

Ombudsman's Determination

Applicant	Ms Diane Mansell
Scheme	NHS Pension Scheme
Respondent(s)	Cardiff & Vale UHB, CWM Taff LHB Headquarters, NHS Pensions

Complaint Summary

Ms Mansell has complained that there are inaccuracies in the records held by NHS Pensions as a result of incorrect information provided by Cardiff & Vale University Health Board (Cardiff & Vale UHB) and Cwm Taf Local Health Board (Cwm Taf LHB).

Summary of the Ombudsman's determination and reasons

The complaint should not be upheld against Cardiff & Vale UHB and Cwm Taf LHB because there is no evidence to prove that their records for Ms Mansell are incorrect.

The complaint should not be upheld against NHS Pensions because they have based their records on the information provided by Cardiff & Vale UHB and Cwm Taf LHB.

Detailed Determination

Material Facts

1. Ms Mansell says that she first became aware that there were errors in her pension records in November 2011 when she did not receive a 'pensions choice' pack. Following this she entered into protracted correspondence with her former employers, Cardiff & Vale University Health Board and Cwm Taf Local Health Board, to resolve the issues.
2. On 3 August 2012 Ms Mansell wrote to NHS Pensions setting out the issues she had with her pension records. She said that she had become aware of the errors in the autumn of 2011 and that since then she had been able to resolve some issues. However, she had now received a statement of membership and found that a number of errors still existed. She detailed the start and finish dates of her various employments and said that her membership of the Scheme had been continuous since November 1981. She disputed the calendar length of service and therefore her total pensionable service.
3. NHS Pensions responded on 10 October 2012. They said that in order to provide a full response they would need more information. The letter explained that they had written to the employers mentioned to ask them to confirm the dates of employment and that Cwm Taf NHS Trust had already updated Ms Mansell's record for missing bank employment hours from 15 October 2006 to 30 April 2007.
4. Ms Mansell wrote to NHS Payroll Services on 14 February 2013 to question the information held for her. In their response NHS Payroll Services (Bridgend) said that they could only comment on one element which referred to her period of employment with Abertawe Bro Morgannwg University NHS Trust (**ABM**). They said that although she had had a bank contract for two years with ABM she was only actually paid for the period 6 July 2009 to 31 January 2011. They added that NHS Pension regulations stipulated that bank post records had to end on the date the individual last worked and that this had been done using the last day of the pay period she was last paid, i.e. 31 January 2011. This information had been confirmed to NHS Pensions in October 2012.
5. On 22 March 2013 NHS Shared Services (Cardiff) responded with regards to Ms Mansell's periods of service with the Cardiff & Vale LHB. They said that two periods of service did not require amendment, but that a third, which had been shown as commencing on 1 May 2009, had been amended to 16 March 2009. However, the end date of that period of service was also incorrect and was amended from 31 January 2010 to 24 September 2009.
6. Ms Mansell also wrote to NHS Pensions on 15 February 2013 under Stage 1 of the Internal Dispute Resolution (IDR) procedure, to complain about the inaccurate records they continued to hold for her.

7. NHS Pensions responded to Ms Mansell's complaint on 18 March 2013. They explained that whilst NHS Pensions was the central hub for the Scheme they relied on NHS employers to administer the Scheme locally and to supply the pay and membership information required in order to maintain records. The letter set out the pensionable employment information they held. They detailed their responses to her six specific questions. In the case of her employment with Cardiff & Vale LHB they said that the commencement date had been amended from 1 May 2009 to 16 March 2009.
8. In conclusion they said that Ms Mansell's complaint could not be upheld as her membership records had been updated using information provided by her various NHS employers. However, it added that should she wish to query the membership information NHS Pensions would need to see documentary evidence of any discrepancies.
9. Ms Mansell pursued her complaint under Stage 2 of IDR on 16 May 2013. She reiterated the concerns that she had regarding the accuracy of the records held about her membership of the Scheme. She said that:-
 - The start date for her service with Aneurin Bevan HB was shown as 22 July 1996 whereas it should have been 21 July 1996, which was a Sunday. She submitted a copy of her diary as evidence to support this claim.
 - Her employment with Cwm Taf was shown as ending on 16 July 2008 whereas it should have been shown as ending on 30 October 2009. She submitted a copy of a compromise agreement to support this claim.
 - The start date for her employment with Pontypridd and Rhondda was 18 January 2001 and not 1 September 2002 as shown. She supplied a copy of payslips from March 2001 in support of this claim, payment having been delayed.
 - She agreed that her start date with Cardiff & Vale LHB had been amended.
 - She also agreed that her start date with ABM had been amended, but added that the finish date was being reviewed by her Union representative as she had been provided with conflicting information regarding the end date.
 - Finally she said that she had started her training in November 1981 and therefore had continuous calendar membership of the NHS Pension Scheme of more than 32 years to date whereas the NHS Pension records showed only 29 years and 251 days.
10. NHS Pensions responded on 18 July 2013. Against each of Ms Mansell's points they said that :-
 - Their records showed the start date with Aneurin Bevan HB as being 22 July 1996, this information having been provided at the time she started the post. NHS Pensions had contacted Aneurin Bevan HB but due to the time that had elapsed they no longer held

records of Ms Mansell's employment with them. They pointed out some inconsistencies in her diary entries and said that they could not accept this as proof that she commenced employment on 21 July 1996.

- NHS Pensions had contacted Cwm Taf who had confirmed that the record held by them was correct and that Ms Mansell's employment had ended on 16 July 2008. With regards to the compromise agreement they said that although this showed that she was reinstated to her post on 30 October 2009 and her employment was terminated on the same day there was nothing to show that she was employed in the intervening period. They said that if Ms Mansell believed that the intention of the agreement was to change her pension position she may wish to discuss that with Cwm Taf.
 - NHS Pensions maintained that the payslips provided by Ms Mansell were consistent with her bank post with Pontypridd and Rhondda commencing on 1 September 2002. However, there were four additional hours included on her April 2001 substantive payslip which had not been included on NHS Pensions' records. The pension records had therefore been amended.
 - They confirmed that the start date with Cardiff & Vale LHB had been amended
 - They also confirmed that the start date with ABM had been amended and explained that for pension purposes records were closed down when the member last worked. As 31 January 2011 was the last date Ms Mansell had received payment from Abertawe Bro Morgannwg the correct action had been taken for pension purposes in this employment.
 - With regards to calendar length membership NHS Pensions explained that part-time employments were scaled to the whole time equivalent length. They said that the calendar length membership to 31 March 2012 excluding 21 July 1996, the period from 17 July 2008 to 15 March 2009, and 99 days when contributions were not paid due to unpaid sickness absence equated to 29 years 152 days. The figure of 29 years and 251 days had not allowed for the 99 days sickness absence. They said, however, that this did not affect the whole time equivalent membership of 25 years and 97 days up to 31 March 2012 on which her pension benefits were based.
11. In her complaint to the Pensions Ombudsman Service Ms Mansell said that she had been in continuous employment with the NHS since 23 November 1981 but that this was not reflected in her Human Resources records.
12. Ms Mansell says that the notes to her diary are not inconsistent as claimed by Aneurin Bevan HB and maintains that the start date of her contract was 21 July 1996.

13. In response Cardiff & Vale LHB and Cwm Taf LHB said that she had been employed by them for the period 1 April 1999 to 16 July 2008 but that for the last 99 days of employment, from 9 April 2008 to 16 July 2008, she had been on unpaid sick leave. Although her employment remained ongoing she did not receive any pay for this period and therefore did not accrue any pensionable membership. Whilst it had been agreed that she would be reinstated to her post on 30 October 2009 without a break in continuity of service she did not receive any pay for the intervening period and therefore did not pay any pension contributions nor accrue pension membership.

Conclusions

14. Relevant to Ms Mansell's complaint are the National Health Service Pension Scheme Regulations 1995 (the **Regulations**).
15. Regulation C1 defines the meaning of "pensionable pay". It says:

In these Regulations, "pensionable pay" means, subject to the provisions of this regulation, all salary, wages, fees and other regular payments made to a member in respect of pensionable employment as an officer, but does not include bonuses, payments made to cover expenses or payments for overtime.
16. Regulation C2 defines the meaning of "pensionable service". It says:

(1) In these Regulations, "pensionable service" is service which counts both for the purpose of ascertaining entitlement to benefits under these Regulations and for the purpose of calculating them and means, subject to paragraph (2), the aggregate of the following—

(a) any period of pensionable employment in respect of which the member contributes to the scheme under regulation D1 (contributions by members)...
17. Regulation D1 says that each member in pensionable employment must contribute to the scheme.
18. Regulation P1 deals with absence because of illness or injury or maternity leave. It says:

(1) This regulation applies to members who are absent from work because of illness or injury or who are on maternity leave.

(2) A period of absence to which this regulation applies will count as pensionable service for so long as the member contributes to the scheme.

19. There is no dispute that Ms Mansell was a member of the Scheme. However, she has taken issue with certain of the employment records held for her.
20. As Regulation C2 makes clear in order for service to count as “pensionable service” contributions need to have been paid by Ms Mansell. Therefore, whilst she may have been in continuous service with the NHS since 1981 this does not necessarily mean that she has had continuous Membership of the Scheme for that time.
21. NHS Pensions can only base their calculations and records on the information provided by the employers. NHS Pensions wrote to Ms Mansell’s employers in October 2012 to confirm the dates of her employment. The records for her employment with Cardiff and Vale LHB and her start date with ABM reflect the information they have provided.
22. I am satisfied that NHS Pensions have done all that could be reasonably expected of them to ensure that their records were accurate. As a result I do not uphold the complaint against them.
23. The remaining elements of Ms Mansell’s complaint relate to the records held by her various employers at the time.
24. With regards to her dispute over the start date of her service with Aneurin Bevan HB, Ms Mansell has submitted a copy of her diary for that time as evidence that her start date was 21 July 1996, a Sunday. Whilst I have no doubt that her recollection of events is honestly given, the evidence of her diary is not sufficiently compelling for me to base my conclusion on it.
25. With regards to her employment with Cwm Taf, Ms Mansell has submitted part of the compromise agreement dated 3 February 2010. Paragraph (B) of the compromise agreement said:-

“The Claimant’s employment with the LHB was initially terminated on 16 July 2008 and the Claimant presented an Employment Tribunal complaint against the LHB on 15 October 2008 (claim number 1606835/2008) (the “Tribunal Claim”), however, the parties agree that the Claimant was reinstated to her post on 30th October 2009, and that the commencement of her employment remained 14 March 1999 without any break in continuity of service”.
26. Ms Mansell also referred this aspect of her complaint to the Information Commissioner’s Office. That Office concluded that this agreement was not fully communicated to the Payroll department. I would agree with this conclusion. However, the evidence indicates that from 9 April 2008 Ms Mansell was on unpaid sick leave and therefore did not pay pension contributions. In accordance with Regulation C2 this would therefore not ordinarily count towards pensionable service.

27. Furthermore, whilst Ms Mansell was reinstated to her position there is no evidence to show that she was paid for the period between 16 July 2008 and 30 October 2009 or that she paid pension contributions. Therefore, again, in accordance with Regulation C2 this does not count towards pensionable service. In her letter to the Pensions Ombudsman Service dated 18 May 2014, Ms Mansell appears to accept this position but indicates that she would like to buy back any missed contributions.
28. Regulation Q of the Regulations deals with Paying for additional service by single payment. Regulation Q4 says:
- (1) Subject to paragraph (2), a member who wishes to pay for additional service by a single payment must elect to do so within 12 months of first joining the scheme.
 - (2) A member who, following a break in pensionable employment, rejoins the scheme, may pay for additional service by a single payment if—
 - (a) he again becomes a member having become entitled, in respect of earlier pensionable service, to a pension under regulation L1 (preserved pension) which has not become payable,
 - (b) he again becomes a member having, in respect of earlier pensionable service, received a refund of contributions which has not been repaid, or
 - (c) he again becomes a member having, in respect of earlier pensionable service, required a transfer of rights to another scheme in circumstances where those other rights are preserved in that other scheme,and he elects to do so within 12 months of rejoining the scheme.
29. In order to be able to purchase additional service Ms Mansell would have had to have elected to do so within 12 months of rejoining the Scheme. In this instance I consider that date to be 30 October 2009 when she was reinstated to her position. So she would have had to have made that election before 30 October 2010 and she has failed to do so. Therefore, there is no requirement for her request to be granted.
30. With regards to her employment with Pontypridd and Rhondda, Ms Mansell maintains that the start date of her employment was 18 January 2001. However, her letter to Cwm Taf UHB dated 30 January 2014 indicates that she understands and accepts the position with regards to these hours and that she agrees the records are accurate.

31. In conclusion, whilst I appreciate and accept that Ms Mansell's recollection of events is honestly given, I do not consider that there is sufficient evidence to demonstrate that the records held by NHS Pensions are inaccurate or that Ms Mansell has suffered any injustice as a result. Therefore I do not uphold her complaint.

Jane Irvine

Deputy Pensions Ombudsman
23 March 2015