

Ombudsman's Determination

Applicant	Mrs E
Scheme	NHS Pension Scheme (the Scheme)
Respondent	NHS Business Services Authority (NHSBSA)

Outcome

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

Complaint summary

3. Mrs E complains that NHSBSA is wrongly refusing to take into account her first two periods of NHS service from 4 June 1973 to 10 December 1977 and 10 May 1981 to 10 June 1982 in its calculation of the benefits available to her from the Scheme.
4. Mrs E says that she did not request a refund of her contributions into the Scheme for both periods of service. Therefore, they should now be aggregated with the pensionable service accrued in the Scheme for her current period of NHS employment which commenced on 22 April 1996.

Background information, including submissions from the parties

5. Mrs E was a member of the Scheme from 4 June 1973 to 10 December 1977 which had been contracted out of the Graduated Pension Scheme at that time. According to NHSBSA however, Mrs E was not contracted out until 1 September 1973.
6. At the date of leaving her employment on 10 December 1977, the relevant SD55 form showed that Mrs E's earnings was £2,470 pa.
7. Regulation 35 of the NHS (Superannuation) Regulations 1961 (as amended) (**the 1961 Regulations**) stipulates that a return of contributions should be made if a member did not qualify for a pension and his/her pensionable earnings had not exceeded £5,000 in any financial year.

8. Since Mrs E's earnings at date of leaving was £2,470 pa, NHSBSA say that in accordance with the 1961 Regulations, she was entitled to a refund of contributions which should have been paid to her shortly after she left NHS employment.
9. According to HM Revenue and Customs (**HMRC**), Mrs E will be entitled to a Graduated Retirement Benefit (**GRB**) for the period 1 September 1973 to 5 April 1975 (the amount of which being dependent on the amount of graduated National Insurance contributions she paid) after NHSBSA had reinstated her membership in the Graduated Pension Scheme by paying a Payment in Lieu (**PIL**) to HMRC.
10. As there was no relevant State pension scheme from 6 April 1975 to 5 April 1978, NHSBSA say that HMRC's records are consistent "with a refund of contributions being made for the period in question" to Mrs E.
11. Regulation 37 of the NHS (Superannuation) Regulations 1980 (as amended) (**the 1980 Regulations**) states that:
 - if a member has five or more qualifying years of membership or annual earnings of more than £5,000 in any financial year then he/she is entitled to defer his/her pension benefits; and
 - a return of contributions should be made if a member does not meet the above criteria
12. For her second period of NHS service from 10 May 1981 to 10 June 1982, Mrs E had accrued only 13 months of qualifying membership in the Scheme and did not have earnings of more than £5,000 in any financial year. In accordance with the 1980 Regulations, a refund of pension contributions was consequently payable to Mrs E for this period of service.
13. This refund has yet to be claimed by Mrs E (further details may be found in paragraph 16 below).
14. Mrs E says that:
 - NHSBSA should not have refunded the Scheme contributions for her first period of service because she had not given it her permission to do so;
 - NHSBSA has not provided any evidence to show that it had paid her the refund;
 - in any case, she was in Saudi Arabia at the time the alleged refund of contributions for her first period of service was made and could not therefore have received it; and
 - NHSBSA have also improperly withheld from her for 35 years the contribution refund for her second period of NHS service which she could have used to purchase additional service in the Scheme.

15. NHSBSA says that:

- a refund of contributions for Mrs E's first period of service would have been paid only on receipt of a claim form completed by Mrs E and her employer;
- it can no longer provide documentary evidence about this refund because copies of the claim form and cheque were not retained beyond seven years as there was no legal requirement to do so;
- the limited records which it still holds about Mrs E indicate that it paid her a refund of her contributions and the cheque was sent to the address on the claim form;
- if this cheque had not been encashed within three months of issue, its validity lapsed but it received no such notification of this;
- the Scheme regulations do not allow the 13 months qualifying service in respect of her unclaimed contributions refund to be added to her accrued pensionable service for her third period of NHS service;
- Mrs E's pension contribution records completed by her employer for the period 4 June 1973 to 10 December 1977 have a clear "WEEDED" stamp on them, which meant that they were no longer required and destroyed after the designated time because there was no pension entitlement remaining;
- if a refund for this period had not been paid, a SD73 letter would be on Mrs E's records and a SD35X form would also be visible;
- a SD73 is the letter which would be sent to members that had not claimed a refund due to them, and the SD35X is the form that records details of the pension contributions that had not been claimed;
- for Mrs E's second period of membership, it has both SD73 and SD35X forms relating to this period of service in its records, indicating that these contributions have not been claimed and refunded;
- the SD73 dated 11 July 1983 was sent to Mrs E's former UK address because Mrs E had not informed NHSBSA of her change of address after moving to South Africa in June 1982 for seven years;
- it is clear that she did not receive any correspondence relating to her pension contributions for this period because of this; and
- it paid a contribution equivalent premium (**CEP**) to HMRC of £277.05 in order to "buy back" Mrs E into SERPS for her second period of service.

Adjudicator's Opinion

16. Mrs E's complaint was considered by one of our Adjudicators who concluded that no further action was required by NHSBSA. The Adjudicator's findings are summarised briefly below:-

- The evidence was clear that Mrs E had paid employee contributions into the Scheme for her first two periods of NHS service. There can therefore be no dispute that Mrs E had been a member of the Scheme for these two periods, but this does not necessarily mean that she was entitled to any pension benefits from them.
- The Social Security Act 1973 which applied at the time Mrs E left the Scheme in December 1977, and in June 1982, stipulated that the granting by a scheme of a deferred pension to a member leaving pensionable service before Normal Retirement Age (**NRA**) under an occupational scheme, applied only if he/she had at least five years' qualifying service. Mrs E was employed by the NHS for less than five years for both her first and second period of service, and did not therefore meet this criterion.
- Mrs E also did not meet the criterion specified in the Regulation 35 of the NHS (Superannuation) Regulations 1961 (as amended) of having pensionable earnings in excess of £5,000 pa in any financial year in order to qualify for a deferred pension.
- Mrs E said that she did not recall receiving such a refund from NHSBSA. If this was the case, it was reasonable to expect that she should have received a statement instead showing what her estimated deferred pension entitlement in the Scheme would be on attaining NRA.
- Moreover, if Mrs E was entitled to a deferred pension from the Scheme for her first period of NHS service, HMRC should hold a record of the Equivalent Pension Benefit (**EPB**) which the Scheme must provide her for contracting her out of the former Graduated Pension Scheme. HMRC did not have such a record for Mrs E. Instead HMRC's records showed that Mrs E had accrued Graduated Retirement Benefits whilst she was a member of the Scheme for her first period of NHS service. She had therefore been bought back into the Graduated Pension Scheme by NHSBSA for the time she was a member of the Scheme, in order to extinguish the EPB payable from the Scheme to her for this period by paying a PIL to HMRC.
- Mrs E should therefore have received a refund of the contributions which she had paid into the Scheme from NHSBSA for her first period of NHS service shortly after leaving.
- Mrs E is also entitled to a refund of contributions for her second period of NHS service and she should now claim that.

17. Mrs E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs E provided her 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 Mrs E for completeness.

Ombudsman's decision

18. Mrs E is adamant that she did not receive a refund of the contributions which she had paid into the Scheme from NHSBSA for her first period of NHS service.
19. I can only reach a view on the evidence available though, and that evidence supports the conclusion that NHSBSA processed the refund as they were required to do and does not support Mrs E's statement that she is entitled to a deferred pension in the Scheme for her first period of NHS service.
20. Although I sympathise with Mrs E's circumstances, I do not consider that there has been any maladministration on the part of NHSBSA, and I do not therefore uphold her complaint.

Karen Johnston

Deputy Pensions Ombudsman
20 December 2017