

Ombudsman's Determination

Applicant	Mrs T
Scheme	NHS Pension Scheme (the Scheme)
Respondent	NHS Business Services Authority (NHS BSA)

Outcome

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

Complaint summary

2. Mrs T complained that up until 2019, NHS BSA had not made her aware that her pension in payment included a Guaranteed Minimum Pension (**GMP**).
3. She believes that once she reached her State Pension Age (**SPA**), the value of her yearly pension from the Scheme should have increased by the value of her GMP entitlement, which it did not.

Background information, including submissions from the parties

4. On 6 July 1992 Mrs T was employed by the Home Office Prison Service (**the former Employer**) as a Nurse. Due to the nature of Mrs T's employment, she was entitled to join the Scheme, instead of the Principal Civil Service Pension Scheme (**PCSPS**). This was because her post provided an NHS service, so, she joined the Scheme by way of a direction made under section 7 (1) of the Superannuation (Miscellaneous Provisions) Act 1967 (**see Appendix**).
5. During Mrs T's membership within the Scheme, her employment was contracted out of the State Earnings Related Pension Scheme (**SERPS**). This meant that the Scheme, as a condition of contracting out, had to provide her with a GMP at her SPA, which at the time was 60 for women. The GMP was required to be at least equal to the benefit that would have been payable from SERPS.
6. On 23 August 1992, Mrs T joined Frimley Park Hospital (**the Hospital**), in a part-time post, while she was in service with the former Employer.
7. On 20 September 1993, the Hospital sent an application to NHS BSA to enrol Mrs T into the Scheme.

8. On 6 October 1993, NHS BSA responded to the Hospital and explained that Mr T was already working in a full-time post with the former Employer. So, she was not eligible to join the Scheme through her employment with the Hospital. It said that the Hospital should delete Mrs T's pension record.
9. On 21 December 1994, Mrs T went on sick leave and did not return to service in either post. This was due to an incident while in service with the former Employer.
10. In October 1996, Mrs T was granted early retirement on the grounds of ill health. Additionally, Mrs T was awarded a benefit under the Civil Service Injury Benefit Scheme, as a result of her service with the former Employer (**the CSIB payment**).
11. On 2 October 1996, Mrs T returned the signed and completed declaration forms to claim her pension. Upon signing the forms Mrs T had agreed that she had read and understood the "Notes for pensioners and their dependants" booklet (**the booklet**).
12. The booklet explained that:-
 - As the Scheme was contracted out, during her Scheme membership she did not pay National Insurance (**NI**) contributions into the SERPS portion of the State Pension Scheme.
 - At her SPA, she would receive a GMP equal to her SERPS benefit, to ensure that she was no worse off as a result of being contracted out.
13. The booklet also included the following statement:

"The GMP is part of the [Scheme] pension, not an extra pension."
14. On 1 November 1996, Mrs T started to receive a yearly pension of £1,037.28, which included a GMP of £408.27.
15. Between 7 February 2000 and 25 July 2000, Mrs T raised a number of complaints with NHS BSA about previous posts, with various employers, which she believed should have been reckonable under the Scheme.
16. NHS BSA investigated Mrs T's complaints under stage one and two of the Scheme's Internal Dispute Resolution Procedure (**IDRP**) and did not uphold her complaints at either stage. It explained that she had received a refund of contributions for two previous posts, because she had not completed 10 years' pensionable service before leaving each post. The only record of pensionable service it retained was with the former Employer between July 1992 and November 1996.
17. Under stage two of the Scheme's IDRP, NHS BSA also explained that it had amended Mrs T's reckonable pensionable service. This was because, between 27 January 1995 and 1 November 1996, she was on unpaid sick leave and did not contribute to the Scheme. As a result, this period was not treated as pensionable. However, it had since amended this and 644 days of disallowed service were now

pensionable. It had arranged to calculate, and pay, any pension arrears that she was owed.

18. On 16 November 2000, NHS BSA confirmed that Mrs T had exhausted the Scheme's IDRPs and that it could not comment on her complaint any further.
19. In 2005, the National Insurance and Contribution Employers Office (**NICEO**) incorrectly notified Capita, the administrator for the PCSPS, that according to its records Capita was required to start paying Mrs T's GMP from the PCSPS when she reached her SPA.
20. In July 2005, Mrs T had reached her SPA and a GMP was incorrectly put into payment by the PCSPS. At this time, Mrs T was also in receipt of her yearly pension from the Scheme which also included her actual GMP entitlement.
21. In 2015, Mrs T queried a number of unrelated tax issues with HMRC, when it was discovered that she had been receiving overpayments of GMP totalling £4,104.81. The overpaid GMP was paid in error from the PCSPS as a result of NICEO's notification to Capita that it was required to pay her GMP, instead of NHS BSA. As a result, MyCSP, the new administrator for the PCSPS, wrote to Her Majesty's Revenue Customs (**HMRC**) to confirm that Mrs T's GMP liability should be under the Scheme, because she was never a member of the PCSPS.
22. On 19 November 2015, HMRC wrote to Mrs T. It explained that because she was contracted out of SERPS a weekly contracted out deduction (**COD**) of £7.86 would be deducted from her Additional State Pension. It also said that NHS BSA was responsible for the payment of her GMP under the Scheme.
23. On 22 December 2015, HMRC wrote to MyCSP and confirmed that the liability for Mrs T's GMP was now under the Scheme.
24. In early 2016, Mrs T complained through the PCSPS' IDRPs about the overpayment of GMP. She also complained that she should have been eligible to join the PCSPS instead of the Scheme. Her complaint was not upheld and she was informed that, due to her role as a nurse, she was only entitled to benefits payable under the Scheme.
25. On 27 April 2016, NHS BSA wrote to Mrs T because it had discovered that she had received a number of overpaid pension payments amounting to £172.55, which needed to be repaid.
26. On 22 July 2016, NHS BSA wrote to Mrs T because it had not received a response to its overpayment letter of 27 April 2016.
27. On 5 August 2016, Mrs T contacted NHS BSA and said that she was unaware that she was in receipt of any overpaid pension amounts. So, she was unhappy that she was required to repay £172.55. Additionally, she said that there was additional service that she believed should be reckonable under the Scheme.
28. On 19 August 2016, NHS BSA responded to Mrs T and said that:-

- It understood that she was upset that she was asked to repay an amount of £172.55, the amount related to overpaid GMP.
 - It had undertaken a review of her case and it determined that her position was complex because:
 - she had retired from the former Employer, due to ill health, and was in receipt a CISB payment from MyCSP; and
 - due to the nature of her post as a nurse, she was allowed to contribute to the Scheme. So, she was now in receipt of a pension in payment which included a GMP.
 - Having considered this, it believed that she would not have been reasonably aware that her GMP was being overpaid. So, it had written off the amount that needed to be repaid.
 - Her query about reckonable service was answered under both stages of the Scheme's IDRP in 2000. Its position remained unchanged and it had nothing further to add.
29. On 1 May 2019, Mrs T telephoned HMRC and made a number of queries about CODs and her GMP entitlement within the Scheme.
30. On 13 May 2019, HMRC responded to Mrs T and explained that:-
- She was a member of the Scheme, which was contracted out of SERPS. So, instead of paying full NI contributions into SERPS, she paid a reduced rate of NI contributions into the Scheme and accrued a GMP.
 - A COD, equal to her GMP, was taken from her Additional State Pension to ensure that she did not receive benefits greater than what she was entitled to. The remainder in excess of the COD was then paid by the Government.
 - The value of her weekly GMP/COD, at her SPA, was £7.86. The GMP amount was not paid in addition to her Scheme benefits, but instead, it was included within her yearly pension from the Scheme.
 - It would contact NHS BSA to request confirmation that it was paying her GMP inclusive of her yearly pension in payment.
31. On 16 July 2019, NHS BSA wrote to HMRC and confirmed that Mrs T was in receipt of a yearly GMP of £550.62. This had been included within her yearly pension from the Scheme since 1 November 1996.
32. On 15 August 2019, HMRC provided Mrs T with a copy of NHS BSA's letter of 16 July 2019, which confirmed that her GMP was already in payment through the Scheme.

33. On 13 September 2019, Mrs T contacted NHS BSA and submitted a complaint to be investigated under stage one of the Scheme's IDRP. She said that:-
- In April 2016, NHS BSA wrote to her to say that it had overpaid her yearly pension by £172.55, however, it was later confirmed that she did not have to repay this amount. It should explain how and why this happened.
 - In August 2019, HMRC wrote to her and confirmed that NHS BSA was paying her a weekly GMP via the Scheme.
 - She had not been informed that her yearly pension from the Scheme contained a GMP. Additionally, there had been no increase to her pension in payment when the GMP became payable at her SPA.
 - She did not believe that her yearly pension from the Scheme contained a GMP, so, NHS BSA should increase it to reflect her GMP entitlement of £550.62, as quoted by NHS BSA.
 - NHS BSA had not treated all of her service, within various NHS posts, as pensionable within the Scheme. She had previously provided a detailed list of her previous posts which she believed should have been pensionable under the Scheme.
34. On 17 January 2020, NHS BSA confirmed receipt of Mrs T's stage one IDRP complaint.
35. On 30 January 2020, NHS BSA responded to Mrs T's stage one IDRP complaint. It did not uphold her IDRP complaint and said that:-
- She had received a refund of contributions for two periods of employment with Gateshead & District HMC in 1969 and 1971.
 - Her pensionable employment under the Scheme was between 6 July 1992 to 1 November 1996.
 - During this time she worked full-time and was on a "whole-time hours" contract with the former Employer. So, any concurrent part-time employment she held elsewhere could not be considered pensionable when she was in service with the former Employer.
 - It held no record of pensionable employment for her under the Scheme between leaving Gateshead & District HMC and joining the former Employer.
 - From 1 April 1973, part-time employees were eligible to join the Scheme, so long as their contracted hours were more than half that of full-time hours. It was not until 1 April 1991, that employees who worked less than half the standard hours were eligible to join the Scheme.

- So, it was possible that between 1972 and 1992, she was working less than half the standard hours and was not eligible to join the Scheme. Alternatively, she may have worked for a non-NHS employer.
 - Because she retired before her SPA, all of her pension was paid, and increased, at the same rate. When she reached her SPA, the GMP element was split out from her excess benefits.
 - The payment of her GMP was included within her total yearly pension. So, when she reached her SPA this did not mean that her pension would increase by the value of the GMP.
 - Under HMRC regulations, once she reached her SPA, any increases to her GMP were capped at three percent. Prior to reaching her SPA, she benefited from increases to her whole pension in payment, including the nominal GMP value, above the three percent cap.
 - She was in receipt of the correct amount of GMP including the increases in payment.
36. NHS BSA also provided Mrs T with a breakdown of her yearly pension in payment since 1 November 1996, and how it had increased. The breakdown demonstrated that upon reaching her SPA, in July 2005, her GMP was separated out from her excess benefits to be increased at a different rate.
37. On 12 February 2020, Mrs T asked for her complaint to be investigated under stage two of the Scheme's IDRP. She said that:-
- She required a weekly breakdown of her GMP in payment, as opposed to a yearly breakdown.
 - She did not agree with the GMP figures that NHS BSA had provided to her. She believed that once she reached her SPA the value of her pension in payment should have increased because of her GMP becoming payable.
 - It should explain how, and why, an overpayment of her pension occurred in 2016. It should also explain why the overpayment was for GMP and why it did not need to be repaid.
 - She was unaware that she had been in receipt of her GMP from the Scheme until 2019. So, NHS BSA should have informed her about the payment of her GMP by providing a breakdown via her P60.
 - Following a Subject Access Request with the NHS, she was provided with documents that inferred that she was opted out of the Scheme in 1993.
 - The documents said that because of a period of part-time employment, alongside her service with the former Employer, she was not entitled to be in the Scheme.

So, the Hospital should delete her pension record from the Scheme for her period of part-time employment.

- She did not understand how she was in receipt of a GMP from the Scheme when she had been provided with evidence that she was opted out of the Scheme.
- She believed that NHS BSA had created a GMP entitlement following the discovery that she was not a member of PCSPS and incorrectly receiving a GMP entitlement.
- Additionally, she believed that the NHS BSA had created the GMP entitlement to “cover up” the fact that she was opted out of the Scheme in 1993.

38. On 20 May 2020, NHS BSA responded to Mrs T's stage two IDRP complaint. It did not uphold her complaint and provided a similar response to its stage one IDRP response. However, it also said that:-

- The value of her pension in payment was not affected when she reached her SPA and her GMP was split out from her excess benefits.
- Her post 6 April 1988 GMP was increased in line with the Consumer Price Index (CPI) capped at three percent. Any CPI increases in excess of three percent, the excess is paid by, and included in, her Additional State Pension.
- The Scheme paid her pension benefits, which included her GMP, so the value of her GMP was deducted from her Additional State Pension by way of a COD. The Government then paid her Basic State Pension plus her residual Additional State Pension.
- Her GMP and excess benefits were paid on a monthly basis, so, it was not required to provide her with a weekly breakdown of her GMP. However, it had divided her current annual pension by 52.143, the number of weeks in a year, to provide her weekly GMP and non-GMP benefits.
- In addition to NHS hospitals, organisations that provided a service for the NHS were, in some instances, permitted to join the Scheme. By joining the former Employer her position provided a service to the NHS, so, her service was pensionable under the Scheme by way of a direction.
- In August and September 1993, the Hospital was informed that she was unable to join the Scheme. This was because she was already a member of the Scheme through the former Employer where she was working full-time hours.
- It did not understand why she believed that she was not part of a pension scheme for four years. She is in receipt of a pension from the Scheme accrued between July 1992 and November 1996 without any breaks in membership.
- It was aware that she had received an overpayment of £172.55, which was requested to be repaid in April 2016. The overpayment was in relation to her GMP,

but it was determined that she would have been unaware she was receiving an overpayment. So, she was not required to repay the amount.

- At the time, its pensions payroll was outsourced to Equiniti, so it held little detail about this overpayment.
- Her P60 did not provide a breakdown of her GMP and excess pension because it was only used to show her total pension in any given tax year.
- Because her eligibility into the Scheme was by way of a direction, she was unable to join the NHS Injury Benefits Scheme. So, it was unclear and unable to comment on why her GMP, accrued under the Scheme, was included alongside her CSIB payment from MyCSP.

39. On 12 June 2020, Mrs T wrote to NHS BSA because she remained dissatisfied with the stage two IDRPs response. She said that:-

- The GMP did not exist and that NHS BSA had intentionally created the GMP figures it had provided to her.
- She believed that she was opted out of the Scheme in 1993.
- She was initially receiving the GMP alongside her CSIB payments, until the GMP was stopped in 2016.

40. On 16 June 2020, NHS BSA responded to Mrs T's email of 12 June 2020 and said that she had exhausted the IDRPs complaints process and it was unable to take her complaint any further.

41. Mrs T's position:-

- She had been provided with historic documents that inferred that NHS BSA had instructed the Hospital to opt her out of the Scheme. So, she believed that she was never a member of the Scheme due to this error.
- Once NHS BSA was informed that she was incorrectly receiving a GMP from the PCSPS, she believed that NHS BSA seized the opportunity to cover up that she was opted out of the Scheme. This was because it said that her GMP entitlement was always included within her yearly pension.
- NHS BSA had not made her aware, at any point, that the yearly pension she received from it contained a GMP.
- When she reached her SPA, the value of her yearly pension from the Scheme did not increase to account for her GMP becoming payable. So, she believed that she was not receiving her full entitlement.
- Due to being opted out of the Scheme in 1993, she also believed that she had not received a full State Pension Benefit because she was contracted out of SERPS and is not receiving a sufficient level of GMP to make up for this.

- She would like NHS BSA to admit to the errors that it has made in the past and pay her the correct level of GMP in addition to her yearly pension.

42. NHS BSA's position:-

- Mrs T's part-time service with the Hospital could not be included within the Scheme, because she was already in a full-time post with the former Employer. So, the Hospital was told to delete any pension record it had setup for her.
- Her GMP has been in payment since she claimed her pension in 1996. Up until she reached her SPA, her GMP and excess benefits increased at the same rate. From her SPA onwards, her GMP was split out from her excess benefits and the GMP then received increases in line with CPI capped at 3% per year.
- There was a small overpayment of GMP, but a decision was made to write the amount off because she would have been unaware of the overpayments.
- Mrs T received annual payslips from the Scheme with contained details about her pension in payment. These payslips provided a breakdown of her GMP and excess benefits and what percentage increase the GMP received each April.
- When she claimed her pension in 1996, she signed a declaration form confirming that she read and understood the booklet. The booklet explained that her GMP was included in her Scheme benefit and it was not an extra pension.
- By signing the declaration form she confirmed that she had read and understood the contents of this booklet.
- It could not comment on why she had received a GMP payment from the PCSPS.

Adjudicator's Opinion

43. Mrs T'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:-

- Mrs T had been in receipt of an ill health pension from 1996. Because she retired before her SPA, her overall benefits, including the GMP, were treated as non-GMP, up until she reached her SPA, at which point her GMP was separated from the non-GMP benefits. Under HMRC regulations all post 1988 GMP, in payment, is only entitled to a yearly increase of up to three percent in line with CPI. However, non-GMP benefits can receive increases in excess of three percent, in line with CPI.
- Although HMRC updated its records to show Mrs T's GMP was in fact payable through the Scheme, this would not have had an effect on her overall pension in payment from the Scheme because it was already in payment. The GMP payment

from the PCSPS was therefore paid in error and should not have been in addition to her Scheme GMP.

- It was appreciated that Mrs T's income reduced because of PCSPS' errors. However, this was not a result of any actions taken by NHS BSA. If her Scheme pension was increased by the same amount as the incorrect PCSPS GMP, this would result in a further overpayment of GMP. The Adjudicator was satisfied that NHS BSA had administered, and paid, Mrs T's GMP entitlement correctly.
- Mrs T signed a declaration form confirming that she read and understood the booklet. The booklet explained that the Scheme was contracted out of SERPS and that she would, in turn, receive a GMP. Mrs T was also provided with annual payslips which provided a breakdown between the GMP and non-GMP benefits. Mrs T was therefore provided with enough information that she ought reasonably to have been aware that her Scheme pension included a GMP.
- Following a review of historic documents from 1993, it was easy to see how Mrs T may have misinterpreted their contents. The documents related to her benefit entitlement through the Hospital. Her service with the former Employer was treated as pensionable, so, her service with the Hospital could not be treated as pensionable as well. Therefore, NHS BSA has correctly recorded Mrs T's service with the former Employer as her only eligible period of pensionable service under the Scheme.
- It was unclear why Mrs T believed that she had never been a member of the Scheme, when she had been in receipt of a pension from the Scheme since 1996. While there was confusion surrounding who was liable for payment of her GMP, NHS BSA has paid her a yearly pension for 25 years. So, Mrs T ought to have been aware that she was a member of the Scheme by the provision of her ill health pension.
- There was no evidence of maladministration on the part of NHS BSA and Mrs T was in receipt of her correct GMP entitlement from the Scheme.

44. Mrs T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs T 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 T. Mrs T's additional comments are as follows:-

- She does not believe that NHS BSA should be her pension provider. She claims that this is supported by the historic documents from 1993. Furthermore, she has been provided with an internal email from NHS BSA which she believes further supports the 1993 documents.
- The internal email of 16 July 2019, which said that she left the Scheme on 1 November 1996, did not match HMRC's date of leaving of 27 January 1995. Between 27 January 1995 and 1 November 1996 she was on unpaid sick leave. So, her contributions to the Scheme would have stopped on 27 January 1995.

- The internal email said that it did not believe that she could have been opted out of the Scheme between 1993/94. If she had, she would not be in receipt of a pension from the Scheme because her pensionable service would have fallen short of two years.
- She believed that the 1993 documents and the internal email provided evidence of “mistakes [and] maladministration leading to corporate fraud”. This was because NHS BSA had used the payment of her GMP, following the cessation of her PCSPS GMP, to “cover up” that she was opted out of the Scheme, in 1993.
- In 2005, her pension was split between GMP and non-GMP benefits. As a result, she believes that she has not received an increase to the non-GMP element of her pension since 2005. However, the GMP element has seen increases since 2005.

45. NHS BSA accepted the Adjudicator’s Opinion and had no further comments to add.

Ombudsman’s decision

46. Mrs T argued that she is not a member of the correct pension scheme. She also believes that the 1993 documents provide proof of “mistakes [and] maladministration leading to corporate fraud”.
47. Having reviewed all of the information available, I do not agree with Mrs T’s assertion that she is not a member of the correct Scheme. I appreciate that, for a lay person, understanding historic documents, from a substantial number of years ago, can be challenging. However, I believe that Mrs T has misunderstood and misinterpreted the historic documents to a significant extent. When Mrs T joined the former Employer, as a Nurse, her role provided an NHS service. Therefore, she was enrolled into the Scheme by way of a direction under Section 7 of the Superannuation Act 1967. I am satisfied that Mrs T was enrolled into the correct scheme.
48. The 1993 correspondence explains that, due to Mrs T’s concurrent employment with the former Employer and the Hospital, she was only entitled to have her full-time service with the former Employer treated as pensionable. This was because she was enrolled into the Scheme by the former Employer before she joined the Hospital. So, NHS BSA requested that the Hospital delete any record of pension entitlement it had set up for Mrs T. I note that this had previously been explained to Mrs T through NHS BSA’s IDRP responses in 2020.
49. Mrs T contended that the internal email suggested that she should not be in receipt of a pension if she joined the former Employer in 1992. I appreciate Mrs T’s interpretation of the internal emails meaning; however, I disagree with the conclusions that she has come to as a result.
50. The internal email is part of an investigation following her query with HMRC about her entitlement to a GMP from the Scheme. It is also a part of NHS BSA’s investigation following receipt of Mrs T’s IDRP complaint in 2019. It explains that if Mrs T joined the

Scheme in 1992, which she did, and was opted out of the Scheme, in 1994, as she claims she was, she would not have met the minimum requirement of two years of service to be eligible for a preserved pension under the Scheme. The email does not say that she was opted out of the Scheme, or that she is not a member of the Scheme.

51. I appreciate that Mrs T has gone to significant lengths to gather this information in relation to her complaint. However, the assumptions that she has drawn from these documents are based on an incorrect understanding of their contents.
52. Mrs T has been in receipt of a pension from the Scheme since 1 November 1996. So, it does not stand to reason how, or why, she is of the belief that she is not a member of the Scheme, regardless of whether, or not, she was opted out in 1993. There is also no evidence to suggest that the level of benefits, including the GMP, she is receiving from the Scheme is incorrect.
53. I agree that there has been confusion surrounding Mrs T's GMP entitlement over the years. However, I am satisfied that since her enrolment into the Scheme, on 6 July 1992, NSH BSA has correctly administered her benefits and at no point during her employment with the former Employer was she opted out of the Scheme despite Mrs T's belief.
54. Mrs T has said that since 2005, following the separation of her GMP and non-GMP benefits, she had not received an increase to her non-GMP benefits. NHS BSA's IDRPs responses provided Mrs T with a detailed breakdown of her pension in payment, split between the GMP and non-GMP elements. It also shows the percentage yearly CPI increase each element has received from 1 November 1996, up until it was split in 2005, onwards. So, it is unclear why Mrs T believes she has not received increases to the non-GMP element of her benefits since 2005.
55. In conclusion, Mrs T has been unable to provide any evidence to support her claims that she has been, or was, opted out of the Scheme, or that she should be receiving benefits from a different pension scheme. The documents that Mrs T has provided have, in fact, confirmed that NHS BSA accurately recorded her service with the former Employer. I am satisfied that Mrs T is, and always has been, in receipt of the correct level of GMP entitlement from the correct scheme.
56. I do not uphold Mrs T's complaint.

Anthony Arter
Pensions Ombudsman

20 December 2021

Appendix

Superannuation (Miscellaneous Provisions) Act 1967

Section 7, Extension of superannuation provisions of National Health Service Acts.

The secretary of state (hereafter in this section referred to as “the Minister”) may direct that regulations made under section 10 of the Superannuation Act 1972 shall, subject to such modifications as may be provided in the direction, apply to any person specified in the direction –

(a) Who is –

(i) Wholly or mainly engaged in health services , whether provided under the National Health Service Act 2006, the National Health Service (Wales) Act 2006 or otherwise, but not provided by a local authority; or

(ii) An officer of a government department serving on the medical or nursing staff of that department or at or for the purposes of a hospital maintained by that department, and who, if he were in the employment of an employing authority within the meaning of those regulations, would be an officer within the meaning of those regulations; or

(b) Who is a member of a body constituted under the National Health Service Act 2006 or the National Health Service (Wales) Act 2006, other than an HNS trust or an NHS foundation trust, or to any class so specified of such persons, as if the person, or any person of the class, so specified were, within the meaning of the said regulation, an officer in the employment of an employing authority, and in that event the regulations shall apply accordingly and any scheme under section 1 of the said Act 1972, if otherwise applicable, shall not apply, or shall cease to apply, to that person.