

## Ombudsman's Determination

Applicant	Mrs Y
Scheme	NHS Pension Scheme ( <b>the Scheme</b> )
Respondent	NHS Pensions

### Outcome

1. I do not uphold Mrs Y'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 Y's previous complaint was determined under the case of PO-12178 (**the determination**). After the determination, NHS Pensions collected Mrs Y's outstanding employee contributions from the pension arrears and additional lump sum it owed to her. Mrs Y's complaint now is that NHS Pensions should not have applied tax to her arrears before collecting the contributions owed.

### Background information, including submissions from the parties

4. Briefly, the background to the determination is that Mrs Y had missing service which amounted to 107 days, as her previous NHS employer had erroneously opted her out of the Scheme. NHS Pensions agreed for this service to be added retrospectively, meaning Mrs Y had to pay her share of employee contributions. To rectify the matter, NHS Pensions offered the following options:-
  - a) To pay contributions of £705, giving her an additional lump sum of £1,027.34 and an annual pension increase to £12,064.66 gross, with the pension arrears being paid from her retirement date; or
  - b) To pay contributions of £883.47, which was £705 plus an additional £178.47 which occurred due an error in the original calculation of her missing service. This would result in a slightly higher additional lump sum of £1,161.75 and higher pension of £12,086.09 gross. Again, any arrears would be paid from her retirement date.

## PO-19030

5. Mrs Y chose option b. She then brought a complaint to this Office regarding the service she had received from NHS Pensions and the amount of time it took for a resolution to be found. Her complaint was not upheld in this respect.
6. It was agreed that Mrs Y would pay her employee contributions by having the £883.47 deducted from the pension arrears she was owed. At that point, it was assumed that the arrears owed to Mrs Y would be sufficient to cover the employee contributions.
7. After Mrs Y's increased benefits were authorised, NHS Pensions calculated that her pension arrears amounted to £928.42, but £185.60 had to be deducted for income tax, leaving £742.82. As this amount was insufficient to cover the employee contributions of £883.47, the outstanding £140.65 was deducted from the additional lump sum of £1,161.75.
8. Mrs Y disagrees with the way NHS Pensions collected her employee contributions. Specifically, she was not happy that tax had to be applied to the pension arrears before her employee contributions were deducted, which resulted in her lump sum having to be reduced to collect the excess contributions. She highlighted that when she was in employment, her employee contributions were deducted from her gross pay; so, following this logic, NHS Pensions ought to deduct her employee contributions from her gross arrears. Mrs Y also said that the situation has been extremely stressful, especially as it has been on-going since 2012.
9. NHS Pensions provided its formal response to this Office which is summarised below:-
  - Section 91 of the Pensions Act 1995 (**the Act**) provides that an overpayment or recovery action of a debt can be set-off against amounts payable, providing the member is informed that such recovery is being made.
  - Although the determination did not specifically mention that the pension would be taxable, it is a long-standing principle within pensions that payment of a pension is taxable income. This is because in most cases, contributions towards a pension are made prior to any taxation. It is not within NHS Pensions' gift to waive the deduction of taxation and thereby recover amounts owed from a gross payment of pension.
  - NHS Pensions informed Mrs Y on numerous occasions that the contributions owed would first be recovered from her net pension arrears, followed by the lump sum. In particular, it wrote to Mrs Y on 10 September 2015 regarding the options available to her and how it would collect her employee contributions. It said:

"If these benefits were put into payment from 16 April 2012, [Equiniti] has confirmed that this would result in net arrears of pension"

...

“In addition, arrangements can be made to deduct the pension contributions from the pension first, with the balance deducted from the lump sum.”

- This was also referenced when NHS Pensions wrote to Mrs Y on 19 October 2015. Therefore, it had fulfilled the requirements set out in the Act.

## **Adjudicator’s Opinion**

10. Mrs Y’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 below:-

- NHS Pensions has the ability to collect the contributions Mrs Y owed from her pension arrears and lump sum, as provided by the Act. The issue is that Mrs Y believes that her employee contributions should be deducted before tax from the pension arrears she was owed by NHS Pensions, to reflect how her employee contributions would have been deducted from her gross salary.
- The pension arrears payable is a benefit, so NHS Pensions is obligated by statute to apply income tax to the arrears payable to Mrs Y. In addition, the £883.47 Mrs Y owes in employee contributions has been calculated from her gross salary, making it no different from if they had been collected as though she was in employment. Mrs Y was always liable to pay the outstanding £140.65 in employee contributions, so there was no issue with NHS Pensions’ deducting this from the additional lump sum. As no financial loss has been suffered, the Adjudicator did not believe NHS Pensions was required to take any further action.
- Turning to non-financial injustice, NHS Pensions provided an equitable solution which Mrs Y had accepted. NHS Pension did not expressly explain how it would deduct her employee contributions from her net pension arrears beforehand, but no error has been made in how her contributions had been collected. Therefore, no award for non-financial justice was justified.

11. Mrs Y did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mrs Y provided her 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 Mrs Y for completeness, as set out below:-

- Mrs Y says she was repeatedly told by NHS Pensions that there would be sufficient pension arrears to cover the contributions she owed. There was no mention that tax would be deducted from the arrears owed to her. It was only after the settlement was made that she became aware that her additional lump sum would be reduced.
- Mrs Y has highlighted that when NHS Pensions made the settlement, the £883.47 was actually taken from her lump sum of £1,161.75, leaving £278.28.

Because of this, Mrs Y says NHS Pensions did not comply with the determination.

- When Mrs Y received her wages, NHS contributions were always deducted before tax. She disputes that she was made aware that her employee contributions would be deducted from the net arrears owed, so NHS Pensions did not fulfil its requirement under the Act.
- Mrs Y made several further points which can be summarised as saying that she was unhappy with the amount of time it has taken for this matter to be resolved.

### **Ombudsman's decision**

12. Mrs Y has argued that NHS Pensions did not make clear that her employee contributions would be taken from her net pension arrears; and, had she been in employment, her contributions would be deducted from her gross salary. As explained by the Adjudicator, the arrears owed to Mrs Y are different from the contributions she would have paid whilst in employment. They are a pension benefit which NHS Pensions has an obligation to deduct tax. The £883.47 Mrs Y owed in employee contributions has been calculated from her gross salary; it is no different from how it would have been calculated had the benefits been paid now or whilst she was in employment.
13. I note that Mrs Y says that she was wholly unaware that the arrears would be taxed. However, as set out in paragraph 9 above, the fact that Mrs Y would be paid net of arrears was mentioned in two letters sent to her by NHS Pensions, on 10 September and 19 October 2015. Therefore, I find that it was reasonable for Mrs Y to have known that tax would be applied to the arrears.
14. As stated in the determination, NHS Pensions has exceptionally provided two options for Mrs Y in order to find a resolution to her missing service. The overall amount Mrs Y was owed was £1,021.10. The fact that NHS Pensions deducted Mrs Y's employee contributions from her lump sum, as opposed to taking it from her net arrears, then taking the remaining amount from her lump sum, makes no difference to the amount Mrs Y is entitled to; both payment methods equal £1,021.10.
15. Finally, turning to the amount of time it has taken to settle this complaint, this has already been addressed in the Determination, so I will make no further comment here.
16. I do not uphold Mrs Y's complaint.

**Anthony Arter**

Pensions Ombudsman  
30 May 2019