

## Ombudsman's Determination

Applicant	Mr K
Scheme	NHS Pension Scheme ( <b>the Scheme</b> )
Respondent	NHS Business Services Authority ( <b>NHS BSA</b> )

## Outcome

1. I do not uphold Mr K's complaint, and no further action is required by NHS BSA.

## Complaint summary

2. Mr K has complained that he disagrees with NHS BSA's decision that his mother's estranged husband, Mr E, is entitled to benefits from the Scheme following his mother's death. His mother's wishes were that the Lump Sum on Death (**LSOD**) was paid to him and the ongoing pension to be paid to Mr H with whom she had been living for an extended period of time.

## Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the key points. I acknowledge there were other exchanges of information between all the parties.
4. Ms E was a member of the 2015 Scheme.
5. In March 2022, Ms E was diagnosed with cancer, and she began to put her affairs in order. She wrote a Will which left her Estate to Mr K and her partner Mr H. She began divorce proceedings against her estranged husband Mr E and she completed a Nomination Form (**the Nomination Form**) for the LSOD. This named Mr K as the beneficiary. She also completed a form to request cancellation of an existing partner nomination (**the Cancellation Form**). However, the Nomination Form and the Cancellation Forms were not signed or submitted to NHS BSA.
6. On 8 August 2022, Ms E died.
7. On 1 August 2023, Mr K sent an email to NHS BSA. He said in summary:-

- His mother, Ms E, had worked for the NHS for a long time before she died in August 2022.
- Throughout her working life she paid into her pension in preparation for retirement but sadly she was not able to enjoy this part of her life as she became ill with cancer.
- When she was diagnosed with cancer Ms E started divorce proceedings against her ex-partner Mr E. She was separated from Mr E for around 20 years. The marriage broke down due to Mr E financially abusing his mother. Mr E was addicted to gambling and an alcoholic.
- When Ms E fell ill, she wrote a Will outlining that she did not want Mr E to get a penny from her estate that she had worked so hard to build up over her working life.
- When he had previously contacted NHS BSA, he was met with a “roadblock” outlining that because Ms E was still technically married the pension must go to a surviving husband. He thought that this was absolutely ridiculous, and he felt that NHS BSA was hiding behind a ridiculous policy. Given Mr E’s addictions surely NHS BSA had some duty of care to the general public.
- Giving Mr E this amount of money will end his life because he will drink and gamble to excess. He has no fixed abode, and this too should add more concern to his well-being.
- He would like a written response outlining NHS BSA’s policy and the fact that the money will be sent to Mr E.

8. On 23 January 2024, NHS BSA sent Mr K a letter which said in summary:-

- The rules of the Scheme were laid down in Regulations agreed by Parliament. NHS BSA must ensure that the benefits authorised are only those to which a member, or their dependents, were legally entitled to receive. NHS BSA had no discretion to alter or vary the benefits payable or the recipients of those benefits.
- Ms E was a member of the 2015 Scheme when she sadly died, as such the benefits payable on her death are detailed in the NHS Pensions Scheme Regulation 2015 (as amended). The relevant extracts of the Regulations are in the Appendix.
- Unfortunately, as Ms E had not given notice under Schedule 14 paragraph 9 sub-paragraph 3, entitlement to the LSOD fell to her legal spouse.
- Similarly, her legal spouse was automatically entitled to a surviving partner pension. An individual maintained their entitlement to pension scheme benefits regardless of whether they made a claim for payment meaning that NHS BSA

remained liable to pay those benefits to the legal recipient on receipt of a valid claim.

9. Following the complaint being referred to The Pensions Ombudsman (**TPO**), NHS BSA and Mr K made further submissions.

### ***NHS BSA submissions***

10. NHS BSA reiterated the information it had previously provided and in addition said:-

- Where a scheme member was still legally married at the date of their death, then their surviving spouse was entitled to any LSOD which was available together with an adult dependant's pension.
- If a member wanted someone else to receive the LSOD, then they must complete a nomination form; Ms E did not do this.
- If a member with an estranged spouse did not want them to receive an adult dependant's pension, then divorce proceedings need to be completed prior to death. The Scheme Regulations were clear on the entitlement criteria, and these could not be varied by the terms of any valid Will. It had no discretion in this matter.
- Unfortunately, as Ms E had not given notice under the entitlement to the LSOD, it fell to her legal spouse. Similarly, her legal spouse was automatically entitled to an adult dependant pension.

### ***Mr K's submissions***

11. Mr K said in summary:-

- On the NHS BSA website its states:

“A Will is a legal document stating how the deceased person wishes their Estate to be shared. The people who receive a share of the Estate are the Beneficiaries and the people chosen to administer the Will are the Executors. The Executors are usually the people who apply for a Grant of Probate. This certifies that the Will is authentic.”
- Taking the above into consideration, while NHS BSA refers to a Will being a ‘legal document’, nowhere on the website does it state that this legal document will not be taken into consideration at any point, regardless of what it says within it.
- On the NHS BSA website within the link<sup>1</sup> it states:

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<sup>1</sup> <https://www.nhsbsa.nhs.uk/sites/default/files/2021-09/Death%20in%20Membership-useful%20information%20for%20employers-20210916-%28V3%29.pdf>

“Qualifying scheme partners. For a continuous period of at least two years ending with the member’s death, both the member and the partner are living together in the same household as if they were married or civil partners”

- His mother and her partner, Mr H had been living together for 15 years. Evidence of this had been sent to NHS BSA. He could also evidence that the divorce proceedings were going ahead. Ms E’s health deteriorated very quickly, and she had a ‘legal document’ (the Will) drawn up to stop her (ex) husband benefiting from her Estate. Ms E and Mr H were financially co-dependent. They shared a house and household finances.
- The NHS BSA website also contained information about when the Will would not be taken into consideration. He noted the reference to the term “earmarking”. Given the situation and the fact that the Will was being disregarded, could the period of time that Ms E was with her (ex) husband be considered? Mr E could be given a proportional percentage of the pension based on this. He felt this would be more than generous.
- He had also looked at other complaints that the Ombudsman had been involved in. In case CAS-50008-T7M8<sup>2</sup> this was upheld because the ‘partner’ (not wife) was not paid the survivors pension, due to misinformation. He believed the NHS BSA website provided misinformation/misleading information as it referred to a Will, yet nowhere does it state that NHS BSA would not take the Will into account when dealing with pensions.
- In addition, in case CAS-56210-B2T3<sup>3</sup>. On page 2, paragraph 8 of this document it states:

“Finally, before moving on from the Regulations, it is worth noting that Regulation 41 deals with a separate benefit, a survivor’s pension, that may become payable on the death of an active member. This pension may become payable to a cohabiting partner, the definition of which is more difficult to fulfil than that of “Dependent” in relation to Regulation 40. For example, a potential cohabiting partner in this case must have been living together “...for a continuous period of at least 2 years on the date the member ... died”.”
- He could prove and evidence that Ms E and her partner, Mr H, were living together for an extended period of time.

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<sup>2</sup> <https://www.pensions-ombudsman.org.uk/sites/default/files/decisions/CAS-50008-T7M8.pdf>

<sup>3</sup> <https://www.pensions-ombudsman.org.uk/sites/default/files/decisions/CAS-56210-B2T3.pdf>

## **Adjudicator's Opinion**

12. Mr K'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 Adjudicator's role was to assess whether NHS BSA had followed the appropriate Regulations when deciding who was entitled to benefits after Ms E's death. The Regulations did not provide NHS BSA with any discretion regarding who should be awarded the adult dependant's pension or the LSOD.
  - Mr K had referred to the NHS BSA website and the status of a Will as a "legal document" and the fact that it did not state anywhere that it would not be taken into consideration. The information on the NHS BSA website was correct regarding the status of a Will. When the scheme rules gave a discretion to decide who the death benefits should be distributed to then the Will would be part of the information that was gathered to inform its decision making. In this case NHS BSA did not have any discretion.
  - Mr K had referred to pension earmarking and the fact that it would be fairer for Mr E to only receive a proportion of Ms E's pension. This was something that would be considered as part of the financial settlement in divorce proceedings. It was not an option available to NHS BSA under the Scheme Regulations.
  - Mr K had also provided information on the NHS BSA website and Ombudsman's decisions that show that Mr H met the definition of a cohabiting partner and so should be entitled to the adult dependant's pension. While the Adjudicator agreed that Mr H did meet this definition it was not relevant here as Ms E was still legally married and as such any adult dependant's pension was due to Mr E.
  - The Adjudicator noted that Mr K had said that NHS BSA had provided incorrect information regarding the status of the Will, and he referred to the Determination CAS-50008-T7M8 where the complaint was upheld due to the provision of incorrect information. TPO deals with each complaint on its own merits and in this case the complainant was given specific incorrect information by the scheme administrator in response to a telephone query. In the Adjudicator's opinion, Mr K had not been provided with any specific information by NHS BSA that said Ms E's Will would be taken into consideration when deciding who to pay the death benefits to.
  - The Adjudicator understood Mr K's disappointment regarding the payment of his mother's pension benefits but in the Adjudicator's opinion the Regulations had been followed correctly and the person entitled to the LSOD, and the adult dependant's pension was Mr E who was still Ms E's legal spouse.

13. Mr K did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mr K said that there must be something that could be done about the fact that his mother worked all her life and now all her pension benefits were going to her abusive estranged partner. I agree with the Adjudicator's Opinion and note the additional point raised by Mr K.

### **Ombudsman's decision**

14. Mr K has complained that following the death of his mother he and Mr H should be entitled to benefits from the Scheme.
15. I note that because Ms E was still married to Mr E, Ms E was prevented from marrying or entering into a civil partnership at death and this disqualified Mr H from qualifying as a surviving scheme partner under Regulation 114 so that only Mr E could qualify for the adult's dependant pension and, subject to any nomination provided in a written notice, for the LSOD. As Ms E had not given notice in respect of the LSOD, the LSOD was also payable to Mr E as her legal spouse.
16. I do recognise that this is a difficult situation, and that Mr K feels understandably frustrated. However, it is important that individuals do review their pension arrangements to make sure that they reflect their wishes when they die. Particularly in a situation such as this where Ms E remained married to a spouse that she did not have any contact with. Ms E was in the process of changing the arrangements but unfortunately, she was unable to complete this before she died.
17. My role is limited to assessing whether NHS BSA has followed the Regulations correctly. NHS BSA has no discretion and can only reach a decision based on the Regulations and the evidence provided to it which was that Ms E was still legally married to Mr E and had not signed and submitted the Nomination and Cancellation Forms.
18. I do not uphold Mr K's complaint.

**Camilla Barry**

Deputy Pensions Ombudsman  
07 May 2025

## **Appendix – 2015 NHS Pension Scheme Regulations Schedule 14**

### **9. Payment of lump sums on death**

- (1) A lump sum payable under paragraphs 1 to 8 must be paid in accordance with this paragraph.
- (2) The lump sum must be paid to the member's personal representatives except so far as it is payable to a different person or body under sub-paragraph (4) or (6)
- (3) A member may give notice to the scheme manager-
  - (a) Specifying –
    - (i) The member's personal representatives
    - (ii) One or more other individual's or
    - (iii) One incorporated or unincorporated body, to whom the lump sum is to be paid; and
  - (b) Where two or more individuals are specified specifying the percentage of the payment payable to each of them.
- (4) If the member has-
  - (a) Given notice under sub-paragraph (3) specifying a person and
  - (b) Not revoked that notice,  
the lump sum (or as the case may be the percentage of it specified in respect of the person) may be paid to the person unless sub-paragraph (5) or (7) applies.
- (5) This sub-paragraph applies if-
  - (a) The person specified in the notice has died before the payment can be made or
  - (b) The payment to that person is not, in the opinion of the scheme manager reasonably practicable.
- (6) If the member-
  - (a) Leaves a surviving adult dependent and
  - (b) Has not given notice under sub-paragraph (3) or has revoked any notice so given, the lump sum may be paid to that person unless sub-paragraph (7) applies
- ....
- (7) A notice under sub-paragraph (3) –
  - (a) Must be given in writing and
  - (b) May be revoked at any time by a further notice in writing.

## **2015 NHS Pension Scheme Regulations**

### **113 Surviving adult dependant pension**

- (1) If an active member, a deferred member or a pensioner member dies leaving a surviving adult dependent the surviving adult dependent is entitled to a pension payable for life.
- (2) In this part “surviving adult dependent” means in relation to the deceased member or former member-
  - (a) The surviving spouse
  - (b) The surviving civil partner or
  - (c) A surviving scheme partner

### **114 Surviving scheme partner**

- (1) A person (P) is the scheme partner of a member if—
  - (a) the member and P are living together as if they are husband and wife or civil partners,
  - (b) the member and P are not prevented from marrying or entering a civil partnership,
  - (c) the member and P are financially interdependent or P is financially dependent on the member, and
  - (d) neither the member or P is living with a third person as if they are husband and wife or civil partners.