

## Ombudsman's Determination

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

## Outcome

1. I do not uphold Mrs E's complaint and no further action is required by NHS BSA.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mrs E says that she was not given any pension information when she rejoined the Scheme in 1996.
4. Mrs E has also complained that in 1997 she was incorrectly told by the local NHS Pensions Officer (**the Officer**) that she was ineligible to buy additional years of pensionable service.

## Background information, including submissions from the parties

5. Mrs E worked for the NHS between 1966 and 1981. She then took a career break and, in July 1995, she contacted NHS BSA about her length of pensionable service.
6. On 4 July 1995, NHS BSA replied to Mrs E's enquiry confirming the dates of her past NHS employments and a total preserved Scheme membership of 13 years and 101 days. The letter enclosed a copy of the Scheme Guide and information about buying additional membership in a booklet entitled "Increasing your benefits." Amongst other things, the booklet said that additional membership can be purchased by a single payment up to 12 months after joining or rejoining the Scheme.
7. One year later, on 23 July 1996, Mrs E returned to NHS employment on a temporary contract as a Health Visitor at Wirral Community Healthcare Trust.
8. On 6 February 1997, Mrs E attended a Training Course where she learned that she might be able to buy additional years of pensionable service. This prompted her to see the Officer as she wanted to buy additional Scheme membership and had the

finances to do this by a single payment. Although she was within the 12 month time limit for this option, Mrs E says that she was told by the Officer she was not eligible and that she could instead make Additional Voluntary Contributions to a plan provided by Equitable Life.

9. On 2 June 1997, Mrs E's employer wrote to her confirming her appointment as a permanent member of staff and enclosing a copy of the contract for her acceptance. The contract of employment had a section about the Scheme where it said the following:

“On joining the Trust, you have the option to participate (continue) in one of the country's largest occupational pension schemes. Full details are enclosed in the information pack enclosed with this document; you are urged to study this pack carefully so that you can advise the Personnel Department of your intention in this regard when you commence duty.”
10. Mrs E says that the covering letter of 2 June 1997 does not mention the information pack and she does not believe it was enclosed as stated in the contract.
11. Mrs E says that she phoned the Officer in June 1997 and she was told again that she was not eligible to buy additional service with a single payment.
12. In February 2000, Mrs E submitted a form entitled “Buying Additional Membership – request for details.” Specifically, she asked for information about buying additional membership by extra contributions and by single payment and completed those sections of the form.
13. As more than 12 months had passed since she rejoined the Scheme, the single payment option was not available to her at the time. In June 2000, Mrs E decided to buy additional membership by paying extra contributions until her 60<sup>th</sup> birthday. She did this by completing form AB54 and signing a declaration that she had read the “Increasing your benefits” guide.
14. Mrs E complained that she was not given any pension information within 13 weeks of rejoining the Scheme, as set out in Regulation 5 of The Occupational Pension Schemes (Disclosure of Information) Regulations 1986 (**the Regulations**). She says that she would have bought the maximum additional membership possible, if she had been correctly informed by the Officer or if she had received details about the Scheme within 13 weeks of employment.
15. NHS BSA considered Mrs E's complaint through its internal dispute resolution procedure (**IDRP**). It concluded that Mrs E received sufficient documentation before rejoining the Scheme about buying membership by a single payment and the associated 12 month time limit. NHS BSA also commented that she had sufficient opportunity to challenge the information she says the Officer gave her and to seek clarification sooner.

## **Adjudicator's Opinion**

16. Mrs E's complaint was considered by one of our Adjudicators. He did not uphold the complaint and his findings are summarised below:
  - Even if Mrs E's employer had failed to give her information within 13 weeks of rejoining the Scheme, he does not consider that this would have had a significant impact. This is because the relevant information was already available to Mrs E before she rejoined the Scheme.
  - Mrs E does not dispute receiving the Scheme booklets from NHS BSA in July 1995. Although she was not working for the NHS at the time, it is not unreasonable to think that she would have read the booklets, especially if she was considering returning to NHS employment after such a long absence.
  - Mrs E's employer also provided an information pack about the Scheme when her contract became permanent in 1997. Therefore, she had sufficient information that would have alerted her about her rights to buy additional service either by single payment or regular contributions. And this should reasonably have raised sufficient doubt about any incorrect information that may have been given by the Officer.
17. Mrs E did not accept the Adjudicator's Opinion and she reiterated the points she had previously made. In particular, her responses focused on the following:
  - She has not been able to obtain any records from her former employer and it is difficult to provide information when her records have been destroyed. There is no evidence to show that she was given information about the Scheme within 13 weeks of rejoining the NHS, as stated in the Regulations.
  - The information that was sent one year prior to employment was not relevant because she was only enquiring about her length of pensionable service at the time. She did not have the information or the knowledge when she commenced employment.
  - The Pensions Ombudsman has previously said, on another case, that he does not consider the obligation to provide information when members join the Scheme to be affected by whether or not they were provided with the relevant information during earlier membership of the Scheme.
18. The Adjudicator was not persuaded to revise his Opinion and the complaint was passed to me to consider. NHS BSA accepted the Adjudicator's Opinion and did not make any further comments.
19. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mrs E for completeness.

## Ombudsman's decision

20. I consider that the information given to Mrs E about the Scheme in 1995 and 1997 would reasonably have made her aware of the option of buying additional service by single payment or regular contributions and she did in fact buy additional service in 2000.
21. I note Mrs E's comment that, in 1995, she was only enquiring about her length of pensionable service. But I find it reasonable to expect Mrs E to give some attention to the additional information about increasing her benefits, particularly given her extended break from NHS employment.
22. In June 1997, Mrs E's employer enclosed an information pack about the Scheme on confirming her appointment as a permanent member of staff. Mrs E does not believe that an information pack was enclosed with the contract of employment. On the balance of probabilities, I consider it more likely than not that it would have been enclosed as stated in the contract.
23. I am unable to determine whether or not Mrs E was given pension information within 13 weeks of rejoining the Scheme, as stated in the Regulations. Both Mrs E and NHS BSA have been unable to obtain any records from her former employer about the pension information it may or may not have given her in 1996. I understand that Mrs E has tried to obtain this information from her former employer as she considers it relevant to the outcome of this complaint. However, based on the information given to her in 1995 and 1997, I am satisfied that Mrs E had sufficient details about buying additional service even if there was a failure to provide this within 13 weeks of rejoining the Scheme.
24. Mrs E has also complained that, in 1997, she was incorrectly told by the Officer that she was ineligible to buy additional service and she could instead pay into an Additional Voluntary Contributions (**AVC**) plan with Equitable Life. To uphold the complaint on that basis I would have to be persuaded that it was more likely than not that Mrs E received wrong information in 1997 and that her reliance on it caused her injustice. Mrs E told this service that she first became aware of the grounds of her complaint in 2013. Both parties are now having to cast their minds back over a very considerable span of time. There are no contemporary records from 1997. In those circumstances I consider the best evidence is what Mrs E in fact did in 1997. Mrs E did not elect to start an AVC plan in 1997. Rather, she took a decision to buy additional years service in 2000. If Mrs E had started an AVC plan in 1997, I could have reasoned that she relied upon the information she says the Officer gave her but on the evidence above I cannot reach that conclusion on the balance of probabilities.

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25. Therefore, I do not uphold Mrs E's complaint.

**Karen Johnston**

Deputy Pensions Ombudsman

5 July 2016