

Ombudsman's Determination

Applicant	Mr David Gapper-Hampson
Scheme	NHS Pension Scheme (the Scheme)
Respondent	NHS Business Services Authority (NHSBSA)

Complaint summary

Mr Gapper-Hampson complains that NHSBSA wrongly declined his claim for a survivor pension from the Scheme when his partner Mr Y died in 2013.

Summary of the Ombudsman's determination and reasons

The complaint should not be upheld against NHSBSA because they fully complied with the provisions of the NHS Pension Scheme Regulations 1995 (as amended) (**the Regulations**) when making their decision to decline Mr Gapper-Hampson's claim for a survivor pension from the Scheme.

DETAILED DETERMINATION

Material Facts

1. Mr Y retired from NHS service on the grounds of ill health in June 1994 and received a pension from the Scheme.
2. Mr Gapper-Hampson and Mr Y met in April 2001. They underwent a “Ceremony of Commitment” in September 2005 and lived together as a couple until Mr Y’s death in 2013.
3. Mr Gapper-Hampson says that they had planned to subsequently renew their vows to each other in a civil partnership ceremony but Mr Y died before this could happen.
4. Mr Gapper-Hampson says that:
 - they were jointly responsible for all finances around their home which they had shared since 2001;
 - in August 2001, they had ensured that their “wills, next of kin, power of attorney and pensions papers” were updated to reflect both his and Mr Y’s wishes;
 - he satisfies the criteria shown on the Scheme’s website to qualify for a survivor pension (of which relevant paragraphs are reproduced in the Appendix to this document); and
 - NHSBSA are unfairly refusing to pay him a survivor pension because they cannot find Mr Y’s completed PN1 form nominating him to receive this pension.
5. NHSBSA rejected Mr Gapper-Hampson’s application for a survivor pension because:
 - in accordance with the Regulations, Mr Y was ineligible to nominate a partner for a survivor pension since he had not been a contributing member of the Scheme on or after 1 April 2008; and
 - as they can only pay benefits in accordance with the Regulations, Mr Gapper-Hampson was not entitled to a survivor pension from the Scheme.

NHSBSA's position

6. According to their records, they did not receive a completed PN1 form from Mr Y. If they had received such a form, they would have returned it to him because no entitlement for a survivor pension existed.
7. Survivor pensions for nominated partners were introduced into the Scheme from 1 April 2008 following a review conducted by the Department of Health in partnership with NHS employers and all NHS trade unions.
8. For reasons of affordability, the review partners decided that nominated survivor pensions would not be available for dependents of members who did not pay pension contributions into the Scheme on or after 1 April 2008. If this restriction did not apply, the contribution rate for the current membership of the Scheme would have been excessive and unrealistic.
9. As Mr Y and Mr Gapper-Hampson had not formed a civil partnership, NHSBSA would only be able to pay a survivor pension from the Scheme under the provision in the Regulations dealing with nominated partners. Regulation G14 only says that "a member whose pensionable employment ceases on or after 1 April 2008 may, by giving notice in writing to the Secretary of State, nominate a person to receive a surviving nominated partner pension."
10. They must comply with the Regulations and ensure that benefits payable to a member are only those which he/she is legally entitled to receive. As Mr Y was not a contributing member of the Scheme on or after 1 April 2008, they are unable to pay Mr Gapper-Hampson a survivor pension.

Conclusions

11. NHSBSA have to pay survivor pensions in accordance with the Regulations, which stipulate that they are only available to nominated partners of people who were contributing members of the Scheme on or after 1 April 2008.
12. Since Mr Y's last day of pensionable service in the Scheme was in June 1994, Mr Gapper-Hampson is consequently ineligible to be considered for a nominated survivor pension because no such entitlement exists.

13. As NHSBSA have complied with the Regulations when deciding that Mr Gapper-Hampson is not entitled to a survivor pension, there has been no maladministration on their part in declining his application.
14. I am also satisfied that the NHS website and the accompanying notes to the PN1 form did make it sufficiently clear to members that only if they had pensionable service in the Scheme on or after 1 April 2008 could they nominate a partner to receive a survivor pension on their death.
15. In my view, Mr Y should therefore reasonably have known that he did not meet this eligibility criterion and if he had submitted a completed PN1 form to NHSBSA, it would be returned to him.
16. I do not uphold Mr Gapper-Hampson's complaint.

Tony King

Pensions Ombudsman

30 December 2014

APPENDIX

Relevant Information about Survivor's Pensions on the NHS Website

Life Assurance and Family Benefits Factsheet 1995 section

Pensions for Surviving Partners

This information only applies to members who have pensionable Scheme membership on or after 1 April 2008.

Pensions for surviving partners can be paid to:

- a legal spouse
- a registered civil partner
- a nominated partner with whom you have an exclusive long-term committed relationship of at least two years and upon whom you are financially dependent or inter-dependent

A form PN1 to nominate a non-legal partner can be downloaded from our Pension Scheme forms section. The benefits payable will depend on your circumstances when you die and you are advised to tell your next of kin or personal representative about the benefits that may be payable on your death.

You should not complete this form if either of you are currently married or in a civil partnership with someone else.

Partner Nomination (PN1)

Please read these notes before completing the partner nomination form, then keep them in a safe place.

Do not complete this form if either of you are currently married or in a civil partnership with someone else.

1. You may use this form only if you have membership on or after 1 April 2008 in the Scheme. Your pensionable service may have started before 1 April 2008 but providing you have pensionable service on or after 1 April 2008 you can complete this form.

2. You can nominate your partner to receive a survivor's pension after your death by completing this form and jointly signing the declaration. Your application will be registered by NHS Pensions subject to the eligibility conditions detailed below.
3. A nomination form will only be accepted if, after your death, the following conditions are met:
 - NHS Pensions has received a correctly completed Partner Nomination form (PN1) signed by you and your partner;
 - you and your partner have been living together in an exclusive long-term relationship for at least 2 years;
 - you and your partner are free to marry or to enter a civil partnership – please refer to “Guide to relationships that are not allowed to marry in the UK”;
 - you and your partner are financially interdependent, i.e. you rely on your joint finances to support your standard of living, although you do not need to be contributing equally;
 - the conditions stated in the declaration section of the form.