

Ombudsman's Determination

Applicant	Mrs L
Scheme	NHS Pension Scheme (the Scheme)
Respondents	NHS Pensions

Outcome

1. I do not uphold Mrs L'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 L's complaint against NHS Pensions is about her entitlement to Mental Health Officer (**MHO**) status under the Scheme.

Background information, including submissions from the parties

4. Mrs L is currently employed by the NHS and is a member of the 1995/2008 section of the Scheme.
5. She was previously employed by the NHS between April 1984 and March 1988, and was a member of the pre-1995 section of the Scheme during this time.
6. In March 1988 she left employment and received a refund of her contributions in respect of her membership of the Scheme up to this point.
7. She returned to work for several different NHS Trusts and NHS organisations between March 1989 to June 1993.
8. However, NHS Pensions have no record of her securing accrued rights in the Scheme during this period.
9. From June 1993 to September 1996 she worked for a private hospital group and was not a member of the Scheme during this period.
10. However, Mrs L says she is struggling to comprehend how it is that she is not entitled to MHO status on the basis that NHS Pensions have no record of a pension entitlement being due to her for pre-7 March 1995 service.

11. She asserts that HM Revenue & Customs (**HMRC**) letters of 18 December 2017, 20 December 2017 and 8 January 2018 make clear reference to a Guaranteed Minimum Pension (**GMP**) owing from the Scheme for the periods 6 April 1984 to 15 March 1988, and for the period 6 April 1993 to the 5 April 1994. These amounts being £1.23 a week and £0.35 a week accordingly.
12. She understands that her state pension will be reduced because of NHS Pensions having these GMP obligations and is “dumbfounded” why it is believed NHS Pensions have or indeed should have, paid her a refund of contributions in respect of these service periods. If they had, HMRC records would not show a GMP owing to her.
13. She accepts that HMRC records show her as having paid a Contributions Equivalent Premium to buy her back into the State Earning Related Pension for the period 1 February 1993 to 31 March 1993, but that there is no record of this happening for the period 6 April 1993 to 5 April 1994.
14. It has not been explained to her why HMRC records show her as being due a GMP of £0.35 a week because of her past membership of the Scheme for this period.
15. Although she previously accepted that she had received a refund of contributions from the Scheme up to 15 March 1988, she now says that this was a mistake as she responded without thinking, and does not know for certain what happened.
16. It was many years ago and she says that HMRC records suggest that she did not, and this explains why a GMP liability is showing for this period.
17. Overall, given that the evidence in the form of three different letters from HMRC she refuses to accept that she had no accrued rights in the Scheme prior to re-joining in 1996.

Adjudicator’s Opinion

18. Mrs L’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:-
 - The Adjudicator outlined the criteria to qualify for MHO status:
 1. Be in pensionable employment under the 1995 Section on 6 March 1995 as a MHO;
 - or
 2. Have accrued rights to benefits under the 1995 Section of the scheme arising out of a MHO employment and at no time since that last occasion on which he was so engaged has there been a break in pensionable employment for any one period of 5 years or more ending after the 6 March 1995.

- The Adjudicator understood that at the key MHO qualification date of 6 March 1995 Mrs L was in full time employment as a psychiatric nurse in a private psychiatric hospital, which would have been considered an approved place of work to maintain MHO status.
- The Adjudicator recognised that Mrs L is aware of many nursing colleagues that maintained MHO status while working in similar establishments. She also remained registered as Mental Health Nurse with the Nursing and Midwifery Council throughout the period and was employed the whole time in the care and treatment of psychiatric patients.
- To qualify for MHO status, she needed to have been in pensionable employment under the 1995 Section of the Scheme on 6 March 1995, as a MHO, but the Adjudicator understood that she was not a member of the Scheme or any other scheme at this point.
- Mrs L has also confirmed that she received a refund of contributions for her service up to 15 March 1988, and this means that her accrued benefits for this service, under the 1995 Section of the Scheme were extinguished.
- The Adjudicator noted that her membership between February 1993 to 31 March 1993 at the Grove Park hospital was not long enough for her to have accrued a preserved benefit within the Scheme and that she is still due a refund of her contributions for this period.
- Therefore, when she re-joined the Scheme in 1996/1997 she had no accrued rights under the Scheme prior to this point.
- The Adjudicator further noted that NHS Pensions say that it has no record of Mrs L being a member of the Scheme between 1989 and 1993. According to HMRC she was paying the “A rate” level national insurance contributions during this period, and this indicates that she was part of the State Second Pension at the time.
- Members of the Scheme would not have been paying this level of contributions as it contracted its members out of the State Second Pension in return for paying lower national insurance contributions.
- This means that Mrs L would not have accrued pre-1995 benefits in the Scheme and therefore does not currently qualify for MHO status.
- If she considers that she was, or should have been enrolled in the Scheme during this time, then this is something she will need to take up with her employers at the time, and possibly NHS Pensions. Particularly if her former employers say that she was enrolled and contributions were deducted and paid to NHS Pensions.

- It should also have been evident from her payslips at the time whether contributions were deducted and paid into the Scheme, and it is likely that she would have been sent formal confirmation from NHS Pensions if she re-joined the Scheme at this point.
- The Adjudicator informed her that the presence of a GMP liability does not constitute an accrued benefit in the Scheme, rather a liability to pay the equivalent of a GMP.
- The GMP built up when she was a member of the Scheme and was an alternative to benefits from the State Second Pension. In contracted out schemes this element of pension falls on the scheme rather than the state, but would normally only remain with the scheme if more than two years' service was completed.
- To have been entitled to deferred accrued rights when she left the Scheme, the following would have been required:
 1. More than 2 years qualifying membership.
 2. Less than 2 years in the Scheme, but have transferred another pension into the NHS Pension Scheme.
- However, the Adjudicator understood that neither of these scenarios applied in her case.
- The Adjudicator explained that there are other possible explanations why a GMP liability for her is showing with NHS Pensions, for example when a refund of contributions was made from the Scheme, it may not have correctly returned the GMP liability to HMRC, or HMRC may not have correctly recorded this at the time.
- The letter of 18 December 2017 from HMRC also states, "please contact the NHS pension scheme directly to find out the true amount of benefits held for you in their scheme." However, the Adjudicator understood that NHS Pensions has no record of any benefits for Mrs L in the Scheme.
- If Mrs L disputes NHS Pensions' record of her membership of the Scheme, the Adjudicator urged her to take this up with it, as based on the balance of the current evidence, the Pensions Ombudsman is likely to find that she does not have any pre-1995 accrued benefits in the Scheme.
- However, the Adjudicator stated that any of the following evidence would help to prove this:
 1. Leavers statement detailing her deferred benefit in the Scheme.

2. Annual statements detailing her deferred and active benefits in the Scheme.
 3. Letter when she re-joined the Scheme in 1989.
- The Adjudicator summed up that the available evidence indicates that Mrs L is either entitled to a GMP from the Scheme, which would have been retained in error, or a reduced contracted out deduction from HMRC, not a Scheme pension that would amount to accrued rights.
 - Taking all of this into account, it was the Adjudicator's view that she does not qualify for MHO status under the current criteria.
19. Mrs L did not accept the Adjudicator's Opinion, or provide any of the requested evidence, so the complaint was passed to me to consider.
 20. Mrs L 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 L for completeness.

Ombudsman's decision

21. Mrs L says that she clearly has an "accrued right" in the Scheme as previously explained because this is what her HMRC records show.
22. However, I agree with the Adjudicator's view that based on the available evidence, it is more likely than not that she does not have any pre-1995 accrued benefits in the Scheme, so I do not uphold Mrs L's complaint.

Anthony Arter

Pensions Ombudsman
2 October 2018