

Ombudsman's Determination

Applicant	Ms S
Scheme	NHS Pension Scheme (the Scheme)
Respondent	NHS Business Services Authority (NHS BSA)

Outcome

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

Complaint summary

2. Ms S' complaint is about the death benefits payable in relation to her late ex-husband, Mr E. Ms S has said that:
 - she was under the impression that, as the surviving partner, she would receive the remainder of the deceased's pension; and
 - she was not made aware that divorce would affect this.

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 that there were other exchanges of information between all the parties.
4. Extracts of the relevant Scheme Regulations are included in the Appendix.
5. Mr E was a member of the Scheme from 2 September 1985 until 31 May 2014.
6. Mr E and Ms S were married for a period during Mr E's membership in the Scheme and had four children.
7. In 2013, following their divorce, Mr E completed a Death Benefit Nomination form (**DB2**). He nominated Ms S, as his ex-wife, to receive 100% of any lump sum death benefit payable. The DB2 stated:

"...In the event of your death we'll take your wishes into account when paying any lump sum death benefits."

And

“If you would like more information about death benefits payable from the plan, please refer to the Flexible Transitions Account Technical Guide or the Key Features of the Flexible Transitions Account. These are available from your financial adviser or us on request.”

8. Mr E claimed his retirement benefits from the Scheme early. He received his lump sum on 18 August 2014 and his pension also became payable from this date.
9. On 17 September 2014, NHS Pensions, which administers the Scheme on behalf of NHS BSA, sent Mr E a letter about his benefits (**the award letter**). The award letter contained a section that set out any relevant survivor’s details as follows:

“Survivor’s details

Pension: £ n/a

Additional Pension £ n/a

Total Pension £ n/a

Surname:

Forenames:

National Insurance Number:

Date of Birth:”

10. The award letter also contained information regarding the survivor pension which said:

“A pension may be paid to your surviving partner. This pension is payable for the life of your surviving partner.

...

If you wish to nominate your partner to receive a survivor pension, please complete form PN1 available on our website www.pensions.nhsbsa.nhs.uk.”

11. There is no record of Mr E contacting NHS Pensions to query Ms S’ entitlement to any survivor benefits. Nor is there any evidence that he completed the PN1 form.
12. On 23 January 2019, Mr E died.
13. On 25 January 2019, Ms S notified NHS Pensions of Mr E’s death. She confirmed that she was Mr E’s legal personal representative.
14. On 1 February 2019, Ms S telephoned NHS Pensions. According to the telephone note, Ms S explained that Mr E had nominated her to receive the death benefit lump sum. Ms S has said that there was also a discussion about potential children’s pensions.

15. On 11 February 2019, NHS Pensions wrote to Ms S. It provided details of the pension paid to Mr E and the income tax deducted for the tax year commencing 6 April 2018. It also confirmed that an additional payment of £627.04 (gross) would be payable on receipt of a valid claim. This amount was subsequently paid to Ms S.
16. On 19 March 2019, a member of the Bereavement Team within NHS Pensions wrote to Ms S about a child's pension payable for her and Mr E's youngest son, and potentially an adult dependant's pension. Additionally, NHS Pensions:-
 - Asked Ms S for details of her relationship with Mr E as it had received a decree absolute for their marriage.
 - Explained the test that would have to be met for Ms S to qualify for a surviving partner pension, should she apply for it. It had to be satisfied that, for a continuous period of two years prior to Mr E's death, they were living together in an exclusive relationship.
 - Requested proof of their child's dependency on Mr E because Ms S had said that the same child lived with their partner.
 - Mis-spelt Mr E's name and also referred to him by the incorrect name.
17. In response, Ms S complained to NHS Pensions and said:-
 - Mr E's death was sudden, and within five years of him taking early retirement.
 - She found it distressing that NHS Pensions had mis-spelt Mr E's name and also referred to him by the incorrect name.
 - She had provided a copy of her and Mr E's joint mortgage statement in January 2019 but received no acknowledgment.
 - While she and Mr E were divorced, the family dynamic remained the same.
 - She was Mr E's next of kin and executor of his estate. She also managed and paid for his funeral.
 - Neither she nor Mr E were in other relationships.
 - She was unaware that two of her children could be eligible for a children's pension until she telephoned NHS Pensions in February 2019.
 - She had provided evidence of one child's dependency on Mr E. The child had only recently moved out to live with their partner.
18. On 17 May 2019, NHS Pensions responded to Ms S' complaint under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**). It apologised for the errors with the late Mr E's name in the correspondence that it had sent on 19 March 2019. It also acknowledged that the Bereavement Team had contacted Ms S regarding the £627.04 payment that was due.

19. In June 2019, NHS Pensions wrote to Ms S about the death benefit lump sum that Mr E had nominated her to receive. It asked her to complete a form and provide the relevant certificates.
20. On 17 July 2019, NHS Pensions received the relevant documentation to pay Ms S the death benefit lump sum. It paid her £6,394.33 on 3 August 2019.
21. On 17 December 2019, Ms S wrote to NHS Pensions. She expressed her dissatisfaction with the stage one IDRPs response. She explained that, as she understood it, Mr E's pension would transfer to her after he died based on his nomination in the DB2. Ms S asked for a breakdown of Mr E's pension, including what he would have received throughout his retirement. Ms S said that this is what she and her children expected to receive.
22. On 13 February 2020, NHS BSA responded to Ms S' stage two IDRPs complaint. It did not uphold her complaint and, in summary, said:-
 - The rules of the Scheme were laid down in regulations that had been agreed by Parliament.
 - It could only pay benefits that a member, or their dependants, were legally entitled to receive.
 - Under Regulation F2 (2) of the Scheme Regulations 1995 (as amended), a lump sum was only payable when a pensioner member of the Scheme died within five years of retirement. The death benefit lump sum payable would be the lower of:
 - five times their annual pension minus the amount of pension that they had already received; or
 - twice their pensionable pay, less any retirement lump sum that they had received.
 - Mr E had nominated Ms S to receive the death benefit lump sum. She was therefore entitled to receive a death benefit lump sum of £6,294.33. This had been calculated using the following method to establish the correct figure:
 - five times Mr E's annual pension minus the pension that it had already paid: $5 \times £10,318.27 - £45,767.89 = £5,823.46$; or
 - twice Mr E's pensionable pay less any retirement lump sum received: $2 \times £42,000.47 = £85,000.94 - £68,788.44 = £16,212.50$.
 - In accordance with Regulation F2, it had awarded her £5,823.46. After the pensions increase was added, this increased to £6,294.33 and was paid on 3 August 2019.
 - Mr E was single when he died. So, NHS BSA was not required to pay an adult dependant's pension as he had no eligible spouse, registered civil partner or qualifying nominated partner.

- It understood that Mr E had paid into the Scheme while he was an active member. But contributions were calculated in the same way for all members regardless of whether they were married, single or had children.
- There could be a small, short-term children's pension payable to any child dependent on Mr E when he died, up until the date that child reached age 23. In order to determine whether a child's pension was payable, NHS BSA required documentation from Ms S.

23. NHS BSA has confirmed that it did not receive a completed child's pension application or the supporting documentation that it requested.
24. During the course of this investigation, Ms S explained that she and Mr E had a child who was around 13 years old when Mr E died. However, Ms S has not provided any evidence to suggest that she applied for a child's pension on behalf of that child.

Adjudicator's Opinion

25. Ms 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:-
- The DB2 form that Mr E completed, stated that a death benefit lump sum would be payable in the event of his death. It made no reference to a pension being paid following his death and also said that NHS BSA, or a financial adviser, could be contacted for further information on death benefits.
 - In 2014, Mr E received the award letter which, in the Adjudicator's view, made it sufficiently clear that no survivor's pension was payable because the survivor details were marked as not applicable. The award letter also said that Mr E would have to complete a PN1 form to nominate a surviving partner to receive his pension. There was no evidence to suggest that Mr E or Ms S contacted NHS Pensions or NHS BSA about the survivor benefits or completed form PN1. Nor was there evidence to support Ms S' assertion that NHS Pensions provided her with misleading information.
 - It is not within the Pensions Ombudsman's (**the PO**) remit to say what decision NHS BSA should have arrived at. The PO can only ask a decision-maker to review its decision, if the decision making process was flawed or the original decision could not have been reached by another reasonable decision-maker.
 - Under the Scheme Regulations, an adult dependant's pension is payable to a spouse, civil partner, or qualifying scheme partner. NHS Pensions considered Mr E to be single at the time of his death because it had received decree absolute which showed that Mr E and Ms S were divorced. Mr E did not complete a PN1 form to nominate Ms S to receive an adult dependant's pension. The Adjudicator

was therefore satisfied that NHS BSA's decision was not perverse and that it had considered the relevant facts.

- While Mr E and Ms S' family dynamic may have remained the same after their divorce, this of itself was not sufficient to warrant an adult dependant's pension being paid. Rather, NHS BSA had to be satisfied that, for a continuous period of two years prior to his death, Mr S and Ms E were living together in an exclusive relationship. Ms S did not provide that evidence.
- There was no evidence to suggest that Ms S applied for any children's pensions or that NHS BSA failed to consider any such application.

26. Ms S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms S provided further comments which do not change the outcome.
27. In summary, Ms S said that she and Mr E were told that they only had to complete the DB2 form to ensure that the surviving partner received an adult dependant's pension in the event of their deaths.
28. I note the additional point raised by Ms S, however, I agree with the Adjudicator's Opinion.

Ombudsman's decision

29. Ms S has said that she and Mr E were told that they only needed to complete the DB2 form to ensure that the surviving partner received an adult dependant's pension. In the absence of a call recording to corroborate Ms S' assertion, I must make a decision based on the available evidence. I have reviewed the DB2 form that Mr E completed, and I am satisfied that it was made sufficiently clear that the form was applicable to a death benefit lump sum only. Ms S has been paid the death benefit lump sum that she was entitled to receive under the Scheme Regulations.
30. I have also reviewed the award letter that Mr E received, and it is clear from the information provided that Ms S had not been nominated to receive a survivor's pension. Mr E did not query the information that had been provided and did not contact NHS Pensions in order to clarify why the relevant section of the award letter did not contain any information. I am satisfied that the award letter did make it clear to Mr E that he had not made a nomination regarding a survivor's pension.
31. Mr E did have the option to complete form PN1 to nominate Ms S, but no evidence has been provided to show that Mr E did in fact do this. However, even if Mr E had completed form PN1, the Scheme administrator needed to be satisfied that the qualifying conditions had been met before an adult dependant's pension became payable.
32. NHS BSA has considered all the information than Ms S has provided regarding her financial position and her relationship with Mr E. NHS BSA has made the decision that Ms S is not entitled to an adult dependant's pension. I find that there has been no

CAS-77309-S8M2

maladministration regarding NHS BSA's consideration of Ms S' eligibility for an adult dependant's pension. In addition, Ms S had the option to provide information regarding herself and their children in order to apply for a child's pension, but she has not done so and so their eligibility has not been assessed.

33. I do not uphold Ms S' complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
23 January 2024

Appendix

NHS Pension Scheme Regulations 1995 (as amended)

PART F Lump sum on death

F2 Member dies after pension becomes payable.

- (1) Subject to paragraph (7) If a member dies after his pension under this Section of the scheme becomes payable, a lump sum on death shall be payable in accordance with regulation F5.
- (2) Subject to regulation S4, the lump sum on death will be equal to 5 times the yearly rate of the member's pension (less the amount of pension already paid) provided that the maximum payment under this paragraph shall not exceed an amount equal to twice the member's final year's pensionable pay less an amount equal to aggregate of –
 - (a) the member's retirement lump sum paid under regulation E6 (lump sum on retirement)

And

- (b) any lump sum paid to the member under regulation E7 (general option to exchange part of pension for a lump sum).

PART G Surviving Partner Pensions

G14 Surviving scheme partner's pension.

- (6) A reference in these Regulations to regulation G1 to G6 means, in relation to benefits in respect of a member who has a scheme partner, those regulations as applicable to the member's surviving scheme partner.
- (7) A person (P) is the scheme partner of a member if –
 - (a) the member and P are living together as if they were husband and wife or civil partners,
 - (b) the member and P are not prevented from marrying or entering into a civil partnership,
 - (c) the member and P are financially interdependent, or P is financially dependent on the member,
 - (d) neither the member nor P is living with a third person as if they were husband and wife or as if they were civil partners.
- (8) A person is a surviving scheme partner of a member if the Secretary of State is satisfied that for a continuous period of at least two years, ending with the member's death, the person was the scheme partner of that member.

G15 Dependent surviving scheme partner's pension

(1) A member may apply for the member's scheme partner to receive a dependent surviving scheme partner's pension on the member's death.

(1A) An application must—

(a) be made by the member giving notice in writing to the Secretary of State before leaving pensionable employment, and

(b) be in relation to a person who has been the member's scheme partner for a continuous period of at least two years on the member's last day of pensionable service.