

## Ombudsman's Determination

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

## Outcome

1. I do not uphold Mrs N's complaint and no further action is required by NHS BSA

## Complaint summary

2. Mrs N has complained that NHS BSA has miscalculated her pension in respect of her part-time working since 2015. This has resulted in the loss of approximately 15% of her pension. The complaint is that the scheme was maladministered resulting in the calculation of her pension not being in accordance with documents available and received.

## Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. Mrs N's date of birth is 9 June 1959. She worked for the NHS from 1978, apart from a short period for childcare, until her retirement. She joined the NHSPS in 2001 when working full-time for a General Practice (**the Practice**). In April 2005, she became a full-time Nurse Practitioner Partner of the Practice.
5. From 2005 Mrs N was a non-GP provider in the Practice, which meant that her earnings were based on a percentage of the partnership profits. She remained in full-time employment until 2015 when she reduced her hours.
6. Mrs N was a member of the 1995 section of the NHSPS. The NHSPS is governed by regulations; the regulations relevant to Mrs N's case being the National Health Service Pension Scheme Regulations 1995 (**the Regulations**).
7. From 1 April 2004 the Regulations were changed to allow non-GP providers to participate in the NHSPS.

8. NHS BSA issued a benefit quotation to Mrs N on 11 June 2014 (**the 2014 quotation**), based on the last membership information provided by her employer as at 31 March 2013. The quotation showed a pension accrued to date of £12,630.41 and a lump sum cash benefit of £37,891.24. The projected benefits to her Normal Pension Age (**NPA**) of 60 were £19,574.22 and £58,722.67 respectively.
9. The quotation explained that her pension was based on one-eightieth of final pensionable pay for each year of scheme membership. Pensionable pay was calculated using the pay figures reported to NHS BSA. It said that for part-time working NHS BSA calculated pensionable pay as if it were for whole-time working. Membership was accrued as one day's membership for each day of whole-time working and for part-time working the membership accrued was proportional to the hours or sessions worked compared with the whole-time equivalent hours or sessions.
10. The quotation also said that for estimation purposes NHS BSA had assumed that Mrs N's current membership pattern was maintained up to the projected NPA.
11. In the quotation, NHS BSA said, "Whilst we have made every effort to ensure that this quotation is accurate, you should be aware that this statement **is an estimated quotation only**" [original emphasis].
12. Mrs N says that her Independent Financial Adviser (**IFA**) telephoned NHS BSA, on 7 November 2014, for advice on how part-time work affected membership. She says that, on 11 November 2014, the IFA advised her that her pension accrued to date would not be reduced at all by moving to fewer sessions per week.
13. She says that based on this advice she decided, in April 2015, to cut down her whole-time hours from seven sessions to six sessions per week.
14. Mrs N intended to take early retirement in March 2019.
15. On 12 July 2018, Primary Care Support England (**PCSE**) emailed Mrs N to confirm receipt of her End of Year Certificate (**the Certificate**). PCSE confirmed that she would not suffer a reduction in her pension through the late receipt and processing of the Certificate.
16. Mrs N wrote to NHS BSA on 13 July, 31 July, 6 August and 7 September 2018. She also sent several emails. Despite receiving an automated acknowledgement saying it would reply within two days, no substantive response was received. She requested: details of contributions made by the Practice and her; the basis of those figures, that is salary and percentage contribution; confirmation that all payments were up to date; and the investment growth. She also asked how the benefit was calculated and the revaluation factors applied for each year, together with an estimate of her pension commencing on 9 June 2019.
17. In November 2018, Mrs N was informed that she was to be treated as a whole-time officer. She says this was never advised to her nor was it stated in any of the

correspondence she received or any of the information readily available on the NHS pension website.

18. On 20 February 2019, Mrs N complained under stage one of the NHSPS Internal Dispute Resolution Procedure (**IDRP**). She said that:-

- NHS BSA had incorrectly calculated her total pensionable pay. She had been told, in NHS BSA's letter of 22 November 2018, that the pensionable pay was calculated as £108,261.74. However, this did not take into account that this figure was her part-time income and should be increased in accordance with Regulation R5(4) (see Appendix 1).
- This has deprived her of 1/7<sup>th</sup> of her pension and lump sum payment.
- The letter of 22 November 2018 was the first letter setting out her total pensionable pay since she started working part-time.
- The Regulations were not readily accessible through the NHS pensions website.
- She had not been informed of the change to the Regulations, which was applied from 1 April 2004.

19. NHS BSA responded on 12 April 2019. It said:-

- Mrs N had been employed as a non-GP provider. This meant that the relevant information for her pay was set out under the heading of non-GP provider on Page 6 of the NHSPS Member Booklet (**the Booklet**).
- It enclosed a copy of the basic administration guide that further confirmed that, as a non-GP provider, she was afforded whole-time officer (not practitioner) status. Information relating to part-time officers and the uprating of pay was not applicable to non-GP providers.
- The Regulations were available to view on the NHS BSA website.
- Furthermore, although NHS BSA did not inform members individually of changes to the Regulations, it did always update employers via the Employer Newsletter, and these were also available to members on the website.
- It was only able to pay benefits calculated in accordance with the Regulations for non-GP providers and had no discretion to do otherwise.

20. Mrs N escalated her complaint to stage two of the IDRP on 5 June 2019. She said that:-

- In contravention of Regulation R5(4), NHS BSA had not calculated her total pensionable pay figure correctly as it had not taken into account that she switched to part-time working in April 2015. She contended that she was entitled to have her total pensionable pay enhanced up to the equivalent for full-time working.

- She was not asking for discretion in the application of the Regulations, only that her total pensionable pay be calculated in line with all published documentation and letters to her, in particular those dated 9 July 2009 and 11 June 2014.
- Her pay based on the application of Regulation R5(4) would be 16.66% higher, reflecting a larger share of the Practice's profits, which themselves would be enhanced by the reduction in the use of locum staff. 16.66% of the pension quoted resulted in a loss of £3,930 p.a.
- NHS BSA had accepted there had been service shortcomings and that she would seek redress for the inconvenience and distress caused.
- She had relied on all the readily available information in the Booklet, the correspondence received from NHS BSA, the information available on the NHS BSA website and the specific letters of 9 July 2009 and 11 June 2014 in making her decision to reduce her sessions.

21. NHS BSA responded on 31 July 2019. It said:-

- As a non-GP provider, Mrs N was treated as a whole-time officer in accordance with Regulation R1(3) (see Appendix 1).
- Benefits were based on 'pensionable pay'. Regulation C1 (see Appendix 2) contained a general definition of what constituted pensionable pay. However, this definition was modified for non-GP providers as a result of the application of Regulation R1.
- The modified definition was contained in Schedule 2, paragraph 3 of the Regulations, headed 'Meaning of pensionable earnings' (see Appendix 3). In the case of a non-GP provider, pensionable earnings were the difference between practitioner income and any permissible practice expenses, in other words the profits.
- Because non-GP providers did not receive benefits based on salary or wages the Regulations required that they complete an annual certificate of pensionable profits as set out in Schedule 2, Paragraph 23 of the Regulations (see Appendix 4).
- The Booklet included on page 6, under the heading 'What counts as pensionable pay/pensionable earnings', a statement that for a member who is engaged as a non-GP provider their pensionable earnings are "as set out in the GP providers certificate of pensionable earnings."
- The Certificate was accompanied by guidance notes which confirmed that non-GP providers were treated as whole-time officers, regardless of how many hours they worked.

22. Mrs N says that to confuse things further, she again received a letter from the NHS BSA, dated 13 July 2019, which said that she was being treated as a whole-time member of the NHS pension scheme with regards to part-time work.

23. Mrs N's position:-

- It is clear from the two letters from NHS BSA dated 13 July 2019 and 11 June 2014, that she was being treated as a normal member of the NHSPS with regards to part-time work. However, in November 2018 she was informed that she was to be treated as a whole-time officer with different treatment for part-time working. This was never advised to her previously, nor is it stated in any of the correspondence she received or any of the information readily available on the NHS BSA website.
- In April 2015, she decided to cut down her whole-time hours from seven sessions to six sessions. This naturally resulted in her share of the profits from the partnership being reduced. It was clear in all the correspondence and from the NHSPS website that the rate at which her pension accrued would be reduced but the pensionable pay would be correspondingly increased. This is set out in Page 21 of the Booklet.
- This way of calculating accrued years and final pensionable salary is the only way that any of the documents she has located deal with the issue of part-time work. There is no distinction between any of the forms of remuneration. The documents are very clear that whole-time officers have their final pensionable pay enhanced, with reduced accrual rates applying when they become part-time.
- In the letters dated 13 July 2009 and 11 June 2014, NHS BSA state that it calculates pensionable pay as if it were for whole-time working and that the accrued membership is proportionate to the hours or sessions worked when compared with the whole-time equivalent. This is what she is asking for, the pay being calculated for whole-time and the part-time service accruing as proportionately less.
- She relied on these letters when deciding to reduce the sessions she worked from seven to six per week. She says that if she had reduced her sessions by, say, 50% this would have meant her pension would be halved.

24. NHS BSA's position:-

- Regulation R5(4) applies only to those members who are employed and paid salary or wages.
- The Regulations include separate and specific provisions for the administration and calculation of scheme benefits for non-GP providers.
- The Regulations have been applied correctly and contain no provision to enable Mrs N's part-time share of the profits to be increased in the way she is seeking.

- The quotations to which Mrs N has referred contained generic notes which do not override the Regulations.
- She completed an annual certificate of pensionable profits which contained guidance notes that confirm she would be treated as a whole-time officer.
- A number of Technical Newsletters were issued between 31 March 2004 and 8 August 2007 which set out the change in the Regulations allowing non-GP providers to participate in the NHSPS. These communications were issued to all NHSPS employing authorities. This would have included all GP practices, including the one where Mrs N worked.
- The change included confirmation that non-GP providers would accrue NHSPS membership on a whole-time officer (non-practitioner) basis and introduced the Annual Certificate of practice NHS pensionable earnings, which was to be completed by GPs and non-GP providers.

25. After reviewing NHS BSA's response, Mrs N added the following comments:-

- Nowhere in Regulation R does it state that whole-time officers are treated differently. In fact, she believes that the wording covers all members.
- The Technical Newsletters referred to by NHS BSA should have been incorporated into the Regulations and the Booklet. She points to wording on page 5 which shows that she comes under the definition of NHS staff (officers), a group which it says includes general practice staff and non-GP providers. Page 21 of the Booklet, dealing with part-time staff, appears to apply to this group.
- She also points to guidance provided by the Pensions Advisory Service (**TPAS**), which shows that members must be advised about changes to their pension in situations such as: a change in the rate of accrual; changes in the salary used to work out the pension; and changes in the way pensionable service is calculated.
- While she notes that it states that a non-GP Provider is treated as a whole-time officer, she says there is no statement that contradicts regulation 5(4) in the Regulations and provides no contradiction to the guidance for members as to how non-GP providers are treated. She contends that a document that is intended to provide guidance to filling in a form, and whose sole purpose is to provide that guidance, should not be used or relied on by NHS BSA to set out the Regulations.
- The 2014 quotation was specifically in response to a request from her financial advisor, and clearly set out how part-time working was calculated. It is totally irrelevant that it is generic. It is a quotation that she relied on, along with other published information, to make a decision, that has now severely impacted her. It is incumbent on NHS BSA to send out factual and correct information, not an incorrect generic letter.

- The second last paragraph of the response stating, “I submit that when (sic) [Mrs N] was not entitled to rely on her own interpretation of the notes enclosed with letters of 2009 and 2014”, is, at best, inflammatory. It is quite clear what is expressly stated, and her interpretation is exactly as written in the letters and on page 21 of the Booklet.

## **Adjudicator’s Opinion**

26. Mrs N’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:-

- The fact that Mrs N became a non-GP provider in April 2005 does not appear to be in dispute. As a result of that change, she was no longer salaried and her earnings were based on a share of the partnership profits.
- Mrs N has based her complaint on the wording of two quotations, one in 2009 and the other in 2014. The Adjudicator said he was disregarding the 2009 quotation as this was dated some six years before Mrs N decided to reduce her hours and therefore could not reasonably be relied upon due to the passage of time. Furthermore, the argument pertaining to both is essentially the same.
- Looking at the 2014 quotation, it was made clear that it was an estimate only. It also said that NHS BSA had assumed that Mrs N’s current membership pattern was maintained up to the projected NPA. This of course included the fact that she would continue to work full-time.
- In the Adjudicator’s view, this should have been sufficient to alert Mrs N to the fact that she could not rely on the information contained in the 2014 quotation in deciding whether to reduce her hours.
- With this in mind, the Adjudicator acknowledged that Mrs N had said that she asked her IFA for advice on how part-time work would affect her membership. Following a conversation with NHS BSA, he told her that her ‘pension accrued to date’ would not be reduced by moving to fewer sessions per week. She said that it was based on this advice that she had decided, five months later, to reduce her whole-time hours from seven sessions to six sessions per week.
- There was no evidence to show what specific questions the IFA asked NHS BSA, or what answers he was given. It was not clear whether he was aware of her status as a non-GP provider, or what the implications of this were in terms of how she would be treated under the Regulations. It was likely that he did not, as Mrs N herself appeared to have been unaware.
- It therefore could not be said for certain that the advice was tailored to a non-GP provider, as it could not be assumed that the IFA specifically brought this to the attention of whoever he spoke to. Accordingly, without further information

supporting Mrs N's position, it could not be said that, on the balance of probabilities, the advice specifically took into account Mrs N's non-GP provider role. Without this, the Adjudicator could not conclude that incorrect information was provided.

- Looking at the availability of information regarding the treatment of non-GP providers, NHS BSA had pointed out that a number of Technical Newsletters were issued between 2004 and 2007, which set out the change to the Regulations allowing non-GP providers to participate in the NHSPS. There was no reason to believe that these had not been received by the Practice.
- Mrs N said that she had not been told about the change to the Regulations. But there was no reason for her to be informed as, at the time the change became effective, she was not a non-GP provider, so the change did not apply to her.
- At the time Mrs N moved to being a non-GP provider it was to be expected that any implications of that change, including remuneration and the impact on pension and other benefits, to have been clarified with her. However, this would have been a matter for her and the Practice, and not NHS BSA.
- Furthermore, she was consequently required to complete the Certificate each year. The Adjudicator acknowledged that Mrs N would not have been the person to fill in much of the Certificate, but she would have had the responsibility of ensuring it was correct and signing it. This would have given her the opportunity to review the guidance notes, as instructed by the Certificate: "Please refer to the guidance notes when completing this certificate".
- As an example, the Q&A notes attached to the 2014-2015 Certificate said, under the heading 'Non GP providers pensionable pay':

"A non GP provider (i.e. a shareholder who is not a GP) is classed as a whole time Officer for NHS Pensions Scheme purposes."

- And under 'Frequently asked questions' it said:

"Q. I am a non GP Provider; do I still complete the certificate?"

A. Yes. Every non GP provider must complete the certificate annually. As non GP providers are classed by the Scheme as **'whole-time officers' (regardless of the hours they work)** [my emphasis] they can only be 'pensionable' in one practice/centre and therefore are only required to complete one certificate. By virtue of the fact that non GP providers are classed as whole-time they must decide, after seeking expert advice, which of their NHS posts should be pensionable."



- With regard to the Booklet, it was important to note the following wording on Page 3:

“This guide is intended to provide you with a general overview of the benefits provided by the 1995/2008 NHS Pension Scheme. We have taken great care to get the details right at the time of publication but it does not give a complete or legally binding statement of the law and regulations which govern this Scheme. Nothing in this guide can override the Regulations which set out the conditions of entitlement and determine the rate at which benefits are payable. In the event of any conflicting information, the Regulations will prevail. ... If you are in any doubt about how your benefits are calculated or what you may be entitled to, please contact your local pension administrator or NHS Pensions”.

- Page 5 of the Booklet split the membership into two main groups. The first group consisted of ‘NHS staff (officers)’ and ‘Practice and approved employer staff (officers)’, while the second group is classed as ‘Practitioners’. The definition of ‘Practice and approved employer staff (officers)’ is shown as “general practice staff, non-GP providers and eligible staff of an independent provider granted access to the Scheme...”

- Page 21 of the Booklet appeared to refer to the ‘Practice and approved employer staff (officers)’ group and said, under the heading ‘Members working part time’:

“For calculating benefits, membership means the actual amount of membership you have built up in this Scheme. For example someone who has worked part time, 50% of standard full time hours, for 20 years will have 10 years’ membership counting towards their benefit calculations. The other main factor in calculating benefits, final years’ pensionable pay, or reckonable pay, is based on the full time equivalent salary for that job. In the example given the 50% part time worker may have earned £12,500 a year but for the purpose of calculating benefits the 100% full time rate of £25,000 is used.”

- So, this could be construed to mean that non-GP providers fall within the group whose part-time earnings are adjusted to their full-time equivalent.
- However, Page 6 of the Booklet, made clear that for a member who is engaged as a GP or non-GP provider ‘Pensionable earnings’ are “as set out in the Providers certificate of pensionable income...”
- This did appear to be a contradiction, but as the note on Page 3 states, it is the Regulations which are overriding and set out the conditions of entitlement and determine the rate at which benefits are payable.
- Regulation R5(4) made clear that for the purpose of calculating a member’s final year’s pensionable pay in respect of part-time employment, the member’s

pensionable pay will be the amount that would have been paid in respect of a single comparable whole-time employment.

- Regulation R1(3) showed that non-GP providers are classed as whole-time officers, regardless of the hours worked. It therefore followed that, in Mrs N's case, she is treated as working full-time and her pensionable pay was not subject to any adjustment even though she worked part-time.
- Regulation C1(1) (b) showed that pensionable pay for non-GP providers is calculated in accordance with paragraphs 3 and 4 of Schedule 2. Those paragraphs in turn show that pensionable earnings are based on practitioner income less practice expenses.
- Regulation 23(2) showed that the Certificate records the totality of the member's pensionable earnings.
- Mrs N had argued that the Regulations were not readily accessible through the NHS BSA website. The Adjudicator acknowledged that there is not a direct link from the homepage of the website but pointed out that there is a clearly shown search facility which can be used to lead to the Regulations. Furthermore, they can be easily found by using any of the generally available search engines.
- The Adjudicator was satisfied that overall there was sufficient information available to Mrs N, which showed that non-GP providers are classed as whole-time officers, regardless of the hours worked, and that their pensionable earnings are as set out in the Certificate.
- The Adjudicator concluded that NHS BSA had not misinformed Mrs N as to her pension entitlement, that there was sufficient information available to her and that the Regulations had been applied correctly in using the earnings shown on the Certificate without adjustment.

27. Mrs N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs N provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mrs N.

28. Mrs N says:-

- The Adjudicator considered that the quotation in 2009 could not reasonably be relied upon due to the passage of time and yet he expected her to rely on Technical Newsletters issued between 2004 and 2007, that have never been provided to her at the time or during the dispute.
- If the Technical Newsletters were specifically in relation to members participating in the NHSPS, they should have been issued directly to the members concerned. NHS BSA should not have relied on cascading information down.
- She does not dispute that the 2014 quotation was only an estimate due to the final pensionable salary and that the working pattern was unknown. However, the issue

was that it is very clear that her accrued time and pensionable pay is adjusted for part time working.

- She relied on these quotations, particularly the one issued in 2014 just prior to her decision to reduce her working hours, and readily available information in the Booklet and from her IFA.
- NHS BSA was fully aware that her status had changed so why was it that she and the IFA were not given the correct information with regards to the accrued pension.
- As the way her pension was calculated had changed, she should have been informed. NHS BSA never issued any annual summary between 2014 to late 2018 when she had to force the issue by raising the lack of response with my Office.
- Regulation R5 does not show that she is treated as working full time and her pensionable pay was not subject to any adjustment even though she worked part time. NHS BSA's view of what it wants the regulation to say, is not correct and has not been communicated to the affected members.
- Mrs N maintains that nowhere does it state that Regulation C1(1) (b) contradicts Regulation R5 or that R5 does not apply in her case.
- Where is the definition of whole-time officers and statement stating that their accrued benefits are reduced if they reduce their hours? NHS BSA was aware of ambiguity in the Regulations and their published documentation. This should have been changed in one of the revisions.
- She is not asking NHS BSA to override any of the Regulations as the only place where working part time is discussed is Regulation R5. This should be used to calculate her pensionable pay. Despite continuous correspondence, NHS BSA cannot show why it is ignoring regulation R5, and where its interpretation is outlined.
- The Booklet is very specific; she comes under the icon NHS staff (officers) not practitioners as she is a non-GP provider.
- The Regulations were not accessible from the NHS BSA website, while all the other documents were readily available, such as the Booklet. Therefore, it is not unreasonable that she should rely on the website and the information contained on it, not through searching on the worldwide web.
- She is simply asking for a fair reward for her many years of service to the NHS. She says it is clear and undisputed that she was misinformed in the letter of June 2014, just months before she started her part time work pattern.

## **Ombudsman's decision**

29. NHS BSA must operate the NHSPS in accordance with the Regulations. It has no discretion in this. However, it is not responsible for the wording of the Regulations, that is for Parliament to decide.
30. NHS BSA is responsible for the administration of the NHSPS, it relies heavily in that on its relationship with employers, both in providing it with timely and accurate data and in ensuring relevant information is provided to the members.
31. One aspect of that relationship is that Technical Newsletters, and other similar documents relating to the running of the NHSPS, are not issued directly to the membership but are sent instead to employers to then be communicated and applied to those members affected by them. Mrs N may consider this unreasonable, but I disagree. Not only is it logistically unrealistic to expect that NHS BSA could provide each member with the information relevant to them, such documents are often specifically written in such a way for an audience who can understand the implications and apply them correctly. The development of the NHS BSA website may have broken down that structure to a degree, but Technical Guidance remains under the Employer Hub, which to my mind is correct.
32. Mrs N has focussed on the wording of Regulation R5 as evidence that her pension has been calculated incorrectly. She says that Regulation R5 does not show that she is treated as working full time when she was only working part-time.
33. But she cannot rely on this regulation in isolation, it must be taken in the context of other relevant regulations. Regulation R1(3) explains that non-GP providers are classed as whole-time officers regardless of the hours worked. Therefore, I agree that R5 does not apply to Mrs N in the way she believes as she was a non-GP provider.
34. She also maintains that she relied on the quotation issued in 2014 and readily available information in the Booklet and her IFA. She says that the Regulations were not readily accessible from the NHS BSA website and therefore it is not unreasonable that she should rely on the website and the information contained on it, in particular the Booklet, and not through searching on the worldwide web.
35. But, as the Adjudicator pointed out, the note on Page 3 of the Booklet not only made it clear that nothing in the Booklet could override the Regulations, it also provided a link to the Regulations.
36. I therefore do not accept Mrs N's claim that the Regulations were not readily available to her or that she had to simply rely on the wording in the Booklet.
37. With regards to the quotation issued in 2014, I find that there was nothing intrinsically wrong with the information provided at the time. It made clear that that it was based on the assumption that Mrs N's current membership pattern was maintained up to the projected NPA.

38. The wording regarding part-time working was generic and must be read in conjunction with the provisions of the Regulations. NHS BSA has to strike a balance between producing quotations that are comprehensive but at the same time are intelligible. It is unrealistic to expect that NHS BSA should produce quotations that cater for every individual set of circumstances that might arise. Members must be expected to read their quotations together with other information relevant to their particular situation.
39. The Adjudicator has discussed the advice provided to the IFA in his Opinion. I agree that it cannot be said with any certainty that the information the IFA was given by NHS BSA was incorrect.
40. So, I am not persuaded that it is reasonable for Mrs N to have relied on the 2014 quotation in making her decision to reduce her hours. This was clearly a lifestyle choice and I cannot be certain that it was not one she would have made anyway had she been aware of the position regarding her pension. The quotation contained a clear warning saying that the information was for guidance only and should not be relied upon.
41. I acknowledge that there was a delay in providing Mrs N with annual benefit statements in the years immediately after she reduced her hours. However, it is accepted that this was due to the fact that PCSE did not apparently receive the Certificate for Mrs N's 2014/2015 earnings until 12 July 2018. Although Mrs N points out that this Certificate was sent three times, I cannot find that the delay in producing an annual statement was due to any maladministration by NHS BSA.
42. Mrs N has quoted guidance provided by TPAS which shows that members must be advised about changes to the way in which their pension is calculated. But the way in which Mrs N's pension is calculated has not changed. She simply reduced her hours and that has resulted in a reduced pension, in accordance with the Regulations.
43. I do not uphold Mrs N's complaint.

**Anthony Arter**

Pensions Ombudsman  
5 November 2021

## Appendix 1

### Part R Special provisions for certain members

#### R1 Practitioners and specialist trainees in general practice

- (1) These Regulations apply to members who are or have been practitioners as if they were officers employed by the relevant Local Health Board or the National Health Service Commissioning Board, but with the modifications described in Schedule 2.
- (2) These Regulations apply to members who are or have been specialist trainees in general practice as if they were whole-time officers employed by the relevant employing authority.
- (3) These Regulations apply from 1st April 2004 to a non-GP provider as if they were a whole-time officer employed by the National Health Service Commissioning Board or relevant Local Health Board with the modifications described in paragraphs 3, 4, 5, 10 and 23 of Schedule 2 and Schedule 2B.

#### Part-time employment

- R5.**—(1) Subject to paragraphs (6) and (10), a member's pensionable service in part-time employment will not count at its full length but will be calculated as described in paragraphs (2) or (3), whichever is applicable, as its whole-time equivalent.
- (2) If the member's part-time employment is expressed as a specified number of half-days or sessions a week, the whole-time equivalent of the member's pensionable service in respect of that employment will be calculated by multiplying the full length of that service by the following fraction—

$$\frac{\text{member's pensionable pay}}{\text{comparable whole-time earnings}}$$

- (3) In any case where paragraph (2) does not apply, the whole-time equivalent of the member's pensionable service in respect of part-time employment will be calculated by multiplying the full length of that service by the following fraction—

$$\frac{\text{member's hours of employment each week}}{\text{hours constituting comparable whole-time employment}}$$

- (4) Subject to paragraph (5), for the purpose of calculating a member's final year's pensionable pay in respect of part-time employment, the member's pensionable pay will be the amount that the Secretary of State determines would have been paid in respect of a single comparable whole-time employment.
- (5) Paragraph (4) does not apply to the calculation of final year's pensionable pay for the purposes of—
- (a) regulations F1(2) and F2(2) (lump sum payable on death in pensionable employment or after pension becomes payable);
  - (b) regulation S2 (reduction of pension on return to NHS employment).
- (6) If a member with pensionable service in part-time employment becomes entitled to a pension under regulation E2 (early retirement pension on grounds of ill health)—
- (a) the member's pensionable service in part-time employment will count at its full length for the purpose of calculating whether, and (if so) to what extent, the

pensionable service upon which the pension is based should be increased under regulation E2;

(b) the pension will be based on the whole–time equivalent of the period of part–time employment and the increase under regulation E2 will be limited to such amount as bears the same proportion to the amount that would have been paid had the pensionable service not been part–time as the whole time equivalent bears to comparable whole time employment.

(7) If a member in part–time pensionable employment elects to buy additional service as described in regulation Q1 (right to buy additional service), the period of additional service will be calculated in accordance with Table 1 or Table 3 of Schedule 1 (whichever is applicable) and then reduced by multiplying the full length of that additional service by the following fraction—

$$\frac{\text{part – time pensionable employment}}{\text{comparable whole – time pensionable employment}}$$

where— “part–time pensionable employment” means the number of hours, half–days or sessions that the member was required to work under his contract of employment during the period by reference to which “remuneration” was calculated for the purposes of Table 1 of Schedule 1 or regular additional contributions were paid in accordance with regulation Q6 (paying by regular additional contributions); and

“comparable whole–time pensionable employment” means the number of hours, half–days or sessions that would have constituted comparable whole–time pension– able employment during that period.

(8) If a member in part–time pensionable employment elects to buy an unreduced retirement lump sum as described in regulation Q2 (right to buy an unreduced retirement lump sum), the period referred to in Table 2 or Table 4 of Schedule 1 (whichever is applicable) will be reduced in like manner as described in paragraph (7) above.

(9) Paragraphs (7) and (8) above also apply for the purposes of regulation Q7 (part payment for additional service or unreduced retirement lump sum).

(10) A member’s pensionable service in respect of part–time employment will count at its full length (and concurrent periods of employment will be treated as a single employment) for the purposes of regulations C2(3) (limit on pensionable service that counts for benefits) and C3(1) (qualifying service).

## **Appendix 2**

### **C1 Meaning of "pensionable pay" and "final year's pensionable pay"**

(1) In these Regulations, "pensionable pay" means, subject to the provisions of this regulation--

(a) all salary, wages, fees and other regular payments made to a member in respect of pensionable employment as an officer, but does not include bonuses, pay awards and pay increases that are expressed by the Secretary of State to be non-consolidated, payments made to cover expenses or payments for overtime;

(b) pensionable earnings calculated in accordance with paragraph 3, or as the case may be, paragraph 4 of Schedule 2 in the case of a non-GP provider who does not receive any of the payments referred to above in respect of his pensionable employment as an officer by virtue of the application of these Regulations to him as if he were such an officer under regulation R1.



## **Appendix 3**

### **Schedule 2**

#### **Meaning of "pensionable earnings"**

3 (1) In the case of a either a type 1 practitioner or a non-GP provider who is not in receipt of any salary, wages, fees or any other regular payment in respect of his employment by virtue of the application of these Regulations to him as if he were such an officer under regulation R1, "pensionable earnings" means—

(a) in the case of a type 1 medical practitioner or a non-GP provider, practitioner income less any sum on account of practice expenses (for these purposes, D2(1) contributions payable under paragraph 10(6) or (7) are neither practitioner income nor practice expenses); and

(b) in the case of a type 1 dental practitioner, practitioner income (taking into account any relevant pensionable earnings ceiling).

(2) Subject to sub-paragraph (3), for the purposes of this paragraph, "practitioner income" means as regards type 1 medical practitioners—

(a) payments made to such a person—

(i) pursuant to a GMS contract, a PMS agreement or an APMS contract, an NHS standard contract, an NHS standard sub-contract where the party to the NHS standard contract in question is an employing authority, or a contract entered into by a local authority pursuant to its functions under the 2006 Act relating to the improvement and protection of public health and which the Secretary of State agrees to treat as a qualifying contract for these purposes;

(ii) in respect of the performance of certification services, commissioned services or collaborative services where the practitioner is a GMS practice, a PMS practice or an APMS contractor: this also applies to such payments received from such a practitioner;

(iii) in respect of the provision of primary medical services under, in the case of England, section 83(2)(a) of the 2006 Act or, in the case of Wales, section 41(2)(a) of the 2006 (Wales) Act where such a person has been engaged by a Local Health Board to assist in the provision of such services;

(iv) in respect of the provision of locum services;

(v) in respect of the performance of primary medical services, commissioned services, collaborative services, NHS 111 services and certification services where those payments are made by an OOH provider or other employing authority providing OOH services;

(vi) in respect of primary dental services, general ophthalmic services or pharmaceutical services;

(vii) in respect of practice-based work carried out in educating or training, or organising the education or training of, medical students or practitioners;

(viii) in respect of the provision of primary medical services where such a person has been engaged by a clinical commissioning group to assist in the provision of such services;

(b) any charges collected from patients in respect of the services mentioned in subparagraph (a) which the type 1 medical practitioner is authorised by or under any enactment to retain other than charges authorised by regulations made under in the case of England, section 185(1) of the 2006 Act or in the case of Wales, section 133(1) of the 2006 (Wales) Act (charges for more expensive supplies of dental appliances); and

(c) any sums paid to the practitioner out of a fund determined by reference to the number of beds in a hospital;

(d) in the case of a type 1 medical practitioner, allowances and any other sums (but excluding payments made to cover expenses) paid in respect of Board and advisory work.

(e) health-related functions exercised under section 75 of the 2006 Act.

(2A) Subject to sub-paragraphs (2B), (2D) and (3), for the purposes of this paragraph, "practitioner income" means, as regards a type 1 dental practitioner, income which accrues to the practitioner which is derived from a GDS contract or a PDS agreement, and—

(a) includes charges collected from patients which are required, by virtue of directions given under, in the case of England, sections 94, 103 or 109 of the 2006 Act or in the case of Wales, sections 52, 60 or 66 of the 2006 (Wales) Act (which relate to PDS agreements and payments under GDS contracts), to be set off against payments under the contract or agreement; but

(b) does not include—

(i) charges collected from patients which are not required, by virtue of such directions, to be so set off,

(ii) income received by a practitioner to whom regulation B2 (restrictions on membership), regulation B3 (restriction on further participation in this Section of the scheme) or regulation B4 (opting-out of this Section of the scheme) applies, or

(iii) income received on or after 7th November 2011 by a practitioner in respect of the performance of services under a GDS contract or a PDS agreement to which the practitioner's employer is not a party.

(2B) As regards each GDS contract or PDS agreement from which practitioner income is derived, the maximum amount of practitioner income which may be derived from that

contract in any financial year is, subject to sub-paragraph (2C), the value of that contract in that financial year—

(a) less the value of following payments (where payable in that financial year by the National Health Service Commissioning Board or Local Health Board that is a party to the contract or agreement)—

(i) monthly seniority payments,

(ii) adoption leave, maternity leave, parental leave, shared parental leave or paternity leave payments;

(iii) sickness leave payments,

(iv) reimbursement of the salary of a foundation trainee,

(v) reimbursement of the national insurance contributions of a foundation trainee, and

(vi) reimbursement of non-domestic rates; then

(b) multiplied by a percentage to be determined by the Secretary of State, which produces the amount referred to in this Schedule as the "pensionable earnings ceiling".

(2C) Where the income of a type 1 dental practitioner includes payments made under a GDS contract or a PDS agreement consisting of all or any of—

(a) monthly seniority payments;

(aa) a dental trainers grant;

(b) maternity leave, paternity leave, parental leave, shared parental leave or adoption leave payments; and

(c) sickness leave payments,

those payments are practitioner income for the purposes of this paragraph (that is, they are pensionable earnings notwithstanding that they are not included in the calculation of the pensionable earnings ceiling for a particular GDS contract or PDS agreement).

(2D) The following payments under a GDS contract or PDS agreement are not to be considered practitioner income for the purposes of this paragraph—

(a) reimbursement of the salary of a foundation trainee;

(b) reimbursement of the national insurance contributions of a foundation trainee; and

(c) reimbursement of non-domestic rates.

(2E) For the avoidance of doubt, income which accrues to a type 1 dental practitioner while he is engaged as a type 2 practitioner is practitioner income of that type 1 dental practitioner, but unaffected by any pensionable earnings ceiling (although the combined earnings of that practitioner will be subject to the upper limit specified in paragraph 8).

(3) If the practitioner is in concurrent employment as an officer, or with a local authority or university, or as a civil servant, or in any other employment that the Secretary of State may in any particular case allow, "practitioner income" does not include any amounts for which the practitioner is required to account to the employer as a term or condition of that employment.

(4) In sub-paragraph (2)(a), "locum services" shall have the same meaning as for the purposes of paragraph 6.

### **Calculating pensionable earnings of medical practitioners in partnership**

4 (1) In the case of type 1 medical practitioners practising in partnership (with or without a non-GP provider who is a partner in a partnership), the pensionable earnings of each type 1 medical practitioner and non-GP provider who is a partner in a partnership shall be calculated by aggregating the pensionable earnings of each (including for this purpose, any amount that would constitute pensionable earnings in the case of any of them who are not included in this Section of the scheme) and, subject to sub-paragraph (2), dividing the total equally by reference to the number of such partners.

(2) Where the type 1 medical practitioners and any non-GP providers who are partners in a partnership do not share equally in the partnership profits, they may elect that each partner's pensionable earnings shall correspond to each partner's share of the partnership profits.

(3) Where a type 1 medical practitioner practising in partnership also has earnings in respect of NHS employment otherwise than as a practitioner, the partners may elect that the pensionable earnings of that practitioner, as determined in accordance with sub-paragraph (1) or (2), shall be reduced by the amount of those earnings and the pensionable earnings of each of them (including that practitioner) be then increased in proportion to their respective shares of the partnership profits.

(4) The calculations described in sub-paragraphs (2) and (3) will be made by the National Health Service Commissioning Board or Local Health Board to which the partners are required to give notice of their election in accordance with paragraph 5.

## Appendix 4

### Accounts and actuarial reports

23 (1) In the case of members who are practitioners or non-GP providers, regulation U3 (accounts and actuarial reports) is modified as described in this paragraph.

(2) In respect of each scheme year, a type 1 medical practitioner and a non-GP provider shall provide each relevant host Board with a certificate that correctly records the totality of their pensionable earnings based on—

(a) the accounts drawn up in accordance with generally accepted accounting practice by the practice of which the member is a member; and

(b) the return that member has made to Her Majesty's Revenue and Customs in respect of their earnings for that year, no later than 1 month after the date on which that return was required to be submitted to Her Majesty's Revenue and Customs.

(3) In respect of each scheme year, a type 2 medical practitioner and a locum practitioner shall provide each relevant host Board with a certificate that correctly records the totality of their pensionable earnings based on—

(a) the payments they receive from employing authorities for practitioner services, and

(b) the return that member has made to Her Majesty's Revenue and Customs in respect of their earnings for that year,

no later than 1 month after the date on which that return was required to be submitted to Her Majesty's Revenue and Customs.

(4) Within 1 month of the end of each financial year, a host Board must give to each—

(a) GDS or PDS contractor with which that host Board is a party to a GDS contract or a PDS agreement, a notice which sets out, in accordance with the host Board's records, the amount of the pensionable earnings ceiling and the amount of the pensionable earnings the contractor has paid to every type 1 dental practitioner who has performed services under that contract or agreement during that financial year ("an annual reconciliation notice"); and

(b) type 1 dental practitioner referred to in (a), a notice which sets out the amount of pensionable earnings each practitioner has been paid for that financial year as indicated in the host Board's records ("a performer's notice").

(5) Within 3 months of the end of each financial year the GDS or PDS contractor must return the annual reconciliation notice to the host Board stating—

(a) that the amounts referred to in sub-paragraph (4)(a) are correct or, where either or both of those amounts are incorrectly shown in the notice, the correct figure or figures; (b) in the case of a type 1 dental practitioner whose earnings, during the

period covered by the annual reconciliation notice, are not pensionable because they fall within paragraph 3(2A)(b) of this Schedule, the earnings that would otherwise have been pensionable if that paragraph did not apply;

(c) the amount of any monthly seniority payments, maternity leave payments, paternity leave payments, adoption leave payments, parental leave payments, shared parental leave payments or sickness leave payments paid under the contract or agreement during the financial year;

(d) the amount of pensionable earnings the contractor has paid to each type 1 dental practitioner under the contract or agreement during the financial year;

(e) whether each type 1 dental practitioner who performed services under the contract or agreement referred to in sub-paragraph (4)(a) was given the opportunity to verify the pensionable earnings declared for them in the annual reconciliation notice; and

(f) the name and dentist's reference number of any type 1 dental practitioner who—  
(i) failed to verify; or (ii) disagrees with, the amounts declared for them in the annual reconciliation notice and, where paragraph (ii) applies, the reason for the disagreement.

(6) Within 3 months of the end of each financial year, each type 1 dental practitioner who performed services under the contract or agreement referred to in sub-paragraph (4)(a) must return the performers' notice to the host Board, stating—

(a) that they were (or were not, as the case may be) in pensionable employment for the period covered by the performer's notice;

(b) that they were (or were not, as the case may be) directly employed by the contractor referred to in sub-paragraph (4)(a) during the period covered by the performer's notice;

(c) in the case of a practitioner, who was in pensionable employment during the period covered by the notice, the pensionable earnings they received under the contract or agreement during that period;

(d) in the case of a practitioner whose earnings, during the period covered by the performer's notice, fell within paragraph 3(2A)(b) of this Schedule, the earnings that would otherwise have been pensionable if that paragraph did not apply;

(e) the amount of any monthly seniority payments, maternity leave payments, paternity leave payments, adoption leave payments, parental leave payments, shared parental leave payments or sickness leave payments received by the practitioner under the contract or agreement during the financial year; and

(f) whether the practitioner and contractor have together verified that any amounts the practitioner has declared in respect of sub-paragraph (6)(c), (d) or (e) are the

same as the equivalent amounts declared in the annual reconciliation notice referred to in subparagraph (5).

(7) Within 3 months of the end of each financial year, a type 2 dental practitioner must provide the host Board with whom their employer has entered into a GDS contract or a PDS agreement, with a notice of their pensionable earnings based on—

- (a) the payments they have received from their employer for practitioner services provided under that GDS contract or PDS agreement during that financial year; and
- (b) the pensionable earnings they have received, as a type 2 dental practitioner, from all other type 2 dental practitioner sources during that financial year.

(8) An employing authority may, in exceptional circumstances, and with the agreement of the Secretary of State, arrange or agree a different time limit for the issue and return of the certificates, notices or statements referred to in sub-paragraphs (2) to (7) and may, if a material particular has changed, accept a replacement.

(9) Subject to sub-paragraph (10), an annual reconciliation notice will be invalid if—

- (a) it contains information that the employing authority's records show is inaccurate or misleading in a material particular;
- (b) subject to sub-paragraph (8), it is not received within the specified time limit;
- (c) the total of the amounts specified in it in respect of each type 1 dental practitioner that performed services under the contract or agreement referred to in sub-paragraph (4)(a) is greater than the aggregate of the pensionable earnings ceiling referred to in subparagraph (4)(a) and the amount referred to in subparagraph 5(c);
- (d) it is incomplete in any material particular; or
- (e) one or more of the practitioners referred to in it did not, for whatever reason, verify the earnings figure the contractor has declared for them.

(10) Where an employing authority has received an annual reconciliation notice which is valid for some or all of the practitioners listed in it, the amounts notified to that employing authority for the financial year to which the notice relates will, subject to sub-paragraphs (16), (17) and (18), be the pensionable earnings for those practitioners.

(11) Where an employing authority has received an annual reconciliation notice which is invalid for some or all of the practitioners listed in it, the pensionable earnings for those practitioners for the financial year to which the notice relates will be—

- (a) zero, where the employing authority's records show that value or the authority is unable to estimate the value of the practitioner's pensionable earnings; or
- (b) the figure that the employing authority estimates will represent that practitioner's share of the aggregate of the pensionable earnings ceiling referred to in sub-

paragraph 4(a) and the amount referred to in sub-paragraph (5)(c) (“the maximum amount”), less the difference between—

(i) that maximum amount, and

(ii) the total of the monthly amounts in respect of which estimated contributions to this Section of the scheme under regulation D1 (contributions by members) were paid on account during the financial year to which the earnings relate,

but if the total mentioned in sub-paragraph (ii) is greater than the maximum amount, then no amount is to be deducted pursuant to this sub-paragraph.

(12) Each employing authority and GDS or PDS contractor must, in respect of each scheme year, provide the host Board and the Secretary of State with a statement of estimated contributions due under regulations D1, D2, Q6 and Q8 in respect of any—

(a) non-GP provider that is a GMS or PMS practice or an APMS contractor who assists in the provision of NHS services provided by that GMS or PMS practice or APMS contractor;

(b) type 1 medical practitioner who performs medical services as, or on behalf of, the practice or contractor;

(c) type 2 medical practitioner employed by the practice or contractor;

(d) type 1 dental practitioner who performs services under a GDS contract or a PDS agreement, or

(e) type 2 dental practitioner employed or engaged to perform services under a GDS contract or a PDS agreement.

(13) In respect of each scheme year, each employing authority and GDS or PDS contractor shall, in respect of type 2 medical or dental practitioners employed or engaged by the practice or contractor, provide the Secretary of State with an end-of-year statement of—

(a) pensionable earnings;

(b) contributions to this Section of the scheme made under regulation D1 (contributions by members) and the modifications to that regulation referred to in paragraph 10 of this Schedule;

(c) contributions to this Section of the scheme made under regulation D2 (contributions by employing authorities) and the modifications to that regulation referred to in paragraph 10 of this Schedule; and

(d) any pensionable earnings deemed in accordance with regulation P1 (absence because of illness or injury or certain types of leave) and the modifications to that regulation referred to in paragraph 19 of this Schedule.



(14) The host Board and the Secretary of State shall be provided with—

(a) the statement referred to in sub-paragraph (12) at least 1 month before the beginning of that scheme year;

(b) the statement referred to in sub-paragraph (13) no later than 3 months after the end of that scheme year.

(15) No later than 13 months after the end of each scheme year, each employing authority, GDS contractor and PDS contractor must forward to the Secretary of State a copy of the records referred to in regulation U3(3) and (4).

(16) A member's pensionable earnings for a scheme year shall be zero and no contributions paid in respect of that scheme year are to be refunded where, in respect of that scheme year, a practitioner or non-GP Provider has failed to comply with the requirements of—

(a) whichever of sub-paragraphs (2), (3), (5), (6) or (7) applies to that member, or

(b) sub-paragraph (2) of paragraph 2. This is subject to sub-paragraphs (17) and (18).

(17) If, in respect of a scheme year, the employing authority of a practitioner or non-GP provider member is in possession of a figure representing all or part of that member's pensionable earnings for that year, the Secretary of State may treat that figure as the amount of that member's pensionable earnings for that year where—

(a) that member has failed to comply with the requirements of whichever of sub-paragraphs (2), (3), (5), (6) or (7) applies to them, and

(b) a benefit in respect of that member's service as a practitioner or non-GP provider is payable to, or in respect of them, under these Regulations.

(18) If, in respect of a scheme year, a practitioner or non-GP provider—

(a) dies without complying with the requirements of whichever of sub-paragraphs (2), (3), (5), (6) or (7) applies to them; or

(b) is, in the opinion of the Secretary of State, unable to look after their own affairs by reason of illness or lack of capacity within the meaning of the Mental Capacity Act 2005,

the Secretary of State may require that practitioner's or non-GP provider's personal representatives or person (or persons) duly authorised to act on the member's behalf to provide the relevant certificate, notice or statement within the period specified in sub-paragraph (19).

(19) The period is—

(a) that referred to in whichever of sub-paragraphs (2), (3), (5), (6) or (7) was or is applicable to them; or

(b) such other period as the Secretary of State permits.

(20) The certificates, notices and statements referred to in this paragraph—

(a) shall be in such form as the Secretary of State shall from time to time require;

(b) may be provided to the Secretary of State in such manner as the Secretary of State may from time to time permit.