

Ombudsman's Determination

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| Applicant | Mrs S |
| Scheme | NHS Pension Scheme (the Scheme) |
| Respondents | NHS Business Services Authority (NHS BSA) |

Outcome

1. I do not uphold Mrs S' complaint and no further action is required by NHS BSA.

Complaint summary

2. Mrs S complained that as a result of incorrect information which was provided to her husband before he died, he amended his Will in the belief that she would receive a larger widow's pension from the Scheme than she was entitled to.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. Dr S was a member of the Scheme.
5. On 5 April 1978, The Occupational Pension Schemes (Public Service Pension Schemes) Regulations 1978 (**the 1978 Regulations**) were introduced and applied to the Scheme. Under the 1978 Regulations, where a marriage or civil partnership took place after the member left pensionable employment, the adult dependant pension would be based on membership from 6 April 1978 only.
6. On 4 March 1989, Dr S retired and began receiving his pension from the Scheme.
7. On 18 February 1993, Dr S and Mrs S were married.
8. On 19 February 1993, Dr S wrote to NHS Pensions who administer the Scheme (**the Administrator**). He informed it of his marriage to Mrs S and queried what her entitlement to a widow's pension would be in the event of his death.
9. On 16 April 1993, the Administrator replied to Dr S. It said that in the event of his death, Mrs S would receive £3,400 a year, which was less than 50% of his pension. It advised that as Dr S and Mrs S were married after he retired, under the 1978

Regulations any pension payable was based on Dr S' membership from 6 April 1978 only.

10. On 1 May 1996, Dr S wrote to the Administrator and enclosed a copy of the marriage certificate. In the letter he said that he had been advised that the widow's pension would only be based on his service after 5 April 1978 and asked the Administrator for an explanation of this.
11. On 15 May 1996, the Administrator replied. It explained that where the marriage took place after the member had left the Scheme, a widow's pension was only based on service from 6 April 1978.
12. On 19 September 2001, Dr S wrote to the Administrator again to ask for the value of Mrs S' current entitlement to a widow's pension under the Scheme.
13. On 26 September 2001, the Administrator responded. It reiterated that because Dr S and Mrs S were married after Dr S retired, Mrs S would be entitled to a widow's pension based on his service from 6 April 1978, which would be a pension of £4,400.00 a year. It advised that this figure would be increased annually as and when cost of living increases occur.
14. On 14 May 2020, Dr S wrote to the Administrator to ask what Mrs S' current entitlements were with regards to her widow's pension. In the letter he said:

"Please can you let me know what my wife's pension would be if I died now. I last asked in 2001, 19 years ago".
15. On 27 May 2020, Dr S received a letter (**the May Letter**) in response from the Administrator. It advised him that if he was married or in a registered civil partnership at the time of his death, an adult dependant's pension would be payable to a surviving spouse or registered civil partner. It also said:-

"Our records indicate that a surviving widow would receive a continuing adult dependant's pension of 50% of your current pension".

It advised him that further information and clarification about the Scheme benefits could be found on its website and provided a link.
16. On 2 April 2023, Dr S died.
17. Following Dr S' death. The Administrator wrote to Mrs S to advise her that she would receive Dr S' full pension of £52,356.24 per year for three months and thereafter a pension of £8,036.59 per year.
18. Between April and August 2023, Mrs S contacted the Administrator on a number of occasions by telephone and by letter to query her entitlement to a widow's pension as it was less than what she was expecting. The Administrator advised Mrs S that the statement in the May Letter was incorrect. It advised that the regulations of the Scheme (**the Scheme Regulations**) state that where a member married after they retired, the relevant period of service commenced on 6 April 1978.

19. On 7 August 2023, Mrs S complained under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). In summary she said:-

- It was clear from the May Letter that the Administrator had specifically reviewed Dr S' file and was not simply making a general statement.
- Dr S, in reliance on the May Letter, decided that she would have sufficient income from his pension and accordingly made a codicil to his Will leaving some assets to her and other assets to his four sons. Therefore, she had suffered a loss of expected income.
- The Administrator should review her complaint and reinstate the full 50% widow's pension.

20. On 5 December 2023, NHS BSA provided its stage one IDRP response. In summary it said:-

- It had reviewed its records which demonstrated that Dr S started to receive his pension from 5 March 1989 and Dr S and Mrs S were married on 18 February 1993.
- It confirmed that where a marriage or civil partnership took place after the member left pensionable employment, the widow's pension would be based on membership from 6 April 1978 only.
- The Scheme Regulations were laid down in regulations agreed by Parliament which it was obliged to adhere to. The Department of Health and Social Care (**DHSC**) governed the regulations of the Scheme, and the Administrator was responsible for administering the Scheme in accordance with the regulations set by DHSC.
- While the letter dated 27 May 2020, advised that Mrs S would receive 50% of Dr S' pension in the event of his death, it had no discretion in this matter, and it was unable to uphold her complaint.
- Dr S was previously informed in earlier correspondence that the widow's pension would be reduced. However, it acknowledged that incorrect information was provided to him in the May Letter. It apologised for this and offered £750 compensation for the distress and inconvenience caused to Mrs S.

21. On 4 January 2024, Mrs S responded to the Administrator to invoke stage two of the IDRP as she did not accept its explanation or the offer of £750 compensation. In summary she said:-

- During a telephone conversation in May 2020, Dr S was told by the Administrator that the rules had changed and that she as a surviving widow would receive 50% of his pension.

- Due to the significance of this change Dr S asked for these details to be put in writing. He was first asked to send a letter on this point so there would be a record of his question.
- The May Letter demonstrated that Dr S' file had been reviewed and that the statement therein as to the widow's entitlement of 50% of his pension clearly took account of their circumstances.
- Dr S was entitled to rely on this statement as he had already discussed the specific point on the telephone. Therefore, there was no need to respond a further time to the May Letter asking the Administrator to check the position again. Dr S duly relied on that statement when amending his will.
- The Administrator acknowledged that the May Letter contained a serious mistake. This negligence caused her a significant loss as she had previously set out in her letter dated 7 August 2023.
- The Administrator should either reinstate her pension to the full 50% of Dr S' pension or it must pay her substantial compensation for her loss.

22. On 28 February 2024, NHS BSA provided its stage two IDRP response. In summary it said:-

- Regulation G6 of the NHS Pension Scheme Regulations 1995 (as amended) (**the 1995 Regulations**) confirmed that the 1978 Regulations applied where the member and his wife were not married during any period of pensionable employment. In these circumstances, the widow's pension would be equal to one-half of a pension calculated on the basis of the member's pensionable service after 5 April 1978.
- There was no record of a telephone call with Dr S in May 2020. Following 26 September 2001, the subsequent recorded contact it received from Dr S was the letter dated 14 May 2020. In this letter, he referred to having last contacted the Administrator with regards to Mrs S' entitlements in 2001.
- The information provided to Dr S on 27 May 2020 was incorrect. However, as this information was contrary to information which he had previously been provided with, it would have been reasonable for Dr S to request a current valuation of the widow's pension, as this was the main purpose of his letter.
- The Administrator could only pay a member or their dependants a pension that they were legally entitled to receive. Therefore, it was unable to authorise an increase of the widow's pension to 50% of Dr S' pension.
- Having reviewed all the relevant case papers it considered that the offer of £750 in recognition of the distress and inconvenience caused by the provision of incorrect information to Dr S, was reasonable.

Adjudicator's Opinion

23. Mrs 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 below:-
- Under the Scheme Regulations Mrs S was entitled to a widow's pension upon Dr S' death. However, as Dr S was not an active member of the Scheme at the time he married Mrs S, Regulation G6 of the 1995 Regulations applied. These regulations are set by Parliament and cannot be amended at NHS BSA's discretion. Therefore, NHS BSA were correct in stating that it was not within its power to pay 50% of Dr S' pension to Mrs S.
 - Mrs S stated that Dr S changed his Will on the basis of the information he received from the Administrator during a telephone call in May 2020 and also in the May Letter. However, in his letter to the Administrator dated 14 May 2020, Dr S referred to last having asked about Mrs S' pension entitlement in 2001, and no reference was made to any telephone call within this letter.
 - The Administrator acknowledged that the May Letter incorrectly advised Dr S that Mrs S was entitled to 50% of his pension. However, Dr S had been provided with the correct information on at least three occasions prior to this. Indeed, the Administrator provided him with an explanation of the Scheme Regulations on 15 May 1996, following his request for clarity with regard to Mrs S' entitlement in the event of his death.
 - Mrs S said that once Dr S received the May Letter, there was no need for him to confirm her entitlement to a widow's pension. In the Adjudicator's view, this argument could not succeed. Dr S was provided with valuations of the amount of the widow's pension Mrs S would receive on two occasions prior to receiving incorrect information in the May Letter. Therefore, it would have been reasonable for Dr S to have contacted the Administrator after receiving the May Letter to request a valuation of the amount Mrs S was entitled to, particularly if, as Mrs S suggests, he intended to change his Will on this basis.
 - The Administrator apologised for the mistake it made in the May Letter and offered £750 for the distress and inconvenience caused to Mrs S. In the Adjudicator's opinion, this was reasonable in the circumstances, and it is a matter for Mrs S as to whether she accepts this offer.
 - In the Adjudicator's view, Mrs S is receiving the widow's pension she is entitled to receive according to the Scheme Regulations, and NHS BSA was correct in stating that it has no discretion to amend the widow's pension to a higher amount.
24. Mrs S did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mrs S reiterated her comment that NHS BSA provided Mr S with incorrect information which she said it had admitted on many occasions. This does not change the outcome, and I agree with the Adjudicator's Opinion.

Ombudsman's decision

25. I appreciate that the information Dr S received in the May Letter was incorrect, although I note that he had previously received correct information and explanations. However, the Scheme Regulations are clear that where a marriage or civil partnership took place after the member left pensionable employment, the adult dependant pension would be based on membership from 6 April 1978 only. As Dr S and Mrs S were married after he left service, these regulations apply, and NHS BSA has no discretion to amend the widow's pension which Mrs S is legally entitled to.
26. I empathise with Mrs S' position in that she expected to receive a larger widow's pension than she is currently receiving. While I appreciate that this is upsetting to Mrs S, she is not entitled to receive 50% of Dr S' pension under the Scheme Regulations.
27. I understand that Dr S changed his will after receiving the May Letter. However, I note that his letter of May 2020 gave no indication that the information would be used to consider changes to his will. I find that NHS BSA did not have or assume any duty to either Dr S or Mrs S in relation to the changes Dr S made to his will. As such, NHS BSA is not responsible for any loss Mrs S suffered in consequence of the changes Dr S made to his will which he may have made in the belief that she would receive a larger widow's pension from the Scheme, and I do not uphold this part of Mrs S' complaint.

I consider that NHS BSA's offer of £750 to Mrs S for the distress and inconvenience it caused by providing incorrect information is certainly reasonable in the circumstances.

28. Therefore, I do not uphold Mrs S' complaint.

Camilla Barry

Deputy Pensions Ombudsman

7 January 2025

Appendix

SI 1995/300 The National Health Service Pension Scheme Regulations 1995

Part E Benefits for Members

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.

(2) The pension under this regulation shall be at a yearly rate of 1/80th of final year's pensionable pay for each complete year of pensionable service, plus the relevant daily proportion of that rate for each additional day of such service.

(3) A member who stays in pensionable employment until age 75 shall be entitled to receive a pension under this regulation at that age even if he does not retire from such employment.

(4) Subject to paragraph (5), where a member who leaves pensionable employment on or after 1st April 2008 becomes entitled to a pension under this regulation, the Secretary of State may discharge the Secretary of State's liability for that pension by the payment of a lump sum of an amount consistent with—

(a) the contracting-out requirements; and

(b) the preservation requirements .

G6 Member marries after leaving pensionable employment

(1) This regulation applies where the member and his wife were not married to each other during any period of pensionable employment.

(2) Subject to paragraph (3), the widow's pension will be equal to one-half of a pension calculated as described in regulation E1 (normal retirement pension) on the basis of the member's pensionable service after 5th April 1978.

(3) If the member dies after his pension under this Section of the scheme becomes payable, the widow's pension for the first 3 months after the member's death (6 months if the member dies leaving at least one dependent child dependent on the widow) will be equal to the amount of the pension that would have been payable under regulation G3 (member dies after pension becomes payable).

(4) Where the scheme partner referred to in regulation G14 (surviving scheme partner's pension) becomes the member's widow on the member's death, the widow's pension will, if it would be more beneficial to the widow, be equal to the surviving scheme partner's pension that would have been payable if the widow and the member had not been married to each other.