheme, Pension Credit, Universal Credit and other state benefits, are outside my jurisdiction. I therefore cannot consider these and I have only looked at those matters relating to Dr U's complaint against NHS BSA.
69. The additional information provided by Dr U has been submitted previously and was considered by the Adjudicator in the preparation of his Opinion. This information does not relate directly to the benefits Dr U has accrued in the NHSPS and which have been in payment since 2013.
70. The Category D contracted out NICs were paid to HMRC during those periods of service when Dr U was a member of the NHSPS. They are payable at a lower rate than Category A NICs to recognise the fact that the pension accrued in the NHSPS for that service is at least equivalent to the additional pension that would have been accrued under the second tier state scheme.
71. There is no discrepancy at all regarding who took custody of these contributions. All the parties involved in Dr U's complaint have made clear to him that NICs are paid to HMRC and count towards his basic state pension and other state benefits.
72. Dr U has failed to provide any evidence to show that his NHSPS pension is incorrect.
73. I do not uphold Dr U's complaint.

Anthony Arter

Pensions Ombudsman
14 December 2021

Appendix 1**Employers' Contracted-Out National Insurance Contributions passed on to HMRC
and then to NHS Pensions Scheme**

Date	Hospital/Trust	Total Pensionable Pay	Contracted Out NICs Employer	Contracted Out NICs Employee
22/11/2019-30/06/2000	5843 – University Hospital of South Manchester NHS Foundation Trust	£13,712.23	£1,744.68	£680.33
11/02/2002-03/10/2002	6059 -Cwm Taf Morgannwg University Local Health Board	£17,824.72	£1,285.41	£501.48
14/10/2002-04/02/2003	4815 -Dorset County Hospital NHS Foundation Trust	£9,924.77	£935.53	£316.84
11/08/2003-02/11/2003	3231 -County Durham & Darlington NHS Foundation Trust	£9,577.20	£2442.18	£744.79
06/05/2003-05/08/2003	0003 -Transfer from Northern Ireland (Causeway Hospital)	£8,095.00	£2,425.78	£703.51
10/05/2004-30/09/2004	5224 -North Devon District Hospital (Cornwall & Isles of Scilly HA (Staff)	£27,530.20	£4,307.75	£1,111.56
01/08/2007-31/10/2007	4221-Barking, Havering & Redbridge University Hospitals NHS Trust	£7,010.76	£744.38	£231.16
18/02/2008-17/08/2008	5841-M Manchester	£14,323.18	£1,276.48	£636.70

	University NHS Foundation Trust			
15/09/2008- 09/04/2009	5443- SouthWarwshire Foundation Trust	£19,858.17	£4,494.24	£1,703.92
10/04/2009- 05/10/2009	3671- RotherhamNHS Foundation Trust	£18,986.51	£5,262.98	£1,737.94
04/01/2010- 15/08/2011	3472- Mid Yorkshire Hospitals NHS Trust	£62,673.22	£11,349.80	£4,003.99
03/01/2012- 04/07/2012	4233- Whittington Hospital	£21,889.87	£2,451.44	845.64
01/08/2012- 06/08/2013	4271- Colchester General	£41,821.10	£2,517.85	£680.33

Appendix 2

NHS BSA records show the following membership of the NHSPS

Employer	Start date	End date	Reckonable membership	
			Years	Days
University Hospital of South Manchester NHS Foundation Trust	22/11/1999	30/06/2000		221
Cwm Taf Morgannwg University Local Health Board	11/02/2002	03/10/2002		235
Dorset County Hospital NHS Foundation Trust	14/10/2002	04/02/2003		114
Transfer back in of benefits previously transferred out of NHS Northern Ireland*	06/05/2003	05/08/2003		92
County Durham & Darlington NHS Foundation Trust	11/08/2003	02/11/2003		84
Northern Devon Healthcare NHS Trust	10/05/2004	30/09/2004		144
Barking, Havering & Redbridge University Hospitals NHS Trust	01/08/2007	31/10/2007		92
Manchester University NHS Foundation Trust	18/02/2008	17/08/2008		181
South Warwickshire Foundation Trust	15/09/2008	09/04/2009		207
Rotherham NHS Foundation Trust	10/04/2009	05/10/2009		179
Mid Yorkshire Hospitals NHS Trust	04/01/2010	15/08/2011	1	224
Whittington Hospital NHS Trust	03/01/2012	04/07/2012		183
East Suffolk & North Essex NHS Foundation Trust	01/08/2012	06/08/2013	1	6
Membership totals			7	137

- A letter, dated 3 November 2003, from Dr U to NHS BSA requested the transfer of the contribution of £514.36 that he made while working at Causeway Hospital,

CAS-54702-Y2X3

Coleraine from 6 May 2003 to 5 August 2003 from HSC Northern Ireland to the NHSPS.

Appendix 3

Extracts from the NHSPS booklet regarding rejoining.

Rejoining this Scheme before retirement

If you change jobs and have less than a years' break you will normally, depending on your age, be able to rejoin the same section of the Scheme.

If you are eligible to rejoin the same section of this Scheme in which you have deferred benefits, after a break of 12 months or more, your benefits at retirement will be worked out in whichever of the following two ways gives the highest financial outcome for you:

- your periods of membership will be added together and your total membership and final year's pensionable pay (or reckonable pay) will be used to work out your benefits; or
- the benefits you have earned for each period of membership will be worked out separately, re-valued then added together.

If you are a Practitioner and are eligible to rejoin the same section of this Scheme after a break in membership, your Practitioner pension record will be re-activated and your pension will be based on all of your Practitioner earnings.

Rejoining this Scheme after retirement

1995 Section

If you are in receipt of an NHS pension under the 1995 Section you cannot rejoin this Scheme unless:

- you are under age 50 when you return to work and are in receipt of an ill health retirement pension or
- you retired on or after 1 April 2008 and before 1 October 2009 if aged under 75.

You may be eligible to join a different NHS Pension Scheme after a waiting period. This will usually be the longer of two years from the date of your retirement or the length of any membership enhancement included in your pension calculation