

Ombudsman's Determination

Applicant	Mrs W
Scheme	NHS Pension Scheme (the Scheme)
Respondent	NHS Pensions

Outcome

1. I do not uphold Mrs W's complaint and no further action is required by NHS Pensions.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs W has complained that she is not eligible for Special Class Status (**SCS**), because she had a break in service of over five years.

Background information, including submissions from the parties

4. Mrs W became a member of the Scheme in 1983, and held SCS until 13 August 1988, when she left the Scheme. She began working as a General Practice (**GP**) nurse, and was no longer eligible to be a member of the Scheme. She transferred her benefits to a personal pension plan held with Scottish Equitable in 1990.
5. On 1 September 1997, the Scheme was opened to GP staff and at this point Mrs W re-joined the Scheme, and transferred her benefits with Scottish Equitable back into the Scheme.
6. In November 2015, Mrs W wrote to NHS Pensions, and queried why she no longer held SCS. She said when she joined in 1983, she had SCS and although she left the Scheme for over five years, she was still a nurse within the NHS, just not a member of the Scheme. Therefore, she believed she should still be entitled to SCS.
7. NHS Pensions wrote to Mrs W on 21 January 2016, and said in order to receive SCS she needed to meet the following criteria:

“**Either** – be in pensionable NHS employment on 6 March 1995 even if this membership was subsequently transferred out or refunded

Or – have accrued rights to benefits (at least two years) on 6 March 1995

And not had a break in pensionable NHS employment for any one period of five years or more.”

NHS Pensions said as GP members of staff were not eligible to join the Scheme until 1 September 1997; it was able to exercise discretion for SCS as long as the person did not have a break in pensionable NHS employment of five years or more. It concluded that Mrs W was not eligible to SCS because the break in her service ran from 1988 to 1997, which was over five years.

8. Mrs W complained that it was through no fault of her own that GP nurses were unable to be members of the Scheme. She said she had no choice but to transfer to a new plan where she could continue to pay contributions. She transferred all her benefits back into the Scheme as soon as she was able to do so in 1997. She considered it was unfair that she was being denied SCS, and she believed she should be able to retire at age 55 with no reduction.

Adjudicator's Opinion

9. Mrs W's complaint was considered by one of our Adjudicators who concluded that no further action was required by NHS Pensions. The Adjudicator's findings are summarised briefly below:
 - NHS Pensions were correctly applying the regulations in making its decision not to award Mrs W SCS. She had a break in service of over five years and therefore she was not eligible for SCS.
10. Mrs W did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs W provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and therefore, I will only respond to the key points made by Mrs W for completeness.
11. NHS Pensions agreed with the Adjudicator's opinion.

Ombudsman's decision

12. Mrs W believes she should be entitled to SCS.
13. She says that the five year break in service rule is unfair. She considers that it removes pension rights for some members of the Scheme and not others. I sympathise with Mrs W's position as some nurses who made similar career choices to her will remain eligible for SCS, because their gap in service was less than five years. But as with all scenarios where there is a 'cut-off' point some people will benefit and some will be disadvantaged.

14. However, my role is to consider whether NHS Pensions are correctly applying the regulations of the Scheme in a fair and reasonable way. Although, it is unfortunate that Mrs W does not meet the criteria for SCS ul believe she is being treated fairly in the sense that any member who has a break in service of over five years would be denied SCS status.
15. Mrs W says as her accrued benefits were re-instated due to a Pension Review, she should be eligible for SCS. Although her benefits were re-instated this does not change the fact that she had a break in service where she could not be a member of the Scheme. As the break in service was over five years she is not eligible for SCS.
16. Therefore, I do not uphold Mrs W's complaint.

Anthony Arter
Pensions Ombudsman

27 September 2016