

Ombudsman's Determination

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

Outcome

1. I do not uphold Mrs N'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. Mrs N's complaint concerns NHS BSA's decision regarding her eligibility for preserved pension benefits.

Background information, including submissions from the parties

4. Mrs N joined the Scheme on 1 August 1983 and the last day she contributed to the Scheme was 31 January 1988. Mrs N's membership in the Scheme amounts to 4 years 140 days.
5. Mrs N's pension benefits are subject to Section 8 and Section 37 of the National Health Service (Superannuation) Regulations 1980, which states:-

"8 Officer's pension and retiring allowance

On ceasing to be an officer, a person shall be entitled to receive from the Secretary of State—

(a) an annual pension if—

(i) he has completed 5 years' service and is permanently incapable of discharging efficiently the duties of his employment by reason of physical or mental infirmity; or

(ii) he has attained the age of 60 years; or

(iii) there has been repaid to the Secretary of State a transfer payment which was made under regulation 80(1) or the corresponding provision of the previous regulations to the superannuation scheme of the Commission of the European Communities a Community institution in respect of that person; or

(iv) he has completed 5 years' service or he is a person to whom regulation 37(4) or regulation 37(5)(b) or (c) applies, and in any such case he has not, within 12 months and without first having become entitled to receive payment of such annual pension, again become an officer; or

(v) he has completed 5 years' service and the conditions prescribed in paragraph (4) are applicable in his case; and...

37 Return of contributions

(1) Subject to the following provisions of this regulation, a person who on ceasing to be an officer does not become entitled to receive payment of any other benefit under these regulations and who holds no other employment in which he is an officer shall be entitled to receive from the Secretary of State a return of his contributions..."

6. At the time Mrs N left NHS employment, her employer would have provided her with the booklet 'A Guide to the Scheme' and 'Leaving the National Health Service'. The latter one, dated April 1987, which on page 1 said:

"On the other hand, if you cannot transfer your pension rights and you have at least 5 years' service...you should think very seriously about PRESERVING YOUR PENSION RIGHTS...if you would like further information, please ask the superannuation officer of your last National Health Service employing authority, or write to..."

7. On 5 April 1988, changes were made to the Regulations in that the qualifying service reduced from 5 years to 2 years.

8. On 7 March 1989, NHS BSA sent Mrs N a letter informing her of her pension position that further explained:

"Our records show that your last superannuable job in the NHS ended more than 12 months ago. As you did not have enough service at that date to be entitled to a pension, you may have to have your contributions paid back to you..."

9. In January 2014, Mrs N contacted NHS BSA via telephone to enquire about the amount of refund she is entitled to. She also enquired about an ill health retirement pension. NHS BSA informed her that in order to apply for it she must take a refund of her contributions first.

10. In March 2016, Mrs N's tax adviser sent a letter to NHS BSA to request her updated pension valuation.
11. On 21 November 2017, Mrs N raised a complaint to NHS BSA by invoking the Scheme's two-stage internal dispute resolution procedure (**IDRP**). In her appeal, Mrs N said that:

"I would like my complaint to continue to be considered and that I remain completely dissatisfied by the response so far. Miss E included a copy of a letter dated 07/03/89 sent to my old home. I have no recollection of any letter sent over 28 years ago...At that time I was very severely ill and more than likely in no fit state to deal with any letter...I was 'lost' to your system and effectively forgotten and ignored..."
12. On 12 January 2018, NHS BSA sent Mrs N a response under stage one of the IDRP that said:

"Prior to 6 April 1988 NHS employees needed to have at least five year's membership in the NHS Pension Scheme in order to be entitled to preserved benefits. As you have less than five years in the Scheme and your membership ended prior to 6 April 1988 your benefits cannot be preserved. We wrote to you on 7 March 1989 to confirm that your membership had ended more than 12 months prior and inviting you to take a refund of your contributions. Whilst I sympathise with your situation I cannot uphold your complaint and confirm that your only option at this time is to take a refund of your contributions."
13. Mrs N further appealed by invoking stage two of the IDRP. In her appeal, Mrs N said that a copy of the letter dated 7 March 1989, was sent to her old address and she has no recollection of it as it was sent over 28 years ago. Mrs N also said that she was ill at the time and more than likely unfit to deal with any letter.
14. On 6 April 2018, NHS BSA sent Mrs N a response under stage two of the IDRP that maintained its previous stance and added that:

"The onus rests with individual members to be aware of the scheme rules, to act upon any entitlement that becomes due and keep NHS Pensions informed of any changes to their address for as long as any entitlement remains in the Scheme...Guidance was also available from NHS Pensions, upon request, at any time...Our letter was sent to the latest home address on our records, as provided by your employer when you left on 31 January 1988...In this respect I believe NHS Pensions has fulfilled its obligations however, because you did not inform NHS Pensions of any changes to your home address, it was not possible to contact you as intended. Thereafter, the matter rested with you to contact NHS Pensions to confirm your intentions. As a member...the onus rested with you to keep abreast of the scheme rules, for example by reading

the guidance at appropriate intervals and to consider the impact of any changes in your employment at an appropriate time.”

15. In April 2018, Mrs N brought the complaint to this Office. In September 2018, NHS BSA provided this Office with a copy of call notes dated 21 January 2014 and 30 March 2017, that show NHS BSA informed Mrs N of her pension position and the Regulations. It also confirmed that the option of claiming a refund of the contributions is still available to her.

Adjudicator’s Opinion

16. Mrs N’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 below:-

- Changes were made to the Regulations on 5 April 1988 and the qualifying service reduced from 5 years to 2 years, however as Mrs N left the Scheme before 5 April 1988 these changes do not apply to her and the earlier Regulations remain valid for her membership in the Scheme.
- On that basis, the Adjudicator was satisfied that NHS BSA applied the Scheme Regulations correctly. As explained by NHS BSA, Mrs N is entitled to a refund of contributions and, as confirmed by NHS BSA to this Office, this option is still available to her.
- The Scheme Regulations are statutory regulations set up by the Government and NHS BSA does not have any discretionary power to override the Regulations.
- In the email dated 11 September 2018, NHS BSA sent this Office a copy of the call notes dated 21 January 2014 and 30 March 2017, that evidence NHS BSA explained the Regulations to Mrs N and that her only option is to take the refund. It also enclosed a copy of the letter dated 7 March 1989, that would have been sent to Mrs N informing her of the changes within the Scheme membership however, the Adjudicator has seen no evidence that she responded to this letter.
- Mrs N said that NHS BSA did not contact her or keep her informed properly of her pension rights.
- However, when Mrs N was leaving NHS employment, her employer would have provided her with a Scheme booklet entitled “A Guide to the Scheme” and “Leaving the National Health Service”, dated April 1987, of which page 1 informed her of her pension position. The Adjudicator believed that Mrs N could have contacted the Scheme to find out what would happen to the pension benefits she had accrued.

- While the Adjudicator understood that it may come as a disappointment to her, the Adjudicator disagreed with her claim that she should be entitled to have her pension benefits preserved. The Adjudicator was satisfied that NHS BSA had correctly interpreted the Scheme Regulations and that Mrs N's only option is a refund of the contributions.
 - The Adjudicator also believed that NHS BSA provided Mrs N with a detailed explanation regarding the changes to the Scheme membership and information would have been sent to her at the time.
17. Mrs N did not accept the Adjudicator's Opinion and in response made the following comments:-
- Due to her illness at the time, she was not in a position to do any paperwork or to keep up with events. She maintains that NHS BSA did not contact her or keep her properly informed after she had to give up her job due to illness.
 - Regardless of the Regulations, she has been treated badly by NHS BSA. She said that it did not correspond with her for years even though it knew her home address.
 - She is losing faith that the Ombudsman is impartial as to date it seemed to her that only the NHS BSA's side has been considered by the Adjudicator.
18. The complaint was passed to me to consider. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs N for completeness.

Ombudsman's decision

19. Mrs N maintains that NHS BSA did not contact her or keep her informed of her pension position.
20. As stated by the Adjudicator in the Opinion, NHS BSA was expected to send her correspondence in relation to the changes regarding her membership in the Scheme. It is my view that NHS BSA did send sufficient information to enable Mrs N to be aware of the implications of the changes within the Scheme that could affect her membership. Therefore, I do not find that there was maladministration on the part of NHS BSA, as it had made the salient information available to Mrs N.
21. I have great sympathy for Mrs N due to the fact that she was ill at the time and that she said she did not receive the said information. However, I would have expected her to inform NHS BSA of her change of address and make enquiries about her pension position especially that she was leaving her employment. I have seen no evidence of her doing so.
22. I note that Mrs N has said she is losing faith that the Ombudsman's impartiality. I want to assure Mrs N that I am impartial. However, my role as the Ombudsman in complaints of this nature is to decide if the NHS BSA has applied the Scheme Regulations correctly in terms of Mrs N's pension entitlement. I find that NHS BSA

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applied the Scheme regulations correctly in that she is not entitled to preserved pension benefits. Consequently, I do not find that there was any maladministration on NHS BSA's behalf.

23. Therefore, I do not uphold Mrs N's complaint.

Anthony Arter

Pensions Ombudsman
15 October 2018