

Date 15/12/2025
Your Ref
Our Ref 10827R

Enquiries to Richard Mutch
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Dear

FREEDOM OF INFORMATION REVIEW - PENSION

I write in response to your request for review of NHS Lothian's response to your Freedom of Information request about pensions. Having discussed your request and our response of, 30 October 2025, I can respond as follows:

Original Request and Response:

Question:

My questions cover the period from March 2018 to present.

1. What was the precise detail of the original error that excluded me from auto-enrolment in 2018/2019?
2. Was I categorised as an eligible employee at this time? If no, when did NHS Lothian designate me as such?

Answer:

Under the Freedom of Information (Scotland) Act 2002 we are not able to release information that is specific to you as an individual. Personal information relating to yourself is exempt from release under the section 38 of the Freedom of Information (Scotland) Act 2002. The purpose of this exemption is not to deny individuals a right to access information about themselves but to ensure that the right is exercised under the Data Protection Act 2018, which will determine whether the person has a right to the information. More information about making a subject access request to NHS Lothian under the Data Protection Act can be found at the following web address:
<https://www.nhslotthian.scot/yourrights/data-protection-privacy/requests-for-personal-information-including-medical-records-subject-access-requests/>

Question:

3. What checks and balances in procedures did NHS Lothian have in 2018? Has this changed since then? If so, when and how? What changed that meant I was auto-enrolled in 2025?

Answer:

There is ongoing monitoring so that staff who are eligible for autoenrolment are flagged in the system so that when the re-enrolment process is run they will be added to the pension scheme.

In 2023 SPPA changed their rules regarding pensions which meant that some people became eligible and were able to rejoin the scheme. 2025 was the first time the re-enrolment was run since that change.

Question:

4. For each year from 2018, how many employees, who met eligibility criteria, did NHS Payroll fail to auto-enrol in line with their legal responsibilities?

Answer:

I am advised that this information is not collected centrally. Information will be held in individual payroll records, but in order to provide the information you request it would be necessary to review each record over the period you have specified, requiring significant resources. Under section 12 of the Freedom of Information (Scotland) Act 2002, NHS Lothian is not required to respond to your request if the resources required to do so equate to more than £600 in cost.

Question:

5. Has NHS Payroll ever declared / reported themselves to the Pension Regulator for failure to comply with their legal duties in respect of pension auto-enrolment?

Answer:

NHS Lothian has not reported itself to the Pension Regulator for any failure to comply. If a concern is raised by an employee then this is worked through with that individual and the error corrected.

Question:

6. What remedial measures have NHS Lothian Payroll taken when they have been made aware of such breaches in legal responsibilities? Have they made people aware if they have been affected by such breaches?

Answer:

Any errors are dealt with on a case by case basis. Once identified, this is worked through with the individual until a resolution is reached. This usually involves a calculation of the

difference due, payment by the employee of their share and then making adjustments through payroll and advising the appropriate pension provider.

Question:

7. What mechanisms/ facilities do NHS Lothian Payroll have in place to recompense employees who have suffered financial loss that can be directly attributed to NHS Lothian Payroll's errors?

Answer:

NHS Lothian does not have a policy specifically regarding compensation of financial loss due to superannuation or pension scheme errors. NHS Lothian will rectify the situation by paying backdated employer contributions, but there is no mechanism for any other compensation payment to be made.

Question:

8. How many special payments, eg ex-gratia or compensatory payments have NHS Lothian Payroll made in each of the years from 2018? What is the range of the value of such payments?

Answer:

I am advised that no such payments have been made.

Question:

9. I would be grateful if you could let me see any emails that discuss my case that have been exchanged between Ruth Kelly, Kenny Scott and Craig Black from 01/07/2025 to the present.

Answer:

I am advised that there have been no emails directly between Ruth Kelly, Kenny Scott and Craig Black that are not copied in to yourself. As above, we are not able to release information that is specific to you as an individual. Personal information relating to yourself is exempt from release under the section 38 of the Freedom of Information (Scotland) Act 2002. The purpose of this exemption is not to deny individuals a right to access information about themselves but to ensure that the right is exercised under the Data Protection Act 2018, which will determine whether the person has a right to the information. More information about making a subject access request to NHS Lothian under the Data Protection Act can be found at the following web address:
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Review Request:

1. Questions 1, 2 and 9. I will follow up with Data Protection team. Regarding Q9, it is simply not true that I was copied into all the emails. I know emails were exchanged between Kenny Scott and Craig Black in early July and I was not copied in. At this time I asked Kenny Scott to forward them to me but he declined.
2. Question 3. This does not answer my question. I asked specifically and what checks and balances are in place, not whether there are checks and balances are in place. 'Ongoing monitoring' is not a satisfactory answer. What does this mean? What do they actually do? I have now spoken to others in my position and it appears the matter comes to light when they tell payroll and not because payroll unearthed the problem.
Regarding eligibility and 2023. It is true SPPA rules changed at this time and some people became eligible to rejoin this particular scheme. However, NHS Lothian's legal duty to auto-enrol these people into an occupational scheme goes back many years before this. The change with the SPPA in 2023, I believe, served primarily as an external catalyst that unearthed people that had missed out for years.
3. Question 4. Perhaps this highlights the need to keep a central records to establish improved administration of the scheme to ensure NHS Lothian is compliant with their legal duties.
4. Question 5. I can do this.
5. Question 6. Does not answer the question have they made people aware. This is rather them being made aware by people affected by the failure to auto- enrol.
6. Questions 7&8. I have subsequently been made aware that it is the Finance Dept that are responsible for such matters so perhaps better these questions are addressed to them. I find it hard to believe there are no guideline/ policies regarding ex gratia and special payments generally if not specific to pensions. One example of such payments might be when an employee incurs bank charges due to a mistake in salary payments by Payroll. Such payments do exist and responsibility is taken in such matters.

In the ways highlighted above I have found the response unsatisfactory, missing the point in and parts, failing in detail and vague in parts. I accept I could have phrased my questions better. I would welcome a review.

Review Response:

1.	As advised, we are not able to release information that is specific to you as an individual. Personal information relating to yourself is exempt from release under the section 38 of the Freedom of Information (Scotland) Act 2002. If there is further email correspondence this need to be accessed via DPA processes.						
2.	<p>Within the numbers for 2019 (the next re-enrolment after 2018, NHS Lothian reported the following information:</p> <table> <tr> <td>Total number of staff in employment on re-enrolment date:</td><td>36,631</td></tr> <tr> <td>Number of staff put into the pension scheme:</td><td>1,262</td></tr> <tr> <td>Number of staff who were already members:</td><td>29,554</td></tr> </table>	Total number of staff in employment on re-enrolment date:	36,631	Number of staff put into the pension scheme:	1,262	Number of staff who were already members:	29,554
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Number of staff put into the pension scheme:	1,262						
Number of staff who were already members:	29,554						

	<p>Number of staff who did not fall into any of the above: 5,815</p> <p>Out the 5,815 the majority would be where employees are already within the scheme in their substantive role and therefore unable to join, we will also have ones that did not meet the criteria eligibility due to earnings and age.</p> <p>At the point of re-enrolment Atos run the process on behalf of those holding the eligibility criteria for re-enrolment as there's various factors that exclude employees from enrolment such as age, earnings, absence etc those holding these eligible criteria are enrolled on our staging date which is every three years. Those that do not meet the criteria at that the staging date are monitored after every pay period and enrolled when they meet the criteria.</p> <p>During 2018/19 the eligibility criteria on bank post should have been amended from ineligible to eligible and enrolled into NEST at the next available point the criteria was met. This did not happen until 2025 following the change in SPPA pension eligibility.</p> <p>Those that met the criteria are written to as they have the option to opt-out as they do not want to be within a scheme, there is also communications issued by the Board to make staff aware that re-enrolment is happening if anyone has any queries at the time.</p>
3.	This is not something that can be addressed via FOI(S)A, we can only release recorded information.
4.	Nothing to respond to.
5.	<p>Staff are made aware via the auto-enrolment process unless specific queries are raised. Where identified, NHS Lothian always ensures retrospective contributions are made.</p> <p>We have not reported ourselves but have worked with the TPR when issues have been identified to correct them for the employee.</p>
6.	<p>NHS Lothian's arrangements with regards to special payments (including ex-gratia payments) are documented in section 14 of the Scheme of Delegation, which is available on the NHS Lothian website</p> <p>NHSL-Board-SOD-v12.0-as-agreed-by-Board-2025.04.16.pdf</p>

If you are not satisfied with this response you still have the right to make a formal complaint to the Scottish Information Commissioner who you can contact at the address below or using the Scottish Information Commissioner's Office online appeals service at <https://www.foi.scot/appeal>. If you



remain dissatisfied with the Commissioner's response you then have the option to appeal to the Court of Session on a point of law.

Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS
Telephone: 01334 464610
Fax: 01334 464611
e-mail: enquiries@foi.scot

Yours sincerely

**Freedom of Information Reviewer/
NHS Lothian**
cc: Executive Nurse Director