

Ombudsman's Determination

Applicant	Mrs N
Scheme	NHS Pension Scheme (the Scheme)
Respondent	NHS Business Services Authority (NHS BSA)

Outcome

1. I do not uphold Mrs N's complaint and no further action is required by NHS BSA.

Complaint summary

2. Mrs N has complained that:-
 - NHS Pensions¹ wrongly decided that it is unable to consider her retrospective application for early payment of deferred benefits (**EPDB**).
 - The Scheme literature did not stipulate that she had to apply for EPDB before age 60, and that she could not make a retrospective application on the grounds of ill health.

Background information, including submissions from the parties

3. Mrs N is a member of the 1995 section² of the Scheme.
4. The Scheme is governed by the NHS Pension Scheme Regulations 1995 (as amended) (**the Scheme Regulations**).
5. Mrs N worked for the NHS between March 1977 and June 1988.
6. When she left NHS employment on 13 June 1988, she became a deferred member of the Scheme³.

¹ The Scheme is administered by NHS Pensions, which is part of NHS BSA.

² The 1995 section is for members who joined before 31 March 2008.

³ At the time, the Scheme was known as the National Health Service Superannuation Scheme.

7. On 18 July 1989, the Department of Health sent Mrs N a letter detailing her options on leaving the Scheme (**the July Letter**). It said that:-
- She was entitled to a pension and a lump sum from the Scheme when she reached age 60.
 - If she became permanently unable to work because of ill health prior to attaining age 60, she might be able to claim early payment of her preserved [deferred] benefits. To qualify, she would have to meet one of the following criteria:-
 - a) If she had left her job in the NHS, she must be permanently unable to do any regular work.
 - b) If she had left the Scheme but was still working in the NHS, she must be permanently unable to carry out her NHS duties.
 - To claim her preserved benefits, she should request a form from the Department of Health three months before she reached age 60.
 - She could write to the Department of Health at any time if she became permanently unable to work because of ill health and wished to claim early payment of her preserved benefits.
 - If she was working in the NHS, or had re-entered NHS employment, she could normally apply to re-join the Scheme at any time and earn further pension benefits. These would be added to the preserved benefits from her earlier service.
8. Mrs N re-joined the Scheme on 1 September 1997. She became a deferred member of the Scheme for the second time when she left NHS employment voluntarily⁴ on 23 August 2003.
9. On 25 February 2013, NHS Pensions sent Mrs N⁵ an age retirement estimate showing the projected benefits available to her from the Scheme as at her Normal Pension Age (**NPA**) of 60. Under the heading “About Your 1995 Section Membership Statement”, NHS Pensions said that further information about the benefits was available on its website.
10. In April 2017, NHS Pensions sent Mrs N a Total Reward Statement (**TRS**) which provided details of the current estimated value of her benefits in the Scheme.
11. The TRS showed that:-
- If eligible, Mrs N could take her benefits before her NPA but they would be reduced accordingly.

⁴ According to her former employer, Mrs N did not leave her role on the grounds of ill health.

⁵ Mrs N requested this estimate.

- The benefits would only become payable once the appropriate application had been made.
 - Further information about the Scheme, including when benefits can be taken, may be found in the Scheme Guides or the TRS information website.
12. In its letter dated 12 November 2018 (**the November Letter**) NHS Pensions informed Mrs N that, as she was approaching her NPA of 60 in March 2019, she could claim her benefits by completing form AW8P. It said that:-
- She could now access her TRS and Annual Benefit Statement (**ABS**) online.
 - She should visit its website for further details about what the ABS contained.
 - More information about the Scheme could also be found on its website.
 - If she had any questions, its online knowledge base “Ask Us” could answer them. Alternatively, she could contact NHS Pensions by telephone, or in writing.
13. NHS Pensions sent another TRS to Mrs N in November 2018.
14. In an e-mail dated 24 April 2019 to NHS Pensions, Mrs N explained that:-
- She had to retire early in January 2010, due to ill health.
 - She was not aware at the time that she could apply for “an early pension if retired due to ill health”. She only discovered this when she recently visited NHS Pensions’ website to find out why the benefits available, on attaining NPA, had not yet been paid.
 - When she telephoned NHS Pensions, she was told that it would accept a retrospective application for “an early pension if retired due to ill health”, and that there were no time limits for making an application.
15. On 4 May 2019, NHS Pensions replied as follows:-
- It could not consider a retrospective application for ill health early retirement (**IHER**) unless the sole reason for Mrs N leaving NHS employment in August 2003, was due to ill health. Mrs N could ask her former employer to complete form AW33E if she had medical evidence to support her IHER application.
 - If this was not the case, Mrs N would be entitled to receive her normal retirement benefits from her NPA, as she was now over age 60.
16. On 21 May 2019, Mrs N completed form AW8P to claim her deferred benefits from the Scheme from NPA, and also on the grounds of ill health.

17. By signing form AW8P, Mrs N acknowledged that she had read the “Retirement Guide for Members of the Scheme,” and the guidance notes attached to form AW8P, before completing it.
18. On 12 July 2019, NHS Pensions informed Mrs N that it could not consider her IHER application because: (a) her former employer did not say that her reason for leaving NHS employment in 2003 was due to ill health; and (b) Mrs N had indicated that she only became ill in 2010.
19. According to a telephone note made by NHS Pensions on 23 July 2019, Mrs N said that:-
 - She was unhappy that her IHER application had been rejected.
 - She wished to take her normal retirement benefits.
 - If NHS Pensions had told her to complete form AW240 in 2010, she would have made an application for EPDB at the time.
20. On 5 August 2019, Mrs N made a complaint to NHS Pensions under Stage One of the Scheme’s Internal Dispute Resolution Procedure (**IDRP**).
21. In its response under Stage One of the IDRP, dated 1 October 2019, NHS Pensions informed Mrs N that it did not uphold her complaint on the following grounds:-
 - Under the Scheme Regulations, there are separate provisions for IHER from deferred status.
 - An IHER pension may only be paid to a deferred member, if they are permanently incapable of earning a living through regular work.
 - Prior to her 60th birthday, Mrs N did not submit a completed AW240 application form with appropriate medical evidence.
 - Information about IHER has been available on its website since 2009.
 - The July Letter explained that her preserved benefits from the Scheme were payable from age 60. The July Letter also explained that they could be paid earlier than NPA if she applied to take them on ill health grounds.
 - When Mrs N re-joined the Scheme in September 1997, her employer should have provided her with a copy of the “Guide to the NHS Pension Scheme for GP Practice Staff”⁶ (**the Guide**).

⁶ NHS Pensions enclosed a copy of the section of the Guide concerning IHER. NHS BSA has submitted a copy as evidence to The Pensions Ombudsman (**TPO**).

- When she became a deferred member of the Scheme in August 2003, her employer should have given her a copy of the “Leaving Early and Transferring Out” factsheet (**the Factsheet**)⁷ It contained information on how to claim benefits early due to ill health.

22. On 4 November 2019, Mrs N replied as follows:-

- She did not receive the July Letter because she moved house in June 1989. Even if she had received it, it did not say that she had to claim her IHER benefits before age 60.
- The section of the Guide concerning IHER, which NHS Pensions had sent her, was silent about the timing of an application for an ill health pension. If there was a deadline, this should have been explicitly stated in the Guide.

23. On 19 November 2019, NHS Pensions informed Mrs N that:-

- The July Letter was not returned by Royal Mail marked undelivered. So NHS Pensions assumed she had received it.
- Although the July Letter did not specify a deadline for making a claim for EPDB due to ill health, it stated that her preserved benefits would normally be payable from age 60. Furthermore, the July Letter said that if she became permanently incapable of working prior to age 60, NHS Pensions may consider putting her benefits into payment early but she would have to apply for EPDB before her 60th birthday.
- The IHER section of the Guide⁸ explained that members who are too ill to continue working in their present job are able to retire early. The Guide also explained that, for most members of the Scheme, NPA meant age 60. So, early retirement could only take place prior to this age.
- The Factsheet⁹ confirmed that early retirement meant before age 60 in respect of members claiming preserved benefits from the Scheme.

24. Mrs N was unhappy with this response and requested that her complaint be considered under Stage Two of the IDRP. In her letter dated 27 November 2019, she said that:-

⁷ NHS BSA has been unable to provide TPO with a copy of the Factsheet.

⁸ This section also said that further information about IHER was available in “Booklet SDER”. Mrs N could have obtained a copy of this booklet either from NHS Pensions’ website or from the “Pensions Officer”.

⁹ NHS Pensions enclosed a copy of the relevant section of the Factsheet with its letter.

- The fact that preserved benefits are usually payable from the Scheme from age 60 confirmed that there was no deadline for making a claim for EPDB on the grounds of ill health.
- The July Letter did not explicitly state that the claim must be made before her NPA. In fact, it said that it could be made “at any time”.
- The Guide states that, “The normal retirement age for most Scheme members is 60 but you can choose to retire before or after that age”. So, she could have chosen a later retirement age of, say 61, and “the provisions concerning ill health would have to read in that light”.
- The Guide and the Factsheet were silent on when a claim for EPDB on the grounds of ill health could be made. So, in her view, it could be made retrospectively.

25. On 13 January 2020, NHS Pensions issued a decision under Stage Two of the IDRP but did not uphold the complaint. It said that:-

- An application for EPDB from deferred status due to ill health is considered under regulation L1(3)(b)¹⁰ of the Scheme Regulations.
- Before NHS Pensions could have considered an application from Mrs N, it would have required an AW240 application form completed and signed, by her treating doctor, prior to her attaining NPA.
- On receipt of an application for EPDB due to ill health, the Scheme’s medical adviser (**SMA**) would assess whether the deferred member met the relevant criteria as at the date of receipt of the AW240 application form.
- If it was determined that the member was permanently incapable of engaging in regular employment of like duration, pension benefits would be paid from the date the AW240 application form had been signed by the treating doctor. They would be paid without any enhancement, or reduction for early payment.
- A claim for benefits must be made in accordance with regulation T1¹¹ of the Scheme Regulations. In Mrs N’s case, it did not receive a completed AW240 application form before she reached age 60. So her pension benefits from the Scheme could only be paid on age grounds in accordance with regulation L1(1)¹² of the Scheme Regulations.

¹⁰ This regulation has been set out in the Appendix.

¹¹ This regulation has been set out in the Appendix.

¹² This regulation has been set out in the Appendix.

- Her pension had now been put into payment with effect from the date she attained age 60.
- The July Letter clearly stated that if she became permanently unable to work, because of ill health before age 60, she might be able to claim EPDB. The expression “at any time” meant prior to her NPA.

26. NHS Pensions also said that:

“I note your comments concerning literature from NHS Pensions and in particular information regarding an application for ill health retirement benefits and making a retrospective application. I advise that information regarding ill health retirement benefits including the AW240 application form is available online...NHS Pensions also has a helpline...to assist with any queries. This information was provided within our letter dated 12 November 2018.

I confirm that information regarding ill health retirement benefits was also available online in 2009...

...I trust that you will understand that the rules of the Scheme are laid down in regulations agreed by Parliament...As the Scheme Administrator, NHS Pensions must ensure that the regulations are adhered to and that benefits authorised are only those which a person is legally entitled to receive; there is no discretion in this.”

27. Following the complaint being referred to TPO, NHS BSA made further submissions that have been summarised below.

NHS BSA’s position

28. It has paid the correct level of benefits available to Mrs N from the Scheme in accordance with the Scheme Regulations.
29. To qualify for EPDB, on the grounds of ill health, the Secretary of State must be satisfied that the deferred member is permanently incapable of any regular employment of like duration because of illness or injury. The word “permanently” in this context means until their NPA in the Scheme. So, an application could be considered only if the deferred member was under NPA. In Mrs N’s case, NPA means age 60.
30. The date of an application for EPDB, due to ill health, is considered to be the date NHS Pensions receives the completed AW240 application form.

Adjudicator's Opinion

31. Mrs N's complaint was considered by one of our Adjudicators who concluded that no further action was required by NHS BSA. The Adjudicator's findings are summarised in paragraph 32 to 48 below.
32. The Scheme is a statutory scheme made under the Superannuation Act 1972. The Scheme Regulations govern the payment of benefits from the Scheme. In its capacity as the administrator of the Scheme, NHS Pensions must act in accordance with these regulations and within the framework of the law.
33. Consequently, NHS Pensions had to follow the relevant provisions of the Scheme Regulations when calculating Mrs N's retirement benefits, subject to any overriding pensions legislation.
34. Mrs N's position was that NHS Pensions could have considered her application for EPDB retrospectively from January 2010. In accordance with regulation T1 of the Scheme Regulations, her application must be made to the Secretary of State in such form as it might require. One of the requirements was that an AW240 application form must be completed and signed by the treating doctor prior to the member attaining NPA.
35. If the application had been successful, Mrs N would have been entitled to early payment of pension benefits, without any enhancement, or reduction for early payment, backdated to the date her treating doctor signed the AW240 application form.
36. The Scheme Regulations determined the date a member attained NPA; this could not be determined by the member. The expression early retirement meant immediate payment of retirement benefits before NPA.
37. In Mrs N's case, NHS Pensions did not receive a completed AW240 application form prior to her attaining NPA.
38. Regulation L1(3)(b) of the Scheme Regulations, stipulated that a deferred member shall be entitled to receive their retirement benefits early on the grounds of ill health under the following circumstances:

"the Secretary of State is satisfied that the member is suffering from mental or physical infirmity that makes him permanently incapable of engaging in regular employment of like duration".
39. The word "permanently," in the above context, meant until the member's NPA.
40. It was clear from the Scheme Regulations that Mrs N could only have applied for EPDB prior to attaining NPA in March 2019. A retrospective application was not permitted under the Scheme Regulations.

41. By the time Mrs N submitted her completed form AW8P, she had already attained NPA. So, in accordance with the Scheme Regulations, her application could only be considered on age grounds.
42. Consequently, it was the Adjudicator's opinion that there had been no maladministration on the part of NHS Pensions in deciding that it could not consider Mrs N's retrospective application for EPDB.
43. Mrs N also said that she did not receive any literature from NHS Pensions explaining that she had to apply for EPDB before age 60. Furthermore, the information she received did not indicate that she could not make a retrospective application for EPDB on the grounds of ill health.
44. Having carefully examined the July Letter, and the section of the Guide concerning IHER, it was the Adjudicator's view that the information provided by NHS Pensions was not incorrect. However, without a detailed knowledge of the Scheme Regulations, the literature was open to interpretation.
45. With the benefit of hindsight, it would have been helpful if NHS Pensions had explicitly stated that an application for EPDB had to be made before NPA. Also, that it could not be made retrospectively. However, this did not amount to maladministration on the part of NHS Pensions in the circumstances.
46. While the Adjudicator recognised the strength of feeling expressed by Mrs N, there was nothing preventing her applying for EPDB before attaining NPA.
47. The Guide, age retirement estimate, the two TRS, and the November Letter all stated that further information about the Scheme, including when benefits could be taken, may be found on NHS Pensions' website.
48. The Adjudicator was satisfied that NHS Pensions acted reasonably by signposting Mrs N to the website, where the Scheme Regulations, and full details on how to apply for EPDB due to ill health, were readily available at the time.
49. Mrs N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs N provided her comments which do not change the outcome.

Mrs N's comments

50. She worked for the NHS on a part time basis as a Practice Nurse¹³ from 3 January 1990 to 17 February 1991.
51. She also worked (part time) from April 1992 to January 2010 for the NHS and in schools. In particular, she was a Nursing Matron at Frewen College from June 2007. The College paid her Nursery and Midwife Council (**NMC**) subscription.

¹³ NHS BSA says that: (a) Practice staff were ineligible to join the Scheme until 1 September 1997, and (b) Mrs N was consequently ineligible to be a member of the Scheme over this period.

52. She meets the criteria of being permanently unable to do any regular work after having left her job in the NHS in order to claim EPDB from the Scheme. She can supply medical evidence to support her application from January 2010.
53. The Scheme literature that she has received since 1977 did not provide sufficient information about EPDB on the grounds of ill health or how to apply for it.
54. She says that:
- “The July Letter states that if I became permanently unable to work because of ill health prior to attaining age 60, (see comma), I might be able to claim early payment of my preserved benefits.
- The very position of the comma makes it clear that it is the illness that has to happen before age 60, not the claiming of early benefits.”
55. The July Letter did not show that she had to make her claim for EPDB on the grounds of ill health before age 60. Furthermore, “not one doctor” informed her that she could make such an application or offered to send form AW240 to NHS Pensions for her.
56. NHS Pensions only told her about the requirement of form AW240 in order to apply for EPDB after her 60th birthday in 2019.
57. On 13 March 2025, her GP completed part two of form AW240 (PC) titled “NHS Pensions – Pension Credit Member – Consideration of entitlement for EPDB due to ill health” in support of her retrospective EPDB application. In her GP’s view, there was nothing in “the literature or online” which said that Mrs N could not make such an application.
58. She suffers from life threatening conditions and has “seen more than 200 consultants, over 20 professors, had 150 scans and tests, two operations, three in-patient stays, and many hundreds of blood tests and GP visits.”
59. She says that:
- “The nub of my case is that due to entirely understandable ignorance of the necessary form for my GP to sign at the onset of her illness, I am at risk of being deprived of ten years of IHER pension (worth approximately £50,000) to which I have contributed during 30 years of public service in the NHS and education”.
60. I note the additional points raised by Mrs N but I agree with the Adjudicator’s Opinion.

Ombudsman’s decision

61. Mrs N says that she has received Scheme literature since 1977 which did not explicitly state she had to apply for EPDB on the grounds of ill health before age 60, or that she could not make a retrospective application.

62. Having carefully examined the July Letter, and the section of the Guide concerning IHER, I concur with the Adjudicator's view that the information provided by NHS Pensions was a little ambiguous and, without a detailed knowledge of the Scheme Regulations, open to interpretation in a way that was not its intended true meaning.
63. With the benefit of hindsight, it would clearly have been better if NHS Pensions had explicitly stated that an application for EPDB had to be made before NPA and could not be made retrospectively in accordance with the Scheme Regulations.
64. Regrettably, Mrs N misinterpreted the information from NHS Pensions to mean that it could consider her retrospective application for EPDB.
65. Mrs N contends that she had relied upon this information to her financial detriment by not applying for EPDB on ill health grounds from January 2010. According to her calculations, she has suffered a financial loss in the region £50,000.
66. The basic principle for negligent misstatement is that a scheme is not bound to follow incorrect information. A member is only entitled to receive the benefits provided for under the scheme rules, that is, those based on correct information accurately reflecting the scheme rules.
67. Broadly, I will provide redress if it can be shown that financial loss or non-financial injustice has flowed from incorrect information given. For example, the member may have taken a decision in the expectation of receiving the higher benefits which they would not otherwise have done. I will also consider whether it is more likely than not that a member relied on the incorrect information to their detriment and that it was reasonable for them to do so.
68. A complaint of negligent misstatement must, however, be based upon an inaccurate statement which is clear and unequivocal.
69. Given my findings above, I do not consider that there has been any negligent misstatement by NHS Pensions. The information which NHS Pensions supplied Mrs N about EPDB was not incorrect, it just could have been expressed more clearly.
70. Furthermore, I cannot disregard the fact that the Guide, age retirement estimate, the two TRS, and the November Letter sent to Mrs N all stated that further information about the Scheme, including when benefits could be taken, may be found on NHS Pensions' website.
71. So the Scheme Regulations and details on how to apply from EPDB were readily available to Mrs N on request from NHS Pensions, or on its website. I consequently consider that it had been open to Mrs N back in 2010 to research EPDB in more detail in order to decide whether it would be appropriate to her circumstances.
72. By doing so, it would have become evident to Mrs N much earlier that she had misunderstood how applications for EPDB on the grounds of ill health were dealt with by NHS Pensions and she would not now be in the unfortunate situation which she finds herself.

73. NHS Pensions could only pay her the correct benefits from the Scheme calculated in accordance with the Scheme Regulations which is what has happened.
74. While I sympathise with Mrs N's circumstances, I consequently find that there has been no maladministration by NHS Pensions and do not uphold her complaint.

Dominic Harris

Pensions Ombudsman
7 May 2025

Appendix

Regulation L1 of the Scheme Regulations provides for the payment of a preserved pension

Regulation L1(1) states:

“Subject to paragraphs (3) and (4), a member who leaves pensionable employment before age 60 without becoming entitled to a pension under any of regulations E1 to E5 shall be entitled to receive a pension and retirement lump sum under this regulation from age 60”

Regulation L1(3)(b) of the Scheme Regulations relates to the early payment of deferred (preserved) benefits due to ill health and provides that:

“The member shall be entitled to receive the pension and retirement lump sum before age 60 if-

(b) the Secretary of State is satisfied that the member is suffering from mental or physical infirmity that makes him permanently incapable of engaging in regular employment of like duration”.

A claim for benefits must be made in accordance with regulation T1 of the Scheme Regulations, which states:

“A person claiming to be entitled to benefits under these Regulations (“the claimant”) shall make a claim in writing to the Secretary of State in such form as the Secretary of State may from time to time require”.