

Ombudsman's Determination

Applicant	The Estate of Mr N
Scheme	HSC Pension Scheme (the Scheme)
Respondents	Southern Health and Social Care Trust (the Trust) HSC Pension Service (HSC)

Outcome

1. I do not uphold this complaint and no further action is required by the Trust or HSC.

Complaint summary

2. Mrs N has complained that her late husband's ill health early retirement (**IHER**) award was changed to a death in service award because he had outstanding annual leave. Mrs N says they were not informed that his benefit would be changed in such circumstances.

Background information, including submissions from the parties

3. Mrs N's late husband, Mr N, was an employee of the Trust.
4. From 7 November 2015, Mr N was on sick leave.
5. On 19 November 2015, Mr N met with the Trust and said that the diagnosis for his illness was terminal. He confirmed that he wished to apply for commuted ill health pension benefits, where benefits are provided as a lump sum in circumstances of serious ill health.
6. On 20 November 2015, the Trust arranged for an appointment to be held on 31 December 2015 between its Occupational Health (**OH**) department and Mr N.
7. On 23 November 2015, estimates of pension benefits were provided to Mr N.
8. On 1 December 2015, Mr N was forwarded sections A and B of form AW33 to complete. Members who wish to apply for IHER must complete an AW33 form, which is an assessment form. Section A is completed by the applicant, Section B is completed by Human Resources and Section C is completed by the Trust's Occupational Health Physician (**the Trust Physician**), where medical evidence is attached to support the application. The form is then forwarded to HSC and

assessed. If IHER is granted, the member and employer are required to complete form AW6 in order to release the member's pension, which is forwarded to HSC.

9. On 31 December 2015, Mr N attended an appointment with the Trust Physician in order to complete Section C of the AW33 form. The Trust has said that Mr N did not bring the relevant medical evidence to this appointment so with his consent, the Trust Physician requested information from his GP.
10. Following the receipt of Mr N's GP report on 21 January 2015, the Trust Physician completed Section C of the AW33 form in an appointment on 4 February 2016 (that Mr N was not required to attend). The Trust Physician's note of 9 February 2016 states:

"I have now received the additional information I previously requested at [Mr N's] appointment with myself. With the information I have to hand, I have now completed Part C of his ill health retirement (AW33) form. No review appointment has been made."
11. On 5 February 2016, the Trust's Human Resources Adviser (**the HR Adviser**) sent Mr N a copy of Part C of the AW33 form. The covering letter to this said:

"Please find attached Part C of your AW33 form. My advice is to send all parts of your completed AW33 form by recorded delivery to the HSC Pension Branch for processing...

I will notify HSC Pension Branch by email today that your application will be with them soon and if they could process [sic] as soon as possible."
12. On the same date, the HR Adviser sent an email to HSC saying:

"Can I alert you to an application for commuted ill health pension that should be with you in the coming week if you can look out for this and fast track..."
13. On 15 February 2016, the HR Adviser emailed the same contact at HSC advising that Mr N had not posted his form as yet but would that week.
14. On 17 February 2016, Mr N completed and signed the AW33 form.
15. On 24 February 2016, a representative of HSC sent Mr N's application with the attached medical information to one of its medical advisers.
16. On 11 March 2016, HSC's medical adviser made a decision on Mr N's IHER application.
17. On 21 March 2016, Mr N died.
18. On 31 March 2016, HSC wrote to the Trust in respect to Mr N's IHER application. It said:

"...after consultation with the Department's Medical Adviser it has been decided that the above named satisfies the requirements with effect from 11th

March 2015 [sic-2016] as set down in the Scheme Rules Tier 2 Ill-Health retirement benefits option to commute due to Serious Ill Health.”

19. On 4 April 2016, the HR Adviser wrote to HSC and said:

“As per our telephone conversation last week in which you confirmed that [Mr N] was awarded Tier 2/Commutated pension effective from 11 March 2016. I informed you that [Mr N] had passed away on 21 March 2016. You confirmed as he had been awarded a commuted pension prior to his death that his pension would be honoured as a commuted pension.

I have forwarded Mr N’s completed AW6 form today and would appreciate your help in getting monies paid to his widow...”

20. On 23 May 2016, the Trust wrote to Mrs N. This letter was sent following a meeting which took place at Mrs N’s home in which the Trust advised of HSC’s decision in respect to Mr N’s application. The main points were:-

- Mr N was accepted for a tier 2 commuted pension with effect from 11 March 2016. Following this confirmation, the Trust was asked to notify HSC of any outstanding annual leave owing to Mr N so this could be added on to his leaving date. The Trust confirmed this to be 25 days, extending Mr N’s actual leaving date to 15 April 2016.
- HSC informed the Trust that Mr N was deemed to still be in superannuable employment on the day he died, and therefore, he was entitled to death in service benefits rather than IHER. The benefits now payable to Mrs N and her family were: a death gratuity, an initial survivor’s pension (paid between 16 April 2016 to 15 October 2016) and a survivor’s pension (payable from 16 October 2016). Copies of the relevant forms to process these benefits had been provided at the meeting.

21. Mrs N subsequently sent a letter of complaint to HSC. The main points were:-

- She had been informed by the Trust that because Mr N had outstanding annual leave, his IHER benefit would now be paid as a Death in Service benefit. Mr N had started his application for IHER on 15 November 2015. His OH appointment could not be arranged until 31 December 2015, more than a month after his initial application.
- At this appointment, the Trust Physician did not accept the medical documentation Mr N had provided as suitable for his IHER application and requested further information. This was unacceptable as Mr N had been given a terminal diagnosis of cancer. This decision by the Trust Physician caused Mr N a lot of stress.
- It then took until 4 February 2016 for OH to accept that Mr N was unfit to work. In total, Mr N had waited ten weeks, which was an unacceptable length of time for a dying patient to wait.

- In guidelines from HSC's pensions website, it stated that if a member was terminally ill, they may take their benefits immediately as a serious ill health pension lump sum. Mr N was awarded Tier 2 ill health on 11 March 2016, this should have been awarded immediately, or rather, given on 31 December 2015.
 - Further, there was no information anywhere on outstanding annual leave and how this could affect such a benefit. How could Mr N have taken his annual leave while on sick leave?
22. On 12 April 2017, HSC responded under stage one of its Internal Dispute Resolution Procedure (**IDRP**). It said:-
- The Scheme guides on its website were intended to provide members with a general overview of benefits and were not intended as a legally binding statement of the law and regulations which governed the Scheme.
 - The Scheme's regulations were clear that in order to receive benefits, a member must retire from HSC employment. On 11 March 2016, Mr N was still regarded as being in HSC employment.
 - The application process for IHER and the payment of benefits was not as straightforward as Mrs N had suggested. The process required members to submit medical evidence in order for it to be ascertained whether they were entitled to benefits under the regulations that govern IHER. If the member was successful, a number of factors must be taken into account in order to calculate and pay benefits, including their pensionable pay and their last day of pensionable service, which would include any annual leave accrued.
 - The rules for the awarding of IHER benefits was set out in The Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995 (**the Regulations**). It was not possible for a member to be awarded IHER solely as a result of attending an OH assessment.
23. Also within this letter, HSC provided extracts of Regulation 4(5) and 4(6) of the Regulations (see Appendix).
24. Mrs N appealed HSC's decision.
25. On 9 June 2017, HSC responded under stage two of the IDRP. It said it noted with much regret that the death benefit calculated following Mr N's death was substantially less than that which was expected for a commuted ill health pension. However, the award was calculated in accordance with the Regulations, so the correct approach had been applied. In respect to the delays Mrs N had complained about, it said these were issues for Mr N's employer.
26. On 29 November 2017, Mrs N complained to the Trust, attaching the letter she had previously sent to HSC. She said that OH had requested additional medical evidence, which had delayed Mr N's access to IHER benefits. In calculating Mr N's retirement

date of 11 March 2016, which preceded his death, no mention was made of outstanding annual leave being a factor that would change this. Mr N could not use his annual leave if he was on sick leave.

27. On 20 February 2018, the Trust replied to Mrs N. It said:-

- Regarding whether its OH department delayed Mr N's IHER application by requesting additional medical evidence, Mr N had attended an appointment with the Trust Physician on 31 December 2015 for completion of Section C of the AW33 form. The Trust Physician must be satisfied that there is sufficient supporting medical evidence before processing this form. The Trust Physician endeavoured to ensure all available evidence was appended to an application.
- In February 2016, in anticipation of an assessment confirming Mr N's eligibility to IHER, staff within its Human Resources department assisted Mr N in completing the AW6 form, which he signed on 17 February 2016. This could not however be processed until a decision on eligibility from HSC.
- The effective date confirmed for eligibility of IHER benefits was 11 March 2016. In order to claim those benefits, an application was required to be processed. Part of this process involved confirming any outstanding entitlements for which payment is made. Upon review of Mr N's leave record, he had 25 days of annual leave which he had not taken, which extended his superannuable employment. Given that he had accrued this entitlement, it was payable to him.
- Mrs N had asked how a staff member on sick leave could have used annual leave, and why Mr N was not informed of the possible ramifications. When an individual is on sick leave and their contract is due to be terminated due to retirement on the grounds of ill health, accrued unused annual leave is paid to the staff member upon termination of their contract. Mr N's annual leave was paid to him in accordance with the Trust's normal practice.

28. Mrs N's position is as per her complaint letters to the Trust and HSC.

29. HSC's position is as follows:-

- The complaint appeared to be directed at the process adopted by HR and the delay by the Trust's OH department in accommodating a further appointment following a request for additional medical information.
- It maintained that the decision to award death in service benefits was the correct and only possible outcome as awards could only be made in strict adherence with the Regulations.

30. The Trust's position is:-

- In Mr N's appointment with the Trust Physician, he brought information on his Disability Living Allowance, which was not acceptable for the Trust Physician to proceed with completion of Part C of the AW33 form. In order to enable Mr N to proceed with his application and be successful in it as quickly as possible, the Trust Physician requested a report from Mr N's GP. Had this information not been requested, it could have resulted in Mr N's application being delayed or rejected.
- Once the pertinent information had been received from Mr N's GP, an appointment was made as soon as possible for the completion of the AW33 application form. This took place on 4 February 2016 and the completed application was then sent to HSC. Mr N was not required to attend.
- Annual leave entitlement continues to accrue for staff members on sick leave. This would have been known to Mr N. As sick leave usually commenced unplanned, there was no opportunity to use annual leave prior to this. Mr N had been on an extended period of sick leave and was not in a position to use his annual leave when his award of pension benefits was made. The leave was paid to Mr N on termination of his contract and notified to the Trust.
- The payment made for accrued annual leave was treated as a period of superannuable service by HSC in line with the Regulations. The effect of this was that Mr N was treated as being in superannuable service for 25 days after 11 March 2016. Mr N was thereby deemed to have passed away "in service" when he died on 21 March 2016, so he was awarded death in service benefits rather than commuted benefits.
- The interpretation of the Regulations and the decision to award pension benefits rested with HSC. This was not a Trust decision, so it was unable to provide the remedy Mrs N was seeking.

31. In response to questions asked as part of the Adjudicator's investigation, the Trust confirmed the following:-

- In terms of whether Mr N would have been paid IHER benefits retrospectively had he not accrued annual leave which extended his service, his effective date of retirement would have been 11 March 2016 and commuted benefits would have been paid with effect from that date.
- The initial view of the HR Adviser (that the commuted benefits would be honoured) was in the absence of the knowledge that Mr N had outstanding annual leave.
- In terms of the annual leave options Mr N had in 2015/16 (bearing in mind that he was on sick leave), Mr N was on full pay during his sickness absence period. Mr N used some of his contractual leave prior to commencing sick leave. The leave year ran from April to March. Mr N did not return from sick leave and therefore did not have the opportunity to use the remainder of his annual leave during that leave year.

- Mr N died with an entitlement for the full 12 months of leave in that year. The only option available was to pay the remaining accrued leave entitlement once Mr N had passed away.
 - Its records showed that a meeting was held with Mr N and a member of its HR team on 19 November 2015. This was the first time it became known that Mr N's prognosis was terminal. It followed up on 20 November 2015 with HSC for an estimate of pension benefits and these were received on 23 November 2015.
 - In respect of its timescales for arranging an appointment, between OH and members, for an IHER application, in general, the Trust has in place a "fast-track arrangement" for appointments for staff members with a terminal diagnosis. OH appointments required in these circumstances must be with a medical physician and not an OH nurse. Appointments scheduled with an OH physician would usually be booked up to two months in advance. Priority would be given for appointments related to IHER and it would look to cancel slots where it could when trying to secure a date. It would be usual for an appointment to take between four and eight weeks to secure.
 - In regard to when the Trust Physician contacted Mr N's GP for information following the meeting of 31 December 2015, he posted his letter on 5 January 2016. The Trust received a reply on 11 January 2016 requesting the payment of fees prior to the release of the report. Payment was sent on the same day.
 - In respect to why an appointment on 4 February 2016 was needed given that Mr N was not required to attend, an appointment is scheduled with an OH physician for each individual assessment or contact to secure appropriate time in the schedule. When all information is available, the physician does not necessarily need to meet with the staff member however, some might do. The physician uses the scheduled appointment time to complete the necessary documentation in the absence of a face-to-face meeting.
32. In response to a question the Adjudicator asked Mrs N, she confirmed that when Mr N was given his terminal diagnosis, life expectancy was not discussed.

Adjudicator's Opinion

33. The complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trust or HSC. The Adjudicator's findings are summarised below:-
- It was noted that the circumstances in this case were particularly difficult. She would consider whether HSC and/or the Trust made an administrative error when handling Mr N's IHER claim, and whether HSC applied the Regulations correctly.
 - In regard to the Regulations, these set out how and when ill health benefits were paid, and how a member's length of service was determined. Regulation 13 stated

that “a member who retires from superannuable employment because of physical or mental infirmity that makes him permanently incapable of efficiently discharging the duties of his employment shall be entitled to a pension...” Hence, a member must be retired from superannuable employment in order to be entitled to an ill health pension.

- Mr N was granted ill health commutation on 11 March 2016. Regulation 4(5) provided for a payment to be made to a member that dies and has untaken leave. In these circumstances, the member’s superannuable employment “is treated...as continuing for a period equal to the period of leave for which payment is made...” In Mr N’s case this meant that he was treated as having died whilst “in service” so his entitlement to a commuted ill health pension no longer stood. HSC did however act in accordance with the Regulations in adding on his accrued leave. There did not appear to be any provision within the Regulations for it to have taken any other action.
- In respect of whether the Trust, as Mr N’s employer, caused avoidable delays in processing Mr N’s IHER application, Mr N made the Trust aware of his prognosis on 19 November 2015 and he met with the Trust Physician on 31 December 2015. There was a period of six weeks between these dates, but given that Christmas and a bank holiday fell within this period, this appointment was effectively made within five weeks of when Mr N notified the Trust of his condition.
- The Adjudicator had asked the Trust about timescales for an appointment with an OH Physician once a member had notified it of their intention to make an IHER application, and whether this timeframe was shortened in cases of serious ill health. The Trust said that members with a terminal diagnosis met with a physician and not an OH nurse. It said appointments with a physician were usually booked up to two months in advance and that although priority was given to IHER appointments, an appointment could take four to eight weeks to secure. So, the Trust did carry out Mr N’s appointment within its usual timescales.
- The five week period, in which Mr N waited for this appointment to take place, was not unreasonable, bearing in mind that an OH physician would have other appointments already booked. More importantly, there was no indication that Mr N’s life expectancy from that point would be relatively short.
- The Trust Physician requested information following this appointment from Mr N’s GP on 5 January 2016; this was within a week. Mr N’s GP subsequently responded requesting payment prior to releasing this information. This payment was sent on the same day the request was received. The Trust acted in a timely manner in these instances.
- On the point of the Trust requesting further medical evidence, Mrs N had questioned why the Trust did so as she considered that this caused delays, particularly as Mr N’s prognosis at this point was clear. All IHER applications must be supported by relevant medical evidence. It was appropriate for the Trust to ask

for this information at this juncture. Mr N had brought information on his Disability Living Allowance to his appointment. This was usually not relevant to the assessment of an IHER application.

- The Trust received the GP's report on 21 January 2016 and the Trust Physician completed Mr N's form on 4 February 2016, so within a period of two weeks. Although this arguably could have been completed sooner, two weeks was not an unreasonable period. In any case, had this been completed sooner, for instance by a week, this would not have had a material impact on the overall timeframe in this matter, so, there were no material delays in this regard.
- Turning now to HSC's actions and its processing of Mr N's application, he completed the form on 17 February 2016 and this appeared to have been received by HSC on 24 February 2016 at the latest, when it forwarded this to a medical adviser. The medical adviser's decision was made just after two weeks of receiving this. Given these points, HSC processed Mr N's application fairly swiftly. There were no identifiable errors or delays that were caused through HSC's handling of this matter.
- Following Mr N's death, the HR adviser was seeking for Mr N's IHER award to be paid to Mrs N. However, the Trust's payroll department subsequently confirmed the annual leave that Mr N had remaining, which had an impact on his application. Although it was very regrettable that Mrs N was left with the disappointment of the type of benefit owed being changed, the Trust had said that the HR adviser was not aware of how Mr N's leave would affect his IHER application and that this was then explained in a face-to-face meeting with Mrs N. This was the appropriate course of action given the circumstances.
- Although Mr N was not aware that his annual leave could affect his IHER benefit, his knowledge of this would not have changed the matter. Mr N was on sick leave and could not have used his annual leave.
- Despite the difficult circumstances which had given rise to this matter and the fact that the change in award was due to circumstances beyond Mrs N's (or Mr N's control), there was no evidence that the Trust or HSC's actions amounted to maladministration. HSC had applied the Regulations in respect to Mr N's employment and his IHER application correctly and neither party had caused any delays.

34. The Trust and HSC agreed with the Adjudicator's Opinion. Mrs N did not accept the Adjudicator's Opinion and made the points below:-

- When Mr N applied for IHER in November 2015, he should have been told that he needed to use his annual leave. At that point he had time to use it. This needed to be explained to employees.

- Mr N was awarded IHER on 11 March 2016. His annual leave should have been sorted before this award was made. It was very unfair to withdraw this award after telling him he would receive it.
- Mr N had brought information on DLA to the meeting as the amount he was receiving was only given to patients with a life expectancy of six months or less. The doctor would have known that.

35. The Adjudicator replied to Mrs N's comments as follows:-

- Mr N was on sick leave so he did not have the opportunity to use the remainder of his annual leave. Should employees not return to work in such circumstances, their annual leave is added on to their record. It was sad that Mr N passed away shortly after his award was finalised, leading to this situation. However, she did not think that the Trust could have allowed Mr N to use his annual leave, as that was not the correct type of leave for his situation at that time.
- She understood why Mrs N felt that the outcome of such an award being changed in such circumstances should have been explained to employees. However, she did not believe that Mr N's situation was particularly common. Further, the Scheme Rules did not allow for the exception in question; HSC was bound by the Rules as they stood.
- It was extremely unfortunate that Mr N had been told that he would receive the IHER award, only for this to be changed. However, when Mr N was awarded IHER on 11 March 2016, it could not be known that he would pass away shortly afterwards. She had asked the Trust why it had been thought, after Mr N had passed away, that his IHER award would be honoured. She understood that this was in the absence of the knowledge of Mr N's leave situation.
- From her experience, information on DLA was not usually considered valid evidence for IHER purposes. Given the timeline of events, she presumed the DLA letter was from November/December 2015, so on that logic, it could have been assumed that Mr N's potential life expectancy extended to May/June. It was because of the unfortunate fact that his life expectancy was shorter, coupled with his leave situation, that the IHER award could not be paid. This stance was reinforced by the additional emails Mrs N had recently supplied which suggested that in November 2015, it was felt that Mr N would hopefully recover and be able to attend work.

36. Mrs N's son, Mr M, became her representative from this point onwards. He made the following points on Mrs N's behalf:-

- He found it strange that a case such as this was not provided for in the Regulations. Further, given the size of the NHS employee pool in Northern Ireland, there must have been a case that was similar.

- His father was on sick leave and then retired due to ill health, so how could annual leave be added to his retirement date? If he was an employee on sick leave, he could not take annual leave as this was against HSC trust policy. If the process followed with his father was true, it meant that the Trust would not allow a sick person to take annual leave when on sick leave but that annual leave could be added to a terminally ill employee who was being medically retired? This was a contradiction that needed addressing and would not stand up to scrutiny in a court of law.
- He would not accept the logic applied by the Adjudicator in respect to the DLA evidence and the period of six months. It was up to six months, not a minimum of six months. Assumptions should not be made and “we need to speak in facts.”
- He had provided the scheme guide from the HSC pensions website from 2016. It clearly stated that a person that was terminally ill could take their lump sum immediately. The HSC website stated that benefits could be taken immediately. Taking more than three months to process such an application was not immediate for a person with a terminal illness.
- Given that there were five weeks between appointments and that his father had 24 weeks life expectancy, a 20% delay was quite long.
- Why when accessing his father's medical records, which would have been available digitally, did it take as long as three weeks?
- The Trust had yet to acknowledge that IHER was awarded as per their paperwork and then withdrawn.
- It was now more than five years' since Mr N's death and his family was yet to be shown a policy or Regulation that stated that the actions taken followed the correct protocol. He wished to see a clear policy that stated that a terminally ill retired person would have remaining annual leave added to their retirement date. The trust forbade his father from taking annual leave when sick but decided to add this on to his service when retired medically.

37. The Adjudicator's reply, in summary was:-

- Regulation 4(5) covered annual leave being added on in the stipulated circumstances.
- Mr M had mentioned an oncologist's report and that his father had a 24 week life expectancy. Mrs N was asked whether life expectancy had been discussed with the Trust in November 2015. Mrs N said life expectancy was not discussed but a terminal diagnosis was given. The Adjudicator would however review any information to the contrary.
- In terms of the statement that benefits may be taken immediately with regard to terminal illness, the context of this statement in terms of pensions more broadly

was important. Usually, an individual could not take their pension benefits until they reached their scheme's normal retirement age. This was usually the age of 60 or 65. The statement that benefits may be taken immediately in terminal cases was a relative statement in terms of other timescales in regard to normal retirement or other types of ill health retirement.

- The OH would have obtained Mr N's consent at the December 2015 meeting when it was decided that GP records would be sought. She was not aware of the system at Mr N's GP practice and whether records were available digitally/the policy on sharing these.
- She was aware that the Trust came to Mrs N's home and that an award for commuted benefits was discussed and then withdrawn.
- Although her view was that Regulation 4(5) supported the Trust's actions in adding annual leave to Mr N's leave record in the way it did, given Mr M's specific request, she would make an enquiry to the Trust.

38. The Adjudicator asked the Trust whether an internal policy document from 2016 existed in respect to annual leave and whether leave could be added on to an employee's leaving date after they had died.

39. The Trust provided its response:

"To clarify, there is no such internal policy document that directly addresses [Mr M's] query as stated, however all actions in relation to this case were taken in line with the Pension Regulations."

40. The complaint has been passed to me to consider and I have noted Mrs N's and Mr M's additional comments, however, I agree with the Adjudicator's Opinion.

Ombudsman's decision

41. I am very mindful of the sad circumstances in this matter.

42. There are two main questions to address: (1) Whether the Regulations have been followed by HSC in its handling of Mr N's award and (2) Whether there were any avoidable delays or administrative errors.

43. The central issue here is that annual leave was added on to the leaving date on Mr N's record, meaning that he was effectively considered to be "in service" at the point at which he died. Due to this, he was awarded death in service benefits rather than commuted benefits. This is unfortunate, however, I agree that Regulation 4(5) stipulates that untaken annual leave be added on to a deceased employee's leaving date in such circumstances. Hence, I am satisfied that HSC followed the Regulations in this regard and in its decision to change Mr N's award.

44. Mr M has sought a specific policy document from the Trust which sets out the protocol at the time in such circumstances. He considers that the absence of this

renders it difficult to truly know whether the Trust/ HSC followed the correct procedure. While I understand his rationale and how a written policy might be useful, I consider that the Regulations alone support HSC's actions.

45. In respect of the Trust's timing in handling Mr N's claim, the context here is crucial and it is important to not view the matter with the benefit of hindsight. I consider that a period of effectively five weeks for an initial appointment was not unreasonable given the Trust's normal timescales and the fact that Mrs N says that life expectancy had not been discussed with the Trust.
46. Mrs N has said that the DLA information which Mr N brought to his appointment with the Trust Physician ought to have been adequate, where the amounts specified within corresponded with a life expectancy of six months or less. However, I do not find that the Trust Physician acted unreasonably in requesting further information from Mr N's GP where this had been deemed necessary. Specifically, I do not consider that requesting specific medical information was an unsuitable course of action given the nature of the application at hand. Further, I find that the Trust acted in a timely manner in requesting this information, paying the fees required for this information once notified, and in completing Part C of the AW33 form.
47. The Trust forwarded Mr N's completed application on 24 February 2016 which was within a week of his signing it, and a decision was made on this on 11 March 2016, so just over two weeks after receipt. The HR Adviser had made HSC aware that the application should be fast tracked. The Trust's actions were appropriate.
48. Mr M has said that Mr N's benefits should have been released immediately. Although time is a crucial factor in the case of ill health commutation, there is nonetheless a process that needs to be followed. It is clear that the Trust followed this process. Although there were periods where the process could have been more efficient, I do not find that there were any periods of identifiable, avoidable delays which the Trust should be liable for.
49. Lastly, given the already challenging circumstances of this matter, I appreciate the surprise and considerable disappointment that Mrs N and her family naturally would have felt when Mr N's award was changed to death in service benefits. However, this in itself does not entitle Mr N's family to the award originally agreed.
50. I do not uphold this complaint.

Anthony Arter

Pensions Ombudsman
17 September 2021

Appendix

The Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995

Meaning of “superannuable service”

Regulation 4(5)

“If, when a member leaves superannuable employment or dies, a payment is made in respect of leave not taken— (a) the member’s superannuable employment will be treated, subject to paragraph (3), as continuing for a period equal to the period of leave for which payment is made; and (b) the payment will be treated as the member’s superannuable pay for that period.”

Regulation 4(6)

“In order to calculate the length of a member’s service, all periods of service will be added and each resulting period of 365 days (disregarding service on 29th February in a leap year) will be treated as one year.”

Early retirement pension (ill health)

Regulation (13)(1)

“A member who retires from superannuable employment because of physical or mental infirmity that makes him permanently incapable of efficiently discharging the duties of that employment shall be entitled to a pension under this regulation if he has at least 2 years' qualifying service or qualifies for a pension under regulation 12 (Normal retirement pension).”