

Ombudsman's Determination

Applicant	Mrs N
Scheme	NHS Pension Scheme (the Scheme)
Respondent	NHS Pensions

Outcome

1. I do not uphold Mrs N'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 N believed that she was a member of the Scheme between 1992 and 1997, but later discovered that no pension contributions were paid by her former NHS employer. Mrs N says that she did not opt out of the Scheme in 1992, and consequently can no longer afford to retire early due to her missing membership.

Background information, including submissions from the parties

4. In 1988, Mrs N began employment with the NHS as a trainee nurse, and completed her training in 1992. According to Mrs N, she commenced "substantive employment" with the NHS between 1992 and 1997. Mrs N later re-joined the NHS in 2002.
5. In January 2016, after checking her NHS pension record online, Mrs N discovered that no pension contributions had been paid towards the Scheme between 1992 and 1997 by her former employer, Northampton General Hospital NHS Trust (**the Trust**). Mrs N subsequently queried her employment record with HMRC, and received evidence to show that she was employed by the Trust for the period in question.
6. In February 2016, Mrs N wrote to NHS Pensions to invoke its Internal Dispute Resolution Procedure (**IDRP**). She requested that NHS Pensions provide her with a signed copy of a SD502 form from 1992, which is used when a member wishes to opt out of the Scheme.
7. In April 2016, NHS Pensions issued its IDRP stage 1 response, and said its records showed that no pension contributions were made to the Scheme between 30 March

1992 and 28 April 1997. NHS Pensions said it no longer held copies of the SD502 opt out forms for the years in question.

8. Mrs N appealed the IDRP stage 1 response but did not receive a reply, so brought her complaint to this Office. Mrs N provided a document from HMRC to prove that between the tax years 1992 and 1997, she was employed by the Trust.
9. NHS Pensions submitted its formal response to this Office and said: -
 - To opt out of the Scheme, employees are required to complete a SD502 form and return it to their employer. NHS Pensions do not retain copies of this form.
 - The records it held showed that between 29 September 1988 and 30 March 1992, Mrs N was employed by the Trust, and in its closing period in 1992, the Trust confirmed that Mrs N had left the Scheme. The reason given was that Mrs N had resigned.
 - Under routine procedures, NHS Pensions acted to preserve the benefits Mrs N had accrued up to 30 March 1992. It contacted the Trust in April 1993, who returned a form with Mrs N's pensionable pay at the time of leaving. If, for example, Mrs N's employer had overlooked enrolling her back into the Scheme or collecting her pension contributions, the preservation enquiry from NHS Pensions would have prompted corrective action by the Trust.
 - Due to the passage of time, there was no evidence of any communication from the Trust which indicated that she was re-enrolled into the Scheme between 1992 and 1997, or that pension contributions were collected from her during this period.
 - Until April 2016, members of the Scheme were contracted-out of the State Second Pension (**S2P**) formally known as the State Earning Related Pension Scheme (**SERPS**), meaning they would have paid reduced rate National Insurance (**NI**) contributions (**D rate**) for the duration of their membership. Individuals who were not contracted-out and participating in the S2P, would pay a higher rate of NI contributions (**A rate**). Therefore, Mrs N's NI contribution rate was a reliable indicator of whether she was a member of the Scheme between 1992 and 1997.
 - Mrs N had provided NHS Pensions with a history of her National Insurance contributions. For the tax years between 1988 and 1992, Mrs N's NI contributions were deducted at D rate, indicating that she had been contracted-out of SERPS during this period as expected.
 - However, between the tax years 1992 and 1997, Mrs N was paying A rate NI contributions, meaning that she was not contracted-out of SERPS, and therefore was not a member of the Scheme for this period.

10. NHS Pensions explained that employers notify NHS Pensions of the reason for leaving via a specific 'exit codes' as follows:

01 - resignation or retirement from NHS employment

02 - Dismissal

03 - Redundancy

16 - Opted out but employment continues

In Mrs S' case the exit given for cessation at 30 March 1992 was 01 – resignation. However, this does not necessarily mean that NHS Employment has ceased altogether; the 01-exit code is used when an employee moves from one NHS Employer to another, the previous NHS Employer will notify NHS Pensions using this exit code, even within the same NHS Trust.

11. NHS Pensions also explained that in 1992, employer's annual and closing records were recorded via magnetic tape. The recorded information would be transferred to NHS Pensions without manual intervention.

Adjudicator's Opinion

12. Mrs N'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: -
- In light of the evidence submitted by NHS Pensions, the Adjudicator was satisfied that Mrs N could not have been a member of the Scheme between 1992 and 1997 because she was not contracted-out.
 - Although Mrs N had submitted evidence to show that she was employed by the Trust between 1992 and 1997, being employed by the Trust and being a member of the Scheme are two completely separate matters. The evidence available strongly suggested that Mrs N had been unenrolled from the Scheme in 1992, and therefore there was no evidence of maladministration on the part of NHS Pensions.
13. Mrs N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs N 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 N for completeness.
14. Mrs N says it appears that she had been opted out of the Scheme without her express permission, and that someone else ought to take responsibility for this as the missing period between 1992 and 1997 penalises her financially and personally.

Ombudsman's decision

15. I understand that it must have come as a shock for Mrs N to discover that she was not a member of the Scheme for the five-year period in question, 1992 to 1997. However, I agree with the Adjudicator that based on the evidence provided by NHS Pensions, in particular that Mrs N was not contracted-out of SERPS between the tax years 1992 and 1997, Mrs N was not a member of the Scheme between this period.
16. The complaint which has been investigated is against NHS Pensions and turns on whether or not she was a member over the period in dispute. The information provided by HMRC clearly indicates she was paying A rate NI contributions between 1992 and 1997, therefore I am satisfied that Mrs N was not a member of the Scheme for this period and she is not entitled to an additional 5 years pensionable service in the Scheme.
17. I accept that Mrs N maintains she did not opt out of the Scheme in 1992. However, even in the absence of the S502 opt out form, I do not find that NHS Pensions administered her record incorrectly. It was the responsibility of Mrs N's employer to provide NHS Pensions with the relevant annual update to her pensionable status. When Mrs N qualified as a Nurse in 1992, her record was correctly updated with the 01-exit code to reflect the information provided by her employer, that she had ceased employment in respect of that particular NHS employer. The reason why Mrs N was not opted back into the Scheme when she joined her new NHS employer is something about which I make no finding because there is no complaint against that employer which has been investigated.
18. Therefore, I do not uphold Mrs N's complaint against the Scheme.

Karen Johnston

Deputy Pensions Ombudsman
15 November 2018