

Ombudsman's Determination

Applicant	Dr E
Scheme	NHS Pension Scheme (the Scheme)
Respondent	NHS Business Services Authority (NHS BSA)

Outcome

1. I do not uphold Dr E'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 E's complaint concerns NHS BSA's decision not to re-instate his Added Years (**AY**) contract by means of an Individual Direction, which is necessary because he incurred a break in membership. Dr E is also dissatisfied that NHS BSA did not accept his Locum forms being sent late due to him being paid late.

Background information, including submissions from the parties

4. The pertinent Added Years Regulation concerning the effect of a break in Scheme service is Regulation Q9 of the NHS Pension Scheme 1995 Section. The relevant section is cited in Appendix 1.
5. Dr E's submission regarding Locum payments falls under Schedule 2 of the NHS Pension Scheme 1995 Section. The relevant section is set out in Appendix 2.
6. On 24 March 2004, Dr E took out an AY contract to purchase 10 years 41 days by paying 8.6% extra pension contributions that was due to run until age 60. Dr E filled out and signed an 'Election form' (**the Form**) which advised him to read the statement and the Scheme booklet "Increasing your Benefits", which was enclosed with the form.
7. Page 12 of the Scheme booklet would have advised Dr E that:
"If before your chosen end age you:
 - leave the Scheme for any reason, or

- have breaks in your membership, or
- reduce your hours at work or your payments stop,

you will normally get only the added years or unreduced lump sum you have paid for at that stage...We will also have to reduce the benefits you get from your added years or unreduced lump sum, if they are paid before your chosen end age”.

8. Dr E was suspended by the General Medical Council (**GMC**) from 9 November 2009 to January 2011, due to an investigation. As a result of Dr E’s suspension, he was unable to secure employment with NHS. During this period, Dr E undertook a vocational training course.
9. NHS BSA was not informed that Dr E had stopped his AY contributions until 7 March 2011, when Dr E commenced his employment with Kent Primary Care Agency (**the Agency**) and his active membership resumed.
10. On 4 February 2015, NHS BSA sent Dr E a letter informing him that:

“Please note that the responsibility for notification of an AVC [AY] contract lies firstly with yourself to notify the practice, secondly for them to arrange collection from your salary and notify our team. I reiterate, our team were not notified, therefore there is no error on our part for non-deduction of AVC amounts from the from [sic] the practice payments in order to pay to the NHS Pensions Agency”.
11. NHS BSA also apologised that its response to Dr E’s initial query lacked detail, clarity, and had progressed slowly. This was because his status as a GP returner was an uncommon occurrence.
12. On 17 February 2015, Dr E telephoned NHS BSA to enquire whether he still had an AY contract in place. During this telephone call, NHS BSA advised Dr E that due to incurring a break (over 364 days) in his AY contract, it had ceased, as stated in the Scheme Regulations. Dr E said he was not happy that it had taken NHS BSA four years to notify him of this. However, NHS BSA referred him to the Scheme booklet that would have been enclosed with the Form when he took out his AY contract back in March 2004.
13. On 11 March 2015, NHS BSA sent Dr E a letter informing him that:

“Since our last communication, we have been informed by NHS Pensions Agency that your Added Years contract was cancelled with effect from November 2009. Therefore, there are no arrears due in relation to your employment at Lea Surgery 7.3.11-8.4.12. However, during your current locum role you have included Added Years in the payments you have made. This money has been paid over monthly and reported annually to the NHS Pensions Agency by our team. Evidently the NHS Pensions Agency system was not up-dated to reflect the cancellation of your contract until the latter part

of last year, and it has allowed us to up-date your record with Added Years contribution details. No communication regarding the cancellation has been received from NHS Pensions Agency until now. We have calculated the total amount paid by you during your locum employment as £10,364.38. This includes returns received up to and including November 2014, which was last received. In order to start the process for your refund, would you please complete the enclosed Declaration of Banking Details form and return it to me”.

14. Dr E raised a formal complaint with NHS BSA by invoking the two-stage internal dispute resolution procedure (**IDRP**). In its stage one response letter, dated 22 September 2015, NHS BSA did not uphold Dr E’s complaint. It confirmed that the Scheme Regulations had been applied correctly and that Dr E’s AY contract cannot be reinstated due to the incurred break of 14 months in the contract. NHS BSA also considered an Individual Direction facility which may be granted in special circumstances in order to reinstate the AY contract. It asked Dr E to provide details of the training he undertook whilst being suspended from work, which he subsequently provided.
15. On 1 August 2016, NHS BSA sent Dr E a response under stage two of the IDRP. It said that:

“In Dr E’s case the sanctions imposed meant he could not do any locum or Out of Hours work but he could still have taken up a salaried post in which he would have been able to contribute to the NHS Pension Scheme. Had Dr E taken up a salaried post he would have been able to contribute to the NHS Pension Scheme through this post and would not have incurred a break in service of more than 12 months. Should Dr E wish to increase his retirement benefits, there are other options such as the purchase of additional pension”.
16. Turning to the second limb of Dr E’s complaint. In April 2015, Dr E sent NHS BSA an email enclosing copies of the Locum forms he had submitted in March 2015.
17. On 24 June 2015, NHS BSA sent Dr E a response under stage one of the IDRP. It considered each of Dr E’s submitted forms. The Locum forms were in relation to different periods and different NHS places that Dr E worked at. The letter added that:

“I have looked at each of the forms and can confirm that each was submitted outside the 10 week deadline”.
18. On 25 August 2015, NHS BSA sent Dr E a response, under stage two that said:

“In conclusion, NHS Pensions believes that sufficient information is available to GP Locums and employers to alert them of their responsibilities and the timescales involved in making payments. NHS Pensions does not believe that the late Locum payments constitute an exceptional circumstance...if a practice does not pay a GP Locum in a timely fashion then the Locum must advise

their Area Team of this and the Area Team will contact the practice to remind the practice of their obligations”.

19. In a letter to Dr E, dated 17 November 2016, NHS BSA explained that it had contacted the Department of Health with regard to Dr E's request for an Individual Direction, and received confirmation that it can only be granted to members who had gone overseas to carry out training or employment that would benefit the NHS and this was not applicable in Dr E's case.
20. In February 2017, Dr E brought the complaint to this Office.
21. On 10 April 2017, NHS BSA sent a formal response addressing both parts of Dr E's complaint. It maintained its previous stance with regard to them both.
22. In a telephone call to this Office in January 2018, NHS BSA confirmed that Dr E had AY arrears of £2,332.26 however it had been offset against his refund of AY contributions. Dr E has 843 days' worth of AY to use at age 60.

Adjudicator's Opinion

23. Dr 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:-
 - Dr E's complaint concerning his AY contract should not be upheld against NHS BSA because it correctly interpreted the Scheme Regulations and Dr E is only entitled to the benefits under these Regulations.
 - Based on the evidence the Adjudicator has seen, Dr E would have had sufficient information with regard to purchasing an AY contract. The Scheme booklet informed him that if he has breaks in his membership he would normally get only added years or an unreduced lump sum that he has accrued at that stage. The Adjudicator believed, it was Dr E's responsibility to notify the Agency that he had incurred a break in his AY contract. However, the Adjudicator has seen no evidence of Dr E doing this. NHS BSA does not have a duty to inform members of a break in their AY contract. NHS BSA has a duty to provide sufficient information to members, such as that provided in scheme booklets.
 - It is unfortunate that Dr E incurred a break in his AY contract, meaning his contract must cease as stated in Regulation Q9. NHS BSA considered granting an Individual Direction to Dr E by which his contract could be re-instated under special circumstances. However, this can only be granted to Doctors who had gone overseas to carry out training or employment that would benefit the NHS and this is not applicable to Dr E. Furthermore, had Dr E secured another employment with NHS during his suspension period, his AY contract would have continued. The Adjudicator has seen no evidence that NHS BSA has made an administrative error in this respect.

- The Adjudicator noted that NHS BSA offered another option to increase his pension benefits by purchasing additional pension. The Adjudicator also understood that Dr E is entitled to 843 days' worth of AY contributions which he can benefit from at age 60. There is no evidence to say that NHS BSA has not given due regard to Dr E's circumstances and therefore the Adjudicator could not make a finding of maladministration against NHS BSA.
 - Turning to Dr E's complaint concerning the later submission of his Locum forms, the Adjudicator noted paragraph (5) of Part V of the Scheme Regulations. It essentially states that "No application may be made...in respect of a period of engagement as a locum practitioner ending earlier than ten weeks before the date of the application". NHS BSA said to Dr E that Locum forms can be only accepted late in special circumstances. The Adjudicator noted that NHS BSA considered Dr E's circumstances and gave reasons for its decision. Dr E's getting paid late by his employer does not constitute an exceptional circumstance, as explained by NHS BSA.
 - The Adjudicator therefore did not uphold this part of Dr E's complaint.
24. Dr E did not accept the Adjudicator's Opinion and the matter 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 and I will therefore only respond to the key points made by Dr E for completeness.
25. Whilst Dr E accepts that he was unaware of his responsibility to contact his employer with regard to a break in his AY contract, he does not believe that the Adjudicator considered the gross negligent misstatement on NHS BSA's part.
26. Dr E disagrees with the Adjudicator's statement that an Individual Direction can only be awarded to someone who has been working abroad; he says this is factually incorrect under the Department of Health's own regulations.

Ombudsman's decision

27. Dr E does not believe that the Adjudicator took into account the amount of negligence on NHS BSA part. I find that the Adjudicator did consider the information NHS BSA would have provided, or made available to Dr E, when he took out his AY contract. I consider that the information contained within the Scheme booklet was sufficient to inform him of the implications of a break in the Scheme membership. As explained by the Adjudicator, NHS BSA does not have a duty to inform members of a break in the AY membership. There is also no discretionary power that can be exercised by NHS BSA under the Regulations for Dr E's AY contract to be reinstated. So, I disagree with Dr E that NHS BSA was negligent in this case.
28. I also find that NHS BSA correctly exercised its discretion whether or not to grant Dr E an Individual Direction. Dr E was not in employment at the time therefore did not fall within the criteria set laid down by the Department of Health. In order to be

considered for an award, doctors are required to work in developing countries for humanitarian work. I believe that NHS BSA took into account Dr E's personal circumstances and all relevant information and followed the correct guidelines. I therefore disagree with Dr E that the Adjudicator's statement, with regard to the criteria for an Individual Direction, was factually incorrect.

29. Therefore, I do not uphold Dr E's complaint.

Anthony Arter

Pensions Ombudsman
13 February 2018

Appendix 1

Regulation Q9

Effect of member being absent or leaving and re-joining this Section of the Scheme during the contribution option period.

(3) This paragraph applies if a member--

...

(b) leaves pensionable employment during the contribution option period; and

(c) returns to pensionable employment within 12 months of leaving.

Appendix 2

The National Health Service Pension Scheme Regulations 1995

Part V

Miscellaneous and Supplementary

Schedule 2

Medical and Dental Practitioners

2A Membership: locum practitioners

(1) Regulation B1(2) (automatic membership of this Section of the scheme) does not apply to locum practitioners.

(2) A locum practitioner may apply to join this Section of the scheme by sending an application to the employing authority and submitting such evidence relating to his service as a locum practitioner and the contributions payable in respect of it as are required by the authority.

(3) On receiving such an application, such evidence and such contributions, the employing authority must submit the application to the Secretary of State

(5) No application may be made under sub-paragraph (2) in respect of a period of engagement as a locum practitioner ending earlier than ten weeks before the date of the application.