

Ombudsman's Determination

Applicant	Mr E
Scheme	NHS Pension Scheme (the Scheme)
Respondents	NHS Business Services Authority (NHS BSA)

Outcome

1. Mr E's complaint against NHS BSA is partly upheld, but there is a part of the complaint I do not agree with. To put matters right, for the part that is upheld, NHS BSA shall compensate Mr E for the error it made.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr E has complained that NHS BSA incorrectly re-enrolled him in the 2008 Section of the Scheme. Mr E says that the Scheme refused to pay him pension benefits under the 2008 Section and instead it started paying him pension benefits under the 1995 Section that he did not ask for.

Background information, including submissions from the parties

4. Mr E was a member of the Scheme (1995) during various employments from 18 February 1980 to 15 November 1982. Upon leaving the Scheme his accrued retirement benefits were preserved for payment at age 60.
5. On 16 March 2009, Mr E re-joined the NHS and was wrongly re-enrolled in the 2008 Section and was incorrectly allowed to pay contributions as if he had membership in both Sections of the Scheme.
6. On 26 September 2013, Mr E received a letter from NHS BSA enclosing a retirement benefits application form (AW8P). Mr E did not claim his retirement benefits.
7. On 18 July 2014, in response to Mr E's enquiry NHS, BSA sent a letter to Mr E enclosing a membership statement as at 31 March 2014.
8. It was not until August 2014 that NHS BSA and the Scheme realised the error. NHS BSA sent Mr E a letter notifying him that under the 1995 Section of the Scheme, a

member is not allowed to re-join the Scheme after the date on which they become entitled to receive benefits. The letter said:

“...your employer should not have deducted, nor should we have accepted, the contributions you paid in employment(s) between 16/03/2009 and 31/03/2014 inclusive...because you should have already received payments of your benefits, your pension will be brought into payment once you have returned the necessary information noted in the next paragraph and will automatically be backdated to your 60th birthday. When paying the arrears we will also include any cost of living increases that you are entitled to”.

9. NHS BSA also enclosed an AW8P that Mr E subsequently completed and returned, expecting pension benefits from both the 1995 and 2008 Section of the Scheme.
10. On 28 October 2014, NHS BSA sent Mr E a letter telling him the pension benefits to which he is entitled to receive from the 1995 Section.
11. On 18 November 2014, Mr E received a letter from NHS BSA informing him that it will commence paying his pension benefits.
12. On 23 February 2014, Mr E contacted NHS BSA to make a complaint on why he has not been receiving his pension benefits under the 2008 Section of the Scheme. NHS BSA said that it had sent a letter dated 12 August 2014. Unfortunately Mr E did not seem to have received it. On 16 March 2015, Mr E made a formal complaint to NHS BSA saying that he is not prepared to accept a refund of his contributions and wants the benefits for which he has received estimates.
13. On 17 March 2015, NHS BSA sent Mr E an email acknowledging his complaint.
14. On 14 May 2015, NHS BSA sent a response to Mr E under the internal dispute resolution procedure (IDRP) stage1. The letter said:

“...I would like to offer my sincere apologies for the problems you have encountered and I am sorry that you were allowed to continue to pay pension contributions for over 5 years when you were ineligible to do so...I have not been able to ascertain whether you received any scheme literature or attended an induction course...I can confirm that you are now in receipt of your correct entitlement under the NHS Pension regulations and that the only option is to have the pension contributions you paid from March 2009 returned to you...I will arrange for statutory interest to be paid on the pension arrear and lump sum you received recently...The Senior Management Team has authorised a payment of £250.00, to be paid to you by way of an apology, and in recognition of the distress and inconvenience”.

15. On 20 May 2015, Mr E appealed the IDRP stage 1 decision and invoked the second stage.
16. On 16 December 2015, NHS BSA sent a letter to Mr E apologising for the delay in responding to him.
17. On 22 December 2015, NHS BSA sent a response under IDRP Stage 2, that said:

“We apologised that the scheme contributions were deducted in error from 2009 to 2014, however members cannot receive benefits that they are not entitled to under the provisions of the NHS Pension Scheme Regulations...In recognition of the distress and inconvenience this caused we paid you £250.00. We will also pay interest on the contributions that were returned to you. The interest on this amount is £345.39. We will also pay interest on your pension arrears. The interest on this amount is £321.68”.
18. On 21 January 2016, Mr E brought the complaint to the Pensions Ombudsman, (TPO).
19. On 22 February 2016, TPO received a formal response from NHS BSA maintaining that its previous decision was correct.

Adjudicator's Opinion

20. Mr E'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:-
 - NHS BSA has agreed that Mr E was incorrectly re-enrolled in the 2008 Section of the Scheme, so there is no dispute that an error has occurred.
 - NHS BSA relies on Regulation B3(2) and 2.B2(2) of the NHS Pension Scheme Regulations 1995 (see Appendix 1). The Adjudicator considered the Regulations have been correctly applied. This is because, Mr E's pension was payable from 1 January 2008, his 60th birthday. However, Mr E did not return to employment until 16 March 2009, which meant he was not eligible to re-join the Scheme. However, the Adjudicator did not believe it was this point which was in dispute.
 - Mr E maintains that because of NHS BSA's error it should pay him his pension benefits under the 2008 Section. However, Mr E is only entitled to his correct benefits in accordance with the regulations. He is not entitled to receive those benefits within the 2008 Section because he reached retirement age within the 1995 Section when he incorrectly re-joined the 2008 Section.
 - Mr E said that he did not receive NHS BSA's letter dated 12 August 2014. The Adjudicator could not say whether or not this was the case as there was no evidence to prove either way. However, on balance, it was likely that he did not receive this letter as he applied for his pension benefits under both sections. So

the Adjudicator did not think Mr E would have been aware of the error when making his application to claim his pension.

- It was the Adjudicator's view that NHS BSA rightly upheld Mr E's complaint and instructed his employer to return to him the incorrectly deducted pension contributions; the additional pension purchased, and to pay interest. With regard to the distress and inconvenience he had suffered, NHS BSA offered £250. The Adjudicator believed this was not in accordance with awards directed by the TPO in similar cases, therefore she recommended that NHS BSA pay an award of £500 in respect of the significant distress and inconvenience suffered by Mr E.
 - It is therefore the Adjudicator's opinion that this complaint should be partly upheld.
21. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, and I will therefore only respond to the key points made by Mr E for completeness.
22. Mr E made an assertion that other members of the 1995 Section of the Scheme received correspondence with regard to pension contributions towards the 2008 Section but he has not received it. He maintains that he should have started receiving pension benefits under 2008 Section and not the 1995 Section.
23. Mr E says that his complaint is against NHS BSA and his employer and that this Office should have investigated his complaint against the employer as well.

Ombudsman's decision

24. There is no evidence available to me to suggest Mr E's assertion concerning other members of the 1995 Section is correct. In any event, as stated by the Adjudicator in the Opinion, Mr E is not entitled to receive pension benefits under the 2008 Section of the Scheme rules; he should not have been allowed to enrol in the 2008 Section. So, I do not find that NHS BSA were at fault in this respect.
25. Mr E's employer has not been named as a Respondent, and so I make no finding in respect of the employer, however, NHS BSA has admitted the error and taken full responsibility for it.
26. Therefore, I partially uphold Mr E's complaint.

Directions

27. I direct that within 21 days of this Determination NHS BSA shall pay Mr E:
- (i) £250 in addition to the £250 already paid in respect of the significant distress and inconvenience caused by its maladministration; and

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(ii) NHS BSA shall refund Mr E the incorrectly paid contributions, together with interest, calculated from the date that the contributions were taken, at the rate for the time quoted by the reference banks.

Anthony Arter

Pensions Ombudsman
20 July 2017