

Ombudsman's Determination

Applicant	Dr H
Scheme	NHS Pension Scheme (the Scheme)
Respondents	NHS Business Services Authority (NHS BSA)

Outcome

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

Complaint summary

2. Dr H complained that NHS BSA incorrectly calculated her pension contributions. She argues that her earnings during the period 1 April 2019 to May 2019 did not reach the higher earnings band of £111,377.00 and therefore her contribution rate should not be 14.5%.

Background information, including submissions from the parties

3. The Scheme is a statutory pension arrangement governed by regulations (**the Scheme Regulations**).
4. The Scheme Regulations applicable to Dr H's complaint are the National Health Service Pension Scheme Regulations 2015 (**the 2015 Regulations**).
5. The Scheme Regulations classify General Practitioners (**GP**) into three different categories, the two categories relevant in this case being 'Practitioner' and 'Officer'.
6. Practitioner is defined under paragraph two of Schedule 10 of the 2015 Regulations, as:

"a medical practitioner or non-GP provider not in receipt of salary, wages, fees or other regular payments in respect of their employment"
7. Officer is defined under Regulation 27, Part 4 of the 2015 Regulations as:

"a medical contractor or non-GP provider employed by an NHS organisation... in receipt of a salary, wages, fees and other regular payments in respect of their employment".

8. Regulation 30 and Schedule 11, Paragraph 3 of the 2015 Regulations contains provisions for determining the contribution rate for the current Scheme year for a member who was in pensionable employment with the same employer on or both the last day of the previous Scheme year, and the first day of the current Scheme year. Schedule 11, Paragraph 3 provides that a member's contribution rate for the current Scheme year should be determined on the basis of their pensionable earnings from the previous Scheme year, which must be calculated in line with one of 12 provided cases.

9. Case 8 of Schedule 11, Paragraph 3 of the 2015 Regulations (set out in Appendix 1) states that if a member:

“(a) started pensionable employment with an employer on a part-time basis during the previous Scheme year;

(b) paid contributions in respect of that employment at the same percentage rate from the date the employment started to the last day of that year.

The amount of M's pensionable earnings determined by the formula—

$$\frac{CWTE}{NDPE} \times 365$$

where—

CWTE is the amount the scheme manager determines would have been paid for the employment during the previous scheme year in respect of a single comparable whole-time employment; and

NPDE is the number days of pensionable employment with the authority during that year”.

10. On 14 July 2017, Dr H began employment with the North East Ambulance Service NHS Foundation Trust (**the Trust**) as a Clinical Hub Sessional GP Advisor.

11. On 26 September 2017, the Trust issued a letter of engagement to Dr H which outlined the terms and conditions of her employment. This letter included details about her position, responsibilities, salary and benefits such as paid annual leave and statutory sick pay (**SSP**).

12. On 1 June 2018, Dr H started paying pension contributions into the Scheme in respect of her employment with the Trust.

13. On 21 May 2019, Dr H left employment with the Trust but continued paying contributions into the Scheme through another employer.

14. On 1 May 2020, Dr H raised a complaint against NHS BSA under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). She complained that NHS BSA had incorrectly calculated her pension contributions for the period April 2019 to May 2019.

She said that she had paid contributions at the rate of 14.5%. However, her earnings during that period amounted to £39,994, so they did not meet the earnings band of £111,377 for the contribution rate of 14.5% to be applicable to her.

15. On 13 July 2020, NHS BSA responded to the complaint under stage one of the Scheme's IDRPs. It explained that while NHS BSA was the administrative centre for the Scheme, it relied on the employing authority to provide information about Scheme members pension details. It stated that as Dr H's complaint was against her employer, the Trust, she had to raise her concerns directly with them.
16. On 19 July 2020, Dr H emailed NHS BSA saying that it was liable for the Trust calculating her pension contributions using an incorrect contribution rate. She also said that NHS BSA had provided incorrect information to the Trust regarding contribution rates, and this had led to her paying higher contributions to the Scheme.
17. On 20 July 2020, NHS BSA responded to Dr H and explained that, if she was dissatisfied with its response under stage one of the IDRPs, she could request that her complaint be reconsidered under stage two of the IDRPs. Dr H subsequently requested for her complaint to be considered under stage two of the IDRPs.
18. On 13 August 2020, NHS BSA issued its stage two IDRPs response. It said the following:-
 - It administered the Scheme in partnership with employing authorities. Employing authorities had a statutory responsibility for setting the correct contribution rate, collecting contributions, constructing, and updating individual membership records. It held these records centrally for the purpose of calculating and paying pension benefits for the Scheme. Due to the shared responsibilities, it was reliant upon employing authorities making accurate and timely updates to membership records. The data was submitted electronically by each employing authority once a year.
 - The general rule was that a member's contribution rate at the start of each Scheme year was based on the Whole Time Equivalent (WTE) rate of pensionable earnings received during the previous Scheme year. This was unless the member's circumstances had changed during the Scheme year.
 - If a member only started contributing to the Scheme part way through the year, their earnings would be scaled up to a full year. If a member was working part time, their WTE earnings would be used to establish the contribution rate. For this purpose, each Officer role was ring-fenced and had its own contribution rate.
 - As Dr H began paying pension contributions into the Scheme on 1 June 2018, the Scheme Regulations stated that NHS BSA needed to look at what she would be expected to earn if she was working whole time for a full year in this role.
 - It had been informed by the Trust that Dr H's pensionable earnings from 1 June 2018 to 31 March 2019 were £171,071, with 1,523 hours worked out of the

maximum whole-time hours of 1,628. The WTE pensionable earnings for that 304-day period was £182,865 (£171,071 / 1523 x 1628). Converted to a full year the pensionable earnings equated to £219,558 (£182,865 / 304 x 365). Based on the fact that Dr H's WTE earnings were assessed as being more than £111,377, it was satisfied that the Trust had applied the correct contribution rate of 14.5% for the period 1 June 2018 to 31 March 2019.

- The 2015 Regulations stipulated that if an employment spanned two Scheme years, the contribution rate for the following Scheme year was based on the pensionable earnings (WTE earnings for a full year of employment) from the previous Scheme year. So, NHS BSA was satisfied that Dr H's earnings from the 2018/2019 Scheme year should be used to set the contribution rate for the 2019/2020 Scheme year.
 - It had considered whether there was any indication that Dr H's earnings changed in the 2019/2020 Scheme year, to ascertain whether a different contribution rate may be applicable. It was informed by the Trust that Dr H's pensionable earnings from 1 April 2019 to 21 May 2019 were £39,994 with 273 hours worked, which were the maximum possible for that period. So, the WTE earnings for that 51 day period were $£39,994 / 51 \times 365 = £286,232$. Accordingly, earnings at that level did not point towards any change that would mean a lower contribution rate than 14.5% would be applicable to Dr H.
 - Although Dr H left employment with the Trust on 21 May 2019, this did not alter the assessment of her pensionable earnings for the purpose of setting a contribution rate.
 - It was not upholding Dr H's complaint and was of the view that she had paid contributions at the correct rate.
19. On the same date, Dr H emailed NHS BSA claiming that the calculations shown in its response under stage two of the IDRPs were inaccurate. She contended that WTE earnings could not be used to calculate her contributions because she was a GP. She also said that NHS BSA had neglected to review the aspect of her complaint regarding the Trust's failure to deduct contributions in the 2017/2018 Scheme year.
20. On 8 September 2020, NHS BSA responded to Dr H. It said the following:-
- When a Scheme member had a mixture of Practitioner and Officer employment categories, the contribution rate was determined separately for each type of employment. For GP service roles, the rate for each year was based on the total earnings for that year. In contrast, when under a contract of service, the rate was based on WTE earnings. The contribution rate was determined separately for each employment category, so the earnings in any past or concurrent employment did not affect the contribution rate in another employment.
 - The Trust had provided Dr H's letter of engagement which confirmed that she was formally employed under a contract of service with rights to annual leave and

SSP. This meant that she was an Officer member of the Scheme whilst employed by the Trust and so her contribution rate could only be based on her WTE earnings.

- There were no provisions in the Scheme Regulations to set a contribution rate based on Dr H's actual pensionable earnings from 1 April 2019 to 21 May 2019, which were £39,994.
- Even if the Trust had employed Dr H as a Practitioner, in a contract for services role, the contribution rate applicable to her would still be 14.5%. If Dr H had been a Practitioner, her actual pensionable earnings would have been grossed up to a full year, through a process known as 'annualising'. The annualising formula was "Total GP earnings / Number of pensionable days worked x 365 days". In Dr H's case, this would have been (£39,994 + £9,009) / (51days + 29 days) x 365 which equated to £223,577.
- It acknowledged that Dr H had been in discussions with the Trust regarding the fact that she had commenced employment with the Trust in 2017 but was not enrolled into the Scheme until 1 June 2018. It was unable to provide any further comments on this matter until the issue had been resolved by the Trust.

21. On the same date, Dr H responded to NHS BSA and claimed that the Trust had not employed her under a contract of service.
22. On 16 September 2020, NHS BSA provided Dr H with a copy of the letter of engagement. NHS BSA explained that as Dr H had rights to annual leave and SSP, she was employed under a contract of service by the Trust and met the definition of an Officer member of the Scheme.
23. On the same date, Dr H emailed NHS BSA saying that the letter of engagement clearly stated that she was a Sessional GP and not an Officer. She requested that NHS BSA direct her to the part of the letter that mentioned her rights to annual leave and SSP.
24. On 28 September 2020, NHS BSA emailed Dr H clarifying that part six of the letter of engagement, titled 'holidays', explained her contractual rights to paid annual leave. It explained that, in addition to being an active Officer member of the Scheme during working and non-working days, she was also a member whilst on annual leave. It also stated that while the letter of engagement did not specifically refer to sick leave, the Trust had informed NHS BSA that Dr H had received SSP during her employment.
25. The Trust has provided NHS BSA with a copy of Dr H's contribution statement for the 2018/2019 and the 2019/2020 Scheme year (**the contribution statement**) which showed the following:-
 - Dr H paid employee contributions to the Scheme through the Trust between 1 June 2018 and 31 March 2019. The total pensionable earnings she received

during that period were £171,071. Her total pension contributions to the Scheme during that period were £24,805.

- Dr H paid employee contributions to the Scheme through the Trust between 1 April 2019 and 21 May 2019. Her total pensionable earnings during that period were £39,994. Her total pension contributions in the same period were £5,799.

26. Dr H's position:-

- NHS BSA's determination of her contribution rate was incorrect. Her pensionable earnings in the 2018/2019 and the 2019/2020 Scheme years did not exceed £111,377.
- She was employed as a GP by the Trust, so her contribution rate could not be based on her WTE earnings.

27. NHS BSA's position:-

- The Trust was Dr H's employing authority and was responsible for setting the correct contribution rate, in line with the Scheme Regulations. It had reviewed the Trust's assessment of Dr H's contributions and could confirm that the Trust had correctly applied the 2015 Regulations and set the correct contribution rate at 14.5%.
- The contribution statement confirmed that in the 2018/2019 Scheme year Dr H's actual earnings were £171,071, and she paid total contributions of £24,805. This meant that she contributed 14.5% of the earnings she received from the date she started paying pension contributions into the Scheme on 1 June 2018 to the last date of the Scheme year on 31 March 2019. It also confirmed that in the 2019/2020 Scheme year Dr H's actual pensionable earnings were £39,994, and she paid total contributions of £5,799. This meant that she contributed 14.5% of the earnings she received from the start of the Scheme year on 1 April 2019 until she left employment with the Trust on 21 May 2019.

Adjudicator's Opinion

28. Dr H'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 in paragraphs 29 to 34 below.
29. GP's that are formally employed under a contract of service are Officers in the Scheme and their contributions are calculated using their WTE earnings. In Dr H's case, all the available information suggested that she was employed under a contract of service by the Trust. This was because, during the course of her employment, she was entitled to be paid annual leave, SSP and other benefits which meant that she was classed as an Officer in the Scheme. As Dr H was an officer member of the Scheme, it was the Adjudicators opinion that her contributions should be calculated using her WTE earnings.

30. NHS BSA could only provide benefits in accordance with the Scheme Regulations. After reviewing the 2015 Regulations, the Adjudicator was of the opinion that NHS BSA had correctly calculated Dr H's contributions for the period 1 April 2019 to 21 May 2019, based on her earnings from the 2018/2019 Scheme year, and applied the correct contribution rate of 14.5%. The available information indicated that Dr H's employment with the Trust spanned two Scheme years, and she was employed by the Trust on both the last day of the 2018/2019 Scheme year and the first day of the 2019/2020 Scheme year. So, in accordance with Regulation 30 of the 2015 Regulations, her pensionable earnings from the 2018/2019 Scheme year would determine the contribution rate applicable to her in the 2019/2020 Scheme year.
31. NHS BSA calculated Dr H's earnings in accordance with Case 8 of Schedule 11, Paragraph 3 of the 2015 Regulations. In the Adjudicator's opinion, Case 8 was the appropriate method of assessing Dr H's earnings, as she was in part time employment with the Trust over the span of two Scheme years and paid contributions in respect of this employment at the same percentage rate.
32. The Adjudicator noted that part time employees accrue service on a part time basis, for example someone working half of the full-time hours would accrue half the service in the Scheme that someone working full time hours would. The Scheme Factsheet (set out in Appendix 2) explained that an Officer member working part time hours would have their actual pensionable earnings uprated to the equivalent of someone working full time hours. Essentially, a hypothetical full-time salary or WTE salary would be calculated. In addition, members who started paying contributions to the Scheme part way through the Scheme year would have their pensionable earnings pro-rated to reflect their earnings for the full year.
33. In Dr H's case, her pensionable earnings for the period June 2018 to March 2019 were uprated because she worked 1,523 part time hours out of the possible 1,628 full time hours. So, while her actual earnings in the 2018/2019 Scheme year were £171,071, her WTE earnings were £182,865. In addition, since Dr H started paying contributions part way through the Scheme year and had worked 304 days out of the possible 360 days, her earnings were pro-rated to a full year which amounted to earnings of £219,558. Considering that, Dr H's pensionable earnings in the 2018/2019 Scheme year exceeded £111,377, in the Adjudicator's opinion, the contribution rate applicable to her in the 2019/2020 Scheme year for the period 1 April to 21 May 2019 was 14.5%.
34. The Adjudicator concluded that even if NHS BSA were to determine Dr H's contribution rate solely based on her pensionable earnings in the 2019/2020 Scheme year, the contribution rate of 14.5% would still be applicable. The available evidence indicated that Dr H worked 273 hours between 1 April 2019 to 21 May 2019 (the maximum possible hours for that period) and received pensionable earnings of £39,994. As this period related to Dr H's service at the start of the Scheme year, NHS BSA calculated her contributions based on what she would be expected to earn if she remained in that employment for the full year. So, converted to a full year, Dr H's pensionable earnings amounted to £286,232.

35. Dr H did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
36. Dr H provided some additional comments which are summarised below:
- There has been no consideration given to the fact that her earnings from 1 April to 21 May 2019 during the 2019/2020 Scheme year amounted to £39,994. She therefore did not meet the earnings band of £111,377 for the contribution rate of 14.5% to be applicable to her.
37. I note the additional points raised by Dr H, but they do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

38. Dr H's complaint concerned the contribution rate which has been used to calculate her contributions to the Scheme. Dr H asserted that her earnings from 1 April to 21 May 2019 during the 2019/2020 Scheme year totalled £39,994. Consequently, she has argued that the contribution rate of 14.5% was not applicable to her for this period as she did not meet the earnings band of £111,377.
39. My powers are set out in Part X of the 1993 Act¹ and subsequent regulations. This legislation sets out what I can and cannot do. In particular, I must apply the law that applies at the relevant time and determine whether it has been applied correctly. I must decide complaints and disputes in accordance with established legal principles rather than by reference to what I may consider fair and reasonable.²
40. I acknowledge that Dr H earned £39,994 between 1 April 2019 and 21 May 2019 and I appreciate her frustration. However, her contributions cannot be calculated on the basis of her actual earnings. NHS BSA is required to adhere to the Scheme Regulations when calculating a member's contributions and determining the appropriate contribution rate. It cannot use any other method of calculating contributions than those outlined in the Scheme Regulations.
41. The 2015 Regulations state that when a member's service spans two Scheme years, the current year's contribution rate is determined by the previous year's pensionable earnings. It is evident from the contribution statement, that Dr H was employed with the Trust on the last day of the 2018/2019 Scheme year, and the first day of the 2019/2020 Scheme year. So, there is no doubt that her service with the Trust spanned two Scheme years. In light of this, I find that Dr H's contribution rate for the 2019/2020 Scheme year should be based on the pensionable earnings she received in the 2018/2019 Scheme year.
42. Having carefully examined the 12 cases provided in Schedule 11 Paragraph 3 of the 2015 Regulations, I agree with the Adjudicator that Case 8 was the most appropriate

¹ See <https://www.legislation.gov.uk/ukpga/1993/48/part/X/enacted>

² Henderson v Stephenson Harwood [2005] Pens LR 209 (s12)

method of calculating Dr H's pensionable earnings for the 2018/2019 Scheme year. I have reviewed the calculations undertaken by NHS BSA and I am satisfied that Dr H's pensionable earnings for the 2018/2019 Scheme year have been correctly assessed as £219,558. Given that Dr H's earnings were in excess of £111,377 in the 2018/2019 Scheme year, I find that the correct contribution rate of 14.5% has been applied, in the 2019/2020 Scheme year for the period 1 April 2019 to 21 May 2019.

43. I recognise that Dr H left pensionable service with the Trust on 21 May 2019 during the 2019/2020 Scheme year. However, as NHS BSA has clarified in its stage two IDRP response, this did not impact the calculation of Dr H's contributions for the period from 1 April 2019 to 21 May 2019. While Dr H's employment with the Trust lasted only two months in the 2019/2020 Scheme year. It is relevant that the Scheme Regulations require NHS BSA to calculate Dr H's contributions as if she had been in full-time employment throughout the entirety of the 2019/2020 Scheme year.
44. Consequently, I do not uphold Dr H's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
24 January 2024

Appendix 1

The National Health Service Pension Scheme Regulations 2015

Schedule 11: Determination of Pensionable Earnings: Setting Contribution Rates

Regulation 30

1-- Introduction

For the purposes of this Schedule—

(a) “previous scheme year” means the scheme year immediately preceding the scheme year in respect of which contributions are payable in accordance with this scheme (“the current scheme year”); and

(b) if a member holds two or more pensionable employments at the same time—

(i) the determinations referred to in paragraphs 2 to 4 apply to each such employment separately; and

(ii) each such employment is treated separately for the purpose of paying contributions.

2-- Continuous employment spanning two scheme years

(1) Sub-paragraph (2) applies for the purposes of determining the relevant contribution rate for the current scheme year for a member (M) who is in pensionable employment with the same employing authority on both—

(a) the last day of the previous scheme year; and

(b) the first day of the current scheme year.

(2) Where M is within column 1 of one of the following cases, M must pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (3) of regulation 30 in respect of the amount of pensionable earnings referred to in column 1 of that table which corresponds to the amount determined as mentioned in column 2 relating to that case.

Column 1	Column 2
CASE 8	
M— <ul style="list-style-type: none"> (a) started pensionable employment with an employing authority on a part-time basis during the previous scheme year. 	The amount of M's pensionable earnings determined by the formula—

- (b) paid contributions in respect of that employment at the same percentage rate from the date the employment started to the last day of that year.

$$\frac{CWTE}{NDPE} \times 365$$

where—

- CWTE is the amount the scheme manager determines would have been paid for the employment during the previous scheme year in respect of a single comparable whole-time employment; and
- NDPE is the number of days of pensionable employment with the authority during that year.

Appendix 2

NHS Pensions - Cost and contributions from 1 April 2015 to 31 March 2021 (Excluding: Practitioners and Non-GP Providers)

Key Points:

- The general basis rule is that your contribution rate at the start of each Scheme year will be based on your whole time equivalent rate of pensionable pay received during the previous Scheme year unless your circumstances (including annual pay increases) have changed or change during the Scheme year.
- If you only started to contribute to the Scheme part way through a year your pay will be scaled up (i.e. pro-rata) to a full year to establish your tiered rate. If you are part time it will be the whole time equivalent pay that will be used. Please remember this affects people who started a new pensionable employment or re-employment, who joined the Scheme for the first time, or re-joined the Scheme after a break in membership, part way through a Scheme year.
- If you change employers, receive a promotion, receive a pay increase etc on or after 1 April; your contribution rate will be reassessed based on the remainder of your estimated annualised whole time equivalent pensionable pay for the Scheme year.
- Once your rate is set it is generally 'fixed' unless you are promoted, you receive a pay increase, take on extra duties, or are permanently moving from night to day duty. Fluctuations in part time hours will not change your contribution rate as the rate is always set on a full year, whole time equivalent pay basis.
- In circumstances where your pensionable pay or pensionable allowances change in year, your rate of contributions should be reassessed by your employer using your new estimated annualised pay. If you work part-time, there is only a need to reassess your contribution rate if your notional whole time rate of pay also changes. Therefore, if you receive an annual pay increase during a Scheme year on or after 1 April your employers should re-assess the tiered contribution rate and apply a new rate if this is appropriate.