

## The Ombudsman's Determination

Applicant	Ms N
Scheme	NHS Pension Scheme
Respondent	NHS Business Services Authority ( <b>NHS BSA</b> )

### Outcome

1. I do not uphold Ms N's complaint. However, NHS BSA, should calculate and provide Ms N with an early retirement quotation detailing the benefits that could currently be paid to her.

### Complaint summary

2. Ms N's complaint concerns the provision of incorrect information about her entitlement to a refund of contributions.

### Background information, including submissions from the parties

3. Ms N was employed by the NHS between 1 January 2003 and 20 March 2005. During this time, Ms N was a member of the 1995 section of the Scheme (**the 1995 Section**).
4. On 22 July 2006, NHS BSA sent Mrs N a statement for her 1995 Section benefits which said that her benefits had now been preserved. Under section five of the letter "Can I join the NHS Pension Scheme again before I reach age 60" it said:

"Provided you are working in the NHS, you can normally apply to rejoin the Pension Scheme at any time. If you do rejoin the Scheme, you will earn further benefits. These are added to the "preserved" benefits from your earlier membership..."
5. On 29 November 2021, Mrs N re-joined the NHS on a 12-month fixed term contract. Thereafter, Ms N was automatically enrolled into the 2015 section of the Scheme (**the 2015 Section**).

6. The 2015 Section is administered in accordance with the NHS Pension Scheme Regulations 2015 (**the 2015 Regulations**). Regulations 22, 40 and 72 are relevant in Ms N's case, and provide the criteria that need to be met for a refund of contributions:

**"22 Qualifying service**

(1) The qualifying service of a member (M) is the aggregate of the following periods—

- (a) M's pensionable service, except service mentioned in regulation 20(1)(c);

...

(7) Relevant qualifying service in a connected scheme is service that counts for the purposes of—

- (a) regulation C3 of the 1995 Regulations; or
- (b) regulations 2.A.5 or 3.A.5 of the 2008 Regulations"

**40 Eligibility for refund**

(1) Contributions made by a member (M) must be repaid to M if—

- (a) the 1993 Act condition applies; or
- (b) the short service condition applies.

(2) The "1993 Act condition" is that—

- (a) Chapter 2 of Part 4ZA of the 1993 Act applies to M; and
- (b) the repayment is made in accordance with that Chapter.

(3) The short service condition applies if—

- (a) M does not qualify for benefits under regulation 72;
- (b) M is not a pensioner member;
- (c) M ceases to be an active member;
- (d) the 1993 Act condition does not apply to M; and
- (e) M makes a claim in writing to the scheme manager for the repayment.

**72 Qualifying for retirement benefits**

(72) A member is qualified for retirement benefits under this scheme if—

- (a) the member has at least 2 years' qualifying service.."

7. On 21 December 2021, Ms N noticed that £322.62 worth of pension contributions were deducted from her monthly salary.
8. On 11 January 2022, NHS BSA wrote to Ms N and offered her the opportunity to amalgamate her 1995 and 2015 Section benefits.
9. On 13 January 2022, Ms N telephoned NHS BSA's customer contact centre to query whether, once her fixed term contract finished, she could receive a refund of contributions for the 2015 Section (**the Call**). The NHS BSA representative incorrectly told Mrs N that she could apply for a refund of contributions when her fixed-term contract ended.
10. On 4 August 2022, Ms N was told that her fixed-term contract would not be extended and that her employment would finish at the end of November 2022.
11. Between August and September 2022, Ms N corresponded with NHS BSA to opt out of the Scheme and apply for a refund of contributions. During this period NHS BSA informed Ms N that she was not entitled to a refund as her pensionable service was in excess of two years. The pensionable service attributable to her 2015 Section benefits was linked to her 1995 Section service. NHS BSA sent Ms N an opt out form to prevent any further contributions being deducted from her salary.
12. Ms N submitted a complaint under stage one of the Scheme's internal dispute resolution procedure (**IDRP**).
13. On 10 October 2022, NHS BSA provided its stage one IDRP response and said that Ms N was not entitled to a refund of contributions for the 2015 Section. This was because her combined pensionable service, for both the 1995 and 2015 Sections was in excess of two years. It agreed that she was provided with incorrect information during the Call.
14. On the same day, Ms N asked for her complaint to be investigated under stage two of the Scheme's IDRP. She said that she was not provided with any information about automatic enrolment before she was enrolled into the 2015 Section.
15. On 15 December 2022, NHS BSA responded to Ms N's stage two IDRP complaint and said that:-
  - Under the Pensions Act 2008, NHS employers were required to assess individuals, at prescribed intervals and enrol, or re-enrol, them into the Scheme.
  - NHS employers were required to inform their employees of how the automatic enrolment process worked and how it applied to them.
  - She was not eligible for a refund as her total amount of pensionable service between each section under the Scheme was in excess of two years.
  - In recognition of the provision of incorrect information during the Call, and for the service she received, it offered her £500.

### **Ms N's position**

16. She was provided with incorrect information about her entitlement to a refund of contributions during the Call. The NHS BSA representative assured her, during the Call, that the 1995 and 2015 Sections were completely separate and not linked. Consequently, both she and the representative were under the impression that if her temporary contract ended, she could apply for a refund of contributions in November 2022.
17. If she had been made aware of the correct position, that the 1995 and 2015 Sections would be linked in terms of continued pensionable service, she would have opted out of the Scheme much sooner than she did.
18. As she was employed through a temporary NHS contract, with no guarantee that the contract would be extended or made permanent, she wanted to save as much money as possible. Since her contract ended, she was relying on savings and her partner to help her financially. The refund of contributions would make a substantial difference in her circumstances.
19. Her NHS Employer, Public Health Wales (**PHW**), did not provide her with any information about the auto-enrolment process, or how it may affect her previous period of service. She queried with her manager whether she needed to be enrolled into the Scheme; however, her manager told her that it was an automatic process which she was unable to stop.
20. She was aware that if she did receive a refund, it would only be the contributions she paid less tax at her normal rate.

### **NHS BSA's position**

21. There was no dispute that Ms N was given incorrect information during the Call. NHS BSA also accepts that Ms N was incorrectly provided with a link to a refund application in August 2022, when she should not have been. In recognition of these errors, it had offered to pay £500 to Ms N, which she was yet to accept.
22. It was for Ms N's NHS Employer to provide her with the necessary information about auto enrolment in relation to her specific circumstances. That is, how it may affect her as she held benefits in the 1995 Section. It understood that Ms N's NHS Employer would have written to her at the time with the necessary information.
23. Ms N suffered a loss of expectation that she was entitled to a refund of her contributions. However, in paying into the 2015 Section, she had accrued valuable benefits which she could claim from age 55, albeit with a reduction to account for it being taken early.
24. Alternatively, Ms N could leave her 2015 Section benefits deferred, accruing annual cost of living increases. Thereafter, she could claim the 2015 Section benefits at her normal retirement age of 65. She was also eligible to transfer her benefits to another pension provider.

25. While Ms N was an active member of the 2015 Section she was also covered by the Scheme's life assurance and ill health cover.
26. Ms N paid £2,488.24 worth of contributions into the Scheme, with her NHS Employer paying £3,847.38. If she did receive a refund of contributions, she would only receive her contributions back less income tax at her marginal rate.
27. Regulation 40 of the 2015 Regulations provides that a refund of contributions can only be paid if the individual has less than two years' worth of qualifying membership under the Scheme. Mrs N already accrued more than two years' worth of qualifying service during her membership in the 1995 Section. NHS BSA can only act within the provisions set out in the 2015 Regulations. It is not permitted to act in any other way, nor was there any discretion available under the 2015 Regulations for it to do so.

### **Preliminary Decision**

28. I issued a Preliminary Decision on 7 July 2025. Ms N did not accept the Preliminary Decision and made further submissions, which are as follows:-
  - She believed that NHS BSA were able to use the 2015 Regulations to allow its telephone operatives to provide misinformation with little to no recourse. This meant that, as in her case, if an individual was provided with incorrect information during a telephone call, NHS BSA could claim that it was a "training issue".
  - She was never provided any auto-enrolment information from her NHS Employer, PHW, before she was enrolled back into the Scheme in November 2021. She was told by NHS BSA that she should have received a six-week notice warning her that she would shortly be enrolled into the Scheme, along with the necessary information to allow her to make an informed decision about whether or not to re-join the Scheme. At no point did she receive any such notice or information.
  - The only information she received was a letter in January 2022 informing her that she could amalgamate her 1995 Section benefits into the 2015 Section. It was this letter that led her to making the Call.
  - She was informed that as she was over the age of 55, and if the value of her Scheme benefits was below £10,000, then she would be able to claim them as a small pot lump sum, or via trivial commutation. Due to her previous experience with NHS BSA, she did not trust them to provide her with accurate information about her entitlement.

### **Ombudsman's Decision**

29. Ms N's complaint relates to the provision of incorrect information about her eligibility for a refund of contributions from the 2015 Section.
30. Ms N has also said that her previous employer, PHW, did not provide her with the required auto-enrolment outlining the options available to her before she was automatically re-enrolled into the 2015 Section of the Scheme. I do not doubt Ms N's

claim that she did not receive any pre-auto-enrolment materials. However, I am unable to comment on this matter as the complaint accepted for investigation is against NHS BSA, not PHW. If Ms N wishes to pursue this matter any further, she is required to contact PHW.

31. NHS BSA does not dispute that Ms N was provided with incorrect information on the terms of her participation in the 2015 Section, which I consider amounts to maladministration.
32. I also find that it was an unequivocal representation which NHS BSA ought reasonably to have expected Ms N to rely on in deciding whether or not to opt out of the 2015 Section and which she did in fact rely on in deciding not to opt out immediately. However, I find that she has not sustained any financial loss in consequence of such reliance since the value of the benefits that she has accrued, through her own and her NHS Employer's contributions, are likely to be greater than the value of her own contributions net of tax.
33. I find that while it is deeply unfortunate that Ms N was provided with incorrect information, NHS BSA is only permitted to pay her benefits or any refund of contributions in accordance with the 2015 Regulations. The provision of incorrect information does not permit NHS BSA to depart from the 2015 Regulations.
34. Regulations 40 states that in order for a refund of contributions to be paid, the "1993 Act conditions" or the "short service conditions" need to be met. The short service conditions are met when a member does not qualify for retirement benefits under regulation 72. That is, they have less than two years of qualifying pensionable service. Regulation 22(7) provides for qualifying service in previous sections of the Scheme, for example the 1995 Section, to be linked to current sections, such as the 2015 Section.
35. Ms N was a member of the 1995 Section between 1 January 2003 and 20 March 2005. For this period of service alone Ms N qualified for retirement benefits under regulation 72. Consequently, when Ms N was automatically enrolled into the 2015 Section, her qualifying service between the 1995 Section and the 2015 Section was in excess of two years. So, the short service condition under regulation 40 was not met and Ms N is not eligible for a refund of contributions. The 2015 Regulations are unambiguous in their nature and do not provide any latitude for NHS BSA to exercise discretion on the matter. I am therefore satisfied that NHS BSA have acted in accordance with the applicable regulations in refusing to Ms N's request for a refund of contributions.
36. I note that Ms N has queried whether she can claim her Scheme benefits as a one-off lump sum through trivial commutation. She has said that due to the misinformation provided during the Call, she does not trust that NHS BSA will be capable of providing her with accurate information about her entitlement.
37. It is perhaps understandable that, based on Ms N's prior experienced with NHS BSA, she is unsure of the accuracy of any information she is given. However, the provision

of the misstatement during the Call does not mean that NHS BSA will be unable to accurately calculate her entitlement within the 1995 and 2015 Sections. To aid Ms N's understanding of her current entitlement now that she is over age 55, NHS BSA should provide her with a retirement quotation which makes clear what she is eligible to claim from the 1995 and 2015 Sections and sets out her options including in respect of transfers and trivial commutation.

38. I appreciate NHS BSA has offered Ms N £500 in recognition of its errors during the Call. I consider that this is appropriate for the significant distress and inconvenience Ms N has suffered. She has not sustained a financial loss as she is entitled to benefits under the Scheme in respect of her contributions to the 2015 Section which I find are at least equal in value to the contributions she paid. I do however find that Ms N has suffered significant inconvenience as she was relying on savings, and her partner, to help her financially in the near term and the refund of contributions would have made a substantial difference in her circumstances.
39. NHS BSA should contact Ms N directly to make payable the £500 in recognition of the significant distress and inconvenience she suffered. NHS BSA should also provide Ms N with an early retirement quotation for her benefits in the 1995 and 2015 Sections.
40. I do not uphold Ms N's complaint.

**Camilla Barry**

Deputy Pensions Ombudsman

18 July 2025