

Ombudsman's Determination

Applicant	Mrs K
Scheme	NHS Pension Scheme
Respondents	NHS Pensions

Outcome

1. Mrs K's complaint against NHS Pensions is partly upheld, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld) NHS Pensions should pay Mrs K £500 for the distress and inconvenience caused.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs K was informed in error that she was entitled to retire at age 55, under the NHS Pension Scheme's special class status. Mrs K asked for the special class status to be re-instated.

Background information, including submissions from the parties

4. Mrs K left the NHS in 1992 and in 1993 transferred 5 years 183 days Service from the NHS Pension Scheme into the Federated Pension Scheme.
5. Mrs K started work for the NHS again in 1996 and joined the NHS Pension Scheme at that time.
6. In 2011, NHS Pensions informed Mrs K that she had retained her special class status. NHS Pensions later informed Mrs K that this was an error. They said that, as the administrator of the NHS Pension Scheme, they had to act in accordance with the Rules, and because of this could not authorise a special class status if Mrs K did not qualify under the Rules.

Adjudicator's Opinion

7. Mrs K's complaint was considered by one of our Adjudicators who concluded that NHS Pensions should pay £500 for the distress and inconvenience caused, NHS Pensions agreed with the Adjudicator and an offer of £500 was made prior to the Opinion being issued. Mrs K declined the offer; the Adjudicator confirmed his view, in his Opinion, that £500 was fair compensation for the errors made by NHS Pensions.
8. The Adjudicator's findings are summarised briefly below:
9. The Adjudicator said that the Rules regarding special class status changed on 6 March 1995 and, because of this, the special class status no longer existed for anyone who joined the NHS Pension Scheme after that date.
10. Existing members of the special classes could continue to qualify for special class status dependant on their circumstances on 6 March 1995. The Rules state:

“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”.
11. Mrs K transferred her NHS pension to another scheme in 1993. It was the Adjudicator's opinion that it was this decision that resulted in the special class status being lost. Under the Rules Mrs K needed to either be a member of the NHS Pension Scheme on 6 March 1995 or, if not a member at that time, have retained deferred benefits under the scheme on that date.
12. As Mrs K joined the NHS Pension Scheme in 1996 and no deferred benefits were retained the Adjudicator believed that special class status was no longer available.
13. The Adjudicator agreed that NHS Pensions made an error in advising Mrs K, in 2011, that she had retained her special class status, a fact that NHS Pensions accepts. The Adjudicator believed that, as NHS Pensions have to administer the NHS Pension Scheme in accordance with the Rules, he could not recommend them to do

otherwise. The adjudicator confirmed that the error itself did not entitle Mrs K to the special class status.

14. The Adjudicator was of the opinion that the distress and inconvenience had been significant and, to compensate for this, recommended that £500 be paid to Mrs K. NHS Pensions have agreed with this recommendation.
15. Mrs K did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs K provided her further comments, many of which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mrs K for completeness.

Ombudsman's decision

16. Mrs K has said that she had believed that she had retained her special class status for 20 years and made her financial plans around retiring at age 55. Mrs K has said that she believed that, when she joined the NHS Pension Scheme in 1996, the special class status had been retained, and this was confirmed by the incorrect letter of 2011.
17. Mrs K has confirmed that she has not lost out financially as a result of the error, Mrs K continues to work for the NHS. Although the expectation was to retire at 55 no specific financial plans were made.
18. Mrs K has referred to a letter which would have been sent by NHS Pensions in 1996. Mrs Berwick had not originally referred to this letter as part of the complaint; however, NHS Pensions have confirmed that it would have been sent and that the wording "could have been clearer". The letter said:

"Special class status will not apply to anyone who starts working in one of those jobs for the first time on or after 6.3.95".
19. I agree that this wording could have led to Mrs K's understanding that she had retained special class status. However, this does not allow the special class status to be retained as Mrs K does not qualify under the Rules. As such I can only consider this in respect of the distress caused.
20. Mrs K has stated that she spent less than 5 years out of the NHS and transferred back the original scheme benefits in 1996. I accept this; however, as Mrs K was a member of the NHS Pension Scheme on 6 March 1995, and had no retained benefits on that date, these facts on their own do not entitle the special class status to be retained.
21. Mrs K has said that the significant distress caused has impacted on her life considerably, as it has taken so long to be resolved.

22. I agree with the Adjudicator's opinion that Mrs K does not qualify under the Rules of the Scheme and that the special class status therefore does not apply.
23. I agree with the Adjudicator that a payment for the distress and inconvenience caused should be paid to Mrs K. The distress has been significant and I agree with the amount of £500 recommended by the Adjudicator.
24. Therefore, I uphold Mrs K's complaint in part.

Directions

- For the significant distress and inconvenience caused NHS Pensions should pay Mrs K £500.

Anthony Arter

Pensions Ombudsman
24 June 2016