CAS-37294-G0Y2

Ombudsman's Determination

Applicant	Mrs S
Scheme	NHS Pension Scheme
Respondent	NHS BSA

Outcome

1. Mrs S' complaint is upheld and to put matters right NHS BSA shall reinstate Mrs S' Special Class Status. NHS BSA shall put Mrs S back into the position she would have been in had she taken her pension unreduced from age 55. NHS BSA shall also pay Mrs S £1,000 for the serious distress and inconvenience which she has suffered.

Complaint summary

2. Mrs S has complained that NHS BSA has incorrectly removed her Special Class Status and that as a result she could not retire at age 55, without her pension being subject to an early retirement reduction.

Background information, including submissions from the parties

3. A Scheme member who meets the requirements set out in Regulation R2 of the NHS Pension Scheme Regulations 1995 (as amended) (SI 1995/300) (the **Regulations**) (see Appendix 1), has the option to retire at age 55 without a reduction to their pension for early retirement. This is known as Special Class Status (**SCS**).

4. To be eligible for SCS, under Regulation R2 a member must:

   - have been in pensionable employment as a nurse, physiotherapist, midwife or health visitor on or before 6 March 1995;
   - not have a break in pensionable employment of 5 years or more; and
   - spend the last five years of their pensionable employment as a nurse, physiotherapist, midwife or health visitor.

   "Nurse" is not defined in the Regulations.

5. Mrs S' employment history was as follows:-

Employer and Role	**From**	**To**
Cheltenham & District Health Authority	August 1986	March 2000
Various nursing roles		
NHS Gloucestershire	**January 2002**	**March 2013**
Project Manager – Clinical Quality and Governance	January 2002	March 2003
Assistant Director of Service Development	March 2003	June 2007
Deputy Director Clinical Development and Engagement	June 2007	June 2010
Deputy Director Clinical Development and Nursing	June 2010	March 2012
Deputy Director of Quality and Nursing	March 2012	March 2013
NHS Trust Development Authority (which became part of NHS Improvement in 2016)	**April 2013**	**April 2020**
Head of Quality (also referred to as Head of Clinical Quality), band 8d,	April 2013	August 2014
Deputy Clinical Quality Director/ Head of Quality, band 9	August 2014	April 2020

6. Mrs S has always been of the view that she held SCS.

7. On 22 August 2016, Mrs S contacted NHS BSA to enquire about the process of retiring when she reached 55 and was advised she did not have SCS.

8. Mrs S responded to NHS BSA and organised for job descriptions to be sent by her employer to support her claim that SCS should apply. Mrs S explained that all her roles were clinical nursing positions and she had assurances from her employer that SCS had been retained. She asked NHS BSA to reinstate her SCS.

9. On 14 October 2016, NHS BSA replied to Mrs S and said her SCS had been removed from 23 March 2000. NHS BSA explained that this was because in 2002 NHS Gloucestershire had updated her roles as "administrative or managerial", which meant she was no longer employed in a nursing capacity and so not entitled to SCS. NHS BSA also said that as she did not hold SCS in 2002, then it was irrelevant whether her later roles attracted SCS.

10. On 25 November 2016, NHS Gloucestershire wrote to NHS BSA. It explained that Mrs S' roles from January 2002 to March 2013, were all clinical nursing roles that attracted SCS. It could not locate job descriptions for all the roles but provided letters from the Director of Nursing that confirmed the roles Mrs S undertook required a nursing qualification and therefore Mrs S should have her SCS reinstated.

11. On 17 January 2017, NHS BSA wrote to Mrs S and advised her that her role as the Project Manager - Clinical Quality and Governance from January 2002 to March 2003, did not qualify for SCS as it was "a general management post."

12. NHS BSA said that for Mrs S to qualify for unreduced early retirement at age 55 she would need to be employed in a post attracting SCS throughout all her employment with the NHS. So, even if Mrs S' more recent roles allowed retention of SCS, she still did not qualify because her role from January 2002 to March 2003 did not attract SCS.

13. In April 2017, Mrs S raised numerous concerns relating to how NHS BSA was dealing with her enquiry about SCS. Mrs S requested that the complaint be dealt with under the Scheme's Internal Dispute Resolution Procedure (**IDRP**).

14. On 2 June 2017, NHS BSA replied under Stage One of the IDRP and said:-

    - Members of the 1995 Section of the Scheme were able to retain SCS if they were working in general managerial roles where a nursing qualification was an essential requirement.

    - The role from January 2002 to March 2003 did not satisfy the criteria because it was not a role based around a nursing qualification.

    - The period of employment from 1 April 2007 to 31 March 2013 did not satisfy the requirements for SCS because a nursing qualification was not a requirement.

    - All the pension estimates she had received which had a retirement age of 55 had been issued by her employer, and not by NHS BSA.

15. On 10 August 2017, Mrs S wrote to NHS BSA, and appealed the decision.

16. On 12 October 2017, NHS BSA responded and said:-

> "That an individual with a nursing qualification and retained nursing registration does not give that individual an automatic right to SCS.
>
> NHS Pensions has been provided with a copy of your job description…for the period June 2007 to June 2010…The job description refers to the clinical nature of the role and the person specification confirms that the post holder must have…NHS Clinical professional qualification…
>
> That a "NHS Clinical professional qualification" is required means the post is not restricted to a nurse, as other suitably qualified NHS professionals could

apply for and be appointed to this post. As a nursing qualification is not essential SCS cannot be retained."

17. Mrs S referred her complaint to my Office, and I issued a Determination under PO-19257 (the **previous Determination**) on 5 December 2018, which in summary said:-

- There was insufficient evidence to make a final decision on whether Mrs S was eligible for SCS or not.
- NHS BSA had not properly taken into account all the information provided by NHS Gloucestershire.
- NHS BSA had not provided an adequate explanation of why it did not accept NHS Gloucestershire's stance regarding Mrs S' eligibility for SCS.
- NHS BSA had not communicated with NHS Gloucestershire or Mrs S to explain why it had not accepted NHS Gloucestershire's statement that Mrs S would not have been a successful candidate if she did not hold a nursing qualification.

18. In my previous Determination I directed NHS BSA to complete a full investigation into its previous decision not to award SCS and explain its decision to Mrs S in detail. NHS BSA was also directed to provide Mrs S with a comprehensive explanation of why it did not accept NHS Gloucestershire's clear evidence that Mrs S should hold SCS.

19. If NHS BSA remained of the view that Mrs S was not eligible for SCS then she could bring a new complaint to this office should she remain of the opposite view. I also directed that NHS BSA's explanation should be clear, consistent, and supported by sufficient evidence to allow me to make a decision whether SCS should be granted or not.

20. I also awarded Mrs S £1,000 for the serious distress and inconvenience the matter had caused her.

21. On 20 December 2018, following the previous Determination, NHS BSA wrote to Mrs S confirming that it had reviewed its decision about her SCS. NHS BSA explained that it did not consider that Mrs S was entitled to SCS for the following reasons:-

- SCS was originally given to nurses due to the arduous nature of their nursing duties and that they could not be expected to undertake these duties to age 60.
- Examples of these duties were confirmed in the SD Letter (89) 7, for Employing Authorities (**EAs**) which referred to "Capacity Code 1" being the code given to different types of employee where the grades could have SCS. The guidance said:

"EAs are reminded that it is SOLELY the duties performed that determine special class status and classification is not influenced by either the pay scales used or possession of a nursing qualification.

Whilst nursing duties are many and varied the following, if they form a major proportion of the duties performed, will comply with the definition of arduous for the purpose of granting special class status:

- Lifting, carrying, controlling and restraining
- Feeding, bathing, dressing and attending to personal needs
- Constant attendance and monitoring of patients
- Responsibility for administering treatment and drugs."

- The 1983 Griffiths Report highlighted the need for nurses to be employed in management roles and that this would mean that they moved away from the arduous nature of nursing and would lose their SCS. So, it was agreed that nurses could still retain the SCS if they moved away from the arduous nature of nursing into management roles and certain criteria were met.
- The two criteria to meet the "retention provisions" are that the member must have been entitled to SCS in the previous role and a nursing qualification must be "essential" for the role that they are moving into.
- It considered that if another individual could be appointed with a different clinical qualification, then this meant a nursing qualification was not "essential", and the post would not then retain SCS.
- Mrs S' role of Deputy Director, Clinical Development and Engagement did not qualify for SCS, as she no longer undertook arduous duties and once SCS was lost then retention of it could not be considered for later roles.
- Even assuming Mrs S retained her SCS in the previous role, she still did not meet the criteria for SCS as the job description and personal specification for the Deputy Director, Clinical Development and Engagement role did not confirm that a nursing qualification was essential. This was because the personal specification allowed a "suitable clinically qualified individual" to also apply for the role.
- Being a qualified nurse registered with the Nursing and Midwifery Council (**NMC**) did not give an automatic right to SCS.
- The supporting letters from NHS Gloucestershire detailed Mrs S' key roles and responsibilities and confirmed the clinical nature of the role rather than confirming a nursing qualification was required for the role.

- Even if Mrs S relied upon her nursing qualification, knowledge, experience, and registration with a professional body to apply for a role this did not mean that she could retain SCS.

- NHS Gloucestershire did not correctly assess the criteria for Mrs S' role as Deputy Director, Clinical Development and Engagement for the retention of SCS purposes and, in any case, it was NHS Pensions that had the final decision on whether SCS could be retained.

22. On 2 April 2019, the Director of Nursing wrote to NHS BSA setting out Mrs S' role as the Director of Nursing and Clinical Development for NHS Gloucestershire (see Appendix 2).

23. On 5 April 2019, Mrs S' line manager, the Interim Delivery and Improvement Director, provided a statement on Mrs S' role (see Appendix 3).

24. On 9 April 2019, the Chief Nursing Officer for NHS England/Improvement wrote a statement in relation to Mrs S' post as Head of Clinical Quality (from 1 April 2013) (see Appendix 4) (**Employer Statement**).

25. On 28 April 2019, Mrs S provided NHS BSA with a copy of the supporting job specifications and statements from her employer. She also said:-

    - NHS BSA had not completed a full and substantive investigation and had simply "rubber stamped" the previous decision.

    - According to the Regulations, as she had no break in pensionable employment, the only questions relevant to her circumstances were: if she was in pensionable employment as a nurse on 6 March 1995; and was she in pensionable employment as a nurse for the last five years of her employment. The answer to the first question was "yes" and, as she has been a nurse for the entire period, she should be granted SCS from September 2012 to September 2017.

    - The High Court considered Regulation R2 of the Regulations in NHS BSA v Williams[1] and held that a number of different factors were important when considering a SCS entitlement. A nurse was someone who was both a registered nurse and was employed to carry out the functions conventionally carried out by registered nurses.

    - There is no definition of "nurse" in the Regulations and there is nothing to suggest SCS should be restricted to people who remain as "front line" nurses performing arduous duties.

    - She had always worked as a nurse and she was employed for her nursing knowledge, experience and skills as indicated by the job descriptions, job specifications and supporting statements from her employer.

[1] *The NHS Business Services Authority v Christine Williams* [2016] EWHC 1952 (Ch)

- Throughout her employment with the NHS it was essential for her to maintain her nursing registration with the NMC and this requirement had to be validated every three years. This required that she undertake “450 practice hours” which demonstrated that the role is one which the NMC accept as nursing.

- NHS BSA was consistently making a legal error regarding the role of the retention provisions in decisions relating to SCS, as it believed a short period in which a person is not entitled to SCS was sufficient to “break the chain.”

26. On 3 June 2019, NHS BSA issued its response to Stage Two of the IDRP. It did not uphold Mrs S’ complaint. It considered each of Mrs S’ job roles, taking into account the job descriptions, person specifications, the supporting letters provided by Mrs S’ employers and the description of her duties and responsibilities. For each of her roles from 2002 to the present it made the following statements:-

    Project Manager – Clinical Quality and Governance January 2002 to March 2003

    Assistant Director of Service Development March 2003 to June 2007

    - These two roles indicated a varied portfolio of responsibilities which were administrative and strategic in nature and were therefore not nursing posts that qualified for SCS automatically under the Regulations.

    - Eligibility for SCS therefore rested with NHS Pensions agreeing that the posts qualified for SCS under the retention provisions.

    - The supporting letters indicated the roles were of a clinical nature, but this was not consistent with the responsibilities listed which were administrative.

    - In the absence of formal job descriptions, it was difficult to conclude with any certainty whether these posts could have met the eligibility criteria under the retention provisions for SCS.

    - Taking into account other posts with similar responsibilities, the roles did not meet the eligibility criteria for retention of SCS. This was because the alternative clinical registrations, such as with the Healthcare Professions Council (**HCPC**), could meet the person specification.

    Deputy Director Clinical Development and Engagement June 2007 to June 2010

    Deputy Director Clinical Development and Nursing June 2010 to March 2013

    Deputy Clinical Quality Director and Head of Clinical Quality April 2013 to present

    - These job titles and descriptions confirmed that Mrs S was not employed in a grade that qualified for SCS automatically under the Regulations.

    - Eligibility for SCS therefore rested with NHS Pensions agreeing the post qualified for SCS under the retention provisions.

- The post did not meet the eligibility criteria for retention of SCS because SCS was not held in each of the preceding posts.

- The person specification for each post indicated that an alternative clinical registration, such as HCPC, could meet the person specification. Therefore, the roles were not ones that could only be occupied by a qualified nurse.

27. NHS BSA also said:-

- Maintenance of a nursing qualification did not guarantee continuation of SCS. A member must be employed as a nurse, physiotherapist, midwife or health visitor in order to qualify for SCS under Regulation R2 of the Regulations.

- SCS was granted automatically to the “front-line” nurse grades in recognition of the physical requirements and the “stresses and strains” associated with their day to day duties in anticipation that nurses would be unable to perform their duties beyond age 55.

- Senior positions within the nursing service did not attract SCS under the Regulations. Where a nurse progressed to a senior position under the Regulations the default position is that the entitlement to SCS stops.

- The retention provisions were introduced in the 1980s to help ensure nurses would not be discouraged from pursuing senior positions due to the prospect of losing their SCS.

- The retention provisions for SCS are not provisions contained within the Regulations.

- Applications for retention of SCS are considered by NHS Pensions on an individual basis based on formal evidence of duties, responsibilities and person specification of the post. The final decision as to whether retention can be granted rests with NHS Pensions.

- Actual entitlement to retire from age 55 by virtue of SCS was only realised where a member held SCS continuously through at least five years pensionable NHS employment and is still an active member with SCS at their selected retirement date. This is not the case with Mrs S as she has not been a registered nurse in roles that require her to be a nurse.

- It had not unlawfully denied Mrs S the right to retire at age 55 on full benefits and it had administered Mrs S’ entitlement in accordance with the Regulations.

- Mrs S was not entitled to SCS according to the Regulations or under the retention provisions.

- It disagreed that it failed to comply with the previous Determination and believed it had considered the matter in full, including the evidence provided by the employers at each stage of the appeal procedure.

- It had provided a full explanation of its decisions with reference to the Regulations.
- It refuted the allegation that it had made factual and legal errors when considering Mrs S' entitlement to SCS.

28. When Mrs S referred her new complaint to my Office, NHS BSA reviewed its decision again. It repeated much of the information referred to under IDRP. NHS BSA accepted that Mrs S' roles from 2010 to 2013 were nursing in nature. However, she was still not entitled to SCS as she did not meet the retention provisions.

29. NHS BSA were provided with a full copy of the submissions made by Mrs S to my Office in October 2019. All the job descriptions and personal specifications have been shared with NHS BSA.

Summary of Mrs S' position

30. NHS BSA has not administered her pension entitlement correctly as it has incorrectly decided that she was not entitled to SCS following the "clear" evidence provided by NHS Gloucestershire that showed her roles required her to be a qualified nurse.

31. NHS BSA has not applied the Regulations correctly as she has not had a break in her employment for more than five years. She was in pensionable employment as a nurse on 6 March 1995, and during the last five years of her pensionable employment.

32. She had to work longer due to the NHS BSA's maladministration which means there are two possible periods which might constitute the "last five years" of her pensionable employment, but she considered this point was academic as she was employed as a nurse for the entire time.

33. She had always intended to take her pension benefits at age 55 but was denied this by NHS BSA. She had taken her retirement benefits in 2020 and suffered an actuarial reduction to her pension which she accepted "without prejudice". Her last day of nursing service was 29 February 2020, but when her annual leave was "added on" her retirement date became 29 April 2020.

34. The High Court in NHS BSA v Williams considered the Regulations which said a number of different factors are important in considering SCS. A nurse was someone who was both a registered nurse and was employed to carry out the functions conventionally carried out by registered nurses.

35. There is no definition of "nurse" in the Regulations and no definition of any description of the sort of functions conventionally carried out by registered nurses. There was nothing to suggest SCS should be restricted to people who remain as "front line" nurses. The Regulations state the reverse and refer only to being "in pensionable employment as a nurse."

36. The NHS Occupation codes go all the way up to “Director of Nursing” and Capacity Code 1 was used specifically for this purpose. So nursing was not restricted to just front line nurses or those that perform arduous physical work.

37. When NHS BSA rejected her first complaint it said that: “The job title and description confirms that you are not employed in a grade that qualified for SCS automatically under Regulation R2.” This did not make sense as there were no references to grades in the Regulations.

38. NHS BSA had reached a decision by only considering job titles and descriptions. It had ignored the evidence from her employer.

39. She had not seen any documentation that related to the “retention provisions”.

40. NHS BSA’s own guide to SCS stated that employers can make their own assessment against the retention provisions for posts up to the level of Director of Nursing, at which point the case has to be referred to NHS Pensions. All of her roles were below that level, so NHS BSA were breaching its own guidelines.

41. Following the previous Determination, NHS BSA did not carry out a full and substantive investigation into her entitlement to SCS and simply reconsidered its decision with reference only to the unwritten retention provisions, rather than the Regulations.

42. The dispute has been ongoing for a number of years and the maladministration by NHS BSA has caused her immense stress. She was diagnosed with clinical depression in October 2018. NHS BSA were aware that the dispute had affected her health as this was part of her submission in April 2017, and as part of her complaint in 2019 she had confirmed she was diagnosed with “severe clinical depression”.

43. The NHS BSA had made a number of incorrect statements about her employment. Although her job title changed during her time at NHS Trust Development Authority (**NHS TDA**) her nursing role did not. Mrs S said that in April 2013 when she joined the NHS TDA she was Head of Quality at band 8d.

44. In August 2014, she was promoted to Deputy Director of Clinical Quality at band 9 which was the same nursing role with more responsibility for additional NHS organisations, dealing with more challenging and complex nursing and other clinical issues, across a much wider geographical area, working with more external agencies, and with more autonomy and accountability.

45. In September 2016, her job title was changed to Head of Quality when NHS TDA became part of NHS Improvement. The job title of “Head of Quality” sometimes referred to as “Head of Clinical Quality” was the same job role. This has been evidenced by the information provided by her employer. The job description provided refers to “Head of Quality”.

46. NHS BSA stated the NHS TDA did not undertake nursing duties and that their employees do not work in the “traditional” sense. This was incorrect and indicated

NHS BSA have no actual knowledge of this organisation. The NHS TDA nurses' roles encompass all fields of nursing in "all NHS care settings".

Summary of NHS BSA's position

47. The relevant Regulation is Regulation R2 which provides entitlement to SCS to a specific set of employees allowing them to retire at age 55 with no reduction.

48. The 1983 Griffiths report provided instructions on creating nursing management roles and the "intention" of the Regulations was to allow nurses who carried out a "hands on" role of nursing to retire early. Nursing managers were not considered to be employed as a "nurse" for the purposes of the Regulations. It was for this reason the retention provisions were created outside of the Scheme to allow employees that opt to no longer be a nurse but to be a nursing manager to be able to retain SCS.

49. The two criteria that had to be met to satisfy the retention provisions were: the previous role must have had SCS; and a nursing qualification must be essential for the role that the member was moving into.

50. The retention provisions are not in the Regulations. Should NHS BSA revert wholly to the Regulations the only result would be that members who are no longer employed as nurses would automatically lose their entitlement to SCS.

51. A full review of all the available evidence was completed following the previous Determination. This review found that Mrs S was not employed as a nurse in her role as Project Manager from January 2002 to March 2003, so she was not entitled to SCS under the Regulations.

52. Applications for retention of SCS are considered by NHS Pensions on an individual basis based on formal evidence of duties, responsibilities, and person specification of the post. The final decision as to whether retention can be granted rests with NHS Pensions.

53. A review was completed under the retention provisions to consider whether Mrs S could retain SCS in all of her roles. It was clear that maintenance of a nursing qualification did not guarantee continuation of SCS. A member must be in employment as a nurse, physiotherapist, midwife or health visitor in order to qualify for SCS under the Regulations. As Mrs S was not employed as a nurse under the Project Manager role, she does not meet the retention provisions.

54. Mrs S' nursing background had assisted her in carrying out her various roles, but it had not been evidenced why she or her employers maintain that another "clinically qualified person" would not be able to carry out the roles.

55. It accepts that the roles Mrs S undertook between 2010 and 2013 were nursing in nature, but Mrs S did not qualify for SCS by virtue of the fact that from 2002 to 2010 there was no entitlement to SCS under the Regulations or retention provisions.

56. Having SCS does not automatically mean that a member was entitled to take benefits from age 55 without reduction. To have benefits paid without actuarial reduction before age 60 a member must have SCS for the last 5 years of pensionable employment.

57. Mrs S had taken her pension benefits in April 2020 on an actuarially reduced basis and the application form at the time referred to her being “Head of Clinical Quality”.

58. Using the job description and person specifications for the role Mrs S undertook for NHS TDA, NHS BSA would not have accepted that Mrs S was in pensionable employment as a nurse, physiotherapist, midwife or health visitor. This was because:-

- There was no requirement for the applicant to be a qualified as a nurse, physiotherapist, midwife or health visitor.
- The job description set out the required leadership and who would be managed but “nurse” was not specifically named.
- In the “Quality and improvement” section there was a substantial list of functions the majority of which were not solely related to nurses or nursing. Where nursing is mentioned, it was in conjunction with the role of the “Medical Director,” who is not a nurse.
- There is no requirement for a nursing qualification but for a “First degree in a health related subject”. This would mean any clinical or allied health profession as well as a nurse could apply for and have an expectation of being appointed for the role. There is no requirement to be registered with a professional body in general or NMC specifically.
- If an individual was appointed for the role, then any required nursing functions would have been undertaken by a different employee. So a nursing qualification was not essential for the role.
- The job description allowed for any clinical or allied health professional to apply for the role. If only a nurse could apply, then it would expect this to be reflected in the job description.
- The Head of Quality job description provided by the Employer was also generic, and it was not known if this was the job description supplied to Mrs S.
- The Chief Nursing Officer also confirmed it might be possible for the role to be undertaken by someone holding another clinical qualification "in a different setting.” Mrs S’ employer therefore recognised that it was possible for someone who did not have a nursing qualification to fulfil the role, which indicates a nursing qualification was therefore not essential for the role.

59. NHS BSA would only consider the retention of SCS status subsequent to consideration of whether the requirements in Regulation R2 are met. The retention provisions are an additional means of establishing SCS and are in line with a

consistent and longstanding policy set by the Secretary of State in light of and in line with the historical context of SCS status. As set out in the issued circulars and guidance this falls within the general power of the Secretary of State.

60. In NHS BSA v Williams it was confirmed that qualification as a nurse is important. This did not mean an individual who was qualified as a nurse but working in a non-nursing role such as a consultant's personal assistant, where nursing knowledge may be of assistance but not essential, was working as a nurse.

61. There has been no supporting evidence that Mrs S was appointed because of her nursing background but in any case, as confirmed in NHS BSA v Williams having a nursing background does not mean that SCS was appropriate.

62. If a nursing qualification was not essential for the role in "all settings" it arguably cannot be said to be essential for the role.

63. NHS BSA v Williams stated, "I do not say that it is impossible in theory that a person who is not qualified as a nurse could be in employment as a nurse, but that would be the most exceptional case which, in practice, could not happen." Given that a person without a nursing qualification could undertake Mrs S' role at NHS TDA, it arguably follows that the role does not amount to employment as a nurse.

64. NHS BSA has never received a request to consider ill health retirement from Mrs S. As Mrs S retired on 29 April 2020, it is not possible to backdate and pay her pension from age 55 under the Regulations.

Ombudsman's decision

65. Mrs S has complained that NHS BSA has decided that she no longer holds SCS. This means she was unable to retire at age 55 without her pension being subject to early retirement reductions.

66. The test NHS BSA has applied in reaching this decision can be summarised as follows:

- In order for a nurse to be eligible for SCS, they must have been in a nursing role on 6 March 1995.
- In order to retain SCS, a nurse must then subsequently either:
  - remain in front-line nursing roles for their entire career until age 55; or
  - following the 1983 Griffiths report, they can "retain" SCS if a nurse moves away from front-line nursing roles to management positions, provided that two criteria are met: firstly, that the immediately preceding role was also eligible for SCS; and secondly, that a nursing qualification is essential for the current role.

67. The requirement for a nurse to have been in pensionable employment as a nurse as at 6 March 1995 is uncontroversial, as is the requirement for a nurse to spend the last

five years of their pensionable employment as a nurse. Both these requirements are clearly set out in Regulations R2(1)(a)(i) and R2(1)(b) respectively.

68. However, the “retention provisions” for SCS across job roles, referred to by NHS BSA, are entirely absent from the Regulations. The Regulations simply state that if a member was eligible for SCS on 6 March 1995 and spends the last five years of their pensionable employment as a nurse, they qualify for SCS, provided that they did not have a break in pensionable employment for any one period of five years or more. The Regulations also do not specify that the break in pensionable employment is a break in pensionable employment as a nurse.

69. It is therefore permissible under Regulation R2 for a member who was in pensionable employment as a nurse as at 6 March 1995 to have subsequently moved to non-nursing roles and, provided that they did not have a break in pensionable employment of five years or more, then return to pensionable employment as a nurse later in their career. Provided that they then spend the last five years in pensionable employment as a nurse, they will remain eligible for SCS under Regulation R2.

70. So, even if Mrs S had ceased to be in pensionable employment as a nurse at particular points in her career after 6 March 1995, provided that she did not have a break in pensionable employment of five years or more, and spent the last five years of pensionable service as a nurse, she would remain eligible for SCS.

71. The 1983 Griffiths Report introduced the concept of retention of SCS in order to remove a potential impediment to nurses who may have been discouraged from moving into management positions because they would lose SCS eligibility. It is within NHS BSA’s power to introduce wider eligibility to SCS than is provided for in the Regulations for individuals who are no longer working as nurses in the last five years of pensionable employment.

72. However, the retention provisions, as an extra-statutory policy, cannot operate to constrain eligibility in circumstances where they conflict with the Regulations. In order to qualify for SCS on retirement at age 55, Mrs S is not required by the Regulations to work throughout her career in front-line nursing roles, or “retain” eligibility across roles carrying SCS status, or require an agreement from NHS BSA that SCS would be retained until she returned to a nursing role. By applying more restrictive criteria than those set out in the Regulations, I consider that NHS BSA has relied on the retention provisions rather than considering eligibility under the Regulations themselves, and so have again not properly assessed Mrs S’ eligibility for SCS.

73. NHS BSA’s definition of “nurse” also constrains eligibility for SCS to nurses either working in a front line patient facing, arduous role or to those who have “retained” eligibility and where a nursing qualification is essential for their current role. However, there is no such definition in the Regulations and NHS BSA has therefore put in place a test which is more restrictive than the test set out in the Regulations. In defining “nurse” for the purposes of the Regulations, NHS BSA has not properly followed the approach set out in NHS BSA v Williams.

74. In NHS BSA v Williams, the Court had to decide whether Mrs Williams was in "pensionable employment as a nurse" within the meaning of Regulation R2 of the Regulations. In considering whether a member is in "pensionable employment as a nurse" within Regulation R2, the Court held, per Warren J at 152:

> "employment as a nurse" was intended by the draftsman of the 1995 Regulations to capture principally those members of the Scheme who were qualified nurses employed in a nursing job. It is … not simply because of their job function, but also because of their job titles, job descriptions and importantly qualifications."

75. There is therefore an objective meaning to "nurse" under Regulation R2, which will be based on the job title, job function, job descriptions and qualifications required for the role. Qualification as a nurse was seen by the Court as important, it would only be in exceptional circumstances where someone who was not a qualified nurse was in employment as a nurse. However, holding a nursing qualification alone is not in itself determinative of whether a person is in pensionable employment as a nurse. The Court also rejected the assertion that arduous duties are either a necessary or sufficient condition for a person to be a nurse.

76. There is no dispute that Mrs S was in pensionable employment as a nurse on 6 March 1995. Therefore, the only additional condition in the Regulations that Mrs S has to meet is whether she has been in pensionable employment as a nurse for the last five years of her employment before reaching age 55, provided she did not have a break in pensionable employment of five years or more.

77. As Mrs S was born in September 1962 the last five years of her employment was from September 2012 to September 2017, which was the earliest point at which she could have retired had it been agreed that she held SCS.

78. Despite NHS BSA's contention that SCS must be retained from role to role, this requirement is not part of the Regulations. This means the nature of the roles Mrs S held before 2012 is irrelevant to determining her eligibility now for SCS provided that she was employed as a nurse in 1995, which, as has been agreed by all parties, she was.

79. Before I consider the roles Mrs S held between 2012 and 2017, and whether Mrs S was in pensionable employment as a nurse during this period, I will explain why I am satisfied that I have jurisdiction to make a finding of fact in this case, confined to and based upon Mrs S' individual circumstances and the relevant facts (noting Edge and Others v Pensions Ombudsman and Another [1998] Ch. 512), rather than remit the decision back to NHS BSA.

80. I accept that NHS BSA, and specifically NHS Pensions, is the body which administers the Scheme and is responsible for making day to day decisions about members' entitlements under the Regulations. However, where a member disputes a decision made by NHS BSA that they are not eligible for SCS on the basis of the definition of "nurse", I cannot see in Regulation R2 or elsewhere any power which confers a discretionary judgment making role or power on NHS BSA to determine the meaning

of “nurse” in the context of Regulation R2; it is a matter of fact to be decided. Mr Justice Warren made the same point in NHS BSA v Williams.

81. As I have set out in paragraph 75, there is an objective meaning to the word “nurse”. This meaning, in the event of a dispute between a member and NHS BSA, must be decided as a matter of fact by an appropriate judicial authority. Mr Justice Warren (at para 112) referred to this being “an Ombudsman, the Court or an appellate Court”. I consider that my statutory powers, under section 146(1)(c) of the Pension Schemes Act 1993, as amended Regulation 2(2) of The Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996, to determine a dispute of fact or law between a beneficiary of an occupational pension scheme and an administrator, confer on me the necessary authority to make a finding of fact in this case. As I stated in the previous Determination, I could not then make a finding without additional evidence about Mrs S’ roles between 2012 and 2017, which has now been provided to me.

82. I consider Mrs S is eligible for SCS under the Regulations, taking into consideration the evidence presented concerning the roles she has held during the period 2012 to 2017. These being:

- Deputy Director of Quality and Nursing at NHS Gloucestershire: March 2012 to March 2013
- Head of Quality and Deputy Clinical Quality Director at NHS TDA; Head of Quality at NHS TDA/NHS Improvement: April 2013 to April 2020.

Deputy Director of Quality and Nursing

83. In a letter dated 2 April 2019, the Director of Nursing for NHS England, South West North, set out a detailed description of Mrs S’ areas of responsibility in the role, and confirmed that a nursing qualification was essential for the role, which includes:

> “Providing nursing expertise and leadership in relation to critical patient care issues such as infection prevention and control, safeguarding, medicines management, continuing health care, clinical safety and risk management.”

84. In any event, on 16 October 2019, NHS BSA acknowledged that Mrs S’ role between 2012 and 2013 was in substance a nursing role and said:

> “it would be fair, reasonable, and justifiable for NHS BSA to accept that the responsibilities over and above the Job Description from 2010 to 2013 as described by the Directors were nursing in nature when carried out by Mrs [S]. In my opinion it has been demonstrated that from 2010 to 2013 nursing was essential for the role that she was undertaking on an exceptional basis.”

85. As Deputy Director of Quality and Nursing, Mrs S was therefore in pensionable employment as a nurse for the purpose of Regulation R2.

Head of Quality (band 8d) at NHS TDA and Deputy Clinical Quality Director/ Head of Quality at NHS TDA/NHS Improvement (band 9)

86. Mrs S has said her job title in April 2013 was Head of Quality at band 8d. In August 2014 she was promoted to Deputy Director of Clinical Quality at band 9 and in September 2016 her job title was changed to Head of Quality at band 9 when NHS TDA became part of NHS Improvement. Head of Quality and Head of Clinical Quality were used synonymously throughout the period and refer to the same role. The formal job description for "Head of Quality" (band 8d) said that:

> "…the post holder will be clinically qualified and relevant professional registration is essential."

87. This same requirement is included in the job descriptions for "Deputy Clinical Quality Director" and "Head of Quality" (band 9).

88. The following specific responsibility, with minor variations, is also included in each job description:

> "To support the regional Medical and Nurse Director [and the Deputy Director of Nursing] in the delivery of the [Directorate/ regional] objectives."

89. The job description for "Head of Quality" (band 9) includes the following additional requirements for the role:

> "Provision of regional expert advice on areas of personal clinical expertise as requested by the regional nurse or medical director or deputy.
>
> Proactively escalate and brief the regional nurse / medical director or deputy on any quality or safety issues of significant concern, using an SBAR approach.
>
> Work with regional medical and nurse directors to ensure the effectiveness of the quality offer is equitable, and needs based on assessment of risk."

90. The job descriptions do not say that the job holder needed to be a nurse, only that they need to hold a clinical qualification. However, the Employer Statement from April 2019 described the Head of Quality (band 9) job description as "generic" and stated that in the specific context of the role that Mrs S performs:

> "…she was appointed… because of her nursing skills, experience and qualification which was essential for the setting, role, responsibilities and the team in which she is employed. [Mrs S] would not have been employed if she had not been registered as a nurse with the Nursing and Midwifery Council (NMC)."
>
> …

> "[Mrs S'] employer required her to maintain her professional registration as an essential qualification for the role and the Employer Statement said that the team [Mrs S] manages "would not be able to deliver an effective operation without her nursing experience and qualification."

91. The Employer Statement also gave examples of the work Mrs S undertook in this role, which:

> "…include devising strategies to prevent infection, analysing complex harm reviews, reviewing safe staffing/nursing levels, understanding patient experiences, reviewing the care, safety and experience of patients e.g. long waits in A&E, investigating whistleblowing concerns regarding nursing care, and undertaking the senior nurse role for hospital and service site visits or CQC mock inspections"

92. The Employer Statement makes clear that, in the context of Mrs S' specific role, a nursing qualification is an essential requirement for her to carry out her role effectively. The Employer Statement refers to Mrs S being employed as Head of Clinical Quality since 1 April 2013 and not explicitly to her job title of Deputy Clinical Quality Director between 1 April 2013 and August 2014. However, it is clear that it is written in support of her roles being nursing roles during the whole period of her pensionable employment at NHS TDA/ NHS Improvement from 2013 to 2019.

93. The Employer Statement sets out various job functions Mrs S carries out in her specific role which are also nursing in nature, albeit at a strategic level rather than direct hands-on care. It is also clear that Mrs S' employer considers her nursing qualification and experience to be essential criteria for her to carry out her role. NHS BSA continues to argue that the job role did not require a nursing qualification and would expect the job specification to set this out if it was essential. It is not absolutely clear-cut that a nursing qualification is essential for the role in question if it was held by another individual, depending on their background and skill-set. However, the evidence from Mrs S' employer is clear. She would not have been offered the role without a nursing qualification, and that, in the context of the role she undertook, a nursing qualification and nursing experience were essential to the successful performance of her role. On balance, therefore, I consider that Mrs S was in pensionable employment as a nurse between 2013 and 2017.

94. NHS BSA recognises the definition of nurse in the traditional sense of providing hands on care to patients on a ward and conducting arduous duties. As referred to in NHS BSA v Williams, there is nothing in the Regulations which makes physically arduous duties a necessary condition for a person to be a nurse or excludes non-physical, strategic and managerial duties.

95. Mrs S' roles between April 2013 and 29 September 2017 are therefore eligible for SCS. Following on from NHS BSA's acknowledgement that her previous role as Deputy Director of Quality and Nursing was a nursing role, Mrs S is eligible for SCS as she meets the necessary requirements under Regulation R2. I make this finding

based on the complaint made by Mrs S, that she held SCS. This is notwithstanding any further claims Mrs S might, in the alternative, be able to make in respect of not being informed of the purported changes to her pension entitlement at the relevant times (for example when considering changing roles/accepting promotions).

96. I appreciate that Mrs S is frustrated with how the matter has been dealt with by NHS BSA. She has been through two complaints and arrived at the same outcome, without a full explanation being given by NHS BSA or the clear evidence provided by her employer being taken into account. She has explained that the complaint, which has been ongoing for a number of years continues to have a severe effect on her health. Although I made an award of £1,000 for distress and inconvenience in my previous Determination, I believe a further award of £1,000 for the serious distress and inconvenience that has been caused, is reasonable given the circumstances.

97. I uphold Mrs S' complaint.

Directions

98. Within 28 days of the Determination NHS BSA shall put Mrs S back into the same financial position she would have been in had SCS not been removed and she had taken her pension at age 55 unreduced. NHS BSA shall:

- pay the arrears of Mrs S' pension that she would have received between the date of her 55th birthday and the date of this Determination had she held SCS, taking into account the pension she has already received from April 2020 and the salary Mrs S received from her continuing employment between her 55th birthday and April 2020, as a lump sum;

- apply interest to the above calculated in accordance with Regulation T8 of the Regulations from the date each pension payment fell due to the date of payment to Mrs S;

- pay Mrs S a further £1,000 for the severe distress and inconvenience which she has suffered; and

- adjust Mrs S' current pension in payment from the date of the Determination to the level she would be receiving had the correct unreduced pension been paid from age 55.

Anthony Arter

Pensions Ombudsman
26 May 2021

Appendix 1

Extract from NHS Pension Scheme Regulations 1995 (as amended) SI 1995/300

“Nurses, physiotherapists, midwives and health visitors

R2.—(1) Subject to paragraph (2), this regulation applies to a member—

(a) who, at the coming into force of these Regulations—

(i) is in pensionable employment as a nurse, physiotherapist, midwife or health visitor, or

(ii) has accrued rights to benefits under the scheme arising out of a previous period in which she was engaged in such employment and at no time since the last occasion on which she was so engaged has she had a break in pensionable employment for any one period of 5 years or more,

and

(b) who spends the whole of the last 5 years of her pensionable employment as a nurse, physiotherapist, midwife or health visitor.

(2) This regulation shall cease to apply if the member has a break in pensionable employment for any one period of 5 years or more ending after the coming into force of these Regulations.

(3) Where this regulation applies—

(a) regulation E1 (normal retirement pension) will apply to the member as if the reference, in paragraph (1) of that regulation, to age 60, were a reference to age 55,”

Appendix 2

Extract from letter from Director of Nursing at NHS Gloucestershire of 2 April 2019

"I am writing regarding [Mrs S'] employment with NHS Gloucestershire in 2012/13 when she was accountable to me as the Director of Nursing and Clinical Development for NHS Gloucestershire, an NHS organisation responsible for the commissioning of patient services.

[Mrs S] was employed as a nurse in 2012/13, her role was Deputy Director of Quality and Nursing for NHS Gloucestershire. [Mrs S] and I were the two most senior nurses in the organisation, and she acted up for me across the full range of my duties in my absence which included the Nurse Director role at Board level (a voting member of the CCG's Governing Body).

[Mrs S] was employed because of her extensive nursing knowledge, skills and experience. In her Deputy Director of Nursing role she was responsible for improving the quality and safety of patient care, patient experience and clinical outcomes, and she was instrumental in developing new services and clinical pathways. [Mrs S] managed a team of nurses whose roles were exclusively nursing.

There were many aspects of [Mrs S'] nursing skills, experience, knowledge and expertise that were essential for her to undertake this senior nursing role:

- Providing expert nurse leadership, advice and guidance to nurses, other health care professionals and managers across a range of specialities and organisations
- Providing nurse leadership, advice and expertise at Board level and acting up for the Director of Nursing across the full range of her duties.
- Providing nursing expertise and leadership in relation to critical patient care issues such as infection prevention and control, safeguarding, medicines management, continuing health care, clinical safety and risk management
- Leading portfolios for safeguarding, infection prevention and control, nurse education and continuing health care, and managing the nurses in these teams, (which are only nursing roles, so requires a registered nurse manager). Responsibility for their training, supervision, professional development and maintaining their registration and revalidation
- Providing professional advice on all nursing matters and an advisory and supervisory role as a senior member of the nursing team
- Investigating complaints and incidents using nursing expertise, acting on outcomes and sharing the learning for the benefit of patients and to improve nursing and other clinical care. To provide specialist nursing advice and support to patients and their families where required
- Nurse lead for investigating significant clinical incidents with other health care professionals and overseeing the outcomes and improvement.
- Preparing, providing and participating in nursing and joint HCP educational programmes and events

- Undertaking clinical quality surveillance, reviewing quality of services and ensuring the clinical effectiveness and safety of services from a nursing/clinical perspective
- Developing nursing and clinical policy and protocols, maintaining health care and nursing standards, along with the development of evidence based clinical nursing practice in line with current research and guidelines
- Leading on the development of services and the required standards of care for nursing and other clinical care, to ensure they incorporate current nursing professional recommendations and standards
- Developing clinical audit strategy and clinical audit programmes in partnership with other clinicians
- Providing expert clinical, professional and quality governance support and advice
- Clinical lead for Prison & Probation Ombudsman investigations.
- Nurse member INNF panels
- Relationship development as a nurse leader with GPs and practice staff, NHS provider clinical executives and other system stakeholders and partners

It was only possible for [Mrs S] to undertake these roles and responsibilities as she was a nurse with a great deal of knowledge, experience and skills and I employed her because of this. She had a wealth of nursing knowledge and skills that only stem from being a being a frontline nurse for a considerable number of years in a range of clinical specialities and as her career progressed also using this knowledge to drive and influence nursing policy agendas. She kept herself up to date at all times in relation to nursing developments and best practice.

[Mrs S] would not have been employed if she had not been registered as a nurse with the Nursing and Midwifery Council (NMC). [Mrs S] was required to maintain her professional registration and abide by the NMC Code which sets out the professional standards of practice and behaviour that nurses must uphold. Nurses must act in line with this Code, whether they are providing direct care to individuals or bringing their professional knowledge to bear on nursing practice in other roles such as hers as the Deputy Director of Nursing.

The programmes of work that [Mrs S] was responsible for required a senior experienced nurse and she fulfilled that role, if she had not been employed as such then nursing expertise would have been required from another nurse as nursing input was essential for the professional leadership, nursing advice and leadership, the right governance and for the success of her programmes. Whilst [Mrs S] assumed additional management responsibilities as a Deputy Director, she continued to meet the criteria to retain SCS which is to hold a nursing qualification and undertake functions in addition to management duties including providing professional advice on nursing matters and an advisory and supervisory role within nursing.”

Appendix 3

Extract from Mrs S' line manager Interim Delivery and Improvement Director of 5 April 2019

"As discussed, please find my supporting statement as your line manager below:

[Mrs S] fulfils the Head of Quality role for the NHS Improvement South-West (North) team. This involves coordinating the quality oversight and support across 11 NHS providers in our patch. [Mrs S] is also the senior relationship holder for the provider Directors of Nursing in this patch. [Mrs S] was appointed to this role because of her nursing skills, experience, knowledge and qualification. These are essential for the setting in which our team operates within the NHS, both for her role and for the team in which she is employed.

As the Delivery & Improvement Director for the team and [Mrs S'] line manager, I rely on the professional nursing expertise [Mrs S] brings to understand and advise me on our response to quality issues across the patch. These are often complex in nature and could pose a considerable risk to the quality of patient care if not handled appropriately, making professional nursing expertise essential. If [Mrs S] was not in my team I would need to source the nursing advice and expertise from another experienced and qualified nurse.

As our first point of contact with Board-level Directors of Nursing across the patch, [Mrs S'] expertise as a nurse and her nursing registration is also essential in ensuring she is a credible and trusted professional from the perspective of these individuals, and her advice respected. "

Appendix 4

Extract from Employer statement from Chief Nursing Officer dated 9 April 2019

"1. [Mrs S] has been employed as Head of Clinical Quality since 1 April 2013.

2. The generic job description for this role is attached at Appendix 1. Whilst this is a generic job description, the specific role that [Mrs S] fulfils and that she was appointed to was because of her nursing skills, experience and qualification which was essential for the setting, role, responsibilities and the team in which she is employed. [Mrs S] would not have been employed if she had not been registered as a nurse with the Nursing and Midwifery Council (NMC).

3. As a result NHS Improvement requires [Mrs S] to maintain her professional registration and arranges for her to receive the necessary reminders to re-register and revalidate every three years, thus evidencing that that she continues to practice safely and effectively as a nurse. [Mrs S] gained her revalidation on 30 September 2017 thus evidencing she is still working as a nurse. Nurses must act in line with the NMC Code (attached at Appendix 2), whether they are providing direct care or using their professional knowledge in relation to nursing practice in other roles such as [Mrs S'].

4. Whilst it might be possible for the role to be undertaken by someone holding another clinical qualification in a different setting, [Mrs S's] team would not be able to deliver an effective operation without her nursing experience and qualification. In the specific setting in which she works, and for her specific role in that setting, her nursing experience and qualification is therefore essential. [Mrs S'] senior nursing experience enables her to undertake the fullest breadth/depth required for the role.

5. It should further be noted that [Mrs S] has a registered nurse reporting to her and part of her role responsibilities is to ensure that this individual meets the necessary requirements to maintain their professional registration and revalidation.

6. The majority of the stakeholders with whom the role interacts on a day to day basis across the range of responsibilities are registered nurses of varying levels of seniority and to communicate effectively requires a senior registered nurse.

7. The nature of the work requires the role-holder to have a deep and broad working knowledge of managing clinical issues and events from a nursing perspective with the required knowledge and skills to be able to understand the risks to patients and to progress the necessary quality improvements. The required knowledge set is found in registered nursing staff (such as [Mrs S]) working at senior leadership level; as previously stated she is in a job that is normally carried out by registered nurses in the NHS.

8. Examples of [Mrs S'] work include devising strategies to prevent infection, analysing complex harm reviews, reviewing safe staffing/nursing levels, understanding patient experiences, reviewing the care, safety and experience of patients e.g. long waits in A&E, investigating whistleblowing concerns regarding nursing care, and undertaking the senior nurse role for hospital and service site visits or CQC mock inspections.

9. The programmes of work for which [Mrs S] is responsible require a senior experienced nurse and if she had not been employed as such in her team then nursing expertise would need to be sought from another experienced and qualified nurse. Her input is essential for the professional nursing leadership, nursing assessment, support and advice she provides to her team and the NHS organisations she works with. [Mrs S] can undertake her role as she is a nurse with a great deal of knowledge, experience and skills as a result of having frontline nurse experience and having worked in a range of clinical specialities and health care settings.

10. By way of further context, the Nursing and Midwifery Council Code of professional standards of practice for behaviour for nurses and the Nursing Revalidation process recognise that, as they progress their careers, nurses will provide leadership to make sure people's wellbeing is protected and to improve their experiences of the health and care systems, rather than simply the direct clinical care typically associated with nursing. The Head of Clinical Quality is such a role.

Appendix 1: Job description & person specification

Job Title Head of Quality

Directorate South Region

Department/Team Delivery and Improvement

Location Grade 2.2 / Band 9

Reports to Delivery and Improvement Director

Professionally Accountable to Director of Nursing

Job Summary/Purpose

The Senior Clinical Lead will have a key leadership role in the sub region contributing to delivery of NHS I objectives by:

- Providing clinical advice and guidance to the regional delivery directors and hold responsibility and accountability for the surveillance of the standard of quality and safety at trusts within the sub region, in line with NHS Improvement's operating framework.
- Take oversight of improvement strategies across the sub region to ensure improvements in quality are actioned and effective
- Leading the clinical team managers and co-ordinating specialist advice for example in relation to HCAI and medicines management contribution to this process and take the initiative to step up surveillance, intervention and improvement when the situation warrants it.
- Apply his/her expert knowledge to help prevent infection, inform strategy and in the preparation of intervention plans to help mitigate clinical risk in providers.
- Provide expert advice on healthcare associated infections and related issues.

- Work as part of a quality surveillance and assurance team within the Clinical Directorate.
- Working as part of a team, contribute to the application of the broader quality surveillance and assurance processes.
- Developing constructive and productive relationships with Trusts and key external stakeholders such as NHSE area teams and CQC regional managers. work closely with the regional delivery directors and sub regional teams, taking a strategic view of quality and safety across the sub region.
- Deputise for the Deputy Director of Nursing and Quality as appropriate.
- Ensure strategic policy is translated into effective operational delivery and practice within area of responsibility.

The Senior Clinical Lead will also be expected to have a key role working with the national nursing and medical director, e.g.:

- NHS Improvement is the operational name for the organisation that brings together Monitor, NHS Trust Development Authority, Patient Safety, the National Reporting and Learning System, the Advancing Change team and the Intensive Support Teams.
- Key regional link for cross cutting groups such as the Clinical Directorate planning group
- National lead for the Directorate on specific clinical safety or quality issues where a national approach is required

The post holder will be clinically qualified and relevant professional registration is essential.

Key Accountabilities

Leadership

- Manage a team comprising of a Senior Clinical Advisor, Senior Clinical Manager and Clinical Team Manager and/or other posts commensurate with the position
- To support the regional Medical and Nurse Director, and the Deputy Director of Nursing in the delivery of the regional objectives
- Forge positive working relationships in order to support an effective matrix approach to achieving NHSI objectives
- Provide strong contribution to sub regional tri-partite meetings, Quality Surveillance Groups and Quality Summits for area of responsibility.
- Supporting Trusts within the portfolio ensuring trust boards have appropriate scrutiny of quality and safety to recognise and act on early warning signs of failure,
- Provision of regional expert advice on areas of personal clinical expertise as requested by the regional nurse or medical director or deputy.
- Proactively escalate and brief the regional nurse / medical director or deputy on any quality or safety issues of significant concern, using an SBAR approach.

- Work with regional medical and nurse directors to ensure the effectiveness of the quality offer is equitable, and needs based on assessment of risk.
- Ability to advise and credibly influence on the clinical quality agenda at a regional and sub-regional level

Quality improvement

- Ensure that at an operational level, the benefits of NHS Improvement's approach to supporting quality improvement as set out through planning guidance and Accountability Framework, are realised, with appropriate governance structures in place.
- Work with quality colleagues across the region to identify cross cutting themes and learning and lead an integrated approach to improvement
- Lead on quality improvement programmes across portfolio and the wider region when appropriate in accordance with NHS Improvement's strategy and operating model.
- Identify early warnings of failure for Trusts, within the assigned portfolio of Trusts, but also having regard to Trusts across the region for areas of clinical expertise, and ensure appropriate plans to mitigate the risks are in place.
- Ensure that clinical information is properly integrated into the overall strategy and work of the region and sub region, working closely with NHSIs informatics team.
- Monitor data / intelligence on quality to identify trends and performance profiles. Work closely with the Quality Insight and Intelligence Director and his / her team to ensure the adoption and application of intelligence about individual trusts in the portfolio,
- Actively seek out opportunities to identify and promote continuous quality improvement.
- Undertake specialist reviews/ visits to trusts as necessary and ensure positive and constructive relationships with trust staff are maintained.
- Work with NHSE and CCGs to avoid duplication of oversight whilst acknowledging different accountability frameworks and approaches
- Working closely with local teams of the Care Quality Commission, and other regulatory bodies such as Health Education England
- Hold budgetary accountability for direct reports and work within Standing Financial Instructions as appropriate.
- To oversee development and reporting of timely management information and analysis for regional workstreams defined by the Nurse and Medical Director(s)
- Oversee the quality of produced reports, briefings and presentations
- Lead work on quality programmes, projects and initiatives, and develop success measures
- Working closely with clinical team colleagues, to improve, devise and establish consistent systems and processes for the surveillance of quality plans and profiles as part of NHS Improvement's overall arrangements for quality surveillance and assurance proportionate to risk.

- Support Trusts within the sub region to effectively oversee the tracking of progress against plans, ensuring appropriate processes are in place to flag issues, risks and concerns and deliver improvements
- Advise on the nature of quality related assessments of trusts at times of assurance visits and take part in such activities as required

General

- Maintain accurate records and data storage to support surveillance of individual trusts
- Operate effectively in a flexible and demanding environment and proactively engage with stakeholders.
- Communicate proactively, building good working relationships and provide information and advice to a wide range of internal and external stakeholders on a range of business sensitive issues.
- Lead as an expert; integrating systems and managing effective working relationships with the appropriate stakeholders.
- Provide and receive highly complex, sensitive and contentious information, including presenting information about projects and dependencies to a wide range of internal and external stakeholders in formal settings.
- Present highly complex information in a clear, understandable and audience appropriate manner to senior management and board level groups
- Deal with complex, contentious and conflicting subject matter problems or in day today work load in workshops, meetings, one to one communications and other events, comprising various parts of the business.
- Nurtures key relationships with senior and high profile individuals and responsible for the maintenance of networks.
- Employ effective communication, negotiation and influencing skills to enable stakeholder relationships to deliver objectives over the duration of the tenure/project with external organisations to ensure seamless working within the system.
- Hold line management responsibility for clinical team members
- Ensure appropriate stakeholder engagement strategy is in place defining how the strategy will engage with all stakeholder groups and what information flows will be established and maintained.
- Manage system risks ensuring they are appropriately identified and controls and/or mitigation is in place, escalating to the system board as appropriate
- Responsible for the recruitment and development of the reporting teams, including undertaking appraisal and personal development and, where appropriate, progressing any disciplinary or capability issues.
- Forge positive working relationships, in order to support an effective matrix approach to achieve NHS objectives.

Role Dimensions

Key Relationships (External)

To proactively develop relationships with key stakeholders in the system on both operational and strategic issues in relation to quality, including

- NHS England
- Clinical Commissioning Groups
- NHS Trusts and other healthcare providers
- Local Authorities
- Patient/Public Representative Bodies
- Relevant National and Local Policy Leads

Contacts with national bodies will normally be with regional or local level representatives, and will also include national representatives when required.

Key Relationships (Internal)

To represent the regional clinical team in relationships with other Directorates.

Numbers and types of staff managed

3 direct reports, Senior Clinical Advisor, Senior Clinical Team Manager and Clinical Team Manager.

Budget Managed

Person Specification

Factors	Description	Essential	Desirable
Qualifications	Clinically qualified with current appropriate professional registration	√	
	First Degree in health related subject	√	
	Educated to masters level in health related subject or equivalent level of experience of working at a similar level in specialist area	√	
Knowledge, Training and Experience	Minimum of 3 years Senior clinical leadership reporting to a director in an NHS provider.	√	
	Significant experience of delivery quality improvement using improvement methodology.	√	

	Significant evidence of continued professional development	√	
	Demonstrated expertise in a Healthcare environment	√	
	Significant management experience at senior level in the NHS or other public healthcare related industry	√	
	Proven senior experience of leading and delivering complex change programmes in a politically sensitive and complex environment	√	
	Significant experience and understanding of proven implementation of project management methodologies	√	
	Experience and/or understanding of the health economy – essential		
	Experience of successfully operating in and delivering priorities in a partnership environment		√
			√
Communication Skills	Dynamic personality and the ability to build trusted stakeholder relationships and wide support networks	√	
	Strong external communications skills in a politically sensitive environment and experience in handling media	√	
	Ability to prepare and produce concise yet insightful communications for dissemination to senior stakeholders and a broad range of stakeholders as required	√	
Analytical	Ability to analyse highly complex issues where material is conflicting and drawn from multiple sources	√	

	Demonstrated capability to act upon incomplete information, using experience to make inferences and decision making Ability to analyse numerical and written data, assess options and draw appropriate initiatives	√ √	
Planning Skills	Leadership, vision, strategic thinking and planning with highly developed political skills Demonstrated capability to plan over short, medium and long-term timeframes and adjust plans and resource requirements accordingly	√ √	
Autonomy	Demonstrated capabilities to manage own workload and make informed decisions in the absence of required information, working to tight and often changing timescales Ability to make decisions autonomously, when required, on difficult issues	√ √	
Management Skills	Experience of creating a new team and motivating and inspiring staff to work together to achieve a common objective Ability to delegate effectively Ability to work effectively between strategic and operational activities Demonstrate knowledge of effective budgetary management.	√ √ √	
Physical Skills		√	
Equality and Diversity	Will consider the most effective way to promote equality of opportunity and good working relationships in employment and service delivery and has the ability to take actions	√	

	which support and promote this agenda		