

Ombudsman's Determination

Applicant	Mr N
Scheme	NHS Pension Scheme (the Scheme)
Respondents	NHS Business Services Authority (NHS BSA) NHS England - Midlands and East (NHS England)

Outcome

1. Mr N's complaint against NHS England is upheld. To put matters right, NHS England shall update Mr N's pension record and pay an award of £1,000 in respect of the serious distress and inconvenience which Mr N has suffered.

Complaint summary

2. Mr N's complaint concerns alleged failure to pay pension contributions to NHS BSA. Mr N would like a service statement detailing the contributions that have been paid to date towards his pension.

Background information, including submissions from the parties

3. In 2001, Mr N joined Birmingham Primary Care Support Services (**BPCSS**), (the **Officer Post**). In 2003, he took on an additional contract (the **Ophthalmic Post**).
4. In April 2013, NHS England succeeded BPCSS and took on responsibility for certain aspects of the administration of pension contributions in respect of General Practitioners (**GPs**).
5. In May 2014, Mr N contacted NHS England concerning contributions deducted from fees he had received for ophthalmic services that had not been received by NHS BSA.
6. In June 2014, NHS England confirmed that it had made enquiries and contacted NHS BSA for advice. NHS England offered to meet with Mr N to help reach a resolution. The meeting subsequently took place in November 2014 (the **November Meeting**).

7. During the intervening period, NHS England appointed Primary Care Services England (**PCSE**). PCSE processes payment claims for ophthalmic services on behalf of NHS England. PCSE is owned by a third party.
8. Between October 2015 and January 2016, Mr N's legal adviser, (the **Adviser**), made separate enquiries to NHS England and NHS BSA about Mr N's contributions.
9. On 4 October 2016, following further exchanges with NHS England and NHS BSA, Mr N complained under the Scheme's internal dispute resolution procedures (**IDRP**).
10. On 28 November 2016, NHS BSA issued its response. NHS BSA acknowledged that it had failed to respond to the enquiries that it had received from the Adviser.
11. NHS BSA explained that Mr N's Ophthalmic Post had been deleted. NHS BSA advised that Mr N's employer had indicated that it was not responsible for paying his contributions. The matter needed to be investigated by NHS England, in its capacity as the successor employer.
12. NHS BSA said that it would provide Mr N with a service statement once its service records had been correctly updated.
13. On 19 December 2016, Mr N complained under stage two of the IDRP. In NHS BSA's response dated 9 January 2017, NHS BSA advised that NHS England had agreed to investigate Mr N's employment. NHS BSA explained that it could take no further action until those investigations had been concluded.
14. In the period that followed, there were further exchanges between the parties. NHS BSA informed NHS England that Mr N's record had been updated with pay figures to 31 March 2013. NHS BSA asked NHS England to liaise with PCSE regarding arrears of pension contributions, as deductions of Mr N's contributions had ceased in March 2014 in error. Mr N's contributions, paid over the period 1 April 2013 to 31 March 2014, were not paid to NHS BSA.
15. On or around September 2017, NHS England instructed PCSE to start deducting contributions. NHS England settled the contribution due for the 2013/2014 Scheme year in May 2018.
16. In August 2018, NHS England, jointly with the owners of PCSE, engaged an accounting firm to independently review the pension data held in respect of GPs. Mr N's case was considered as part of that review.
17. NHS BSA is accepting payment slips as evidence of work undertaken by Mr N. NHS BSA considers this to be an exceptional case. NHS BSA also considers that there is no realistic prospect of obtaining information from the responsible Employing Authority.
18. NHS BSA has explained that Mr N's payment slips show that employee contributions have been collected. At this late stage, it would be difficult to establish whether the correct amounts have been remitted to NHS BSA. Employers send NHS BSA a bulk

payment every month covering all current members with no breakdown at member level.

19. NHS BSA says that based on the modest sums identified to date, NHS BSA is prepared to assume that the employer paid Mr N's contributions.
20. NHS BSA has advised that in respect of Scheme years ending March 2009, March 2010, March 2011, March 2012 and March 2013 NHS BSA's records correspond with the details provided by Mr N. Consequently, NHS BSA does not anticipate that any amendments will be required in respect of those Scheme years. NHS BSA currently has insufficient information to review the remaining years. If Mr N is able to locate additional payslips, NHS BSA will consider any further changes that might be required.

21. Mr N's position is summarised below:-

- He contacted NHS BSA in April 2014 and then in May 2014. NHS BSA advised that it had not received his contributions for the last 14 years. He asked for the matter to be investigated urgently.
- He informed PCSE that contributions deducted from 2001 to March 2014, had not been paid to the Scheme. PCSE immediately stopped deducting contributions.
- During the November Meeting, NHS England admitted that it had no records in respect of the period in question. NHS England also conceded that it did not know what had happened to his contributions and agreed to try and locate his contributions.
- Between May 2014 and September 2016, he contacted NHS England and the pensions department on several occasions. He did not receive a response.
- Deductions for his pension contributions did not start again until after September 2017.

22. NHS BSA's position is summarised below:-

- NHS BSA became aware of Mr N's missing employment record in April 2014. Mr N advised NHS BSA that his contributions had ceased in 2014.
- Mr N queried whether the Ophthalmic Post was pensionable. NHS England made a similar enquiry in June 2014.
- NHS BSA confirmed that "doctors who are qualified ophthalmic practitioners are pensionable on fees for eye tests which are free under the provisions of General

Ophthalmic Services.” NHS BSA advised that the benefits are “dynamised,” in the same way as for medical practitioners.

- NHS BSA instructed NHS England on the action required in respect of contributions that were outstanding at that point. NHS BSA agreed to arrange for a service statement to be issued to Mr N once NHS BSA had updated its records.
- NHS BSA was contacted by the accounting firm concerning Mr N’s missing pensionable pay and contributions. Some decisions were made, which were aimed at addressing at least some of Mr N’s concerns.
- The administration of the Scheme is a partnership between NHS BSA and the employer. It is the employer’s responsibility to update a member’s pension record with the correct pay, contributions and service. NHS BSA has access to view the record.
- NHS BSA accepts that it failed to respond to the enquiries the Adviser made on 17 November 2015 and 4 December 2015.
- NHS BSA agreed with the accounting firm the amendments required for Scheme years ending March 2002, March 2008 and March 2014. NHS BSA intends to update Mr N’s membership record once Mr N has confirmed that he agrees with those changes being made. Failing this, when The Pensions Ombudsman concludes that they are correct.
- As at 3 August 2017, Mr N’s pension record had not been corrected. NHS BSA contacted PCSE and NHS England concerning this. NHS BSA did not receive a response at the time.
- Employee contributions are paid at different tiers linked to the amount of pensionable pay. Mr N’s record shows pensionable pay of £47,429 and contributions of £5,928 in respect of Scheme year ending 31 March 2018.
- If Mr N was a “practitioner” Scheme member for the whole of 2017/2018 Scheme year, and his pensionable pay of £47,429 is correct, the correct tiered rate of employee contributions is 9.3%, not 12.5%. Consequently, Mr N would have overpaid his contributions by £1,517, based on the lower tier contribution rate of 9.3%. NHS BSA highlighted this to the accounting firm.

23. NHS England’s position is summarised below.

- NHS England was not the employer at the time. Mr N’s original employer would have been a Primary Care Trust. It is no longer in existence.

- NHS England hold no records prior to its establishment in April 2013. Consequently, it would be impossible for NHS England to access records for the period before April 2013.
- NHS England accepts legacy liability from previous employing authorities.
- NHS England accepts the adjustments proposed and actioned by the accounting firm following its review.
- NHS England also accepts confirmation received from NHS BSA that contributions are deemed to have been paid over in full. NHS England therefore considers that Mr N's pension record is now correct and up to date, based on evidence provided to the accounting firm.
- NHS England is currently reviewing the contributions taken for 2017/2018 financial year in collaboration with PCSE. NHS England will make any necessary adjustment to the contribution rate, if required. Any overpayments will also be rectified.
- Any further queries concerning Mr N's pension record would need to be evidenced by Mr N. NHS England would review the claims without prejudice. Any proven discrepancies would be rectified by NHS England in a timely manner.
- NHS England has agreed to pay £500 to Mr N for the significant distress and inconvenience he has suffered.

Adjudicator's Opinion

24. Mr N's complaint was considered by our Adjudicators who concluded that further action was required by NHS England and NHS BSA. The first Adjudicator's findings are briefly summarised below:-

- Within 21 days of receiving the contributions for 2013/2014 Scheme year, NHS BSA should update Mr N's records. NHSBSA should send a service statement (the **Statement**) setting out Mr N's contributions.
- NHS England should make an award of £500 to Mr N for distress and inconvenience.

25. Mr N did not accept the Adjudicator's Opinion. He made the following comments:-

- The Statement indicated that contributions had not been deducted from his pay during 2001 and 2002. He provided evidence of some of the payments he received during this period. These showed deductions in respect of pension contributions. He subsequently provided evidence to support that his pensionable salary and contributions had also been understated in respect of year end 31 March 2004.

26. The Adjudicator's response to Mr N's further comments are summarised below:-

- The accounting firm produced a spreadsheet detailing the information held on Mr N's pension record. Mr N was asked to review the spreadsheet and provide documentary evidence of any other pensionable salaries and/or contributions that he considered were incorrect, so that the accounting firm could check these against the records held by NHS England.
- Without documentary evidence, it may prove difficult to identify which salaries need amending. The Adjudicator acknowledged that given the passage of time, it is possible that Mr N no longer has all the paperwork.
- The complaint cannot be put on hold indefinitely pending further documentary evidence. Without evidence to support a different outcome, the Adjudicator considered that the Pensions Ombudsman was unlikely to direct that action be taken in respect of pensionable salaries that Mr N suspected have been recorded incorrectly.

27. Mr N did not accept the Adjudicator's response and the complaint was passed to me to consider. Mr N provided his further comments, but these do not materially change the outcome. I agree with the Adjudicators' findings, except that a higher award for non-financial injustice should be made by NHS England. I will therefore only respond to the main points made by Mr N for completeness.

28. Mr N said that he does not accept that it is his responsibility to provide documentary evidence of missing information. He has provided The Pensions Ombudsman with some evidence, dating back almost 19 years. Due to the time that has passed, he has records for some years, but not all.

29. Mr N said that whatever evidence he has provided, Birmingham Health Authority would hold the same records. Pension records are kept by Birmingham Health Authority and information sent to NHS BSA to record pension contributions. The Adjudicator should be making enquiries to Birmingham Health Authority to establish what it has done with his records. He has demonstrated that mistakes were made by NHS England. NHS England needs to accept responsibility for providing all the documentary evidence since all such records should be held by NHS England.

30. Mr N has highlighted that the Statement contained discrepancies. NHS England has not acknowledged that those discrepancies exist. NHS England said he had misinterpreted the value of his pensionable pay for the 2003/2004 Scheme year which he does not accept.

31. Mr N questions whether the details he has provided is actually being considered. NHS England stated that it needed evidence of the split between employer and employee contributions to update its records. NHS England then stated that it was doubtful that he would have anything that would confirm this, as payslips normally

only show employee contributions. This highlights that NHS England has already prejudged the outcome.

32. Mr N maintains that he has been providing evidence [of his pay and contributions] continuously. NHS England should be responsible for locating that information. The mistakes made by NHS England is the cause of this issue. Those mistakes are now causing him considerable stress and inconvenience. Due to his profession, he does not have the time to constantly pursue information when he is not at fault.

Ombudsman's decision

33. I acknowledge that Mr N's original employer no longer exists. I have also noted that NHS England does not hold records in respect of the period before April 2013. It is difficult to see what additional action NHS England could take in these circumstances that would enable NHS England to identify whether further details are missing from Mr N's pension record.
34. NHS England engaged an accounting firm to review Mr N's pension record. I consider that to have been an appropriate course of action. I note that the accounting firm has proposed that Mr N's record should be amended based on the pay slips he had provided to The Pensions Ombudsman. I also note that NHS England and NHS BSA have accepted that recommendation.
35. In the absence of evidence to substantiate that there are further pay details and/or contributions missing, NHS England should proceed with updating Mr N's pension record based on the additional payslips Mr N has provided thus far.
36. I empathise with Mr N's position. However, I do not consider it an efficient use of the limited resources of The Pensions Ombudsman to continue an investigation in the hope of uncovering further maladministration. In the event that Mr N locates any more payslips to support his case, he should submit these directly to NHS England.
37. I am mindful that this dispute has been ongoing since April 2014, and that it concerns purportedly missing pension details over several years. Mr N is now faced with potentially having to spend more of his own time searching his records for past payslips causing him further inconvenience. Having considered the individual circumstances of his complaint, NHS England shall make a distress and inconvenience award of £1,000.
38. In forming this view, I have also taken into consideration the fact that deductions of the employee contributions were not resumed until after September 2017, more than three years after the deductions ceased in March 2014. The evidence also indicates that Mr N's contributions were overpaid during the 2017/2018 Scheme year further compounding matters.
39. Ultimately, it is NHS England's responsibility, as Mr N's employer, to ensure that contributions are deducted from the correct date and at the appropriate tier. The

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outsourcing of the payroll function to an external provider does not negate this responsibility.

40. I acknowledge that NHS England has undertaken to refund any overpaid employee contributions to Mr N promptly.

41. I uphold Mr N's complaint.

Directions

42. Within 56 days of the date of this Determination, NHS England shall:

- I. refund any pension contributions Mr N has overpaid as at the date of this Determination,
- II. pay £1,000 to Mr N in respect of the serious non-financial injustice this matter has caused him,
- III. write to Mr N and request copies of payslips in respect of any further pensionable pay and/or contributions Mr N considers to be incorrect. Within a further 28 days of receipt of the additional information, arrange for Mr N's pension record to be updated accordingly; and
- IV. within a further 28 days of updating Mr N's pension record, arrange for Mr N to be provided with a service statement setting out his pensionable pay details and employee contributions to 2018/2019 Scheme year.

Anthony Arter

Pensions Ombudsman
30 April 2020