

## Ombudsman's Determination

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

## Outcome

1. I do not uphold Mr N's complaint and no further action is required by NHSBSA.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr N has complained that following the death of his wife NHSBSA will not pay him a widower's pension.

## Background information, including submissions from the parties

4. Mr N's wife left NHS employment on 15 November 1987. When she died Mr N made enquiries about his entitlement to a widower's pension.
5. NHSBSA wrote to Mr N under the Scheme's internal dispute resolution procedure on 25 January 2016. It said that as Mrs N left employment on 15 November 1987, Mr N was not entitled to a widower's pension. NHSBSA explained that the Scheme did not provide widower's pensions for a number of years. Widower's pensions were introduced in 1975, when a wife could nominate her husband to receive a widower's pension but only if he was permanently unable to earn his own living and so was financially dependent on her. The Social Security Act 1986 provided that occupational pension schemes, which contracted out of the state second pension, had to provide widower's pensions for service accrued after 6 April 1988. As Mrs N left employment on 15 November 1987, NHSBSA were unable to pay Mr N a widower's pension as he had no entitlement under the Scheme to receive one.
6. Mr N wrote to NHSBSA on 16 May 2016, and said he felt he had a case under the Sex Discrimination Act 1975, because he believed that women and men were not being treated equally under the Scheme in relation to widower's pensions.

7. NHSBSA responded to Mr N on 7 June 2016, and said the Scheme did not provide pensions for widowers before 6 April 1988. It said widower's pensions were introduced on 6 April 1988, as Mrs N left employment on 15 November 1987, Mr N was not entitled to a widower's pension.

## **Adjudicator's Opinion**

8. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by NHSBSA. The Adjudicator's findings are summarised briefly below:
  - Widower's pensions were first introduced in 1975. However, they were only available if the member completed a nomination which declared that her husband was permanently unable to earn a living and dependant on her. Although Mrs N was in NHS employment at that time there was no evidence that she made such a nomination and so it would appear that Mr N did not meet the criteria and was not eligible.
  - On 6 April 1988, in accordance with the Social Security Act 1986, NHS introduced widower's pensions for all members. However, as Mrs N had left employment on 15 November 1987, this was not available to Mr N.
  - NHSBSA's actions would only be classed as discriminatory if people in exactly the same position as Mr N were being treated differently to him.
9. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr N for completeness.

## **Ombudsman's decision**

10. Mr N argues that NHSBSA's decision contravenes the provisions of the Sex Discrimination Act 1975. Mr N does not consider that he is an individual being discriminated against, but says that there are a number of widowers of female nurses who are being treated differently to widows of male nurses.
11. Firstly, it is relevant to provide the historical background in relation to widower's pensions. Widow's pensions were based on the historical protection which was legitimately provided to widows as a result of their traditionally weaker economic position. Widower's pensions were only introduced for all males on 6 April 1988, following legislation changes, largely as a result of the progressive realisation of the need for gender equality. Until this point occupational pension schemes, including NHSBSA, were not required to provide widower's pensions. NHSBSA are required to apply the Scheme regulations which were in force at the time and I consider that they have done so correctly.

12. I sympathise that Mr N considers he is being discriminated against, but under the Regulations NHSBSA could not do otherwise than they did. On the question of whether the Regulations themselves are discriminatory, I hope it is helpful, though it will be of no comfort, to explain that this issue has already been addressed by the courts in the case of R (on application of Iain Cockburn) v Secretary of State for Health [2011] EWHC 2095 (Admin). The court concluded that the Secretary of State for Health had objective and reasonable justification for only changing widower's pensions prospectively and not retrospectively.
13. This was because of the cost implications if the changes were to be made retrospectively. The judgment said it would normally respect the legislature's policy unless it was without reasonable foundation. In this case it was found that taking the cost implications into consideration was reasonable.
14. For the reason given above I believe that NHSBSA are justified in the decision not to grant Mr N a widower's pension.
15. Therefore, I do not uphold Mr N's complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
22 March 2017