

Ombudsman's Determination

Applicant	Ms N
Scheme	NHS Pension Scheme (the Scheme)
Respondents	NHS Business Services Authority (NHS BSA)

Outcome

1. Ms N's complaint against NHS BSA is partially upheld. To put matters right for the part that is upheld, NHS BSA shall pay Ms N £500 for the significant distress and inconvenience she has experienced.
2. My reasons for reaching this decision are explained in more detail in paragraphs 38 to 50 below.

Complaint summary

3. Ms N has complained that she received incorrect information about the value of the additional membership she would receive from her added years contract.
4. She said that she was not informed that her employer would not contribute to the added years contract and would have reconsidered agreeing to the contract had she been correctly informed.

Background information, including submissions from the parties

5. On 16 September 1990, Ms N became an active member of the 1995 Section of the Scheme.
6. On 4 June 2004, Ms N elected to purchase five years 107 days additional membership in the Scheme, by paying 9% additional contributions until 2018, when she reached age 55. At the time she was working part time – at 0.4 whole time equivalent (**WTE**). The declaration at the end of the election signed by Ms N included the following:

“I have read the Scheme booklet “Increasing your benefits”.
7. From 30 April 2014 to 3 November 2014, Ms N had a break in active membership.

8. On 26 April 2018, Ms N received an Annual Benefit Statement (**ABS**) showing her estimated benefits in the Scheme as of 31 March 2017. The information showed:-
 - Pay was £36,794.50.
 - Pension was £9,124.28.
 - Lump sum was £27,372.84.
9. In November 2018, Ms N received a pension forecast. The information showed that she had only purchased approximately two additional years of additional service in the Scheme.
10. On 28 November 2018, Ms N contacted NHS BSA because she believed her pension forecast did not show the correct amount of additional service she had purchased.
11. On 26 February 2019, NHS BSA responded to Ms N to inform her that her pension forecast was correct.
12. On 5 March 2019, Ms N contacted NHS BSA again to ask for more information as to why her pension forecast only showed her as having purchased two years of additional service in the Scheme.
13. On 31 May 2019, NHS BSA responded to Ms N. It reiterated that Ms N's pension forecast was correct but did not provide an explanation regarding her additional service query.
14. On 17 August 2019, Ms N submitted a complaint to NHS BSA. She said:-
 - She had contacted NHS BSA because she had been working 0.4 of her normal hours for four years.
 - She was advised to purchase an additional five years of service to make up the difference.
 - She felt this made sense because $0.4 \times 14 = 5.6$ whole years.
 - In November 2018, she was shocked to find out that she had contributed an extra £25,000 but had only purchased two years of additional service.
 - An error must have been made when calculating her pension estimate.
 - She would not have agreed to pay such a large amount in additional contributions had she been aware she would have only received two added years.
15. On 8 October 2019, NHS BSA responded to Ms N's complaint. It said:-
 - When Ms N signed the contract to purchase added years, she also signed to state that she had carefully read the Scheme Booklet.

- The Scheme Booklet states, “part-time purchase will not buy you full days, but a proportion of days dependant on the hours you have worked.”
 - It had tried to explain this to her several times.
 - It acknowledged that it had not responded to her complaint within its usual timescales.
16. On 14 October 2019, Ms N escalated her complaint under stage one of the Scheme’s Internal Dispute Resolution Procedure (**IDRP**). She said:-
- She had read and fully understood the relevant section of the Scheme Booklet.
 - She did not expect to purchase a full additional year while only contributing part-time, but she was informed that she would secure five added years over a 14-year period which made sense to her.
 - NHS BSA had not explained why £25,000 in additional contributions only purchased two added years when approximately £38,000 of contributions had amounted to almost 19 years of membership prior to the contract.
17. On 21 November 2019, NHS BSA responded to Ms N’s complaint under stage one of the Scheme’s IDRP. It said:-
- Information relating to purchasing added years was available in the Scheme Booklet which all members were advised to read.
 - The extra pension contributions payable on an added years purchase were a percentage of a member’s pay. So, a part-time member would pay less than a full-time member. It would be unfair for a part-time member to receive the same number of added years while contributing less than a full-time member.
 - In addition, normal pension accrument consists of both member and employer contributions. When a member contracts to purchase added years, the employer does not contribute, and the member must pay the full cost of the added years. So, the member will pay more for their added years than they would pay for their normal pension contributions.
18. On 29 February 2020, Ms N escalated her complaint under stage two of the Scheme’s IDRP. She said:-
- NHS BSA had not addressed all the points she had raised in stage one of the IDRP.
 - NHS BSA’s response did not contain an apology for the extensive period the department who dealt with added years had taken to respond to her initial queries.
 - She was incorrectly led to believe that paying into an added years contract over 14 part-time years would purchase five full-time years of additional service.

- The first time she was made aware that her employer would not contribute to the added years contract was in the letter dated 21 November 2019.
19. On 20 August 2020, NHS BSA responded to Ms N's complaint under stage two of the Scheme's IDRPs. It said:-
- The maximum added years Ms N could purchase was five years 107 days.
 - It was not until her actual retirement benefits were calculated that part-time hours were converted into a whole time equivalent.
 - It understood the method that Ms N thought was used to calculate the added years contract but confirmed that this was incorrect.
 - The number of calendar days over which Ms N made additional contributions was from 30 September 2004 to 30 April 2014 then again from 5 September 2016 to 29 September 2018. These two periods together amounted to 10,734 days.
 - 10,734 days when scaled to the full-time equivalent taking into consideration her part time hours equated to 2,004 days.
 - The period from 3 November 2014 to 4 September 2016 equated to 671 days because Ms N was in full-time employment during that period.
 - Ms N intended to purchase 1,932 days of added years. She contributed for a total of 2,675 days but the intended period of payment was 5,110 days. When calculated, this meant Ms N had purchased two years 282 days of added years.
 - The reason that Ms N's added years contract did not display this on 4 June 2004 was because it was impossible to know whether Ms N would have been in full-time employment or not. So, the relevant adjustment to the added years purchased could only be made upon retirement or completion of the contract.
 - The cost of standard membership was shared between the member and the employer. It would be unfair on the employer to be forced to contribute towards added years when it does not have a say in the decision to make a purchase.
 - If Ms N had worked full-time throughout the added years contract, then she would have successfully purchased five years 107 days membership. Since for most of that time, she worked part-time and for a period, was not in pensionable employment, she did not make sufficient contributions to receive the full five years 107 days.

NHS BSA's position:-

20. If Ms N had worked full-time throughout the added years contract, then she would have successfully purchased five years 107 days membership. Since for most of that time, she worked part-time and for a period, was not in pensionable employment, she did not make sufficient contributions to receive the full five years 107 days.

21. Ms N had commented that the overall cost to purchase the added years was six times that of usual pensionable service. This was because contracts to purchased added years were not contributed to by Employers. It was the members responsibility to cover that cost too.
22. The Scheme Booklet was available to all members at the time Ms N signed the added years contract. The Scheme Booklet had set out the monthly cost for each additional year that a member wished to purchase. In addition, the Scheme Booklet displayed the effect that working part-time would have on purchasing added years.
23. It had attached a copy of the application form that Ms N had signed in June 2004 which contained a section that asked Ms N to confirm that she had read the Scheme Booklet.
24. The application form also stated that she would be purchasing additional service at a contribution rate of 9%.

Ms N's position:-

25. She had been incorrectly advised that 14 part-time years would purchase five full-time years of additional service.
26. NHS BSA had not conformed to its response time policy, having taken significantly longer than eight weeks to respond.
27. She had not received an apology from NHS BSA.
28. It was logical to expect that five added years would be purchased over 14 part-time years.

Adjudicator's Opinion

29. Ms N's complaint was considered by one of our Adjudicators who concluded that NHS BSA should pay £500 for the significant distress and inconvenience caused. The Adjudicators findings are summarised in paragraphs 30 to 36 below.
30. There was no evidence that Ms N was provided with a set of calculations in relation to her added years contract. Ms N's recollection of events was not disputed, but comments could only be addressed if they were accompanied by evidence.
31. Ms N had said that the added years contract she signed clearly showed that she was purchasing five years 107 days of additional membership in the Scheme. The contract itself showed Ms N to be purchasing five years 107 days and the effect of part-time hours was not immediately obvious. However, the contract clearly required Ms N to sign a declaration that she had read the section of the Scheme Booklet titled "increasing your Benefits".
32. Having signed the added years contract, Ms N should have thoroughly read the relevant section and gained an understanding that part-time work might impact the

total number of added years she could purchase. Page 14 of the Scheme Booklet stated, "If you work part time, the number of added years or unreduced lump sum you get for your extra contributions or single payment will take account of this." (See appendix one) Had Ms N read the Scheme Booklet as advised, she would have been aware she would have purchased a reduced amount of added years if she worked part-time.

33. Ms N had stated that she was not aware that the cost of purchasing added years was significantly greater than normal service contributions. Ms N was not directly informed that her employer would not contribute to the added years contract until after its completion. However, page 8 of the Scheme Booklet provided a table that clearly showed what percentage of pensionable pay a member would need to contribute depending on their age. It was clear what percentage of her pay she would be contributing and so Ms N should not have been surprised by the overall cost to purchase the added years. If Ms N was unsure of the exact cost associated with purchasing the added years, she should have reasonably sought clarity on this before signing the added years contract.
34. NHS BSA was not responsible for any direct financial loss to Ms N. This was because the information she sought was readily accessible within the Scheme Booklet, which she was required to read when entering the added years contract. Ms N was not misled or misinformed regarding the added years purchase.
35. NHS BSA had provided Ms N with a poor level of service in some regards. This was because:-
 - The standard timescale for responses to IDRP complaints was 40 working days. NHS BSA took significantly longer than this with no update to explain that a response would be delayed.
 - The standard timescale for responses to queries and initial complaints was 8 weeks. When responding to Ms N's two initial queries, NHS BSA took 12 and 13 weeks respectively to respond.
 - Each of NHS BSA's initial responses prior to its stage one IDRP, were unsatisfactory. It did not provide an explanation for the reduced added years figure.
 - NHS BSA could have explained the added years figures Ms N had purchased more clearly and at an earlier stage in the process. While this did not constitute financial injustice, because Ms N had access to the information within the Scheme Booklet which explained the cost per added year purchased, it would have contributed to her distress.
36. NHS BSA's substantial delays and poor quality of responses would have caused Ms N significant distress and inconvenience, so an award of £500 would be in keeping with TPO's guidance on non-financial injustice.

37. Ms N did not accept the Adjudicator's Opinion, and, in response, she provided the following further comments. In summary she said:-

- The calculation of five years 107 days was clearly stated in the contract she signed.
- She had read the Scheme Booklet and her understanding of the information in the Booklet confirmed the advice she had been given by her employer's NHS Pension Advisor.
- She had always understood that working part time hours would reflect the number of added years she was purchasing. This was why it made sense to her that her worked hours would equate to five years 107 days of added years.
- She had no reason to believe that the calculations in the Scheme Booklet meant anything other than what had been explained to her verbally.
- She had not been informed that her employer would not be making contributions. The information required was not readily accessible in the Booklet either.

Ombudsman's decision

38. Ms N provided detailed submissions, which I have reviewed in full. Not all those submissions are directly relevant to this complaint or within my jurisdiction. As a result, this determination will only directly address the key issues regarding Ms N's complaint.

39. Ms N complained that she received incorrect information about the value of the additional membership she would receive from her added years contract.

40. I note that Ms N has made numerous references to the advice given to her by the NHS Pension Advisor at her employer. While I do not doubt Ms N's account of events, I cannot consider (or at least allocate, relatively, little weight to) information which was supplied verbally and not accompanied by evidence in either a call recording or contemporaneous note. Ms N has not provided documentary evidence of the advice supplied by the NHS Pension Advisor, but in any event, it is Ms N's responsibility to ensure a clear understanding of the information provided.

41. In addition, Ms N's complaint is specific to NHS BSA. It would be unfair to blame NHS BSA for any misunderstanding on Ms N's behalf that has derived from a third party. As a result, I will not address the information relating to the NHS Pension Advisor at her employer any further.

42. Ms N has said the calculation of five years and 107 days was clearly stated in the contract she signed. She has also said she understood that the added years purchased would be affected by part-time work and that this was why the calculation equating to 5 years 107 days made sense to her. I have reviewed the election signed by Ms N on 4 June 2004. While I accept that the election states that five years 107 days were available for purchase, the election does not contain a breakdown of the

calculation used to determine that figure. Based on the documentation available, I do not consider it reasonable for Ms N to have determined the calculation for herself, irrespective of the sense it may have made, without confirming that her understanding was correct.

43. Ms N has also said she had read the Scheme Booklet and her understanding of the information in the Booklet confirmed the advice she had been given. While I sympathise that Ms N may have misinterpreted the Scheme Booklet, the information contained therein was readily available and accurate and so NHS BSA cannot be held responsible that it was misunderstood by Ms N.
44. Rather, in my view, it was reasonably clear that the number of added years purchased would be reduced by dint of any part time service: *“If you work part time, the amount of added years ...you get for your extra contributions ... will take account of this”*. Indeed, the Scheme Booklet contained an example to illustrate this: *“... if you work half time and apply to buy 10 added years ... you will only pay half the extra contributions (or single payment). And you will get 5, not 10 years, of additional benefit.”* As noted previously, when Ms S signed the election to purchase added years, she confirmed that she had *“read the Scheme booklet “Increasing your benefits”*” .
45. It may be possible to argue that she had assumed that the figure included in the election took account of this reduction (although that then would not have been able to flex to reflect later changes in her working pattern, as the Scheme Booklet notes: *“if the hours you work change, your contributions and the benefits you get will also change”*). However, that would have been an incorrect assumption. Rather, in my view the Scheme Booklet was sufficiently clear to enable Ms N to ascertain how her added years would be calculated (or at least to trigger questions if to the extent that she had a different view).
46. Ms N has stated she had no reason to believe that the calculations in the Scheme Booklet meant anything other than what had been explained to her verbally. There is a responsibility conferred upon all members of the Scheme to digest the information within the Scheme Booklet in its entirety. Therefore, had Ms N done so, as advised in her added years contract, she would have noted that working part time would have reduced the number of added years she could purchase and the cost of purchasing the additional membership, and likely sought further clarification before signing an agreement.
47. Ms N does not agree that she had been informed that her employer would not be making contributions and maintains that the information required was not readily accessible in the Scheme Booklet either. I agree that this information was not directly quoted in the Scheme Booklet and could have been made clearer. I cannot see evidence of Ms N requesting a breakdown of the overall cost associated with purchasing the additional membership. It is not reasonable to sign an election to purchase added years of service without first confirming the cost. Had Ms N done so,

she would have noted that the cost was significantly greater than her standard contributions and could have queried the reasoning before signing the election.

48. In summary, I do not find that NHS BSA are directly responsible for any financial loss to Ms N. The information she sought was readily available in the Scheme Booklet and she did not take reasonable steps to confirm her understanding of the election she was signing before committing to an agreement.
49. I have, however, also reviewed the poor level of service provided to Ms N by NHS BSA. Its failure to conform to its own service requirements and unsatisfactory responses in the earlier stages of Ms N's complaint will have undoubtedly caused Ms N significant distress and inconvenience. I find that a payment of £500 is appropriate recognition in the circumstances.
50. I uphold this complaint in part.

Directions

51. Within 28 days of the date of this Determination, NHS BSA shall pay £500 to Ms N for the significant distress and inconvenience she has experienced.

Dominic Harris

Pensions Ombudsman

29 January 2024

Appendix One

Money Purchase benefits

Important Notes

You **cannot** buy guaranteed added years or an unreduced lump sum if you were a member of another pension scheme (eg. Local Government) and you kept the conditions of that scheme when you joined the NHS Scheme.

Added years do not count when working out the minimum membership you need to qualify for benefits. If you leave the Scheme with less than 2 years ordinary membership you will still have to take a refund of your contributions, including your AVCs.

Added years are not taken into account when working out any membership enhancement for death, or ill-health retirement benefits. But they are taken into account and may reduce any enhancement, in redundancy benefits.

If you work part time, the amount of added years or unreduced lump sum you get for your extra contributions or

single payment will take account of this.

For example, if you work half time and apply to buy 10 added years or unreduced lump sum, you will only pay half the extra contributions (or single payment). And you will get 5, not 10 years, of additional benefits. If the hours you work change, your contributions and the benefits you get will also change.

If you are a GP working in a NHS hospital or community post, you can buy added years in the way described in this booklet. But we will increase your practitioner benefits by adding an amount to the pensionable pay used to work them out. (See Practitioner booklet SDP). The more added years or unreduced lump sum you buy, the more we will add to your pensionable pay.

Your Pension Officer can tell you more, or you can write to the Agency at the address on page 20.

A Money Purchase AVC arrangement allows you to make additional contributions to build up a retirement fund. These contributions are invested and then used to supplement your main Scheme benefits at retirement, or later.

Money Purchase AVCs can be used to top up NHS main Scheme benefits to the maximum $\frac{2}{3}$ of taxable pay allowed by the Inland Revenue. For example you can pay the contributions on any overtime you may work in the NHS or to increase the NHS benefits you would receive if you plan to retire early.

You may be able to increase your benefits through a Money Purchase arrangement, even if you cannot buy guaranteed added years (see pages 3, 4, and 5).

A Money Purchase arrangement will not increase your retirement lump sum from the main Scheme. But you can, if you wish, make separate contributions to the company you choose to **increase the lump sum your dependants will receive** from the main Scheme if you die before you retire.

NHS Scheme providers

You can take out a Money Purchase 'Group' AVC through the NHS Scheme. These arrangements are part of the Scheme but they are run on our behalf by the chosen providers. See page 16.

Contributions are taken from your pay and, within limits, you can choose how much to pay. You get full tax relief on your contributions and you can normally change or stop the amount you pay and switch between funds and NHS providers.

We have negotiated special NHS terms for these arrangements which are reviewed regularly and there are no commission charges. But because the AVCs are invested with an external provider, the NHS Scheme **cannot** guarantee your fund or the amount of the pension it will produce.

Once in payment, the Scheme **will** guarantee you payment of any pension you receive through NHS arrangements.