

Ombudsman's Determination

Applicant	Mrs K
Scheme	NHS Pension Scheme (the Scheme)
Respondents	Calderdale & Huddersfield NHS Foundation Trust (the Trust) NHS Business Services Authority (NHS BSA)

Outcome

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

Complaint summary

3. Mrs K's complaint is about the loss of her Special Class Status (**SCS**) and that she was not informed about its removal.

Background information, including submissions from the parties

4. Extracts from relevant documents are provided in the Appendix.
5. Mrs K qualified as a nurse in 1982. As a nurse she held SCS under regulation R2 of the NHS Pension Scheme Regulations 1995 (the **1995 Regulations**). SCS allows a qualifying member to retire at age 55 without a reduction to their benefits.
6. SCS was abolished for all new entrants to the Scheme after 6 March 1995, and for those previously holding the status who have a break in pensionable employment of five years or more.
7. In 1990 the Department of Health advised that a member was accepted as a nurse (and therefore held SCS) if they held a nursing qualification (recognised by the Nursing & Midwifery Council - **NMC**) and the job "**requires such a qualification as part of the job specification**"¹. NHS BSA say the letter was not routinely made

1. Department of Health SD letter [90]13 issued 18 June 1990
available to members.

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8. In 1999 Mrs K moved from her nursing post to the post of Clinical Development Facilitator with the Trust.
9. The Trust says Mrs K has held the following non-nursing posts:

Date	Post
April 1999	Secondment, Clinical Development Facilitator
April 2000	Clinical Audit
21 January 2002	Secondment, Surgical Integrated Pathway Facilitator
2 April 2002	Returned to Clinical Development Facilitator
26 August 2008	Secondment, Project Manager
1 March 2009	Fixed term contract, Commissioning and Partnerships
12 August 2009	Permanent contract, Project Manager
1 April 2010	Fixed term contract, Productive Ward Implementation
1 August 2011	Fixed term contract, Service Development
1 August 2014	Permanent contract, Project Manager
15 June 2015	Permanent contract, Property and Commissioning Manager

10. In January 2005 Mrs K opted to purchase added years until she reached age 60.
11. In 2011 Mrs K received 'Your NHS Pension Choice Statement' – a personalised comparison statement of the benefits Mrs K could receive from the 1995 Section or, if she opted by 23 September 2011, to transfer to the 2008 Section. The Statement informed Mrs K:
- “Your benefits in the 1995 Section are paid unreduced from age 55. This applies both to the benefits that you have already built up and those you build up in the future. If you transfer benefits to the 2008 Section and still retire at 55, and take the same lump sum as in the 1995 Section, your pension could be almost a quarter lower”
12. The Statement included a diagram which showed that Mrs K was only likely to benefit by transferring to the 2008 Section if she intended to retire sometime after age 64.5.
13. Mrs K decided to remain in the 1995 Section.
14. In January 2013, as a part of a data cleansing exercise, the Trust's Pension's team retrospectively amended the capacity code (which categorises roles into nursing and

non-nursing posts) held in Mrs K's Pensions On-Line (POL) record for each of her job titles from 1 April 2010. These changes interfaced and updated NHS BSA's records showing that Mrs K's SCS had ceased on 31 March 2010. The Trust did not update Mrs K.

15. In early April 2016 Mrs K exchanged emails with a Pension Officer of the Trust about her pension entitlement. She was informed that her normal retirement age (**NRA**) was 60 and if she wanted to take her benefits at age 55 (in February 2017) her pension and lump sum would be reduced.

16. Mrs K said she was a nurse and had always been led to believe that she could retire at age 55. The Pensions Officer replied:

"You hold a Admin Clerical/Management position and your retirement age is 60 (on Total Rewards). You have held this since 01.04.2010 if you don't need Nursing to carry out your job role you cannot keep your Special Class Status."

17. Later the Trust queried with NHS BSA whether SCS applied to Mrs K from 1 April 2010. NHS BSA replied:-

- Its records showed that Mrs K last held SCS on 31 March 2010.
- SD letters 87(19) and 88(9) confirmed the position for retaining SCS status. The Trust should have approached it when the post commenced for confirmation that SCS could be retained.
- As the job description did not indicate that the post met the criteria for retention of SCS for general management roles, and there was no evidence of a continuing commitment to nursing duties, beyond that which would be normally expected for a Senior Manager of an organisation that provided medical care, SCS could not be retained.

18. Mrs K lodged a grievance against the Trust in July 2016. The Trust provided a technical explanation of the Scheme regulations, the requirements for retention of SCS when a member moves from a nursing role to a management role, and the member's responsibility for making themselves aware of their pension position. Mrs K's grievance was not upheld.

19. Acting on Mrs K's behalf, an Officer for the Royal College of Nursing, appealed the Trust's decision:-

- The Trust should have asked for clarification from NHS BSA at the time Mrs K changed her role to what it considered to be a non-nursing role. If this had been done and the answer had been that Mrs K would lose her SCS she most likely would not have taken the role.
- The Trust's failure to do this was a fundamental breach of policy and trust.
- The Trust had conceded in its outcome letter that it should have updated its records earlier.
- The Trust had accepted that systems and processes by which occupational codes are corrected by its Payroll/Pension department must be reviewed, particularly

with regard to notifying employees of a significant change and it committed to do this.

20. The Trust's appeal panel rejected the appeal. In its decision letter to Mrs K dated 31 March 2017 it said:

"The documentation from the Pensions Agency is clear that to retain special class status you must undertake a post that requires your nursing qualification to be essential for the role. The Panel concluded that you lost your entitlement to special class status on 1 June 1999 when you accepted the secondment to the Clinical Development Facilitator.

The Panel accepted that you had not been informed by your line manager of the consequences of accepting this post however it was the panel's belief that there was no positive duty upon the Trust to warn or consult you on the potential loss of special class status. If you accept a post that did not require your nursing qualification to be essential there was a positive duty upon you to enquire into the retention of special class status.

The Panel concluded that the Trusts failure to consult with NHS [P]ensions, this would have made no difference to the loss of special class status.

The Panel is aware that this has been a very distressing and anxious time for you and would like to apologise for the length of time it has taken to relay the decision to you. However the panel did want to ensure due consideration was given to all the information presented before it."

21. Mrs K submitted her resignation the following month and left the Trust on 8 May 2017.

22. Around the time of her grievance appeal, Mrs K invoked the Scheme's two-stage internal dispute resolution (**IDR**) procedure. NHS BSA turned down her stage 1 appeal:-

- It relied on NHS employers to supply the information it needed to update members records and calculate benefits.
- The Trust was responsible for making all the necessary updates regarding each employment.
- It would only notify a member that they had lost SCS if it received an enquiry.
- Its Scheme guidelines stated that members appointed to general management posts would not normally be allowed to retain SCS. However, where a nursing qualification was a requirement and a member undertook functions in addition to general management duties, such as a continuing commitment to nursing duties, providing professional advice on nursing matters or an advisory or supervisory role within nursing, the status could be considered.
- The post of Property and Commissioning Manager was a general manager's post and not a senior nursing post.

- While the job description stated that a nursing qualification was required, the post was not restricted to clinical workers. The job description did not state the applicant would still be carrying out nursing duties.
- All applications for retention of SCS were assessed on an individual basis. It upheld the decision not to allow SCS on the appointed role as no new evidence had been received to support that Mrs K's work included a continuing commitment to nursing duties, and that she was providing professional advice on nursing matters or an advisory or supervisory role within nursing.

23. On 27 June 2017, acting on behalf of Mrs K, Ramsdens Solicitors LLP (**Ramsdens**) submitted Mrs K's stage 2 appeal to NHS BSA:-

- Referring to a timeline prepared by Mrs K of her roles since May 1982, it said the roles all included a continuing commitment to nursing duties and that Mrs K retained her nursing qualification, both as a requirement of the Trust and her own preference. It said the timeline showed that Mrs K was providing professional advice on nursing matters or an advisory or supervisory role within nursing. It said the job descriptions that Mrs K had received confirmed this.
- At no time was Mrs K informed that her SCS had been or would be removed. If she had been she would not have agreed to change role.
- In fact, she was reassured that she did have SCS. In particular it referred to a conversation that Mrs K had with a representative of the Trust in January 2010.
- The dates for removal of SCS and the reasons given had varied. Mrs K had been told:-
 - That SCS had been removed in 2010 even though no changes were then made.
 - That SCS had been removed in 1999, when Mrs K became a Clinical Development Facilitator.
 - That SCS had been removed in 2013 during a data cleansing exercise and backdated to 2010.
- Mrs K knew she had SCS in September 2011 as she received a Pension Choice booklet which said that she still had SCS and could retire at age 55.

24. In July 2017, in support of Mrs K's appeal, Ramsdens submitted documents that Mrs K had obtained from the Trust:-

- A notification of appointment as a pupil nurse in 1980 and three notifications of change dated 1 July 1980, 23 April 1982 and 28 April 1982.

- A 1999 advertisement for the post of Clinical Development Facilitator, which showed that the post would suit someone with a clinical background.
- A 2000 job description for the post of Clinical Development Facilitator.
- A job description for Project Manager, stating that a clinical or managerial qualification was essential.
- A 7 September 2015 email from the Trust's Human Resources Manager to Mrs K clarifying that as part of the restructuring process Mrs K's terms and conditions of service would remain unaffected.

25. The next month, in further support of Mrs K's appeal, Ramsdens submitted to NHS BSA a page print out from a 'Protection Table' that had been included in documents that Mrs K had obtained from NHS BSA. The print-out, with a log date of 29 March 2015 recorded "Yes" against "MHO or Special Class Indicator". Ramsdens said that Mrs K had never been a mental health officer, consequently "Yes" could only refer to SCS.

26. The same month NHS BSA turned down Mrs K's appeal:-

- To encourage nurses to apply for management roles the Department of Health introduced the possibility of nurses retaining SCS provided certain criteria were met.
- One of the criteria was that a nursing qualification must be essential to the post. This meant that if a suitably qualified health professional other than a nurse could fill the post SCS could not be retained.
- Once SCS was lost it could not be retained in a subsequent 'management' post. However, if the member returned to an actual nursing post then SCS could be granted for that post provided the member had not had a break in membership – Mrs K had not had a break in membership.
- The Trust had updated Mrs K's pension record to show that she ceased to be a nurse on 31 March 2010. Since January 2013 any estimates and statements had confirmed a normal pension age of 60. It had no record of 2010 conversation that Mrs K said she had with a Trust representative and it was not privy to any information provided by the Trust about the retention of SCS on each occasion she changed jobs.
- The Trust should have informed Mrs K if the post qualified for SCS at the time of the job application/confirmation so that she could make an informed choice about whether to accept the offer. If a NHS employer, or the applicant, had any concerns about whether a post would retain SCS the NHS employer should contact it for confirmation either way.

- The Trust had confirmed that Mrs K did not have a nurse bank post with it. If Mrs K held a nurse bank post with another NHS employer then it would not have been pensionable whilst she was working whole-time and only pensionable posts could have SCS.
- The print out of the 'Protection Table' showed that Mrs K had SCS. This had been assessed on the fact that Mrs K held SCS in a previous employment, however as Mrs K was aged 50 at 1 April 2012 she had full protection due to her age and would not transition to the 2015 Scheme.
- On 29 August 2015 Mrs K's Total Reward Statement was accessed which confirmed her normal retirement age as 60; the statement was based on information provided by the Trust. When the Trust removed Mrs K's SCS it should have notified Mrs K.
- In April 2016 Mrs K queried her normal retirement age and was directed back to the Trust to query why her SCS had been removed. The Trust queried the retention of SCS and it informed the Trust that SCS was not applicable to Mrs K. Again, it would have expected the Trust to inform her of the outcome.
- Whilst it did not believe that it had a full list of Mrs K's jobs with the Trust, or complete information of any Bank Nurse employments, on the current information Mrs K did not have SCS as an Integrated Care Pathway Facilitator from 31 March 2005 or as a Project Manager (Band 7). This meant the retention of SCS for the later post of Property and Commissioning Manager could not be considered.
- Should Mrs K be able to provide a full list of employments with dates and job descriptions for each employment it would reconsider its decision.

27. Ramsdens replied that NHS BSA had seen Mrs K's breakdown of all the roles that she held and the job descriptions she had. It submitted a letter that Mrs K had obtained from NMC, dated 2 October 2017, detailing Mrs K's annual renewal registration payments for the last six years. Ramsdens said with each payment Mrs K had to declare that she had undertaken 150 hours of clinical duties.

28. NHS BSA replied:-

- At present it had no record of Mrs K being employed as a nurse or in a nursing capacity since her employment as a Clinical Facilitator.
- The Trust had not provided any evidence that Mrs K was required to do any nursing work alongside her post as an Integrated Care Pathway Facilitator, Project Manager or Property and Commissioning Manager.
- However, Mrs K had confirmed that she was undertaking some form of nursing to be able to keep her NMC registration. That was why it had asked if Mrs K could provide any additional information.

- Should Mrs K be able to provide a full list of her employments with dates and job descriptions for each detailing her additional nursing duties undertaken it would reconsider its decision.
- Holding a NMC registration did not qualify a member for SCS. Retention of SCS was assessed on the duties of the role undertaken on a member's pensionable employment. Any part-time work in excess of whole-time work was not pensionable and could not be considered for retention of SCS unless it was part of the whole-time role. But SCS could be considered for a further part-time employment concurrent with the periods Mrs K worked part-time.

29. Ramsden's submitted:-

- A copy of the timeline detailing Mrs K's duties held (which it had originally submitted in June 2017) and explained that the job descriptions referred to in the timeline and Mrs K's CV had been submitted to NHS BSA in July 2017.
- A draft job description for Mrs K's post of Service Improvement Facilitator and detailed her posts with the Trust since September 2001 as:

Period	Job
Sept 2001 to July 2003	Integrated Care Pathway Facilitator
July 2005 to August 2008	Service Improvement Facilitator
August 2008 to July 2016 (except for April 2010 to March 2011)	Project Manager
January 2010 to April 2011	Productive Ward Manager
July 2016 to date of leaving	Property & Commissioning Manager

- For each post an outline of the requirements/responsibilities of each role.

30. On 1 December 2017 NHS BSA again turned down the stage 2 appeal:-

- Mrs K may be considered for the retention of SCS provided she met the relevant criteria. As previously advised, one criterion is that a nursing qualification, not a clinical or managerial qualification, must be essential for the individual to hold to fill the post and this requirement must be confirmed in the job description.
- A reference to a clinical qualification meant a post was open to any suitably qualified doctor or other healthcare professional. It was not restricted to an individual holding a nursing qualification.
- Mrs K had confirmed that she worked as a Productive Ward Manager from April 2010 and that the post required a clinical qualification. As such the role could not retain SCS.

- Normally that would mean the next post could not be considered for SCS. Nevertheless, it had given consideration to the job description and information provided by Mrs K in respect of her Project Manager role. The job description confirmed that the role could be filled by an individual educated to degree level or equivalent who had a clinical or managerial background. Consequently, the role could be filled by someone who was not clinically qualified. As such the role would not retain SCS.
- While Mrs K's earlier posts had not been examined, SCS would be lost if any of the posts were open to non-nursing staff. Once SCS was lost it could not be retained in later roles regardless of the qualifications required for any of those roles.
- It did not have access to Mrs K's Terms and Conditions. But it would not normally confirm that a role would or would not have SCS, as the granting of the status was determined either directly by legislation or by NHS BSA (in respect of retention of the status).

Mrs K's position

31. Ramsdens says:

"Had our client been told that any of her roles did not have SCS then she would not have taken them and would have made other pension provision. Her last position as Property & Commissioning Manager stated that an essential criterion required was membership of a professional body and it was accepted that our client['s] NMC registration was acceptable. In order to maintain this qualification our client needed to undertake nursing duties as these were part of her role and undertaken within her hours as Property & Commissioning Manager."

32. Commenting on the Trust's position Mrs K says:-

- She did not move from nursing roles in 1999 or subsequently as stated by the Trust. She continued nursing duties and maintained her NMC membership throughout her employment.
- The Project Manager and Service Improvement Facilitator roles asked for a clinical qualification. The ordinary accepted and dictionary definition of the word "clinical" means relating to the observation and treatment of actual patients. Therefore, for both jobs she needed to be able to prove that she gave direct patient care and that she was able to do so.
- The Trust did not inform her that these posts did not qualify for SCS. In 2010 she had a discussion with a Trust representative about keeping her SCS and it was agreed that she needed to do this due to the benefits it gave.
- She has always been aware of her pension position. It was not until 2016 that the Trust informed her that her SCS had been taken away in April 2010. The Trust should have informed her as soon as the change was made.

- In September 2011 she based her pension options on the pension choice document from NHS BSA which stated that she still held SCS. "I may have made different choices at this point if I had been given correct information to make my choices."
- The Trust has not dealt with her sympathetically.

33. Commenting on NHS BSA's position Mrs K says:-

- While she was not shown the detailed criteria or the SD letter of 16 June 1990, she was aware that a member was required to hold a nursing qualification and be in a job which required such a qualification to retain SCS.
- In 2005 she purchased additional membership. While the form stated that the NRA was 60 it did not say she had lost SCS. when she signed the form she expected to be able to retire at 55, if she wanted to, as she then had SCS. Alternatively, she could continue working to age 60 or later if she wished to.
- She undertook nursing duties as part of her Property and Commissioning role. She was not on the nurse bank and did not get paid any extra for the clinical role as it was part of her role.
- The print out of the 'Protection Table' obtained from NHS BSA recorded "Yes" next to "MHO or Special Class Indicator". She has never been a Mental Health Officer, so "Yes" could only refer to SCS, which reinforces her belief that SCS has never been removed from her.
- She accessed her Total Reward Statement/Annual Benefit Statement in November 2015. It was not clear from what she saw that she had lost SCS.

The Trust's position

34. The Trust says:-

- In 1999 Mrs K moved into non-nursing roles. Mrs K maintained her nursing registration and believed she had retained SCS.
- The non-nursing roles did not require, as an essential requirement, a nursing qualification.
- In 2013 it retrospectively corrected Mrs K's employment record to match her non-nursing roles from 2010. Unfortunately, it did not inform Mrs K.
- It has no record of any discussion with Mrs K about the effects on retention of her SCS by moving to a non-nursing role in 1999 or later.

- Its view is that an individual has personal responsibility to ascertain the applicable pension provision in any role that they choose to undertake. While it has apologised for not informing Mrs K of the change to her pension record, its mistake does not change the fact that Mrs K lost her SCS in 1999 when she moved into non-nursing roles.
- It is compelled to follow the Scheme's Regulations.
- It has dealt with Mrs K's position sympathetically. It cannot grant retention of SCS as that is not within its control.
- While it recognises the upset and disappointment felt by Mrs K; and has apologised for any mistakes in informing Mrs K of the pension record change, it is not responsible if there has been any financial loss or non-financial loss.

NHS BSA's position

35. NHS BSA says:-

- It does not dispute that Mrs K is a qualified nurse and has retained her NMC qualification. But the posts Mrs K has undertaken since 31 March 2010 do not require a nursing qualification. Consequently, as the posts were not limited to a qualified nurse SCS could not be retained in these posts.
- The job description for Project Manager confirms that the holder must be educated to degree level and have either a clinical or managerial qualification. As the post holder may either have a managerial qualification or any clinical qualification, and a nursing qualification is not mentioned or required, then the post does not qualify for SCS.
- The job description for Service Improvement Facilitator confirms that the post holder must be educated to degree level or equivalent and hold a clinical qualification. As a nursing qualification is not mentioned or required then the post does not qualify for SCS.
- The job description for Clinical Development Facilitator confirms that a clinical background is desirable but does not confirm that a nursing qualification or experience is essential. Therefore, the post holder need not be a nurse and does not qualify for SCS.
- In respect of Mrs K's last position as a Property and Commissioning Manager it is not aware of any requirement that Mrs K undertake any nursing duties. The post holder had to be a member of a professional organisation. This did not limit the post to an individual registered with the NMC. Any other clinician registered with their respective professional organisation could have applied for the role.
- It would only have sent information about SCS, its retention or loss on request.
- It is not informed by employers of what information they provide at the time a member applies or is appointed to a new post.

- It would expect the employer to inform the member of loss of SCS if and when they applied for a new job.
- In the extreme example of Mrs K's case it would also expect the member to realise that they were no longer a nurse and did not have SCS.
- The Trust updated Mrs K's pension record to show that she had ceased to be a "nurse" from 1 April 2010. The Trust made the change remotely and did not ask NHS BSA to make the amendment.
- As an NHS employer can decide if SCS can be retained up to the grade of Director of Nursing, it would have expected the Trust to inform a member if a post they were applying for was either eligible for SCS or would retain SCS. NHS employers do not normally inform NHS BSA of the actual post any member undertakes. Therefore it is not in a position to check if SCS is still appropriate or inform the member of any change. If the Trust had been unsure it should have contacted NHS BSA to seek clarification.
- Once SCS is lost then retention cannot be considered again for the next or a later post.
- It had no record of conversations that Mrs W may have had with the Trust about the Scheme in general or about her NRA.
- Mrs W had four pension estimates (a January 2013 Trust produced estimate and a March 2015, August 2015 and August 2016 annual benefit statement) which informed her that her NRA was 60. A copy of the Total Reward Statement/Annual Benefit Statement is only added to the member's pension record on the date the member accesses the statement electronically.
- Once it was notified of the SCS query it kept Mrs W and Ramsdens informed.
- In January 2005 Mrs W purchased additional membership. While she had a NRA of 55 at that time (as she then held SCS) she took the contract out to age 60. This implies that Mrs W was expecting to work to age 60 at that time, as to leave before age 60 would have meant that the contract was not completed and Mrs W would only have been credited with the additional membership at age 60. Taking the benefit before age 60 would incur an actuarial reduction.

On Mrs K's comment that in January 2010 she discussed with a Trust representative about keeping her SCS

- Whilst it understands the desire to retain SCS, due to the benefit of retiring from age 55, this did not mean that SCS could either be granted or retained for posts that did not require a nursing qualification.

On the screen print of the 'Protection Table'

36. The table was based on information held at April 2012. As Mrs K had previously held SCS and at the time transitional protection in respect of movement to the 2015 Scheme was assessed Mrs K had the potential to have SCS again. Therefore a 'marker' was added to her pension record as a prompt should her transitional protection in respect of movement to the 2015 Scheme ever need to be re-assessed and for the administrator to recheck if SCS was applicable.

Adjudicator's Opinion

37. Mrs K's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trust or NHS BSA. The Adjudicator's findings are summarised below:-
- It is not disputed that Mrs K has a nursing qualification and that she has maintained her registration with NMC. But to retain SCS Mrs K must have remained employed in a role that was only open to holders of a nursing qualification.
 - The posts that Mrs K held with the Trust from 1999 onwards did not impose such a restriction. The posts were open to holders of a clinical qualification (one post required either a clinical or managerial qualification). Consequently, the posts were not limited to an individual qualified as a nurse.
 - Mrs K lost SCS when she ceased to be employed by the Trust in a nursing capacity. Once lost Mrs K could not reclaim SCS for any later post.
 - Mrs K refers to a 2012 print-out of the 'Protection Table' she obtained from NHS BSA, which records "Yes" next to "MHO or Special Class Indicator". Mrs K says "Yes" can only refer to SCS (as she has never been a MHO), which reinforces her belief that SCS has not been removed from her. But NHS BSA was reliant on the Trust informing it that Mrs K had lost her SCS. The Trust belatedly did that in 2013.
 - Ramsdens says had Mrs K been told that any of the roles did not have SCS she would not have taken them and would have made other pension provision.
 - In Scally², the complaint was that the member should have been given more information by his employer about valuable rights that he could have accessed in his statutory pension scheme.

2. Scally v Southern Health and Social Services Board [1992] 1 AC 294

- However, the Court avoided a general principle that employers should bring unknown pension rights to the attention of their members or protect their overall economic wellbeing. The duty only applies when the following conditions apply:-
 - The terms of the contract have not been negotiated with the individual.
 - The particular term in question makes available a valuable right contingent upon the individual taking action to avail himself of it.
 - The employee cannot, in all the circumstances, reasonably be expected to be aware of the term unless it is drawn to their attention.
- Mrs K's case fails the third condition:-
 - Mrs K concedes that she knew the requirements to retain SCS.
 - Mrs K would have been aware that the post she was taking up in 1999 (and subsequent posts she took up) was not a nursing post and was open to a holder of a non-nursing qualification.
 - There was sufficient information in the Scheme Guide to alert Mrs K to the fact that she might lose her SCS when she was considering a new role.
 - Prior to taking up each role Mrs K could have queried with the Trust (which she says she did in 2010), and or NHS BSA, whether the position would affect her SCS.
 - There was no duty on the Trust to inform Mrs K that she might be disadvantaged if she lost SCS by moving to a new post. To impose such a duty would be going beyond a duty to make an employee aware of a benefit, as envisaged in *Scally*, and falls within the general duty to protect the financial interests of employees which was rejected in the cases: *University of Nottingham v Eyett* [1999] 2 All ER 437, *Crossley v Faithful & Gould* [2004] ICR 1615 and *Greenway v Johnson Matthey plc* [2016] 1 WCR4487.
- While the Trust did not inform Mrs K in 2013 that she had lost SCS, it would not have made any difference if it had. By that time, Mrs K had already lost her SCS status. There is no evidence that Mrs K asked at the time she was considering each position whether her SCS status would be lost by taking up the position.
- Ramsdens argues had Mrs K been told that any of her roles did not have SCS then she would not have taken them and would have made other pension provision. But if SCS had really had been of such importance to Mrs K, she would have made enquiries prior to taking up each position. It appears that hindsight is being applied as Mrs K now wants to retire at age 55. At the time each position arose, Mrs K would have been making a decision on the basis of whether or not she wanted to go into that type of role and whether she wanted that type of

career/promotion. The Trust amending the record in 2013 makes no difference to decisions she made before this.

38. Mrs K did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ramsdens provided its further comments (on behalf of Mrs K) 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 Ramsdens for completeness.

Ombudsman's decision

39. Ramsdens says Mrs K made her decision to stay in the 1995 Section of the Scheme on the fact that she had been notified in the Pension Choice Statement that she still had SCS and could retire at age 55.
40. The Statement informed Mrs K that if she transferred to the 2008 Section, retired at age 55 and took the same lump sum as in the 1995 Section her pension could be almost a quarter lower. A diagram indicated that Mrs K was only likely to benefit from transferring to the 2008 Section if she opted to retire sometime after 64.5 years.
41. The retirement age under the 2008 Section is 65 compared to 60 under the 1995 Section. Therefore, it is unlikely that Mrs K' would have opted to transfer to the 2008 Section if she had been informed that she did not hold SCS.
42. Ramsdens says that Mrs K believes she does not fail the third condition under Scally and consequently the Trust had a duty to inform her prior to taking-up a post whether the position would retain SCS. Specifically, Ramsdens says there was no need for Mrs K to raise a query with the Trust because she was never informed that she had lost SCS and when she enquired about retiring at age 55 she was informed that she still retained SCS.
43. But the relevant point is that Mrs K could have queried with the Trust, and or NHS BSA, prior to taking-up each post whether the position would affect her SCS status. Nevertheless, for the other reasons cited by the Adjudicator it is clear Mrs K's case fails the third condition.
44. Ramsdens says Mrs K had conversations with her line manager about keeping her nurse registration as this gave her special privileges and it cost Mrs K £350 per year to keep her NMC registration and her monthly subscriptions to the RCN.
45. It is not disputed that Mrs K has a nursing qualification and that she has maintained her registration with NMC. But to retain SCS Mrs K must have remained employed in a role that mandatorily required the post holder to hold a nursing qualification.
46. Ramsdens says until Agenda for Change all the posts Mrs K held were on a nursing grade between E and G. But the payment of salary equivalent to a nursing grade is not the benchmark for the retention of SCS.

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47. One of the criteria is that a nursing qualification is essential to the post. Clearly the posts that Mrs K successfully applied for were open to other clinicians. The role of Project Manager was also open to holders of a managerial qualification.
48. I do not uphold Mrs K's complaint.

Anthony Arter

Pensions Ombudsman
30 November 2018