

## Ombudsman's Determination

Applicant	Mrs E
Scheme	NHS Pension Scheme Regulations 1995 ( <b>the Scheme</b> )
Respondent	NHS Business Services Authority ( <b>NHSBSA</b> )

## Ombudsman's Determination and reasons

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

## Complaint summary

3. Mrs E's complaint against NHSBSA, the Scheme managers is that she should be entitled to continue to receive her widow's pension even if she were to remarry or cohabit. She has been told by NHSBSA that the Scheme rules do not allow for this.

## Background information, including submissions from the parties

4. Mr E, (Mrs E's late husband), retired from Lincoln and Louth NHS Trust on 20 February 1999 at the age of 63.
5. Mr E died on 10 March 2010 and a widow's pension was then paid to Mrs E.
6. On 12 November 2012 and 21 May 2013, Mrs E asked NHSBSA whether her widow's pension would cease if she remarried. She was subsequently informed on both occasions that it would cease if she was remarried.
7. An extract from the relevant pages of the NHSBSA Website says,

### **"Life Assurance and Family Benefits Factsheet 1995 Section**

A Surviving Partner Pension for your legal spouse, civil partner or nominated qualifying partner is payable for life, even if your spouse, civil partner or nominated partner remarries or begins living with someone as their spouse, civil partner or partner.

Important note: Surviving partners of members who had a last day of membership before 1 April 2008 will lose their Surviving Partner Pension if they re-marry or co-habit.”

## **Relevant Scheme Provisions**

### **8. The National Health Service Pension Scheme Regulations 1995 (as amended)**

#### **“Part G Surviving Partner Pensions**

##### **G1 Widow's pension**

(1) Subject to the following provisions of this regulation, if a male member dies in the circumstances described in any of regulations G2 to G6 and leaves a surviving widow, the widow shall be entitled to a pension as described in whichever of regulations G2 to G6 applies.

(1A) Paragraphs (2) to (7) apply if a member's pensionable employment ceases before 1st April 2008.

(2) Subject to paragraphs (3) to (5) -

(a) no widow's pension shall be payable in respect of any period during which the widow and a man to whom she is not married are living together as husband and wife; . . .

(b) the widow shall cease to be entitled to a widow's pension if she remarries;

The Secretary of State may pay a pension to a widow who has remarried, or who is living together as husband and wife with a man to whom she is not married, if the Secretary of State is satisfied that the widow will otherwise suffer severe financial hardship.”

## **Adjudicator's Opinion**

9. Mrs E'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:

- Mrs E's complaint should not be upheld against NHSBSA. This is because, NHSBSA have acted in accordance with the Scheme rules in deciding that Mrs E loses the right to her widow's pension if she were to remarry or cohabit.
- The wording on the relevant section of the NHSBSA website dealing with widow's pensions was not misleading. It clearly states that Surviving partners of members who had a last day of membership before 1 April 2008 will lose their Surviving Partner Pension if they remarry or cohabit. Mr E left the Scheme when he retired on 20 February 1999, so it should have been apparent to Mrs E that it applied to him.

10. Mrs E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs E provided her further comments. Essentially I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mrs E for completeness.

### **Ombudsman's decision**

11. Mrs E says that she read the following extract from NHSBSA's website prior to November 2012:

"Q. I receive a survivor pension, what if I remarry or cohabit?

**A. Where payment of a survivor pension is being paid in respect of a member who has contributed to the NHS Pension Scheme (Amended April 2008) or the New NHS Pension Scheme, the survivor pension will not stop if the survivor remarries or cohabits. "**

12. The extract Mrs E has quoted in her email from the website has since been updated. However, Mrs E was told by NHSBSA on 12 November 2012 and 21 May 2013 that her widow's pension would cease if she remarried. I therefore do not find that the scheme made a clear representation to her upon which it was reasonable for her to rely, or that she has suffered any injustice as a result of any representation made to her.
13. The difficulty faced by Mrs E is a direct result of the Scheme rules. Mrs E submits that the fact that the Scheme rules were amended so that surviving partners of members who had a last day of membership before 1 April 2008 will lose their Surviving Partner Pension if they re-marry or co-habit makes her feel discriminated against.
14. . My role is to decide whether the rules of the Scheme have been correctly applied. It is not within my power to amend or disapply them. I therefore make no finding with regard to this aspect of Mrs E's complaint.
15. NHSBSA acted correctly in accordance with the Scheme rules in stating that Mrs E's widow's pension would cease if she either remarried or cohabited.
16. Therefore, I do not uphold Mrs E's complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
2 June 2016