

Ombudsman's Determination

Applicant	Mr E
Scheme	HSC Pension Scheme (the Scheme)
Respondent	HSC Business Services Organisation (HSC) on behalf of the Department of Health (DoH)

Outcome

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

Complaint summary

3. Mr E is unhappy with HSC's decision not to award him partner's pension benefits in respect of his late partner, Ms N.

Background information, including submissions from the parties

4. Ms N's death benefits are regulated by Regulation 31 E of the 1995 Health and Personal Social Services (Superannuation) Regulations, under which the decision maker with regard to the distribution of the benefits, is the Department of Health (**DoH**) and HSC is the Scheme's Administrator. The relevant sections of Regulation 31E are set out in the Appendix.
5. Mr E has co-habited with Ms N since 1993. Since 2009, they have lived together at Ms N's address. Mr E said that Ms N persuaded him to give up his job, so he could look after his ill mother. Mr E said that the agreement was for him to spend time by commuting between Ms N's house and his mother's house. Ms N was the breadwinner and Mr E was financially dependent upon Ms N from January 2009.
6. Sadly, on 26 December 2012, Mr E found Ms N dead in her house. She passed away unexpectedly and did not leave a Will, an expression of wish form or make provisions for Mr E.
7. It was not until September 2017, that Mr E completed a Partner Nomination form (**the Form**) declaring that he and Ms N had lived together for 4 years and were financially interdependent. He submitted the Form in February 2018.

8. On 19 February 2018, HSC sent Mr E an acknowledgement letter informing him that based on the information submitted, it was unable to pay him a partner's pension at that stage and requested further information.
9. On 27 February 2018, Mr E submitted a list of evidence to show that he and Ms N co-habited at the same address. The evidence consisted of a copy of a settlement of a proportion of Ms N's estate, a Remembrance Service listing, a rota to show that he took turns with family to look after his mother, a receipt for an engagement ring and other non-financial information showing that they cohabited together at the same address.
10. On 25 April 2018, HSC sent Mr E a letter informing him that he would not be eligible to receive a partner's pension because he had not been able to show that he and Ms N had been living together for at least 2 years prior to her death, as stated in the Scheme's regulations.
11. In May 2018, unhappy with HSC's decision, Mr E appealed, by invoking the Scheme's two-stage internal dispute resolution procedure (**IDRP**). In his submission, Mr E referred to *Brewster v Northern Ireland Local Government Officers' Superannuation Committee* [2013] NICA 54 (**Brewster**) case, having a bearing on his complaint. He said that unlike Denise Brewster where she had no alternative place to live, Mr E was fortunate enough to fall back on his home address after the death of Ms N.
12. On 26 June 2018, HSC sent Mr E a response under stage one of the IDRP that did not uphold his complaint. It referred to Regulation 31E (2) (iii) and added:

"I have reviewed your claim and I note that you are unable to provide any copies of any utility bills or any other official documentation that prove that you were co-habiting at the same address as Ms N in the two years prior to her death. I note that you have sent us copies of a Motor Vehicle Insurance Certificate and a Domestic Rates Bill and refer to the settlements from Prudential and the estate, but these do not prove that you were financially interdependent. Examples of the type of evidence we would require would be details of shared bank accounts, loan or mortgages in joint names or wills naming each other as the main beneficiary."
13. On 26 July 2018, HSC sent Mr E a response under stage two of the IDRP that maintained its previous stance and added:

"If you can provide any further evidence that you fulfil the eligibility criteria please submit and we will be happy to review your case again...I regret that my reply cannot be more favourable, but HSC Pension Service must abide by the regulations of the scheme."
14. In August 2018, Mr E brought his complaint to the Ombudsman.

Adjudicator's Opinion

15. Mr E's complaint was considered by one of our Adjudicators who concluded that no further action was required by HSC. The Adjudicator's findings are summarised below: -

- The Ombudsman's role is to examine the HSC's decision-making process and decide whether it has, as far as possible, identified all potential beneficiaries; properly reviewed the merit of each one; and its decision was within a range of decisions which it was reasonable for the HSC's to have made.
- The Adjudicator noted that Ms Wasson did not leave a Will and no provision was made for Mr E. The Adjudicator did not dispute the fact that he was co-habiting with Ms Wasson however her role was to check whether HSC has followed the Scheme regulations correctly.
- Under Regulation 31E (2) (iii) of the 1995 Health and Personal Social Services (Superannuation) Regulations, partner benefits can be paid if "the member and the nominated partner were financially interdependent or the nominated partner was financially dependent on the member." The member would also need to prove that the member and nominated partner were living together as husband and wife or civil partners.
- As much as the Adjudicator had great sympathy for Mr E's circumstances, she was satisfied that HSC has made sufficient enquiries and applied the regulations correctly. In order to be eligible for partner's death benefits, Mr E must meet the criteria under Regulation 31E. The Adjudicator noted that Mr E has provided HSC with information to show that he was in a relationship with Ms Wasson. However, this information did not meet the criteria under the Regulations. Mr E has not been able to provide evidence such as details of joint bank accounts, loan or mortgage in joint names or wills naming each other as beneficiary.
- It was the Adjudicator's view that HSC, in reaching its decision, took into account all relevant factors, ignoring irrelevant ones and that Mr E did not qualify as a beneficiary under the Scheme regulations so HSC was unable to pay partner's pension to him.
- The Adjudicator also noted that Mr E referred to the Brewster case having a bearing on his case. In this case, Ms Brewster was successful in her appeal because the requirement in the regulations that the appellant and her partner should have made a nomination was disapplied on the basis that the nomination form amounted to unlawful discrimination and as such Ms Brewster was entitled to receive a survivor's pension under the scheme. However, Ms Brewster had to satisfy the prescribed conditions for an unmarried co-habiting partner set out in the regulations. The Adjudicator noted that Mr E did not satisfy these criteria therefore she did not agree that the Brewster case applied in his case.

- Mr E also provided evidence of being awarded settlement monies from Ms Wasson's Prudential policy, however each scheme has its own rules and regulations. Therefore, an Ombudsman would not direct HSC to make a payment to Mr E, even if Prudential has, if he does not satisfy the criteria stated in the regulations therefore the Adjudicator was of the view that the complaint should not be upheld.
16. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E 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 E for completeness.
 17. Mr E maintains that as he and Ms N were much more than cohabitees, he should be entitled to a partner's pension.
 18. He strongly believes that the Brewster case has a bearing on his case. This is because "the case concerns a requirement in the local government pension scheme (benefits, membership and contributions) Regulations 2009...that unmarried co habiting partners be nominated by the pension scheme member in order to be eligible for a survivors Pensions".
 19. In the telephone call, dated 11 March 2019, HSC confirmed that, it was only following the Brewster case judgment in 2017, Mr E was allowed to submit his application for partner's pension without the jointly signed nomination form. However, Mr E was still required to meet the second condition of Regulation 31E in order to be eligible for the benefits.

Ombudsman's decision

20. My role is to examine HSC's decision-making process, and decide whether it has, as far as possible, identified all potential beneficiaries; properly reviewed the merits of each one according to the Regulations; and made a decision which was within the range of decisions which it was reasonable for HSC to have made.
21. I have great sympathy for Mr E's situation. I appreciate that being in a close relationship with Ms N, he believes he should be entitled to a partner's pension. However, HSC must follow the scheme's regulations. HSC considered Mr E's claim for a partner's pension under the criteria for a potential beneficiary, but as he could not prove that he and Ms N were financially interdependent, he was not eligible for the partner's pension. Regulation 31E requires that Mr E must have lived Ms N as her husband or civil partner of and been financially dependent upon or interdependent with her for 2 years prior to her death. I appreciate that Mr E has provided evidence, that he feels, should be sufficient to prove his close relationship with Ms N, but I cannot fault the Trustees' conclusion that the evidence provided does not prove that Mr E met the dependency criteria set out by the scheme regulations.

22. Mr E strongly believes that the Brewster case applies to his complaint. As explained by the Adjudicator, that case held that an unmarried co-habiting partner could qualify even if there was no nomination form in their favour. This means that the condition in the Regulations which requires a nomination form to exist before a co-habiting partner may qualify for benefit has to be disapplied. However, Mr E still has to satisfy the remainder of the prescribed conditions set out in Regulation 31E. As Mr E cannot prove that he satisfied these other criteria, I do not find the Brewster case takes his claim any further.
23. It is clear that HSC, has considered Mr E as a potential beneficiary and has taken into account all relevant factors, ignoring irrelevant ones and made its decision in accordance with the criteria set out in the regulations.
24. Therefore, I do not uphold Mr E's complaint.

Karen Johnston

Deputy Pensions Ombudsman
26 March 2019

Appendix

“Surviving nominated partner’s pension

31E.-(1) A member whose superannuable employment ceases on or after 1 April 2008 may, by giving notice in writing to the Department, nominate a person (“the nominated partner”) to receive a surviving nominated partner pension on the member’s death and such a nomination shall be effective from the date the Department accepts it.

(2) The Department must accept a member’s nomination if-

(a) the member and the nominated partner have jointly made and signed a declaration in the form required by the Department that remains effective at the member’s death; and

(b) the nominated partner satisfies the Department that for a continuous period of at least two years ending with the member’s death-

(i) the member and the nominated partner were living together as if they were husband and wife or civil partners;

(ii) the member and the nominated partner were not prevented from marrying or entering into a civil partnership;

(iii) the member and the nominated partner were financially interdependent, or the nominated partner was financially dependent on the member; and

(iv) neither the member nor the nominated partner was living with a third person as if they were husband and wife or as if they were civil partners.”