

## Ombudsman's Determination

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

### Outcome

1. I do not uphold Mrs R'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 R's complaint is that her pension has been suspended as she has exceeded her earnings margin. She says NHS BSA failed to provide her with correct information in relation to what would happen if she retired then returned to work. As a result, she is at a disadvantage because she is neither receiving benefits under, nor is she paying contributions into, her pension.

### Background information, including submissions from the parties

4. In 1985, Mrs R joined the NHS. She is a member of the 1995 Section of the Scheme, which is governed by NHS Pension Scheme Regulations 1995 (as amended) (**the Regulations**). Due to her role in the NHS, Mrs R had Special Class Status (**SCS**), as provided for under R2 of the Regulations (see Appendix 1). That meant she had the right to retire at age 55 with an unreduced pension (normally, this is not possible until age 60). (Normal retirement between 55 and 60 for someone with SCS is referred to as "age retirement".) Latterly, Mrs R was working for the NHS on a part-time basis.
5. In or around January 2018, Mrs R applied to "retire and return" from the Scheme and applied for her benefits to come into payment from her 55<sup>th</sup> birthday, March 2018. She confirmed that she would take a month's break from NHS employment, before returning to work for it for 16 hours a week.
6. Her application included the AW8 form and was submitted by her employer. Section S2 of the Regulations contains the provisions relating to abatement of benefits on return to NHS employment (see Appendix 2). The relevant part states:

“Where this regulation applies, the member’s pension will be reduced to the extent necessary to ensure that the member’s pension plus pay from NHS employment for any financial year after the pension becomes payable does not exceed the member’s previous pay.” [S2(3)]

“previous pay” means, the greater of—(a) final year’s pensionable pay; and (b) the annual rate for any pensionable employment in respect of which the pension referred to in paragraph (1) became payable and which the member held immediately before becoming entitled to that pension.” [S2(14)]

7. On her application, Mrs R indicated she would be re-employed in the NHS from April 2018. In addition, she indicated that her re-employed rate of pay would be £48,750 a year and her part-time pro-rata would be £20,800 a year.
8. Before submitting her application, Mrs R would have been required to review various documents, including: “NHS Pensions: Returning to the NHS after retirement”, which stated:

“If I return to NHS employment after retirement will my benefits be affected?

If you are over the normal pension age (60 for 1995 Section members, 65 for 2008 Section members and State Pension Age or age 65, if later, for 2015 Section members) then your pension will not be affected if you return to work in the NHS... Your benefits will also not be affected if you retired before the normal pension age and:

- you are in receipt of redundancy [my emphasis] benefits and retired on or after 1 October 2011. This is because the unreduced [my emphasis] element of your pension has been funded using some or all of your redundancy compensation lump sum.
- you are in receipt of actuarially reduced early retirement benefits. This is because you have funded the early payment of your benefits by the actuarial reduction.

In all other types of early retirement, including ‘retirement in the interest of efficiency of the service’, your pension may be affected.

If you return to NHS employment... your pension may be subject to a reduction. This is known as “abatement”. Whether your pension is reduced or not will depend upon when you left the Scheme, when you claimed your pension benefits and the type of pension benefits claimed.

Abatement rules cease once you have reached your normal pension age of the Section or Scheme from which you have claimed your pension benefits.

In all circumstances you must remember to tell your new employer that you are in receipt of NHS Pension Scheme benefits and also notify the Scheme’s paying agent [Equiniti] that you have returned to NHS employment.”

9. Mrs R would also have been required to review the “NHS Pensions: Retirement Guide” (**the Retirement Guide**). This stated:

“What if I want to work after I retire?

If you are thinking of returning to NHS employment... you should read the information about working after retirement available on our website... Your pension may be affected, depending on your earnings. It may be reduced or stopped altogether while you are working (we call this abatement). You must tell your employer that you have a pension from this Scheme and write to our paying agents, before you go back to work with the NHS, with the details...

What if abatement applies to me?

We will let you know the amount that you can earn each year without affecting your pension payments. This is called your Annual Earnings Margin.

When your NHS work begins your expected pay for the year will be compared with your earnings margin and if necessary your pension payments will be adjusted. This is done so that overpayments of pension can be avoided wherever possible.”

10. NHS BSA also made available on its website, further information which Mrs R was able to review before deciding to retire and return, including a webpage: “How is abatement calculated if I retire from the 1995 section of the scheme?” This stated:

“In the 1995 section of the scheme, abatement applies where your earnings from re-employment plus the unearned element [my emphasis] of your pension in payment exceed your earnings before retirement. The unearned element is the difference between your annual pension payable and the amount that would have been paid as a reduced pension due to voluntary retirement [my emphasis]. The reduction can be up to the total value of the unearned element and will continue until you reached age 60 or the earnings from your re-employment reduce sufficiently...

The above does not apply if you are a Special Class or Mental Health Officer (MHO) [my emphasis]. Please see the relevant related article for details of how abatement is calculated for Special Class or Mental Health Officer (MHO) members.”

11. Mrs R has also provided evidence that she reviewed a document entitled “NHS Pension Scheme Abatement: Basic overview for employers.” This stated:

“Abatement is the process whereby a member’s NHS pension is reduced pound for pound if their earnings on re-employment in the NHS, plus the unearned element [my emphasis] of their NHS pension, exceed their pre-retirement pensionable earnings.

Following a review of the NHS Pension Scheme, a new abatement formula was introduced for most retirements when the pension is payable from 2 April 2008 onwards. The following guidance is based on the new formula...

1995 Section - pensions subject to the previous abatement formula

Some current and former members are still subject to the previous formula, which is the pension plus new earnings must not exceed the earnings prior to retirement. They are:

- Special classes - the review considered the position of the special classes and concluded that those who were eligible should retain the right to retire with unreduced benefits from age 55. Therefore, where abatement applies to a member of the special classes taking age retirement before reaching age 60, it will continue to be assessed under the previous formula, irrespective of the date on which pensionable employment ended...

Where the previous abatement formula applies to these groups it will continue until the pensioner reaches age 60.

How is abatement calculated under the new formula [my emphasis]?

Abatement will apply if the:

Unearned Pension + New Earnings = more than the Previous Pay."

12. Mrs R's application was processed. Payment was authorised from 2 March 2018. Her lump sum was put into payment but, on checking with her employer, it was found that she would exceed her earnings margin.
13. On 15 March 2018, Equiniti wrote to Mrs R. It said that her earnings margin, the "Annual rate you may earn before your pension is reduced (your annual earnings margin, divide by 52.143 to give the weekly margin)", was £2,294.26. Because her re-employed earnings would exceed that level, her pension was abated in full.
14. Mrs R complained to NHS BSA under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). The key points were:-
  - NHS BSA was applying the Regulations incorrectly because it regarded "previous pay" as actual salary. The Regulations and supporting material implied it was "Final Year's Pensionable Pay" which was determined as whole-time pay.
  - She understood that, as long as (1) the unearned element of her pension plus (2) her actual salary on re-employment, was less than (3) her Final Pensionable Pay, then abatement would not apply to her.
15. NHS BSA responded under stage one of the IDRP and rejected her complaint. She appealed.

16. In September 2018, NHS BSA responded under stage two IDRP. In summary the points were:-

- Where a Scheme member moves from whole-time to part-time work, contributions are based on whole-time equivalent pensionable pay. But membership is scaled based on number of hours actually worked (for example, two years at half standard hours make one year of pensionable membership).
- Mrs R had SCS. But where a SCS member receiving Scheme benefits returns to work before age 60, her earnings in addition to her pension must not exceed what she was earning before retirement.
- If a member remains below her earnings margin, or ceases employment, her benefits are paid without reduction. In any case, abatement rules no longer apply from age 60.
- As part of her application, Mrs R was required to declare she had read the Retirement Guide, which mentioned abatement. Members are also directed to the NHS Pensions website, which includes more information about benefits following re-employment.
- Mrs R disagreed that the abatement calculation should be based on her final year's pensionable pay. However, the definition of "previous pay" in the Regulations was: greater of final year's pensionable pay and the annual rate of pay received prior to employment ending; it could not include earlier years' pensionable pay in the calculation.
- The Regulations also set out that it is the actual pensionable pay a member receives which is used in the abatement calculation. Therefore, it was not possible to consider Mrs R's whole-time equivalent earnings in the assessment.
- The Retirement Guide explained that the earnings margin would be assessed on the expected pay for the year of re-employment. In March 2018, Equiniti confirmed that Mrs R could earn about £2,300 before her pension would be abated.
- Sufficient information was made available to Mrs R, outlining how her pension could be affected if she returned to work.

17. Dissatisfied with NHS BSA's response, Mrs R referred her complaint to this Office. She made the following points:-

- She understood that, as long as the unearned element of her pension, plus her actual salary on re-employment, was less than her Final Pensionable Pay, abatement would not apply to her.
- If abatement should apply, which in any case she disputed, it should be based on the unearned element of her pension; she should not have her whole pension suspended.
- She was not receiving her monthly pension and was not significantly better off than what she would have been had she simply retired and not returned to work.

- If NHS BSA had informed her of the correct position, she would have continued working, rather than retiring and returning, to maximise her pension benefits.
- She phoned Equiniti in February 2018 and asked if she would receive her “extended lump sum”, first payment and monthly pension based on the figures she had submitted. It confirmed her figures and said she would definitely receive her monthly payment.
- She wanted: her monthly pension back-dated from April 2018; to be able to continue working 16 hours a week and receive her benefits, as she understood this was possible; NHS BSA to make clearer in its guidance how exactly earnings on re-employment are calculated; and, an apology for all the distress and inconvenience this matter had caused her.

## **Adjudicator’s Opinion**

18. Mrs R’s complaint was considered by one of our Adjudicators, who concluded that no further action was required by NHS BSA. His findings are summarised below: -

- R2 of the Regulations sets out the provisions in relation to SCS. Members with SCS could retire at 55 with unreduced benefits. But R2 did not override S2 (the abatement provisions). So, whilst in theory Mrs R was eligible to receive unreduced benefits from age 55, in practice they were subject to abatement until age 60.
- Regulation S2 outlined that SCS members who retired and returned would have their benefits abated where their pension plus their earnings on re-employment exceed their pre-retirement earnings. Mrs R accepted that she was not permitted to earn more than a certain amount. However, at no point was she told abatement would be based on last year’s part-time earnings (indeed, the application requested part-time earnings/whole-time equivalent (**WTE**)).
- However, NHS BSA’s application of the Regulations was correct, for two reasons. First, the Retirement Guide provided only a basic summary of how benefits were calculated and paid. It explained that 1995 Section members working part-time would have their benefits calculated on WTE pensionable pay. However, the actual membership used in the calculation would be adjusted based on the number of hours worked.
- Second, whilst Mrs R believed she had paid full contributions, only contributions on the hours worked had been paid; these were not equivalent to the contributions made by a member who worked whole-time over the same period. Were this basis to be used to assess the earnings margin of part-time members, part-time members would be better off than full-time members.
- Mrs R had argued that if abatement applied at all, it should be based on WTE, not part-time yearly earnings. However, the Regulations were clear on this point. Part S2(3) of the Regulations stated: “Where this regulation applies, the member’s pension will be reduced to the extent necessary to ensure that the member’s pension plus pay from

NHS employment for any financial year after the pension becomes payable does not exceed the member's previous pay."

- Under S2(14) of the Regulations, "previous pay" meant: "the greater of: - (a) final year's pensionable pay; and (b) the annual rate of pay for any pensionable employment in respect of which the pension referred to in paragraph (1) became payable and which the member held immediately before becoming entitled to that pension." Therefore, the Regulations supported NHS BSA's interpretation of how abatement was calculated.
  - NHS BSA had provided sufficient information about abatement to allow Mrs R to make an informed decision about whether to retire and return. She would have been able to review the Retirement Guide and "Returning to the NHS after retirement" document. There was also further information on the NHS website.
  - NHS BSA could not provide financial advice. In other words, it could not tell members whether it was in their interest to retire and return.
  - Nor was there evidence that NHS BSA mis-informed Mrs R, by giving her an incorrect earnings margin. So, NHS BSA had not mis-led her into retiring and returning.
  - NHS BSA had suggested Mrs R could cancel her application, re-join the Scheme and return to employment qualifying for SCS. In this way, her benefits could potentially be paid before age 60, though she was still subject to the abatement rules before age 60.
  - In summary, the basis of NHS BSA's abatement calculation was correct, so there were insufficient grounds for re-calculating Mrs R's earnings margin the in the way that she had argued it should be calculated.
19. NHS BSA accepted the Adjudicator's Opinion and made no further comments. Mrs R did not accept the Adjudicator's Opinion and made the following points:-
- Regarding paragraph 19 of the Opinion, in respect of the application requesting part-time earnings, Mrs R said: "the application requested part-time earnings and WTE, again, that is why I phoned [NHS BSA], who confirmed I would be getting my monthly pension."
  - Also, regarding paragraph 25 of the Opinion, where the Adjudicator said NHS BSA provided sufficient information about abatement, Mrs R said: "My informed decision was based on all the above as I was told I would be getting my monthly pension."
  - Further, regarding paragraph 26 of the Opinion, where the Adjudicator said NHS BSA could not provide financial advice, Mrs R said: "I was not asking for specific financial advice just asked if I was going to get my monthly pension, again the answer was yes."
  - Finally, regarding paragraph 27 of the Opinion, where the Adjudicator said NHS BSA did not give Mrs R an incorrect earnings margin, she said "I don't know what evidence [NHS BSA] have re my phone calls and conversations as they have not disclosed this. Basically, it's their word against mine! and I am not believed!"

20. I have considered Mr R's further comments, which do not change the outcome. I agree with the Adjudicator's Opinion and so I will only respond to the key points made by Mrs R for completeness.

## **Ombudsman's decision**

### Application of the Regulations by NHS BSA

21. The crux of Mrs R's complaint is: she understood that if (1) the unearned element of her pension plus (2) her actual salary on re-employment were less than (3) her Final Pensionable Pay, abatement would not apply to her.
22. However, it is important to note that Mrs R does not actually have an "unearned amount". As the webpage "How is abatement calculated if I retire from the 1995 section of the scheme?" outlines, the formula for abating benefits by reference to, first, re-employed earnings and, second, the "unearned element", applies to members taking voluntary early retirement. The unearned element is the amount the pension would have been actuarially reduced for early payment, had the member not retired under voluntary early retirement; in other words, it is the difference between (1) the unreduced pension the member is actually entitled to receive due to voluntary early retirement and (2) the amount she would have received as a reduced pension (reduced because it is paid for longer). However, the same webpage also states: "The above does not apply if you are a Special Class or Mental Health Officer (MHO). Please see the relevant related article for details of how abatement is calculated for Special Class or Mental Health Officer (MHO) members." I am not aware if Mrs R reviewed the article in relation to abatement for SCS members. However, it states:

"If you are a Special Class or Mental Health Officer (MHO) member, abatement applies when your earnings from re-employment plus your gross annual pension exceed your earnings before retirement. In all cases, the gross pension amount used in the calculation is the amount of pension before reduction to pay for any optional bigger lump sum. The reduction can be up to the total value of your annual pension and will continue until you reach age 60 or the earnings from your re-employment reduce sufficiently.

An example of this: £10,000 (Earnings before retirement) ... £5,000 (Earnings from re-employment) + £7,000 (gross annual pension) = £12,000 (This would mean that you have exceeded your earnings before retirement and therefore are subject to abatement) ..."

23. I agree that S2 of the Regulations provides that members who retire/return before age 60 are subject to abatement if their pension plus their re-employed earnings exceeds their pre-retirement earnings (with pre-retirement earnings having the meaning described in S2(14)). That is, "previous pay" means the greater of "final year's pensionable pay" and "the annual rate of pay for any pensionable employment in respect of which the pension referred to in paragraph (1) became payable and



which the member held immediately before becoming entitled to that pension.” So, it is the whole of a member’s pension that can potentially be reduced, and not just the unearned amount (which, in any case, Mrs R does not have, as is explained in paragraph 22 above).

24. Further, whilst Mrs R is correct that SCS members are entitled to receive unreduced benefits at age 55 (this is provided for under R2 of the Regulations, and there is no dispute that she met the relevant criteria), I do not find that R2 overrides S2. That is, whilst Mrs R is in theory entitled (under R2) to receive unreduced benefits from age 55; in practice (under S2) due to the level of her pre- and post- retirement earnings, her benefits can potentially be abated until age 60.
25. To explain this in another way, there is an important difference between “reduced” and “abated”. Scheme benefits taken before members’ normal pension age can be “reduced”, in order to account for the fact they will be paid for longer. Benefits taken on re-employment, however, where those benefits exceed the benefits that would have been received by a member who did not retire (and continued in pensionable employment without taking any benefits) can potentially be “abated”.
26. Therefore, I find NHS BSA did not make an administrative error when it fully abated Mrs R’s pension, after her employer informed it that on re-employment she would she would exceed her earnings margin of approximately £2,300.

#### Provision of information by NHS BSA

27. I accept that NHS BSA could have given Mrs R more information about the fact that her benefits could potentially be reduced after she retired and returned to NHS employment. However, I agree with the Adjudicator that, based on the available evidence, NHS BSA provided her with adequate information. NHS BSA can only provide members with general guidance and information. By definition this is not tailored to members’ individual circumstances; therefore, it cannot be definitive. In particular I note the new abatement calculation, which said that abatement would apply if (1) the unearned pension plus (2) the new earnings was more than (3) the member’s previous pay, was outlined not in a document aimed at members, but in a document designed for use by employers. Therefore, Mrs R should not have relied upon it (if in fact she did so). In any case, the document also mentioned that SCS members remained subject to the previous calculation formula (and the formula was outlined in the relevant section of NHS BSA’s website).
28. Mrs R also says she was told over the phone that she would receive her “monthly pension” (or words to that effect). However, there is no further evidence of what she was told exactly (though NHS BSA does not dispute that she made enquiries about retiring and returning to work). However, even if Mrs R was told that she would receive her monthly pension, I do not find that that amounts to a promise that her pension would not be abated. NHS BSA would have been unable to provide an earnings margin to Mrs R prior to her retirement (and, there is no evidence that it did so in her case) because the assessment can only be made once the member’s

earnings on re-employment have been confirmed by the employer. This is because only it knows the level of earnings that will be paid (and the member must take a one-month break from employment before returning).

29. In general, Mrs R believes that NHS BSA has applied the Regulations incorrectly as it regards “previous pay” as actual salary. In her view, the Regulations and supporting material implied that it was “Final Year’s Pensionable Pay” which was determined as whole-time pay. However, the general literature, including the NHS Pension Scheme “Guide for Members” provides only an overview of how benefits are calculated. Whilst it outlines that 1995 Section members working part-time, will have benefits calculated on a whole-time equivalent pensionable pay; the membership used in the calculation is based on the number of hours actually worked.
30. NHS BSA has confirmed that though Mrs R believes she had paid full contributions, only contributions on the hours worked have been paid, and these are not equivalent to the contributions paid by a member who worked whole-time for the same period. If whole-time equivalent earnings were used in order to assess the earnings margin of part-time members, they would have an unfair advantage over full-time members. I therefore do not find that NHS BSA has made an administrative error in this regard.
31. It should also be noted that , the principle of abatement is that members who retire and return to work, who may often work fewer hours than before they retired, should not be better off than members who continue in pensionable employment without taking their benefits.
32. NHS BSA has suggested Mrs R could cancel her ‘retire and return’ application and repay any benefits she has received. She could then potentially re-join the Scheme and continue to accrue benefits. If she returned to employment attracting SCS, she could potentially receive benefits before age 60 (although she would remain subject to abatement rules until age 60, if she chose to continue working). I find that this is a reasonable suggestion in the circumstances. Mrs R should contact NSH BSA directly if she wishes to pursue this option.
33. Therefore, I do not uphold Mrs R’s complaint.

**Anthony Arter**

Pensions Ombudsman  
30 January 2019

## **Appendix 1**

### **The National Health Service Pension Scheme Regulations 1995**

#### **Nurses, physiotherapists, midwives and health visitors**

R2.—(1) Subject to paragraph (2), this regulation applies 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 rights to benefits under 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 she 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 her pensionable employment as a nurse, physiotherapist, midwife or health visitor.

(2) This regulation shall cease to apply if the member has a break in pensionable employment for any one 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 pension) will apply to the member as if the reference, in paragraph (1) of that regulation, to age 60, were a reference to age 55; (b) if the member leaves pensionable employment because of redundancy, but without becoming entitled to a pension under regulation E3 (early retirement pension on grounds of redundancy), regulation L1 (preserved pension) will apply as if the references, in paragraphs (1), (3) and (4) of that regulation, to age 60, were references to age 55.

(4) Where, in accordance with paragraph (3), a member becomes entitled to receive a pension before age 60, the amount payable shall—

(a) in the case of a female member, be calculated by reference to all of her pensionable service under the scheme; and (b) in the case of a male member, be calculated only by reference to pensionable service on or after 17th May 1990.

(5) Subject to regulation Q6(4), if the member chooses to pay for additional service or unreduced retirement lump sum by regular additional contributions under regulation Q6, contributions may be made from the next birthday following the exercise of the right to do so, until the member's 55th, 60th or 65th birthday, whichever the member chooses, and that date will be the chosen date under regulation Q6(3).

(6) For the purposes of paragraphs (1) and (2), pensionable employment includes employment that qualified the member for benefit under a health service scheme.

(7) For the purpose of calculating the 5 year period referred to in paragraph (1)(b), "pensionable employment" does not include additional service bought under regulation Q1 or a period in respect of which a refund of contributions has been paid under regulation L2.

## Appendix 2

### The National Health Service Pension Scheme Regulations 1995

#### **Reduction of pension on return to NHS employment**

“S2.—(1) This regulation applies, until he reaches age 60, to a member in respect of whom a pension is payable under any of regulations E1 to E5 or L1, who continues in, or subsequently returns to, NHS employment.

(2) A member to whom this regulation applies must inform his employer, and any other person that the Secretary of State may specify, that his pension under the scheme has become payable.

(3) Where this regulation applies, the member’s pension will be reduced to the extent necessary to ensure that the member’s pension plus pay from NHS employment for any financial year after the pension becomes payable does not exceed the member’s previous pay.

(4) A member’s pension will be reduced as described in this regulation whether or not the member is included in the scheme in respect of the employment after his pension becomes payable and regardless of any provision of these Regulations under which a member may be treated as having left NHS employment without actually leaving.

(5) For the purposes of paragraph (3), the amount to be taken as the member’s previous pay shall—

(a) be increased in each financial year by the amount by which a pension beginning on the date on which the member’s pension under the scheme became payable (or, if earlier, the member left pensionable employment) would have been increased under Part I of the Pensions (Increase) Act 1971 at the 6th April falling in that financial year; (b) in the case of a person who holds a continuing employment (otherwise than as a practitioner), be increased by the annual rate of pay in respect of the continuing employment; (c) in the case of a person who is employed as a practitioner in continuing employment, be increased by the average of the annual amounts of uprated earnings in respect of the last 3 financial years prior to the pension referred to in paragraph (1) becoming payable.

(6) For the purpose of calculating the reduction to be made under paragraph (3) in respect of any part of a financial year, the amount of the member’s “previous pay” will be reduced proportionately.

(7) This paragraph applies to a person who held a part–time pensionable employment immediately before the pension described in paragraph (1) became payable and who, within the 12 months preceding the date on which the pension became payable, held a concurrent part–time pensionable employment.

(8) Where paragraph (7) applies and the concurrent part–time pensionable employment terminated before the pension described in paragraph (1) became payable, previous pay shall be increased as described in paragraph (9).

(9) For the purpose of paragraph (8), previous pay shall be increased by the annual rate of pay in respect of the concurrent part-time employment mentioned in that paragraph or, if higher, that part of the pensionable pay for that employment which falls within the 12 month period mentioned in paragraph (7).

(10) This paragraph applies to a person who within the 12 months preceding the date on which the pension described in paragraph (1) became payable, was in pensionable employment as a practitioner.

(11) Where paragraph (10) applies and the pensionable employment as a practitioner terminated before the pension described in paragraph (1) became payable, previous pay shall be increased as described in paragraph (12).

(12) For the purpose of paragraph (11), previous pay shall be increased by the average of the annual amounts of the member's uprated earnings in respect of the pensionable employment as a practitioner mentioned in that paragraph.

(13) For the purpose of paragraph (11), "uprated earnings" means the same as in paragraph 11(2) of Schedule 2.

(14) For the purposes of this regulation—

"annual rate of pay" means the annual rate of so much of the member's pensionable pay immediately before his pension became payable as consisted of salary, wages or other regular payments of a fixed nature plus so much of his pensionable pay as consisted of fees and other regular payments not of a fixed nature as was payable during the last year before his pension became payable;

"continuing employment" means a pensionable employment which a person held immediately before he became entitled to a pension under the scheme and which he continues to hold whether it is pensionable or not;

"NHS employment" has the same meaning as in regulation S1(5);

"pension" means the amount of pension paid under the scheme for any financial year, plus any increases to that pension payable under Part I of the Pensions (Increase) Act 1971 for that period;

"pay" means the amount of pensionable pay received by the member during that financial year from NHS employment (or what would have been his pensionable pay had he been in pensionable employment); and

"previous" pay means, the greater of— (a) final year's pensionable pay; and (b) the annual rate of pay for any pensionable employment in respect of which the pension referred to in paragraph (1) became payable and which the member held immediately before becoming entitled to that pension."