

Ombudsman's Determination

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

Outcome

1. Mrs S' complaint against NHS BSA is not upheld.

Complaint summary

2. Mrs S' pension payments were temporarily suspended. She blames this on poor communication by NHS BSA regarding the need to complete a Declaration of Entitlement document (**the Declaration document**). She complains that the Declaration document inadequately explains what the eligibility criteria is for her to continue receiving payments and that this information should be provided to her before signing.

Background information, including submissions from the parties

3. Regulation T1A(1) of The National Health Service Pension Scheme Regulations 1995 states that:

"Secretary of State may specify a date by which a person who is in receipt of a benefit under this Section of the scheme is to provide the Secretary of State with all or any of the following material:

- evidence of the person's identity;
- the person's contact details;
- evidence of the person's continuing entitlement to the benefit."

4. Regulation T1A(2) states:

“Where a person fails to provide the material referred to in paragraph (1) in accordance with that paragraph the Secretary of State may withhold all, or any part, of any benefit payable to that person.”

5. Mrs S’ representative (**Mr N**) has Power of Attorney (**POA**) for her.
6. On 13 August 2024, Mr N received the Declaration document for signing.
7. On 17 August 2024, Mr N complained to NHS BSA under the Scheme’s internal dispute resolution procedure (**IDRP**). He said, as relevant:

“I am writing to formally complain about the [Declaration document] sent to my address on 13 August (received on 15 August).

As you are aware, I have power of attorney for [Mrs S]. She has just turned 94 and has vascular dementia, so you'll forgive her for being unable to answer any questions I might have about her pension.

In the letter accompanying the declaration, you provided no information at all about the conditions that need to be met for [Mrs S] to remain eligible for her pension. I also cannot find the information clearly noted on your website. It is therefore impossible for me to complete the declaration.

The declaration itself is manifestly unreasonable. It requests no substantial information about [Mrs S] or her personal circumstances, yet you require it to be signed before an independent witness and posted back to you at [Mrs S]’ own expense. You also threaten to suspend payment of her pension if this is not actioned within 4 weeks. There is simply no need for this and it is frankly scandalous that you would treat anyone this way, let alone a 94 year old widow with dementia.

In resolution of my complaint, I would kindly ask that you:

- write to [Mrs S] with a formal apology;
- confirm what actions will be taken to make your processes less erroneous and more accessible to elderly and disabled pensioners;
- provide the information around eligibility needed to complete the declaration
- pay my reasonable costs of £130 for arranging to have the declaration signed, witnessed and posted back to you (alternatively, advise that the declaration will not be necessary)
- pay my expenses of £3.05 for posting the declaration first class signed for (alternatively, you can provide a prepaid envelope and the declaration will be sent at your risk).

Please note that I have also copied in my local MP for transparency and oversight.

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8. On 2 September 2024, NHS BSA provided Mr N its Stage One IDRP complaint response. It stated that a letter was sent to him on 26 October 2023, which advised that the Declaration document would be sent to him annually, to confirm that Mrs S remained eligible to receive pension payments. NHS BSA said that the Declaration document was required in order to verify continued entitlement to benefits and check that its records were correct. It said the Declaration document may be returned by email and must be independently witnessed.
9. Later the same day, Mr N replied to NHS BSA. He queried what the eligibility criteria was. He believed this had not been handled within its Stage One IDRP complaint response. He requested his complaint to be escalated to Stage Two of the Scheme's IDRP.
10. On 7 September 2024, Mr N emailed NHS BSA and stated there had been no response to his complaint escalation request. He confirmed that he had now signed the Declaration document under protest, in order to avoid Mrs S' pension payments from being suspended, notwithstanding the fact that he remained unaware of the eligibility criteria.
11. On 16 September 2024, NHS BSA received the Declaration document.
12. On the same day, NHS BSA acknowledged receipt of Mr N's Stage Two IDRP complaint and told him that it had 40 days to respond.
13. On 21 September 2024, Mr N emailed NHS BSA and advised that he had received another letter threatening to stop Mrs S' pension payments, notwithstanding that he had already returned a signed Declaration document.
14. On 17 October 2024, Mr N emailed NHS BSA and advised that he had received another letter dated 14 October 2024, which stated that Mrs S' pension payments would be suspended. Mr N returned the signed Declaration document for a third time. He stated that his Stage Two IDRP complaint had not been acknowledged, and he asked to receive compensation.
15. On 23 October 2024, NHS BSA responded to Mr N. It apologised for the delay and said that the signed Declaration document was being processed urgently. It advised him that his Stage Two IDRP complaint was currently with a Disputes Manager. It confirmed that it had also received correspondence from Mrs S' Member of Parliament.
16. On 29 October 2024, NHS BSA issued its Stage Two IDRP complaint response to Mr N. It summarised the complaint with regard to the Declaration document and poor levels of service, but did not uphold his complaint.
17. Mr N referred the complaint to The Pensions Ombudsman. He said he lives by himself and has a disability that make it hard for him to travel.

Adjudicator's Opinion

18. Mrs S' complaint was considered by one of our Adjudicators who concluded that, while there was some maladministration, due to Mrs S' condition, she had not suffered distress and inconvenience, and the complaint was not upheld. The Adjudicator's findings are summarised below in paragraphs 19 to 29.
19. Under the Scheme Regulations, NHS BSA was authorised to request confirmation of a member's continued entitlement to benefits from the Scheme and was further empowered to withhold those benefits, subject to a suitable response to the request. The Adjudicator was satisfied that NHS BSA acted within its regulatory powers in issuing the Declaration document to Mrs S. The issuance of the Declaration document was appropriate, and this aspect of the complaint should not be upheld.
20. The request for the Declaration document to be independently witnessed was consistent with NHS BSA's processes for verifying ongoing pension entitlement. So, the request for independent witnessing was reasonable, and neither arbitrary nor unnecessary, so this aspect of the complaint also should not be upheld.
21. Mr N had not disputed that he was informed, in NHS BSA's correspondence of 26 October 2023, that he would be contacted annually to confirm Mrs S' ongoing eligibility to receive her pension.
22. Mr N sought clarification of the eligibility criteria underpinning the Declaration document on 17 August 2024, 2 September 2024 and 7 September 2024. NHS BSA did not provide this information to Mr N in its responses to any of these requests. This represented a shortfall in NHS BSA's communication with him.
23. The Adjudicator accepted Mr N's explanation that asking Mrs S to confirm her continued eligibility for her pension payments was not possible due to her condition, and that Mr N had stated he had a disability which affected his ability to travel. Mr N had also said a pre-paid envelope should have been supplied so that he or Mrs S did not incur any cost returning the declaration.
24. An enquiry by telephone or via the internet – NHS BSA's helpline telephone number was included on all its correspondence – at any time between receipt of the 26 October 2023 letter and the arrival of the Declaration document on 13 August 2024, would have clarified the limited circumstances in which a pensioner may become ineligible for an NHS pension, such as death, re-employment with the NHS, or conviction of certain criminal offences. NHS BSA also confirmed to Mr N on 2 September 2024 that the completed declaration could be returned by email. So, there was no requirement for him to travel or to consult Mrs S personally in order to verify the Declaration document, nor would there have been any cost incurred in returning the document to NHS BSA.
25. It was understandable that Mr N found NHS BSA's failure to inform him of the eligibility criteria, despite his repeated requests for this information, frustrating.

26. NHS BSA had not disputed that it erroneously issued two further requests for the Declaration document after Mr N had already completed and returned it on 7 September 2024, and that it “temporarily suspended” Mrs S’ pension between two of the payments.
27. Although NHS BSA stated that Mrs S’ pension payments were not interrupted, the Adjudicator considered the issuance of further reminder letters and the temporary suspension amounted to maladministration. It was understandable that Mr N was worried about the potential suspension of an elderly vulnerable relative’s pension. However, as Mr N was acting in a representative capacity, the Pensions Ombudsman (**the PO**) could not make an award to him for distress and inconvenience.
28. As the pension payments were not interrupted, there was no suggestion that Mrs S suffered a financial loss. Due to Mrs S’ dementia, there was no evidence to support a view that she was aware of the administrative issues, so there was also no basis for the PO to be able to make an award to her for distress and inconvenience.
29. The accepted shortcomings in NHS BSA’s communications, combined with the delays in processing the returned declaration which resulted in the unnecessary temporary suspension of Mrs S’ pension, constituted maladministration. However, as the maladministration did not cause Mrs S to suffer distress and inconvenience, and the PO could not make an award to an applicant’s representative, the complaint against NHS BSA was not upheld.
30. NHS BSA accepted the Adjudicator’s Opinion. Mr N did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr N provided further submissions which have been summarised below.

Mr N’s further submissions

31. Given that Mrs S is in her 90s, has vascular dementia and requires 24-hour care, the issuance of the Declaration document represents a failure to make reasonable adjustments in respect of her age and disability, contrary to the Equality Act 2010 (**the 2010 Act**). NHS BSA ought to have exercised its discretion not to issue the Declaration document to Mrs S.
32. NHS BSA’s requirement that the Declaration document be independently witnessed was unreasonable and unnecessary. Imposing this blanket requirement on a scheme intended for pensioners amounts to indirect age and disability discrimination under the 2010 Act, particularly in circumstances where a reply was requested within one month.
33. It should not have been necessary to conduct internet searches or make telephone enquiries to ascertain the pension eligibility criteria. He was unable to locate this information on the NHS BSA website at the time and he received no response to his emails or telephone calls to NHS BSA seeking clarification.

34. The Adjudicator's Opinion stated in paragraph four that Mrs S' pension payments were stopped as a result of the issue with the return of the Declaration document, but later stated (paragraph 31) that the payments were not stopped. This aspect of the Opinion is therefore incorrect.
35. He did make Mrs S as aware of the difficulties he encountered completing the Declaration document as her disability would allow her to be. As both he and Mrs S had experienced worry, an award for distress or inconvenience to Mrs S should be considered. Withholding an award because he had POA for Mrs S amounts to discrimination arising from a disability and failure to make reasonable adjustments.
36. I have considered the additional comments from Mr N. They do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

37. The managers and trustees of pension schemes have a duty to ensure that the payments made are correct and in accordance with the rules of the scheme. Where a payment is made that is not in line with the rules, it will usually be necessary to recover the overpayment. The recovery of overpayments can cause distress and hardship, and so it is good practice that processes are put in place to reduce the risk of the overpayment being made in the first place. This is one such process – with NHS BSA checking regularly that pensioners remain entitled to the payment they are receiving.
38. In this case the Scheme Regulations specifically empower NHS BSA to seek confirmation of a member's continued entitlement to benefits payable from the Scheme. Accordingly, NHS BSA acted within its regulatory powers in issuing the Declaration document. In doing so, it addressed the request to Mr N in his capacity as Mrs S' POA, rather than requiring Mrs S to complete the declaration herself (which was appropriate, taking into account the POA, Mrs S' age, disability and need for 24-hour care). I do not agree that the issuing of the Declaration document constituted a failure to make reasonable adjustments or amounted to unlawful age or disability discrimination.
39. NHS BSA was entitled to require the Declaration document to be independently witnessed. Given that the declaration in it relates to the ongoing payment of Scheme benefits, it was reasonable and proportionate for NHS BSA to seek independent verification to reduce the risk of fraud. The requirement for witnessing cannot be characterised as unreasonable or unnecessary, nor do I consider that it amounts to indirect age or disability discrimination. As Mr N has acknowledged, by its nature the Declaration document is issued to individuals already in receipt of pension benefits, and therefore, by definition, to pensioners. It is a standard safeguard designed to protect the integrity of the Scheme and applies irrespective of age, while also allowing for completion by an authorised representative, such as Mr N.

40. I am satisfied that NHS BSA acted lawfully, properly and within the scope of its discretion, and that there was no breach of the 2010 Act in the circumstances of this case.
41. I note Mr N's concern that he was unable to readily ascertain the pension eligibility criteria and that his emails and telephone enquiries to NHS BSA seeking clarification went unanswered. This aspect of the complaint has already been considered and upheld by the Adjudicator in his Opinion. The Adjudicator agreed that NHS BSA ought to have responded to Mr N's emails and provided clarification of the eligibility criteria when requested and that this represented maladministration. I agree with this finding, although I am not persuaded that the maladministration caused either Mr N or Mrs S to suffer sufficient non-financial injustice to meet the threshold to warrant a monetary award for distress and inconvenience. There is no evidence that Mrs S was treated unfavourably because of her disability, nor that the handling of the matter caused her a level of distress beyond that which is ordinarily associated with routine administrative processes.
42. Mr N has also raised concerns about an inconsistency in the Adjudicator's Opinion as to whether Mrs S' pension payments were stopped, and that Mrs S herself experienced worry as a result of the difficulties encountered in completing the declaration, such that an award for distress or inconvenience should be made to her.
43. I understand that in the absence of a returned declaration, NHS BSA has confirmed that an automatic, temporary suspension was applied as an administrative safeguard. Once the completed declaration was received and verified, it was formally accepted on 26 October 2024, at which point the temporary suspension was lifted. So, as this was put in place after a payment had been made, and then subsequently lifted before the next payment, I am satisfied that this process did not result in any interruption to the scheduled payment cycle or any permanent loss of pension income to Mrs S.
44. I do not uphold the complaint.

Dominic Harris

Pensions Ombudsman
13 January 2026