

## Ombudsman's Determination

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

## Outcome

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

## Complaint summary

3. Mrs S has complained that NHS BSA has decided that she no longer holds Special Class Status (**SCS**). This means if she chooses to retire at age 55, she will be subject to an early retirement reduction.

## Background information, including submissions from the parties

4. SCS is defined in the NHS Pension Scheme Regulations 1995 (**the Regulations**, as shown in the Appendix). The Regulations provide that a member who worked as a nurse, physiotherapist, mid-wife or health visitor, may be able to retire at age 55 without being subject to early retirement reductions.
5. From 23 December 1994 to 30 May 2016, Mrs S worked in a variety of roles within the NHS and held SCS.
6. On 31 May 2016, Mrs S took up to the role of Cognitive Behavioural Therapist (**CBT**). This role did not attract SCS. Mrs S' employer, North West Boroughs Healthcare, confirmed that the essential requirements for the role was to be trained to degree level, have a post degree qualification in the field, and an up to date professional registration. Therefore, Mrs S was not able to retain SCS because her nursing qualification was not an essential requirement to work within the role.
7. Mrs S made a formal complaint, through the Scheme's internal dispute resolution procedure. She believed that, as she held a nursing qualification and registration, she should be able to retain SCS, regardless of whether it was an essential requirement or not.

8. NHS BSA did not agree. NSA BSA said that in order to retain SCS, it had to be an essential requirement to hold a nursing qualification. It said the role of CBT was not a nursing role, and it was not essential to hold nursing qualifications.
9. Mrs S remained dissatisfied and brought her complaint to The Pensions Ombudsman (**TPO**) to be independently reviewed.
10. During the course of this Office's investigation, NHS BSA said that if Mrs S had been working with patients suffering from a mental disorder, then she may meet the requirements for Mental Health Officer (**MHO**) status. This also offers members the option to retire at age 55, without being subject to early retirement reductions. I understand that NHS BSA is now in the process of investigating whether Mrs S should have MHO status.

### **Adjudicator's Opinion**

11. Mrs S' complaint was considered by one of our Adjudicators who concluded that no further action was required by NHS BSA. The Adjudicator's findings are summarised below:-
  - In order to hold SCS, the Regulations lay down that a member had to work as a nurse, physiotherapist, mid-wife or health visitor. Mrs S works as a CBT, as this does not fall into one of the categories to hold SCS, NHS BSA had not done anything wrong in making the final decision that she could not hold SCS.
  - Retention of SCS is allowed for nurses if it is an essential requirement to hold a nursing qualification for the role. Although Mrs S does hold a nursing qualification, it is not an essential requirement for the job role. Further, the North West Boroughs Healthcare confirmed that anyone with vocational training to degree level, post qualification training in the field and an up to date professional registration could hold the post, which meant a nurse qualification was not essential.
  - Mrs S said that she is aware of a colleague, working in a similar role, who has been able to hold SCS. However, TPO can only consider the information provided that relates to Mrs S complaint.
  - As soon as Mrs S role changed, NHS BSA updated its records to show she did not hold SCS. Therefore, the Adjudicator considered that the responses have been clear, and no misleading information was provided to Mrs S.
12. Mrs S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs S provided her further comments which do not change the outcome.
13. Mrs S thought that MHO status should be taken into account; this is currently under consideration by NHS BSA.
14. She also said that her manager believes that she meets the requirement for SCS.

15. NHS BSA accepted the Adjudicator's Opinion and did not provide any further comments.
16. I agree with the Adjudicator's Opinion, and I will therefore only respond to the key points made by Mrs S for completeness.

### **Ombudsman's decision**

17. Mrs S has complained that NHS BSA has said she cannot retain SCS. However, throughout the process of this Office's investigation, it has become apparent that the applicability of SCS and MHO status may have been confused.
18. Both SCS and MHO status allow a member to retire at age 55 without being subject to an early retirement reduction. It appears Mrs S has always worked with patients suffering from a mental disorder. Therefore, NHS BSA has agreed to consider whether she should hold MHO status. It is for Mrs S and NHS BSA to review her employment history and decide whether she is eligible. Once this has been completed, should Mrs S remain dissatisfied, she will be able to bring a new complaint to this Office in relation to MHO status.
19. I do not need to wait for NHS BSA's decision on MHO status in order to determine whether Mrs S should hold SCS, as this Determination only relates to SCS.
20. Mrs S is 45 years of age, so she has not yet reached 55. I believe, as Mrs S has not yet had a break in service of over five years, she may be able to go back to her old role and retain SCS, but she would need to confirm this with NHS BSA.
21. When Mrs S moved into the role of CBT, her SCS was removed. This was because she was no longer working as a nurse. The Regulations are clear that in order to hold SCS, a member needs to work as a nurse, physiotherapist, mid-wife or health visitor.
22. NHS BSA has put a policy in place for when nurses move out of nursing roles and into different roles, such as managerial or therapist roles. It allows nurses to retain SCS, if they move into a new role which also includes nursing.
23. When Mrs S moved into the CBT role, although she held nurse registration and qualifications, this was not essential to the role. People with different professional registrations and qualifications would have been able to obtain the position. The job specification says the required qualifications are: vocational training to at least degree level or its equivalent, substantial post-qualification training in Cognitive Behavioural Therapy to at least Diploma level or its equivalent, and up to date professional registration.
24. As nursing is not an essential requirement, NHS BSA confirmed that Mrs S could not retain SCS. I am satisfied that NHS BSA has acted in accordance with the policy it has put in place, in its decision that Mrs S cannot retain SCS as nursing is not an essential qualification requirement for the CBT role.

25. It is not sufficient for NHS BSA to rely solely on qualifications, it needs to consider the work that Mrs S is undertaking as a CBT. I do not consider that a nurse and a CBT are similar roles. A nurse is required to complete different tasks and would require more physical hands on care of patients. A CBT would complete a talking style therapy, which would involve minimal physical interaction with the patients. So, it is reasonable to determine that Mrs S did not meet the criteria for SCS.
26. Although Mrs S has asserted that her manager believes she should hold SCS, ultimately, it is NHS BSA, and not an employer, who can decide this. I agree with NHS BSA's reasons for concluding that Mrs S did not retain SCS when she moved to the CBT role.
27. I do not uphold Mrs S complaint.

**Anthony Arter**

Pensions Ombudsman  
16 July 2019

## Appendix

### NHS Pension Scheme Regulations 1995 - SI 1995/300

R2 Nurses, physiotherapists, midwives and health visitors

(1) Subject to paragraph (2), this regulation applied to a member-

(a) who, at the coming into force of these Regulations-

(i) is in pensionable employment as a nurse, physiotherapist, midwife or health visitor, or

(ii) has accrued right to benefits under this Section of the scheme arising out of a previous period in which she was engaged in such employment and at no time since the last occasion on which he was so engaged has she had a break in pensionable employment for any one period of 5 years or more, and

(b) who spends the whole of the last 5 years of his pension employment as a nurse, physiotherapist, midwife or health visitor.

(2) This regulation shall cease to apply if the member has break in pensionable employment for any on period of 5 years or more ending after the coming into force of these Regulations.

(3) Where this regulation applies-

(a) Regulation E1 (normal retirement pensions) will apply to the member as if the reference in paragraph (1) of that regulation, to age 60, were a reference to age 55;