

NHS Pensions Employer Newsletter – August 2019

1: Sharing Our Performance

First Awards

A total of 4708 applications have been processed so far in July of which 99.47% were paid on time.

To recap for the full month of June 4616 were processed of which 98.57% were paid on time.

Bereavements

Bereavements recovery is now complete.

TRS Refresh 2019

The refresh cycle is all on schedule. The Pensions data has now been handed over to the supplier for the statements to be prepared and we still expect the refreshed statements to be made available on Wednesday 21 August 2019.

POL availability

POL will be available throughout August 7am – 7pm, apart from the periods noted below, when we are currently scheduled for system maintenance:

7pm, 9 August 2019 – 7am, 12 August 2019

7pm, 30 August 2019 – 7pm, 2 September 2019

2: NHS Trust wholly owned subsidiary companies

Trust Wholly Owned Subsidiary Companies

The Department of Health and Social Care have confirmed that NHS Trust Wholly Owned subsidiaries can apply for access to the NHS Pension Scheme for compulsorily transferring staff, and new starters. Access for staff will not be granted automatically, and it is for employers to decide to apply for access for their staff. There are separate access routes for compulsorily transferring staff and new starters, so employers may need to make more than one application if they have multiple cohorts of staff.

Wholly Owned Subsidiary Companies

Under powers granted under the NHS Act 2004, the approach of successive Governments has been to empower NHS organisations so that they are responsible for deciding locally the most appropriate structures they need to deliver services to their patients and to support their operations.

Creating a wholly owned subsidiary is an alternative to outsourcing services to the private sector. Wholly owned subsidiary companies are 100% owned by their host Trusts. There are multiple reasons for setting up a wholly-owned subsidiary (WOS), including:

- To provide services for other trusts,
- To employ staff on more flexible and in some cases more generous terms and conditions,
- To attract staff from the local employment market

Ministers from the Department of Health and Social Care have considered the position regarding access to the NHS Pension Scheme. This guidance sets out how different cohorts of staff can access the NHS Pension Scheme, and how employers can apply for scheme access for their staff.

Access for Transferring Staff

Access to the NHS Pension Scheme is afforded under the terms of HM Treasury's New Fair Deal policy for staff who are subject of a TUPE (Transfer of Undertakings, Protection of Employment) transfer. The policy exists to ensure the pension rights of staff who are compulsorily transferred to a non-public sector organisation are protected. Access to the NHS Pension Scheme for eligible staff is achieved by granting the new employer a direction or determination issued by the Department of Health and Social Care.

A Direction is a legal document is drafted under powers conferred within Section 7 of the Superannuation (Miscellaneous Provisions) Act 1967, and provides access to the 1995/2008 NHS Pension Scheme for eligible staff. A Determination is also a legal document, drafted under powers conferred within Section 25 of the Public Service Pensions Act 2013 and provides access to the 2015 NHS Pension Scheme.

Staff who are compulsorily transferred from an NHS organisation to a WOS retain their employment terms and conditions, in accordance with TUPE regulations and access to the NHS Pension Scheme, in accordance with HMT's New Fair Deal guidance.

Further information on how WOSs can apply for NHS Pension Scheme access for staff they receive under a TUPE transfer, and the qualifying criteria for scheme access can be found at;

<https://www.nhsbsa.nhs.uk/sites/default/files/2017-05/NFD%20Guidance%20Pack%20%28V4%29%2005.2017.pdf>

Access for New Starters

Ministers from the Department of Health and Social Care have reached a decision to accept applications for new starter access to the NHS Pension Scheme from Trust WOSs. The Department of Health and Social Care is satisfied that allowing new starters in trust

subsidiary companies into the scheme is consistent with wider scheme access policy, provided that such companies can prove that they are wholly owned by an NHS organisation.

WOS employers who wish to apply for NHS Pension Scheme access for new starters will need to; submit a business case to nhsbsa.schemeaccess@nhs.net in a formal letter including the below information:

1. What is the name of the subsidiary company?
2. What the company does?
3. That the company is a wholly sub company of a Trust and the name of the trust.
4. What type of services the employees will be working on
5. How you will be recruiting will this be previous NHS employees and non-previous NHS Employees
6. What are the roles that you are wanting to have access to the NHS Pension Scheme (please ensure all roles that you could ever need to advertise are included)
7. The date you would like access to the NHS Pension Scheme for the new starters?
8. If the company has any other directions (open or closed) have been granted and the Employing Authority Code if approved.
9. Where will your funding come from for the services
10. Any other information you feel we need to be aware of
11. Please also confirm that you accept that Access to the NHS Pension Scheme is under the strict condition that the subsidiary company, which is a company limited by shares, remains a wholly owned subsidiary of the Trust. That is, in the event that the subsidiary company is not the sole shareholder access to the NHS Pension Scheme may terminate
12. Any person (including a GP) working for the subsidiary company under a contract for services (self-employed) arrangement does not have access to the NHS Pension Scheme
13. Will a contract be awarded to the subsidiary company
- If yes, what type of contract will be awarded to the subsidiary company?
14. Please confirm that you understand that new fair deal will apply to all eligible staff in wholly owned subsidiaries in the event of a subsequent staff transfer?

As part of their application, subsidiary employers will be required to confirm the NHS services they are contracted to provide, and also confirm that the new starters who will have access to the scheme will be performing these services.

If an application for new starter scheme access is successful, employers will be provided with a closed direction/determination document which refers to a specific 'class of persons'. This 'class of persons' will be outlined by the employer during the application process, and should reflect the NHS services the subsidiary is contracted to provide.

3: Overpaid Employer Contribution Rate 2019/20

Further to the communication in the March employer newsletter where we advised that all employers should continue to remit 14.38% employer contributions to the Scheme, it has come to our attention that a number of employers have paid more than 14.38% from April 2019.

We have started to contact employers who we believe may have paid an incorrect employer rate to discuss the refund of any overpaid contributions.

With immediate effect, please submit no more than 14.38% in employer contributions to NHS Pensions.

If you have not been contacted directly by the Pensions Finance Reporting Team and you have paid over the higher employer contribution rate and require a refund, please email:-

nhsbsa.pensionsfinance@nhs.net

Ensure you provide the following information:-

- EA code
- How you made the payment
- Date and value of higher rate payment
- The correct value of employer contributions
- The refund payment you require

4: Annual Check – Scheme Access

From 1 April 2019 the Scheme Access Team has introduced an annual check, at the request of the Department of Health and Social Care. The check is to ensure that the access granted to all non-automatic Employing Authorities is still relevant, and is the correct type of access for the organisation.

The process is on a 12 month rolling timeline. Employers will be contacted once a year to complete the request which will be sent via email. A response to the annual check is required within 2 weeks of receiving the initial email. The email will come from the Scheme Access Team email account which is nhsbsa.schemeaccess@nhs.net

The annual check request will be sent to the main EA contact held on our records.

Organisations that use a third party payroll provider are still required to complete and submit the check.

The following organisations will be contacted:

GP Practices

Federations / Super Practices

Universities

Local Authorities

Hospices / Charities

Independent Providers

Social Enterprises

Out of Hours Providers

Compulsory transfer organisations that have approved access to the scheme.

Or referred to as:

Classic APMS Contractor
GMS / PMS Provider
Independent Provider Employing Authority
Closed Direction / Determination Employer
Open Direction / Determination Employer
New Fair Deal Employer
BULK Transfer Employer
Out of Hours Provider

Please note, this is in addition to the financial assurance statements that some organisations complete each year.

5: SD65 no longer required for some new starters

It has been confirmed by The Department of Health & Social Care (DHSC) that the SD65 form is no longer required to be completed by Direction employers for any new starters from the 1 August 2019. It will be the Employer's responsibility to notify us within three months of commencing their employment by either completing an SS10 joiner form or submitting the joiner details through Pensions On-Line (POL). The member will still be required to meet the 12 month eligibility criteria which will be checked on all non POL joiners received and for POL employers, this will be checked when completing the annual check process.

A letter of comfort confirming the changes to the legal documents will be issued to all Direction Employers shortly. Any further queries relating to this can be directed to the Scheme Access Team: nhsbsa.schemeaccess@nhs.net

6: Payment of pensions after opting out of the NHS Pension Scheme

When a member opts out of the pension scheme (either exit code 16) and carries on working in a non-pensionable capacity, we need to ensure that the correct payable date is used when the member applies for their pension.

Deferred members must submit form AW8P and give details of their last day of non-pensionable employment at part 6 of the form. If the member was over their Normal Pension Age at their last day of service and opted out less than 5 years ago, then this date will need to be confirmed by the relevant employer before the award can be paid. Once the date has been confirmed the retirement application will be processed using the payable date of the day after the non-pensionable NHS employment ceases.

Additional checks are required if a member opted out more than 5 years ago and is now wishing to claim their pension. When a member of the 1995 Section opts out of or leaves the Scheme (when they are under their Normal Pension Age) for a period of 5 years or more and then reaches age 60 after 1 April 2008, they can have their pension benefits paid from their 60th birthday without first having to take a 24-hour break in membership.

Where the period between opting out or ceasing NHS Scheme membership and then reaching age 60 is less than 5 years, benefits cannot be paid before the first of the following two options occur;

- the end of the 5 year period, or
- they retire by taking a 24 hour break in NHS employment

Where the opt out period is less than 5 years the member must not work more than 16 hours a week for the first calendar month following their 24-hour break. If the opt out period is 5 years or more, the member is not restricted in the hours they can work and pension benefits will be unaffected.

7: Annual Update for Non POL Employers

This data comes following the processing of the Non POL annual update spreadsheets by the Stakeholder Engagement team. The Data team took over the process for this year and the results are below:

2018	Non POL Processing	2019
21063	Total Members	20557
14018 (67%)	Completed & Updated	15800(77%)
221 (1%)	Error	248(1%)
743	Employers	751
536 (72%)	Updated	623(82%)
287 (39%)	Fully Updated	417(55%)

All the spreadsheets that were received prior to 31 May 2019 have been processed. Work on the spreadsheets that were received after this date continues.

We do however continue to experience non-receipt issues and as of 10 July 2019, 128 updates from employers were outstanding and will be contacted as part of our Non-Compliance process.

8 : Scheme access for self-employed individuals

NHS employers are reminded that the only self-employed individuals who have access to the NHS Pension Scheme are General Practitioners, General Dental Practitioners, Ophthalmic Medical Practitioners, and non-GP Providers.

Any other individual working for the NHS on a self-employed (contract for services) arrangement does not have access to the Scheme.

