

## Ombudsman's Determination

Applicant	Mr N
Scheme	NHS Pension Scheme ( <b>the Scheme</b> )
Respondent	NHS Business Services Authority ( <b>NHSBSA</b> )

## Outcome

1. I do not uphold Mr N'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. Mr N's complaint is that he believes he is paying tax at a higher rate than he should be, and that this is due to NHSBSA not following his written instructions.

## Background information, including submissions from the parties

4. Mr N was a member of the Scheme from 24 July 2000 until 2 May 2006 when he left NHS employment and his pension benefits were deferred.
5. In May 2009, NHSBSA contacted Mr N to explain that his pension had become payable. Mr N did not take any action.
6. On 5 January 2017, Mr N completed all the relevant forms, so that his pension could come into payment. Mr N completed a section of the form that said "Please confirm when early payment of deferred benefit should begin" and filled this in with the date 10 April 2017.
7. On 12 January 2017, Mr N's application was processed by NHSBSA, even though he had expressed that he wanted payment to start on 10 April 2017. Payment was then issued shortly after.
8. Mr N wrote to NHSBSA to raise a complaint. He said he had written on the form that he wanted his pension to come into payment on 10 April 2017, including the backdated pension payments. He said that because NHSBSA had ignored his instructions, he was subject to a 40% tax charge as opposed to 20%.

9. NHSBSA wrote to Mr N and completed stage one and two of the internal disputes resolution procedure. It said there was no option to delay payment of a pension that should have already gone into payment. It said it had paid Mr N's benefits in accordance with the Regulations.
10. Mr N remained dissatisfied and brought his complaint to The Pensions Ombudsman to be independently reviewed.
11. Through further investigation NHSBSA explained that Mr N needed to contact Her Majesty's Revenue and Customs (**HMRC**) who would complete a calculation to see whether the payment of the backdated pension had caused him to be over taxed. HMRC would take into consideration any income Mr N received from 2009 to 2017 and how the pension should have been split over that period. Then, if HMRC found Mr N has been over taxed he would be entitled to a refund of tax.
12. Mr N remained dissatisfied that his instructions on the application form had been ignored. He also asked why NHSBSA had not queried why he had filled out that section of the form if it was wrong. NHSBSA, said that as the early retirement section was not relevant to Mr N no action had been taken. NHSBSA said the following:

"Although it is believed that Mr [N] filled out the section of his pension application about early retirement for a reason, it could also be suggested that as it was not appropriate for the type of pension he was claiming he may have provided a covering letter. This could have explained the reason for completing a portion of the form that was not relevant to a delayed claim for age retirement benefits."

NHSBSA provided an apology if Mr N believed that inappropriate action had been taken when putting his pension into payment.

## **Adjudicator's Opinion**

13. Mr N'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:-
  - NHSBSA processed the application form but ignored the section where Mr N had inserted the date he wanted the payments to start because it was irrelevant to his circumstances, as he was not receiving early payment of deferred pension benefits.
  - Although, NHSBSA provided reasons why it ignored the section of the form, it would have been helpful if it had contacted Mr N and asked why he had inserted a date in the box and explained that they were unable to delay payment.
  - Even if it was considered maladministration that NHSBSA did not act on the information Mr N had provided, no financial loss has been identified.

- When pension benefits are put into payment after normal retirement date the onus is with the applicant to contact HMRC and make them aware of this to ensure they are paying the correct tax. HMRC will look at the income received from 2009 to 2017 and establish which tax bracket he should have been in for each year.
14. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N is of the view that as NHSBSA provided an apology it has accepted that it did something wrong.
15. I agree with the Adjudicator's Opinion and I will therefore only respond to the key point made by Mr N for completeness.

### **Ombudsman's decision**

16. Mr N has complained he is paying a higher amount of tax because he started receiving his pension payments in the 2016/17 tax year as opposed to 2017/18 tax year, as he requested.
17. To ensure he has paid the correct amount of income tax Mr N should contact HMRC, if he has not already done so, who will then look at the income Mr N received from 2009 to 2017 and re-adjust his tax taking into account the back payments.
18. I understand Mr N is unhappy because NHSBSA put his pension into payment without informing him that it could not delay payment until 10 April 2017. But, whilst I consider it would have been helpful if NHSBSA had advised Mr N in advance, I do not consider their actions have caused a financial injustice that cannot readily be put right.
19. NHSBSA had no power to delay payment of Mr N's pension benefits once they had received the form requesting payment. The early payment section of the form did not apply as Mr N was not receiving his pension benefits early, payment was due to commence in 2009. Mr N is required to pay the correct amount of income tax and even if NHSBSA had been able to delay his pension payments to the later tax year, it still would have been Mr N's duty to liaise with HMRC to ensure he had paid the correct amount of tax in relation to the backdated payments. .
20. Therefore, I do not uphold Mr N's complaint.

**Anthony Arter**

Pensions Ombudsman  
18 December 2017