

Ombudsman's Determination

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

Outcome

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

Complaint summary

2. Dr W has complained that she received an excellence award in the 2018/19 tax year, but this was not paid until the 2019/20 tax year. The additional pay was included in the 2018/19 Pension Input Period (**PIP**), but Dr W has said that this is incorrect and should have been included in the 2019/20 PIP.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the key points. I acknowledge there were other exchanges of information between all the parties.

On 13 December 2018, the Advisory Committee on Clinical Excellence Awards sent a letter to Dr W and said her application for a Bronze award (**the Clinical Award**) had been successful. Her Chief Executive had been informed of the new award so that arrangements could be made to adjust her salary. Payment would be backdated to 1 April 2018 and subject to her continued eligibility the Clinical Award would be paid for five years from that date.

4. On 13 February 2020, Dr W's employer sent a letter to Dr W which said in summary:-
 - It confirmed that with effect from 1 April 2018 her allowances would include the Clinical Award.
 - Her February 2020 salary would include the Clinical Award due for February 2020.
 - The arrears due from 1 April 2018 to 31 January 2020 would be paid with her March 2020 salary.

5. 8. On 11 January 2021, Dr W's financial adviser (**the Adviser**) sent a letter to NHS BSA on Dr W's behalf. He said in summary:-
- Dr W received the backdated Clinical Award payment of £44,787.60 in March 2020. This should have resulted in a large increase in her pensionable pay and a large Annual Allowance (**AA**).
 - As this backpay was received in 2019/20 it should count for AA purposes for the 2019/20 tax year and not be allocated to the years when the Clinical Award should have been paid.
 - Dr W's AA Pension Savings Statement for 2019/20 dated 15 September 2020 seemed to have incorrectly calculated her AA over multiple tax years.
 - When he telephoned NHS BSA for clarification, he was sent a link to the NHS BSA knowledge base article "What may affect my Annual Allowance Calculation?". The article referred to backdated salary increases and said:

"Where the salary increase is awarded at a date falling within one pension input period (the current pension input period) but has backdated effect to a previous pension input period, the effect of the salary increase is included in the current pension input period only.

There is no need to recalculate the pension input amount for any previous tax years."
 - This was also confirmed and illustrated with an example in the HMRC manual PTM053800 (The Pension Tax Manual). The relevant extracts are in Appendix One.
 - Could NHS BSA confirm the correct position.
6. On the same day, NHS BSA sent an email to Dr W and said that it had checked her AA Pensions Savings Statement, and it was correct. For AA and pension purposes the correct year was when the payment was due.
7. On 3 February 2021, the Adviser sent an email to NHS BSA which said in summary:-
- He and Dr W had not had any clarification of the methodology that NHS BSA had used for AA calculations where members of the Scheme received backpay.
 - The information provided so far suggested that the pensionable pay had been increased retrospectively in several tax years.
 - His query was whether Dr W's employer could add to pensionable pay in previous tax years due to pay/awards which had been "earned" but not actually paid when calculating the AA use.
8. On 8 April 2021, NHS BSA sent a letter to the Adviser and said in summary:-

- He had queried the methodology used when calculating Dr W's AA and had provided information in a knowledge base article.
 - It could confirm the information in that article was correct for a backdated pay award. For example: if an NHS employee was due a pay award on 1 April 2020 but this was not agreed until 1 May 2021, for AA purposes the pay award was included in the 2020/21 AA calculations.
 - In contrast, if that same NHS employee was awarded an increase on 1 October 2020 under an award but the pay was made late on 1 May 2021, the arrears of pay must be applied in the years the payment was actually earned, not when the payment was actually received.
 - It had processed Dr W's AA calculations on the basis the £44,787.60 backdated Clinical Award payment fell into the second scenario described above.
9. On 23 April 2021, the Adviser sent an email to NHS BSA and said in summary:-
- He attached a letter confirming the Scheme schedule of backpay payments together with Dr W's payslips for February and March 2020 confirming exactly when the backpay was actually paid.
 - The Pension Tax Manual clearly stipulated how to deal with backpay and how it related to the AA.
 - Dr W was paid the Clinical award in 2019/20 (for 2018/19 and 2019/20 years combined, none of the Clinical Award was paid in 2018/19), as such the AA effect of that increase in pensionable pay should apply only in 2019/20.
 - The legislation did not allow for flexibility to recalculate the AA for past years via spreading the backpay over the years it should have been paid in as this would create an opportunity to manipulate the AA. The key here was when the pay award was actually paid, which is in the end of the 2019/20 tax year.
 - Dr W had been materially disadvantaged as she would have an AA tax charge in 2018/19 which would reduce her pension benefits. This was estimated to be around a £1,600 + interest reduction in annual pension via Scheme Pays.
 - His assessment was that she would be well within her AA in 2018/19 if the backpay was treated as per the above legislation
10. In May 2021, NHS BSA sent Dr W her AA Pension Savings Statement for the tax year 2019/20.

The pension input amounts in the last three tax years were:

PIP Start	PIP End	Standard AA (across all of your pension schemes)	Pension Input Amount (Growth) in

			the 1995/2008 NHS Pension Scheme
06/04/2018	05/04/2019	£40,000	£160,075.48
06/04/2017	05/04/2018	£40,000	£40,360.79
06/04/2016	05/04/2017	£40,000	£26,196.06

The pension input amount shown above for each PIP, was the difference between the value of her NHS pension benefits at the start and the end, of the PIP.

Opening and Closing Values

PIP Start	PIP End	Opening Value (adjusted in line with inflation)	Closing Value
06/04/2019	05/04/2020	£784,963.81	£814,874.86
06/04/2018	05/04/2019	£606,490.74	£766,566.22
06/04/2017	05/04/2018	£548,465.17	£588,825.96
06/04/2016	05/04/2017	£516,838.76	£543,034.82

11. On 27 May 2021, NHS BSA sent a letter to the Adviser and said in summary:-

- It had checked the information provided to NHS BSA by Dr W's employer as well as the supporting evidence he had provided and the Finance Act 2004.
- The employer confirmed that Dr W earned the following pensionable pay:

Pension year- 1 April to the following 31 March	Pensionable pay
2016/17	£94,457.68
2017/18	£98,097.35
2018/19	£123,187.08
2019/20	£126,080.15
2020/21	£134,135.35

- The large increase in pensionable pay in 2018/19 reflected the Clinical Award which the Employer confirmed as being awarded on 1 April 2018, with a

payment of arrears being made in March 2020. It had been unable to trace any information as to why the payment of the Clinical Award was delayed from the date it was initially awarded.

- Dr W's payslip of February 2020 confirmed the commencement of payment for the Clinical Award and the March 2020 payslip showed the one-off payment of arrears. Neither of these documents confirmed that the Clinical Award was made later than the 2018/19 pension year.
- The Scheme Regulations required that pensionable pay (and contributions) were recorded in the year the money was earned and not the year that it was paid. Pensionable pay cannot be delayed to a year later as this would be regarded as selection against the Scheme.
- The calculation of the AA was governed by legislation specifically sub sections 227 – 238A of the Finance Act 2004. The relevant extracts of Section 234 Defined benefits arrangements are in Appendix Two.
- In accordance with this Regulation, NHS BSA calculated Dr W's pension and lump sum that she would have been entitled to at 5 April using her pensionable pay (and membership) at that date. There was no reference to backdated pay awards.
- As confirmed Dr W was awarded a Clinical Award on 1 April 2018, however received arrears of payment in March 2020. She has not had a backdated pay award as described in the Pension Tax Manual that is the Clinical Award was not awarded on or after 6 April 2019 and backdated to 1 April 2018. Dr W was, from the information available; "paid late" for an unknown reason.
- Since the introduction of the reduced Annual Allowance (Finance Act 2011) NHS BSA was not aware of any national or local pay negotiations for any member or group of members that have concluded in a later PIP requiring the PIP to be calculated as confirmed in the Pension Tax Manual.

12. Following the complaint being referred to The Pensions Ombudsman, NHS BSA and the Adviser made the following submissions.

NHS BSA's submissions

13. The calculation of the AA was governed by legislation, specifically sub sections 227 – 238A of the Finance Act 2004, as well as other secondary legislation about when information must be provided. There was no reference in the legislation about "backdated" pay awards.
14. The Pension Tax Manual guidance confirmed that any backdated pay awards should be accounted for in the year the backdated pay award is agreed. From the information provided to NHS BSA, the Clinical Award was awarded in 2018/19. Unlike the example provided in the Pension Tax Manual, the consideration of the award did not commence in 2018/19 and conclude in 2019/20 causing a backdated pay award.

15. Dr W was granted a Clinical Award in 2018/19, and the award was confirmed prior to 5 April 2019. As the Clinical Award was granted prior to the end of the PIP, then this award is correctly included in 2018/19. NHS BSA was not privy to the application/granting process of Clinical Awards and was only informed of the additional pensionable pay and contributions for the member.

The Adviser's submissions

16. NHS BSA had not indicated anywhere in its response that the additional award AA accrual must be backdated to the year in which the member was entitled to it. It merely outlined the rules of adjusting past AA accruals. This contradicted what was in the Pension Tax Manual and what HMRC had said in telephone calls he had made. He had challenged NHS BSA's interpretation of the Pension Tax Manual as this clearly stated how to deal with backpay and how it related to the AA.
17. Dr W was paid the Clinical Award in 2019. As such, the AA effect of that increase in pensionable pay should only take effect in 2019/20. The legislation did not allow for flexibility to recalculate the AA for past years via spreading the backpay over the years it should have been paid in. The key here was when the pay award was actually paid, which was in the 2019/20 tax year.

Adjudicator's Opinion

18. Dr W'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 20 to 25 below.
19. The Finance Act 2004 says that the calculation of the pension input amount in respect of a defined benefits arrangement is the amount of any increase in the value of the individual's rights under the arrangement during the PIP that ends in the tax year.
20. The opening value of the PIP is the amount of pension that the individual became entitled to immediately before the start of the PIP and the closing value is the amount of pension that the individual became entitled to at the end of the PIP. This closing value is defined in Section 234 of the Finance Act 2004 as:

“(5) The closing value of the individual's rights under the arrangement is—

$$(16 \times PE) + LSE$$

where—

PE is the annual rate of the pension which would, on the valuation assumptions, be payable to the individual under the arrangement **if the individual became entitled to payment of it** at the end of the pension input period”.

[the Adjudicator's emphasis]

21. In the Adjudicator's opinion the key point here was that Dr W became entitled to the payment of the Clinical Award in the 2018/19 tax year and so it should be included in the closing value at the end of that PIP, which was 2018/19.
22. The Adjudicator reviewed the Pension Tax Manual. The scenario referred to in the example is when salary negotiations were ongoing at the end of a current PIP. In this case whether there would be a pay rise was unknown until the salary negotiations were completed. The new salary and any arrears were then paid in the next PIP and so the backpay arising was included in the PIP in which it was received.
23. Dr W's situation was different. The Clinical Award was made in 2018 and there were no ongoing negotiations with regard to this. There was a delay in payment. However, Dr W knew she had received the Clinical Award and that her pay would increase from 1 April 2018 due to this. The key here is that the Clinical Award had been agreed in the 2018/19 tax year.
24. In the Adjudicator's opinion, NHS BSA had correctly interpreted how the Pension Tax Manual should apply to Dr W's pension and AA and have applied the Regulations regarding PIPs correctly.
25. Dr W did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. The Adviser provided further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by the Adviser.

The Adviser's additional comments

26. He and Dr W disagreed with the Adjudicator's interpretation of the rules.
27. PTM053800 confirmed that:

"What was paid and when is a matter of fact. Where the salary increase is awarded at a date falling within one pension input period (the current pension input period) but has backdated effect to a previous pension input period the effect of the salary increase is included in the current pension input period and not in the previous pension input period. This would not of itself require recalculation of the previous pension input amount in order to arrive at a new opening value for the current pension input period."
28. The clinical excellence award was awarded in 2018/19. The award, in essence, was a salary increase. None of the award was paid in 2018/19 – Dr W should not have any tax impact (or annual allowance tax charge) due to a "salary" that she never received in 2018/19.
29. The salary award (with the missed payments for 2018/19) was finally paid towards the end of the 2019/20 tax year, which is fact.

"What was paid and when is a matter of fact (PTM053800)."

The NHS failed to pay the salary award when it was due, and the key here was Dr W should not suffer a tax charge for income that was never received in 2018/19 through no fault of hers. It was counterintuitive to pay tax on money that was never received.

30. The pension input amount should use a larger increased salary (due to the award) at end of the 2019/20 pension input period and none of the award should impact the salary figure at the end of the 2018/19 pension input period.
31. It was a big disappointment that something as positive as winning a clinical excellence award has caused so much grief. The letter to Dr W from the Advisory Committee on Clinical Excellence Awards dated 13 December 2018 said that winning this award was:

“a public acknowledgement of your professional expertise and sustained and dedicated contribution to the NHS over and above your contractual requirements. Please accept our congratulations for this very significant achievement.”

Ombudsman’s decision

32. Dr W has complained that the backdated pay arising from her Clinical Excellence Award has been treated incorrectly by NHS BSA.
33. The fact that the increased salary was not paid by the NHS in 2018 and a large amount of backdated pay built up was not something that NHS BSA was party to. NHS BSA’s obligations were to make sure it treated the backdated pay correctly for the purposes of Dr W’s pension and for the calculation of the pension input amounts for each PIP for the purpose of calculating any annual allowance charge payable in respect of each PIP. The issue here is whether the relevant legislation required pension accrual in respect of the salary increase arising from her Clinical Excellence Award to be recognised in the PIP in which such salary increase was awarded, earned, or paid insofar as those are different periods.
34. The Adviser highlighted a section of PTM053800. PTM053800 provides guidance on the treatment of backdated pay rises. It addresses scenarios where “a salary increase [is] granted at a date within one pension input period but has backdated effect to a previous pension input period”. It provides that, when a salary increase is awarded in one year (or PIP) and backdated in respect of service completed in a previous PIP, the related increase in pension should not be treated as arising in the previous PIP but recognised in the PIP in which it is awarded. In effect, the increase in pension is to be recognised in the year (or PIP) in which the award is made, not in the year when the employee provided the service in respect of which the salary increase is paid (i.e. when it was earned). PTM053800 does not specifically address scenarios where pay is awarded and earned in one PIP but paid in a later PIP.
35. In Dr W’s case the salary increase was originally awarded in December 2018 and backdated to 1 April 2018, but it is not being backdated to a previous PIP. However,

amounts payable or earned in respect of service during 2018 and 2019 were not paid until February and March 2020 (in PIP 2019/2020).

36. The Finance Act 2004 provides that the pension input amount for any PIP is calculated using the annual rate of pension that would be payable if the individual were entitled to payment of such pension immediately before the start of the PIP and the annual rate of pension that would be similarly payable at the end of the PIP. What would be payable if the individual became entitled to the pension immediately before the end of each PIP is to be determined in accordance with the relevant scheme rules. Under the Scheme Regulations, the amount of pension earned in any year is based on the 'standard earned pension' for that year being $1/54^{\text{th}}$ of the member's pensionable earnings for the year.
37. The issue is then whether a salary increase awarded in December 2018 and payable, subject to continued eligibility, for five years from 1 April 2018 (i.e. with some backdating but not to a previous PIP) but then not actually paid until February and March 2020 would qualify as pensionable earnings for the purpose of the Scheme Regulations in the 2018/19 PIP and following PIPs. In my view, pensionable earnings for any year under the Scheme Regulations, refers to the salary or wages the employee is entitled to in respect of their service in that year, i.e. the amount earned and payable under their terms and conditions of employment as applicable to them during that year, irrespective of when the amounts so payable are actually paid.
38. As such, if the increase was awarded in 2018 and payable from that date in respect of Dr W's service from 1 April 2018, the salary increase payable during the year 2018/19 should be included in her pensionable earnings for the year 2018/19 and therefore should be recognised in the 2018/19 PIP for the purpose of determining the relevant pension input amount, notwithstanding that she did not receive payment until late in the 2019/2020 PIP. As such, the increase having been awarded in 2018, Dr W became entitled to the increased salary and associated increase in her pension in 2018. It has been correctly treated as being included in the closing value at the end of that PIP, which was 2018/19.
39. I do not uphold Dr W's complaint.

Camilla Barry
Deputy Pensions Ombudsman
08 April 2025

Appendix One: PTM053800 - Annual allowance: pension input amounts: backdated pay rises

“Backdated salary rises can be relatively common, primarily occurring in two scenarios: in situations where negotiations with a trade union representing a large number of employees end some time after the date on which salaries are deemed to have increased, and in individual salary negotiations for senior management which may involve remuneration committee consideration

As a consequence, a salary increase could be granted at a date within one pension input period, but has backdated effect to a previous pension input period.

What was paid and when is a matter of fact. Where the salary increase is awarded at a date falling within one pension input period (the current pension input period) but has backdated effect to a previous pension input period the effect of the salary increase is included in the current pension input period and not in the previous pension input period. This would not, of itself require recalculation of the previous pension input amount in order to arrive at a new opening value for the current pension input period.

Depending on the timing of the next year's salary negotiations, some pension input periods could see the impact of two salary increases. However, carry forward of any unused annual allowance might reduce the possibility of an individual being liable to the annual allowance charge in these circumstances.

Example:

- for the purpose of this example CPI is assumed to be 3%
- Dave has an arrangement in a defined benefits scheme where he accrues a 60th benefit for each year of service
- Dave's employer usually concludes the salary negotiations for each year 4 months before the end of the pension input period for Dave's arrangement and any salary increase is paid from the following month
- at the start of the previous pension input period Dave had 19 years' service and his final pensionable salary was £80,000
- at the end of the previous pension input period Dave had 20 years' service but still had final pensionable salary of £80,000
- his final pensionable salary had not increased because the salary negotiations covering that pension input period had not been concluded by the end of the pension input period
- Dave's pension input amount for the previous pension input period was:

$$(20/60 \times £80,000 \times 16) - (19/60 \times £80,000 \times 16 \times 1.03) = £9,173.45$$

- during the current pension input period Dave's employer concludes the salary negotiations for the previous year as well as the current year
- there is a backdated increase of 2% for the previous year which increased Dave's final pensionable salary to £81,600 and a 1% increase for the current year which increases Dave's latest final pensionable salary to £82,416
- the pension input amount for the previous pension input period does not change despite the backdated salary increase
- this is because the salary increase was not in payment when the previous pension input period ended
- the opening value for the purpose of the current pension input period is based on Dave's annual rate of pension just before the beginning of the pension input period
- like the closing value of the previous pension input period, the opening value of the current pension input period is based on Dave's final pensionable salary of £80,000 rather than £81,600 because Dave's salary increase for the previous year was not in payment just before the start of the current pension input period
- Dave's pension input amount for the current pension input period is:

$$(21/60 \times £82,416 \times 16) - (20/60 \times £80,000 \times 16 \times 1.03) = £22,063.05."$$

Appendix Two: The Finance Act 2004.

“Section 234 Defined benefits arrangements

- (1) The pension input amount in respect of a defined benefits arrangement is the amount of any increase in the value of the individual's rights under the arrangement during the pension input period of the arrangement that ends in the tax year.
- (2) There is an increase in the value of the individual's rights under the arrangement during the pension input period if—
 - (a) the opening value of the individual's rights under the arrangement, is exceeded by
 - (b) the closing value of the individual's rights under the arrangement.
- (3) The amount of the increase in the value of the individual's rights under the arrangement during the pension input period is the amount of that excess.
- (4) The opening value of the individual's rights under the arrangement is—

$$(16 \times PB) + LSB$$

where—

PB is—

- (a) if the pension input period is the first pension input period of the arrangement, the annual rate of the pension which would, on the valuation assumptions (see section 277), be payable to the individual under the arrangement if the individual became entitled to payment of it immediately before that pension input period (or is nil if no such annual rate would be so payable), or
- (b) (in any other case, the annual rate of the pension which would, on the valuation assumptions, be payable to the individual under the arrangement if the individual became entitled to payment of it at the end of the immediately preceding pension input period, and

LSB is—

- (a) if the pension input period is the first pension input period of the arrangement, the amount of the lump sum to which the individual would, on the valuation assumptions, be entitled under the arrangement (otherwise than by commutation of pension) if the individual became entitled to the payment of it immediately before that pension input period (or is nil if there is no such lump sum to which the individual would be so entitled), or
- (b) in any other case, the amount of the lump sum to which the individual would, on

the valuation assumptions, be entitled under the arrangement (otherwise than by commutation of pension) if the individual became entitled to the payment of it at the end of the immediately preceding pension input period.

(5) The closing value of the individual's rights under the arrangement is—

$$(16 \times PE) + LSE$$

where—

PE is the annual rate of the pension which would, on the valuation assumptions, be payable to the individual under the arrangement if the individual became entitled to payment of it at the end of the pension input period, and

LSE is the amount of the lump sum to which the individual would, on the valuation assumptions, be entitled under the arrangement (otherwise than by commutation of pension) if the individual became entitled to the payment of it at that time.”