

## Ombudsman's Determination

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

## Outcome

1. I do not uphold Dr N's complaint and no further action is required by NSH BSA.

## Complaint summary

2. Dr N's complaint concerns the suspension of his NHS pension. Specifically:-
  - He was issued with a P60, which contained incorrect information.
  - His spouse's pension was incorrectly calculated.

## 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 LN, Dr N's late wife, was a pensioner member of the Scheme, an occupational defined benefit scheme administered by NHS BSA. Dr N is in receipt of a pension in respect of his membership in the Scheme.
5. On 26 July 2018, Dr LN died.
6. On 27 July 2018, Dr N informed NHS BSA of Dr LN's death.
7. In response, NHS BSA said that Dr N was now entitled to a spouse's pension. So, it would send him the relevant application forms (the **Forms**) to complete in order to claim the spouse's pension.
8. On 5 September 2018, NHS BSA sent Dr N the Forms and asked him to provide a copy of Dr LN's death certificate and their marriage certificate (the **Certificates**).
9. On 8 September 2018, Dr N returned the completed Forms and the Certificates to NHS BSA.

10. On 14 September 2018, NHS BSA uploaded a copy of the Forms and the Certificates onto both Dr LN and Dr N's Scheme records. As a result, NHS BSA incorrectly recorded that Dr N had died.
11. On 7 November 2018, NHS BSA awarded Dr N a spouse's pension backdated to 26 July 2018 and paid him pension arrears amounting to £3,261.91. NHS BSA has said that the delay in paying the spouse's pension was partly due to a migration of its records onto a new administration system.
12. On 27 November 2018, NHS BSA incorrectly suspended Dr N's pension as its system indicated that he had died on 26 July 2018.
13. On the same day, NHS BSA sent three separate letters to Dr N. In summary, the letters explained that from 6 April 2018 to 26 July 2018, he had received pension payments amounting to £26,220.27. Consequently, his pension had now been suspended. It also provided him with forms to claim the spouse's pension linked to his pension.
14. In response, Dr N informed NHS BSA that he had not died and that his pension should not have been suspended.
15. On 12 February 2019, Dr N telephoned NHS BSA and said that he had not received his pension payments for December 2018 or January 2019.
16. On 7 March 2019 and 12 March 2019, Dr N complained to NHS BSA concerning the suspension of his pension and the time taken to rectify the matter. He also complained that his spouse's pension was incorrect. He said that it should be 50% of the pension that Dr LN was receiving at her date of death.
17. On 15 March 2019, NHS BSA paid Dr N pension arrears of £9,346.06: the backdated instalments of his pension in respect of the period December 2018 to March 2019.
18. On 25 July 2019, NHS BSA issued a response to Dr N's complaint. It said that:-
  - It had recently implemented a new payroll system. This delayed payment of the spouse's pension.
  - The spouse's pension was payable from 26 July 2018. As it was paid more than one month after the due date, NHS BSA was required to pay interest on the arrears of pension. The interest was calculated using the Bank of England base rate, so interest amounting to £2.55 had been included in the arrears of £3,261.91.
  - As his pension was suspended from 27 November 2018 to 15 March 2018, he was due interest of £7.79 on the arrears of £9,346.06.
  - His pension was suspended because the Forms and Certificates were uploaded on to his Scheme record in error.

19. NHS BSA upheld Dr N's complaint and offered him £500, in recognition of the distress and inconvenience he had suffered due to NHS BSA's errors.
20. On 22 August 2019, Dr N asked for his complaint to be investigated under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**). He said that NHS BSA had not explained why his spouse's pension was not 50% of Dr LN's pension at her date of death.
21. On 26 September 2019, NHS BSA sent Dr N details of the pension he had received during 2018/2019 tax year (**the Incorrect P60**). However, the figures were lower than he had expected. This is because NHS BSA had not taken into account the months when his pension was suspended and then subsequently reinstated. Dr N contacted NHS BSA several times to request an updated P60. However, he has said that NHS BSA only provided him with copies of the Incorrect P60.
22. On 16 October 2019, NHS BSA responded to Dr N's complaint under stage one of the IDRP and apologised that its service had not met its usual standards. It explained that:-
  - It had reviewed his original complaint, and the response it issued on 25 July 2019, and had decided to uphold his complaint.
  - Regulation G7(3) of the NHS Pension Scheme Regulations 1995 (**the Regulations**), states that any pre-6 April 1988 pensionable service is not included in the calculation of the spouse's pension. So, his spouse's pension entitlement was not 50% of the pension Dr LN received at her date of death.
  - It had reported the potential data breach, when it uploaded Dr LN's documents to his NHS record, to the Information Commissioners Office.
  - The offer of £500 in recognition of the distress and inconvenience he had suffered was sufficient in the circumstances.
23. On 18 October 2019, Dr N asked for his complaint to be investigated under stage two of the Scheme's IDRP. He said that because of the errors on the part of NHS BSA, his P60 for 2018/2019 tax year, and his late wife's P60 in respect of the same tax year, contained incorrect information. He also did not agree that the spouse's pension he received was correct.
24. On 21 October 2019, NHS BSA's payroll sent a corrected P60 in respect of Dr LN's pension. It showed the pension paid to Dr LN from 6 April 2018 until her date of death. Dr N informed NHS BSA that the covering letter had been incorrectly addressed to his wife. This had caused him additional inconvenience and distress.
25. Between October 2019 and November 2019, Dr N contacted NHS BSA's payroll to request a corrected P60 in respect of his pension for 2018/2019 tax year. Due to the suspension of his pension between December 2018 to March 2019, his gross pension was lower than it should have been. This meant that the details NHS BSA had recorded for him for 2018/2019 tax year were incorrect.

26. Dr N requested the assistance of his financial adviser (**the Adviser**) to obtain a corrected P60 due to the time taken by NHS BSA's payroll to provide the information.
27. On 21 November 2019, NHS BSA sent the Adviser corrected P60 figures for the 2018/2019 tax year. It explained that its payroll system did not recognise the arrears payment of £9,346.06 that was made to Dr N on 15 March 2019. NHS BSA said that it has since contacted His Majesty's Revenue and Customs (**HMRC**) to provide corrected details about the pension paid to Dr N in the 2018/2019 tax year.
28. On 3 December 2019, NHS BSA provided its response under stage two of the IDRP and said that:-
  - In relation to the setup of the spouse's pension, and the suspension of his pension, it agreed that the service Dr N had received was unacceptable. It also agreed that there had been a delay in providing the correct P60 details to his Adviser.
  - It apologised for the administrative errors which had led to the suspension of Dr N's pension. It also apologised for the letters NHS BSA had sent in error on 27 November 2018, and for the fact that the covering letter accompanying Dr LN's P60 had been incorrectly addressed.
  - NHS BSA had reviewed the calculation of the spouse's pension. Dr LN had a period of pensionable service from 6 April 1988 to 2 July 1994 and also a second period from 4 July 1994 to 1 July 1999. It had discovered that the second period had not been included in the calculation of the spouse's pension.
  - He was due an additional payment in respect of the arrears of the spouse's pension.
29. Due to the errors identified during its investigation, NHS BSA increased the offer of £500 to £1,000 in recognition of the serious distress and inconvenience Dr N had suffered.
30. On 16 December 2019, NHS BSA wrote to Dr N and provided him with details of his revised spouse's pension. It said that he was due additional arrears, amounting to £2,739.63, which he would receive shortly.
31. In 2020, the Employment Tribunal issued its decision in the case of Goodwin v the Secretary of State for Education. It was determined that a spouse's pension, for a surviving male spouse of a female member, who died on or after 5 April 2005, will now include any pre-6 April 1988 pensionable service. NHS BSA subsequently informed Dr N that it would amend his spouse's pension accordingly and pay any arrears due to him.

## **Adjudicator's Opinion**

32. Dr N's complaint was considered by one of our Adjudicator's who concluded that no further action was required by NHS BSA. The Adjudicator's findings are summarised below:-
- NHS BSA incorrectly uploaded the Forms and Certificates to Dr N's NHS pension record, which resulted in his status being changed to "deceased." Consequently, Dr N's pension was suspended, and several incorrect communications were sent to him.
  - Dr N's spouse's pension was also incorrectly calculated. It was only after several complaints from Dr N, that NHS BSA discovered that a portion of Dr LN's pensionable service was not included in the calculation of the spouse's pension.
  - When NHS BSA identified that Dr N's pension had been suspended in error, it paid arrears worth £9,346.06 to Dr N in March 2019. In accordance with the Regulations, NHS BSA paid interest on the arrears as they were paid more than one month after the due date. NHS BSA also paid interest on the arrears of the spouse's pension as the payment was delayed due to the implementation of a new payroll system.
  - NHS BSA had taken action to bring Dr N's spouse's pension in line with his actual entitlement. Dr LN's second period of pensionable service had subsequently been included in the calculation of the spouse's pension.
  - The Adjudicator noted that NHS BSA made several errors. The errors were avoidable and occurred during a difficult period for Dr N. NHS BSA took an unreasonable period of time to rectify the errors. However, following the actions taken by NHS BSA, Dr N had been returned to the correct position. This was because the arrears of his pension, and the arrears of the spouse's pension, had been paid with interest. Also, the calculation of the spouse's pension had subsequently been amended.
  - NHS BSA also took an unreasonable amount of time to make an otherwise simple amendment to Dr N's P60. However, the Adjudicator appreciated that a corrected P60 had been provided to him. Furthermore, HMRC had been notified of Dr N's tax details for 2018/2019 tax year.
  - There was no financial loss to consider. However, NHS BSA's errors will have caused Dr N serious distress and inconvenience. NHS BSA had offered Dr N £1,000, in recognition of the non-financial injustice he had suffered. The Adjudicator agreed that the offer was reasonable and in line with what I would direct in similar cases.
33. Dr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. I agree with the Adjudicator's Opinion. I will respond to the points made by Dr N for completeness.

34. Dr N explained that by appointing the Adviser, to follow up his request for a corrected P60, he incurred fees that he would not otherwise have incurred.
35. Dr N also explained that the interest paid on the arrears of pension was less than the bank charges he incurred in having to use his overdraft when his pension was suspended. However, he did not wish to provide documentary evidence of the Adviser fees or the bank charges that he had incurred.

### **Ombudsman's decision**

36. Dr N's complaint concerns several administrative errors on the part of NHS BSA which led to the suspension of his pension and the incorrect calculation of the spouse's pension.
37. I agree with the Adjudicator that the errors were avoidable. Although NHS BSA corrected the errors, it was at times slow to act. But for Dr N's persistence, in maintaining that the spouse's pension was incorrect, it is unclear whether the error in the calculation would have been discovered or resolved by NHS BSA. That said, I am satisfied that NHS BSA has now put Dr N in the financial position, he would have been in, had the maladministration not occurred.
38. Dr N submits that the interest NHS BSA paid on the arrears is less than the overdraft charges he incurred following the suspension of his pension. I note that Dr N says that he also incurred fees because he engaged the Adviser in connection with this matter. Dr N has not provided any supporting evidence of the financial detriment he claims he has suffered despite being invited to do so by the Adjudicator.
39. Before asking for the Adviser's help in requesting a corrected P60, there were other resources available to Dr R that would not have incurred a fee. One such resource would have been to contact my Office's early resolution team. In any event, in the absence of corroborating evidence that Dr N has incurred costs, as a direct result of NHS BSA's maladministration, I am unable to uphold the complaint and make any directions for redress.
40. I find that NHS BSA's administrative failings in this case amount to maladministration. I acknowledge that this matter caused Dr N distress and inconvenience at a difficult time. I also find that NHS BSA's offer of £1,000 is sufficient in recognition of the serious distress and inconvenience Dr N has suffered. Dr N should contact NHS BSA if he wishes to accept its offer.
41. I do not uphold Dr N's complaint.

**Anthony Arter**

Pensions Ombudsman

28 October 2022

