

Ombudsman's Determination

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| Applicant | Mrs H |
| Scheme | NHS Pension Scheme (the Scheme) |
| Respondents | NHS Business Services Authority (NHSBSA) Sheffield Teaching Hospitals (STH) |

Complaint Summary

1. Mrs H's complaint against NHSBSA is about the decision that she was not eligible to take her benefits early under the Special Class Status (**SCS**) terms of the Scheme. Her complaint against STH is that they gave her misleading information about her entitlement to continuing SCS status while on secondment on which she relied when deciding to retire.

Summary of the Ombudsman's Determination and reasons

2. The complaint should not be upheld against NHSBSA because they correctly interpreted the regulation and, even though there was a delay in providing benefit figures, they have offered Mrs H an appropriate level of compensation for the non-financial loss she has suffered. The complaint against STH should be upheld but only to the extent of the significant non-financial loss she has suffered.

Detailed Determination

Relevant provisions of the Scheme

3. Regulation R2 of the National Health Service Pension Scheme Regulations 1995 (**1995 Regulations**) says:

“R2 Nurses, physiotherapists, midwives and health visitors

(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...

(ii) has accrued rights to benefits under this Section of 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 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...”

Material facts

4. Mrs H started employment with the NHS in 1981. In 1995, Mrs H was employed by STH in a SCS role as a Healthcare Support Worker.
5. In 2000, Mrs H took a part-time role with Sheffield Children's NHS Foundation Trust (**SCH**) as a Staff Side Co-ordinator. She continued in her role as a Band 2 Healthcare Support Worker with STH.
6. In November 2008 she was elected by staff at SCH to the role of Staff Side Chair. The notes of the election show that Mrs H agreed to accept the 20 hour a week Band 6 role, if her employer [STH] agreed to a secondment and a return to her ward after. The post would run for one year and be up for re-election at the following year's AGM.

7. In March 2009, Mrs H was offered, and accepted, a secondment from her Healthcare Support Worker role with STH to the Staff Side Chair role with SCH. Thereafter she had two roles with SCH, one as Staff Side Co-ordinator and the other as Staff Side Chair. She performed all her work for SCH and was remunerated for both roles by SCH. She was directly employed by SCH in the Staff Side Co-ordinator role. She also retained a right to return to her SCS role with STH, who say that during this period she continued to be employed by them. At that time she was 49 years old.
8. Mrs H says that in 2009 she sought verbal advice from STH's pensions department regarding her pension and SCS, and was advised that as long as she did not have a block of 5 years out of her SCS role, and she was back in that role on the date of her retirement, her retirement age of 55 would remain unchanged. STH say that they do not have any documentary evidence of this.
9. In August 2010, Mrs H emailed STH asking how long she would have to be back in her SCS role before she could apply for her pension. STH responded by email: "[t]he least time we would recommend is a week but the choice is yours as long as the 5 years isn't exceeded".
10. In February 2014 (one month short of the 5 year anniversary of her secondment), Mrs H returned from her secondment as Staff Side Chair to her Healthcare Support Worker role with STH. She says she did so to preserve her SCS rights.
11. In March 2014, Mrs H was made redundant from her part-time Staff Side Co-ordinator's role with SCH.
12. In April 2014, Mrs H went on long-term sick leave from her Healthcare Support Worker role due to a back complaint and did not return to work.
13. In May 2014, Mrs H asked for a quotation of the retirement benefits payable to her at age 55.
14. In May 2014, Mrs H completed an application form – AW8 – for her retirement benefits to be paid from the Scheme. The AW8 form is signed and dated 15 May 2014 by Mrs H. There is a post mark dated 22 May 2014, which is the date the completed AW8 form was received by STH. The AW8 form shows the reason for retirement to be ill health and the date of retirement to be 31 August 2014. The words "Special Class" are hand-written on the AW8 form, but it is unclear as to whether this was written by Mrs H or STH.
15. STH obtained projections using NHSBSA's Pensions Online in May and June 2014. The May 2014 projections, dated 2 May 2014, showed an estimated pension of £8,695.90 per annum plus a tax free cash sum of £26,087.69, or an estimated pension of £6,987.78 plus a tax free cash sum of £46,595.17. These projections were based on a pensionable pay of £32,637.55 and took into account her salary in her Staff Side Co-ordinator and Staff Side Chair roles with SCH. There is nothing in these projections to say whether or not a reduction was applied to the benefits, but based

on the pensionable pay and pensionable service (ie 21 years 115 days) there appears to be no reduction. The penultimate paragraph at the bottom of the projections states:

“Whilst we have made every effort to ensure that this quotation is accurate, you should be aware that this statement **is an estimate quotation only**. The figures contained in it are based upon information that we hold as of the date that this quotation was issued and have been projected on the basis of your current pay and pattern of service. Exact figures for your retirement benefits cannot be given until such time as your final pay and service details are known and an application for benefits has been made in accordance with the Scheme rules.

...”

16. The June 2014 projections, dated 2 June 2014, showed an estimated pension of £9,141.41 per annum plus a tax free cash sum of £27,424.23, or a pension of £7,345.78 per annum plus a tax free cash sum of £48,971.84. This forecast was based on a pensionable pay of £34,309.66 which took into account her salary in her Staff Side Co-ordinator and Staff Side Chair roles with SCH. They were based on a normal pension age (**NPA**) of 55 with no reduction in benefits. Like the May 2014 projections, the June projections also contained a warning that the figures quoted were only estimates.
17. In an undated letter from STH to Mrs H, the figures shown in the June 2014 projections are quoted. STH refer to a telephone conversation and say that the estimated benefits assume a retirement age of 55. STH apologise for any confusion caused by the earlier estimate.
18. Mrs H resigned from her role as Healthcare Support Worker with a leaving date of 31 August 2014.
19. In August 2014, Mrs H contacted STH's pension department on a number of occasions about information on her pension. She was informed that there was a problem with her SCS and the amount of time she had been back in that role.
20. Mrs H was eventually informed she was ineligible for SCS.
21. Mrs H was paid a pension of £6,147.23 pa and a lump sum of £40,981.61 as from 1 September 2014.
22. On 21 October 2014, STH wrote to NHSBSA saying that both at the time of Mrs H's secondment in 2009, and at the time of her retirement in August 2014, they had sought guidance and information from NHSBSA on her pension entitlement, and it was understood that she had relied upon this information in coming to a decision to retire. Consequently, they asked NHSBSA to reconsider their view that she was not entitled to early retirement with unreduced benefits.

23. On 21 November 2014, NHSBSA responded to STH's letter of 21 October 2014 as set out below.
- a. Mrs H's pension record showed that numerous estimates and service statements were produced, including a redundancy estimate provided to her employer on 2 January 2014. Her Choice statement and all the estimates subsequently produced up to when she resumed her SCS role on 2 February 2014 were based on the premise that her normal retirement age was age 60.
 - b. Further estimates were run by STH in May 2014 and, as she had rejoined an employment that attracted SCS, they were calculated on a normal retirement age of 55.
 - c. While it is regrettable that being allowed to run an estimate at age 55 might imply that the member was eligible to retire at that age, it is important to note that the estimates were for information purposes only and should not be construed as an undertaking on their part to pay the figures shown.
 - d. If Mrs H wished to pursue the matter further, she had the right to take it through the IDR process.
24. On 15 December 2014, STH wrote to Mrs H saying that they had received a response from NHSBSA confirming that the regulations did not allow her access to her pension on SCS grounds because not all the last five years of her pensionable service was in a SCS role. They said that they would like to reassure her that she had their commitment to assist her wherever possible throughout the process.

The complaint

25. Mrs H complained to both NHSBSA and STH saying:
- a. at no point she had left her SCS role throughout the whole of her employment with the NHS;
 - b. between 2009 and 2014 she had kept regular contact with STH's pension department while trying to plan for her retirement and she was given estimates so that she could make an informed decision;
 - c. she received estimates of reduced benefits while on secondment, but she was advised that she could only be provided with a written quotation at this point as the system would not allow a SCS estimate to be produced until she was back in the SCS role;
 - d. in February 2014, on the advice given both on the estimated benefits and the timescales she chose to give up her secondment and returned to her substantive post with STH;

- e. in April 2014, she applied for her pension and was advised to check the estimate that would be sent to her to make sure it is correct before she submitted her retirement application;
 - f. in May 2014, she received the pension estimate and although the SCS was apparent the salary information was incorrect;
 - g. in June 2014, she received a pension estimate quoting a pension of £9,141 plus a tax free cash sum of £27,424, or a pension of £7,345 plus a tax free cash sum of £48,971 and, based on all the advice she had been given, she decided to resign from her Healthcare Support Worker role and applied for her pension;
 - h. if the advice she had been given had been different, financially she would not and could not have made the decision she did.
26. Mrs H's MP wrote to STH about her complaint, and they responded to her MP as set out below.
- a. When Mrs H undertook secondment in 2009, they wrote to NHSBSA to ask for information relating to her SCS. However, they no longer have copies of any correspondence between them and NHSBSA from around 2009/2010 on this particular case.
 - b. A member of their pensions department did make contact with NHSBSA regarding Mrs H. The member recalls that calls were made to NHSBSA and the guidance given at the time was such that provided Mrs H returned to her SCS role within five years, she would be able to claim her pension on SCS grounds without the requirement to work for an additional five years in that post.
 - c. This understanding was further supported by the information available to both employees and employers on the 'Ask Us' section of the NHSBSA website. Since raising this point with NHSBSA, the guidance on their website has changed to state that *all* membership within the last 5 years prior to retirement should have been spent in a SCS role in order to take unreduced pension benefits [*my emphasis*].
 - d. Prior to Mrs H retiring in 2014, they provided her with estimates of her benefits generated from the NHSBSA website, which all stated a NPA of 55, indicating that she had retained her SCS.

The internal dispute resolution procedure (IDRP)

27. On 22 December 2014 Mrs H lodged a formal complaint under the scheme's IDRP provisions. She stated:

"I was told I would receive a pension of special class nature payable from my 55th birthday. I relied on that information in taking my decision to retire from employment. I could have stayed in employment beyond this date, but actively decided to draw on my pension based on the figures I was told. (A return to

my old role is no longer possible – as the secondment role I undertaken as now been filled by someone else). Following my retirement I was distraught to learn that a much lower pension would actually be payable from NHSPS. Had this lower rate of pension been told to me at the correct time, ahead of my retirement, I would have elected to remain in work. As it is, I have retired from work and find myself suffering an irrevocable detriment as a direct consequence of being provided with incorrect information from my employer, using systems provided by NHS Pensions Agency.”

28. On 12 February 2015 a stage one IDRPs decision was issued by NHSBSA. Their findings are set out below.
- a. Mrs H was ineligible to retire at age 55 because she had not had SCS while seconded. Her employers agreed that the seconded role was not SCS.
 - b. They had a record of a telephone call from STH in 2010 asking for a return call to discuss the impact of her secondment on Mrs H’s SCS status. However there was no record of the return call being made.
 - c. The information given on their website at that time confirmed that a member with SCS could only retire at age 55 if they had spent their last five years of membership in a SCS post. A Special Class Factsheet (the **Factsheet**) containing the correct information had existed since before 2009. They were unable to say whether the employer had accessed it. The original advice given on the ‘Ask Us’ section of their website was that a member with SCS could retire at 55 provided they had *any* special class membership within their last five years [*my emphasis*]. This was incorrect and has since been corrected, but following the link on the page to the Factsheet would have enabled the correct position to be established at the time. Nothing published by them can override the regulations. In the case of any conflicting information, the regulations always prevail.
 - d. As the regulations had been applied correctly, they were unable to uphold her complaint.
29. Mrs H appealed the NHSBSA stage one IDRPs decision and in April 2015 the matter was considered by them under stage two. On 20 April 2015 the stage two decision was issued. This explained the employer responsibilities to provide information under the NHSPS Employer Charter, and set out the regulation relevant to SCS status (as above). It also set out extracts from the information which it published and which was available to Mrs H. Their findings are set out below.
- a. The Scheme Guide in print in March 1995, when Mrs H joined the Scheme, stated that ‘female members of the special classes are entitled to retire with benefits from age 55, provided that their last 5 years of membership is in one of these jobs’. The joiner form SS10 submitted by her employer when she joined the scheme confirmed she had been issued with the Starter Pack and

Scheme Guide, from which this is an extract. The Factsheet from March 2009 confirmed this information.

- b. The retirement page from the Scheme Guide in print in March 2009 until March 2010 confirmed that those with SCS 'have the right to retire from a NRA of 55 without a reduction to their pension, subject to certain criteria being met' and signposted to the Factsheet above.
 - c. The Employer Guide and 2009 Employer FAQs stated that the NRA for a member with SCS is age 55, provided that the last 5 years' membership prior to retirement is as a SCS member.
 - d. Notwithstanding the incorrect information initially included in the 'Ask Us' section of the website in 2013, there was sufficient correct information available to employers to enable them to confirm that in order to retire early she would need to have spent the last 5 years membership prior to retirement in a role which qualified for SCS.
 - e. The employer's email of 10 August 2010 was incorrect and it predated the introduction of 'Ask Us'.
 - f. The systems Pensions Online and Total Rewards Statements provided by NHSBSA take a 'snapshot' of employment status at any given time, which explained why on return to her Band 2 job at the end of her secondment the system identified her as being SCS 'assuming all criteria for retirement at age 55 would be met at retirement'. Similarly, as the record created by her employer during her secondment was a non-nursing (ie non SCS) post, any 'snapshot' generated during those years would have used an associated retirement age of 60.
 - g. While her terms and conditions of employment remained during the period of secondment that did not extend to the right to retire at 55 with unreduced benefits.
 - h. It took longer than was reasonably acceptable to provide her with the correct retirement benefit figures and offered a compensatory payment of £250 in recognition of distress and inconvenience.
30. In May 2015, STH wrote to Mrs H acknowledging that the situation regarding her pension entitlement had caused her and her family considerable distress in the period since her retirement. They appreciated the many years of valuable service she had provided and were extremely sorry that she had found herself to be in this position. They offered her £5,000 in full and final settlement of all claims she may have against them.

The Ombudsman complaint and investigation

31. On 23 June 2015 Mrs H brought her complaint to us making the comments set out below.

- a. She made the decision to retire based on very clear advice and estimates she received from her local pensions department (to whom she was directed by NHSBSA). It was not until she had left employment that NHSBSA informed her that she was outside of the regulations and that her employer had advised her incorrectly (even though they had her application three months before she left employment).
- b. NHSBSA tells her she is outside of the regulations and her employer tells her she is not. They have been in dialogue with each other, but unfortunately without a resolution.

32. In response to our enquiries about the pension benefits Mrs H is now receiving, NHSBSA explained that the benefits actually payable to her, when she retired on 31 August 2014, were a pension of £5,859.07 and a lump sum of £39,060.54. However, these benefits were subject to an adjustment which increased them to a pension of £6,147.23 and a lump sum of £40,981.61 because they included an element of pay protection. They explained the detail of the adjustment as follows:

“Where pension benefits are claimed on voluntary early retirement and the member is under the age of 55, pensions increase is not immediately payable. This is because there are no provisions within the Pensions Increase Act 1971 for increases to be applied unless retirement is on the grounds of ill health.

Once the member reaches age 55 the pension in payment is subject to an immediate increase between the deemed date and age 55. However, this increase is not treated as arrears and so no additional payment is made to the member the pension is simply increased. The deemed date is the date from which the member’s pension starts to receive increases under the Act. Increase start from the earlier of

- The day after active scheme membership ended; or
- The day after the pay period used to calculate benefits ended.

In the case of Mrs H her pension benefits were subject to a period of pay protection and therefore an element of pension increase as an earlier pay period was used to calculate her pension entitlement.”

33. We also enquired about the pension Mrs H would have been entitled to if she had continued in both the Staff Side Chair and Co-ordinator roles (ie had she not stepped down from the former and been made redundant from the latter) until 31 August 2014 and only then retired. NHSBSA informed us that the pension and lump sum paid to her would have been £7,246.47 pa and £23,555.62. If she was to exchange part of her pension to receive a larger lump sum, the pension would reduce to £5,920.35 and

the lump sum would increase to £39,469.02. These figures are based on the assumption that she was not made redundant from her Staff Side Co-ordinator role, she would not have some of her pension protected as a result of having to move from a higher paid to a lower paid post due to redundancy. They also explained that because she would not be retiring under SCS terms, she would receive 79% of her unreduced pension and 85.6% of her unreduced lump sum.

Summary of Mrs H's position

34. She considers she has been disadvantaged by her decision to retire in 2014, which was based on what STH had told her about how her SCS status worked during and after secondment. She has consistently said that she would not have made the decisions she made had she been given the correct information.
35. If she had been given the correct information in 2009, she would have undertaken the secondment role. However she would not have resigned in 2014, she would have continued working until such time as her pension entitlement was sufficient to enable her to retire.
36. Had she been given the correct information in 2014 she would not have stood down from her Staff Side Chair role with SCH and gone back to nursing at STH. She left her Staff Side Chair role because she was told she needed to be back in her SCS role, as there was a five year deadline in maintaining her SCS. She questions the relevance of the redundancy issue. She says did not lose the Staff Side Chair role because she was made redundant. She contends there is no document/regulation/policy that states she could not remain as Staff Side Chair, even if the Staff Side Co-ordinator's role was made redundant.
37. She has not taken up other employment since her retirement in 2014. Initially, this was because she was in discussions with STH who assured her repeatedly over a period of months that the matter would be resolved and she fully expected to receive the benefits quoted to her in June 2014. Latterly, she has been caring for family members who have been diagnosed with terminal illness.
38. Caring for her family members should not be held against her as a failure to mitigate her loss. It was a decision taken on the assumption that the pension figures she had been provided with would be honoured.
39. STH should not be relying on NHSBSA's Pensions Online to provide important estimates, upon which individuals like her will make life altering decisions.
40. Prior to her retirement she was advised that she could expect to receive a lump sum of around £48,970 and an annual pension of £7,345. On her retirement she actually received a lump sum of £40,981 and an annual pension of £6,147. Therefore, the financial loss she has suffered is a lump sum of £7,990 and an annual pension of £1,198.

41. But for the incorrect information provided to her, she would have had two clear options in 2014 – which were:
 - a. remain on secondment until such time as her retirement provision match her needs; or
 - b. continue with STH until such a time as her retirement provision matched her needs (for example for another five years, so as to regain SCS status).
42. It was plainly open to her to remain on secondment until such time as her retirement provision matched her needs.
43. With regard to continuing with STH until such time as her retirement provision matched her needs, she has no evidence to substantiate this because she has not focussed her submissions on this point. However, STH did reassure her that the matter would be resolved as evidenced by their letter to NHSBSA dated 21 October 2014 and STH's letter to her of 15 December 2014 informing her that they supported her complaint. Such supportive correspondence from her employer was naturally taken by her to constitute "reassurance" that the matter would be resolved.
44. The fundamental principles of liability for maladministration as per *Hogg Robinson Financial Services v Pensions Ombudsman* [1998] OPLR 131, are specifically: (1) has there been maladministration on the part of the trustees or administrators? (in this case – yes); and (2) has the member sustained injustice? (in this case – yes).
45. She questions the accuracy of the figures calculated by NHSBSA based on her continuing in both the Staff Side Chair and Co-ordinator roles until 31 August 2014. NHSBSA had stated that her pension at August 2014 would be subject to reductions of 79% and 85.6%. Such figures are extraordinary and highly doubtful. In any event, the point is a red herring because the calculation applies a retirement date of 31 August 2014. But for STH's faulty information and maladministration, she would not have retired on 31 August 2014.
46. The redundancy payment she received should not be taken into account in assessing her loss. Redundancy is a separate employment matter.

Summary of NHSBSA's position

47. During the period Mrs H was undertaking the Staff Side Co-ordinator's and Staff Side Chair roles, she was not a working nurse or in any grade that would have qualified her for SCS. On cessation of her secondment to SCH, she returned to a nursing role. However, the fact that she returned to a nursing role is not the same as actually undertaking a role which would qualify a member for SCS during a period of secondment.
48. Mrs H says that her terms and conditions of employment during her secondment did not change. However, this would appear not to be the case. In her various posts she was contracted to work a number of different hours and was paid different rates of

pay. Whilst membership of the Scheme may be part of an NHS employee's term and conditions, whether a member qualifies for SCS is not.

49. Mrs H has continuous membership of the Scheme from 4 April 1989. This means that when she returned to a nursing position on 4 February 2014, the post was granted SCS and retained that status until she retired. However, being in a role which attracts SCS at the time of retirement does not automatically qualify her for retirement without actuarial reduction from age 55. The regulations require members with SCS to have spent the whole of the last five years in a post which attracts SCS in order to be eligible to retire from age 55 without an actuarial reduction.
50. They did not cause STH to give Mrs H the wrong information in 2009/10. The original 'Ask Us' section on their website stated: "If you have Special Class status your normal retirement age is 55 and you may retire at this age with unreduced benefits providing any membership you have within the five years prior to retirement is within a Special Class role and you have active membership within a Special Class role when you retire". While they accept that the original information on their website could possibly be regarded as not being as accurate as necessary, it is not incorrect as it confirms that for the last five years of membership prior to retirement the member must be in a SCS role and retire from membership with SCS. However, Mrs H's decision to take secondment with SCH pre-dates the availability of the 'Ask Us' facility.
51. With respect to the estimates STH had obtained from Pensions Online in June 2014, these were based on the information held at that time. If the member has SCS on the day the estimate is produced the system will calculate benefits on that basis. While the system will allow an employer to submit an application for retirement benefits on age grounds for a member with SCS from age 55, it does not check that all eligible criteria has been met against the member's pension record. Checks to ensure all retirement eligibility criteria have been met are undertaken on receipt of the application form.

Summary of STH's position

52. They understand that Mrs H has suffered considerable distress as a result of the issues raised in her complaint. They have sought to support her in her engagement with NHSBSA. They have offered Mrs H a sum in recognition of her distress and disappointment at being unable to retire at age 55 with the level of pension she was expecting, but the offer was refused.
53. They acted at all times on the basis of information provided by NHSBSA and the Pensions Online tool, and acted entirely appropriately in doing so. Even if it is considered that they were at fault, there is strong evidence that Mrs H has not suffered any financial loss as a result of this.

54. Along with the AW8 form, which they sent Mrs H for completion, an estimate was produced on 2 May 2014. The estimate clearly states that the figures were estimates. She subsequently queried the May 2014 figures and these were recalculated in June 2014 and sent to her. However, they cannot be certain whether they had sent her the document which they had run through Pensions Online, which contained the warning that the figures were estimates, or whether the figures were extracted from the estimate and put in a letter.
55. If NHSBSA's position as to Mrs H's entitlement to SCS is correct, there is no counter-factual scenario in which she would have been entitled to retire at age 55 and receive her forecasted pension. This would be the case even if she had been provided with correct information in advance of her secondment in 2009, and in the pension forecasts provided to her in advance of her retirement in August 2014.
56. Mrs H has said that she would have continued to work if she had appreciated the correct level of her pension entitlement in advance of retiring. The right course of action therefore, is for her to seek appropriate employment in order to supplement her income.
57. They were informed by SCH that at the time she was made redundant from her Staff Side Co-ordinator's role, Mrs H was offered three opinions. Having received these options, she accepted a tax free redundancy payment of £18,600. She then continued in her Healthcare Support Worker role until August 2014 and earned £6,085 nett in salary and benefits over this period.

Further investigation of the redundancy issue

58. In response to enquiries about whether Mrs H could have continued in her secondment with them despite their making her substantive role redundant, SCH explained:
 - a. in order for a person to undertake the Staff Side Chair role with them the person needed to be substantively employed by them;
 - b. Mrs H held the substantive post of Staff Side Co-ordinator which was made redundant, but prior to this redundancy she returned to her Healthcare Support Worker role with STH to preserve her SCS;
 - c. even if she had not returned to her Healthcare Support Worker role, she would not have been eligible for subsequent re-election to the Staff Side Chair role as she did not hold a substantive post with them; and
 - d. it is an agreement with their trade unions that to be able to represent their staff and be in a paid position, the person needed to be an existing employee and a recognised trade union representative.
59. This was not Mrs H's understanding of the situation.

60. The potential implications of the redundancy decision made by SCH were investigated in some detail in the course of which Mrs H produced an undated 'redundancy options sheet' which she says she had not seen at the time of her redundancy, but had obtained in 2015 after a request for her personal file. The document outlines three options, all premised on redundancy of her 10.1 hour post as Side Chair Co-ordinator with SCH.
61. Option A was to take a full redundancy payment of £10,075.13 and a reduced pension. Option B was to take a full redundancy payment of £10,075.13 and defer the pension ie take it at a later date (reduced if taken under NPA) or leave claiming benefits until 60. Option C was to take a full pension, in which case the redundancy payment will be nullified or reduced to £6,383.07. It explained under note 2 - 'Concurrent employments':
- "If you are made redundant between the ages of 50-55, and choose to take your benefits, you have to take them in respect of all your employments. If you do not return to your Special Class employment with STH NHSFT then your benefits will be approximately as detailed in example 1. However if you do return to your Special Class employment with STH NHSFT before 31/03/14 then your benefits will be approximately as detailed in example 2"
62. This document gave rise to an exchange between SCH and STH. In an email dated 4 December 2015 to STH, Mr N of SCH said that various options were presented to Mrs H at the time of their discussions with her regarding this matter. He says: 'I recall advising [Mrs H] to seek advice from the pensions team at Victoria Pay Services [ie STH]. I also specifically recall that [Mrs H] was clear about her options as she wanted to take the redundancy payment, return to her role at STH before accessing her pension at a later date'.
63. Mrs H maintained she was not in fact given Option C, which included the option to take an unreduced benefit payment. NHSBSA then pointed out that they did not produce the options sheet and the cost of taking full pension recorded there was not accurate in any event. They provided a copy of a calculation dated 2 January 2014 which had been issued to SCH ('EA Code 3683'). This shows a one off payment capitalised cost of providing unreduced benefits of £48,357.04. They are unaware of what SCH later did with it.
64. On 17 May 2016, in an effort to establish the correct factual basis for any subsequent discussion, NHSBSA produced an estimate of redundancy benefits based on a retirement date of 31 March 2014, and a pensionable pay of £34,183.50. The benefits quoted were an annual pension of £9,001.26, a lump sum of £27,003.79 and a survivor's pension of £4,500.63. The one off payment cost to provide these unreduced benefits was £49,389.22.
65. SCH were asked for their views on the implications of these costings. In an email dated 18 May 2016, addressed to all parties including us, SCH said:

“The redundancy from this organisation was part of our cost reduction programme based on an assessment of the cost to the organisation as provided in the attachment [ie the redundancy options document produced by Mrs H].

The hypothetical question seems to be would this Trust have made the post redundant had the capitalised cost to the Trust been approximately £50K. Had that been the cost we would have looked at alternative cost saving measures.”

66. In an email dated 19 May 2016 to us, SCH confirmed: “for clarity, if the capitalised cost to this organisation for [Mrs H’s] redundancy was circa £50K then we would not have made the post redundant”.

Conclusions

67. Under the 1995 Regulations a member in a SCS role (i.e. a nurse, physiotherapist, midwife or health visitor) can retire early at age 55 without an actuarial reduction, provided they were not out of that role for a period of more than five years and they have been in that role in last five years before retirement.
68. Mrs H had been seconded to the Staff Side Chair role in March 2009 but returned to her SCS role in February 2014, so she was not out of the latter role for more than five years. However to be entitled to unreduced benefits on retirement aged 55, she also needed to have been back in the SCS role for at least five years at the time she retired and in fact she was back in it for only a few months. Therefore, she was not entitled to an unreduced pension under the SCS terms when she retired in August 2014.
69. I have considered the fact that she remained employed by STH during the period of secondment. However, the test under the regulations is whether someone ‘spends’ the whole of the last 5 years of her pensionable employment as a nurse. I find that Mrs H spent the period on secondment in a non-nursing role. I am therefore unable to find that NHSBSA misinterpreted the 1995 Regulations.
70. I do not uphold the complaint against NHSBSA because although they have admitted delays in providing correct retirement benefit figures, the offer of compensation (ie £250) which they made was in line with the level of award which I would have made at the time.
71. Turning to the pension projections provided in May and June 2014, Mrs H had completed the AW8 form, applying for her pension to be paid from the Scheme, and sent it to STH before she received the June 2014 projections. This means that Mrs H had already decided to retire, and receive her benefits from the Scheme, before she received the June 2014 projections. Consequently, she could not have relied on the June 2014 projections in deciding to retire on 31 August 2014.

72. With regard to the May 2014 projections, Mrs H had queried the figures with STH and therefore she clearly had not relied on the figures. Besides the loss she is claiming are not the figures shown in the May 2014 projections but the figures shown in the June 2014 projections.
73. It is entirely possible that Mrs H was not sent the June 2014 projections, which STH had run off Pension Online, but just given extracts taken from this projection. However, the fact remains that these figures were quoted to her after she had made her application to retire, and take her benefits from the Scheme, and therefore she could not have relied upon them.
74. I turn now to Mrs H's complaint that she was given incorrect information by STH, in the verbal advice she received in 2009, the written advice she received in 2010. STH say that they contacted NHSBSA in 2009 for information about Mrs H's SCS, but they did not have copies of any correspondence to show what advice they had received.
75. What is clear is that in 2010, Mrs H was incorrectly informed in an email from STH that she could return to her SCS role and needed to be in it for only a week to be eligible for unreduced retirement benefits at age 55. STH claim that they had obtained their information from NHSBSA before advising Mrs H, but NHSBSA say that they had no record of a call conveying this information to STH in 2010. I accept that the STH member of staff concerned believed she was conveying the sense of what she had understood correctly, but there is insufficient evidence to demonstrate that anything said or published by NHSBSA in 2009/10 caused the incorrect information to be given to Mrs H. I find that STH were responsible for the incorrect information given in 2009/10.
76. It is clear that STH provided Mrs H with specific incorrect information about her SCS in 2010 and that statement remained uncorrected as at the date of her decision to retire. The August 2010 email is a clear and unequivocal representation that she could draw her pension on SCS terms so long as she was back in her SCS role at the time she applied for it. I accept that the representation was made in honest error but it was incorrect. I am also satisfied that STH had access at the time to published information which set out the correct position. I therefore find maladministration on the part of STH.
77. I now need to consider whether Mrs H has suffered an injustice as a consequence of the maladministration on the part of STH.
78. The basic principle is that an incorrect statement about entitlement to benefit does not automatically entitle a member to the level of benefit incorrectly quoted. A member is only entitled to receive the benefits provided for under the scheme rules/regulations, i.e. those based on correct information accurately reflecting the scheme rules/regulations.

79. I can provide redress for negligent misstatement if the member can prove that they relied reasonably on a clear and unequivocal statement, which was false, and doing so caused them financial loss. For example, the member may have taken a decision in the expectation of receiving the higher benefits which they would not otherwise have done, such as retiring early. I must consider whether it is more likely than not that the incorrect information caused the member to act in a way they would not have done had the information been correct, that it was reasonable for them to do so, and that doing so caused them loss. Having considered the facts I conclude that Mrs H cannot demonstrate this.
80. Mrs H accepts that if she had been given the correct information in 2009 she would still have taken secondment to SCH at that time. The critical decisions took place in 2014 when she decided to stand down from her Staff Side Chair role.
81. I find that she did rely upon the information given in 2009/10 when making her decision to leave her secondment and return to her lower paid SCS role. It is clear that Mrs H paid close attention to the terms on which she would be seconded, including whether she would be able to return to her SCS job and how long she would need to spend in it before she could retire at 55 with full pension. The timing of her decision to stand down at 4 years and 11 months into her secondment was clearly intended to preserve what she believed to be her right to retire on full benefits at 55. I accept that if she had known the correct information at any point before she made that decision she would have chosen to stay in her secondment arrangement. As the facts appeared to her at the time I can see no incentive to do otherwise.
82. In the course of the dispute about precisely what options were discussed with Mrs H at the point of making her redundant, neither she nor SCH have ever suggested that they discussed what her NRA would be if she returned to STH. SCH's undisputed evidence is that they referred her back to STH on such matters. I therefore find that Mrs H made her decision to go back to her nursing role with STH at that time based on the incorrect information previously provided by them.
83. The next question is what would have happened had she not made that decision. SCH have said they would not have made her redundant if it was going to cost them nearly £50,000. On the basis of the information provided by NHSBSA I find that it would have cost that much to make her redundant from both roles with access to unreduced benefits. I therefore find that on the balance of probabilities SCH would not have done it and she would have been able to continue working in her band 6 roles up to the point of retirement.
84. The next question is when would she have retired? Is there any reason to conclude it would not have been when she in fact retired (ie 31 August 2014)? Mrs H says she would have continued to work until her benefits were at the level she could afford to retire on. But, she has not said exactly what those benefits may be. I can only assume that the benefits she had in mind were the figures quoted in the June 2014 projections (ie an annual pension of £7,345 and a lump sum of £48,970). However,

given that she had decided to retire and applied for payment of her benefits from Scheme before she received figures in the June 2014 projections, it is therefore questionable whether the exact level of benefits she would receive at retirement was a major factor in her decision to retire on 31 August 2014. I find, on the balance of probabilities, she would have continued in her Band 6 roles, but that she would most probably have retired on 31 August 2014.

85. I have considered the points made by STH that Mrs H would have had to retire anyway because of health issues and has failed to mitigate her loss by looking for work since she retired. Indeed, on the AW8 form she completed she stated that her retirement was due to ill health. I accept that health was a problem in her substantive nursing role. No evidence has been produced to show that it was a problem in her administrative role. However Mrs H accepts that she has not worked since her retirement in 2014. The reasons she has given are the repeated reassurances she says she was given by STH that the matter would be resolved and the fact that she has been caring for family members. I agreed that she continued to correspond with both SCH and NHSBSA after she retired, but I cannot see any evidence of reassurance she was given by them or STH after September 2014 which would have stopped her from seeking employment. STH in their letter of 15 December 2014 to her reassured her of their commitment to assist her wherever possible, which is not the same as reassuring her that the matter will be resolved. By December 2014, she knew that the matter could not be resolved, but there is no evidence to show that she subsequently made any attempts to seek employment. Therefore, I find, on the balance of probabilities, she would not have continued working after 31 August 2014.
86. I accept that there was a duty to mitigate her loss and no evidence of mitigation has been put forward. Mrs H says that she made the decision to care for her family on the assumption that the pension figures she had been provided with would be honoured. However, as previously stated, she could not have relied on the June 2014 projections and she knew by December 2014 that she would not receive the pension quoted to her in those projections. In the circumstances I do not think any lost earnings or further scheme accruals are recoverable past the point at which she in fact stopped work.
87. NHSBSA's calculations show that if Mrs H had continued in her Staff Side Chair and Co-ordinator roles and retired on 31 August 2014, the benefits she would receive would be lower than the benefits she is currently receiving. In addition, she would not have been entitled to the redundancy lump sum she received because she would not have been redundant. Therefore, I am unable to find that she has suffered a financial loss as a result of her reliance.
88. With regard to the redundancy payment Mrs H had received, if she had continued in her Staff Side Chair and Co-ordinator roles she would not have received this payment. Therefore, it is only proper and right that this payment is taken into account in assessing any loss she may have suffered.

89. Mrs H questions the accuracy of the figures calculated by NHSBSA for the scenario where she continued in her Staff Side Chair and Co-ordinator roles and retired on 31 August 2014. Apart from referring to the reductions that would be applied to her pension at August 2014, she has not said why the figures quoted by NHSBSA were inaccurate. The reductions referred to are the percentages of the unreduced pension and unreduced lump sum she would receive, and not the percentages by which they would be reduced.
90. Even though I have found that Mrs S has not suffered a financial loss, STH did lead her to believe she was entitled to benefits based on ongoing SCS status when under the Scheme rules she was not, and I recognise that she suffered significant non-financial loss in the form of distress and inconvenience as a result.
91. Ordinarily I would not uphold a complaint where a party has made an appropriate offer of compensation prior to the complaint being brought to the Ombudsman. In this case the offer made by STH was significantly more than I consider it appropriate to award in the circumstances. Exceptionally I am upholding the complaint in this case, because at the conclusion of IDRP, Mrs H remained trapped between contrary arguments and positions which were difficult to evaluate without the clarifications provided by NHSBSA in the course of investigation. I therefore accept that it was reasonable for her to pursue her complaint.

Directions

92. I direct that within 14 days of the date of this determination STH shall pay direct to Mrs H £500 as compensation for the significant non-financial loss she has suffered as a consequence of maladministration on their part.

Karen Johnston

Deputy Pensions Ombudsman
2 February 2017