

Ombudsman's Determination

Applicant	Mr H
Scheme	NHS Pension Scheme (the Scheme)
Respondent	NHS BSA

Outcome

1. I agree that part, but not all, of this complaint should be upheld. To put matters right for the part that should be upheld, NHS BSA shall pay £500 to Mr H, in recognition of the significant distress and inconvenience it has caused.

Complaint summary

2. Mr H's complaint is that NHS BSA discriminated against him by treating the pension that his wife would receive, in the event of his death, as a post retirement widow's pension. In addition, Mr H is complaining that NHS BSA gave him inaccurate information and incorrectly calculated the widow's pension, should he predecease his wife.

Background information, including submissions from the parties

3. Mr H joined the Scheme on 28 May 1956 and retired on 31 December 1985, following redundancy.
4. In December 1985, NHS BSA informed him that he would receive a pension of £9,526.75 pa from 1 January 1986, which included an additional service credit of 8 years 147 days. In the event of his death, NHS BSA told Mr H that his wife would receive a widow's pension, equal to half of the pension he was receiving at the date of his death.
5. On 13 September 1990, Mr H remarried. As the marriage took place after his retirement date, it qualified as a post retirement marriage, for the purposes of the Scheme.
6. On 24 April 2011, Mr H informed NHS BSA about his remarriage and on 4 June 2011, he asked for written confirmation of the widow's pension. On 4 July 2011, NHS BSA confirmed by letter, that if Mr H pre-deceased his wife, she would be entitled to a post

retirement widow's pension, equal to half his pension, calculated by reference to his service in the Scheme from 6 April 1978 to 31 December 1985.

7. On 23 October 2017, Mr H asked for clarification of the widow's pension. He said that NHS BSA's customer contact centre had told him, on several occasions, that his wife would be entitled to half of his full pension, if he pre-deceased her.
8. On 19 April 2018, NHS BSA apologised for the delay in providing information. It also apologised because Mr H had been given conflicting information by its call handlers in the customer contact centre. It then confirmed that when a member marries after retirement, the widow's post retirement pension is half the member's pension, based on pensionable service from 6 April 1978 to the date the member retires. NHS BSA informed Mr H that the current value of the widow's pension was £2,535.54.
9. On 9 May 2018, Mr H raised a complaint under stage one of the Scheme's internal dispute resolution procedure (**IDRP**) because NHS BSA had given him conflicting information about the calculation of the widow's pension. He also claimed that he and his wife had been living together for three years prior to his retirement and therefore she should be entitled to a full widow's pension.
10. In the stage one IDRP decision dated 3 July 2018, NHS BSA said that Regulation G6(2) of the National Health Service Pension Scheme Regulations 1995 (**the NHS Regulations**) specifically provided that only Mr H's active membership in the Scheme from 6 April 1978, to his retirement on 31 December 1985, could be considered, in calculating the widow's pension. This is because he was not married to his wife when he left the Scheme and, under Regulation G6(2), their period of cohabitation could not be considered. Regulation G6(2) is set out in the Appendix.
11. NHS BSA accepted that its customer contact centre had given Mr H incorrect information and apologised for the poor service he had received. NHS BSA also confirmed that the figure of £2,535.54, stated in its letter of 19 April 2018, for his widow's pension was correct, as at that date.
12. On 22 July 2018, Mr H complained under stage two of the IDRP. He claimed that the Scheme should recognise his period of cohabitation with his wife as akin to marriage. He explained that it was a committed "civil relationship" that had lasted for three years prior to his retirement. They had also bought a house together and held a joint bank account. In addition, he claimed that, following a recent court case, cohabiting couples were entitled to the same pension rights as married couples. This meant that his wife should be entitled to a full widow's pension, based on the contributions he had paid into the Scheme for approximately 30 years. Mr H also added that when he retired on redundancy in 1985, he was credited with extra pension that should be considered in calculating the widow's pension.
13. On 19 September 2018, the stage two IDRP response was issued. NHS BSA upheld Mr H's complaint in part and explained that:-

- Under Regulation G6 of the NHS Regulations, if a member marries after leaving the Scheme, the widow's pension will be based on 50% of his pension calculated in relation to pensionable service from 6 April 1978 (though for the first three months it will be paid at 100%).
 - Long term partners do qualify for some pension benefits under Regulation G14 of the NHS Regulations but only where a member leaves the Scheme after 1 April 2008. Mr H left the Scheme in 1985 so this does not apply to him. Therefore, it is not correct for Mr H to claim that, if he and his wife had not married but had continued cohabiting, she could have received half of his full pension, including his service from 1956 to 1985.
 - Mr H was also not eligible for a survivor's pension. This benefit only applies to same sex couples who have entered into a legally binding "civil partnership."
 - The case of *Brewster v Northern Ireland Local Government Officers' Superannuation Committee* [2017] UKSC 8 (**the Brewster case**) found that the requirement for unmarried but not married couples, to submit a nomination form when claiming a survivor's pension, is unlawful. However, this judgment does not affect the substantive requirements of the Scheme, in Regulations G14 or G6.
 - The calculation of the widow's pension was incorrect as it omitted the enhanced pension awarded to Mr H on redundancy in 1985. The correct widow's pension at this time would be £5,288.30 pa.
14. On 26 September 2018, Mr H referred his complaint to this Office as he was disappointed with the IDRPs responses.
15. On 14 May 2019, NHS BSA confirmed that Mr H did not request a statement about the widow's pension at any other times other than mentioned above. It also said that the widow's pension of £5,288.30 had been correctly calculated in the stage two IDRPs response, enhanced with an additional 8 years and 147 days' service.

Adjudicator's Opinion

16. Mr H's complaint was considered by one of our Adjudicators who concluded that further action was required by NHS BSA. The Adjudicator's findings are summarised below:-
- NHS BSA had correctly calculated Mr H's widow's pension, under Regulation G6 of the NHS Regulations as a post retirement widow's pension and correctly disregarded the period when Mr H and his wife were cohabiting before he retired.
 - The *Brewster* case was not relevant to Mr H's complaint. The judgment in that case found that the requirement for a nomination form for unmarried couples, but not married couples, was unlawful but it does not affect the way widows' pensions should be calculated under the NHS Regulations. Accordingly, the Adjudicator

concluded that Mr H and his wife were not being discriminated against, when their period of cohabitation was disregarded.

- NHS BSA had admitted that its customer contact centre had given Mr H incorrect information about the calculation of a widow's pension and omitted his enhanced service. In the Adjudicators' opinion, this amounted to maladministration.
- In the Adjudicator's view, Mr H had not suffered a financial loss because of this maladministration. The Adjudicator's opinion was that Mr H had asked for clarification of the benefits his wife would receive, should he predecease her, and this situation had not yet arisen. In addition, Mr H had not provided any evidence that he relied on the misinformation about a widow's pension to his detriment.
- However, in the Adjudicator's opinion, Mr H had suffered significant distress and inconvenience as a result of NHS BSA's maladministration. In the Adjudicator's opinion, there were two issues that together had caused significant distress and inconvenience to Mr H. These were (i) NHS BSA's customer contact centre incorrectly advising him that the widow's pension would be half his full pension and (ii) Mr H having to draw NHS BSA's attention to its error, in omitting his enhanced service credit from the calculation.
- Accordingly, it was the Adjudicator's view, that Mr H should receive an award in recognition of the significant distress and inconvenience he had experienced.

17. NHS BSA did not accept the Adjudicator's Opinion and made the following additional submissions:-

- It had correctly informed Mr H that his widow's pension would only be half of his pension in relation to service after 6 April 1978, in its letter of 4 July 2011.
- It admitted giving incorrect and confusing information to Mr H but submitted that the distress and inconvenience was not significant and that the apology already given should suffice.
- It had taken reasonable steps to put things right. The error in the calculation of the widow's pension in the statement dated 19 April 2018, was quickly rectified in the second stage IDRP on 19 September 2018.
- Its customer contact centre records show that a call handler confirmed, on 10 July 2017, that the widow's pension would only be half of his pension in relation to service after 6 April 1978.
- On 23 October 2017, Mr H had three calls with call handlers. One call handler informed him that his widow would receive half of all his pension but two further calls corrected this. So, an initial error was quickly remedied in a third call.

18. NHS BSA's further comments did not change the Adjudicator's Opinion and the complaint was passed to me to consider.

19. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by NHS BSA for completeness.

Ombudsman's decision

20. Having considered this complaint, I find that, NHS BSA has correctly calculated the widow's pension, in accordance with Regulation G6 of the NHS Regulations as a post retirement widow's pension. I also find that it correctly disregarded the period when Mr H and his wife were cohabiting before he retired. NHS BSA also correctly informed him that his widow's pension would only be half of his pension in relation to service after 6 April 1978, in its letter of 4 July 2011.
21. NHS BSA say it was clear that Mr H understood both, from its letters of 4 July 2011, and 10 July 2017, that a pension based on service from 6 April 1978 to 31 December 1985 would be payable to his wife in the event of his death. However, I consider that the conflicting and confusing advice given by its customer contact centre thereafter and its omission of his enhanced service credit in the calculation of the widow's pension, amounted to maladministration.
22. I do not consider that this maladministration caused Mr H a financial loss nor has he shown that he relied on it to his detriment. However, it is my view that it caused Mr H significant distress and inconvenience.
23. I say this because the call records supplied by NHS BSA show that he called three times on 23 October 2017, to confirm if he had been given correct information about the widow's pension. Two of the calls gave him conflicting advice so, he then called a third time to request confirmation in writing.
24. In addition, NHS BSA omitted his enhanced service credit when it calculated the widow's pension in April 2018 and only became aware of the omission when Mr H brought it to NHS BSA's attention. Although the omission was corrected shortly after being made aware of it, I find that NHS BSA's maladministration, on more than one occasion would have caused Mr H significant distress and inconvenience. Accordingly, I consider that Mr H should receive an award in recognition of this. I do not find an apology is sufficient.
25. Therefore, I uphold Mr H's complaint in part.

PO-22111

Directions

26. Within 14 days of the date of this Determination, NHS BSA shall pay £500 to Mr H in recognition of the significant distress and inconvenience it has caused.

Anthony Arter

Pensions Ombudsman
25 July 2019

Appendix

The National Health Service Pension Scheme Regulations 1995 [1995 No. 300]

G6 Member marries after leaving pensionable employment

- (1) This regulation applies where the member and his wife were not married to each other during any period of pensionable employment.
- (2) Subject to paragraph (3), the widow's pension will be equal to one-half of a pension calculated as described in regulation E1 (normal retirement pension) on the basis of the member's pensionable service after 5th April 1978.
- (3) If the member dies after his pension under this Section of the scheme becomes payable, the widow's pension for the first 3 months after the member's death (6 months if the member dies leaving at least one dependent child (dependent on the widow) will be equal to the amount of the pension that would have been payable under regulation G3 (member dies after pension becomes payable).
- (4) Where the scheme partner referred to in regulation G14 (surviving scheme partner's pension) becomes the member's widow on the member's death, the widow's pension will, if it would be more beneficial to the widow, be equal to the surviving scheme partner's pension that would have been payable if the widow and the member had not been married to each other.