

Ombudsman's Determination

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

Outcome

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

Complaint summary

3. Dr N is unhappy about the actuarial reduction which applies to the added years she bought within the Scheme, for which she elected a retirement age of 65. She considers the reduction to be unduly harsh and inconsistent with what it would have been had she opted for these benefits to come into payment at age 60.

Background information, including submissions from the parties

4. In May 2002, Dr N became a member of the 1995 section of the Scheme (**the 1995 section**). The normal retirement age for the 1995 section is 60.
5. In 2005, Dr N contacted NHS BSA enquiring about additional benefits.
6. On 19 May 2005, NHS BSA responded saying:

"Your potential calendar length membership to age 60 (your minimum retiring age) is 15 years 348 days. You may be able to purchase 15 years 348 days.

The cost to purchase one year of membership from your next birthday would be 1.85% to age 60 and 1.21% to age 65.

If you took out an additional membership contract to your 60th birthday the maximum you could buy is; 4 years 315 days at full cost – 9%."
7. On 20 March 2006, Dr N completed a form electing to purchase added years amounting to 7 years and 160 days.

8. On 11 January 2016, at the age of 57, Dr N ceased being an active member of the Scheme.
9. Sometime in early 2017, Dr N contacted NHS BSA, requesting a pension statement. She received a response in April 2017; the estimate assumed a retirement age of 60.
10. On 7 May 2017, Dr N queried the calculation which applied to her additional years pension entitlement. She said that if she was obliged to take payment of this at age 60, rather than the date originally selected, the method of pension calculation should be based on the accrual rate that would apply had she initially applied for a contract with a payment age of 60. She asked NHS BSA to confirm that, should these benefits come into payment at age 60, they would be based on the lower accrual rate attached to an original election for benefits at age 60, as opposed to a 0.772% reduction being applied to her age 65 contract.
11. On 6 June 2017, NHS BSA sent Dr N a letter which stated:

“Your added years purchase will be paid alongside your normal NHS benefits. They cannot be left to be paid at age 65 and as you have been out of the scheme for over 365 days the added years purchase has been closed and a credit of 2 years 247 days has been added to your records.”
12. On 4 September 2017, after further exchanges, Dr N formally complained to NHS BSA under the Scheme’s Internal Dispute Resolution Procedure (**IDRP**). The main points of her letter, insofar as they relate to her current complaint were:-
 - If she was obliged to take added years at age 60, then the more reasonable and equitable approach would be to base the pension calculation on the accrual rate that applied in 2006 for the contract intended to provide benefits at 60.
 - It was questionable how it could be correct for members to pay the same overall amount of money into the Scheme and yet be awarded two different added years pensions and lump sums, depending on the age they selected, when payment actually started at the same date.
 - Based on her calculations using an accrual rate for retirement at age 60, this would provide an additional pension of £2,098 per year. This was £350 per year more than the entitlement derived using the accrual rate which applied to benefits payable at age 65, with the reduction factor applied.
13. On 27 October 2017, NHS BSA responded under stage one of the IDRP. It stated:-
 - Where an added years contract ended before the chosen completion date, the member was credited with the amount of extra membership they had bought. If benefits became payable before the chosen completion date, the benefits payable in respect of the extra membership were subject to an actuarial reduction.

- When Dr N signed the added years contract, she confirmed that she had read the Scheme Booklet entitled “Increasing your Benefits” (**the booklet**). This confirmed that members had the option of paying contributions to age 60 or 65.
14. On 7 January 2018, Dr N appealed NHS BSA’s decision. She highlighted that there were two facts that she was not aware of when she signed the contract for added years, which had caused her a financial loss. The first was that a pension in the 1995 section was not enhanced if members took benefits after their normal retirement date (**NRD**). This was not stated in the 2005 scheme booklet. The second was that added years taken to age 65 might provide a lower annual pension and lump sum payment if commenced at age 60, compared with an identical contract where age 60 was selected at the outset.
15. On 19 February 2018, NHS BSA responded under stage two of the IDRP. It stated:-
- The purchase of added years was a long-term commitment. When assessing the costs involved, the Scheme Actuary assumed that the member would not realise the benefits of their election before it had been completed.
 - Payment of benefits before the agreed completion date would result in unfunded liabilities for the Scheme, such as additional pension payments and the early release of the lump sum. These additional costs were not included in the Actuary’s original costing and, to offset them, the pension for added years must be reduced. The scale of the reduction was based on actuarial guidance.
 - Rather than being a penalty, the reduction applied was an actuarial adjustment, to reflect the cost of putting the additional benefit into payment early, and the likelihood that it would remain in payment longer than it otherwise would have.
 - The added years arrangement was administered in accordance with Part Q of the NHS Pension Scheme Regulations 1995 (**the Regulations**). Regulation Q7 provided authority for a reduction to be applied when an election was not completed and when benefits were paid early.
 - The booklet gave information about purchasing added years and the impact on that purchase if a member ceased payment early or retired before his selected date.
16. On 26 March 2018, Dr N appealed again. She noted that the Scheme would be required to pay her pension over the five-year period between 60 and 65; however, her point was that this was not in line with a member who had a contract until age 60. The reduction factor prescribed by the actuaries was 0.772, which gave her 754 days of membership. Had she originally chosen an end age of 60, her membership credit would have been 905 days. A more equitable reduction factor would be 0.926, which would align both contracts. She said NHS BSA’s stage two response was inadequate and it should provide a further response fully addressing her complaint.

17. On 16 April 2018, NHS BSA provided a further stage two response. It did not dispute the calculations Dr N had provided, but said it had calculated her benefits in line with the Regulations.
18. Dissatisfied with NHS BSA's responses, Dr N referred her complaint to this Office.
19. On 10 July 2018, NHS BSA provided its formal response. It reiterated the points made previously and said it felt Dr N had been provided with adequate information on the purchase of added years in order to make an informed decision.
20. On 23 July 2018, Dr N and her representative provided their further comments. The key points were:-
 - Dr N was being forced to accept unfairly reduced benefits without prior knowledge that this would be a consequence of leaving the NHS at any time up to and including age 60.
 - NHS Pensions had not provided appropriate information because it had failed to make clear that continuing employment after her NRD would not result in any pension entitlement accrued up to age 60 being enhanced. It was now evident that it would not have been in Dr N's interest to take out an added years contract with an end age of 65 years
 - The booklet did not explain that, if a member did not complete a contract with an end age of 65 years, and left the NHS before their NRD, they would receive a smaller final pension than someone who selected a contract for age 60 and left service at the same time.
 - Knowing that the 1995 section did not provide for the enhancement of benefits when members continued working past their NRD, NHS BSA ought to have included some form of cautionary wording, informing members that it would not always be in their best interest to work beyond their NRD. This would be the absolute minimum required of NHS BSA to ensure that adequate information was provided.

Adjudicator's Opinion

21. The 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 below:-
 - The payment of benefits was governed by the Regulations. Regulation Q7 applied to the payment of additional service. Specifically, paragraph 6(b) of Regulation Q7 provided that NHS BSA may apply a reduction factor, which was discretionary and determined by the Scheme Actuary. NHS BSA had acted in accordance with the Regulations.

- Dr N said the booklet should have referenced that, if a member did not complete an added years contract with an attached age of 65, and left employment before their NRD, they would receive a smaller final pension than a member in the same circumstances with a contract to age 60. However, the booklet appeared to be a general guide to how a member could increase their benefits in the Scheme. Therefore, it was not necessary for NHS BSA to explain in the booklet what Dr N had contended and it would have been open to her to make her own enquiries.
- Dr N also believed that the booklet ought to have informed members that it would “not always be in the best interest of their pension benefits to work beyond their normal retirement date.” The matter of when to retire was an entirely individual choice.
- It was not obvious that no enhancement would apply should members of the 1995 section chose to retire after age 60. However, NHS BSA’s omission of this point, or its failure to highlight how the different ages applying to an added years contract could affect the level of benefits payable, did not make the booklet incomplete or incorrect.

22. NHS BSA accepted the Adjudicator’s Opinion. Dr N did not accept the Adjudicator’s Opinion and provided the following further comments:-

- At no point had she been offered an explanation as to why it was possible that two different pension entitlements could be derived depending on the choice of an arbitrary retirement date that had no actual influence on the cost to NHS BSA. There was no difference in her mortality risk regardless of the age she selected for her added years contract.
- NHS BSA, through the guidance of its actuary, had the ability to both comply with the Regulations and determine that she was entitled to a reduced pension in the circumstances. This was a poor example of parliamentary scrutiny of the law.
- The Scheme Actuary’s guidance implied that she was likely to live longer by initially contemplating retiring at age 65. As no explanation had been provided on this part of the calculation by NHS BSA, she could only assume that the correction was unjust as it indicated a non-existent change in her mortality risk.
- The Regulations provided the Scheme with the discretion to apply financially discriminatory actuarial corrections in situations where it was not possible to know in advance when these would arise. Hence, NHS BSA had a duty to provide some cautionary warning.
- If such cautionary wording could not be included in the booklet, an additional clause in the signature section of the form for added years would suffice. A suggestion would be: “Note: Choosing an end age of 65 and then leaving the

NHS before age 60 will result in a lower pension than if an end age of 60 was chosen initially.”

- The Adjudicator had suggested that members could make their own enquiries into the matter. This suggestion was not logical and highlighted her main argument. It was not possible to ask appropriate questions in advance as it was not possible to anticipate what was not known.
- NHS BSA said that the purpose of the correction was to offset unfunded liabilities. As the Scheme was not backed by tangible assets, and relied on payments from the Secretary of State, no costs were theoretically incurred as a result of her decision to leave employment earlier than originally anticipated.
- This potential actuarial flexibility in the calculation was known in advance by the Scheme’s administrator. In omitting to make this known, NHS BSA had failed to carry out its role in an open and transparent manner.

23. The Adjudicator subsequently considered Dr N’s further points but her opinion remained unchanged, and she so informed Dr N. Dr N added the following points for the Ombudsman to consider:-

- The issue here was not that NHS BSA could apply a financially discriminatory actuarial correction but whether they should be allowed to do so unchallenged, as this resulted in scheme members being treated inconsistently.
- As no explanation had been forthcoming from NHS BSA on the actuarial correction in question, it was fair to assume that there was no other explanation available to justify why the two added years pension entitlements were not the same. She hoped the Ombudsman would view the complaint from a wider perspective.

24. The complaint has now been passed to me to consider. I agree with the Adjudicator’s Opinion and I will therefore only respond to the key points made by Dr N for completeness.

Ombudsman’s decision

25. The crux of the matter here is the actuarial reduction which has been applied by NHS BSA in calculating Dr N’s added years entitlement.

26. I agree that Regulation Q7 allows NHS BSA to apply such a reduction in line with guidance from the Scheme Actuary. However, I understand that Dr N is no longer specifically disputing whether the Regulations allow it to do so but rather, whether in principle, this should be the case.

27. However, decisions relating to the drafting of legislation are a matter for Parliament and not one which the Ombudsman’s office would comment on.

28. Dr N believes that NHS BSA did not provide adequate information when she made an election for added years. She says it failed to make clear that an enhancement would not apply to members in the 1995 Section working after their NRD; and, it did not point out that different pension entitlements would apply to an age 60 and 65 added years contract, in the circumstances she has outlined.
29. I appreciate that these points would have been beneficial for Dr N to have known at the time. However, the key point is that the booklet is a general guide, a summary. Whilst it did not include the specific information Dr N has mentioned, I do not find this to be an omission amounting to an administrative error. Accordingly, I do not find that NHS BSA needs to take further action in this particular case.
30. Similarly, I cannot agree that NHS BSA had a duty to include in the booklet the cautionary wording Dr N has highlighted, as it is not incomplete or inaccurate in the absence of this. Rather, including this additional information would have been helpful to some members in the situation in which Dr N finds herself and perhaps NHS BSA should consider adding some additional wording either in the next Booklet update or on the added years' form.
31. However, I do not uphold Dr N's complaint.

Anthony Arter

Pensions Ombudsman
15 October 2018