

NHS Pensions - Mental Health Officer status (1995 Section only)

History of Mental Health Officer status

Mental Health Officer (MHO) status is a historical provision that was introduced to compensate members caring for patients suffering from mental health disorders.

It was a continuation of arrangements which existed prior to the formation of the NHS in 1948, when treatment for mental health patients was different to today.

Benefits

Members who have 20 years MHO membership can:

- Retire from age 55 without any reduction to benefits, providing they are still in pensionable MHO employment on the day before they retire.
- Count each complete year of MHO membership, after accruing 20 years, as 2 years for benefit purposes, known as 'doubling'.

Abolition of MHO status

On 6 March 1995 the NHS Pension Scheme regulations were amended and MHO status was abolished for all members, however, an exception was made for members who already held MHO status on or before this date and who did not have a break in membership of 5 years or more.

MHO status does not apply in the 2008 Section or the 2015 Scheme. Members who transition from the 1995 Section to the 2015 Scheme may still maintain MHO status which is important in respect of the 1995 Section benefits.

Eligibility

In order to be considered for the status a member must:

- Spend all, or almost all, of their time in the direct treatment or care of those suffering from mental disorders.
- Hold active (counting towards pension benefits) 1995 Section membership as a MHO on or before 6 March 1995.
- Not of had a single break of five or more years in employment after 6 March 1995.

Eligibility following a break

In pensionable employment on 6 March 1995

If a member was in pensionable employment (contributing to the Scheme) on 6 March 1995 as an MHO, they will qualify for MHO status on rejoining the Scheme in employment which attracts the status, as long as they do not have a break in pensionable employment of any one period of five years or more. This is the case even if they subsequently receive a refund of contributions, transfer benefits out of the Scheme, or retire.

Not in pensionable employment on 6 March 1995

If a member had deferred benefits as an MHO member on 6 March 1995 they will qualify for MHO status on rejoining the Scheme in employment which attracts the status, as long as they do not have a break in pensionable membership of any one period of five years or more.

Note: If the member had transferred benefits out of the Scheme, received a refund, or retired as a MHO member prior to 6 March 1995 then they are not eligible for the status on returning to pensionable employment.

Criteria to claim 1995 Section benefits from age 55

In order to claim a 1995 Section pension from age 55 a member must:

- Have achieved at least 20 years qualifying MHO membership. This does not need to be continuous and can include Regulation R3 (6) membership.
- Be an active MHO on the day immediately prior to retirement.
- All NHS work must cease for at least a 24 hour break including any 2015 Scheme membership where a member has transitioned over.

Any membership in the 2015 Scheme would become deferred until their Normal Pension Age unless the member claimed a voluntary early reduced pension.

When a member leaves pensionable employment before age 55, benefits become deferred and do not become payable until the normal pension age of 60 in the 1995 Section.

Redundancy - An exception to this is a MHO 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 all other criteria is met and they did not return to a pensionable non MHO employment.

Transition to the 2015 Scheme

MHO membership counting towards doubling will cease when a member moves to the 2015 Scheme.

1995 Section members holding MHO status who either move straight into the 2015 Scheme or do so following the end of a period of Tapered Protection and who do not exceed a break of five years or more, will have a final salary link for the purpose of the 1995 Section pension benefits. If the final salary link is maintained and the criteria to retire at age 55 for MHO purposes is met, the 1995 Section benefits can be claimed once all NHS employment ends. Any 2008 Section or 2015 Scheme benefits would be calculated as normal and, if being paid before the Normal Pension Age, would attract an actuarial reduction.

Although MHO status is not applicable to 2015 Scheme membership, it will still need to be recorded to establish possible early retirement criteria for those members who hold rights in the 1995 Section. Employers will need to continue to accurately record MHO status and the continuation of MHO status in these circumstances. The same processes and forms used for protected 1995 members will continue to apply.

Part time membership

Previously a member had to be whole time to qualify for MHO status. However, part time members may now be granted the status in certain circumstances. MHO status may be backdated to 8 April 1976 for part timer members who made a valid application to an Employment Tribunal and for those members who were contributing to the Scheme on 14 January 1999. A member who was not in pensionable employment on 14 January 1999, but subsequently rejoined the Scheme after that date will still be entitled to have MHO status considered for current and future periods of part time membership, subject to fulfilling the other criteria.

MHO work done outside the NHS

Some periods of work with mental health patients which do not count towards a member's pension may count towards the 20 years required to double membership. This includes:

- membership no longer reckonable in the NHS Pension Scheme, e.g. membership refunded or transferred out of the Scheme;
- work with mental health patients outside the NHS (including some work in government approved premises outside the UK).

When considering whether this membership counts towards a member's doubling date, doubling cannot commence from a date prior to entry to the NHS Pension Scheme or prior to age 50. This provision would only be of use to a member who holds active MHO membership (counting towards pension benefits) on or before 6 April 1995 and where no single break of five or more years has occurred.

Eligible members should contact NHS Pensions directly using the dedicated application form if they believe they have Regulation R3 (6) membership which may count towards their doubling date. They should include documentary evidence, such as job descriptions, person specifications or letters of appointment, to enable NHS Pensions to investigate further.

Clinical Commissioning Groups (CCG's)

NHS Pensions understands that CCGs are mainly involved in the commissioning of services from other providers and are not always directly involved in the actual care and treatment of patients i.e. they do not directly administer wards, (nursing) homes, clinics, etc. or employ staff who work in such places, which would mean that CCGs do not normally employ staff who are directly involved in the care and treatment of mentally ill patients. Therefore, as a general rule, NHS Pensions expects that the majority of CCG employees will have a capacity code 04 i.e. individuals employed in an administrative capacity and not 01 (nurse) or 03 (doctor).

CCGs **must** ensure their staff pension records reflect the correct capacity code.

Should there be any doubt that a member may be able to retain MHO status then the CCG **must** refer the case to NHS Pensions and any applications for retention must include:

- the current job description;
- person specification;
- organisational chart; and
- a copy of the previous job description.

Any member of staff whose duties change during an employment or on moving to a new role where MHO or Retention of MHO status would no longer apply will lose the status and must be informed of the decision immediately. For changes during an ongoing employment, **the employer is also responsible** for informing NHS Pensions to change the capacity code from the date the status is lost.

Retention of MHO status

Historically, following management restructuring within the NHS, representations were made to allow Scheme members who were appointed to posts which, although within nursing, were managerial in character, to retain MHO status. Guidelines were developed to enable employers to make decisions on retention of MHO status.

Criteria for retention of MHO status

When considering whether a member is entitled to retain MHO status they:

- **must** have clear line management responsibility for ward nursing staff and consequently a responsibility for the treatment or care of patients suffering from mental health disorders.

Entitlement to retain the status will be strengthened if:

- a member's responsibilities include setting and monitoring standards of psychiatric nursing and development and training of nursing staff under their control.

Retention of MHO status applies to those working in mental health trusts and units catering primarily for patients suffering from mental health disorders. Those who are employed in units which do not cater primarily for those with mental health disorders will not normally be allowed to retain MHO status.

A member must have held the status in the post directly before the post in which they wish to 'retain' the status.

Retention of MHO status cannot usually be considered when a member's previous job was not within nursing. This is because the grades of staff they are managing do not always automatically qualify for MHO in their own right.

Decision making

The decision about whether a member can retain MHO status can be made by the employer for a member who is appointed to any nursing post up to the grade of Director of Nursing (or equivalent) **only**. Members who are above the grade of Director of nursing will not normally be allowed to retain the status as it is extremely unlikely they will fulfil the criteria.

Where an employer makes a decision that a member can retain MHO status, the guidelines above **must** be adhered to. NHS Pensions expect employers to compare the role where retention is being requested with the previous roles to assess any significant parallels. How the member has demonstrated the criteria for retention must be recorded so evidence can be provided to NHS Pensions if requested.

The employer **must** notify NHS Pensions that they have considered the member for retention of MHO status in all cases. The member **must** not be notified of the decision on retention until the employer receives confirmation from NHS Pensions that this has been accepted.

If an employer has any doubts about whether a particular member can retain MHO status they must contact NHS Pensions providing copies of the current and former job descriptions together with any other information considered relevant to the application.

Should an employer believe a specific member of the grade of Director of Nursing or above exceptionally warrants the status, they must contact NHS Pensions providing the supporting information detailed above.

Investigations into retention of MHO status should be made at the time a member commences the role. NHS Pensions would not expect these investigations to be commenced just prior to retirement.

When deciding whether a member can retain MHO status it is also important to remember that consideration is being given to whether the particular member can retain MHO status in that role. This does not necessarily mean that MHO status would apply automatically to any other member subsequently undertaking the role.

In all cases of retention NHS Pensions maintain the right to make the final decision.

Restriction of MHO membership

A member with MHO status is restricted to 40 years pensionable membership at age 55 and 45 years overall.

When the maximum 45 years pensionable membership is reached before age 60, an MHO must continue to pay contributions until age 60, unless they opt out of the Scheme or retire and claim their pension benefits.

Where maximum 45 years pensionable membership is reached after age 60 but before 65, a member must stop paying contributions when 45 years pensionable membership has been achieved.

All MHOs must cease paying contributions at age 65 regardless of the amount of pensionable membership they have achieved.

In all cases pension benefits are not payable until a member leaves NHS employment and retires or on reaching age 75 (70 on or before 31 March 2008) whichever is earlier.

Alternative benefit calculation

Benefits are usually based on pensionable pay up to the date contributions stopped. However, the NHS Pension Scheme regulations allow for an alternative calculation for MHOs who cease to be pensionable but have continued to work in the NHS before taking retirement benefits.

In these circumstances, if more beneficial, the regulations allow benefits to be calculated using straight membership (no doubled years) and a later pensionable pay figure. The later pensionable pay figure and the straight membership total would be assessed at whichever of the following events happened first:

- retirement;
- reaching upper pensionable age 65;
- the achievement of 45 years actual membership (not including doubled years);
- death.

If benefits using this method are more beneficial, then the regulations also allow outstanding contributions to be deducted from the retirement or death benefit lump sum.

Process for applying for MHO status

Employers should consider MHO status on joining a new member of staff into the scheme.

To gain an understanding of the new employees' pension background, we suggest sending the 'New Employee Questionnaire' to all new staff as soon as possible. The information gained will not only help employers decide whether MHO is likely but will also help avoid several other pension related issues such as overlapping employment and added benefit contribution arrears. The questionnaire can be downloaded from Technical guidance under the 'Joiners' section.

MHO status can still be requested retrospectively if it wasn't picked up on joining the member although it should be noted that where a request has previously been rejected, further requests should not be made unless new supportive evidence is available.

Members are also being encouraged to keep track of their own membership record and employers may receive SM MHO 'Form A' member application to investigate MHO status.

Action for employers to take:

- For new joiners, send the New Employee Questionnaire to help establish if MHO status is likely and the member will be eligible
- Telephone the customer contact centre to confirm whether the member is an eligible MHO.
- Refer to the MHO application forms

Important note: The joiner form will ask if MHO status should apply but in all cases where MHO status needs to be investigated, you should still complete one of the separate application forms summarised below:

MHO Application forms

SM333 – An application form to request MHO status for the automatic grades only (nurses capacity 01 and hospital doctors' capacity 03).

SM215 – An application form to request MHO status specifically for a trainee or qualified Clinical Psychologist.

SM1 – An application form to request MHO status for all other grades that are not an automatic grade or Qualified Clinical Psychologist.

Process for applying for retention of MHO status for nurses in managerial grades

On joining a member where Retention of MHO status is being considered for a nurse manager, the employer should:

- Send the New Employee Questionnaire to help establish if MHO status is likely and the member will be eligible;
- Record the capacity code initially as '04' on the joiner form;
- Telephone our customer contact centre to confirm whether the member is an eligible Mental Health Officer; and
- Refer to the MHO application forms and download the SMR form.

This application form can be used to request 'Retention' of MHO and/or Special Class (SC) status for a nurse in a managerial grade. This form can be used where the employer has either made the decision or requires NHS Pensions help with decision making.

Separate forms will be required for any subsequent change in job role once retention has been accepted.