

## Ombudsman's Determination

Applicant	Mrs M
Scheme	NHS Pension Scheme (the <b>Scheme</b> )
Respondents	(1) NHS Business Services Authority ( <b>NHS BSA</b> ) (2) Norfolk & Suffolk NHS Foundation Trust (the <b>Employer</b> )

## Outcome

1. I do not uphold Mrs M's complaint and no further action is required by NHS Business Services Authority or Norfolk & Suffolk NHS Foundation Trust.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mrs M is unhappy that she was not provided with sufficient information about Mental Health Officer (MHO) status, and that she was incorrectly told she did not qualify for MHO status. Mrs M feels she has been misled by the information given to her, which she says has caused her to make an uninformed decision about her entitlement and when she took her retirement benefits from the Scheme.

## Background information, including submissions from the parties

4. Mrs M has been a member of the Scheme since 24 November 1989, and remained in active service until 30 April 1998. Her membership was transferred to a personal pension arrangement, but was later reinstated into the Scheme. At the time of re-instatement, the Employer confirmed to NHS BSA that MHO status did not apply during this period. Mrs M re-joined the Scheme on 1 May 1998 and continued to pay contributions until she retired on 3 July 2009. NHS BSA say that since this employment started after 5 March 1995, and the Employer had confirmed Mrs M did not have MHO employment before that date, MHO status would not apply in the latter employment.
5. MHO status was abolished with effect from 6 March 1995. Members who qualified for the status on or before that date were allowed to keep the status, provided they did not incur a break in active membership of five years or more. MHO status allows qualifying members to retire at age 55, having completed 20 years' service, and also

counts completed years of MHO membership twice if the member completes 20 years' service as a MHO.

6. Mrs M received a Statement of Membership (**statement**) dated 18 February 1999. In the section regarding whether MHO status had been granted, it had been marked she did not qualify for MHO.
7. Therefore, when Mrs M retired in early July 2009, she took her benefits based on the information NHS BSA had at the time. Mrs M continues to work for the NHS after having taken benefits.
8. Mrs M says she learned, in late 2014, that her colleagues had been awarded MHO status, though she had been doing the same job role as them. On 28 November 2014 Mrs M wrote to the Employer and NHS BSA explaining that she had been told that MHO status was open to doctors and nurses only, and therefore, she did not qualify. She also explained that, in 2009, she was around four months short of the 20 years' service necessary to qualify for MHO eligibility, and had she not been misinformed about her eligibility to MHO status, she would have continued working and not taken her benefits in 2009.
9. On 17 December 2014, the Employer accepted that Mrs M appeared to have met the criteria in order to be eligible for MHO status, and that she should raise this with NHS BSA.
10. On the same day, NHS BSA also responded to Mrs M, and said that MHO status had always been open to NHS staff members who worked whole time or almost whole time, in contact with the mentally ill prior to 6 March 1995. Information regarding MHO status is available in the scheme guides and that it is not for the Scheme to invite members to query the status. Because Mrs M had less than 20 years membership at age 55, it would not apply MHO status retrospectively.
11. Mrs M asked her Employer for further help in pursuing the matter. However, the Employer said, in its letter dated 18 June 2015, that it was not in a position to resolve the issue. This is because MHO status is assigned by NHS BSA rather than the Employer, but confirmed that it would assist NHS BSA with the provision of relevant information on the nature of her work in the event that evidence of this were needed. The Employer, in a further letter dated 6 June 2016, maintained that whilst it sympathised with Mrs M's circumstances, there was little it could identify that would help rectify the situation, especially given she had taken her benefits from the Scheme.
12. NHS BSA responded to Mrs M's concerns in the first stage of the Internal Dispute (**IDRP**) letter, dated 20 April 2016, but did not uphold her complaint. NHS BSA maintained its position that the information received from the Employer had not confirmed Mrs M was eligible for MHO status and therefore her pension benefits have been calculate in accordance with the Scheme regulations.

13. In the second stage IDRP letter of 5 July 2016, NHS BSA explained it could not retrospectively consider Mrs M for MHO status, because she is already in receipt of her Scheme benefits. NHS BSA also identified that it had sent Mrs M statements in June 2006, April 2008, January 2009, and February 2009, and all statements showed she did not qualify for MHO status. It is the employer's decision whether the employee's role attracts MHO status, not NHS BSA's.
14. Because Mrs M remained dissatisfied that neither NHS BSA nor her Employer were able to retrospectively apply MHO status, she referred the matter to this office.

### **Adjudicator's Opinion**

15. Mrs M's complaint was considered by one of our Adjudicators who concluded that no further action was required by NHS BSA or the Employer. The Adjudicator's findings are summarised briefly below:-
  - The Employer was obliged to provide her with, or direct her, to the information about MHO status, which it did in February 1999 when it issued the statement. The statement referred to various guidance booklets which covered benefits available under the Scheme.
  - After inspecting the wording used in the 1999 statement, there is nothing to suggest she would not have been eligible for MHO status or was restricted from applying for MHO status. Had Mrs M queried her eligibility, her Employer would have investigated it or referred the matter to NHS BSA.
  - Though it is accepted that Mrs M did meet the criteria for MHO status, this does not necessarily mean she would have automatically been entitled to the associated benefits. The Employer would have needed to provide NHS BSA with the relevant paperwork, and NHS BSA would make the decision as to whether she was entitled to MHO status and associated benefits.
  - The complaint against the Employer should not be upheld because there was no overriding responsibility on it to ensure Mrs M had been given MHO status.
  - A complaint against NHS BSA cannot be upheld because it relied on the information given to it by the Employer.
16. Mrs M did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. She 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 M for completeness.

### **Ombudsman's decision**

17. Mrs M remains unhappy because she asked her HR department several times about her eligibility for MHO status, and that she had been informed each time that she did

not qualify. Because Mrs M continues to work full time for the NHS, she says this demonstrates she would not have taken her pension benefits in 2009 had she known of her entitlement to MHO associated benefits.

18. I understand Mrs M's difficulty in accepting NHS BSA's and her Employer's position that there is nothing further that can be done to help her. It is unfortunate that the provision of the misinformation was not identified sooner, nor rectified prior to Mrs M taking her benefits from the Scheme in 2009.
19. As the adjudicator explained, Mrs M had the opportunity to question the statements provided to her since 1999. Had Mrs M queried her eligibility to MHO status, there is no reason for me to suspect that the Employer or NHS BSA, would not have investigated her concerns and given her a considered answer.
20. However, I accept the Employer's position that it did not have an overriding duty to advise Mrs M which benefits she was entitled to, or make a decision on her behalf regarding her application for such benefits.
21. NHS BSA has explained that information about the available benefits was easily available from other sources, including the website and guidance booklets. I consider this to be a reasonable approach for the dissemination of such information.
22. Therefore, I do not uphold Mrs M's complaint.

**Anthony Arter**

Pensions Ombudsman  
28 April 2017