

## Ombudsman's Determination

Applicant	Mr E
Scheme	NHS Pension Scheme ( <b>the Scheme</b> )
Respondent	NHS Business Service Authority ( <b>NHS BSA</b> )

## Outcome

1. I do not uphold Mr E's complaint and no further action is required by NHS BSA.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr E was automatically enrolled into the Scheme. He complains that, because he is over normal retirement age, he is no longer entitled to a refund of contributions and must take Scheme pension benefits.

## Background information, including submissions from the parties

4. In May 2017, Mr E began employment with the Cardiff and Vale University Health Board (**the Board**) aged 66. Mr E says that upon joining, he told the Board that he did not want to be enrolled into the Scheme.
5. In July 2017, Mr E discovered that he had been enrolled in the Scheme as his payslips showed pension contributions, amounting to £127.56, had been deducted from his salary. Mr E requested that he be unenrolled and his pension contributions refunded. Mr E was unenrolled, but was told that his pension contributions could not be refunded because he was over the Scheme's normal retirement age of 65.
6. In January 2018, Mr E complained to NHS BSA and invoked its internal dispute resolution process (**IDRP**). Mr E's complaint was not upheld at either stage of its IDRP. A summary of NHS BSA's key points are set out below:-
  - Since April 1988, eligible NHS employees have been automatically enrolled into the Scheme. Membership of the Scheme is voluntary however, if members wish to opt out of the Scheme they must submit a SD502 form.

## **PO-20407**

- The Board acted correctly in automatically enrolling Mr E into the Scheme and commencing the collection of pension contributions.
  - Under provisions introduced by the Pensions Act 2008, employers are not permitted to provide opt-out request forms to their employees under any circumstance.
  - The Scheme Regulations state that if a member leaves the Scheme with less than two years membership and before the normal retirement age of 65, they are not entitled to a preserved pension and may be eligible for a refund of pension contributions.
  - As Mr E is over the normal retirement age of 65, pension benefits are automatically payable subject to the cessation of NHS employment, meaning that he is not entitled to a refund of pension contributions. Mr E is however entitled to Scheme pension benefits.
7. Mr E did not agree with the outcome he received from NHS BSA, and brought his complaint to this office. Mr E provided a copy of the completed enrolment form which he submitted to the Board, stating that he did not wish to enrol in the Scheme.
8. The relevant extract from the Scheme Regulations is set out in the Appendix.

### **Adjudicator's Opinion**

9. Mr E's complaint was considered by one of our Adjudicators who concluded that no further action was required by NHS BSA. The Adjudicator's findings are summarised briefly below:-
- The Scheme Regulations state that Mr E is not entitled to a refund of pension contributions because he joined the Scheme over the age of 65. The Scheme Regulations are statutory and the Pensions Ombudsman cannot make a direction outside of them.
  - Mr E has not suffered a financial loss because he is not entitled to a refund of pension contributions, as he is entitled to pension benefits under the Scheme.
10. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E 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 Mr E, summarised below for completeness:-
- Mr E originally thought that the Board mistakenly enrolled him into the Scheme. However, Mr E says that the enrolment form correctly shows that this was not his intention. Mr E accepts that NHS BSA does not enrol members itself, but says the individuals who enrolled him "would have to be approved by [NHS BSA], so [it] must take some responsibility for the actions of those they have approved."

- Mr E had no knowledge that he had been enrolled into the Scheme until pension contributions had already been deducted from his Salary. He was not told that a SD502 form ought to be submitted until after pension contributions had been deducted from his salary.
- Mr E says that “There are two basic principles that govern financial services, Treating Customers Fairly (**TCF**) and putting customers at the heart of everything they do”. He says that he cannot see how either of these principles have been adhered to as his pension contributions cannot be refunded.

### **Ombudsman’s decision**

11. Mr E has cited the Financial Conduct Authority’s TCF principles. However, the Scheme is a public-sector pension and therefore TCF does not apply. NHS BSA are bound by the relevant Scheme Regulations set out by Parliament, and it is my role to determine whether it has acted in accordance with these Regulations.
12. NHS BSA does not automatically enrol members. In Mr E’s case, this duty is carried out by the Board. I realise that Mr E did not wish to be enrolled into the Scheme, but the Board followed the correct process in automatically enrolling him. To opt out of the Scheme, Mr E was required to submit a SD502 form. This may not have been apparent to Mr E at the time, but this is not something which NHS BSA is accountable for. Mr E can take this up with the Board if he wishes.
13. Regulation 73 states that Mr E is entitled to retirement benefits if he ceases pensionable service after attaining the age of 65. It follows that Mr E is entitled to retirement benefits under the Scheme and consequently is not entitled to a refund of pension contributions. Mr E may not agree with the Scheme Regulations, but I have found that NHS BSA has administered them correctly.
14. In addition, Mr E may not be allowed a refund of pension contributions, but he is entitled to retirement benefits, therefore he has not suffered a financial loss, although I appreciate this is of little comfort to Mr E as the contribution he has made will produce an extremely small pension
15. However, Mr E’s intention not to enrol into the Scheme was clear from the enrolment form he submitted to the Board. The Board is not a respondent in this complaint, so it is a matter for Mr E to consider whether he wishes to raise a separate complaint against the Board.
16. In respect of NHS BSA I am unable to uphold Mr E’s complaint.

**Anthony Arter**

Pensions Ombudsman  
31 August 2018

## **Appendix**

17. Section 73 of the 2015 NHS Pension Scheme Regulations state:

“(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).”