

Ombudsman's Determination

Applicant	Mr N
Scheme	NHS Pension Scheme (the Scheme)
Respondents	NHS Business Services Authority (NHS BSA), Lincolnshire Community Health Services (LCHS)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by NHS BSA or LCHS.

Complaint summary

2. Mr N's complaint concerns NHS BSA's decision to pay him only death in service benefits, in respect of his late mother's (**Ms N**) membership in the Scheme. Mr N believes that NHS BSA and LCHS should have put Ms N's ill-health retirement benefits (**IHRB**) into payment prior to her death; and, if they had, he would be eligible to receive the associated IHRB death benefits as her beneficiary.

Background information, including submissions from the parties

3. On 1 August 2016, Ms N commenced sickness leave and then found out she was terminally ill with cancer.
4. On 7 August 2016, a request by Ms N to apply for IHRB was received by LCHS, Ms N's former employer. LCHS's payroll and pensions function was outsourced to a neighbouring Trust, Lincolnshire Partnership NHS (**LPFT**). LCHS passed Ms N's application to LPFT, which processed it on the same day and sent the necessary paperwork to Mrs N.
5. On 21 October 2016, NHS BSA wrote to Ms N acknowledging receipt of her application for IHRB.
6. On 24 October 2016, NHS BSA confirmed that Ms N's application for Tier 2 IHRB had been accepted.

7. On 31 October 2016, Ms N died. On the same day, LCHS was notified of NHS BSA's decision to grant Ms N IHRB.
8. On 2 November 2016, NHS BSA received an email from LCHS, advising that the form AW8 – Application for payment of the Scheme's retirement benefits had not been completed.
9. On 17 November 2016, as Ms N was an LCHS employee and member of the Scheme at time of her death, LCHS sent Ms N's family an application form for a Life Assurance Sum.
10. On 10 December 2016, Ms N's daughter, Ms H, raised a complaint under the Scheme's internal dispute resolution procedure (**IDRP**).
11. On 17 February 2017, NHS BSA issued its stage one IDRP response to Ms H. It confirmed that as no application for payment of benefits had been made, it was unable to authorise payment of IHRB and that only death in service benefits were payable.
12. On 16 June 2017, Ms H appealed.
13. On 1 July 2017, Ms H raised a further complaint to LCHS. She said that an error had been made by LCHS as, prior to Ms N's death, NHS BSA had confirmed that she qualified for IHRB.
14. On 28 July 2017, NHS BSA issued its stage two IDRP response to Ms H. It confirmed that it could only pay benefits which are provided for in the Regulations and that it had no power of discretion over the level and type of pension benefits paid to members or their next of kin. The decision maker had confirmed that a lump sum on death was payable in accordance with Regulation F5. He said that although the medical advisor approved Ms N's IHRB application on 24 October 2016, in order for IHRB benefits to be paid the Scheme would require form AW8 to be completed by the member. Further, if the benefits were to be commuted NHS BSA would also require the form AW341 to be completed by the member. As Ms N passed away before her last day of NHS employment, her retirement did not take place.
15. On 11 September 2017, LCHS responded to Ms H's complaint. It confirmed that Ms N had outstanding annual leave which would have taken her pensionable service to 16 November 2016. LCHS accepted that there had been a two day delay in informing its HR team to send out the AW8 form, however this timescale was in line with its Service Level Agreement, which allows for a response within a five days window. LCHS said that even if it had expedited this process, it would have made no difference to the outcome, because a few days were required to process the application form; and, Ms N's untaken annual leave would have taken her retirement date beyond her date of death.

Adjudicator's Opinion

16. As a result of LCHS' response to Ms H, Mr N, son of Ms N, complained to this Office. His complaint was considered by one of our Adjudicators, who concluded that no further action was required by NHS BSA or LCHS. The Adjudicator's findings are summarised below:-
- In order for Ms N to receive her IHRB, the Scheme would require the AW8 form to be completed by her. As she died before her last day of NHS employment, her retirement did not take place. The Adjudicator appreciated that, on 24 October 2016, NHS BSA confirmed that Ms N qualified for IHRB, however this was not the same as her employment ending on grounds of IHRB. The Adjudicator was satisfied that under Regulation F5 of the NHS Pension Scheme Regulations 1995, only death in service benefits were payable.
 - The Adjudicator thought that the time taken by LCHS and NHS BSA was reasonable in the circumstances. Ms N applied for IHRB and LCHS acted as quickly as possible. Her request was passed on to LPFT the same day it was received. The Adjudicator noted that LPFT also dealt with the request on the same day. Further, LCHS confirmed that NHS BSA made a decision in relation to the application within one working day of receiving it.
17. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments, which do not change the outcome. I agree with the Adjudicator's Opinion and will therefore only respond to the key points made by Mr N for completeness.

Ombudsman's decision

18. Mr N has said that that no-one had told him or Ms N that an AW8 form needed to be completed. However, even without the AW8 form, due to Mrs N's outstanding annual leave her pensionable service end date would still have extended beyond the date of her death. Under normal circumstances, LCHS would have sent any applicant an AW8 form to progress the application. However, in this case notification of the NHS BSA's decision had been superseded by news of Ms N's death so the AW8 form was not sent to her family.
19. LCHS has acknowledged that there was a two-day delay between LPFT's receiving notification of NHS BSA's decision and this being communicated to them, which resulted in LCHS not being notified until after Ms N death. However, I do not believe that this delay had any material impact. I am satisfied that even if LCHS had been notified immediately, and it had been possible to both send the AW8 form to Ms N and receive and process the completed form within the remaining two working days prior to her death, her retirement would not have taken effect until her pensionable service ended on 11 November 2016, which is 12 days after her death, because her outstanding leave necessarily extended her service. There would have been no eligibility for IHRB, only death in service benefits.

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20. I sympathise with Mr N and understand his frustration. I understand he feels that as NHS BSA informed Ms N that her IHRB application had been approved, this should be honoured. However, NHS BSA cannot vary benefits and must apply the correct Scheme Regulations. I find that NHS BSA was correct to award a lump sum on death in accordance with Regulation F5.

21. I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
29 July 2019