

Ombudsman's Determination

Applicant	Mrs M The Estate of Mr M (the Estate)
Scheme	NHS Pension Scheme (the Scheme)
Respondent	NHS Business Services Authority (NHS BSA)

Outcome

1. I do not uphold Mrs M's personal complaint, or the complaint brought by Mrs M on behalf of the Estate and no further action is required by NHS BSA.

Complaint summary

2. The Estate's complaint, brought on its behalf by Mr M's wife, Mrs M, acting as executor of the Estate is that:-
 - Mr M was not informed that he should consider updating his Expression of Wish (**EOW**) form during a telephone call in 2015.
3. Mrs M's complaint is in relation to:-
 - NHS BSA's decision not to award her a Life Assurance Lump Sum (**the Lump Sum**).

Background information, including submissions from the parties

4. 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.
5. Mr M was a member of the Scheme, a defined benefit occupational arrangement, for NHS staff. NHS BSA act as the administrator for the Scheme.
6. The Scheme is administered in accordance with the NHS Pension Scheme 1995 Regulations (as amended) (**the 1995 Regulations**).
7. Regulation F5 (4) states:

"If a member dies having made a nomination in favour of one nominee

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(whether or not he also leaves a surviving partner), the lump sum shall be paid to that nominee unless—

(a) the member has given notice to the Secretary of State revoking that nomination; or

(b) the nominee has died before the payment could be made; or

(c) the nominee has been convicted of an offence specified in regulation T6(1A) and the Secretary of State has directed, as a consequence of that conviction, that the member's right to payment in respect of the member's death shall be forfeited; or

(d) payment to the nominee is not, in the opinion of the Secretary of State, reasonably practicable, in which case the lump sum shall be paid to the member's personal representatives.”

8. On 20 November 2007, Mr M completed a Death Benefit 1 EOW (**the 2007 EOW**) and nominated his daughter to receive the Lump Sum, in the event of his death.
9. The 2007 EOW contained the following statement:

“I can confirm that unless there is a more recent life assurance lump sum nomination form, the [Scheme] will carry out the instructions contained in Part 2 of this form”.
10. On 3 July 2008, Mr M completed a Partner Nomination 1 EOW (**the Partner EOW**) nominating Mrs M, to receive a dependent's pension, in the event of his death. In signing the Partner EOW, Mr and Mrs M agreed that they had read the accompanying notes which contained the following statement:

“If an adult dependent's pension is authorised your nominated partner will also receive any lump sum on death benefit unless you have completed [a Death Benefits 1 form] in favour of one or more nominees or an organisation.”
11. On 1 April 2014, Mr M began to receive his pension benefits from the Scheme.
12. In March 2015, Mr M was diagnosed with an aggressive brain tumour.
13. On 2 April 2015, Mr M married Mrs M.
14. Later that month, Mr M telephoned Equiniti Paymaster (**Equiniti**), the former payroll provider for the Scheme (**the Call**). Mrs M has said that during this call:-
 - Mr M informed Equiniti of his marriage to Mrs M and asked if there was anything he needed to do to ensure that she would receive a dependent's pension.

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- Equiniti informed him that he only needed to send a copy of his marriage certificate to NHS BSA.
15. NHS BSA has said that the Call was not recorded and the representative that Mr M spoke with did not leave a call note on his record.
 16. NHS BSA has said that it took over the Scheme's payroll from Equiniti in July 2017.
 17. On 10 July 2018, Mr M died.
 18. Mrs M telephoned NHS BSA and informed it that Mr M had died and requested the necessary forms to claim the dependent's pension. The NHS BSA representative indicated that Mrs M might also be entitled to receive the Lump Sum. NHS BSA sent Mrs M the necessary declaration forms to complete and return.
 19. On 3 September 2018, Mrs M returned the signed declaration forms to NHS BSA.
 20. Mrs M telephoned NHS BSA on 14 November 2018, 29 November 2018, 3 December 2018, 4 December 2018 and 7 December 2018. This was because she had not received any further information about the payment of the dependent's pension or the Lump Sum.
 21. On 20 December 2018, NHS BSA informed Mrs M that she was not entitled to the Lump Sum because Mr M's 2007 EOW nominated another individual to receive it. NHS BSA confirmed that Mrs M was entitled to the dependent's pension.
 22. On 30 December 2018, Mrs M submitted a complaint about her entitlement to the Lump Sum and said:-
 - During the Call, Mr M informed Equiniti that he and Mrs M were married and that he had recently been diagnosed with an aggressive tumour.
 - Mr M specifically asked Equiniti if there was anything else he needed to do, other than sending in his marriage certificate, to ensure that Mrs M received the dependent's pension. Equiniti said he did not need to do anything else.
 - Mr M was not informed that Mrs M would not automatically become entitled to the Lump Sum following their marriage. Nor was he informed that the 2007 EOW could only be overridden by completing another EOW.
 - Section B, of the 2007 EOW said, "in the event of my death, I want my legal representative to receive the [Lump Sum] payable instead of my legal spouse". Mr M did not tick this box, so she should be eligible to receive the Lump Sum.
 - In 2015, Mr M was coming to terms with his diagnosis. Neither Equiniti nor NHS BSA provided him with important information. Further, since informing NHS BSA that Mr M had died, the process had been challenging and NHS BSA had been unsupportive.

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23. On 11 February 2019, NHS BSA responded to Mrs M's complaint and explained that:-
- The accompanying notes for the Partner EOW said, "if an adult dependent's pension is authorised, your nominated partner will also receive any lump sum on death benefit unless you have completed [a Lump Sum EOW] in favour of one or more nominees or an organisation".
 - Mr M had not completed a new Lump Sum EOW, so the 2007 EOW, in favour of his daughter, was still applicable under the 1995 Regulations.
 - It noted that Mrs M's dependent's pension was not paid within 30 days of the due date. Subsequently, the 1995 Regulations provided for the payment of interest for the period of the delay. The interest was calculated in line with the Bank of England's base rate, this amounted to £4.75.
24. On 30 May 2019, Mrs M submitted a complaint under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**) and said:-
- If Mr M had been fully informed, during the Call, about the requirements that needed to be met for a Lump Sum to be paid to his spouse, it is likely he would have completed a new Lump Sum EOW nominating herself.
 - NHS BSA had a duty of care to provide members with any, and all, relevant information. Particularly, as the representative that Mr M spoke with during the Call was aware of his diagnosis and should have been more forthcoming with information about EOW's.
 - She had recently been told that Mr M should have checked the Scheme's website, where information about EOW's and the Lump Sum was readily available. Given Mr M's diagnosis and imminent surgery, he was not in a fit state to search online for relevant information that should have been provided to him.
 - Mr M believed that by being married to Mrs M, she would be automatically entitled to all Scheme death benefits. He was not made aware that the payment of the dependent's pension and the Lump Sum were subject to two different processes.
 - When Mr M completed the 2007 EOW his daughter was still in full-time education. He did not want his ex-wife to benefit from his pension, so, at the time, it made sense for him to nominate his daughter.
25. On 24 July 2019, NHS BSA responded to Mrs M's stage one IDRP complaint and said that:-
- It was unable to comment on the Call as any of Equiniti's call recordings were only kept for a maximum of six months.
 - Any, and all, information on how to complete, or cancel, an EOW was included in the relevant form. The 2007 EOW provided information on making a nomination, and the requirement to cancel a pre-existing EOW should the beneficiary change.

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- It appreciated Mrs M's understanding of the first part of section B on the 2007 EOW. However, the second part of section B said, "Tick this box if you do not want the legal spouse named below to receive the lump sum but are unable to nominate someone else". Had Mr M ticked this box, she would still not be entitled to the Lump Sum.
- It had acted in accordance with the 1995 Regulations, in that, because the 2007 EOW, had not been replaced, the Lump Sum was payable to the individual nominated in the 2007 EOW. The 1995 Regulations did not provide NHS BSA with any discretion in the matter.

26. On 29 August 2019, Mrs M asked for her complaint to be investigated under stage two of the Scheme's IDRP and added that:-

- During the Call, the representative should have made a note of Mr M's diagnosis, his recent marriage, and that he had asked for additional information about how best to prioritise his beneficiaries.
- Mr M had provided Equiniti/NHS BSA with a copy of their marriage certificate. This should act as proof that the Call did take place.
- It would be reasonable to assume that after a member got married, any previous EOW's that did not nominate their spouses, may need to be changed. The Call representative should have raised this with Mr M at the time, when it was clear he was attempting to update his beneficiary to be his spouse.
- Mr M was unable to make an informed choice, during a difficult time in his life.

27. On 21 October 2019, NHS BSA responded to Mrs M's stage two IDRP application and did not uphold her complaint. Broadly, NHS BSA provided a similar response to its stage one response, and added that:-

- The 1995 Regulations are laid down and agreed by Parliament.
- NHS BSA must act in accordance with the 1995 Regulations and can only pay benefits to legally entitled beneficiaries. While Mr M completed the Partner EOW in 2008, so that Mrs M could receive a dependent's pension, he had not revoked the 2007 EOW. In this case, the 2007 EOW was applicable, and the nominated beneficiary was entitled to the Lump Sum.
- It accepted that the Call did take place. However, Equiniti only held limited records so it could not be certain what Mr M and the representative discussed.

Adjudicator's Opinion

28. Mrs M's personal complaint and the complaint made on behalf of the Estate were considered by one of our Adjudicators who concluded that no further action was required by NHS BSA. The Adjudicator's findings are summarised below:-

The Adjudicator's Opinion on the complaint made on behalf of the Estate

- It was understood that, after Mr M received his diagnosis, he contacted Equiniti to inform it that he and Mrs M were married and to enquire about a dependent's pension. This was to see if it needed any further information beyond sending in his marriage certificate. Due to the time that has since passed, Equiniti no longer held any recordings of the Call.
- It did not appear that Mr M had asked for any details, or information, about the Lump Sum or EOW's. He was provided with information about the Dependent's pension and told that a copy of his marriage certificate was required. By providing this information Equiniti's representative correctly responded to Mr M's questions, about a dependent's pension, so it was reasonable for the representative not to provide any further information beyond the scope of what was asked for. However, providing additional information about death benefits would have been considered good practice, but not doing so did not amount to maladministration.
- The Adjudicator did not believe that it was Equiniti's position to make any assumptions on what information Mr M may, or may not, require, or what he intended to use it for. Equiniti was the Scheme's third-party payroll provider, so it was unlikely that it had access to any EOW's that Mr M had completed. So, there was no reason for the representative to query Mr M's beneficiaries or inform him that he should consider completing a new EOW.
- In the event that Equiniti had access to Mr M's completed EOW, there was nothing to suggest that nominating someone other than his wife, such as a child or charity, would have been seen as out of the ordinary. It was also likely that NHS BSA would have been unaware that Mr M contacted Equiniti. Consequently, the Adjudicator was of the view that it would be unreasonable to hold NHS BSA responsible for not providing information that may have been requested during a call that it was likely unaware of.
- It was appreciated the level of distress Mr M would have been under during the Call, after he received his diagnosis. However, there was a period of time between 2015 and 2018 where information about EOW's and Lump Sum was readily available on NHS BSA's website.

The Adjudicator's Opinion on Mrs M's personal complaint

- Regulation F5(4) makes clear that if a member makes a nomination in favour of an individual, despite having a surviving partner, the Lump Sum is paid to the nominee. F5(4) provides four exemptions to this rule(see paragraph 7). If a member provides written confirmation revoking the former nomination, the Lump Sum is then payable to the member's personal representative, which was Mrs M as the Executor of the Estate.

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- At the time of Mr M's death, the 2007 EOW was still applicable and none of the exemptions under Regulation F5(4) were met. So, the Adjudicator agreed that NHS BSA had acted in accordance with the relevant regulations and that it held no discretion in the matter.
- The Partner EOW made clear that it was only in reference to the dependent's pension and not the Lump Sum. Mr M completed the Partner EOW less than a year after completing the 2007 EOW. So, the Adjudicator was of the view that Mr M would have recalled completing the 2007 EOW and the information it provided. When completing the Partner EOW, it was open to Mr M to complete an additional Lump Sum EOW, but he did not, despite the information contained in the 2007 EOW and the Partner EOW.
- In the Adjudicator's opinion the Lump Sum is not payable to Mrs M or the Estate as it is required to be paid in accordance with the 2007 EOW, which did not nominate Mrs M or the Estate as a beneficiary for the Lump Sum. The 2007 EOW was not revoked or replaced and so it is still relevant for the purposes of the 1995 Regulations.

29. Mrs M did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs M provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mrs M, which were:-

- The purpose of the Call was to inform Equiniti of Mr M's diagnosis and that he had re-married. At no point during the Call did Mr M specifically ask for any details about a dependent's pension.
- Despite the information about the Lump Sum and EOW's being available online, between 2015 and 2018, Mr M was not in a position to access this information. His condition had diminished his physical and cognitive abilities, and, 18 months prior to his death, he was bedbound and unable to access a computer or the internet. In the months leading up to his death, Mr M also went blind.
- It was extraordinary that Equiniti did not hold a recording of the Call and that no notes about the Call were added to Mr M's record. Once Equiniti's representative was made aware of Mr M's diagnosis, the representative should have proactively provided any information that would appear to have been relevant to Mr M's circumstances.

30. NHS BSA accepted the Adjudicator's opinion and did not provide any further comments.

Ombudsman's decision

31. There are two separate complaints accepted for investigation, one from Mrs M, on behalf of the Estate, and the other from Mrs M herself. Firstly, I will deal with the complaint relating to the Estate.
32. Mrs M, as the Executor of the Estate, believes that Mr M was provided with insufficient information, prior to his death, regarding the Lump Sum and EOW's. It is inferred that if he was provided with the relevant information, he may have updated his EOW in light of the requirements to receive the Lump Sum. Mrs M's recollection of the Call was that the representative told Mr M that all he needed to do was send in a copy of his marriage certificate.
33. I appreciate the level of distress that Mr M would have been under when he made the decision to telephone Equiniti. I also do not dispute that the Call took place, however, without a call note, or a recording of the Call, there is no way of knowing what Mr M and the representative discussed. However, considering the actions taken by Mr M after the Call, it is reasonable to assume that Mr M did make the representative aware of his diagnosis and also that he had re-married but made no further enquiries.
34. I agree with the Adjudicator, in that, it would have been considered best practice for the representative, after they were made aware of Mr M's diagnosis, to have referred him to NHS BSA, or at least to the Scheme website. However, given that Mr M did not appear to ask any specific questions about death benefits or EOW's, I find that it was reasonable for the representative to only provide information, and answers, to the questions asked by Mr M, at the time. Furthermore, in my view it was not for the representative to have made any assumptions on what information Mr M might require, or what he might require it for. Indeed, given the sensitive nature of Mr M's condition, it may not have been reasonable to broach the subject of death benefits unless asked to.
35. It is possible that if Mr M had enquired about death benefits, the Equiniti representative may not have been in a position to provide this information. This is because Equiniti did not act as the Scheme administrator, instead, it acted as a third-party payroll provider for the Scheme.
36. In any event, there is no certainty that if Mr M had been told that he should consider updating his EOW that he would have taken this course of action. It is possible that because Mrs M was provided for under the Partner EOW, Mr M may have left the 2007 EOW as it was to ensure his nominated beneficiary received the Lump Sum.
37. I turn now to the complaint brought by Mrs M, regarding NHS BSA's decision to pay the Lump Sum in accordance with the 2007 EOW. Generally, a decision maker is not bound to pay benefits in accordance with an EOW or a Will. However, in this case the 1995 Regulations provide a specific rule for the payment of the Lump Sum.

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38. Regulation F5(4) provides that unless a previous Lump Sum EOW is revoked, or replaced, irrespective of a current spouse or partner, the nominated beneficiary is the rightful recipient of the Lump Sum. There are four exemptions to this rule, and if any one applies, the Lump Sum defaults to being paid to the member's personal representative, which, in this case, is Mrs M on behalf of the Estate.
39. Having reviewed the evidence, none of the exemptions under rule F5(4) applied, and the 2007 EOW was still applicable at the date of Mr M's death. Consequently, irrespective of the fact that Mrs M was Mr M's spouse, NHS BSA was required to act in accordance with the Regulations by paying the Lump Sum to the nominated beneficiary under the 2007 EOW. Without a reason as to why paying the Lump Sum to the nominated beneficiary was practicably unreasonable, in the opinion of the Secretary of State, NHS BSA held no discretion in the matter.
40. In conclusion, I appreciate that this is not the outcome that Mrs M had hoped for, but NHS BSA was statutorily required to pay the Lump Sum in accordance with the 2007 EOW.
41. I do not uphold Mrs M's personal complaint, or the complaint brought by Mrs M on behalf of the Estate.

Pensions Ombudsman

Dominic Harris

03 August 2023