

Ombudsman's Determination

Applicant	Mrs R
Scheme	NHS Pension Scheme (the Scheme)
Respondents	NHS Business Services Authority (NHS BSA)

Outcome

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

Complaint summary

3. Mrs R's complaint is that NHS BSA, the Scheme Manger, failed to pay her a share of the lump sum death benefits payment it paid following the death of her mother, Dr Y.

Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the key points in my Opinion. I acknowledge there were many other exchanges of information between all the parties.
5. In March 2001 Dr Y completed a death nomination form in favour of her three children. This was rejected by NHS BSA as at the time The NHS Pension Scheme Regulations 1995 (**the 1995 Regulations**) did not allow multiple nominations. NHS BSA explained this in a letter to Dr Y dated 15 May 2001. The letter advised,

"If you wish for any gratuity to be paid to your children you can arrange for the payment to be made to a legal representative and make allowances with them for the payment to be divided."
6. In August 2001 Dr Y completed a new nomination in favour of a third party. This was accepted.
7. Dr Y left the NHS in 2005.
8. The National Health Service Pension Scheme Regulations 2008 (**the 2008 Regulations**) came into effect on 1 April 2008. From this date a member under the 1995 Regulations and the 2008 Regulations could nominate more than one

beneficiary. Relevant extracts from the 1995 and the 2008 Regulations are provided in the Appendix below.

9. Dr Y returned to the NHS in January 2010.
10. In July 2010 Dr Y completed a new Will (her last Will). She appointed her husband to be, Mr S, and her daughter from her first marriage, Mrs R (then Ms Y), to be the Will's Executors and Trustees and guardians of her two other daughters from her first marriage. Dr Y bequeathed all of her estate both real and personal for the benefit of her three daughters.
11. In August 2010 Dr Y married Mr S.
12. In 2012 Dr Y was diagnosed as terminally ill. In March 2013 she retired on grounds of ill health.
13. On 9 May 2013 NHS BSA sent Dr Y a retirement benefits statement and key notes. The statement detailed the calculation of Dr Y's ill health benefits, which comprised a pension, a lump sum and a survivor's pension. The notes, entitled 'About Your Annual Pension', as relevant said,
 - under the heading 'Pension Benefits Payable after your Death',

"Depending on circumstances, the scheme may pay one or more of the following benefits: life-assurance lump sum; survivor pension; one or more child allowances."
 - Under the heading 'About life-assurance lump sum',

"A life-assurance lump sum is a normally tax-free sum of money that may be payable if you have been in receipt of your pension for less than five years.

A life-assurance lump sum is paid to the organisation, or one or more persons, you have specifically nominated to receive it. If you have not made such a nomination, the life assurance lump sum will be paid to your surviving partner, if you have one; otherwise, it will be paid to your legal personal representative.

You can make a nomination, and change your nomination, at any time. If you would like to make a nomination, or change an existing nomination, please completed form DB2 available on our website www.pensions.nhsbsa.nhs.uk. If you do not have access to the website or cannot download the form your Pensions Officer will help you."
14. Sadly Dr Y died on 3 April 2015.
15. At the time of her death Dr Y had not revoked her August 2001 nomination or submitted a new nomination. NHS BSA duly paid the lump sum death benefit of £22,462.02 to the third party nominee.

16. As joint Executors, Mrs R and Mr S unsuccessfully appealed NHS BSA's decision through the Scheme's internal dispute resolution procedure.

Mrs R's position as represented by Mr S

17. Mr S says:

- NHS BSA failed to take into account all of the relevant information available to it as required by the Pensions Regulator and has not acted in the best interests and intentions of Dr Y, himself, or in particular Dr Y's three daughters.
- The nominee is only one of the factors that should be taken into account when deciding the recipient of the lump sum death benefit.
- Dr Y's original nomination of her daughters, her last Will and family circumstances at the time of her death were ignored.
- The nominee nomination was attributed to both periods of Dr Y's NHS service. A new nomination or confirmation of the existing nomination should have been sought when she returned to the NHS.
- A reasonable person would assume that a subsequent marriage would cancel a prior nomination.
- Following the diagnosis of her terminal illness Dr Y and he attended a meeting with her NHS supervisor and the NHS Human Resources department to discuss her circumstances and in particular her NHS pension. She was informed about a survivor's pension (and nominated Mr S), but not the lump sum death benefit and her nomination of the nominee.
- NHS BSA failed to make a reasonable decision. It blindly paid the lump sum to the nominee who very obviously had not featured in Dr Y's life in recent years.

18. NHS BSA says:

- In 2001 it informed Dr Y that it had accepted her third party nomination. Its acknowledgment letter enclosed a copy of the nomination she had completed, which she was asked to keep safe. The letter explained how to amend or revoke the nomination and that it was her responsibility to inform the nominee.
- Regulation F5 does not say that a nomination is revoked if the member re-marries.
- If a member wishes to cancel or change a nomination they must do so in writing.
- The responsibility for maintaining the nomination rested with Dr Y. Dr Y did not inform NHS BSA that she wanted to change her nomination.
- It had to automatically pay the lump sum to the nominee without investigation.

- The payment did not form part of Dr Y's estate and therefore was not subject to the terms of her Will.
- While Dr Y was not a member of the Scheme on 1 April 2008, when she re-joined the Scheme details of the Scheme would have been made available to her by her new employer and were on the Scheme's website.
- It did not take part in any discussions with Dr Y's employer regarding death benefit nomination wishes.
- A lump sum on death is not normally paid when a Scheme pensioner dies, but there may be an amount to pay if the member dies within five years of drawing their pension. But this can only be determined at the date of their death.
- When Dr Y submitted her application for ill health retirement it did not know her life expectancy.

Adjudicator's Opinion

19. Mrs 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 summarised briefly below:-

- Dr Y's March 2001 nomination was not valid as the 1995 Regulations at that time did not permit multiple nominations.
- Dr Y chose to nominate a third party and she did not subsequently revoke the nomination.
- The responsibility for making and maintaining the nomination rested with Dr Y. The fact that she left and later returned to the NHS did not mean that the payment to the nominee should have been limited to the proportion of the lump sum attributable to Dr Y's first period of pensionable service.
- From 1 April 2008, under regulation F5(4) of the 1995 Regulations, NHS BSA was required to pay the lump sum to the nominee unless F5(4)(a), or (b), or (c), or (d) applied. But as no part of that proviso applied NHS BSA had to pay the lump sum to the nominee. Dr Y's Will and other factors could not be taken into account.
- It is not clear why Dr Y decided to nominate the nominee and it is not known if Dr Y made an arrangement with the third party similar to that suggested to her by NHS BSA (when it rejected Dr Y's multiple nomination of her three daughters) and, if so, why it has not been carried out. But it is not for the Ombudsman to comment further on this.
- Mr S says following the diagnosis of her terminal illness Dr Y and he attended a meeting with Dr Y's NHS supervisor and the NHS Human Resources department to discuss Dr Y's circumstances and in particular her NHS pension. He says Dr Y

was informed about a survivor's pension, but not the lump sum death benefit or the nomination she had made. However, that is not a matter for NHS BSA. It was not a party in the discussions.

- This is a very unfortunate situation, but there are no grounds for the Ombudsman to find that NHS BSA's action in this matter amounts to maladministration.

20. Mrs R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S provided his further comments on behalf of Mrs R which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr S for completeness.

Ombudsman's decision

21. Mr S says:-

- NHS BSA's regulations are at odds with the requirements of the Pensions Regulator. Namely, it failed to take into account all of the relevant information available to it. It has not acted in the best interests and intentions of the late Dr Y. himself (as the surviving widow) and in particular Dr Y's three children.
- NHS BSA are incorrect in saying that it was obliged to make the lump sum payment to the third party nominee without investigation.
- NHS BSA seems to rely heavily on what should have been done at various stages without providing any proof that these things were done. There is often a gap between what should be done and what actually is done.
- NHS BSA provided an illustration of ill health benefits to Dr Y's employer who passed it on to Dr Y at the meeting in December 2012. However, there was no mention of a death benefit lump sum at the meeting, in the provided illustration or in the subsequent letter from NHS BSA to Dr Y of 9 May 2013.

22. The December 2012 illustration appears to have been generated by Dr Y's employer using the on-line calculator on NHS Pensions' website. The May 2013 statement was issued to Dr Y by NHS BSA when her retirement benefits were put into payment. There was no requirement for either document to detail a lump sum payable on death within five years of the commencement of the pension as it could not have been known if an amount would become payable. Nevertheless the notes that accompanied the statement did refer to the possibility and gave details on how to nominate a beneficiary and change an existing nomination. I am satisfied that NHS BSA provided the required information to Dr Y.

23. In 2001 Dr Y chose to nominate a third party. Responsibility for managing the nomination rested with Dr Y and she did not subsequently revoke or change it.. Dr Y's remarriage did not cause the nomination to fall away and other factors such as the execution of a new Will cannot be taken into account. .

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24. Under the Regulations (see the appendix below) NHS BSA was required to make the payment to the third party. Unfortunately, NHS BSA has no flexibility as it has no discretion in the matter.
25. There are no grounds for me to find that NHS BSA's action amounts to maladministration as it is bound by the Regulations.
26. Therefore, I do not uphold Mrs R's complaint.

Anthony Arter

Pensions Ombudsman
17 January 2018

Appendix

The NHS Pension Scheme Regulations 1995

27. As relevant, in August 2001 regulation F5 ('Payment of lump sum') said:-

“ ...

(2) Unless paragraph (3) or (3A) below applies, the lump sum shall be paid to the member's personal representative.

(3) Where the member dies and leaves a widow or widower the lump sum may be paid to the widow or widower, unless-

(a) the member has given notice to the Secretary of State in accordance with paragraph (3B) below that the widow or widower is not to receive the payment, and has not revoked that notice; or

(b) paragraph (3A) below applies.

(3A) Where the member has given notice to the Secretary of State in accordance with paragraphs (3B) and (3C) below that the lump sum is to be paid to a person specified in the notice, and has not revoked that notice, the lump sum may be paid to that person unless-

(a) that person has died before the payment can be made; or

(b) payment to that person is not, in the opinion of the Secretary of State, reasonably practicable.

(3B) Notice to the Secretary of State for the purpose of paragraph (3) or (3A) above-

(a) shall be given only by a member who is in pensionable service under the scheme;

(b) shall be given in writing; and

(c) may at any time be revoked in writing;

and, subject to sub-paragraph (a) above, a member who revokes such a notice may give further notice for the purpose of one of those paragraphs.

(3C) A notice given for the purpose of paragraph (3A) above shall specify one person, who may be-

(a) an individual;

(b) a body corporate; or

(c) an unincorporated body.”

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28. As relevant, from 1 April 2008 regulation F5 said:-

“(4) If a member dies having made a nomination in favour of one nominee (whether or not he also leaves a surviving partner), the lump sum shall be paid to that nominee unless-

(a) the member has given notice to the Secretary of State revoking that nomination; or

(b) the nominee has died before the payment could be made; or

(c) the nominee has been convicted of an offence specified in regulation T6(1A) and the Secretary of State has directed, as a consequence of that conviction, that the member's right to payment in respect of the member's death shall be forfeited; or

(d) payment to the nominee is not, in the opinion of the Secretary of State, reasonably practicable,

in which case the lump sum shall be paid to the member's personal representatives.

(5) If a member dies having made a nomination in favour of two or more persons (whether or not he also leaves a surviving partner) and has not given notice to the Secretary of State revoking that notice, the lump sum shall be paid to those nominees...

(6) A nomination may only be made by a member -

(a) who is in pensionable employment in the scheme at the time of making the nomination; or

(b) whose pensionable employment in the scheme ceased on, or after, 1st April 2008.

(7) A nomination shall specify one or more persons who may be -

(a) an individual;

(b) a body corporate;

(c) an unincorporated body; or

(d) the member's personal representatives,...

(8) A nomination or notice referred to in this regulation is only valid -

(a) if addressed to the Secretary of State;

(b) upon receipt by the Secretary of State;

(c) if made (or revoked) in writing;

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(d) if it nominates the whole of the lump sum to a nominee and, in the case of a nomination specifying more than one individual, if it also specifies the percentage of the lump sum to be paid to each such individual...”