

Ombudsman's Determination

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

Outcome

1. I do not uphold Dr N's complaint and no further action is required by NHS BSA.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Dr N is complaining that NHSBSA refused to refund him the pension contributions he made while he was a student in accordance with the legislation which governed the Scheme at that time. Dr N also says that NHSBSA acted with maladministration in its advertisement of added years to him as a beneficial purchase without warning him of any associated risks.

Background information, including submissions from the parties

4. Dr N's pre-practitioner membership is covered under Regulation 9 and 23 of the Scheme rules. Regulation 9 states:

"(1) Subject to sub-paragraph (3), if a member does not have more than 10 years' officer service on first becoming a practitioner, the member's officer service before first becoming a practitioner will be treated as practitioner service."

5. Regulation 23 states:

"23 Reckoning of service in certain continuing employments.

(1) There shall be reckonable for the purpose of calculating the amount of a benefit payable to or in respect of an officer under these regulations, in addition to any period of employment otherwise reckonable under these regulations as service in relation to the employment he has ceased to hold (in this regulation referred to as his "main employment"), any other period of

employment which has been reckonable as service under these regulations or the previous regulations and-

(a) which has terminated before or at the same time as the termination of his main employment;

(b) is service in respect of which no benefit under these regulations or transfer payment has been paid;

(c) is not service in respect of which contributions have been returned to the officer and have not been repaid by him; and

(d) is not service which has been followed by any continuous period of 12 months or longer during no part of which the person was an officer.

(2) Where on giving up his main employment an officer continues in some other employment, any period of service which apart from this paragraph is reckonable in relation to one only of those employments shall be reckonable also in relation to the other employment for the purpose of determining whether any benefit is payable to or in respect of him but not for the purpose of calculating the amount of any such benefit.”

6. On 29 April 1981, NHS BSA wrote to Dr N in response to an enquiry he made about buying additional years. The letter said that Dr N could purchase a maximum of 7 added years and explained his options.
7. On 21 May 1981, Dr N’s employer, Manchester Area Health Authority, sent Dr N an illustration of the cost of purchasing added years.
8. On 18 June 1981, Dr N applied to purchase 5 added years whilst he was working as a House Officer.
9. On 1 February 1985, Dr N began working as a Trainee General Practitioner with Rochdale Family Practitioner Committee.
10. On 12 April 1985, Dr N sent a letter to NHS BSA enquiring about his pension status when he became a GP.
11. On 30 April 1985, NHS BSA sent a letter to Dr N saying:

“I can advise you that your service as a Trainee GP will continue to be classed as officer status for our record purposes until you complete your training and either go into partnership as an Assistant GP or become a Principal Practitioner. At benefit stage you will receive separate awards for your Officer service and Practitioner service”.
12. On 31 May 1995, Dr N requested an estimate of his pension benefits from NHS BSA.
13. On 25 June 1995, Dr N received an estimate of his pension benefits. It incorrectly included his purchased additional years in Dr N’s Officer membership that was

concurrent with his GP service instead of being included with his pre-practitioner Officer membership.

14. On 21 October 2008, Dr N requested an estimate of his pension benefits from NHSBSA.
15. On 22 October 2008, NHS BSA sent Dr N an estimate, explaining that the most beneficial option was to dynamise all of the Officer membership including the added years.
16. On 18 July 2009, Dr N received an estimate from NHS BSA showing the added years purchase included correctly.
17. On 24 September 2012, Dr N received a letter from NHS BSA in response to his query in relation to a transfer of his pension benefits. The letter explained that as Dr N was still an active member of the Scheme, the guaranteed transfer value was not possible.
18. All the subsequent estimates that Dr N have received until October 2013 correctly included added years.
19. It was not until April 2013 that Dr N queried how the 'old style' added years were calculated and enquired about his options.
20. Dr N invoked internal dispute resolution procedure (IDRP) stage 1.
21. On 13 May 2014, NHS BSA responded to Dr N under IDRP stage1 that said:

“...the purchase of added years is purely voluntary and NHS Pensions (or any predecessors) is not and has never been allowed to offer financial advice...NHS Pensions cannot predict the path a member's career will take in the future. I am satisfied that full information relating to the inclusion of the added years purchase in the calculation of retirement benefits was provided to you at the time...I note that in the estimate provided to you on 25 June 1995, your added years purchase was not included in the calculations correctly. I apologise for this error. However, I note that all subsequent estimates have been calculated correctly and have had the flexibility tests that resulted from the new GP contract in 2003 applied to them”.
22. Dr N appealed against the decision and invoked IDRP stage 2.
23. On 26 August 2014, NHS BSA sent Dr N a response under IDRP stage 2 that said:

“The possibility that you might have made a decision in 1981 not to buy added years with a view to achieving greater benefits would have been heavily dependent upon the path your career would take. At that time you had not yet embarked on a career in general practice. It would require assumptions that benefits derived from variable future practitioner earnings would outweigh benefits you might achieve from officer employment that many practitioners

also undertake. With those variables, not to mention the possibility of future changes in legislation affecting benefit calculations we believe it was appropriate that the information we gave you was limited to facts relevant to your scheme membership at that time”.

24. Dr N decided to bring the complaint to this Office on 2 November 2015.
25. On 18 January 2017, this Office received a formal response from NHS BSA that said:
“...Claims are not traditionally received when there is a short break in membership but payment of a refund becomes mandatory when a break in between two periods of membership is 12 months or more. Although Dr N had a number of short periods of membership none of the breaks reached 12 months. We have no record of him enquiring about a refund.”

Dr N's position:

26. His pre-practitioner employment should not have been pensionable as he was a locum doctor and there were many restrictions on locum doctors contributing to the Scheme.
27. His contributions were returned for one specific period of employment with South Manchester Health Authority and he should have had a refund of his contributions when he was a locum doctor.
28. The analysis of the pensions estimate by the specialist accountancy firm, Moore and Smalley, clearly identifies the anomalies in the estimate. It was not until 2 January 2014 that his 5 added years were calculated as part of his Officer membership, to his financial detriment.
29. Dr N referred to Regulation 37(2) that states that the contributions must not have been returned to the officer and should be attributable to service which ‘was reckonable under these regulations’. “Service” is defined under the Regulations as ‘in relation to an officer of an employing authority, means continuous employment by that authority as an officer’.
30. Had he bought 4 additional years instead of 5, his pension forecast would have been higher by over £9,000. On the contrary, if he had not bought any additional years his pension forecast would have still been £2,600 better off.
31. He raised questions about his Officer membership and the effect of his added years purchase on his pension in April 1981 and October 1987, however NHSBSA had not responded to him.
32. He believes that NHS BSA acted with maladministration in connection with this complaint. This is evident by their poor-record keeping and the fact that Dr N should have been warned about the risks of purchasing added years.

NHSBSA's position:

33. All full time employment was pensionable, irrespective of the length of the employment.
34. Dr N's contributions were refunded previously as it was paid incorrectly. So there is a clear distinction between short service refund and returning contributions paid incorrectly.
35. The restrictions mentioned by Dr N did not apply to locum doctors hence his assessment is incorrect.
36. There are flexibilities enabling Officer membership to be treated as GP membership but only in specific defined circumstances included in the Scheme Regulations. When there is less than 10 years Officer membership before becoming a GP, it can be treated as GP membership and used to increase the basic dynamised GP pension benefits. When there is more than 10 years Officer membership, members receive more beneficial flexibilities.
37. NHSBSA also said:

“...I am unable to accept your suggestion that the added years were mis-sold. Although you point towards the possibility of achieving better results that view relies upon calculations which were not available, either at the time when the added years were purchased or currently...the mis-selling and risk you point to rely upon hindsight to look back across the whole of your career and disregarding the basis upon which the offer to buy added years was made and accepted”.

Adjudicator's Opinion

38. Dr N'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 briefly below:-
 - Dr N's complaint should not be upheld against NHSBSA because it was Dr N's choice to purchase added years. And prior to making his decision, Dr N had received correct information from NHSBSA to enable him to understand the procedure for purchasing added years.
 - NHSBSA responded to Dr N's enquiry in relation to purchasing added years by sending him an illustration and an application form. The Adjudicator was satisfied that the information Dr N received was not misleading based on his circumstances and the facts at the time.
 - It was the Adjudicator's view that by signing and dating the application for purchasing added years, Dr N agreed to do so. Based on the evidence the Adjudicator had seen, Dr N would have had sufficient information at the time to make his decision whether or not to go ahead with the purchase. The Adjudicator

has seen no evidence of Dr N contacting NHS BSA seeking clarification in relation to the purchase. The Adjudicator believed the onus was on Dr N to do so had he had any concerns at the time.

- NHS BSA's letter dated 30 April 1985 clearly explains Dr N's position regarding his pension by advising that his Officer benefits will be separate to his GP ones. Again, the Adjudicator has seen no evidence of Dr N contacting NHS BSA in relation to this letter.
- It is unfortunate that Dr N's Officer membership has exceeded 10 years, meaning it cannot be added to his GP membership. However, the Adjudicator's view was that Dr N did not suffer any financial loss as a result of this. His current benefits are still higher than they would have been had he not purchased additional years but not as high as he would have expected.
- The Adjudicator agreed that NHS BSA correctly interpreted the Scheme Regulations and that Dr N is only entitled to the benefits provided under these Regulations. The Adjudicator disagreed with Dr N when he says he should be allowed to receive the higher incorrect benefits.
- The Adjudicator also believed that NHS BSA provided a detailed explanation regarding the cost of 'old-style' added years, description of the benefit calculation and other points raised by Dr N. Dr N's decision was based on an informed choice and NHS BSA had no obligation to provide him with financial advice. Therefore, the Adjudicator disagreed with Dr N's assertion that NHS BSA acted with maladministration in connection with his complaint.
- It was therefore the Adjudicator's opinion that this complaint should not be upheld.

39. Dr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Dr N provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Dr N for completeness.

Dr N's further comments are:-

- Dr N contests the start date of his employment with NHS as he says that it should be 1 February 1982 when he started his training and not 1985.
- NHS BSA did not address or acknowledge Dr N's financial loss throughout his complaint.
- In order for Regulations 9 and 23 to have applied, Dr N's pre-practitioner service would have to have qualified him as an "officer" within the meaning of regulation 4. Clearly his time before 1981 did not qualify as Officer service within the requirements of regulation 4. Regulation 4 states:

“4 Application

Subject to regulations 5 and 8(3) this Part of these regulations shall apply to the following officers of an employing authority who have attained the age of 18 years -

Every whole-time officer whose duties are wholly or mainly administrative, professional or clerical;

(h) any trainee practitioner, who for the purposes of this Part of these regulations shall be treated as being a whole time officer in the employment of an Area Health Authority:...

and the term “officer” shall be construed accordingly.”

- NHS BSA never provided an accurate and complete breakdown of Dr N's pension benefits, only estimates.

Ombudsman's decision

40. Whilst I note Dr N's assertion that he began his training on 1 February 1982, this is the date when he became a junior doctor. During this time Dr N would have received further training to enable him to subsequently take up a career in hospital medicine and enter general practice. It is not until Dr N became a Trainee Practitioner when his intention of becoming a practitioner became clear. To determine Dr N's complaint the essential date to consider is the date when he started as a Trainee Practitioner and not as an Officer. I have seen no evidence that the period of service in question should be treated as pensionable and Dr N has not provided any evidence to substantiate his assertion.
41. Dr N believes that NHS BSA did not consider the part of his complaint about financial loss. However, I find that in its letter dated 26 August 2014 under IDRP stage 2, NHS BSA addressed this sufficiently by providing a breakdown of Dr N's benefit calculation and its method. I do not find that there is any evidence that he has suffered financial loss.
42. Dr N was correctly included in the Scheme as an Officer under regulation 4 of the 1980 Regulations. Regulation 4 essentially places a requirement on NHS BSA to treat an Officer as a Trainee Practitioner which applies to Dr N's case. The implications of Regulation 9 and 23 have already been considered by the Adjudicator as set out in her Opinion and I agree with her findings. Based on the Regulations, Dr N's Officer pay has been treated as Practitioner's pay and dynamised from the year when the pay was received. So I do not find that NHS BSA have acted with maladministration in this case.

PO-10779

43. Lastly, Dr N says that he has never been provided with an accurate and complete breakdown of his pension benefits by NHS BSA. However, it is open to him to contact NHS BSA to make that request.
44. Therefore, I do not uphold Dr N's complaint.

Anthony Arter

Pensions Ombudsman
20 June 2017