

Ombudsman's Determination

Applicant	Mrs N
Scheme	NHS Superannuation Scheme (Scotland) (the Scheme)
Respondent	Scottish Public Pensions Agency (SPPA)

Outcome

1. Mrs N's complaint is partly upheld and to put matters right SPPA shall pay interest on the refund of contributions in line with Regulation T10(3), and pay Mrs N £500 for significant distress and inconvenience.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs N has complained that there is a discrepancy between the pension contributions she pays, and her colleagues who are on the same pay grade as her but work between Monday and Friday. Mrs N says that when she joined the Scheme, she received complete parity with her colleagues in regard to her pension contributions and pension accrual, with both her contributions and her benefits being 70% of a full-time member. She says this parity has not continued since the introduction of contribution bandings in 2008, and she is now paying a higher percentage of contributions than her weekday colleagues. As a result of this, Mrs N says that she is receiving a lower proportion of a full-time member's pension accrual, compared to her contributions.
4. While investigating Mrs N's complaint SPPA have amended her whole time equivalent (**WTE**) pensionable salary which has reduced her annual pension entitlement causing her a loss of pension benefits. Mrs N says that this has not only continued the disparity between her and her weekday colleagues, but has created further disparity between her and a full-time member earning the same WTE as her. Mrs N wants her WTE pensionable salary calculated as it was before SPPA amended it and her contributions to be at the same proportion as her colleagues.

Background information, including submissions from the parties

5. On 5 June 2002, Mrs N joined the Scheme. She works part time at 16 hours a week; 8 hours on Saturday and 8 hours on Sunday. She receives a 44% allowance for working on Saturday and an 88% allowance for working on Sunday. Both allowances are pensionable and paid because Ms N works during the weekends, these allowances are not payable to weekday staff.
6. Mrs N was paying employee contributions at 5% of salary, including the allowances, since joining the Scheme up until April 2009.
7. On 1 April 2008, changes were made to the Scheme to introduce tiered employee contribution rates based on pensionable salary. These changes affected Mrs N from 1 April 2009, when her contribution rate increased to 6.5%. There was a further increase in March 2013 to 9%.
8. In 2015, Mrs N became aware that her contribution percentage was higher than that of her colleagues who were working in the same role. The colleagues in question are on the same grade as Mrs N, with the same basic wage and also work 16 hours a week. However, their working hours are between Monday and Friday, and they do not receive allowances. She was paying contributions at 9% while her colleagues working Monday to Friday are paying contributions at 5.5%. In April 2015, she made enquiries with SPPA as to why she was paying higher contributions compared to her weekday colleagues.
9. SPPA said: -

“All part time staff who are members of the NHS 1995 scheme have contributions deducted based on the whole time equivalent pay. Scheme contribution rates for any particular year are determined by using the whole time equivalent pay from the previous financial year.

...

The whole time equivalent is calculated by using following process. I have used your 2013/14 details as an example.

$£12246.86 / 155 \times £28839.38$

To obtain your total contribution for the year your employer then applies the appropriate contribution rate ... to your actual salary received.

...

The salary that will be used for any benefit statement and indeed your final calculation will be the whole time equivalent. This is the case for all the 1995 scheme pension calculations. The major determining factor in this particular calculation is your accrued service. Members who work on a part time basis will have both the same contribution rate as full time members and the whole

time equivalent salary used for the calculation. Part time members however will accrue less service due to your work pattern and would not be entitled to the same pension benefits.”

10. Mrs N was not satisfied with SPPA’s response and raised a complaint under the two-stage internal dispute resolution procedure (**IDRP**). She said: -

“I work 16 hours on weekends and I receive a basic wage and I also receive an allowance for working on a Saturday and an allowance for working on a Sunday. My Colleagues work the same 16 hours between Monday to Friday and they receive the exact same basic wage as myself. The only difference between myself and my colleagues is my allowance for working Saturday and Sunday.

I have not had any reply that shows the justification why I am paying almost three times the pension contributions of a colleague of the same grade and the same hourly contract, I am now requesting that you give me an explanation for this.

I have calculated that between 1st April 2011 and 31st March 2014 that if I had received the same pro rata pension benefits per £1 of pension contributions as my colleagues above then my pension fund would have received in the region of £7,258.97 more than it did in this period.”

11. At IDR Stage one SPPA did not uphold Mrs N’s complaint and said that she had been paying contributions at the correct rate. Mrs N appealed.

12. At IDR Stage two, after SPPA reviewed the matter again, it agreed that Mrs N’s contribution rate was too high and should be adjusted to 7.3%. It explained that her pensionable allowances for Saturday and Sunday were being uprated to WTE, along with her basic wage, meaning her WTE was approximately £30,000 per annum. It said: -

“The weekend pay enhancements you receive are already paid at the full time rate i.e. the enhancements of 44% and 88% on a part -time employee’s hourly rate are similarly paid to a full time employee so these payments should not be included when determining your WTE pay for the purposes of setting your contribution rate. Having established your WTE pay based on you [sic] basic annual earnings the annual value of the enhancements should then be added to that figure to confirm your total annual pensionable pay for the purposes of setting your contribution rate. Having established your contribution rate this is then applied to the total of your basic pay and enhancements for each month you are paid.”

13. This resulted in her WTE reducing to £23,877.61, meaning she is in a lower contribution band and a refund of contributions was payable. However, SPPA used the incorrect hourly rate of £9.5282 rather than £9.2582 in its calculations at this stage, which slightly overinflates the figures.

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14. Mrs N requested that SPPA not carry out any adjustment to her contribution rate. In her letter of 16 June 2016, she said: -

“This would be totally unacceptable to me and I do not want you to carry out this action. This action would reduce my pension fund even further!”

She further said: -

“I feel that you have failed to grasp the fact that my complaint was that since 1 April 2009 my contributions have risen disproportionately in comparison to my colleague’s contributions and since that time my salary and benefits have stayed in proportion with my Monday to Friday employee’s.

I firmly believe that rather than deal with my complaint you have attempted to fix a manifestation of the convoluted contribution method introduced on 1 April 2009 which has resulted in me paying more contributions than a full time employee earning circa 33% more.”

15. On 18 October 2016, SPPA issued a letter which quoted Mrs N’s WTE to be £30,068.96. This had been calculated incorrectly by uprating her allowances.

16. In Mrs N’s letter of 27 October 201, she said: -

“...clearly I am due to receive inequitable pension benefits in relation to a full time member earning the equivalent WTE of my salary (£23,877.61)...”

17. Mrs N said that her actual salary equates to 53.82% of the WTE. Yet she says her pension benefits only equate to 42.64% of the pension benefits that an employee earning the WTE would have accrued, using the same start date of employment.

Adjudicator’s Opinion

18. Mrs N’s complaint was considered by one of our Adjudicators who concluded that further action was required by SPPA as it should pay interest on the refund of contributions. The Adjudicator’s findings are summarised briefly below:-

- The Adjudicator explained that the Scheme is a final salary, or defined benefit (DB) pension scheme. Meaning that the pension is calculated using the members’ final pensionable salary and the service accrued within the Scheme. While members of DB schemes, along with employers, may pay contributions, the pension benefits accrued are not related to the contributions paid, because contributions are not used in the calculation of pension benefits. The contribution rates for both the employer and the employee are determined by the Scheme actuaries, with the intention that the contributions paid fund the benefits as they become due, to ensure that the Scheme can meet its future liabilities.
- Part time members accrue service on a part time basis, for example someone working half of the full-time hours will accrue half the service in the Scheme

compared to someone working full-time hours would. A member working part time hours will have their pensionable salary uprated to the equivalent of someone working full-time hours, this will include any pensionable allowances where applicable. Essentially a hypothetical full-time salary or WTE will be calculated.

- In Mrs N's case, she is working two days a week which attract a pensionable allowance. It was noted that prior to Mrs N's complaint, her WTE was being calculated by uprating her actual salary, including the pensionable allowances, to full-time hours. In practice a full-time member, working weekdays, would not be receiving the allowances as they are only available on weekends.
- The Adjudicator referred to a number of circulars, in which staff were informed of the introduction of tiered contribution rates effective from 1 April 2008. These circulars are available on SPPA's website. Circular No. 8 /2007, an updated version being issued on 24 October 2007, details the changes to the 1995 Scheme and the introduction of the 2008 Scheme. Under the section addressing the changes to the 1995 Scheme, of which Mrs N is a member, the tiered contributions are explained. This circular also includes an appendix to be distributed amongst staff to make them aware of the changes.
- Circular No. 4 /2008 issued on 6 March 2008 provides guidance for employers to allocate contribution tiers. In Appendix A, Scenario B states: -

"Member is part time and employed throughout the scheme year 1 April 2007 to 31 March 2008. Contribution rate should be set according to the pensionable pay that would have been received in that year had the member worked full time. Any pensionable allowances etc for part-time members should also be uprated to the (FTE) full time equivalent where applicable."

- The Adjudicator concluded that the calculations SPPA completed at IDRP Stage Two, whereby Mrs N's WTE is calculated by uprating her actual earnings, or basic rate of pay, to full-time earnings before any allowances, and then adding the allowances afterwards to give the WTE, was in line with the rules. The Adjudicator said that this brings Ms N into a lower contribution banding, reduces her contribution rate, and brings her in line with a hypothetical full-time employee who works 8 hours on Saturday and 8 hours on a Sunday attracting the same allowances. It does not have the effect of bringing her in line with her colleagues who earn the same basic pay but work 16 hours between Monday and Friday. These colleagues are not entitled to the allowance and therefore they are earning less than Mrs N and have a lower WTE, therefore placed in a lower contribution banding. However, Mrs N will be accruing a higher pension benefit than these colleagues as her WTE is higher.
- As the pensionable salary is used for both the contribution banding and the calculation of pension benefits, the adjustment to Mrs N's pensionable salary has also reduced the pension benefits that she was expecting to receive. This is a loss of expectation rather than a financial loss. Mrs N has been offered a refund of the

contributions that she has overpaid, effectively returning her to the position she would have been in had the correct WTE been used throughout her membership.

- The Ombudsman would also expect that interest be paid on the refund of contributions in line with Regulation T10(3). The Adjudicator said that SPPA should therefore pay Mrs N interest on the refund of contributions due to her.
- Mrs N says she is accruing benefits at a disproportionate rate compared to her colleagues, and a hypothetical full-time member. The contributions paid do not impact the benefits accrued meaning the contributions paid cannot be compared to the benefits accrued. Contributions are deducted based on the WTE and someone earning more will pay a higher contribution rate if they are in a higher contribution tier.

19. 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 are summarised below:-

- Mrs N disagrees with the calculation of her WTE. She says that pensionable allowances should be uprated to WTE alongside basic pay, and not added on afterwards as SPPA has now done. She has provided a number of extracts from circulars that she believes show the pensionable allowances should also be uprated.
- Mrs N says that the decision to exclude her allowances from uprating to WTE has resulted in her actual salary increasing by £3,600 since 2008 but her WTE only increasing by £1,216, which cannot be correct.
- Mrs N pays a higher contribution rate than her weekday colleagues also working 16 hours per week, and while she has accrued a higher annual pension as a result, the difference in pension is lower than the difference in contributions. For example, her annual pension is estimated as £432 higher but her pension contributions are £508 more per year.
- Mrs N says that following the amendment of her WTE at IDR Stage two her benefits are being calculated on a different pensionable salary to the one she actually earns. She quotes the figures provided in the statement dated 30 November 2017 which is a projection to 20 December 2017 and uses pay details between 21 December 2016 and 20 December 2017. This shows her WTE pensionable salary to be £24,070.76, which she says is being calculated based on a salary of £10,270.19, whereas her salary is actually £13,672.30, including allowances, as quoted on SPPA's letter dated 8 January 2018, so there is a disparity between members in the same WTE.

20. Mrs N's comments do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs N.

Ombudsman's decision

21. My role is to consider complaints in line with the applicable scheme rules or regulations and legislation. Where an error, or maladministration, has occurred I will direct that a member be put into the correct position under the regulations, and if appropriate make an award for financial or non-financial redress.
22. The Scheme Regulations state that a part time member's pension and contributions will be calculated in relation to the comparable full-time employment. The relevant Scheme Regulations in force as at 5 June 2002 when Mrs N joined the Scheme are reproduced in Appendix 1 below, the relevant Scheme Regulations in force as at 1 April 2008 when the contribution bandings were introduced are reproduced in Appendix 2 below. SPPA have previously provided the relevant 2011 Scheme Regulations. Other documents, such as the circulars, say that pensionable allowances should be uprated to whole time equivalent "where applicable". I note the sections of the circulars that Mrs N feels supports her position, but under the Regulations I do not agree that her allowances should be uprated in any different manner to that being used by SPPA.
23. Regulations R5 (2) and R5 (3) set the service accrual rate for part time members. Regulation R5 (3) applies for Mrs N as her service is calculated in hours by dividing the hours she works by the hours a full-time member would work. Mrs N has not disputed the service she has accrued, but for the avoidance of doubt I agree her service has been calculated in line with the Regulations.
24. Under Regulation R5 (4), "the member's pensionable pay will be the amount that the Secretary of State determines would have been paid in respect of a single comparable whole-time employment". This means that pensionable pay must be equal to that of a full-time member performing the same role, whether real or hypothetical. Therefore, the only pensionable allowances applicable to be uprated are those that would, or could, also be earned by a full-time employee for all 37.5 hours per week of their full-time employment.
25. It is not possible to work full-time hours when only working on Saturday and Sunday, and there are no equivalent allowances available for working between Monday and Friday for Mrs N's role. This means that a full-time member would not be paid any more in allowances than Mrs N receives, even if working shifts of equal lengths to Mrs N's on Saturday and Sunday. As Mrs N's allowances are earned for working on a Saturday and Sunday they are not to be uprated by applying them across all five days of a full time equivalent. Uprating the pensionable pay requires them to be added on top of the full time equivalent for 37.5 hours worked Monday to Friday. If these allowances were uprated across all five days, Mrs N's WTE would not be comparable to a full-time member as required under the Regulations, it would vastly exceed that of a full-time member doing the same role.
26. With this in mind, I agree that SPPA have now correctly applied the Regulations and put Mrs N in the position she should have been in since joining the Scheme. While

this correction has resulted in Mrs N's pension estimates reducing, this is a loss of expectation rather than a financial loss. SPPA have offered her a refund of the contributions that she overpaid, and agreed to pay interest on those contributions in line with Regulation T10(3) (see Appendix 3), therefore I do not consider that redress for financial loss is appropriate in this case, as a financial loss is not plausible in the circumstances of this case.

27. I acknowledge the point that Mrs N has made regarding the increase in her actual pay compared to the increase in her WTE shown on her pension statement between 2008 and present. However, Mrs N's WTE has been calculated incorrectly since she joined the Scheme by her employer, until SPPA recognised this at IDRPs Stage Two. Her employer had been uprating her allowances when they are not applicable to be uprated for the reasons outlined above. Therefore, the WTE shown on her pension statements, from her start date up until SPPA made the correction, was overinflated. In reality her WTE and actual pay would have increased at a proportionate rate.
28. I sympathise with Mrs N's statement that while she is accruing a higher annual benefit to her weekday colleagues, she is paying more in contributions each year than the increase in pension she is estimated to receive. Unfortunately, this can occur due to the contribution bands, but as the contributions do not directly relate to the pension accrued the difference in contributions does not affect the pension benefits. The pension is calculated using service accrued and pensionable salary. For part time members pensionable salary is the WTE, not the actual pay. Contributions are not used in the calculation of pension benefits and are therefore not linked to the benefits payable.
29. I do not agree that the adjustment made by SPPA at IDRPs stage two results in Mrs N's pension benefits being calculated on a pensionable salary of £10,270.19. As explained above, for part time members pensionable salary is the WTE. I understand that Mrs N is referring to her actual part time salary. Mrs N has arrived at this figure using the formula: -

WTE / Full-time hours x part time hours

$$£24,070.76 / 37.5 \times 16 = £10,270.19$$

30. However, as the pensionable allowances have not been uprated to the WTE across all five days of the notional 37.5 hour working week, the pensionable salary cannot be reversed in this manner to calculate the actual salary. Instead the pensionable allowances should be taken away first to give the basic WTE, then the formula above should be used and before the pensionable allowances are added back on: -

((WTE – Pensionable allowances) / Full-time hours x part time hours) +
Pensionable allowances = actual part time pay

$$((£24,070.76 - £5,278.44) / 37.5 \times 16) + £5,278.44 = 13,296.50$$

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31. Looking at the letter of 8 January 2018, the pay figure Mrs N has quoted of £13,672.31 represents the full-time basic salary between 1 April 2017 and 20 December 2017. This figure is not Mrs N's annual salary for the year preceding the estimate, instead this would be the £13,296.50 calculated above using SPPA's methodology and the figures provided in SPPA's letter dated 8 January 2018. (see Appendix 4 for further details).
32. It is true that a member working 16 hours a week in a role with a basic full-time salary of £24,070.76, not earning any allowances would be receiving an actual salary of £10,270.19. The difference here is the pensionable allowances that Mrs N earns.
33. Using the figures in the letter of 8 January 2018, Mrs N's full-time equivalent basic salary is £18,792.32 for the period from 21 December 2016 to 20 December 2017. If Mrs N were not earning the allowances, this would be her WTE pensionable salary, as it will be for her colleagues on the same pay grade working 16 hours Monday to Friday. However, Mrs N earned £5,278.44 in pensionable allowances for working Saturday and Sunday over this period, which her colleagues are not entitled to, and are therefore not applicable for uprating. These pensionable allowances bring Mrs N's WTE pensionable salary up from £18,792.32 to £24,070.76
34. I have also considered whether it is appropriate to make an award of non-financial loss for the distress and inconvenience Mrs N has suffered. I will only make an award where there has been significant distress and inconvenience directly flowing from and error caused by the respondent to the complaint. In this case, SPPA was not responsible for the error in uprating Mrs N's allowances incorrectly. SPPA was using information supplied by Mrs N's employer. SPPA was not in a position to know that it was incorrect, and it reasonably relied on this information when providing Mrs N's pension statements and estimates. Therefore, I will not make an award against SPPA in this respect.
35. Conversely, I note that SPPA continued to supply Mrs N with incorrect information about her pensionable salary following the IDR stage two decision on 9 June 2016. Two examples of this are the letter dated 18 October 2016, which quotes her pensionable salary to be £30,068.96, and the 2017 annual pension statement, available online, which quotes her pensionable salary to be £30,539.04. It was only after this office's involvement that the statement of 30 November 2017 was issued which includes the correction determined at IDR stage two. I consider that this misinformation would have caused Mrs N significant distress, inconvenience and confusion, for which an award of £500 should be made.
36. Therefore, I partly uphold Mrs N's complaint.

Directions

37. Within 21 days SPPA shall pay interest on the refund of contributions in line with Regulation T10(3), if it has not done so already.

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38. Within 21 days SPPA shall pay Mrs N £500 for the distress and inconvenience its continued errors after IDRPs have caused.

Karen Johnston

Deputy Pensions Ombudsman
23 March 2018

Appendix 1

The National Health Service Pension Scheme Regulations 1995 (as at 5 June 2002)

C1 Meaning of “pensionable pay” and “final year's pensionable pay” (as at 5 June 2002)

- (1) In these Regulations, “pensionable pay” means, subject to the provisions of this regulation, all salary, wages, fees and other regular payments made to a member in respect of pensionable employment as an officer, but does not include bonuses, payments made to cover expenses or payments for overtime.

...

D1 Contributions by members (as at 5 June 2002)

- (1) Each member in pensionable employment must contribute to the scheme.
- (2) Members whose employment is by way of manual labour must contribute 5 per cent. of their pensionable pay. Other members must contribute 6 per cent of their pensionable pay.
- (3) If the member is a special class officer, contributions must be paid until the member reaches age 65, or completes 45 years' pensionable service and reaches age 60.
- (4) If the member is not a special class officer, contributions must be paid until the member reaches age 70, or completes 45 years' pensionable service and reaches age 65.
- (5) The employing authority shall deduct each member's contributions from the member's earnings and pay them to the Secretary of State not later than the 19th day of the month following the month in which the earnings were paid.

R5 Part-time employment (as at 5 June 2002)

- (1) Subject to paragraphs (6) and (10), a member's pensionable service in part-time employment will not count at its full length but will be calculated as described in paragraphs (2) or (3), whichever is applicable, as its whole-time equivalent.
- (2) If the member's part-time employment is expressed as a specified number of half-days or sessions a week, the whole-time equivalent of the member's pensionable service in respect of that employment will be calculated by multiplying the full length of that service by the following fraction—

$$\frac{\text{member's pensionable pay}}{\text{comparable whole-time earnings}}$$

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- (3) In any case where paragraph (2) does not apply, the whole-time equivalent of the member's pensionable service in respect of part-time employment will be calculated by multiplying the full length of that service by the following fraction—
- $$\frac{\text{member's hours of employment each week}}{\text{hours constituting comparable whole-time employment}}$$
- (4) Subject to paragraph (5), for the purpose of calculating a member's final year's pensionable pay in respect of part-time employment, the member's pensionable pay will be the amount that the Secretary of State determines would have been paid in respect of a single comparable whole-time employment.
- (4A) "A single comparable whole-time employment" in paragraph 4 means the number of hours, half-days or sessions which the Secretary of State determines would constitute a single comparable whole-time pensionable employment.
- (5) Paragraph (4) does not apply to the calculation of final year's pensionable pay for the purposes of—
- (a) regulations F1(2) and F2(2) (lump sum payable on death in pensionable employment or after pension becomes payable);
 - (b) regulation S2 (reduction of pension on return to NHS employment).
- (6) If a member with pensionable service in part-time employment becomes entitled to a pension under regulation E2(early retirement pension on grounds of ill health) or regulation E3 (early retirement pension (redundancy, etc.))—
- (a) the member's pensionable service in part-time employment will count at its full length for the purpose of calculating—
 - (i) whether and (if so) to what extent, the pensionable service upon which the pension under regulation E2 is based should be increased under that regulation, or
 - (ii) the qualifying service for the purposes of regulation E3(1)(a);
 - (b) the pension will be based on the whole-time equivalent of the period of part-time employment and, in the case of a pension under regulation E2, the increase under that regulation will be limited to such amount as bears the same proportion to the amount that would have been paid had the pensionable service not been part-time as the whole time equivalent bears to comparable whole time employment.
- (7) If a member in part-time pensionable employment elects to buy additional service as described in regulation Q1(right to buy additional service), the period of additional service will be calculated in accordance with Table 1 or Table 3 of

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Schedule 1 (whichever is applicable) and then reduced by multiplying the full length of that additional service by the following fraction—

$$\frac{\text{part-time pensionable employment}}{\text{comparable whole-time pensionable employment}}$$

where—

- “part-time pensionable employment” means the number of hours, half-days or sessions that the member was required to work under his contract of employment during the period by reference to which “remuneration” was calculated for the purposes of Table 1 of Schedule 1 or regular additional contributions were paid in accordance with regulation Q6 (paying by regular additional contributions); and
 - “comparable whole-time pensionable employment” means the number of hours, half-days or sessions that would have constituted comparable whole-time pensionable employment during that period.
- (8) If a member in part-time pensionable employment elects to buy an unreduced retirement lump sum as described in regulation Q2 (right to buy an unreduced retirement lump sum), the period referred to in Table 2 or Table 4 of Schedule 1 (whichever is applicable) will be reduced in like manner as described in paragraph (7) above.
- (9) Paragraphs (7) and (8) above also apply for the purposes of regulation Q7 (part payment for additional service or unreduced retirement lump sum).
- (10) A member's pensionable service in respect of part-time employment will count at its full length (and concurrent periods of employment will be treated as a single employment) for the purposes of regulations C2(3) (limit on pensionable service that counts for benefits) and C3(1) (qualifying service).

Appendix 2

The National Health Service Pension Scheme Regulations 1995 (as at 1 April 2008)

C1 Meaning of “pensionable pay” and “final year's pensionable pay” (as at 1 April 2008)

- (1) In these Regulations, “pensionable pay” means, subject to the provisions of this regulation—
- (a) all salary, wages, fees and other regular payments made to a member in respect of pensionable employment as an officer, but does not include bonuses, payments made to cover expenses or payments for overtime;
 - (b) pensionable earnings calculated in accordance with paragraph 3, or as the case may be, paragraph 4 of Schedule 2 in the case of a non-GP provider who does not receive any of the payments referred to above in respect of his pensionable employment as an officer by virtue of the application of these Regulations to him as if he were such an officer under regulation R1.

...

D1 Contributions by members

- (1) Each member in pensionable employment must contribute to the scheme in accordance with the following paragraphs of this regulation.
- (1A) For the purposes of determining the relevant contribution rate for the 2008–2009 scheme year a member who meets one of the conditions referred to in paragraph (1B) must contribute 5 per cent of the member's pensionable pay.
- (1B) The conditions referred to in paragraph (1A) are—
- (a) the member is in pensionable employment on both 31st March 2008 and 1st April 2008 with the same employer and that employment is by way of manual labour,
 - (b) the member returns to pensionable employment on or after 1st April 2008 and both that employment and the period of pensionable employment immediately preceding that employment is by way of manual labour.
- (1C) For the purposes of determining the relevant contribution rate for the 2008–2009 scheme year paragraph (1D) applies to a member who does not meet any of the conditions referred to in paragraph (1B).
- (1D) For the 2008–2009 scheme year, a member whose pensionable pay falls into a pay band specified in column 1 of the following table must contribute the percentage of the member's pensionable pay specified in column 2 of that table in respect of that amount.

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Column 1	Column 2
Pay band	Contribution percentage rate
Up to £19,682	5%
£19,683 to £65,002	6.5%
£65,003 to £102,499	7.5%
£102,500 to any higher amount	8.5%

- (2) The Secretary of State may make a determination substituting any or all of the pay bands or contribution percentage rates specified in paragraphs (1A) and (1D) with effect from a date specified in the determination.
- (2A) Before making a determination under paragraph (2), the Secretary of State must consider—
- (a) the advice of the Scheme Actuary, and
 - (b) in accordance with regulation U4 (cost sharing), advice from such employee and employer representatives as the Secretary of State considers appropriate.
- (2B) For the purposes of this regulation—
- (a) “primary employment” means a single pensionable employment for which an employing authority specifies the member's working hours or working patterns;
 - (b) “zero hours contract” means pensionable employment in respect of a contract under which—
 - (i) an employing authority does not guarantee to provide work for the member;
 - (ii) there are no specified working hours or working patterns;
 - (iii) the member is paid only for work actually done under it.
- (2C) For the purposes of determining the relevant contribution rate for the 2008–2009 scheme year paragraphs (2D) to (2J) apply to a member who is in pensionable employment with the same employing authority on both 31st March 2008 and 1st April 2008.
- (2D) For the purposes of paragraphs (2E) to (2J)—
- (a) a member shall be regarded as being in pensionable employment throughout the 2007–2008 scheme year regardless of any period in that year during

which the member continues to be employed by the same employer but does not make contributions to the scheme;

- (b) for the purposes of calculating the member's pensionable pay, contributions for any period referred to in (a) shall be deemed to have been paid;
- (c) the amount of pensionable earnings determined in accordance with those paragraphs shall be rounded down to the nearest whole pound;
- (d) if a member holds two or more pensionable employments at the same time—
 - (i) the determinations referred to in paragraphs (2E) to (2J) shall apply to each such employment separately; and
 - (ii) each such employment shall be treated separately for the purpose of paying contributions.

...

(2F) If a member—

- (a) was in pensionable employment with an employing authority on a part-time basis or under a zero hours contract throughout the 2007–2008 scheme year; and
- (b) is employed by that authority on 1st April 2008, the amount of the member's pensionable pay shall be determined by reference to the amount the Secretary of State determines would have been paid in respect of a single comparable whole-time employment during that year.

...

R5 Part-time employment

- (1) Subject to paragraphs (6) and (10), a member's pensionable service in part-time employment will not count at its full length but will be calculated as described in paragraphs (2) or (3), whichever is applicable, as its whole-time equivalent.
- (2) If the member's part-time employment is expressed as a specified number of half-days or sessions a week, the whole-time equivalent of the member's pensionable service in respect of that employment will be calculated by multiplying the full length of that service by the following fraction—

$$\frac{\text{member's pensionable pay}}{\text{comparable whole-time earnings}}$$

- (3) In any case where paragraph (2) does not apply, the whole-time equivalent of the member's pensionable service in respect of part-time employment will be calculated by multiplying the full length of that service by the following fraction—

member's hours of employment each week
hours constituting comparable whole-time employment

- (4) Subject to paragraph (5), for the purpose of calculating a member's final year's pensionable pay in respect of part-time employment, the member's pensionable pay will be the amount that the Secretary of State determines would have been paid in respect of a single comparable whole-time employment and any amount by which the member's actual final year's pensionable pay in respect of part time employment exceeds the amount determined will be ignored.
- (4A) "A single comparable whole-time employment" in paragraph 4 means the number of hours, half-days or sessions which the Secretary of State determines would constitute a single comparable whole-time pensionable employment.
- (5) Paragraph (4) does not apply to the calculation of final year's pensionable pay for the purposes of—
- (a) regulations F1(2) and F2(2) (lump sum payable on death in pensionable employment or after pension becomes payable);
 - (b) regulation S2 (reduction of pension on return to NHS employment).
- (6) If a member with pensionable service in part-time employment becomes entitled to a pension under regulation E2, E2A, E3 or E3A (ill health pensions, pensions on redundancy and early retirement pensions)—
- (a) the member's pensionable service in part-time employment will count at its full length for the purpose of calculating—
 - (i) whether and (if so) to what extent, the pensionable service upon which the pension under regulation E2 or E2A is based should be increased under that regulation; or
 - (ii) the qualifying service for the purposes of regulation E3(2)(a) or regulation E3A(2)(a),
 - (b) the pension will be based on the whole-time equivalent of the period of part-time employment and, in the case of a pension under regulation E2 or E2A, the increase under that regulation will be limited to such amount as bears the same proportion to the amount that would have been paid had the pensionable service not been part-time as the whole-time equivalent bears to comparable whole-time employment.
- (7) If a member in part-time pensionable employment elects to buy additional service as described in regulation Q1 (right to buy additional service), the period of additional service will be calculated in accordance with Table 1 or Table 3 of Schedule 1 (whichever is applicable) and then reduced by multiplying the full length of that additional service by the following fraction—

part-time pensionable employment
comparable whole-time pensionable employment

where—

“part-time pensionable employment” means the number of hours, half-days or sessions that the member was required to work under his contract of employment during the period by reference to which “remuneration” was calculated for the purposes of Table 1 of Schedule 1 or regular additional contributions were paid in accordance with regulation Q6 (paying by regular additional contributions); and

“comparable whole-time pensionable employment” means the number of hours, half-days or sessions that would have constituted comparable whole-time pensionable employment during that period.

- (8) If a member in part-time pensionable employment elects to buy an unreduced retirement lump sum as described in regulation Q2 (right to buy an unreduced retirement lump sum), the period referred to in Table 2 or Table 4 of Schedule 1 (whichever is applicable) will be reduced in like manner as described in paragraph (7) above.
- (9) Paragraphs (7) and (8) above also apply for the purposes of regulation Q7 (part payment for additional service or unreduced retirement lump sum).
- (10) A member's pensionable service in respect of part-time employment will count at its full length (and concurrent periods of employment will be treated as a single employment) for the purposes of regulations C2(3) (limit on pensionable service that counts for benefits) and C3(1) (qualifying service).

Appendix 3

The National Health Service Superannuation Scheme (Scotland) Regulations 2011

T10 Interest on late payment of benefits

...

(3) The interest referred to in paragraph (1) above will be calculated at the base rate on a day to day basis from the due date to the date of payment, and will be compounded with three-monthly rests.

Appendix 4

Further information regarding the calculations based on figures in SPPA's letter of 8 January 2018

Full-time Basic salary (37.5 hours per week) for the period between 21 December 2016 and 20 December 2017: -

01/04/2017 – 20/12/2017	$£18,903.00/365 \times 264 = £13,672.31$
21/12/2016 – 31/03/2017	$£18,503.00 \times 101 = £5,120.01$
Total full-time basic salary	£18,792.32

Part time basic salary (16 hours per week) for the period between 21 December 2016 and 20 December 2017: -

01/04/2017 – 20/12/2017	$£13,672.31/37.5 \times 16 = £5,833.52$
21/12/2016 – 31/03/2017	$£5,120.01/37.5 \times 16 = £2,184.54$
Total part time basic salary	£8,018.06

Pensionable allowances paid for the period between 21 December 2016 and 20 December 2017: -

01/04/2017 – 20/12/2017	£3,879.42 +
21/12/2016 – 31/03/2017	£1,399.02 =
Total pensionable allowance	£5,278.44

Part time salary for the period between 21 December 2016 and 20 December 2017: -

Total part time basic salary	£8,018.06 +
Total pensionable allowance	£5,278.44 =
Total part time salary	£13,296.50

Pensionable Salary (WTE) for the period between 21 December 2016 and 20 December 2017: -

Total full-time basic salary	£18,792.32 +
Total pensionable allowance	£5,278.44 =
Total pensionable salary (WTE)	£24,070.76