

## Ombudsman's Determination

Applicant	Dr E
Scheme	NHS Pension Scheme ( <b>the Scheme</b> )
Respondent	NHS Pensions

## Outcome

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

## Complaint summary

3. Dr E is complaining that:
  - he is unhappy that NHS Pensions informed him that he was entitled to a benefit from the Scheme and then said this was a mistake;
  - he disputes that a refund of contributions from the Scheme was paid in 1986; and
  - he disputes the period of service that NHS Pensions have on his service record.

## Background information, including submissions from the parties

4. Dr E has provided the following details in relation to his employment (as confirmed by HM Revenue and Customs (**HMRC**)):

Year	Employer
1982/83	Kingston & Esher HA
1983/84	Kingston & Esher HA and The Mid Surrey Health Authority
1984/85	The Mid Surrey Health Authority
1985/86	The Mid Surrey Health Authority
1986/87	The Mid Surrey Health Authority and National Westminster Bank Plc

5. NHS Pensions have confirmed, also by HMRC, that they paid to contract Dr E back into the state pension for the period between 27 February 1984 and 23 May 1986. HMRC have also confirmed that Dr E was only contracted out of the State Earnings Related Pension Scheme during this period with the Scheme.
6. On 9 June 2015, Dr E contacted NHS Pensions in order to trace a benefit from the Scheme. In NHS Pensions' initial reply, it provided details to Dr E on how to claim his benefits. On receiving his completed forms, it became aware that a refund had been paid to Dr E in August 1986 of £901.99. Dr E was provided with this information and a copy of NHS Pensions' records.
7. Dr E complained to NHS Pensions on 30 October and 13 November 2015 that he did not receive the 1986 refund as it was sent to an old address. He chased a response to this complaint by telephone, but it was not until he instigated the internal dispute resolution procedure (**IDRP**) that NHS Pensions responded to his complaint in full.
8. Under the Stage 1 IDRP response, NHS Pensions apologised for providing misleading information about accessing a benefit and for the delay in responding to the complaint. It confirmed that its records show that he only had membership between 27 February 1984 and 23 March 1986 (amounting to two years and 86 days) which was refunded via payable order (which could only be made to a bank account). It stated that there was no record of the payable order being returned as uncashed and therefore concluded that the refund had been paid.
9. Dr E disputed NHS Pensions' response, in particular, the dates he worked for the NHS and why the refund was sent to an address he says he had not lived in for eight years prior to the refund being sent. Under the Stage 2 IDRP response, NHS Pensions confirmed that it has no details of his being a member of the Scheme prior

to 27 February 1984. But, it could be that the type of work he was undertaking at the time meant that he had to be employed for two years before being eligible to join the Scheme or that he could have been a member of the Civil Service Pension Scheme.

10. In response to the complaint about the refund, NHS Pensions said:

“A transfer or refund of contributions is only paid on application from the member on the appropriate form. NHS Pension records show a refund of contributions was paid in August 1986, but NHS Pensions has not retained the application form or a copy of the payment letter and cannot confirm the address to which the payment was actually sent. However, on the limited records NHS Pensions does hold your last address is shown as... This address would have been provided either by your NHS employer, from information you provided to them, or from your application form for a refund of contributions.

Payment of the refund of contributions would have been made by cheque or payable order; NHS Pensions does not retain records of cashed payments and the account they were paid into or returned payments made in August 1986, however, if the payment had be [sic] returned uncashed then it would have been cancelled and a further letter would have been sent to you at that time to confirm the address, payment details, etc.”

11. The Stage 2 IDRP decision partly upheld the complaint in regards to the information sent to Dr E in September 2015 as being incorrect. The main part of the complaint was not upheld. Dr E remained dissatisfied with the response and complained to this service.

### **Adjudicator's opinion**

12. Dr E's complaint was considered by one of our Adjudicators who concluded that no further action was required by NHS Pensions. The Adjudicator's findings are summarised briefly below.
- The Adjudicator felt that Dr E had not relied to his detriment on the incorrect information NHS Pensions provided in September 2015 and that, on realising its mistake, NHS Pensions informed Dr E quickly of the error.
  - In relation to the complaint about the failure to receive a refund, the Adjudicator acknowledged that it is difficult to prove a negative, i.e. that someone did not receive something. The Adjudicator felt that Dr E's arguments were only speculation and that it was difficult to prove what had happened as the event occurred so long ago. She also appreciated that Dr E could not prove who had cashed the cheque (including himself) and therefore in the absence of any evidence one way or the other, it could not be found that maladministration had occurred in 1986.

- NHS Pensions agreed to reconsider any further information Dr E provided about his employment and hence his membership of the Scheme. Dr E provided his employment history as confirmed by HMRC. NHS Pensions also contacted HMRC (as did the Adjudicator) and was provided with information showing Dr E's contracting out status in relation to the Scheme. On reviewing all of this information, the Adjudicator's view was that while Dr E worked for two health authorities prior to 1984, he was only contracted out of the Scheme between 28 February 1984 and 23 May 1986 and therefore could not have been a member of the Scheme at an earlier date.

13. Dr E did not agree with the Adjudicator's views and submitted the following:

"the one fundamental issue that no one wants to address despite me raising it several times is NHS cannot show me proof that I have had any pension money, yes they can show a cheque was raised but cannot prove where the money went. they actually sent the cheque as they say to an address I lived at 8 years earlier despite having my current address when working for them – why? it seems they cannot provide any reason for this...

there have been many issues with this pension challenge that range from

1 NHS losing initial paperwork

2 informing me I have a pension

3 doubting I worked for NHS from 1983 despite proof

4 sending a cheque to an address I lived at 8 years earlier but I no longer had any connection with

5 NHS cannot confirm my address when working with them – why, if they rely on their records so much the basics of an address of an employee are fundamental surely"

14. As Dr E did not accept the Adjudicator's opinion, the complaint was passed to me to consider. Dr E 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 E for completeness.

### **Ombudsman's decision**

15. Dr E has not disputed the Adjudicator's view in relation to his membership of the Scheme, so I will not comment further on this.

16. I, and NHS Pensions, agree that Dr E was provided with incorrect information about his benefits in the Scheme when he first made contact with them. However, I also agree with the Adjudicator that Dr E did not rely on this information to his detriment (he did not make any financial commitments based on a supposed benefit from the

Scheme and in fact, did not even know in September 2015 what his supposed benefit was worth). Therefore, I can only consider any non-financial loss Dr E may have suffered. In order to award a payment for non-financial loss, I would need to be satisfied that the distress and inconvenience caused to Dr E was significant. In this case, NHS Pensions realised its error and informed Dr E of the correct position quickly. They also apologised for providing incorrect information. I believe this is sufficient in relation to this part of Dr E's complaint.

17. The main part of the complaint is really about whether or not a refund was made and cashed by Dr E. Dr E disputes that it was, while NHS Pensions records show that a refund was made, but cannot confirm who cashed it (only that it is most likely that it was cashed). A related question is whether NHS Pensions were at fault for sending the payment to the address which they did.
18. There is no legal requirement for NHS Pensions to keep detailed records for more than six years. It is therefore not surprising that the information which it now has in relation to the refund is limited. I also note that no evidence has been submitted to support Dr E's statement that NHS Pensions lost paperwork. It is more likely than not that the information he is requesting (such as signed paperwork and bank details) was destroyed in order to comply with data protection laws.
19. This makes it difficult to make a finding of fact as to what happened and it does not help that the matter being complained of occurred over 30 years ago. The Adjudicator is correct in saying that why the refund was sent to that address and not another is merely speculation. The same as to who did or did not cash the cheque. These are matters that may never be known and I can only make a decision based on the evidence submitted. NHS Pensions' records show that a refund was paid to an address that was either provided by Dr E or his former employer in August 1986 and that it does not appear that the cheque went uncashed. Therefore, Dr E is not owed a benefit from the Scheme, I can see no evidence of maladministration, and I do not uphold his complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
24 March 2017