

## Ombudsman's Determination

Applicant	Mrs E
Scheme	NHS Superannuation Scheme Scotland ( <b>the Scheme</b> )
Respondent	Scottish Public Pensions Agency ( <b>the SPPA</b> )

## Outcome

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

## Complaint summary

3. Mrs E attained Mental Health Officer Status (**MHO status**). Her complaint concerns the SPPA not making her aware that the 'doubled years' benefit she receives is measured only in whole years, and not part years. Mrs E says that, had the SPPA made this clear to her, she would have continued employment to attain a further year of doubled service.

## Background information, including submissions from the parties

4. Mrs E joined the Scheme in October 1987. Members who joined the Scheme could attain MHO status after accruing 20 years' service. Every year accrued beyond this point would be counted as double. The Scheme Regulations state that only whole years can be counted as doubled service (see appendix).
5. Mrs E left the Scheme in March 1992 and transferred her benefits to the University Superannuation Scheme Ltd (**USS**), in doing so her rights under the Scheme were extinguished.
6. In October 1995, Mrs E returned to employment with the NHS and transferred her benefits from the USS back into the Scheme. At this point new members of the Scheme were no longer entitled to MHO status. However, a decision was made by the SPPA to "exceptionally" allow the transfer from the USS to be treated as accrued service, resulting in Mrs E's entitlement to MHO status being retained.
7. In June 2012, after enquiring about her MHO status, Mrs E received a letter from the SPPA confirming that the date on which her accrued service would begin to count as

double was 5 October 2007 (**the doubling date**). The letter also went on to show how many doubled years of service Mrs E had accrued since the doubling date:

“Double Service from 05/10/2007 03 Yrs 000 Days”.

8. On 2 October 2016, Mrs E retired. She had accrued eight years and 362 days since the doubling date. As doubled service only includes whole years in its calculation, the eight years was doubled to sixteen, but the further 362 days Mrs E had accrued were not counted as doubled service.
9. Mrs E invoked the Scheme’s Internal Dispute Resolution Procedure (**IDRP**) and complained that the SPPA did not make it clear to her that only whole years would count as doubled service. Mrs E said that had she known, she would have remained employed for the three remaining days in 2016 to attain a further year of doubled service. Mrs E also highlighted that the SPPA website states:

“Each year or part year after completion of 20 years as an MHO is counted twice its length”.
10. Mrs E’s complaint was not upheld at either stage of the SPPA’s IDRP. In summary, the SPPA said that Mrs E’s benefits had been correctly calculated in accordance with the Scheme Regulations, and that it was correct not to include the final 362 days that Mrs E had accrued after the doubling date. The SPPA admitted that the statement from its website is misleading and will look to clarify it in the future. However, noted that this was taken from the employer section of the website, not the members, and describes how part time service would be accrued, rather than full time service. Notwithstanding, the guidance from its website does not override the Scheme Regulations.
11. Mrs E did not agree with the outcome of the SPPA’s decision so brought her complaint to this Office.

## **Adjudicator’s Opinion**

12. Mrs E’s complaint was considered by one of our Adjudicators who concluded that no further action was required by the SPPA. The Adjudicator’s findings are summarised below:-
  - There is no requirement under the Scheme Regulations to make members specifically aware that doubled service is measured in whole years only.
  - The Adjudicator understood why Mrs E found the statement from the SPPA website misleading, but the statement did not specify that days would be included in the calculation of her doubled service. The Adjudicator highlighted that this had been taken from the employer’s section of the SPPA website, and after reviewing the member’s section, the Adjudicator could not find any statement that says days or part years will be included in the calculation of doubled service.

- The letter Mrs E received in June 2012 stated that her double service was three whole years. In the Adjudicators view, Mrs E ought to have been reasonably aware that days would not be included, or at the very least queried how her doubled service was calculated with the SPPA at the time.
  - In addition to this letter, the Adjudicator noted that, in 2016, Mrs E received an annual statement from the SPPA, which said "If you hold MHO status, we have included any doubled years accrued up to the statement date". This statement did not mention that any doubled years will include days or part years.
13. Mrs E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs E 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 E for completeness, which are set out below:-
- Mrs E said that prior to retirement she searched the SPPA website for information with regard to MHO status, and says she relied on the statement which included part years being counted as twice after the completion of 20 years membership which gave her the impression that "part years to me means months".
  - The SPPA apologised for this misleading statement and said it would be changed, however it is still present on its website.
  - Mrs E's says the annual statements she received in previous years gave total pensionable service in years and days, and says "If you hold MHO status we have included any estimated service enhancement accrued up to the statement date". In Mrs E's view, common sense would indicate that MHO and total accrued service are amalgamated. Her annual statements do not say that doubled MHO service is measured whole years only.

### **Ombudsman's decision**

14. The issue at point in this complaint is whether it was reasonable for Mrs E to rely on the statement from the SPPA website explaining how doubled service is calculated. As Mrs E has said, the website states "Each year or part year after completion of 20 years as an MHO is counted twice its length".
15. The letter Mrs E received in June 2012 specified that she had accrued exactly three years of doubled service from the doubling date. At this point, Mrs E had accrued approximately three years and eight months service since the doubling date. Given that there was a noticeable difference between Mrs E's doubled service and accrued service, Mrs E ought to have known how her doubled service was measured, or with reasonable diligence, Mrs E could have made relevant enquiries with the SPPA if she was not certain.
16. Mrs E says that her annual statements say, "If you hold MHO status we have included any estimated service enhancement accrued up to the statement date".

While this refers to the enhancement accrued up to the statement date, it does not refer to how that enhancement is calculated, nor does it suggest that months or days would be included. I do not find that it is reasonable for Mrs E to have relied on this statement, or to have assumed from it that months or days were included as she has said.

17. In addition, as explained by the Adjudicator, Mrs E's 2016 annual statement says, "If you hold MHO status, we have included any doubled years accrued up to the statement date". This statement only refers to years, there is no mention of part years, months or days. If Mrs E had understood the wording included in the previous annual statements to mean that months and days would be included, it would have been reasonable for her to have made enquires upon receiving the 2016 annual statement.
18. I appreciate that Mrs E retired only three days before accruing a further years' service, which would have counted as double. It is also unfortunate that the reference to the way in which MHO status is calculated is misleading on the employers' section of SPPA's website, this should be corrected as soon as possible. However, it is not repeated on the employees' section. The guidance on its website is just guidance it does not override the Scheme Regulations which prescribe the way in which the benefit is to be calculated.
19. I do understand Mrs E's frustration that if she had just completed a further three days service, she would have been entitled to accrue one more year's doubled service. However, now Mrs E has retired there is no provision in the Scheme Regulations which allows Mrs E to accrue a further three days of service. The SPPA have correctly calculated Mrs E's doubled service, using only whole years accrued after the doubling date, in accordance with the Scheme Regulations.
20. Therefore, I do not uphold Mrs E's complaint.

**Anthony Arter**

Pensions Ombudsman  
31 August 2018

## Appendix

### **The National Health Service Superannuation Scheme (Scotland) Regulations 2011**

#### R3 Mental health officers

(5) Subject to paragraphs (6) to (8), where this regulation applies—

(a) each complete year of the member's pensionable service as a mental health officer in excess of 20 years will count as 2 years' pensionable service.