

Ombudsman's Determination

Applicant	Miss N
Scheme	NHS Pension Scheme (the Scheme)
Respondent	NHS Business Services Authority (NHS BSA)

Outcome

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

Complaint summary

3. Miss N's complaint concerns NHS BSA's calculation of her retirement benefits. Miss N believes that the calculation should include a higher pensionable pay figure of £55,378.45 being applied to part of her pensionable service in relation to her deferred period of service.
4. **Background information, including submissions from the parties**
5. Miss N's retirement benefit calculation is regulated by Part C (6) and Part L (3) of the National Health Service Pension Regulations 1995 (**the Regulations**), which are set out in the Appendix.
6. Miss N's pay and membership history is as follows:

Initial deferred period of membership:-

- NHS from 15 February 1999 to 31 July 2001 totalling 2 years 167 days
- South Yorkshire Pension Fund (transferred in service) totalling 18 years 188 days

Miss N's highest pensionable pay for the above period of 20 years 343 days is £30,495.79.

Later period of membership:-

- NHS from 1 July 2005 to 3 July 2016 totalling 11 years 4 days
- West Yorkshire Pension Fund (transferred in service) totalling 2 years 155 days

- Build up for ill health retirement 3 years 97 days

Miss N's highest pensionable pay of her last three years' earnings to 3 July 2016 was £53,760.24 earned in the period 4 July 2015 to 3 July 2016.

7. In April 2012, Miss N requested a retirement benefit quotation from NHS BSA. It confirmed that Miss N's retirement benefit calculation was based on her pre-sickness absence pensionable pay of £55,378.45.
8. In her submission to this Office, Miss N provided a copy of NHS BSA's internal emails dated 25 April 2012 that show her retirement benefit calculation. She said that the pension officer incorrectly confirmed that "the information that we have provided is correct because it is based on the member having split benefits. Miss N has a deferred period of membership on a higher rate of pay (£55,378.45 up until 01/08/2001)".
9. Following Miss N's successful application for ill health retirement, her employment with the NHS ended in July 2016.
10. Miss N's ill health retirement benefits were calculated by NHS using her total enhanced membership of 37 years 245 days, and the highest of her last three years' pensionable pay of £53,760.24, which was lower than in previous years as a result of her reduced pay during her sickness absence.
11. In August 2016, Miss N raised a complaint under the two-stage internal dispute resolution procedure (**IDRP**). Her complaint was about a delayed ill health pension payment which is not relevant to this complaint.
12. Miss N raised further complaints regarding her retirement benefits calculation by invoking stage two of the IDRP. In her letter dated 22 February 2017 she said: -

"...I received notification that you believe my pension calculation is correct, seeing that I have 20 years 343 days transferred from another scheme, which is added to my further NHS service plus enhancements for ill health retirement. Whilst this is correct I must reiterate that the 20 years 343 days is transferred in and deferred due to being at a higher rate of pay...I struggle to understand why you cannot make the appropriate calculation...I should expect the calculation to be amended..."
13. On 5 April 2017, NHS BSA sent a response to Miss N, under stage two of the IDRP that explained the pensionable pay used in the calculation of retirement benefits was the highest years' pay earned in the last three years of pensionable NHS employment as stated in the Regulations. NHS BSA also explained that it is not clear how the pay value of £55,378.45 was arrived at in April 2012 and appears to have been significantly overstated. It acknowledged that the information provided to Miss N then was conflicting and it this may have led to degree of uncertainty about her entitlement in the Scheme. It also added that: -

“I am sorry that you found the information provided by the Helpline to be unsatisfactory. I should explain that the split calculation scenarios and their complexity vary considerably and for this reason it is difficult for automatic processes to cater for all circumstances at all times. For this reason, when providing estimated benefit information, such as annual benefit statements, NHS Pensions will normally provide basic retirement values based upon known membership information and the latest pay on our records. The highest of your last three years’ earnings to 03/07/2016 were confirmed by your employer as £53,760.24- which was earned in the period 04/07/2015 to 03/07/2016...The final year’s earnings in the later period (£53,760.24) are greater than the highest year’s earnings in the initial deferred period (£30,495.79) accounting for cost of living increases. It is more beneficial therefore, to apply the final year’s earnings to all your membership for benefit calculation purposes. For this reason, I believe your benefits in payment are correctly based upon your 2015-2016 earnings therefore no adjustments are required”.

14. On 3 May 2017, NHS BSA sent additional comments to Miss N under stage two of the IDRPs saying:-

“...your employer...told us your pensionable earnings in the year 01/04/2012 to 31/03/2013 were £54,244.38. Looking at your pay history from 2009 onwards, your annual pensionable earnings did not increase uniformly but varied between around £46,000 to £54,000...Regardless of the level of your 2012-2013 earnings, there are no provisions in the Regulations that would enable the calculation of your pension benefits to be based upon them because these earnings do not fall within the last three years of your scheme membership... Any assessment of your benefits completed in 2012 would have been based upon the latest known pensionable pay on record at that time”.

15. Miss N brought the complaint to this Office in April 2017.
16. In the telephone call to this Office, dated 12 January 2018, NHS BSA confirmed that Miss N’s deferred service was all transferred in and calculated as a single membership credit.

Adjudicator’s Opinion

17. Miss N’s complaint was considered by one of our Adjudicators who concluded that no further action was required by NHS BSA. The Adjudicator’s findings are summarised briefly below:-
- The Adjudicator’s role was to decide whether the Scheme Regulations had been correctly applied, or if NHS BSA made an administrative error.

- NHS BSA relies on Part C(6) and Part L (3) of the Regulations. Essentially, they set out the pensionable pay for retirement benefit calculation purposes as the higher of “pensionable pay in respect of the member's last year of pensionable employment, ending on the date the member ceases to be in such employment” or “if pensionable pay was greater in either or both of the 2 consecutive years immediately preceding the last year”. There are no provisions under the Regulations to take account of the highest pensionable pay preceding the last three years’ of Miss N’s Scheme membership. The Adjudicator noted that Miss N’s transferred in service was treated the same way as her later NHS service, as stated in the Regulations. So, the Adjudicator disagreed with Miss N when she said that her highest earnings figure of £55,378.45 should be used.
 - The Adjudicator also noted that NHS BSA explained to Miss N that the information provided to her in the email dated 25 April 2012 was based on her pensionable pay known at the time. However, Miss N’s pensionable pay has reduced since then, due to her sickness absence, so this information is now out of date and cannot be used by NHS BSA for the purposes of any retirement benefit calculations many years later.
 - The Adjudicator believed that based on the available evidence that NHS BSA acted correctly in accordance with the Regulations in the calculation of Miss N’s retirement benefits. The Adjudicator appreciated that Miss N will be disappointed, but the Adjudicator had not found any evidence that showed NHS BSA made an administrative error regarding her pensionable pay calculation and believed that Miss N’s complaint should not be upheld.
18. Miss N did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Miss N provided her further comments which do not change the outcome. I agree with the Adjudicator’s Opinion and I will therefore only respond to the key points made by Miss N for completeness.
19. Miss N maintains that her deferred period of service should be calculated separately and not be added together with other periods of pensionable service. Her retirement benefits should be calculated to include a higher pensionable pay figure being applied to part of her pensionable service in relation to her deferred period of service.
20. Miss N says that some of her deferred period of service is in relation to transferred in service but not all of it. She asserts that her salary was higher during her deferred period of service. She says that her salary was £30,495.79 during her period of deferred service but that her final years pay was approximately £56,000.
21. In the telephone call to this Office, dated 22 March 2018, NHS BSA confirmed that Miss N’s revalued pay figure during her deferred period of service was £44,898.95 using the most up to date pension increase factor of 1.4723.

Ombudsman's decision

22. NHS BSA has admitted that the information provided to Miss N in April 2012 was incorrect. It was unclear how the figure of £55,378.45 was arrived at. However, I find that NHS BSA had properly explained to Miss N in later correspondence during the IDRP how the correct retirement figures were calculated.
23. Miss N's asserts that her deferred period of service should be treated separately and a higher pensionable pay be applied for this period.
24. Firstly, Miss N's employer had confirmed that the highest earnings in her last three years was £ 53,760.24. I note that NHS BSA had explained that this figure was lower than the £55,378.45 figure previously quoted because it took account of her reduced pay during her sickness absence. I consider that it was reasonable for NHS BSA to rely on the information it received from Miss N's employer in regards to her salary as being correct. I therefore find that NHS BBSA acted reasonably in using this figure in the calculation of her retirement benefits.
25. In addition, Regulation L, Part 3(a) of the Scheme rules says that "member's pensionable service before and after the break in pensionable employment will be treated separately unless, when the member becomes entitled to receive a pension...it would be more favourable to the member... to treat the member's pensionable service before and after the break, and all such other breaks (if any), as continuous."
26. I note that NHS BBSA had confirmed to Miss N on 5 April 2017 that the final year's earnings in the later period of service of £53,760.24 was higher than the highest year's earnings in the initial deferred period of service of £30,495.79. Therefore, it was more beneficial to apply the final year's earnings to all her membership for benefit calculation purposes. I also note that Miss N has not disputed that her salary was £30,495.79 during her deferred period. Therefore, I find that NHS BSA had acted correctly in calculating her retirement benefits based on a pensionable pay figure of £53,760.24 applied to all her periods of pensionable service.
27. Miss N asserts that not all of her initial deferred service period of 20 years 343 days was as a result of transferred in service. Based on the evidence I have been provided with, only 18 years 188 days of the initial deferred period related to transferred in service from South Yorkshire Pension Fund. However, I have seen no evidence that all periods of pensionable service have not been included in the calculation of her retirement benefits. In any event, as I have explained above, Miss N has not been disadvantaged in the method used by NHS BSA in calculating her benefits.
28. Therefore, I do not uphold Miss N's complaint.

Karen Johnston
Deputy Pensions Ombudsman
23 March 2018

Appendix

The National Health Service Regulations 1995

Part C

Pensionable Pay, Pensionable Service and Qualifying Service

(6) Subject to paragraph (6A), in these Regulations, "final year's pensionable pay" means pensionable pay in respect of the member's last year of pensionable employment, ending on the date the member ceases to be in such employment, or dies, whichever occurs first, except-

(a) if pensionable pay was greater in either or both of the 2 consecutive years immediately preceding the last year, "final year's pensionable pay" means pensionable pay in respect of the year immediately preceding the last year or, if greater, pensionable pay in respect of the first of those 2 consecutive years; and

L4 Early leavers returning to pensionable employment

Part L

Early Leavers

(3) Subject to paragraph (5), if the member leaves pensionable employment with a preserved pension under regulation L1 and then returns to pensionable employment 12 months or more after leaving-

(a) the member's pensionable service before and after the break in pensionable employment will be treated separately unless, when the member becomes entitled to receive a pension or the member dies (whichever occurs first), it would be more favourable to the member, or the member's spouse or civil partner, to treat the member's pensionable service before and after the break, and all such other breaks (if any), as continuous; and

(b) if the member becomes entitled to receive a pension under regulation E2 or E2A, the pensionable service upon which that pension is based will be increased as described in paragraphs (4) to (6) of that regulation if the member's pensionable service before and after the break in pensionable employment is treated as continuous, but there will be no increase to any of the member's pensionable service if the member's pensionable service before and after the break is treated separately.