

## Ombudsman's Determination

Applicant	Mr T
Scheme	NHS Pension Scheme ( <b>the Scheme</b> )
Respondents	NHSBSA

## Outcome

1. I do not uphold Mr T'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 T has complained that NHSBSA has failed to give a proper account of its actions and decisions regarding the distribution of the death in service benefit following the death of his brother. Furthermore, there was maladministration:-
  - (i) by the staff in either their responses to his initial enquiries and complaints, or by the staff dealing with his formal complaints; and
  - (ii) because NHSBSA did not undertake sufficient due diligence in the allocation of the lump sum.

## Background information, including submissions from the parties

4. Mr T's brother, Mr AT, was a member of the Scheme who died on 25 October 2017. Prior to his death Mr AT signed a Lump Sum Nomination Form (DB2(PC)) on 22 September 2017, nominating a Ms R to receive the lump sum death benefit. The Nomination Form was initially rejected by NHSBSA who wrote to Mr AT on 13 November 2017, to say that the wrong nomination form had been used. Mr AT had used a DB2 (PC) form which was for Pension Credit members, and not a DB2 form for ordinary members. A new DB2 form was enclosed with the letter.
5. Following Mr AT's death, the administrators of his estate, Mr T and his sister were advised to send in an application form for the lump sum death benefit. The administrators made an application to the Scheme on 22 January 2018.

## **PO-26020**

6. On 9 March 2018, NHSBSA wrote to the administrators of Mr AT's estate to say that it would not accept their application for the lump sum death benefit as he had nominated someone else.
7. Mr T says that NHSBSA informed him that the only nomination form it had on record was the original DB2 (PC) form that Mr AT had completed on 22 September 2017, nominating Ms R and which had been rejected.
8. Mr T says that in their complaints to NHSBSA, they have repeatedly asked for explanations as to how this process conformed to the Scheme's rules and the law. They had also sent information that Mr AT was in a very confused state in the weeks before he signed the form, which was partly completed and witnessed by his line manager.
9. Mr T also says that it appears to him and his sister that the Scheme has made a discretionary decision to pay the lump sum death benefit to Ms R. NHSBSA has also dismissed their medical evidence that his brother was confused in the weeks before his death, and that he was unable to write without making mistakes.
10. Mr T would like the lump sum death benefit to be awarded to the estate, and to be reimbursed for legal fees that have been incurred of approximately £650 plus VAT.
11. Mr T raised his concerns with NHSBSA and completed both Stage 1 and Stage 2 of the Scheme's Internal Dispute Resolution Procedure (**IDRP**).
12. NHSBSA has confirmed that the information provided to Mr T and his solicitors was misleading and contradictory, and below the standard that would be expected. This was because Mr AT's nomination form DB2 (PC) was returned to him and the 'nomination set' field on the administration record had not been completed. However, as both the correct DB2 nomination form and DB2 (PC) nomination form request identical information, a decision was taken to accept the DB2 (PC) nomination form that had been completed.
13. NHSBSA also say that the decision was taken as the regulations that govern the Scheme only require that the nomination is made in writing to the Scheme manager, and that it has not been revoked at any time by a further notice in writing. The regulations do not require the nomination to be made on a form approved by the Scheme. Therefore, as the DB2 (PC) form was signed and dated by Mr AT and witnessed correctly, and expressed his intention clearly and unambiguously, NHSBSA consider that the validity of the nomination is not in question. The regulations do not state that a nomination is invalid if part of the form is incomplete.

## **Adjudicator's Opinion**

14. Mr T'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 below.

15. NHSBSA has informed Mr T and his sister that the Scheme is a statutory scheme governed by regulations agreed by Parliament. There is no discretion within the regulations, and NHSBSA must follow the regulations in its administration of the Scheme.
16. NHSBSA has admitted that Mr T and his sister were initially provided with misleading and contradictory information regarding the validity of the DB2 (PC) nomination form that Mr AT completed. However, even if Mr T was provided with misleading information, this is not sufficient to overturn the regulations and NHSBSA must comply with these. The Adjudicator reviewed the regulations (see Appendix) that govern the payment of lump sum death in service benefits and was of the view that NHSBSA had complied with the regulations when assessing the validity of Mr AT's nomination, as explained below.
17. Paragraph (3) of Part 9 of the NHS Pension Scheme Regulations 2015, says that a member must give notice in writing to the scheme manager, specifying one or more individuals to receive the lump sum. There is no requirement that the notice must be in any particular form, or that the member must use a designated form provided by the Scheme. The Scheme does not have any discretion to vary the nomination and must follow the nomination unless paragraphs (5) or (7) applies. Paragraph (5) concerns the situation where the nominated person has died, and paragraph (7) concerns the situation where the person nominated has been convicted of an offence which would preclude payment. Neither of these conditions apply to Ms R who was the person specified in the nomination made by Mr AT.
18. Mr T has raised the issue that his brother was confused in the weeks before his death. Although that may be the case, there is no doubt that Mr AT completed the form or had the form partially completed for him, and then signed the form to show that he agreed with the nomination and this was witnessed by his line manager. The regulations do not require NHSBSA to take any such confusion into consideration, or do not say that it is a valid reason to overturn the nomination. Therefore, the Adjudicator was of the opinion that NHSBSA had no alternative other than to comply with Mr AT's nomination, and pay the lump sum benefit to Ms R.
19. Mr T had also asked to be compensated for the legal fees that had been incurred when pursuing the complaint against NHSBSA. It is not our normal practice to make an award for legal fees unless the complaint is overly complex, or requires some legal interpretation. The Adjudicator did not consider that either of these factors applied here and as our service is free, it was not necessary for Mr T to obtain any legal input. Furthermore, as the complaint has not been upheld against NHSBSA, Mr T would have to meet his own legal fees.
20. Mr T and his sister did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr T provided his further comments 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 T for completeness.

21. Mr T says that the Adjudicator appears to have answered the questions they raised by reiterating the NHSBSA documents and not through his own investigations. The Adjudicator appears to have taken the documentation from the NHSBSA and treated it as legally accurate. They asked the Adjudicator to investigate what the law says regarding legal documents that have been altered without signature or date. This has not been provided.
22. In response to his question 'Why did the NHSBSA return the nomination form to our brother 6 weeks after receiving it and after they had received the death certificate' the Adjudicator replied, "This was an administrative error." This was the NHSBSA's standard fall back answer to practically every question it found difficult to answer. We expected the Pensions Ombudsman's service to question the NHSBSA to clarify its reasons for so many evasive responses. It appears that the Adjudicator merely accepted NHSBSA's maladministration. We do not feel that a proper diligent investigation has been actioned.
23. Mr T says the Adjudicator also said in response to a request for compensation that "It is generally accepted that administrators are not awarded compensation as they are acting in a third party role and not directly affected by the complaint." But the administrators of an estate can also be beneficiaries so we do not accept this statement. My sister and I are administrators of our deceased brother's estate, but there are a number of other beneficiaries to the estate who have equally been affected by this. Any compensation that was awarded would not come to myself or my sister directly but it would have gone into the estate we are responsible for administering.

### **Ombudsman's decision**

24. I can understand Mr T 's concerns with the distribution of the lump sum death benefit following the death of his brother. The distribution of this benefit is governed by Schedule 14 Part 9 of the NHS Pension Regulations 2015. Paragraph 2 says the lump sum must be paid to the personal representatives unless a nomination has been made. Paragraphs 3 and 4 require the nomination to be made to the scheme manager in writing and the nomination remains valid until it is revoked or overtaken by the events explained in paragraph 7.
25. Mr T has asked about the validity of the document and the fact that the form was altered without signature or date. I have reviewed the nomination form that Mr AT completed and the only alterations made to the form were a mistake in the email address which was corrected to include @ and an amendment to Mr AT's address. Neither of these alterations were major amendments and did not change the main content of the nomination form which was to nominate Ms R. The form was correctly witnessed and signed by Mr AT.

**PO-26020**

26. I therefore find that the nomination that Mr AT completed in September 2017 was a valid nomination as it set out clearly who he wished to receive the death benefit, was signed by him and witnessed by his unit manager.
27. Turning now to Mr T's complaint about the confusion over whether the nomination Mr AT made was on the correct form or not, I can understand that in such a large scheme such as the NHS Pension Scheme it is useful to have different forms for different types of nomination. Therefore, it is understandable why the administrators would want the right form completed. But it is not a requirement under the regulations for a nomination to be on a specific form and indeed given the unfortunate circumstances of Mr AT's death shortly after completing the form it is right that the nomination was accepted. Unfortunately, the request to complete a new form was made 6 weeks after Mr T had advised NHSBSA of his brother's death. This was regrettable, but I do not find it was anything more than an administrative mistake and does not have a bearing on the decision to accept the nomination. It is important to note that there is no discretion within the regulations, and NHSBSA must follow the regulations in its administration of the Scheme.
28. Finally, Mr T has raised the question of compensation for the distress and inconvenience experienced due to the confusion over the validity of the nomination form, However Mr T has brought the complaint on behalf of the administrators of the estate. As such I agree with the Adjudicator's response that administrators are not usually awarded compensation as they are acting in a third party capacity and are not directly affected by the complaint.
29. Mr T has also raised the point that he and his sister are potential beneficiaries of the estate. But as I have not upheld the main part of the complaint regarding the distribution of the lump sum death benefit and have found that it has been correctly distributed then I cannot say they are beneficiaries of this benefit. Therefore, I cannot award any compensation to them as beneficiaries.
30. Therefore, I do not uphold Mr T's complaint.

**Anthony Arter**

Pensions Ombudsman  
28 May 2019

## **Appendix**

### **NHS Pension Regulations 2015 (as amended)**

#### **Schedule 14 Part 9 – Payment of lump sums on death**

(1) A lump sum payable under paragraphs 1 to 8 must be paid in accordance with this paragraph.

(2) The lump sum must be paid to the member's personal representatives, except so far as it is payable to a different person or body under sub-paragraph (4) or (6).

(3) A member may give notice to the scheme manager -

(a) specifying -

(i) the member's personal representatives;

(ii) one or more other individuals; or

(iii) one incorporated or unincorporated body, to whom the lump sum is to be paid; and

(b) where two or more individuals are specified, specifying the percentage of the payment payable to each of them.

(4) If the member has—

(a) given notice under sub-paragraph (3) specifying a person; and

(b) not revoked that notice,

the lump sum (or, as the case may be, the percentage of it specified in respect of the person) may be paid to the person unless sub-paragraph (5) or (7) applies.

(5) This sub-paragraph applies if—

(a) the person specified in the notice has died before the payment can be made; or

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

(6) If the member—

(a) leaves a surviving adult dependant; and

(b) has not given notice under sub-paragraph (3) or has revoked any notice so given,

the lump sum may be paid to that person unless sub-paragraph (7) applies.

(7) This sub-paragraph applies if the person to whom the lump sum (or a specified percentage of the lump sum) would otherwise be payable has been convicted of an

**PO-26020**

offence specified in paragraph 12 of Schedule 3 (forfeiture of rights to benefits) and the Secretary of State has directed, as a consequence of that conviction, that the person's right to a payment in respect of the member's death is forfeited.

(8) A notice under sub-paragraph (3)—

(a) must be given in writing; and

(b) may be revoked at any time by a further notice in writing.