

## Ombudsman's Determination

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

## Outcome

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

## Complaint summary

2. Mr R has complained that NHS BSA has said he is not eligible for Mental Health Officer (**MHO**) status or Special Class Status (**SCS**). This means he is not able to retire at age 55 without being subject to an early retirement reduction.

## Background information, including submissions from the parties

3. MHO status is defined in Regulation R3 of the NHS Pension Scheme Regulations 1995 (**the Regulations**), set out in the attached Appendix. MHO status was abolished on 6 March 1995. However, members who qualified for MHO status on or before that date were able to retain it, provided that they had not had a break in active membership of five years or more and had completed 20 years of pensionable employment in a role which attracted MHO status.
4. SCS is defined in Regulation R2 of the Regulations. SCS provides that a person working as midwife, physiotherapist, nurse or health visitor, shall have the option to retire at age 55 without being subject to an early retirement deduction. SCS was abolished on 6 March 1995, but people were able to retain the status if they had not had a break in pensionable employment of over five years, and they spent their last five years of employment as a midwife, physiotherapist, nurse or health visitor.
5. From 7 November 1994 to 17 October 2012, Mr R was employed by NHS and held MHO status. He also had the potential to retire at age 55 by virtue of SCS.
6. Mr R was made redundant on 17 October 2012 and had built up 18 years of MHO status service. .

7. Since his redundancy, Mr R began looking into his pension benefits. It was at this point that he noticed his retirement age had been changed from age 55 to 60, and that MHO status had been removed for his period of employment from 2010 to 2012.
8. Mr R was dissatisfied that MHO status had been removed from his latter period of employment and that he had not been informed about this. Mr R took his complaint through both stages of the Scheme's internal dispute resolution procedure.
9. NHS BSA said it could not uphold Mr R's complaint and would not grant him MHO status. This was because the Regulations require that a member needs to build up 20 years of pensionable employment to be eligible to retire at age 55 without reductions. Mr R had only completed 18 years of pensionable employment. NHS BSA also pointed out that he was unable to retire at age 55 under SCS, because the Regulations state that a member must work their final five years of employment in SCS employment.

### **Adjudicator's Opinion**

10. Mr R'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:-
  - Mr R was employed from 7 November 1994, until he was made redundant on 17 October 2012. MHO status was removed from his records in 2010, which he believed was incorrect. However, even if he had held MHO status from 1994 to 2012, he still would not have met the criteria of 20 years' service to be able to retire at age 55, without early retirement reductions. NHS BSA is bound by the Regulations, it was correct to decide that he could not hold MHO status.
11. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr R provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the main points made by Mr R for completeness.
12. Mr R said the following:
  - his MHO status was removed two years before he left employment without his knowledge;
  - had he been made aware of the 20 years of service rule he would have argued against his redundancy; and
  - he believes he would have had enough time to seek out employment elsewhere within the NHS to maintain his MHO status.

## **Ombudsman's decision**

13. Mr R has complained that NHS BSA has said he does not hold MHO status or SCS. This means, that if he decided to take his benefits from age 55, his benefits will be subject to early retirement reductions.
14. Mr R says his MHO status was removed in his final two years of employment without his knowledge. Mr R was in NHS pensionable employment from 1994 to 2012. There was some confusion caused by NHS BSA in respect of Mr R's roles from 2010 to 2012, and whether the role attracted MHO status. Initially, NHS BSA said that Mr R could hold MHO status for this role, and then later decided that the role did not attract the status. It is correct for NHS BSA to decide which roles should attract MHO status as long as it complies with the Regulations and NHS BSA can explain why a particular role does not attract the status.
15. However, irrespective of whether the role attracts MHO status, the Regulations state that a member has to have a minimum of 20 years MHO pensionable employment in order to retire at age 55, without being subject to an early retirement reduction. So, even had Mr R held MHO status for his final two years of employment, he would not have met the necessary 20 years pensionable employment criteria by the time he was made redundant in 2012.
16. Mr R has said that he would have looked at ways of remaining employed and not being made redundant had he been made aware of the MHO position. I do not consider that NHS BSA was solely responsible for informing Mr R. When he was informed about redundancy, he could have ascertained his MHO status at the time and, perhaps, could have rectified the position.
17. Mr R has said he would have sought different employment within the NHS, in order to complete the required 20 years, so meeting the criteria for MHO status. The evidence suggests that Mr R has not made any attempt to seek further employment within NHS. There is also no guarantee that he would have been successful in finding further employment, given that he was being made redundant.
18. Mr R has also queried whether he would be able to retire at age 55, under SCS, without being subject to an early retirement reduction. The 1995 Regulations state that a member's last five years of employment has to be in SCS employment. So, from age 50 to 55, the member is required to be in SCS employment in order to be able to retire at age 55 without being subject to an early retirement reduction. As Mr R is no longer employed by the NHS he will not be completing his final five years of employment in an SCS position; he is not eligible for SCS.

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19. I do not uphold Mr R's complaint.

**Anthony Arter**

Pensions Ombudsman  
20 March 2020

## **Appendix**

### **The NHS Pension Scheme Regulations 1995**

#### R3 Mental Health Officer

*(5) Subject to paragraphs (6) and (7), where this regulation applies—*

(a) if the member has in excess of 20 years' pensionable service as a mental health officer, regulation E1 (normal retirement pension) will apply as if the reference, in paragraph (1) of that regulation, to age 60, were a reference to age 55, but only if the member was in pensionable employment as a mental health officer immediately before leaving; and

(b) each complete year of pensionable service as a mental health officer in excess of 20 years will count as 2 years' pensionable service.

*(14) In this regulation, “mental health officer” means—*

(a) an officer working whole-time on the medical or nursing staff of a hospital used wholly or partly for the treatment of persons suffering from mental disorder, who devotes all, or almost all, of his time to the treatment or care of persons suffering from mental disorder;

(b) any other officer employed in such a hospital who is within a class or description of officers designated by the Secretary of State as mental health officers for this purpose; and

(c) a specialist in part-time NHS employment who devotes all, or almost all, his time to the treatment or care of persons suffering from mental disorder and who satisfies the requirements of paragraph (15).

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

R2.—(1) Subject to paragraph (2), this regulation applies to a member—

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

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

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

and

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

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

(3) Where this regulation applies—

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