

## Ombudsman's Determination

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

## Outcome

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

## Complaint summary

2. Ms R has complained that NHS BSA wrongly decided not to award her a surviving scheme partner's pension from the Scheme following the death of her long term partner, Mr A, in February 2022.

## Background information, including submissions from the parties

3. Mr A was a member of the 1995 section<sup>1</sup> of the Scheme.
4. The Scheme is governed by the NHS Pension Scheme Regulations 1995 (as amended) (**the Scheme Regulations**).
5. Regulation G14 of the Scheme Regulations provides for payment of a surviving scheme partner's pension. It stipulates that:

“(1) This regulation applies on the death of a member, if—

- (a) the member has pensionable service on or after 1st April 2008,
- (b) the member dies in any of the circumstances described in regulations G2 to G6, and
- (c) the member leaves a surviving scheme partner.

(2) Where this regulation applies, a surviving scheme partner is entitled to a surviving scheme partner's pension.”

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<sup>1</sup> The 1995 section is for members who joined before 31 March 2008.

6. The definition of a surviving scheme partner in the Scheme Regulations is:

“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.”

7. A scheme partner is defined in the Scheme Regulations as:

“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, and
- (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. Regulation C2 of the Scheme Regulations defines pensionable service “as any period of pensionable employment in respect of which the member contributes to this Section of the scheme under regulation D1 (contributions by members)”.

9. In June 2000, Mr A completed form DB1 nominating Ms R to receive any lump sum benefit available from the Scheme on his death.

10. Mr A’s pensionable service in the Scheme ceased on 27 November 2003 when he retired and claimed his age retirement benefits.

11. Mr A continued to work for the NHS until 2011. In accordance with the Scheme Regulations, he was ineligible to re-join the Scheme upon receiving his retirement benefits. This period of NHS employment was consequently not pensionable.

12. Mr A died on 10 February 2022.

13. On 15 February 2022, Ms R notified NHS BSA of Mr A’s death.

14. On 24 February 2022, NHS BSA sent Ms R a Dependant Claim Form (**DCF**). This form explained that:-

- If Ms R was not married to, or in a civil partnership with Mr A either before or after he retired, she might be eligible to receive an adult dependant’s pension if she met the qualifying criteria.
- One of the criteria was that Mr A’s membership in the Scheme had ceased on or after 1 April 2008.

15. In March 2022, Ms R returned the DCF duly completed to NHS BSA. In her covering letter dated 9 March 2002, Ms A said that:-

- Both she and Mr A were single but had lived together at the same address for over 40 years as if they were married.
  - It was her understanding that, she had been “nominated and eligible to receive” an adult dependant’s pension.
16. On 22 March 2022, NHS BSA informed Ms R that her application for a surviving scheme partner’s pension from the Scheme had been declined as she was not married to Mr A at the time of his death.
17. NHS BSA also explained that:
- “The option to extend adult dependant’s pensions, that already included legal spouses and registered civil partners to include nominated qualifying partners, was introduced for active members...from 1 April 2008.
- Because Mr A last contributed to the Scheme before 1 April 2008, this option was not available.”
18. Ms R was dissatisfied with the outcome of her application and made a complaint in April 2022 under the Scheme’s Internal Dispute Resolution Procedure (**IDRP**).
19. At both stages of the IDRP, NHS BSA informed Ms R that her complaint was not upheld.
20. In its Stage One IDRP decision letter dated 29 May 2022, NHS BSA said that:-
- No surviving scheme partner’s pension was available to Ms R because Mr A’s membership in the Scheme had ended prior to 1 April 2008.
  - It had applied the Scheme Regulations correctly as set out by the Department of Health and Social Care.
  - It had no discretion in the application of the Scheme Regulations.
21. In its Stage Two IDRP decision letter dated 8 September 2022, NHS BSA added that:-
- Although Mr A returned to NHS employment following his retirement in November 2003, the Scheme Regulations did not permit this employment to be pensionable.
  - So she did not satisfy regulation G14(1)(a) of the Scheme Regulations and it could not consider her claim for a surviving scheme partner’s pension.
  - If a pensioner dies, a lump sum on death benefit is not normally paid.

- However if the death occurred before a pensioner had been retired for five years, the rest of the pension payments he/she would have received in the five years would be paid as a lump sum.
- As Mr A had received his pension from the Scheme for more than five years at the time of his death, no such lump sum was payable.

22. Following the complaint being referred to The Pensions Ombudsman (**TPO**), Ms R and NHS BSA made further submissions that have been summarised in paragraphs 23 to 25 below.

### **Ms R's position**

23. She and Mr A were life-long partners. In her view, NHS BSA has discriminated against her by deciding not to award her a surviving scheme partner's pension from the Scheme.

### **NHS BSA's position**

24. NHS BSA must ensure that the Scheme Regulations are adhered to and that benefits authorised are only those that a member or their beneficiaries are legally entitled to receive. It has no powers of discretion over the level and types of pension benefits paid to individuals or their dependents.

25. Although Ms R and Mr A had lived together as a couple in an exclusive relationship, unfortunately there is no legal entitlement to an adult dependant's pension from the Scheme.

### **Adjudicator's Opinion**

26. Ms R'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 set out in paragraphs 27 to 36 below.

27. The Scheme is a statutory scheme made under the Superannuation Act 1972. The Scheme Regulations govern payment of benefits from this scheme. In its capacity as the administrator of the Scheme, NHS BSA must act in accordance with these regulations and within the framework of the law.

28. NHS BSA consequently had to follow any procedure laid down in the provisions of the Scheme Regulations, as qualified by overriding pension legislation, when deciding whether Ms R was entitled to a surviving scheme partner's pension from the Scheme.

29. Regulation G14 of the Scheme Regulations stipulated that on the death of a member, a surviving scheme partner's pension would be payable only if all the criteria specified in subsection 1, as reproduced in paragraph 7 above, were met.

30. When Mr A retired in November 2003, his pensionable service in the Scheme ended.

31. Although Mr A continued to work for the NHS following his retirement until 2011, he was ineligible to re-join the Scheme and so this employment was not pensionable.
32. As Mr A did not have any pensionable service on or after 1 April 2008, Ms R did not meet regulation G14 (1)(a) of the Scheme Regulations.
33. So even if Ms R fulfilled the other two criteria, NHS BSA could not consider her application for a surviving scheme partner's pension. Furthermore, the Scheme Regulations did not provide NHS BSA with any discretion in this matter.
34. Needless to say, the decision made by NHS BSA would appear unfair to Ms R. However, NHS BSA had a duty to pay benefits in accordance with the Scheme Regulations.
35. In the Adjudicator's view, NHS BSA did give proper consideration to her application and it had acted in accordance with the Scheme Regulations.
36. While the Adjudicator sympathised with Ms R's circumstances, the evidence did not support a finding of maladministration by NHS BSA in coming to the decision it did.
37. Ms R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms R provided her further comments which do not change the outcome.

#### **Ms R's comments**

38. It was a very difficult time for her and Mr A during the Covid pandemic.
39. She could not register Mr A's death "in person with another human being". She and Mr A tried unsuccessfully to get married through "the hospice and end of life plan".
40. She and Mr A have worked for the NHS for over 70 years in total. So she finds it difficult to accept that, as a current member of the Scheme, she is ineligible to receive a surviving scheme partner's pension.
41. I note the additional points raised by Ms R but agree with the Adjudicator's Opinion. .

#### **Ombudsman's decision**

42. While I have sympathy for Ms R, my role is limited to assessing whether NHS BSA had applied the Scheme Regulations correctly when deciding whether or not Ms R was entitled to a surviving scheme partner's pension from the Scheme.
43. It is not my role to comment on matters of Government policy or to amend the Scheme Regulations.
44. Unfortunately, the Scheme Regulations, do not provide NHS BSA with any discretion regarding who is eligible to receive a surviving scheme partner's pension from the Scheme.

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45. Having carefully examined all the available evidence, I find that NHS BSA had properly considered Ms R's application and acted in accordance with the Scheme Regulations.
46. While I sympathise with Ms R's circumstances, I do not uphold her complaint.

**Dominic Harris**

Pensions Ombudsman  
29 May 2025