

Ombudsman's Determination

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| Applicant | Mrs F |
| Scheme | NHS Pension Scheme (the Scheme) |
| Respondent | NHS Pensions |

Outcome

1. I do not uphold Mrs F'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. Mrs F is complaining that NHS Pensions have refused to provide her with a refund of contributions for the period between November 2013 and February 2014. She is also complaining about the length of time NHS Pensions have taken to consider her complaint.

Background information, including submissions from the parties

4. NHS Pensions have submitted that under the flexibility available from the Pensions Choices exercise (this was part of the introduction of a new section of the Scheme, the 2008 Section), members who retired from the Scheme after 1 April 2008, but before 1 October 2009, had the option of joining the 2008 Section if they returned to NHS employment.
5. Mrs F retired from the 1995 Section of the Scheme on 3 April 2009.
6. Although she retired in 2009, Mrs F says she continued to work, part time, with the same NHS employer until June 2013. In October 2013, she started employment with a new NHS employer. As she was over age 22 and under the State Pension Age, and because she had retired between 1 April 2008 and 1 October 2009, Mrs F was automatically enrolled in the 2008 Section from 1 November 2013.
7. Under the 2008 Section of the Scheme, the normal retirement age is 65. Under the 1995 Section, the normal retirement age is 60. Mrs F's 65th birthday was 10 November 2013.

8. On 19 February 2014, Mrs F completed a form to opt out of the Scheme. In April 2014, she also requested a refund of her contributions paid into the 2008 Section. NHS Pensions responded on 9 May 2014:

“A refund is not possible because:

As you are a re-employed pensioner and currently in receipt of a pension, you are not entitled to a refund. Your pension entitlement will be reviewed when you reach normal retirement age to take account of your later Scheme membership.”

9. Mrs F replied on 17 June 2014, raising a complaint and pointing out that she was over the age of 65. NHS Pensions considered this as a complaint under the first stage of the Scheme’s internal dispute resolution procedure (**IDRP**) on 5 August 2014. NHS Pensions did not uphold her complaint on the basis that she had reached her normal retirement age of 65 while a member of the 2008 Section of the Scheme. Therefore, a refund was not possible. NHS Pensions also said:

“Therefore, although you have reached the Scheme’s NRA, the date from which your 2008 Section benefits are actually payable is subject to you having a 24 hour break in NHS employment. I enclose the ‘*Working After Retirement Factsheet*’ which gives further information about this.

To claim your retirement benefits please liaise with your employer for completion of the AW8 application form.”

10. The IDRP response also included details of what to do if Mrs F remained unhappy with the response, namely, that she can request a Stage 2 IDRP response within six months of the date of the IDRP letter. Details of the Pensions Advisory Service and this service were also provided.
11. However, Mrs F did not write to NHS Pensions again until 11 July 2016 saying she was no longer in NHS employment and asked for a refund of contributions. She did not receive a reply to this letter and so wrote again on 2 August 2016.
12. NHS Pensions acknowledged Mrs F’s complaint on 26 August 2016. It explained again that she is not entitled to a refund, but was entitled to retirement benefits from the 2008 Section. She was told that she should contact her former employer to complete the relevant documents.
13. Mrs F remained unhappy with the response from NHS Pensions and complained to this service. In relation to the main part of her complaint that the refund was refused, Mrs F claims that there was also a delay in the handling of her complaint. She says this is because she was told via NHS Pensions’ letter of 9 May 2014 that she would have to wait until she retired completely before making a claim for her benefits.

Adjudicator's Opinion

14. Mrs F'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:-
- Under the Scheme Regulations (see Appendix), on joining the 2008 Section of the Scheme in November 2013, Mrs F had sufficient qualifying service (due to her membership of the 1995 Section) to mean that she had more than two years qualifying service. Therefore, she was not eligible for a refund. Also, by 10 November 2013, Mrs F had reached the 2008 Section normal retirement age of 65, which also meant that she was not entitled to a refund, but instead a benefit. As NHS Pensions have correctly applied the relevant Scheme Regulations, the Adjudicator's view was that Mrs F's complaint could not be upheld.
 - Neither the letter from NHS Pensions in May 2014 nor the IDRП response in August 2014 said that Mrs F had to wait until she finished work. NHS Pensions clarified in the IDRП response that she had already passed the 2008 Section's normal retirement age and gave details of what she needed to do to claim her benefits.
 - In relation to the complaint about the time NHS Pensions took to consider her complaint, the Adjudicator's view was that NHS Pensions were not responsible for this delay. The IDRП letter of 5 August 2014 clearly explained to Mrs F what steps she could take if she remained unhappy with the decision, yet Mrs F took no further action for another two years. Therefore, any delay in making a claim for her benefits, or in the time it took NHS Pensions to respond to her complaint, is down to the actions of Mrs F.
15. Mrs F did not accept the Adjudicator's Opinion and submitted further:
- That NHS Pensions took four years to agree to pay her additional pension and that it refused a refund and an enhanced pension in 2016. She also says it was only after contacting this service that NHS Pensions provided her with the forms to claim her benefits.
 - She was told in 2014 that she had to wait until she "retired properly" to claim her benefits.
 - She signed an opt out form in 2009 and paid no contributions to the Scheme between April 2009 and July 2013 while in NHS employment.
 - She also signed opt out forms in 2013 and 2015 and therefore the deduction of contributions was a mistake by her employer.
 - That her retirement age is 60, not 65.

- NHS Pensions did not say she would have to wait until she “finished work” but used the term “retired properly”.
 - She tried to access her benefits in 2016 and was told by NHS Pensions that her former employer had to complete part of the form. She says her employer was unable to do this.
 - NHS Pensions failed to complete the IDRPs and told her that the process had been exhausted without granting her a pension or a refund.
16. As Mrs F did not accept the Adjudicator’s Opinion, the complaint was passed to me to consider. Mrs F’s further comments 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 F for completeness.

Ombudsman’s decision

17. Employers are required to automatically enrol certain new employees into a pension scheme under the Pensions Act 2008. One of the requirements is that if an employee is over 22 and under the State Pension Age (in relation to Mrs F, this was age 65), an employee is automatically enrolled. On 1 November 2013 Mrs F’s employer autoenrolled her into the 2008 Section of the Scheme. The complaint which has been brought is against the Scheme rather than Mrs F’s employer. NHS Pensions had no reason to refuse to accept Mrs F into the 2008 Section of the Scheme on 1 November 2013 because at that date she met the eligibility criteria (see appendix).
18. I agree that NHS Pensions have correctly interpreted the relevant Scheme Regulations. Mrs F is not entitled to a refund following her normal retirement age of 65, and, regardless of this, with her previous service under the 1995 Section being included as part of her qualifying service, she had more than two years’ service, which also made her ineligible for a refund.
19. Mrs F also makes reference to opt out forms she completed in 2013 and 2015. However, the evidence submitted shows that Mrs F opted out of the Scheme on 19 February 2014. There is no evidence that she opted out of the 2008 section after she had been enrolled by her new employer on 1 November 2013. She is claiming that it was the fault of her employer continuing to make contributions. However her employer is not a party to this complaint or investigation and therefore I cannot comment on their role in paying contributions to the Scheme.
20. NHS Pensions were very clear in their IDRPs in August 2014 about what Mrs F needed to do to claim her benefits under the 2008 Section of the Scheme. There is nothing within this document that says Mrs F needed to retire “completely” from employment. Instead, it says that her benefits can be paid after a 24 hour break in NHS employment. She was also told to contact her employer to fill out the

appropriate forms. It was therefore up to Mrs F to decide when to break her employment and take her benefits.

21. The only delay I can see is that NHS Pensions failed to respond to Mrs F's letter of 11 July 2016 and that she had to follow this up with another letter on 2 August 2016 (which was responded to on 26 August 2016). However, Mrs F is claiming that NHS Pensions caused a delay of four years in the payment of her benefits. I do not agree that this was so. As mentioned above, NHS Pensions had provided Mrs F with the information she needed to claim her benefits and it was up to Mrs F to decide when to break her employment and take those benefits. I understand Mrs F's point that there was a delay in eventually completing the appropriate forms, but, again, this seems to be because of the actions of her former employer, who are not a party to this complaint, and not the actions of NHS Pensions. There is nothing within the evidence submitted that shows that NHS Pensions refused to pay her a benefit from the Scheme, instead it was waiting for Mrs F to complete the relevant paperwork before paying any benefits.
22. Under a two stage IDR process, Mrs F had six months to write to NHS Pensions and ask for their decision to be reviewed. Details were provided of this, and where to go for additional help, in the first IDR response. However, she did not contact NHS Pensions for a further two years. NHS Pensions decided in their letter of 26 August 2016 to reconsider her complaint outside of the IDR process and informed her that she would need to contact her former employer to complete the appropriate paperwork to allow payment of her outstanding benefits. At the time of this letter, NHS Pensions were not aware of the employer's inability to complete that paperwork. This is not the fault of NHS Pensions and I understand that it received the information it needed to process Mrs F's benefits on 26 June 2017 (and paid them from 7 July 2017).
23. Therefore, I do not uphold Mrs F's complaint.

Karen Johnston

Deputy Pensions Ombudsman
18 September 2017

Appendix

NHS Pension Scheme Regulations 2008

2.B.1A Eligibility: transitional

- (1) A person is eligible to be an active member of this Section of the Scheme if-
- (a) the person is not prevented from being so by regulation 2.B.2, 2.B.3 or 2.B.6, and
 - (b) either –
 - (i) the Secretary of State has accepted that person's option to join this Section of the Scheme under Chapter 2.K, or
 - (ii) that person meets all of the requirements in paragraph (2).
- (2) Those requirements are that the person –
- (a) is under age 75,
 - (b) was an active member of the 1995 Section on, or after, 1st April 2008,
 - (c) became a pensioner member of the 1995 Section on, or before, 1st October 2009,
 - (d) has either –
 - (i) returned to NHS employment since becoming a pensioner member referred to in (c), or
 - (ii) commenced for the first time NHS employment, and
 - (e) is not eligible to be an active member of the 1995 Section in respect of the employment referred to in (d).

This is subject to the following paragraphs of this regulation.

(3) A person referred to in paragraph (2) is eligible to be an active member of this Section of the Scheme, from the day immediately following the end of Waiting Period A, if that person is entitled to a pension under one of the following regulations of the 1995 Regulations –

- (a) E1 (normal retirement pension),
- (b) E2A(3)(a) (tier 1 ill-health pension on early retirement),
- (c) E3A (early retirement pension (termination of employment by employing authority)), or
- (d) E5 (early retirement pension (with actuarial reduction)).

(4) A person referred to in paragraph (2) shall be eligible to be an active member of this Section of the Scheme, from the day immediately following the longer of Waiting Period A and Waiting Period B, if that person is entitled to a pension under one of the following regulations of the 1995 Regulations –

(a) E2 (early retirement pension (ill health)),

(b) E3 (early retirement pension (redundancy etc additional provisions)).

(5) If a person referred to in paragraph (2) is entitled to a pension under regulation E2A(3)(b) (tier 2 ill health pension on early retirement), that person shall be eligible to be an active member of this Section of the Scheme from the day immediately following whichever of the following occurs last –

(a) the anniversary of that person entering NHS employment, or

(b) the end of Waiting Period A.

(6) A person to whom paragraph (1)(b)(i) or 3(b) applies and who is entitled to a tier 1 ill-health pension under regulation E2A(3)(a) of the 1995 Regulations, ceases to be eligible to be an active member of this Section of the Scheme from the date the Secretary of State makes a determination that that person is entitled to a tier 2 ill-health pension in place of that tier 1 ill-health pension under regulation E2B(3) of those Regulations (re-assessment of ill-health condition determined under regulation E2A).

(7) For the purposes of this regulation –

(a) “Waiting Period A” is a period of two calendar years beginning on the day the person becomes entitled to the pension under the 1995 Regulations;

(b) “Waiting Period B” is a period beginning on the date the person becomes entitled to the pension under the 1995 Regulations which is equal to the calendar length of –

(i) any increase to the person’s pensionable service in the 1995 Section which has been applied in accordance with paragraph (3) of regulation E2 of the 1995 Regulations (early retirement pension (ill-health)), or

(ii) any additional service with which the person has been credited in accordance with regulation 5 of the National Health Service (Compensation for Premature Retirement) Regulations 2002.

(8) This regulation applies to any person who has previously been an active member of a corresponding 1995 scheme as though any reference to –

(a) the “1995 Section” includes a reference to that corresponding 1995 scheme;

(b) the “1995 Regulations” includes a reference to any regulations, orders, rules or other instruments governing that corresponding 1995 scheme;

(c) regulations “E1”, “E2”, “E2A”, “E2B(3)”, “E3”, “E3A”, “E3A(3)(a)”, “E3A(3)(b)” or “E5” includes the equivalent of those regulations in a health service scheme the provisions of which correspond to the 1995 Regulations, and

(d) “regulation 5 of the National Health Service (Compensation for Premature Retirement) Regulations 2002” includes the equivalent of that regulation as it applies to a member of a corresponding 1995 scheme.

2.C.18 Repayment of contributions

(1) The contributions made by a member under this Chapter are not repayable in any circumstances except if –

(a) paragraph (2) applies, or

(b) Chapter 2 of Part 4ZA of the 1993 Act (early leavers: cash transfer sums and contribution refunds) applies and the payment is made in accordance with that Chapter.

(2) This paragraph applies if –

(a) a person who is not a pensioner member ceases to be an active member and does not continue to be, or become, an active member for the purposes of Part 3 within 12 months of ceasing officer service,

(b) the person does not fall within sub-paragraph (a), (b), (c) or (d) of regulation 2.D.1(2) (former members entitled to a pension),

(c) paragraph 1(b) does not apply, and

(d) the person claims repayment of contributions under this regulation by applying in writing to the Secretary of State.

2.D.1 Normal retirement pensions

(1) The general rule is that a member is entitled to a pension payable for life in respect of any period of pensionable service (“the relevant service”) if the member –

(a) has reached the age of 65, and

(b) either –

(i) has ceased to be employed in NHS employment and has claimed payment of the pension, or

(ii) will reach the age of 75 on the next day.

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This is subject to paragraph (2), regulation 2.D.13 (exceptions to requirement that NHS employment must have ceased) and the following provisions of this Part.

(2) A person to whom paragraph (1) applies is not entitled to a pension under the regulation unless –

- (a) the member is entitled to count at least 2 years of qualifying service in respect of the relevant service, or
- (b) a transfer value payment has been accepted by the Scheme during the relevant service under Chapter 2.F (transfers), otherwise than from an occupational scheme,
- (c) the member is entitled to a pension under this regulation in respect of any previous period of pensionable service, or
- (d) the member has reached the age of 65.

(3) A pension to which a member is entitled under this regulation becomes payable immediately the member becomes entitled to it.