

## Ombudsman's Determination

Applicant	Mrs N
Scheme	NHS Pension Scheme ( <b>the Scheme</b> )
Respondents	City Hospitals Sunderland NHS Foundation Trust, ( <b>City Hospitals</b> ), NHS Business Services Authority ( <b>NHS BSA</b> )

## Outcome

1. I do not uphold Mrs N's complaint.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mrs N is complaining that City Hospitals, her employer, did not inform Mrs N that she would lose her Special-Class Status, (SCS), when she moved to a managerial role in 2003. She says that she received her pension projections in 2011, however there was no mention that her SCS had changed.

## Background information, including submissions from the parties

4. Mrs N worked for the NHS and was a member of the Scheme, with her SCS giving Mrs N the option to retire at age 55 under the 1995 Section of the Scheme rules.
5. SCS was abolished on 6 March 1995. However, existing members with SCS could continue to hold SCS provided they met the following conditions:
  - the employee must have held SCS for at least 5 years;
  - the employee must have held SCS throughout the last 5 years of their NHS employment; and
  - the employee must be an active member of the Scheme, with continuing SCS, on the day they actually retire.
6. Mrs N moved to a Deputy Business Manager post, (DBM) in 2003, and received a Variation to Contract which stated: "terms and conditions of her previous statement of particulars remain unchanged".

7. Mrs N states that there was no mention of changes to SCS then. Mrs N says that she remained in her managerial job until April 2005.
8. In July 2008, Mrs N says that she was under a six months probationary period as acting directorate manager, which she subsequently successfully passed and continued with her role. She claims that at no point was she told that the terms and conditions regarding her SCS were being changed.
9. On 26 August 2011, Mrs N was sent a Pension Choice Form together with a 'Special Class Status (1995 Section only) Members FAQ's V1.0 03/2009 document. The information shown on these documents was based on details provided by City Hospitals, stating that she would have been eligible for SCS. Mrs N subsequently made a decision to stay in the 1995 section of the Scheme that enabled members to keep SCS.
10. On 2 April 2012, NHS BSA was informed that Mrs N had been working as a DBM since 7 March 2003. It was only then, that NHS BSA decided to establish whether or not Mrs N would have been eligible to retain her SCS, as it did not hold the full job description at the time.
11. On 1 May 2012, City Hospitals confirmed to Mrs N after reviewing her case that it made a decision to remove her SCS.
12. On 7 November 2013, City Hospitals sent Mrs N a letter stating that her SCS had been removed and would not be reinstated as her current job role did not meet the following criteria:

“...in certain circumstances SCS can be retained. A nursing qualification and experience must be essential for the new post”.
13. It also said in the letter that she could consider her pension options.
14. City Hospitals claims that Mrs N's job role did not require a nursing qualification. It says that her day to day responsibilities involve clerical, administrative and support duties. Based on this job description, City Hospitals maintained that SCS cannot be retained.
15. City Hospitals sent this office a document dated 14 March 1988, that explains retention of SCS for applicants who hold senior management posts. It explains that:

“...the nature of senior management duties precludes special class/mental health officer status. This is because normally such duties do not involve a specific nursing function and/or they do not satisfy the requirements...”

**Mrs N's position:**

16. Mrs N says that she has always retained her professional registration. She contends that, as a manager to nursing staff, she continued to use her knowledge and experience in this area throughout her career. She says that she has also worked as a nurse at times on wards during busy period, supporting the business needs.
17. Mrs N is aggrieved that she was not consulted, notified or given a Variation to Contract to reflect the fact that her SCS was being removed.

**City Hospitals' position:**

18. On 3 February 2016, City Hospitals explained in its letter sent to this office, that the employees, at the time Mrs N's SCS was removed, were no longer employed by City Hospitals. As a result of this, City Hospitals has been unable to speak to the employees concerned about the matter. It also states that, even though Mrs N has retained her professional registration, it is not its requirement for her to do so.
19. City Hospitals has admitted that Mrs N was not informed that her SCS was removed and about her pension choices when she changed her role. However, it says that Mrs N would have been sent a Pension Choice Form and other documents explaining the SCS.
20. On 7 November 2013, Mrs N was also sent a letter about the implications of the removal of SCS and stating that she can re-consider her pension options. Mrs N failed to respond to this letter.

**NHS BSA's position:**

21. On 27 November 2014, NHS BSA explained to Mrs N under the Scheme's internal disputes resolution procedure, (IDRP), stage 1 response, that it had considered her position. It said that it reviewed both her job roles since 2003, namely, the DBM role from 1 June 2003 until 6 July 2008, and her current Directorate Manager role since 1 January 2009, to check whether or not SCS can be re-applied. Based on the information it received from City Hospitals, it said SCS cannot be retained in respect of Mrs N's posts since 2003. This is because the posts do not include a contingency nursing duty. It also added that Mrs N did not meet the 5 year criteria.
22. However, it also said that it had asked City Hospitals whether or not Mrs N's job role required a Nursing Qualification. It has not received any subsequent information confirming this.

**Adjudicator's Opinion**

23. Mrs N's complaint was considered by one of our Adjudicators who concluded that no further action was required by City Hospitals or NHS Business Services Authority. The Adjudicator's findings are summarised briefly below.

- Having reviewed the complaint, the Adjudicator's view is that it cannot be upheld. The Adjudicator has considered all the evidence provided by City Hospitals that would have been sent to Mrs N since she joined the NHS.
  - A key item of correspondence is the document dated 14 March 1988, as it explains the retention of SCS. In light of this, the Adjudicator considered that Mrs N would have been provided with sufficient and clear information about SCS. The Adjudicator thought that the onus was on Mrs N to have queried the retention of her SCS with the Scheme at the time of moving into the DBM post.
  - The Adjudicator therefore disagreed with Mrs N when she says that City Hospitals failed to inform her she would lose her SCS when she moved to her managerial role as the evidence suggests otherwise.
  - The Adjudicator also thought that NHS BSA has considered Mrs N's roles and rightly offered to review her duties if it received more information from City Hospitals. It has not received the information in question, hence it is unable to grant Mrs N retention of her SCS. The Adjudicator agreed with NHS BSA's approach. Mrs N can only receive benefits to which she is entitled under the Scheme rules.
  - It was therefore the Adjudicator's opinion that this complaint should not be upheld.
24. Mrs N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs N provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mrs N.

### **Ombudsman's decision**

25. Mrs N maintains that there is no evidence that she received information and was advised by NHS BSA at the time of her transfer to a managerial role, that her SCS would be lost.
26. As stated by the Adjudicator in the Opinion, Mrs N received numerous correspondence in relation to SCS. I find that she has received sufficient information to enable her to have been aware of the implications of her change in job role on her SCS. Therefore, I do not consider that there was maladministration on behalf of City Hospitals as it has made the salient information available to Mrs N.
27. Mrs N also made reference to Section 4 of the Employment Rights Act 1996. This outlines the employer's obligations to consult in relation to making any changes to the terms and conditions in relation to pension schemes. However, City Hospitals met its obligations by providing information about the Scheme in Mrs N's contract of employment.

**PO-10248**

28. Therefore, I do not uphold Mrs N's complaint.

**Anthony Arter**

Pensions Ombudsman

21 February 2017