

Ombudsman's Determination

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

Outcome

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

Complaint summary

3. Mrs N is complaining that NHSBSA say she is not eligible for Special Class Status (**SCS**), because she had a break in pensionable employment of over five years.

Background information, including submissions from the parties

4. Mrs N was a member of the Scheme and held SCS from 17 October 1983 to 31 July 1989, when she opted out of the Scheme. Members with SCS are eligible to retire at age 55 with no reductions in benefits. On 6 March 1995, the Scheme regulations were changed and SCS was abolished. Consequently, a person joining the Scheme after 6 March 1995 was not eligible to hold SCS. However, a person who had previously held SCS who re-joined the Scheme after 6 March 1995 could have their SCS reinstated if the break in service was less than five years.
5. Mrs N re-joined the Scheme on 23 May 1995.
6. Mrs N requested a retirement benefit statement on 3 March 2000. This was issued on 29 March 2000, and showed her standard retirement age as age 60.
7. No further action was taken until 20 April 2016, when Mrs N queried why she could not retire age 55, without an early retirement reduction to her pension. Mrs N says she understood her SCS would still apply because although she had a break in pensionable service of more than five years, she had remained in NHS employment. She said had she known about the change in the regulations she would have re-joined the Scheme sooner.

8. NHSBSA explained that as Mrs N had a break in pensionable service of over five years she was not eligible for SCS.

Adjudicator's Opinion

9. Mrs N's complaint was considered by one of our Adjudicators who concluded that no further action was required by NHSBSA. The Adjudicator's findings are summarised briefly below:
 - Mrs N re-joined the Scheme after 6 March 1995, when SCS had been abolished. She also had a break in service of over five years and for this reason her SCS could not be reinstated.
 - Mrs N's break in service had exceeded five years before the change in the regulations.
 - NHSBSA are required to comply with the regulations that govern the Scheme. For this reason the complaint could not be upheld.
10. 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 for completeness.

Ombudsman's decision

11. Changes to the Scheme regulations on 6 March 1995 abolished SCS for new joiners. Members who re-joined the Scheme after that date could only have their SCS reinstated if they had a break in pensionable service of less than five years.
12. Mrs N contends that she was not given sufficient information by NHSBSA, at a time where she could have changed her position, re-joined the Scheme and had SCS reinstated. Mrs N opted out of the Scheme in July 1989, so for her to have had a break in service of less than five years she would have needed to re-join the Scheme in July 1994.
13. The change in regulations relating to SCS was widely publicised in a letter dated 15 November 1994, this was issued to all NHS employing authorities. This explained that SCS was no longer going to be available to new members. It also explained that an existing member could have their SCS reinstated if they had a break in service of less than five years. Mrs N has said that she never received this notification. But even if she had it would have been too late as by November 1994 she already had a break in pensionable service of over five years.
14. It is unfortunate that Mrs N had already had a break in pensionable service of more than five years before the notification about the abolition of SCS was issued.

But, I do not consider that NHSBSA have done anything wrong. The communication was sent in a timely manner some months before the change was due to happen in March 1995. When something is time based there will always be a number of people who will not meet the criteria, and although I sympathise with Mrs N, NHSBSA are only following the regulations that govern the Scheme. These say that if a person has a break in pensionable employment of over five years, then they cannot have SCS reinstated if they re-join the Scheme. As Mrs N had a break in pensionable employment of over five years this is the correct decision.

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

Karen Johnston

Deputy Pensions Ombudsman
24 March 2017