

Ombudsman's Determination

Applicant	Dr R
Scheme	NHS Pension Scheme (the Scheme)
Respondents	NHS Business Services Authority (NHS BSA) Norfolk & Norwich NHS Trust (the Trust)

Outcome

1. I do not uphold Dr R's complaint and no further action is required by NHS BSA and the Trust.

Complaint summary

2. Dr R's complaint against NHS BSA is that NHS BSA has refused to grant him pension benefits from the Scheme. Dr R believes that he is entitled to benefits in the Scheme by reason of European Union Law (**EU Law**).
3. Dr R has also complained that NHS BSA did not issue a statutory notice of a chargeable event on the Trust in respect of the late submission of his contributions, and NHS BSA did not respond to his complaint in a timely manner.
4. Dr R's complaint against the Trust is that the Trust paid contributions into the Scheme late and, as a result, his pension benefits in the Scheme have reduced. The Trust also failed to respond to his complaint.

Background information, including submissions from the parties

5. Dr R was a member of the Scheme for three separate periods between September 2004 and October 2007.
6. Dr R transferred these periods of membership to the NHS Scottish Superannuation Scheme (**the Scottish Scheme**) when he joined that scheme in 2008.
7. Dr R has said that he worked for a Scottish hospital from February 2008 to June 2008.

8. Dr R was readmitted into the Scheme from 4 April 2016 to 31 July 2016, when he was employed by the Trust. Dr R's entitlement to benefits from the Scheme was governed by the National Health Service Pension Scheme Regulations 2015 (**the Scheme Regulations**), quoted in the Appendix. Regulation 40, Regulation 72, and Regulation 73 of the Scheme Regulations provided that a member with less than two years' qualifying service was not entitled to a retirement pension, and the contributions from such a member must be repaid to the member.
9. In between the periods of Dr R's membership in the Scheme and the Scottish Scheme, Dr R worked in various European cities.
10. On 6 February 2017, Dr R wrote to the Trust stating that the Trust had not deducted the employee and employer pension contributions from his wages and that this late payment amounted to a chargeable event under the Scheme Regulations. He asked the Trust to pay the contributions to the Scheme immediately.
11. That same day, Dr R wrote to NHS BSA and stated there had been a chargeable event, as the Trust had failed to pay the contributions it was required to pay under Regulations 30 and 33 of the Scheme Regulations. Dr R stated that he was notifying NHS BSA of the chargeable event.
12. On 24 April 2017, NHS BSA wrote to Dr R and confirmed that it had written to the Trust about his contributions for the period from 4 April 2016 to 31 July 2016. It stated that its records showed that he joined the Scheme on 1 June 2016, but its records are only updated once a year on 31 March. It stated that it had not received an update from the Trust, and it had written to the Trust asking the Trust to confirm Dr R's correct start date and make arrangements to pay the pension contributions due.
13. Dr R raised a complaint against the Trust at an Employment Tribunal (**ET**) on the issue of unpaid wages and unpaid pension contributions in respect of his employment with the Trust. By consent order, dated 11 August 2017, the ET directed the Trust to pay into the Scheme unpaid employer contributions of £8,702.47 and unpaid employee contributions of £8,824.18. The Trust has confirmed that it paid the employee and employer contributions to the Scheme in September 2017.
14. On 9 September 2017, Dr R complained to NHS BSA under its Internal Dispute Resolution Procedure (**IDRP**). Dr R's complaint was solely about the late payment of contributions to the Scheme. Dr R questioned why NHS BSA had not issued a written notice of a chargeable event on the Trust in accordance with Regulation 36, quoted in the Appendix. He argued that NHS BSA's failure to issue notice of a chargeable event may have impacted his entitlement to benefits under the Scheme.
15. On 14 September 2017, NHS BSA acknowledged Dr R's complaint.
16. On 4 December 2017, Dr R wrote again to NHS BSA seeking a response to his IDRP complaint.

17. On 19 December 2017, NHS BSA responded to Dr R. It confirmed that when it reconciled the contributions made by the Scheme employers, it found that the contributions from the Trust were paid. It confirmed that, as Dr R had transferred out his previous membership with the Scheme, his previous membership from 2004 to 2007 can no longer be considered qualifying service for the calculation of any benefits he may have been entitled to from the Scheme. It also confirmed that Dr R's employment with the Trust was less than 2 years, which is not long enough to qualify for pension benefits, so he should complete an application for a refund of contributions made to the Scheme.
18. On 2 January 2018, Dr R wrote to the Trust. He stated that he made a formal complaint to the Trust on 6 February 2017, but the Trust did not respond to his complaint. He stated that he was making his complaint to the Trust again. He complained that the Trust paid his contributions to the Scheme late and, as a result of the late payment of contributions, his pension benefits from the Scheme have reduced.
19. That same day, Dr R wrote to NHS BSA and requested that his complaint be considered under stage 2 of the IDRPs. Dr R argued that he was entitled to pension benefits from the Scheme on the basis of EU Law. Dr R's submissions, which mirror his submissions to this Office, are summarised in the section "Summary of Dr R's position".
20. In February 2018, Dr R wrote to NHS BSA requesting that it commence payment of his retirement benefits from the Scheme.
21. On 10 May 2018, Dr R submitted a second complaint application form to this Office. The complaint points mirrored those he raised in his first application form, except for the addition of a complaint about NHS BSA's delay in responding to the stage 2 IDRPs complaint. I have considered the issues Dr R raised in his two application forms within this decision, having investigated the issues.
22. On 23 May 2018, NHS BSA responded to Dr R's complaint under stage 2 of the IDRPs. It confirmed that Dr R was not entitled to benefits from the Scheme, as he did not have sufficient qualifying service. It confirmed that the matter of chargeable events was between NHS BSA and the Trust, and that it had initiated enquiries directly with the Trust on this matter. It also confirmed that the EU Law provisions Dr R sought to rely on did not apply to the Scheme.

Summary of Dr R's position

23. His benefits in the Scheme are social security benefits falling within the scope of EU Regulation (EEC) No 1408/71 of the Council of 14 June 1971, on the application of social security schemes to employed persons and their families moving within the Community (**Regulation 1408/71**) and Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (**Regulation 883/2004**).

24. By virtue of these EU Regulations, NHS BSA is required to aggregate his periods of employment.
25. The judgments in Elisabeth Beerens v Arbeidsvoorziening C-35/77 (**Beerens**) and European Commission v Republic of Malta C-12/14 support his position that his benefits in the Scheme are social security benefits falling within the scope of Regulations 1408/71 and 883/2004.
26. Further, the Scheme benefits constitute old age benefits for the purposes of EU Law, because the Scheme Regulations have a “statutory source”, the Scheme was “adopted on the basis of the law on pensions of 1972 (Superannuation Act 1972)”, and the objective of paying benefits from the Scheme is to ensure that pensioners have the “necessary means” in retirement.
27. He raised a formal complaint with the Trust by letter dated 6 February 2017, and subsequent letter dated 2 January 2018. The Trust did not respond to his complaint.
28. The Trust did not pay the employee and employer contributions to the Scheme on time, and his pension benefits from the Scheme have diminished as a result of the late payment.

Summary of the Trust’s position

29. The Trust acknowledges that it received Dr R’s complaints of 6 February 2017 and 2 January 2018. At the time it received the complaint of 6 February 2017, it was conscious that there was an ET decision pending and it did not respond to Dr R separately trusting that the ET would consider all aspects of Dr R’s pay including his pension.
30. On receipt of the complaint of 8 January 2018, the Trust had complied with the ET’s decision and it had paid the unpaid pension contributions to the Scheme, thereby resolving the matters Dr R had complained about.
31. It recognises with hindsight that it would have been helpful if it had responded directly to Dr R to confirm its understanding that it had complied with the requirements of the ET consent order.

Summary of NHS BSA’s position

32. The EU directives and provisions Dr R refers to do not apply to the Scheme, and Dr R’s entitlement from the Scheme is subject to the Scheme Regulations.
33. It understands that the EU Law cited relates to reciprocal social security or equivalent arrangements between the state pension schemes of EU member states, where contributions in one member state count towards establishing state pension entitlement in another member state.
34. The contributions referred to in the EU directives and provisions are national insurance contributions and not NHS Pension Scheme contributions. There are no general provisions in the Scheme Regulations that would enable periods of

insurance, residence or non-NHS employment to count towards qualifying membership in the Scheme.

35. The information from the Trust confirms that Dr R was employed with the Trust for 119 days, from 4 April 2016 to 31 July 2016, which is less than two years in length and which ceased before Dr R reached his normal retirement age of 65. The provisions of Regulations 72 and 73 of the Scheme Regulations mean that Dr R is not entitled to retirement benefits from the Scheme. He is eligible for a refund under Regulation 40.
36. It is acknowledged that there appears to have been a considerable delay by the Trust in the collection of contributions, however this did not impact on the length of Dr R's pensionable service and his only entitlement is to a refund of contributions.
37. It has not issued the Trust with a written notice under Regulation 36(4) in respect of Dr R's contributions because it has not identified a chargeable event. Whether the Trust paid the contribution late depends on when the relevant earnings became payable or were paid to Dr R. However, NHS employers routinely update NHS BSA's records of pay and contributions on an annual basis, at the end of each scheme year (31 March). So at any given time, NHS BSA's records for any individual member could be up to 12 months behind the monthly contributions actively being collected for that member.
38. There are approximately 1.5 million contributing members in the Scheme, and a typical NHS Trust can have responsibility to pay bulk contribution payments on behalf of several thousand employees.
39. For these reasons, it is impractical for NHS BSA to reconcile the monthly bulk contribution payments it receives, to the extent of determining whether monthly contributions for each individual member have been made on time.
40. In Dr R's case, the period of pensionable employment was April 2016 to July 2016.
41. With the passage of time since then it is not possible to confirm to what extent its records for him had been updated by the Trust at any past point in time, the dates or frequency of payment of his earnings, or whether contributions were collected or paid on time or otherwise.
42. It is unable to conclude on the available evidence that a chargeable event has occurred in respect of Dr R. If a chargeable event under Regulation 36 were to occur, any interest payable is not added to the member's pension account. Contributions are recorded as if they were paid on time and the associated pension benefit attracts revaluation at the applicable rate.
43. It highlights that Regulation 36(2) of the Scheme Regulations states that, where there is a chargeable event, the Scheme Manager may determine what amount of contributions are unpaid, with regard to any factors it considers relevant.

Adjudicator's Opinion

44. Dr R's complaint was considered by one of our Adjudicators who concluded that no further action was required by NHS BSA or the Trust. The Adjudicator's findings are summarised below:-
- The only period of membership Dr R retained within the Scheme was for the period of his employment with the Trust, between April 2016 and July 2016.
 - Based on this, Dr R was not entitled to pension benefits under the Scheme Regulations.
 - Dr R was only entitled to a refund of the contributions for that period, as he had accrued less than 2 years' membership.
 - The late payment of contributions has not impacted Dr R's entitlement from the Scheme, as he is only entitled to a refund of contributions.
 - Whilst NHS BSA was late in its response to Dr R's second stage IDRPs complaint, he was able to refer his complaint to this Office, so the delay has not been of material detriment to him.
 - The matter of the chargeable event is between NHS BSA and the Trust.
 - The EU Laws Dr R cites apply to social security benefit accrual within EU member states.
 - The Scheme does not provide social security benefits.
 - Benefits payable from the Scheme are accrued through direct membership of the Scheme and contributions paid, so Dr R's arguments concerning the statutory basis of the Scheme do not assist him in this complaint.
 - There has not been any valid declaration confirming that the Scheme falls within the scope of the EU Regulations
45. Dr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Dr R 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 R for completeness.

Summary of Dr R's further submissions

46. NHS BSA must give the Trust a written notice of a chargeable event and it does not have discretion on this matter.
47. As a result of NHS BSA's failure to raise a chargeable event, Dr R has suffered a loss to his retirement benefits from the Scheme.

48. Dr R had periods of insurance, employment, self-employment or residence within Europe in between his periods of deferred membership within the Scheme, so he should be entitled to retirement benefits from the Scheme.
49. The definition of social security benefits is autonomous under EU Law.
50. As the purpose of the benefits paid under the Scheme is to provide for “persons who have reached a certain age”, they should be deemed old age benefits. Therefore, the Scheme should be objectively classified as a social security scheme for the purposes of the relevant EU Regulations.
51. The Court of Justice of the European Union (**CJEU**) is able to interpret the EU Regulations, not the Pensions Ombudsman.
52. The fact that the UK Government has not stated that the Scheme falls within the EU Regulations does not mean that it does not fall within the EU Regulations.

Ombudsman’s decision

The complaint against the Trust

53. The issue of the late payment of pension contributions by the Trust has been settled as part of proceedings before the ET. Therefore, I do not make any findings on this aspect of Dr R’s complaint.
54. I find that the evidence does not support Dr R’s complaint that his benefits in the Scheme have reduced because of the late payment of contributions by the Trust. By virtue of the Scheme Regulations, it was the length of Dr R’s service with the Trust that determined his entitlement under the Scheme, not the late payment of contributions. It is not in dispute that Dr R was employed for approximately three months from April 2016 to July 2016. There is no evidence that the information on Dr R’s length of service, which the Trust supplied to the NHS BSA, is incorrect or that the late payment of contributions impacted Dr R’s length of service.
55. I note that the Trust did not respond to Dr R’s complaint and I note its reasons for not responding. The Trust ought to have acknowledged Dr R’s complaints and informed him of its understanding of the position at the time of his complaints. I find that the Trust’s failure to acknowledge Dr R’s complaints amounts to maladministration. However, I consider that any distress and inconvenience Dr R may have experienced as a result of the Trust’s lack of response was nominal, so I do not make an award for non-financial injustice.
56. For these reasons, I find that there is no further action required by the Trust.

The complaint against NHS BSA

Refusal to grant benefits from the Scheme

57. Dr R believes he is entitled to benefits from the Scheme on the basis of Regulation 1408/71, Regulation 883/2004, and the judgments in Beerens, and European Commission v Republic of Malta. I find that the EU legislation and caselaw that Dr R seeks to rely on relate to a different category of benefits and do not assist him in this complaint.
58. As a starting point, I should clarify that Regulation 1408/71 has been repealed and replaced by Regulation 883/2004. Regulation 883/2004 was the Regulation in force at the time of Dr R's membership in the Scheme to date, though there does not appear to be any material difference in the provision within both Regulations regarding its scope. Article 3 (Matters covered) of Regulation 883/2004 states:
- “1. This Regulation shall apply to all legislation concerning the following **branches of social security** (my emphasis):
- (a) sickness and maternity benefits;
 - (b) invalidity benefits, including those intended for the maintenance or improvement of earning capacity;
 - (c) old-age benefits;** (my emphasis)
 - (d) survivors' benefits;
 - (e) benefits in respect of accidents at work and occupational diseases; (f) death grants;
 - (g) unemployment benefits;
 - (h) family benefits.”
59. The Regulation specifically states that its provisions relate to branches of social security, which in my view (and is common knowledge) refers to social security benefits provided by the Government which are different from occupational pension schemes provided by employers like the Trust. In my view, the “old age benefits” mentioned in Article 3(1) refers to a state pension provided by the Government and funded in part by national insurance contributions.
60. This view is supported by the decision in *European Commission v Republic of Malta*, which confirms that Regulation 883/2004 applies to old age benefits provided by a state as part of its social security provisions. I do not believe Dr R is assisted by this case, which concerned a failure of a member state to fulfil its obligations in relation to social security/state pension benefits, not benefits arising in an occupational pension

scheme as the case is here. Neither the provision on old age benefits, nor any other benefits listed under Article 3(1) applies in Dr R's case.

61. Dr R has explained why he believes the Scheme should be regarded as a social security scheme falling within the scope of Article 3(1) and he relies on the decision in *Beerens* C-35/77. The question in *Beerens* was whether certain laws in the Netherlands relating to unemployment benefits fell within the scope of Article 4(1) of Regulation 1408/71 (as stated above, Article 4(1) has been repealed and replaced by Article 3(1) Regulation 883/2004). The laws in question in *Beerens* were the laws on the compulsory insurance of workers against unemployment, laws relating to public allowances for unemployed workers, and the general law relating to social assistance.
62. These laws appear to relate to social security benefits provided by the state which are distinguishable from occupational pension benefits provided by employers like the Trust. Consequently, I do not consider that benefits accrued under the Scheme are social security benefits falling within the scope of the Regulation 883/2004. I do not believe that there is any legal basis in support of Dr R's case that the Scheme falls within scope because it is a statutory scheme providing retirement benefits.
63. In addition, Article 9 of Regulation 883/2004 provides member states (including the UK at present) the power to make declarations specifying the schemes that fall within the scope of the Regulation and sets out the procedure for such a scheme to be recognised for the purposes of the Regulation. The UK Government has made no such declaration in respect of the Scheme under Article 9.
64. I agree with the Adjudicator that the UK Government has not made any valid declaration confirming that the Scheme falls within the scope of the EU Regulations. Dr R cannot interpret the UK Government's lack of such a declaration to mean that he is entitled to benefits from the Scheme.
65. Therefore, I find that the EU principles of aggregation applicable to social security benefits do not apply in this case to extend the period of Dr R's membership within the Scheme.
66. Dr R has also argued that the Scheme Regulations are incompatible with EU Law, and the Scheme Regulations must be interpreted in accordance with EU Law to avoid inconsistencies. In my view, Dr R's case does not raise the issue of incompatibility with EU Law, because the Scheme Regulations relate to a different category of benefits from those within the EU Regulations and case law Dr R cites.
67. Dr R's entitlement to benefits from the Scheme is governed by the Scheme Regulations. Section 72 of the Scheme Regulations provides that a member is entitled to retirement benefits under the Scheme "if the member has at least 2 years' qualifying service". Dr R has not accrued pension entitlement under the Scheme Regulations. Dr R has not provided any evidence to show that NHS BSA's records of his historic pension membership are incorrect.

68. Benefits within the Scheme are accrued through direct membership and contributions into the Scheme; Scheme benefits are not accrued as a result of any entitlement to state benefits as Dr R argues.
69. Dr R also seems to argue that his periods of membership within the Scheme, that were transferred out of the Scheme in 2008, ought to be aggregated with the period of membership arising from his employment with the Trust in 2016. However, Dr R is not entitled to accrue benefits within the Scheme in respect of periods of membership that have been transferred out of the Scheme.
70. I find that in refusing to grant Dr R benefits from the Scheme, NHS BSA acted in accordance with the Scheme Regulations and I do not find any act of maladministration by NHS BSA on this matter.

Failure to issue a statutory notice

71. Dr R believes that NHS BSA acted in maladministration because it failed to issue a written notice on the Trust for late payment of his contributions under Regulation 36(4) of the Scheme Regulations.
72. NHS BSA has explained that it has not issued the Trust with a written notice under Regulation 36(4) in respect of Dr R's contributions because it has not identified a chargeable event. I acknowledge NHS BSA's submissions that it would be impractical for it to reconcile the monthly bulk contribution payments it receives to the extent of determining whether monthly contributions for each individual member were made on time. Further, that Dr R's contributions were paid by the time it reconciled its record of contributions made by the Scheme employers.
73. There are a number of reasons why I do not consider that this aspect of Dr R's complaint succeeds.
74. The Trust does not dispute that it did not pay any pension contributions in respect of the wages it paid to Dr R in June 2016 and July 2016. It is arguable that a chargeable event within Regulation 36(1) might not have occurred in respect of Dr R's entire wages. This is because the issue of unpaid wages (and pension contributions due on those wages) was the subject of proceedings at the ET which determined the matter in August 2017. The Trust has confirmed that in September 2017, it paid the pension contributions due to Dr R into the Scheme.
75. In any event, I do not believe that NHS BSA had sufficient information in respect of any chargeable event at the time Dr R wrote to NHS BSA to enable it to take any further action on the matter.
76. On 6 February 2017, Dr R informed the Trust and NHS BSA that the Trust had not paid the pension contributions due on the wages he was paid in June 2016 and July 2016. I find that NHS BSA investigated this issue because it confirmed in its letter dated 24 April 2017 to Dr R, that the Trust had not updated his records with the Scheme and it had written to the Trust requesting that it update Dr R's records and

pay the pension contributions due. NHS BSA confirmed that it did not have the relevant information from the Trust at the time. I find that NHS BSA took reasonable steps to investigate the matter with the Trust. It appears on the evidence that the Trust did not respond to NHS BSA's request. It also appears that any response from the Trust, had it been forthcoming, would have mirrored that at paragraph 29.

77. In its submissions to this office, NHS BSA has highlighted Regulation 36(2) which provides that, where there is a chargeable event, the Scheme Manager may determine what amount of contributions are unpaid, with regard to any factors it considers relevant. It appears to me that NHS BSA wishes to rely on Regulation 36(2).
78. Regulation 36(2) provides NHS BSA the discretion to issue a determination in respect of unpaid contributions and I find that in order to consider exercising its discretion, NHS BSA must be satisfied that a chargeable event has occurred. There is no evidence that NHS BSA received the information it requested from the Trust. As NHS BSA did not have sufficient information to decide whether there had been a chargeable event, it could not then consider exercising its discretion under Regulation 36(2).
79. Even if there was a chargeable event, I do not believe that Dr R's complaint against NHS BSA succeeds. This is due to the lack of relevant information from the Trust which meant that NHS BSA was unaware that a chargeable event had occurred, and so it could not have issued a notice under Regulation 36(4). Further, NHS BSA has confirmed that by the time it reconciled its records, it found that Dr R's pension contributions were paid.
80. So, even if there was a chargeable event, on the current facts, I do not consider that it would be appropriate for me to direct NHS BSA to issue a notice under Regulation 36(4) to recover interest and administrative charges in respect of the contributions that are now paid. Dr R has received the remedy he would have received under Regulation 36(4); that is his pension contributions have now been paid. NHS BSA has also confirmed that any interest payable under Regulation 36(4) is not added to the member's pension account, and the contributions are treated as if they were paid on time. There is no evidence of any negative impact on the value of Dr R's entitlement from the Scheme.
81. It seems to me that the purpose of a written notice under Regulation 36(4) is to secure the payment of outstanding contributions and interest on those contributions where NHS BSA has made a determination under Regulation 36(2) as to the amount outstanding. I do not believe that the purpose of a notice under Regulation 36(4) is properly served on the current facts, given that the contributions are now paid, and in view of the short service.

PO-18733

82. I do not uphold Dr R's complaint against NHS BSA.

Anthony Arter

Pensions Ombudsman
23 September 2019

Appendix

The National Health Service Pension Scheme Regulations 2015

Members' contributions: employees

30. (1) This regulation applies in relation to an active member (M)....

.....

(5) M's employing authority must deduct member contributions from M's pensionable earnings and pay them to the scheme manager not later than the 19th day of the month following that in which the earnings were paid to M.

Interest and administration charges: late paid contributions

36. (1) There is a chargeable event if an employing authority fails to pay—

(a) the contributions it is required to pay under regulation 30, 31, 33, 34, 35, 48 or 57;

(b) on or before the date specified in the regulation concerned.

(2) Where there is a chargeable event, the scheme manager may determine what amount of contributions are unpaid having regard to—

(a) the amount of contributions historically paid at a chargeable event by that employing authority;

(b) any reasons or explanation provided by the employing authority for the change in the amount of contributions (if any) it has paid at such an event;

(c) any other factors that the scheme manager considers relevant.

(3) Where there is a chargeable event, the employing authority is liable to pay—

(a) standard rate interest on the amount of unpaid contributions constituting that event; and

(b) an administration charge in respect of each such event.

(4) Where the scheme manager becomes aware of a chargeable event, the scheme manager must give the employing authority a written notice specifying—

(a) the date of the chargeable event;

(b) the amount of unpaid contributions determined under paragraph (2);

(c) the amount of interest at the standard rate payable in respect of that event;

(d) the amount of administration charge payable in respect of it; and

(e) that payment of the amounts referred to in paragraphs (c) and (d) is to be made before the end of the period of 1 month starting with the date of the notice and that failure to do so incurs further interest and administration charges.

(5) An amount payable by way of interest or payable by way of an administration charge is to be paid as a single lump sum unless the scheme manager—

(a) considers the case to be exceptional; and

(b) considers it appropriate for all, or part, of the amount to be paid over a period and by a number of instalments determined by the scheme manager.

(6) Where the scheme manager considers the case to be exceptional, nothing in the preceding paragraphs prevents the scheme manager from waiving all or any part of the amount of interest, or all or any administration charges, payable.

Eligibility for refund

40. (1) Contributions made by a member (M) must be repaid to M if—

(a) the 1993 Act condition applies; or

(b) the short service condition applies.

(2) The “1993 Act condition” is that—

(a) Chapter 5 of Part 4 of the 1993 Act(1) applies to M; and

(b) the repayment is made in accordance with that Chapter.

(3) The short service condition applies if—

(a) M does not qualify for benefits under regulation 72;

(b) M is not a pensioner member;

(c) M ceases to be an active member;

(d) the 1993 Act condition does not apply to M; and

(e) M makes a claim in writing to the scheme manager for the repayment.

Qualifying for retirement benefits

72. A member is qualified for retirement benefits under this scheme if—

(a) the member has at least 2 years’ qualifying service; or

(b) a transfer payment otherwise than from another occupational pension scheme has been accepted in relation to the member.

Entitlement to age retirement pension

73. (1) A member is entitled to payment of an age retirement pension from the entitlement day if the member—

- (a) has reached normal pension age;
- (b) is qualified for retirement benefits or the member ceases pensionable service after reaching normal pension age;
- (c) has left all NHS employment or reached age 75; and
- (d) has applied under paragraph 4 of Schedule 3 for the payment of an age retirement pension.

(2) An age retirement pension is payable for life.

(3) This regulation does not apply to a pension derived from pension credit rights (see section 101B of the 1993 Act(1)).