

Ombudsman's Determination

Applicant	Miss Y
Scheme	NHS Pension Scheme (the Scheme)
Respondent	NHS Business Services Authority (NHS BSA)

Outcome

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

Complaint summary

2. Miss Y has complained that NHS BSA failed to inform her that if she became a deferred member of the Scheme in May 2016, she would no longer be entitled to receive unreduced retirement benefits from her 55th birthday in September 2016.
3. She contends that she would not have left NHS employment on 31 May 2016 under the Mutually Agreed Resignation Scheme (**MARS**) if NHS BSA had told her that she must be in pensionable employment on her 55th birthday in order to qualify for such benefits.

Background information, including submissions from the parties

4. The Scheme is governed by the NHS Pension Scheme Regulations 1995 (as amended) (**NHS Regulations**).
5. Miss Y joined the Scheme in April 1985. She worked for the NHS in a role that qualified for Special Class Status (**SCS**) in the Scheme.
6. Consequently, in accordance with the NHS Regulations while Miss Y was an active member of the Scheme, her Normal Pension Age (**NPA**) was 55. The relevant sections of the NHS Regulations are set out in the Appendix.
7. On 29 July 2015, Miss Y telephoned NHS Pensions Customer Contact Services (**CCS**) to enquire when she could claim her pension from the Scheme. According to the note of the call made by CCS, it informed Miss Y that her NPA was 55.

8. In May 2016, Miss Y telephoned CCS again to request details on how to apply for the retirement benefits available to her from the Scheme. She says that during the telephone conversation, CCS:
- did not provide her with “correct guidance” in order to make “a fully informed decision” about when to take her pension from the Scheme; and
 - did not tell her that she would not receive unreduced retirement benefits from the Scheme if she was not in pensionable employment on her 55th birthday.
9. On 20 May 2016, NHS Shared Business Services (**NHS SBS**), the payroll provider for Miss Y’s employer, provided Miss Y with:
- a retirement benefits claim form (**AW8 form**) with guidance notes;
 - a retirement guide; and
 - a quotation showing the estimated benefits available to her from the Scheme based on a pensionable pay of £37,318.05 per annum and retirement dates of (a) 27 May 2016 and (b) her 55th birthday.
10. In its covering letter to Miss Y, NHS SBS said that:-
- Precise amounts for her benefits could not be given until her final pay and membership details were known.
 - It could not accept liability for any inaccuracies in the estimated benefits that were provided for guidance purposes only.
 - She should add the date from which she would like to claim her retirement benefits next to “Claiming from”¹ on Part 1 of the AW8 form, that is, either her leaving date of 27 May 2016 or her 55th birthday.
 - She should also complete parts 7 to 15 of the AW8 form and return it with copies of the relevant certificates.
 - It would then complete parts 2 to 6 and send it to NHS Pensions.
 - NHS Pensions² would calculate the actual retirement benefits available to her from the Scheme.
11. NHS SBS completed part 1 of the AW8 form on 20 May 2016 to show that Miss Y’s “last day of Scheme membership” was 27 May 2016.

¹ NHS SBS wrote “Claiming from” on part 1 of the AW8 form

² The Scheme is administered by NHS Pensions which is part of NHS BSA.

12. The quotation showed that the actuarially reduced retirement benefits available to Miss Y from the Scheme if her date of retirement was 27 May 2016 were as follows:-
 - A full pension of £11,206.71 per annum.
 - A tax free lump sum of £36,601.87.
 - A survivor's pension of £6,564.53 per annum.
13. It also showed that if Miss Y had stayed in the Scheme until her NPA of 55 she could have expected to receive the following benefits:-
 - A full pension of £14,550.21 per annum.
 - A tax free lump sum of £43,650.62.
 - A survivor's pension of £6,637.37 per annum.
14. Under the heading "Important" on the quotation, it said that:

Estimates to a current date: This estimate is based only on the information NHS Pensions holds at this time and assumes that your pensionable pay will remain unchanged until you retire.

Estimates to a future date: This estimate is based both on the information NHS Pensions holds at this time and on projected working patterns and pay selected by you or your employer...

Your final pension benefits will be based on your confirmed membership and pensionable pay at retirement."
15. Miss Y accepted a MARS settlement and left NHS employment on 31 May 2016. She became a deferred member of the Scheme and under the NHS Regulations, her NPA reverted to 60.
16. On 17 August 2016, NHS SBS confirmed receipt of the partially completed AW8 form from Miss Y who had specified in part 1 that she was claiming retirement benefits from her 55th birthday in September 2016.
17. Miss Y had signed the AW8 form on 1 June 2016. By doing so, she declared to NHS Pensions that she had read "the Retirement Guide for members of the Scheme (**the Retirement Guide**) and the application guidance notes" before completing the AW8 form.
18. The "guidance notes for applicants" said that:

"Before you complete the claim form you may need to read or download further information from the website at www.nhsbsa.nhs.uk/pensions."

19. NHS SBS completed a supplementary form to show that: (a) Miss Y's actual date of leaving NHS employment was 31 May 2016; and (b) early payment of her preserved pension should commence on her 55th birthday. NHS SBS sent both forms to NHS Pensions shortly afterwards.
20. On 21 September 2016, NHS Pensions issued a statement to Miss Y detailing the actuarially reduced benefits available to her from the Scheme on her 55th birthday based on her final pensionable pay of £37,349.79 per annum and her leaving date of 31 May 2016.
21. The benefits were:
 - a full pension of £11,393.29 per annum and a tax free lump sum of £37,035.39; or
 - a reduced pension of £9,308.30 per annum and a tax free lump sum of £62,055.31 which included £25,019.92 from exchanging £2,084.99 of her pension.
 - A survivor's pension of £6,572.67 per annum on death after retirement was available with both options.
22. Miss Y was unhappy that her retirement benefits had been reduced and made a complaint under the Scheme's Internal Dispute Resolution Procedure (**IDRP**).
23. NHS BSA did not uphold her complaint at both stages of the IDRP in November 2016 and February 2017.

Miss Y's position

24. The information which CCS gave her during the telephone call in May 2016 was "inadequate and misleading". CCS did not inform her that she would not receive unreduced retirement benefits from the Scheme if she was not in pensionable employment on her 55th birthday. If it had done so, she would have either declined the MARS agreement or retired early from 31 May 2016.
25. CCS also said that an AW8P form³ would be sent to her for completion. At the time of the call, she was only considering whether to accept the MARS settlement and had not yet left NHS employment.
26. She has had to return to work in order to make up the shortfall in her pension benefits.
27. She says that:

"The fact that I was sent and completed a claim form AW8...clearly indicates that I believed I could leave the Scheme on my 55th birthday without any reduction to my pension benefits."

³ The AW8P form is used by deferred members to apply for the benefits available to them from the Scheme.

The position of NHS BSA

28. It can only pay Miss Y the early retirement benefits available to her from the Scheme, calculated in accordance with the NHS Regulations. As Miss Y has received her correct retirement benefits, she has not suffered any actual financial loss. What she has suffered is a loss of expectation. Miss Y expected to receive the higher benefits from the Scheme but was not entitled to them.
29. Information about the benefits payable to deferred members of the Scheme on early retirement at age 55 was available to Miss Y in the Retirement Guide and on its website.
30. Page six of the Retirement Guide showed that:

“Nurses, midwives, health visitors, physiotherapists and mental health officers in the 1995 Section and in post on or before 6 March 1995 (which we describe as having SCS) have the right to retire from a NPA of 55 without a reduction applied to their pension, subject to certain criteria being met. Further information about these criteria can be found in the Special Class and Mental Health Officer (MHO) factsheets available on our website at www.nhsbsa.nhs.uk/pensions

More detailed information about retirement benefits and examples of calculations can be found in the Scheme Guides available on our website at www.nhsbsa.nhs.uk/pensions”

31. The SCS factsheet on its website and therefore available to Miss Y said that:

“Criteria to retire at age 55

In order to retire at age 55 a member must have spent the whole of the last five years pensionable employment in a health service scheme as a member of the special classes. This does not need to be continuous i.e. breaks in NHS employment will not be counted when assessing the five year period.

A member must be in a special class post immediately prior to retirement. When a member leaves pensionable employment before age 55 benefits become deferred and do not become payable until the NPA of 60.

Redundancy – An exception to this is a SC member who is made redundant and is not in receipt of a redundancy pension. In these circumstances a member with deferred benefits may claim these benefits at age 55 if the last five years of pensionable employment was as a member of the special classes.”

32. Miss Y also received the “Frequently Asked Questions” document for the MARS from her former employer which showed that:

“I am 53 and have SCS. If I leave under MARS will I be able to take my pension unreduced at 55?”

Only if you return to pensionable employment that qualifies for SCS before you are 55; this will be within 5 years of leaving. Otherwise you will have to wait until you are 60 to take your pension without a reduction.”

33. Miss Y had consequently been provided with adequate information showing that she would not receive unreduced retirement benefits from her 55th birthday if she was not in pensionable NHS employment at the time.

Adjudicator’s Opinion

34. Miss Y’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 in paragraphs 35 to 42 below.
35. Miss Y declared to NHS Pensions that she had read the Retirement Guide and the application guidance notes when she signed the AW8 form on 1 June 2016 before returning it to NHS SBS.
36. In the Adjudicator’s view, it was consequently reasonable to expect that Miss Y would have read the Retirement Guide and the associated SCS factsheet carefully if information about SCS was critical in her decision on whether to accept the MARS agreement.
37. Miss Y would then have been aware that: (a) she only had the right to retire at age 55 with unreduced pension benefits from active membership in the Scheme; and (b) if she left pensionable employment before age 55, she would then be entitled to deferred benefits from the Scheme that became payable at an NPA of 60.
38. In the Adjudicator’s opinion, it was also reasonable to expect that Miss Y would have studied the MARS documentation which she received from her former employer prior to accepting the MARS agreement. If Miss Y had done so, she would then have known that if she wished to take her deferred pension at age 55, it would be actuarially reduced to allow for the fact that it would be paid for longer and that her NPA had changed.
39. Miss Y said that CCS did not inform her during the telephone call in May 2016 that if she became a deferred member of the Scheme, she would no longer be entitled to receive unreduced retirement benefits from her 55th birthday in September 2016.
40. Whilst this might be the case, the Adjudicator could not overlook that by signing the declaration on the AW8 form, Miss Y had confirmed to NHS Pensions that she had studied the Retirement Guide and guidance notes, both of which provided ample information that should have alerted Miss Y to the consequences of signing the AW8 form.
41. It had consequently been open to Miss Y to research SCS in more detail and defer her decision to accept the MARS agreement until she was completely satisfied that it

would have been in her best financial interests. By deciding not to explore that possibility, Miss Y regrettably chose not to make a more informed choice.

42. As NHS BSA provided Miss Y with adequate information about SCS to make an informed decision and paid her the correct early retirement benefits available to her from the Scheme, it was the Adjudicator's view that there has been no maladministration on its part.
43. Miss Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
44. Miss Y said that:

"I do not accept the outcome as I feel let down and as I have previously stated I was not fully informed prior to taking MARS weeks prior to my 55th birthday."
45. I note the additional points raised by Miss Y but I agree with the Adjudicator's Opinion.

Ombudsman's decision

46. Miss Y says that CCS did not inform her during the telephone call in May 2016 that she would not receive unreduced retirement benefits from the Scheme if she was not in pensionable NHS employment on her 55th birthday in September 2016.
47. I cannot, however, disregard the fact that Miss Y signed the AW8 form on 1 June 2016 and by doing so, she declared to NHS Pensions that she had read the Retirement Guide and the application guidance notes.
48. Furthermore, I consider it reasonable to expect that Miss Y would have studied the MARS documentation which she received from her former employer prior to accepting the MARS agreement.
49. For essentially the same reasons as given by the Adjudicator, I find that Miss Y had an opportunity to research SCS in more detail and defer her decision to accept the MARS agreement until she was satisfied that it would have been in her best financial interests. By deciding not to explore that possibility, Miss Y, regrettably, chose not to make a more informed choice.
50. While I sympathise with Miss Y's circumstances, I do not find that there has been any maladministration on the part of NHS BSA.

CAS-46530-T6X5

51. I do not uphold Miss Y's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman

31 January 2023

APPENDIX

The National Health Service Pension Scheme Regulations 1995

A1 Citation and commencement

(1) These Regulations may be cited as the National Health Service Pension Scheme Regulations 1995.

(2) These Regulations come into force on 6th March 1995.

L1 Preserved pension

(1) Subject to paragraphs (3) and (4), a member who leaves pensionable employment before age 60 without becoming entitled to a pension under any of regulations E1 to E5 shall be entitled to receive a pension and retirement lump sum under this regulation from age 60 if—

(a) the member leaves with at least 2 years' qualifying service

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, or

(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 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;

E1 Normal retirement pension

(1) A member who retires from pensionable employment on or after attaining age 60 shall be entitled to a pension under this regulation.