

## Ombudsman's Determination

Applicant	Mrs S
Scheme	NHS Pension Scheme ( <b>the Scheme</b> )
Respondent	NHS Business Services Authority ( <b>NHS BSA</b> )

## Outcome

1. I do not uphold Mrs 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. Mrs S complains that NHS BSA has said that 'special class status' (**SCS**) no longer applies to her. As a result, she is unable to retire at age 55 with unreduced pension benefits.

## Background information, including submissions from the parties

4. Mrs S was initially a member of the Scheme between 28 June 1982 and 30 April 1987 due to her employment as a nurse. During these periods Mrs S held SCS with potential entitlement to retire from age 55.
5. On 30 April 1987, Mrs S opted out of the Scheme and as such she lost her potential entitlement to retire from age 55 and the normal retirement age for her deferred benefit was age 60.
6. In July 1989, Mrs S commenced a Personal Pension Plan with HSBC that allowed her to contract out of SERPS. It is only possible to contract out of SERPS with one pension scheme at a time, therefore as Mrs S was not an active member of the Scheme it was possible for her to contract out of SERPS with the Personal Pension Scheme with HSBC.
7. In 1994, the Securities and Investment Board (**SIB**) ordered a review of mis-sold personal pensions (**the 'Pensions Review'**). The Pension Review concerned the sales of personal pension policies taken out between 29 April 1988 and 30 June 1994. To assist the Review, special provisions were put in place in Public Sector pension schemes to enable reinstatement of membership, which was deemed to

have been 'lost' or 'missed' from the occupational scheme due to pensions mis-selling of alternative schemes. Reinstatement of membership in the occupational scheme was the preferred method of redress under SIB guidelines.

8. The rights secured by reinstated membership in the Scheme are defined in in Regulation B5 (1-4). Reinstatement effectively secures a period of pensionable service along with all associated continuity and entitlements relating to that period, as if the person had been an active member of the Scheme during the reinstated period.
9. On 1 May 1999, Mrs S resumed the Scheme's membership. However, she was not entitled to resume SCS in this period due to the abolition of the status in 1995 and the 12-year break in her membership.
10. In October 2000, Mrs S applied to transfer her personal pension fund with HSBC to the Scheme. Her application was outside the normal time limits for incoming transfers as prescribed in the Regulations due to her awaiting the outcome of HSBC's review of her personal pension. In the original review Mrs S' policy was identified as being eligible to join the Occupational Pension Scheme at the time of the original advice and she was put into the non joiner category, but it was determined that her circumstances fell outside the scope of the then review procedures. However, Mrs S' case was included in phase two of the review and augmentation redress of £31,832.36 was paid by adding additional units credited to her HSBC pension plan. This calculation took into account Mrs S' NHS special rights including a normal retirement date of 55.
11. On 4 October 2000, HSBC wrote to Mrs S outlining the findings of the review and giving details of the redress offered.
12. On 23 October 2000, Mrs S' husband discussed the full reinstatement of Mrs S' Scheme pension with HSBC's review manager via telephone, where it was confirmed that in order for a full reinstatement to be carried out Mrs S would have make good the shortfall in contributions for the amount of £3,761.94.
13. On 25 October 2000, HSBC received Mrs S' signed acceptance confirming that she does 'not wish to make good the shortfall' relating to the contributions.
14. Following the request from HSBC NHS BSA agreed to extend the normal time limits and the transfer was allowed to proceed.
15. On 15 November 2000 and 8 January 2001, HSBC provided to NHS BSA details of the transfer value available which was quoted as £35,450.31 and £35,028.00.
16. On 8 February 2001, NHS BSA provided Mrs S with a quotation of the membership credit the transfer might have purchased as at 8 February 2001.
17. On 5 March 2001, Mrs S elected to proceed with the transfer and HSBC paid the transfer value of the policy of £33,902.97 to NHS BSA. The transfer payment secured

a membership credit of 7 years 220 days for Mrs S. The credit is reckonable as membership occurring on 1 May 1999, the day she re-joined the Scheme.

18. In October 2016, Mrs S wrote to NHS BSA complaining that she should be considered to have SCS as she won her claim for mis-selling and was transferred back into the Scheme.
19. On 24 October 2016, NHS BSA wrote to Mrs S explaining that SCS is an early retirement right that was given to some members of the Scheme. As Mrs S had a break in active membership which was more than five years she was ineligible to have SCS for her membership after 30 April 1987.
20. On 7 December 2016, Mrs S wrote back to NHS BSA regarding her SCS and her position in the Scheme following the transfer of her pension rights from HSBC.
21. On 24 February 2017, NHS BSA responded to Mrs S confirming that the transfer was not one of those that HSBC asked it to handle as part of the SIB review into mis-sold personal pensions. It was therefore dealt with as an ordinary pension transfer with the result that she was ineligible to retain SCS in the Scheme. NHS BSA suggested she raise the matter with HSBC.
22. On 24 August 2017, Mrs S appealed the decision made by NHS BSA. Her appeal was dealt with by NHS BSA under stage 1 of the Scheme's internal dispute resolution procedure (**IDRP**).
23. On 23 October 2017, NHS BSA issued its stage 1 IDRP response to Mrs S. The decision maker held that as HSBC did not ask NHS BSA to consider her transfer of pension rights under SIB review, her membership was not reinstated due to being mis-sold a personal pension. Instead, her pension record was credited with 7 years and 22 days. As such the break of 12 years 2 days remains on her record and she is ineligible to retain SCS for that period and any subsequent membership.
24. On 29 October 2017, Mrs S appealed under stage 2 of the IDRP.
25. On 19 December 2017, NHS BSA issued its stage 2 IDRP response to Mrs S. The decision maker held that when the pensions mis-selling was established under the SIB review, responsibility for appropriate compensation rested with the reviewing company and as HSBC did not ask it to reinstate membership for Mrs S at any time it is unable to allocate the monies transferred in for any purposes other than to provide a transferred in membership credit under the Regulations. It confirmed that Mrs S had a break in her membership from 1 May 1987 to 30 April 1999 (12 years) and a transferred in membership credit of 7 years 222 days. The decision maker held that Mrs S is not entitled to SCS and her normal retirement age for all benefits in the 1995 section of the Scheme is age 60.

## **Adjudicator's Opinion**

26. Mrs 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: -
- Mrs S' eligibility for SCS ceased on account of the subsequent break in her Scheme's membership from 1 May 1987 to 30 April 1999 (12 years). Upon re-joining the Scheme in 1999 she transferred her HSBC fund into the Scheme which secured a membership credit of 7 years and 220 days. In order to retain SCS Mrs S was required to not incur a break in pensionable NHS employed of more than 5 years.
  - The Adjudicator was of the opinion that a transferred in credit does not serve to backdate the Scheme's membership to an earlier date nor does it bridge a break in the Scheme's membership for eligibility or continuity purposes.
  - The Adjudicator did not agree that NHS BSA had not directed itself correctly when deciding whether Mrs S qualifies for SCS. NHS BSA confirmed that Mrs S' transfer was not one of those that HSBC asked it to handle as part of the SIB review into mis-sold personal pensions. As such NHS BSA correctly dealt with it as an ordinary pension transfer with the result that Mrs S was ineligible for SCS in the Scheme and her normal pension age is 60.
  - The Adjudicator referred to HSBC's letter to Mrs S dated 17 March 2017 which confirmed that Mrs S was given the option to have a full reinstatement of her Scheme pension. She was told that in order to obtain full reinstatement into the Scheme she would need to make good the shortfall in contributions amounting to £3,761.94. HSBC confirmed that Mrs S decided not to proceed with making good the shortfall and in addition on her final acceptance form dated 25 October 2000 she confirmed that she does 'not wish to make good the shortfall'. The Adjudicator explained that as Mrs S did not make any personal contributions she could not be reinstated.
27. Mrs S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs S 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 Mrs S for completeness.

## **Ombudsman's decision**

28. For the avoidance of doubt, I cannot consider HSBC's role in this complaint as it is out of my jurisdiction and the Financial Ombudsman Service has already looked at this aspect of the complaint.
29. Mrs S argues that the pension transfer was completed in connection with an industry review of mis-sold personal pensions (the SIB review). In this respect, she believes

the transferred in membership credit should be treated as having restored the Scheme's membership for her during the break, to the extent that she would be eligible to retain SCS for future membership from 1 May 1999. She further contends that at no point did NHS BSA inform her that by not making such contributions she would lose her SCS and at that time she could not afford to pay £3,761.94 shortfall.

30. NHS BSA disputes that it misdirected itself and has said that the incoming transfer was completed in accordance with the application and subsequent election by Mrs S, and was completed in line with normal pension transfer procedures. It further said that throughout the process there was no guarantee that the membership credit would equal any membership Mrs S may have lost and there was no suggestion that the transfer credit would enable or restore entitlement from HSBC. In any case, HSBC had not approached NHS BSA with a view to reinstatement of lost membership in the Scheme. From the evidence I have seen, and as explained by the Adjudicator, there is nothing to indicate that it was for NHS BSA to fully reinstate Mrs S back into the Scheme as if she has not lost her SCS.
31. Looking at all the evidence, I can see that NHS BSA would not have been aware of the offer HSBC made regarding full reinstatement. Further there is no evidence to suggest that Mrs S approached NHS BSA to clarify the difference in the benefits she would receive without paying the contributions and the benefits she would have received if she paid the contributions. I am unable to find that NHS BSA should be held accountable for not making Mrs S aware of the consequences of not paying the shortfall in contributions, when it was HSBC which was dealing with the misselling review. NHS BSA were not aware that HSBC had made Mrs S this offer and Mrs S had not requested information about her situation from NHS BSA. Therefore NHS BSA cannot have come under a duty to warn her about the shortfall in her SCS service at the point when she transferred in.
32. I find that NHS BSA has followed the instructions provided by HSBC appropriately, and that the incoming transfer has correctly secured a transferred in membership credit for Mrs S in accordance with the Regulations and the application she made. The transfer credit does not diminish the impact of the 12-year break in her membership.
33. Therefore I do not uphold Mrs S' complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
15 November 2018