

NHS Pensions - Termination due to loss of public funds/Exit Code 02

Withholding of benefits

Where a member is dismissed on disciplinary grounds and convicted of an offence involving crime, negligence or a fraudulent act or omission, which results in the loss to public funds, it may be possible to withhold some or all of their retirement benefits in order for the employer to seek recompense.

Not withholding benefits

Exit Code 01 should be used for termination or dismissal when withholding of benefits is **not** appropriate.

Process for receipt of a Termination/Exit Code 02

Exit code 02 should only be used if recommending one of the following:

- The recovery from benefits of a loss to public funds.
- A forfeit of benefit for a serious offence.

Where NHS Pensions receives leaver information from an employer showing a termination/ exit code 02, form 'Reason for termination shown as 02 (SM219)' will be issued to the employer in order to confirm the exit code is correct.

Returned forms indicating a genuine exit code 02 will be looked at on an individual basis and the employer will receive further contact from NHS Pensions.

Electronic Service Record (ESR)

NHS Pensions have no way of identifying dismissal cases where there is potential fraud that will lead to the withholding of NHS Pension Scheme benefits. Assuming all dismissal cases require an exit code 02 could unnecessarily delay the payment of pension benefits.

In view of this NHS Pensions will email a spreadsheet to relevant employers regarding all updates received showing an exit code 02. The spreadsheet will advise employers that

after a period of one month, the exit code will be amended to show exit code 01 unless the employer confirms that exit code 02 is applicable.

Where the employer is recommending recovery of a loss to public funds or forfeiture of benefits and exit code 02 is applicable, it is imperative that NHS Pensions is contacted immediately so that the member's record can be updated.

Where a member has been dismissed on disciplinary grounds and convicted of an offense involving public funds, the Scheme Regulations may enable NHS Pensions to withhold retirement benefits so that the employer can seek recompense.

How can monies be recovered?

In the first instance the employer should attempt to recover any monies lost from public funds, either by agreement with the member, or if necessary by applying for a Court Order.

If this has not been possible then recovery can be considered from Scheme benefits, including:

- pension and/or lump sum ;
- preserved benefits;
- a refund of contributions;
- a transfer payment.

It is not possible to recover from any part of the benefits resulting from a transfer into the NHS Pension Scheme from another pension provider or from benefits resulting from the purchase of Added Years/Additional Pension. Neither can it be recovered from the Guaranteed Minimum Pension (GMP) element of the member's benefits.

What information does NHS Pensions need from the employer?

Where the employer has been unable to recover the monies direct and wishes the Scheme to make recovery from the member's benefits, NHS Pensions needs to be informed of the amount of the loss and the details of the circumstances in which the loss occurred.

If there is no dispute as to the amount involved and the member is agreeing to the proposed recovery from their benefits, a statement signed by the member to this effect should be sent to NHS Pensions.

Where the member does not agree to the proposed method of recovery, or there is a dispute over the amounts involved, the employer needs to obtain a Court Order stating the amount of the loss (or a statement that such an order is being obtained), before referring to NHS Pensions.

A terminal form SD55 and the appropriate application for benefits form where applicable, should be forwarded to NHS Pension. Each SD55 must be coded 02 in the **reason for termination** box, even where the member has voluntarily resigned or retired in order to avoid dismissal.

NHS Pensions action

Where the loss has been suffered by the employer, NHS Pensions will pay the amount of the reduction in benefit to the employer after agreeing the arrangements for the deduction with the paying agent, Equiniti Paymaster (EP).

Serious offences

Where a member is convicted of a serious offence in connection with his NHS employment, the Secretary of State has the power to authorise forfeiture of the whole (or any part) of any benefits payable to, or in respect of, a member of the Scheme.

What constitutes a serious offence?

An offence in connection with the member's employment which is certified by the Secretary of State to:

- lead to serious loss of confidence in the public service;
- have been gravely injurious to the State;
- an offence of treason;
- offences under the Official Secrets Act for which the member has been sentenced to a term of imprisonment of at least 10 years.

What information does NHS Pensions need from the employer?

Where there has been a conviction of a serious offence, which in the opinion of the employer may warrant consideration of forfeiture, NHS Pensions should be notified at the earliest opportunity and be provided with:

- copies of any reports by senior officers;

- summaries of court proceedings etc;
- the terminal form SD55 and the appropriate application for benefits form where applicable. Each must be coded 02 in the **reason for termination** box, even where the member has voluntarily resigned or retired in order to avoid dismissal.

Timescales

If all the relevant information is not received by NHS Pensions, within a reasonable period following the date of termination, the member's pension benefits may be paid in full. It is therefore important to send the required information as soon as possible, in line with NHS Pensions target and Customer Charter and to keep NHS Pensions informed of any unexpected delays.