PO-21236

Ombudsman's Determination

Applicant:	Dr N
Scheme:	NHS Pension Scheme (the **Scheme**)
Respondent:	NHS Business Services Authority (**NHS BSA**)

Complaint Summary

1. Dr N complained about the level of information he was provided with when he was deciding to purchase additional years of contributing service under the Scheme, with a view to increasing his pension benefits under the Scheme. He says that he was not told about the risks that making the purchase posed to the level of his pension benefits and he only became aware of those risks when he received the breakdown of his entitlement in 2013. His complaint was determined on 20 July 2017. Dr N initially applied for permission to appeal. However, the parties subsequently applied jointly for a consent order. The High Court issued the Consent Order, on 26 January 2018, remitting the following matters to me for further consideration:-

    - Dr N contends that his 51 days' service, in various short-term roles prior to his qualification as a doctor, ought not to have been regarded as reckonable service under the Scheme. He contends that, at the end of each piece of work, he was categorised as a leaver and was only entitled to a refund of contributions. He contends that this service was not, therefore, reckonable service.

    - Dr N wrote to Manchester Area Health Authority (**MAHA**) on 8 April 1981. He contends that this letter is material, and that I should refer to it and take it into account in my Determination, because:-

        - It records his having been told that he was not eligible to purchase added years because his "superannuation" started on 21 October 1979 (the start date of his first temporary position as a clinical clerk).

        - It contained his explanation of his previous periods of service and stated his "proper contract" started on 1 February 1981. He also asked if superannuation he had paid as a student would be taken into account.

        - The response, dated 29 April 1981, stated that he was eligible to purchase up to seven years of 'added service'.

- The part of the application form completed by his employing authority included a statement to the effect that it had been made within the 12 months' time limit specified in the relevant regulations, despite the employing authority having exercised its statutory discretion to waive that time limit in Dr N's case.

Summary of the Ombudsman's Determination and reasons

2. The complaint shall be upheld against NHS BSA because it has not applied Regulation 25 of The NHS Pension Scheme Regulations 1980 (SI 1980/362) (the **1980 Regulations**) (in their form at the time when Dr N contracted to purchase his added years), or Regulation 72 of the 1980 Regulations, correctly in Dr N's case.

Detailed Determination

Material facts

3. Dr N worked as a clinical clerk for the following periods: 21 to 29 October 1979; 3 to 14 July 1980; 17 to 31 July 1980; and 5 to 12 October 1980. This amounts to 44 days. He worked as a locum house officer from 18 to 24 December 1980; a further seven days. These periods of paid work constitute the 51 days which Dr N contends should not be treated as reckonable service.

4. Regulation 37 of the 1980 Regulations provided for the return of contributions made to the Scheme on a member ceasing to be an officer in certain circumstances. The relevant parts of Regulation 37 are set out in Appendix 1. Dr N's contributions for the 51 days in question were not returned to him.

5. From 1 February 1981 to 31 January 1982, Dr N was a house physician. From 1 February 1982 to 31 January 1985, Dr N was a senior house officer. From 1 February 1985 to 31 January 1986, Dr N was a trainee practitioner, before qualifying as a practitioner on 1 February 1986.

6. On 8 April 1981, Dr N wrote to NHS BSA. He said that he was a house officer at Manchester Royal Infirmary and he was interested in buying extra years of superannuation. Dr N said he had applied to his local office and had been told this could not be allowed because his superannuation had started on 21 October 1979, which was "over a year ago". Dr N went on to say:

> "… However they said that you can authorise such a purchase in justifiable circumstances and my case, I believe, is. You see I did not qualify in medicine until last year and this is my first ever contract with M.A.H.A. as a qualified doctor. The above mentioned record is due to a locum I undertook at that date as a final year student and the contract was for 5 working days and surely it would have been unreasonable to have applied for a purchase of extra years at that stage. Since then and until I qualified in Dec. 1980 I did a total of 3 other locums as a student again twice for a week each time and the third for 10 days or so. I did one week as a locum as a qualified doctor but that was

> just before last Christmas and well within the 12 months within which one has to make the purchase. My proper contract started 1st Feb. 1981. I, therefore, would appreciate your consideration regarding this. I also wish to know whether the superannuation I paid as a student will be taken into consideration in this respect."

7. In its response, dated 29 April 1981, NHS BSA said Dr N was eligible to purchase up to a maximum of seven added years. It said the cost would be based on Dr N's age and salary at the time of application. NHS BSA said:

> "For each added year purchased your annual pension and lump sum retiring allowance would be increased by 1/80th and 3/80ths respectively of your superannuable pay in the final year of service (or the best of the last 3 years) …"

8. Dr N was told to obtain an application form and information on the methods of payment from his employing authority if he wished to proceed. He was also told an application had to be made within two months of the letter.

9. Dr N's employer wrote to him, on 21 May 1981, setting out details of the costs. Dr N was told the purchase of six years would require a lump sum of £504.44 and instalments of £40.50 per month for 10 years. He was told the purchase of five years would not require a lump sum payment and the monthly instalments would be £39.02. The letter went on to say:

> "… if you decide to purchase five added years there will be an increase in your pension of £337.50 and in your lump sum of £1,012.50. This calculation has been based on your current salary of £5,400 and I am sure that you will realise that tax relief and your salary on termination are the most significant elements of the purchase."

10. On 5 June 1981, Dr N completed an application form to purchase five years by equal instalments over 10 years; the final instalment being due in 1991. His employer completed part two of the form. This included the statement:

> "This application was made within the time limits specified in the regulations and within 3 months of the quotation of cost being supplied …"

11. Dr N's application to purchase five added years was subsequently approved. The "material date" in respect of his purchase of added years was stated on the form as 8 March 1981[1] (the **Material Date**). Dr N's first payment under the added years application was due in July 1981 and the last one in June 1991.

[1] It is not clear why that date is stated to be the 'material date'. Paragraph (2) of Schedule 7 to the 1980 Regulations defines the material date as the date on which the application form to purchase added years is received by the member's employing authority. The form which Dr N submitted appears, from the date stamp, to have been received by the employer on 19 June 1981. However, the relevant legislation did not change between 8 March 1981 and 19 June 1981, so I do not consider this point to be material to the outcome of Dr N's complaint.

12. Regulation 25 of the 1980 Regulations contained provisions relating to the purchase of added years and the application of those added years (see Appendix 1). At the Material Date, Regulation 25(3) provided:

> "Where an officer has completed payments in accordance with paragraph (1)[2] or paragraph (2) [of Regulation 25], the number of added years so purchased shall be added to his contributing service."

13. Regulation 25(4) provided that, where any payments in respect of the purchase of added years were outstanding, but at least one payment had been made:-

(a) on the retirement due to ill-health or death of the officer, the outstanding payments would be waived and the officer would be credited with the full number of added years that he had originally intended to purchase; or

(b) on ceasing to be an officer for any other reason, a proportion of the added years that he had elected to purchase, equivalent to the proportion that the amount actually paid bore to the total cost of purchasing the added years, would be added to his contributing service.

14. Regulation 25(5) provided:

> "In the case of a practitioner, in respect of each year that is added to his contributing service by virtue of paragraph (3) or paragraph (4) there shall be added to his remuneration for the financial year in which the material date (as defined in paragraph 2 of Schedule 7) falls the remuneration on which the payments under this regulation were calculated, and a proportionate part of such remuneration shall be added in respect of any part-year."

15. Regulation 67 of the 1980 Regulations provided that a practitioner would be treated as an officer for the purposes of the Regulations, whilst he remained on the list of at least one Family Practitioner Committee.

16. Regulation 25 (as it was in 1981) and Regulation 67 are set out more fully in Appendix 1.

17. In 1982, Dr N received a refund of contributions. The contributions had been deducted in error by South Manchester Health Authority in respect of some locum work. Dr N had carried out the locum work while simultaneously being in full-time employment as a Senior House Officer by Salford Area Health Authority. It was not possible for both employments to be treated as pensionable.

18. On 30 April 1985, while Dr N was in training to become a practitioner, NHS BSA wrote to Dr N in response to an enquiry from him. It said:

> "I can advise you that your service as a Trainee GP will continue to be classed as officer status for our record purposes until you complete your training and

[2] Paragraph (1) referred to Schedule 7 to the 1980 Regulations. Schedule 7 allowed for added years to be paid for by instalments, as had been agreed in Dr N's case.

> either go into partnership as an Assistant GP or become a Principal Practitioner. At benefit stage you will receive separate awards for your officer service and Practitioner service."

19. Dr N qualified as a practitioner on 1 February 1986.

20. In 1986, Dr N received a refund of contributions deducted in error for the period 1 June 1985 to 31 January 1986.

21. On 26 November 1987, NHS BSA wrote to Dr N concerning his monthly instalments to purchase added years. It confirmed that the instalments had been correctly paid until 31 January 1986, when he had changed Family Practitioner Committee (**FPC**). It advised him that details of his payments made with his new FPC had not been received and it suggested he contact the FPC to confirm how much had been collected. NHS BSA went on to say:

> "When you retire, your benefits will be based on all your superannuable service in the National Health Service. Therefore as you are currently purchasing an additional 5 years' service this will enhance your overall service on which your benefits will be based, thereby giving a higher rate of pension and lump sum payable."

22. Dr N completed his payments for his purchase of added years in 1991.

23. In June 1995, NHS BSA provided Dr N with an estimate of benefits. This quoted an annual pension of £8,488.59 and a lump sum of £25,465.77. NHS BSA said it had worked out the benefits from the total pensionable pay for practitioner service; uprating each year's pay. The practitioner's basic pension was 1.4% of total pay. NHS BSA said it had increased Dr N's practitioner's pension to include his hospital or community service before becoming a principal. It said this was done by multiplying the basic pension by 5,342 days' total service and dividing by 3,466 days' practitioner service.

24. NHS BSA said it had estimated Dr N's annual pension and lump sum from his hospital or community service to be £2,024 and £6,072, respectively. It said this was based on 5 years and 87 days' reckonable service and £30,910.44 pensionable pay. NHS BSA went on to provide details of potential ill health retirement benefits. It also said the estimate included credit for five years' additional service purchased. NHS BSA has since stated that the five years' additional service should have been included in Dr N's pre-practitioner service.

25. Further estimates of Dr N's benefits were provided in October 2008, July 2009, August 2011, October 2012 and October 2013. In these estimates, the additional service was included in Dr N's pre-practitioner membership.

26. In November 2013, Dr N's financial adviser contacted NHS BSA. He said that he had a query about a doctor (unnamed) who had purchased five 'old style' added years in 1981 and had become a GP in 1986. The adviser said that the added years had

taken the doctor's pre-practitioner period to 10 years and 139 days (*sic*) and, therefore, Regulation 72 of the 1980 Regulations (see Appendix 1) was not available to him. The adviser said the next most generous option was to treat all the doctor's income as practitioner income and dynamise it. He said this gave the doctor a pension of £58,154; whereas, without the added years, Regulation 72 would provide him with a pension in excess of £61,000. The adviser asked if there was any flexibility to dis-apply the old style added years contract.

27. The parties consider that Dr N's complaint centres on the operation of Regulation 72 of the 1980 Regulations. Regulation 72 provided for a practitioner's service as an officer, which had been completed prior to his first becoming a practitioner, to be treated as practitioner service. However, Regulation 72 only applied if the total duration of that officer service did not amount to more than ten years.

28. Regulation 72 was replaced by paragraph 9 of Schedule 2 to The NHS Pension Scheme Regulations 1995 (SI 1995/300) (as amended) (the **1995 Regulations**). The effect of paragraph 9 is essentially the same as that of Regulation 72 with regard to the reference to 10 years or fewer of contributing service. The relevant parts of paragraph 9 of Schedule 2 of the 1995 Regulations are set out in Appendix 1.

29. The reference to dynamising all of the doctor's income relates to flexibilities agreed between the British Medical Association and the Department of Health in 2004. Under this agreement, members who cannot benefit from Regulation 72 may receive the most beneficial of three options:-

- A pension based on officer pay treated as practitioner pay and dynamised. Added years are included in the calculation on the basis of the officer salary used to calculate the cost and dynamised from the material date of the contract.

- A separate final salary pension is calculated for any officer membership after becoming a practitioner. The pension for pre-practitioner officer service and practitioner service is based on pre-practitioner pay being treated as practitioner pay and dynamised. Added years are included.

- A separate final salary pension is calculated for the pre-practitioner officer service, including any added years. The pension in respect of practitioner service and any later officer service is based on the later officer pay being treated as practitioner pay.

30. In subsequent correspondence, NHS BSA said that it had calculated that the most beneficial option for Dr N was to dynamise all officer and practitioner pay to produce a practitioner pension. It included his added years by way of a pay credit of the officer salary used to calculate the cost. Dr N's financial adviser calculated that the dynamised option produced a pension of £63,357, which was a less favourable benefit than that which Dr N would have received had he not purchased his added years (£66,884).

Summary of Dr N's position

31. It is submitted on Dr N's behalf:-

- NHS BSA should have refunded Dr N's contributions for the 51 days in question.
- Dr N did not complete or sign any joining/re-joining forms, in respect of membership of the Scheme, in 1980.
- Dr N began his vocational training for general practice on 1 February 1982. He was required to spend at least two years practising hospital medicine and one year as a trainee in general practice. He chose to undertake three years in hospital medicine whilst waiting for a position to become available in a prestigious GP training practice.
- Dr N first applied to buy added years by telephone prior to April 1981. This application was rejected as being out of time. NHS BSA deemed his service to run from his first temporary role as a student. He was told to put his application in writing if he wished it to be reconsidered.
- Dr N wrote to NHS BSA, on 8 April 1981, explaining the nature of his earlier work. NHS BSA responded, on 29 April 1981, agreeing to discount this work and allowing him to buy up to seven years' additional service. This demonstrates its arbitrary and contradictory approach.
- NHS BSA was aware of Dr N's pre-appointment service but did not treat it as non-vested service and refund his contributions.
- In 1982, Dr N worked for another health authority, in addition to his full-time post with MAHA. Pension contributions were deducted from his pay for this second post. He was treated as a locum for this additional post and was not entitled to contribute to the Scheme in respect of these payments. His contributions were refunded.
- Had Dr N worked for 10 years or fewer as an officer, all of his service could be treated as practitioner service under Regulation 72(1). This would result in higher benefits.
- Dr N contacted NHS BSA on numerous occasions but it did not respond.
- On 25 June 1995, NHS BSA stated that Dr N's practitioner pension had been increased to include hospital/community service before becoming a principal. The clear indication was that his added years would be added to his practitioner service and not his officer service.
- It was not clear from subsequent benefit estimates that the added years had been added to his officer service because a single pension figure was provided and the service was not separated. It was not until October 2013 that Dr N received a statement which showed his officer and practitioner service separately.

- Dr N's five added years should be attributed to him at the point he retired and not at the point he purchased them. They should be treated as "pension scheme service"; not officer or practitioner service. For officer service, an officer would work for ten years and enjoy ten years' salary growth before the benefits became paid up. Dr N has five years' salary growth and the purchase of five years. Therefore, he misses out on the extra five years' salary growth and misses the benefit of the five years being based on his final salary.

- Dr N did not work under a contract for service for the disputed period; therefore, he would not have been an employee for the purposes of the Scheme.

- Dr N was engaged on a casual basis as a worker and not as an employee. He did not have a contract of employment and did not enjoy any employment rights, including eligibility for membership of the Scheme. Dr N's solicitor cites a previous Ombudsman's decision (78750/1, 1 March 2011).

- Dr N did not give explicit consent for contributions to be deducted. These were, therefore, unauthorised deductions for the purposes of the Payment of Wages Act 1960.

- Regulation 37(1) stated:

  "… a person who on ceasing to be an officer does not become entitled to receive payment of any other benefits under these regulations and who holds no other employment in which he is an officer shall be entitled to receive from the Secretary of State a return of his contributions."

- Regulation 37(2) stated that contributions must not have been returned to the officer and should be attributable to service which "was reckonable under these regulations". "Service" is defined as "in relation to an officer of an employing authority, means continuous employment by that authority as an officer".

- "Continuous employment", as referred to in Regulation 37(2), is not defined. Each of Dr N's short periods of student work should be treated as separate periods of continuous employment. Therefore, he ceased to be an officer on numerous occasions from 1979 to 1980 and did not receive a refund of his contributions.

- The use of the phrase "entitled to receive" in Regulation 37(1) does not impose a requirement to request a return of contributions. It should be NHS BSA which initiates the return. At the very least, Dr N should have been made aware of his entitlement to a return of his contributions in relation to the 51 days of intermittent work.

- Dr N did enquire about his service as a student but received no response. It was not unreasonable for him to assume that the service would not count.

- Dr N has suffered financial loss as a consequence of poor record keeping on the part of NHS BSA.

- Dr N was misled by the information he received in relation to the purchase of added years.

- Dr N should have been warned about the risk to his practitioner pension.

- It is not accepted that there was no way for NHS BSA to predict Dr N's future career as a general practitioner. It was necessary for Dr N to complete a number of years as an officer before he could pursue a career in general practice. General practice is a common career path for many doctors. Therefore, NHS BSA should have foreseen that someone working as an officer might become a practitioner. It should have included a warning about the risks relating to the purchase of added years.

- NHS BSA was aware that Dr N was training to become a GP a few years after he purchased added years. It should have warned him then. He still had time to rectify the damage by not undertaking the additional year of hospital medicine.

- Dr N followed the simplest and most straightforward career path for a GP. He trained in a variety of specialisms. Had his intention been to specialise as a hospital doctor, he would have sought only one specialism.

- At the point Dr N became a GP, his status changed from officer to practitioner and this must have been known to NHS BSA. It should have informed him about the changes to his pension status. This would have allowed him to take advice on how this would affect his pension. The failure to do so was maladministration on the part of NHS BSA and, as a result, Dr N has suffered a loss.

- It is not accepted that NHS BSA did not give financial advice, either direct or indirect, to Dr N to the effect that the purchase of added years could only be beneficial. For example:-

  - In its letter dated 29 April 1981, it stated: "For each added year purchased your annual pension and lump sum retiring allowance would be increased by 1/80th and 3/80ths respectively of your superannuable pay in the final year of service (or the best of the last 3 years)."

  - In a letter of 21 May 1981, it stated: "The benefits you will receive as a result of you purchasing six added years will be an increase in your pension of £405 and in your lump sum of £1,215, or if you decide to purchase five added years there will be an increase in your pension of £337.50 and in your lump sum of £1,012.50. This calculation has been based on your current salary of £5,400 and I am sure that you will realise that tax relief and your salary on termination are the most significant elements of the purchase."

  - In its letter of 26 November 1987, it stated: "… as you are currently purchasing an additional 5 years' service this will enhance your overall service on which your benefits will be based, thereby giving a higher rate of pension and lump sum."

- Had Dr N been aware of the risk, he would have purchased a smaller number of added years or spent a shorter period of time in service as an officer. He could have taken six months out of service so that he only accrued nine years and six months' officer service.

- Dr N's financial advisers have calculated that, with the five added years, his annual pension will be approximately £60,000. Had he purchased four added years, it is estimated his annual pension would be £69,900. Had he not purchased any added years, it is estimated his annual pension would be £62,577. This future loss of benefits is in addition to the considerable cost of purchasing the added years in the first instance.

Summary of NHS BSA's position

32. NHS BSA submits:-

- All full-time employment was pensionable, irrespective of the length.

- A short service refund is only paid when the member claims it. Claims are not usually received when there is a short break in membership. It has no record of Dr N requesting a refund.

- Payment becomes mandatory when the break in service is 12 months or more. In Dr N's case, none of the breaks in service reached 12 months in length.

- Dr N received a refund of contributions in 1982 because those contributions had been paid in error. This was not because Dr N was working as a locum but because he was already a member in full-time employment; work in excess of full-time is not pensionable.

- Dr N first became a Scheme member on 21 October 1979. When he first enquired about purchasing added years, the request was deemed out of time because it was more than 12 months after he first joined. However, it had discretion to extend the time limit and accept a late application. It exercised its discretion in Dr N's case. It did not discount the short periods of membership.

- The calculations prepared by Dr N's financial advisers rely upon information which was not available at the time he purchased the added years. They have applied 30 years of hindsight.

- The career path of a GP is often complex and regularly involves a number of hospital employments before entering general practice. Such employments can involve a very good salary but may be at the expense of lower practice income, with obvious implications for pension calculations.

- The information provided for Dr N was unambiguous and based on established facts; it did not involve speculation about the path his career might take. Since Dr N did not question the information at the time, it assumes he was content with the purchase of the added years at the time.

- Interpreting Regulation 25(3) so that only a proportion of Dr N's added years is included relies on a narrow interpretation of the word "completed".

- Regulation 25 must be considered as a whole:-

  - Regulation 25(1) sets out the eligibility conditions which must be satisfied for an application to purchase added years to be accepted. The purpose of Regulation 25(3) is to confirm that, if the terms of the contract have been satisfied in full; that is, the applicant has made all the contributions which were due, they are credited with all the added years they applied to buy.

  - Regulation 25(4) deals with a number of different situations when the applicant has not satisfied the terms of the contract in full. It begins with a clear statement that to be eligible to count any of the added years the applicant must have made at least one payment. If no payment has been made, it suggests the application must be void. Where at least one payment has been made and the applicant dies or retires because of ill health, sub-paragraph (a) applies so that they are credited with all the added years they intended to buy. Under sub-paragraph (b), a partial credit is awarded to an applicant who has made some but not all of the payments due and who does not settle the balance. Sub-paragraph (c) provides a limited opportunity for an applicant to resume an incomplete purchase.

- The 1980 Regulations do not specify where in a member's service the added years will be credited. It argues that, in order to apply a proportion of the added years at the date on which Dr N became a practitioner, it would be necessary for the 1980 Regulations to say much more. In particular, it argues that the 1980 Regulations would have to say that the added years were to be apportioned at this date and define how the added years purchased after this date were to be treated.

- The way in which old style added years are taken into account was reviewed by the Department of Health and Social Care (**DHSC**) in 1998. The DHSC has advised that the correct interpretation of the regulations is to include added years at the material date; that is, the date of purchase. Inclusion is, of course, subject to Regulation 25(4) if payments were not completed. Given that the 1980 Regulations are silent on the apportioning of added years when an officer becomes a practitioner, it must be directed by the DHSC's policy. The DHSC is responsible for the regulations and its policy confirms its intention.

- It believes that a previous Ombudsman's Determination considered this issue but it has been unable to locate a reference for this.

Conclusions

33. Dr N has raised two key questions:-

- Should the disputed 51 days count as reckonable service?

- Should he have been given more warning as to the potential disadvantages of purchasing added years?

34. As explained from paragraph 55 onwards, at the point at which Dr N qualified as a practitioner, his added years should not have been credited to his contributing service. On that basis, the inclusion or otherwise of the disputed 51 days as reckonable service has no bearing on whether Regulation 72(1) applied to Dr N, as his total contributing service at that point would have been significantly less than ten years regardless of the inclusion of those 51 days. However, as required by the Consent Order, I have further considered the issues set out in paragraph 33 above, taking into account Dr N's letter to MAHA of 8 April 1981.

Should the disputed 51 days count as reckonable service?

35. With regard to counting Dr N's earlier service as reckonable, his solicitor argues:-

- Dr N did not have a contract of employment and was not an 'employee'. He was employed on an ad hoc basis and was a 'worker'.

- Each time Dr N's period of work ceased, he would have been entitled to a return of contributions. NHS BSA failed to return his contributions as a matter of course, despite there being no requirement for Dr N to request them.

- There is no definition of continuous employment in the Scheme Regulations. Therefore, each period for which Dr N contributed should be treated separately.

- Dr N did not sign any forms in 1980. He did not give any authority for the deduction of contributions.

36. Under current employment law, there are three categories of employment relationship in the job market: employee, worker, and the self-employed. The term 'worker', as we currently apply it, did not come into being until the Employment Rights Act 1996 commenced. Therefore, it does not help to determine Dr N's eligibility for membership of the Scheme in respect of his early service.

37. I note the reference, made on Dr N's behalf, to a previous Ombudsman's determination (78750/1). I do not consider that case to be relevant to Dr N's complaint. That complaint concerned NHS BSA's treatment of a doctor as a deferred member, for the purposes of calculating death benefits, rather than as an active member during periods in which she had not been working. It did not concern any question as to whether the doctor had been eligible for membership of the Scheme in respect of the periods during which she had been working. Therefore, that case does not help to determine Dr N's eligibility for membership of the Scheme in respect of his early service.

38. Regulation 4(1) of the 1980 Regulations provided access to the Scheme for "every whole-time officer whose duties were wholly or mainly administrative, professional or clerical". The key, as far as the Regulations were concerned, was whether the individual was working whole-time hours or not. Although, Dr N only worked for short

periods at a time before 1 February 1981, he was working whole-time hours and was, therefore, eligible to join the Scheme.

39. The process, at that time, was for eligible officers to be automatically entered into the Scheme. Dr N has provided copies of the forms which were completed by MAHA in 1980. The employer's side of the forms were completed but Dr N did not complete the employee's side. However, the forms do not specifically provide for the employee to authorise the deduction of superannuation contributions from his or her wages. Dr N's solicitor has referred to the Payment of Wages Act 1960 and argues that the contributions paid by Dr N were unauthorised deductions. This is straying outside my remit and into issues which are more properly considered employment matters.

40. My role is to determine whether or not Dr N accrued reckonable service in the Scheme between October 1979 and December 1980. This is a question of eligibility for membership and the payment of the required contributions. I find that Dr N was eligible to join the Scheme and, since he paid the required contributions, his early service is reckonable.

41. Under Regulation 37(1) of the 1980 Regulations, Dr N was entitled to a return of his contributions on ceasing membership of the Scheme if he was not entitled to receive payment of any other benefit. NHS BSA did not automatically pay a return of contributions at the end of each period of paid work. It argues that payment becomes mandatory only when there has been a break in service of 12 months or longer.

42. I agree that the 1980 Regulations did not actually require Dr N to request a return of his contributions. NHS BSA was not required to wait for 12 months after the cessation of service to return contributions to an eligible member. However, it does not automatically follow that NHS BSA committed an act of maladministration in deciding not to return contributions automatically before 12 months had elapsed. Regulation 21 of the 1980 Regulations provided for an individual's previous service to be reckonable if he or she re-entered employment as an officer within 12 months and repaid any return of contributions that he or she had received in respect of the previous employment. The implication of Regulation 21 was that such an individual would not necessarily have received a return of his or her contributions, in respect of that previous period of service, before being re-employed within 12 months. It was not inappropriate for NHS BSA to wait to see if the individual concerned would be re-employed within 12 months, before returning contributions. Such practice would have avoided individuals having to repay contributions returned to them on restarting NHS employment within 12 months in order for their previous period of service to count as pensionable service under the Scheme.

43. The refund of contributions paid to Dr N in 1982 was triggered by the fact that he had not been eligible to pay the contributions in the first place, because he was already contributing in respect of whole-time employment. These circumstances did not arise in respect of his earlier service.

44. I note also that the Scheme booklet at the time provided information about the availability of refunds. Dr N would, or should, have been aware that he had paid superannuation contributions. This is clearly indicated on his payslips from that time. There was nothing preventing him from requesting a return of those contributions at that time.

45. Since Dr N did not receive a refund of contributions for any of the periods of paid work between October 1979 and December 1980, I find that each of those periods of paid work became reckonable, under Regulation 21, in relation to his subsequent employments.

Should Dr N have been given more warning of the potential disadvantages of purchasing added years?

46. I move now to consider the information which was available to Dr N when he decided to purchase additional service.

47. Dr N wrote to NHS BSA, on 8 April 1981, expressing his interest in buying "extra years of superannuation". He said that he had been told that his local office could not allow this because, according to their records, his superannuation started on 21 October 1979. Dr N said that he had been informed that NHS BSA could authorise the purchase in justifiable circumstances. He then set out what he considered to be the relevant circumstances in his case; such as the fact that he had not qualified in medicine until 1980 and this was his first contract with MAHA as a qualified doctor.

48. NHS BSA exercised its discretion to extend the period within which an election to purchase additional service could be made. This discretion was available under Regulation 25(1)(a)(i) of the 1980 Regulations, which was in force at that time. NHS BSA did not, as has been suggested, discount Dr N's earlier reckonable service. Nor do I find that it acted in an arbitrary or contradictory manner in exercising its discretion to extend the period within which Dr N could make an election. This was a discretion available to NHS BSA, acting on behalf of the Secretary of State. It is a separate matter from that of the way in which NHS BSA has since applied Dr N's added years.

49. It is clear, from his letter of 8 April 1981, that Dr N was aware that his membership of the Scheme was recorded as having started in October 1979. I note that he asked if the "superannuation" he had paid as a student would be taken into account. In its response, NHS BSA did not address this query. It has been suggested that it was not unreasonable for Dr N to assume that the service would not count. However, this is illogical. Dr N was aware that the records showed that his Scheme membership started in October 1979; that is, the start of the first period of paid work for which he had paid contributions. If this service did not count, there would have been no issue with his request to purchase additional service. In addition, Dr N might have been expected to have queried why he had paid contributions if the service did not count.

50. Dr N was given the option to purchase up to seven years of added service. NHS BSA explained that the cost was based on his age and salary at the time of his application. It also said that, for each added year, Dr N's annual pension and lump sum would

increase by 1/80th and 3/80ths respectively. Dr N opted to purchase five years over a period of ten years.

51. At the time, the Scheme booklet (see Appendix 2) stated:

> "Where a general practitioner has not more than 10 years' hospital service when he first becomes a general practitioner the hospital service is treated as practitioner service for benefit purposes …"

52. The booklet went on to give the example of a person with 20 years' service as a practitioner preceded by 5 years' service as a hospital doctor. It said his superannuable pay as a practitioner would be uprated as shown in the Practitioner's Supplement and then increased by multiplying the total uprated pay by 25/20. The pension was then calculated as 1.4% of the uprated superannuable pay. The booklet did not specifically deal with the position of a practitioner who had entered into a contract to purchase added years prior to becoming a practitioner.

53. I find that the information provided as a matter of course at the time Dr N opted to purchase added years was appropriate. I acknowledge that it did not cater for the circumstances that Dr N now finds himself in. Both the Scheme literature and the correspondence from NHS BSA were more general in nature. However, I find that there was sufficient information available to Dr N to alert him to the potential effects of Regulation 72.

54. Dr N argues that it would have been reasonably foreseeable that he would become a practitioner and that more detailed information should have been provided. I do not find that NHS BSA could have been required to make assumptions about the likely future course of Dr N's career when responding to his request to purchase added years, however simple or straightforward his subsequent career path turned out to be. Nor do I find that NHS BSA was required to monitor Dr N's career path and provide him with subsequent "warnings" about his added years. It would, of course, have been open to Dr N to seek more specific information himself.

The application of Regulation 72

55. Dr N's complaint, of course, arises from the way in which NHS BSA has applied Regulation 72 in his case. That is, NHS BSA has proceeded on the basis that all of Dr N's added years should be credited to him prior to his qualification as a practitioner; thereby crediting him with 10 years and 51 days of contributing or reckonable service as at the date he became a practitioner.

56. Regulation 72 applied to any person who "**on first becoming a practitioner** other than an assistant practitioner is **entitled to reckon** 10 years or less of contributing service otherwise than as a practitioner" (emphasis added).

57. The question is, therefore, whether Dr N was entitled to reckon more than 10 years of contributing service on first becoming a practitioner.

58. Dr N first became a practitioner on 1 February 1986. In order to determine how much contributing service he was entitled to reckon at that time, it is necessary to consider Regulation 25 of the 1980 Regulations, as they were in 1981; that is, when Dr N entered into his contract to purchase his added years of service. This is because Regulation 25 set out some of the terms of that contract.

59. Regulation 25(3) provided that:

> "Where an officer has completed payments … the number of added years so purchased shall be added to his contributing service."

60. Regulation 25(4) provided for (broadly) situations where an individual ceased to be an officer without having finished paying for his added years. It provided that an amount of added years, proportionate to the payments made compared with the total price of the added years that the individual had contracted to purchase, would be added to that individual's contributing service.

61. Regulation 67 of the 1980 Regulations (see Appendix 1), as at 1 February 1986, when Dr N qualified as a practitioner, modified the 1980 Regulations in relation to practitioners so that:-

- The Regulations applied to a practitioner as though he were an officer; and
- A practitioner would not be regarded as having ceased to be an officer whilst remaining on the list of at least one "Family Practitioner Committee".

62. The word "completed" in Regulation 25(3) is key. I consider that the natural reading of Regulation 25(3) is that the additional service purchased should not be added to the member's contributing service until he has finished paying for it. Dr N did not finish paying for his added years until 1991, so his additional service should not have been added to his officer service until then.

63. NHS BSA has drawn my attention to its policy of applying the added years to the member's contributing service at the start of the contract on the Material Date, subject to the individual's ceasing to be an officer before having finished paying for the added years. I do not agree with NHS BSA's application of the added years at the Material Date. As I have explained in paragraph 62 above, I consider that the wording of Regulation 25(3), as at 8 March 1981, is clear that the added years should not have been credited to Dr N's contributing service until 1991; when he had finished paying for them. I disagree with NHS BSA's submission that this is applying too narrow an interpretation to the word "completed" and I do not consider that it stretches the wording of the Regulation beyond reasonable bounds. It is as one would expect; the member may only benefit from the added years once he has paid for them.

64. NHS BSA argues that Regulation 25 must be read as a whole and has referred to Regulation 25(4) (see paragraph 13 above and Appendix 1).

65. To my mind, paragraph (4) simply reinforces what I have said about paragraph (3). It makes it clear that entitlement to reckon the added years is dependent upon the

payment of the agreed contributions; and it is entitlement to reckon that is key to determining whether or not Regulation 72 should apply in Dr N's case. Paragraph (4) makes provision for specific circumstances in which payment is waived or a proportion only of the added years is credited to the member. It covers those circumstances when, for various reasons, the member has **not** completed the purchase of added years.

66. I cannot see that NHS BSA's policy of applying the additional years to an officer's contributing service at the Material Date accords with the provisions of paragraphs (3) and/or (4). On ceasing to be an officer in any of the circumstances described in paragraph (4), a proportion of the added years would have to be removed from the officer's contributing service entitlement (the originally intended full amount of additional service having already been credited on the Material Date). Paragraph (4) is not worded in that way. For example, sub-paragraph (4)(b) provides for a proportion of the additional service that the officer had elected to purchase to be "added" to his contributing service.

67. Dr N did not complete his payments under his added years contract until 1991. Thus, on first becoming a practitioner, he was not entitled to reckon the full five years. At most, if paragraph (4) had applied, he would have been entitled to reckon that proportion of the five years for which he had, by that date, paid additional contributions. On the basis that Dr N began paying for his added years with effect from 1 July 1981, by 1 February 1986, he had completed 4 years and 215 days of his 10-year payment contract. He would have been entitled to reckon 2 years and 108 days of his added years. When added to his actual reckonable service, this would have meant that, on first becoming a practitioner, Dr N was entitled to reckon 7 years and 159 days of contributing service. As that entitlement would have amounted to fewer than 10 years' contributing service, Regulation 72 (now paragraph 9 of Schedule 2) would have applied in that scenario.

68. However, as I have explained in paragraph 61 above, Regulation 67 modified the 1980 Regulations in respect of practitioners so that they were treated for the purposes of the 1980 Regulations as officers. Therefore, paragraph (3), not paragraph (4), applied in Dr N's case. The result of this is that Dr N was not entitled to reckon any of his added years on qualifying as a practitioner in 1986 because he had not completed payment for them in full by that point. He did not complete payment until 1991, so the added years should not have been credited to his contributing service until then. On that basis, Dr N was entitled to reckon only 5 years and 51 days' contributing service on qualifying as a practitioner on 1 February 1986. Therefore, Regulation 72 (or paragraph 9 of Schedule 2) applied in Dr N's case.

69. Further, I agree with Dr N's solicitor that it is significant that Dr N was allowed to continue paying his instalments after qualifying as a practitioner. This suggests to me that NHS BSA understood Regulation 67 to apply, so that Dr N did not cease to be an officer for the purposes of Regulation 25 on qualifying as a practitioner, as NHS BSA clearly did not consider Regulation 25(4) to apply.

70. NHS BSA has suggested that Regulation 25 should have contained further detail as to the application of the added years if it were to be interpreted in the manner outlined in paragraph 68 above. In particular, NHS BSA has suggested that some specific provision would have to be made for the way in which the remaining portion of Dr N's added years is to be treated. NHS BSA has submitted that it considers that it must be directed by the policy set by the DHSC, which is to apply the added years on the Material Date, because the 1980 Regulations contain no express provision as to how added years should be applied in cases such as Dr N's.

71. I consider that sufficient detail is included in Regulation 25. Regulation 25(5) (see paragraph 14 above and Appendix 1), stated quite clearly how added years were to be applied to a practitioner's contributing service, when the time came to apply those added years.

72. By the time Dr N retired, the 1980 Regulations had been replaced by the 1995 Regulations. Paragraph 9 of Schedule 2 to the 1995 Regulations, provides for officer service to be treated as practitioner service in certain circumstances, including (as Regulation 72 of the 1980 Regulations had done) where a member had fewer than ten years' pensionable service as an officer when he or she qualified as a practitioner.

73. Paragraph 9 provides various options for the method of calculating a practitioner's benefits under the Scheme in situations in which his or her pensionable service as an officer is treated as practitioner service. It is for NHS BSA to determine which option under Paragraph 9 would provide the most favourable level of benefits for Dr N. In doing so, NHS BSA will need to apply Dr N's added years in accordance with Regulation 25(5) of the 1980 Regulations, at a notional point in time no earlier than the date on which Dr N paid his final instalment in relation to his purchase of added years, and apply Paragraph 9(1) of the 1995 Regulations (see Appendix 1).

74. I note NHS BSA's reference to a previous Ombudsman's Determination which, NHS BSA submits, considered this issue. NHS BSA has been unable to provide a reference and research undertaken by this office has not unearthed such a case. However, NHS BSA will, no doubt, be aware that I am not bound by previous Determinations. Nor am I bound by the views expressed by the DHSC in its guidance, which are based on an interpretation of the 1980 Regulations which differs from my interpretation.

The Ombudsman's jurisdiction

75. NHS BSA sought clarification as to the extent to which I should be investigating Dr N's case at this stage, having issued a Determination in relation to his complaint in July 2017. NHS BSA suggested that my current investigation should be confined to those two matters specifically referred back to me under the Consent Order, as set out under the heading 'Complaint summary' in this Determination.

76. While I acknowledge that those two matters do not directly concern the question of when the added years' service should have been applied, I am not able to proceed

on the basis of an incorrect calculation. It is also inherent in the appeal judge's decision that Dr N's pension is to be calculated correctly. NHS BSA has indicated its agreement with this aim.

77. I acknowledge that this situation is unusual. I should explain that my office was not made aware that Dr N was seeking a consent order. It was, therefore, unable to provide input to ensure that the wording of the Consent Order resolved unambiguously the issue of the status of my existing Determination. That Determination technically remains binding despite the consent order purporting to remit Dr N's complaint to me to re-determine. My existing Determination would have been quashed had the appeal gone ahead and been upheld, but the Consent Order has not achieved that. Therefore, I am now in the strange position of being required to re-determine the original Determination, even though that original Determination still stands.

78. I have opted to take a pragmatic approach and re-open, re-investigate and re-determine Dr N's complaint. On the basis that it was the Court's intention that Dr N's benefits should be calculated correctly, and with Dr N as the applicant having confirmed that he wishes this analysis to be carried out, I take the view that my re-investigation of his complaint is not restricted to those matters specifically referred to in the Consent Order. I do not consider it appropriate for me to avoid coming to a conclusion as to the correct application of Regulation 72 in Dr N's case, and thereby risk him not receiving the correct benefits as a consequence of a procedural anomaly. The alternative path would be a formal application to the Court to quash the existing Determination and the Consent Order and/or for a new complaint to be made specifically regarding Regulation 72, which I do not consider to be a sensible approach.

79. For completeness, I will mention the judgment in the case of *Sheffield v Kier Group Plc* [2019] EWHC 986 (Ch). In that case, it was found that my jurisdiction did not extend to investigating and determining matters separate from the matter that I had been asked to investigate and determine in that particular case. I acknowledge that Dr N's complaint concerned primarily the inclusion of his pre-qualification service. It did not specifically raise the question of whether his added years should have been considered to be part of his contributing service when he qualified as a practitioner. However, on investigating Dr N's case further, following its remittal to me, it came to light that the addition of his added years to his contributing service at the Material Date had not accorded with Regulation 25(3) of the 1980 Regulations at that time.

80. I consider that the issue regarding the application of Regulation 25(3) is related, albeit indirectly, to Dr N's complaint. The reason for Dr N making his complaint had been that his pre-practitioner service had not been regarded as practitioner service under Regulation 72, when he considered that it ought to have been. The application of Regulation 25(3) affects the operation of Regulation 72, so I do not consider it to be a separate matter from that which I had been asked to investigate.

81. In any case, the Adjudicator who investigated Dr N's complaint following its remittal to me wrote to Dr N's lawyer and to NHS BSA, on 25 October 2018, to explain the relevance of Regulation 25(3) and its application. Dr N's lawyer responded to the Adjudicator, on 6 November 2018, to confirm Dr N's acceptance of the relevance of that issue. He stated that Dr N had no further comment on the Adjudicator's explanation regarding Regulation 25(3)'s relevance or her view that its application resulted in Regulation 72 applying in Dr N's case.

82. On that basis, I do not consider that *Sheffield v Kier* should prevent me from considering the application of Regulation 25(3) as part of this investigation and my Determination in respect of it.

Directions

83. Within 28 days of the date of this Determination, NHS BSA shall calculate Dr N's retirement benefits on the basis that:-

- Regulation 72 of the 1980 Regulations applied to him when he qualified as a practitioner, on 1 February 1986, by virtue of Regulation 25(3) of the 1980 Regulations, so Paragraph 9(1) of the 1995 Regulations therefore applies;
- Dr N's added years were applied, on a date no earlier than that on which he paid the final instalment in relation to his purchase of those added years, in accordance with Regulation 25(5) of the 1980 Regulations; and
- Whichever sub-paragraph of Paragraph 9 of Schedule 2 provides Dr N with the most favourable benefits, taking into account the above, is to be applied.

Anthony Arter

Pensions Ombudsman
14 July 2020

Appendix 1

The National Health Service (Superannuation) Regulations 1980 (SI1980/362) (as amended)

84. As at 5 June 1981, Regulation 4 provided:

> "**Application**
>
> (1) … this Part of these regulations shall apply to the following officers of an employing authority who have attained the age of 18 years -
>
> (a) every whole-time officer whose duties are wholly or mainly administrative, professional or clerical;

85. Regulation 21 provided:

> "**Reckoning as service of previous periods of employment**
>
> (1) Subject to paragraph (6), where a person enters employment as an officer after leaving a previous employment in which he was an officer … the service which was reckonable when he ceased to be employed in that previous employment shall be reckonable in relation to the employment in which he is an officer, if -
>
> (a) he became an officer within 12 months after leaving that previous employment, and
>
> (b) within 6 months after entering the employment of an employing authority he repays to that authority an amount equal to any sum paid to him by way of return of contributions on or after his ceasing to hold his previous employment as an officer, …"

86. Regulation 23 provided:

> "**Reckoning of service in certain continuing employments**
>
> (1) There shall be reckonable for the purpose of calculating the amount of a benefit payable to or in respect of an officer under these regulations, in addition to any period of employment otherwise reckonable under these regulations as service in relation to the employment he has ceased to hold (in this regulation referred to as his "main employment"), any other period of employment which has been reckonable as service under these regulations or the previous regulations and -
>
> (a) which has terminated before or at the same time as the termination of his main employment;
>
> (b) is service in respect of which no benefit under these regulations or transfer payment has been paid;

(c) is not service in respect of which contributions have been returned to the officer and have not been repaid by him; and

(d) is not service which has been followed by any continuous period of 12 months or longer during no part of which the person was an officer.

(2) Where on giving up his main employment an officer continues in some other employment, any period of service which apart from this paragraph is reckonable in relation to one only of those employments shall be reckonable also in relation to the other employment for the purpose of determining whether any benefit is payable to or in respect of him but not for the purpose of calculating the amount of any such benefit."

87. Regulation 25 provided:

"**Purchase of added years of contributing service**

(1) An officer may elect within 12 months of -

(a) first becoming an officer;

…

to make payment in accordance with the provisions of Schedule 7, so that complete years of contributing service may be added to his contributing service:

Provided that -

(i) the time limit of 12 months may be extended to such longer period as the Secretary of State may in any particular case allow, in which event the Secretary of State may vary the provisions of Schedule 7 in such manner as he considers to be appropriate;

…

(2) …

(3) Where an officer has completed payments in accordance with paragraph (1) or paragraph (2), the number of added years so purchased shall be added to his contributing service.

(4) Where any payments in accordance with paragraph (1) or paragraph (2) remain to be made by an officer and at least one payment has been made by him -

(a) in the event of his becoming entitled to pension under regulation 8(1)(a)(i) or dying whilst an officer, the remaining payments shall be waived and there shall be added to his contributing

service the total number of years of contributing service that he elected to purchase and such added service shall be reckonable for the purpose of determining entitlement to any benefit under these regulations;

(b) in the event of his ceasing to be an officer in circumstances other than those mentioned in sub-paragraph (a) of this paragraph, there shall be added to his contributing service that proportion of the service which he elected to purchase as the amount paid bears to the total amount due to be paid, except that, if within 6 months of so ceasing to be an officer he pays the balance of the total amount due to be paid, there shall be added to his contributing service the total number of years of contributing service that he originally elected to purchase, so, however, that the balance of the total amount due to be paid shall be reduced by the amount added under paragraph 4 of Schedule 7 in respect of the period between the date on which he so ceased to be an officer and the date on which the final payment was due; or

(c) if sub-paragraph (b) of this paragraph has applied to him and he again becomes an officer within 6 months in circumstances in which his previous service is reckonable or was taken into account for the purpose of calculating benefits under regulation 8(1)(a)(iv) or 8(1)(a)(v), he may within 3 months of so becoming an officer make the payment that he would have made in accordance with the provisions of Schedule 7 if he had not ceased to be an officer and on making such payment his election under this regulation shall continue to have effect;

(d) the Secretary of State may in any particular case extend any time limit mentioned in this regulation.

(5) In the case of a practitioner, in respect of each year that is added to his contributing service by virtue of paragraph (3) or paragraph (4) there shall be added to his remuneration for the financial year in which the material date (as defined in paragraph 2 of Schedule 7) falls the remuneration on which the payments under this regulation were calculated, and a proportionate part of such remuneration shall be added in respect of any part-year.

(6) …"

88. Regulation 37 provided:

"**Return of contributions**

(1) … a person who on ceasing to be an officer does not become entitled to receive payment of any other benefit under these regulations and who holds no other employment in which he is an officer shall be entitled to receive from the Secretary of State a return of his contributions …

(2) In this regulation the word "contributions" has the meaning assigned to it by regulation 2(5), but only in so far as any sums included in that definition -

(a) have not been returned to the person or, if they have been returned to him, he has repaid the amount he received and any further amount which he is required under these or the previous regulations to pay, and

(b) are attributable to service which was reckonable under these regulations immediately before he ceased to be an officer and in respect of which he has not become entitled to a benefit under these or the previous regulations and no transfer payment has been paid under those regulations ..."

89. As at 1 February 1986, Regulation 67 provided:

"Until he attains the age of 70 years, these regulations shall apply to every practitioner as if he were an officer in the employment of a Family Practitioner Committee and he shall not be regarded as having ceased to be such an officer whilst he remains on a list of at least one Family Practitioner Committee."

90. Regulation 72 provided:

"**Prior service to be treated as practitioner service**

(1) Subject to paragraph (2), where any person on first becoming a practitioner other than an assistant practitioner is entitled to reckon 10 years or less of contributing service otherwise than as a practitioner such service shall be treated as service as a practitioner, the remuneration received in respect of that service being disregarded and, for the purposes of calculating any benefit, the total uprated remuneration as a practitioner being increased by the same proportion as the service as a practitioner has been increased.

(2) This regulation shall not have the effect in respect of a person who first became a practitioner, other than an assistant practitioner, before 31st March 1977, of reducing the benefits which he would have received had the calculation been made under the corresponding provision as it applied immediately before that date."

The NHS Pension Scheme Regulations 1995 (SI 1995/300) (as amended)

91. Paragraph 9 of Schedule 2 provides:

"Officer service treated as practitioner service

(1) Subject to sub-paragraph (3), if a member does not have more than 10 years' officer service on first becoming a practitioner, the member's officer service before first becoming a practitioner will be treated as practitioner service.

(2) For the purpose of calculating any benefit in respect of officer service that is treated as practitioner service under sub-paragraph (1), the member's pensionable pay in respect of that officer service -

(a) may be disregarded and his uprated earnings increased by the same proportion as his practitioner's service is increased by virtue of the officer service being treated as practitioner service under sub-paragraph (1); or

(b) may be treated as pensionable earnings,

whichever is the more favourable to him.

(3) Sub-paragraph (1) does not apply where -

(a) the member first became a practitioner before 31st March 1977 and the benefits calculated under the corresponding provision, as it applied immediately before that date, would have been greater; or

(b) the member's pension in respect of total officer service would otherwise be greater than the member's pension in respect of total practitioner service (where "pension" includes, in each case, any increases payable under Part I of the Pensions (Increase) Act 1971) and the member's total pension would be reduced if the member's officer service before first becoming a practitioner were treated as practitioner service.

(4) The calculation described in sub-paragraph (3)(b) will be made when the member's pension under this Section of the scheme becomes payable. If the member dies before his pension becomes payable, the calculation will be made at the date of his death and by reference to the pension which would have become payable under regulation E1 (normal retirement pension) or L1 (preserved pension) if he had left pensionable employment immediately before that date.

(5) When calculating the member's total officer service and total practitioner service for the purposes of sub-paragraph (3)(b), any increase in the member's service by virtue of regulation E2 or E2A, and

any additional service bought as described in regulation Q1 (right to buy additional service), will be ignored.

(5A) Where a member has more than 10 years' officer service before first becoming -

(a) a practitioner

the member's officer service before first becoming such a practitioner may be treated as practitioner service if it would be more favourable to him.

(5B) For the purpose of calculating any benefits in respect of officer service that is treated as practitioner service under sub-paragraph (5A), the member's pensionable pay in respect of that officer service shall be treated as pensionable earnings.

(5C) If -

(a) any part of the period of a member's officer service is treated as practitioner service for the purposes of sub-paragraph (1) or (5A) (“the converted service”) and,

(b) any part of the converted service has been credited to the member as a result of a transfer-in under regulations N2 or N3 (but not regulation R8(2)) (“the converted service credit”),

the amount of pensionable pay deemed to be received in respect of the converted service credit will be calculated in accordance with paragraph 18 of this Schedule.

(6) Subject to sub-paragraph (8), if a member has, in total, less than one year's officer service on the last occasion on which he ceases to be a practitioner before his pension under this Section of the scheme becomes payable, that officer service will be treated as practitioner service.

(6A) Subject to sub-paragraph (8), if a member has in total, 1 year's officer service or more on the last occasion on which he ceases to be a practitioner before his pension under this Section of the scheme becomes payable, that officer service may be treated as practitioner service if it would be more favourable to him.

(6B) Any officer service which is treated as practitioner service by virtue of sub-paragraph (6) or (6A) shall include any periods of officer service which are concurrent with periods of practitioner service.

(7) For the purpose of calculating any benefit in respect of officer service that is treated as practitioner service under sub-paragraph (6) or

(6A), the member's pensionable pay in respect of that officer service will be treated as pensionable earnings.

(8) If the member has officer service before first becoming a practitioner, sub-paragraph (1) will be applied before sub-paragraph (6) or (6A) and -

(a) neither sub-paragraph (6) nor (6A) will apply to any officer service that is treated as practitioner service under sub-paragraph (1) or (5A); and

(b) any officer service that is treated as practitioner service under sub-paragraph (1) or (5A) will be ignored for the purpose of deciding whether sub-paragraph (6) or (6A) applies.

(9) If any member with practitioner service works in employment as an officer for less than 1 year after last ceasing to be a practitioner, any officer service that is attributable to that employment will be treated as practitioner service.

(10) For the purpose of calculating any benefit in respect of officer service that is treated as practitioner service under sub-paragraph (9), the member's pensionable pay in respect of that officer service will be treated as pensionable earnings.

(11) Where the officer service mentioned in sub-paragraph (6) , sub-paragraph (6A) or sub-paragraph (9) has been credited as a result of a transfer under regulation N1 (member's right to transfer accrued rights to benefits to this Section of the scheme), the pensionable pay in respect of it shall be deemed to be the pensionable pay by reference to which the additional period of service was calculated under regulation N2(3) or N3(2), whichever is applicable.”

Appendix 2

Scheme booklets

Member's Guide 1980

92. Part 24 covered practitioners. Section 24.5 stated:

> "Where a general practitioner has not more than 10 years' hospital service when he first becomes a general practitioner the hospital service is treated as practitioner service for benefit purposes, practitioner benefits being increased proportionately by the length of hospital service, e.g. a person with 20 years' service as a practitioner preceded by 5 years' service as a hospital doctor or dentist has his superannuable pay as a practitioner uprated as shown in the Practitioner's Supplement and then increased by multiplying the total uprated pay by 25/20. Pension is then calculated on 1.4% of the uprated superannuable pay."

93. Part 6 covered leaving the Scheme. It listed three options: preservation of pension rights; transfer of pension rights; and refund of contributions. Members were told to obtain leaflet SDK, which explained the options in more detail.

94. Part 9 covered refunds of contributions. Section 9.1 stated:

> "A member can have all his contributions refunded if he
>
> - is under age 26, or
> - has less than 5 years' service (including qualifying service). (For this purpose qualifying service does not include any added years purchased.)
>
> Members not in these categories will have pension rights preserved, as appropriate, as explained in Section 7.1 although contributions paid in respect of service not preserved may be refunded."

Practitioners' supplement (March 1977)

95. Part 4 of the Practitioners' supplement explained how benefits for doctors and dentists in general practice were calculated. It said:

> "Instead of being based on service and final pay, as shown in Section 9 of the guide to the scheme, a practitioner's benefits are assessed as a proportion of his total pensionable earnings throughout his career but these pensionable earnings are first uprated by percentages representing the increases recommended by the Review Body on Doctors' and Dentists' Pay …"