

PO-4855

Ombudsman's Determination

Applicant	Mrs J Webb
Scheme	NHS Pension Scheme
Respondent(s)	South Central Ambulance Service (SCAS)

Complaint summary

Mrs Webb's complaint against the SCAS is that they did not inform her or her late husband that it was possible for him to take ill-health retirement or a serious ill-health lump sum under the Scheme's regulations.

Summary of the Ombudsman's determination and reasons

The complaint should not be upheld against SCAS because they did not have a duty to advise/inform Mr Webb about the option to take ill health retirement or a serious ill health lump sum.

Detailed Determination

Material facts

1. The relevant regulations are the National Health Service Pension Scheme Regulations 1995 (SI1995/300) (as amended). In particular, Regulation E2A which provides for an ill health pension on early retirement. This regulation includes provision for the payment of a serious ill health lump sum instead of a pension where the member is expected to live for less than one year. Regulation T1 required a claim for benefits to be made in writing by the person claiming to be entitled to them.
2. Mr Webb was employed by the SCAS as an Operational Team Leader. He died whilst in service on 11 March 2013. Mr Webb was a member of the 1995 NHS Pension Scheme. His contract of employment provided that his post was superannuable unless he opted out of the Scheme or was ineligible to join. It provided that Mr Webb's remuneration would be subject to a deduction of 5 or 6% and SCAS would contribute 14%. The contract stated that details of the Scheme were given in a guide which could be obtained from his manager or SCAS' HR department.
3. Mr Webb became ill in November 2012, and was initially diagnosed with diverticulitis. He had periods of sickness absence in November and December 2012. Mr Webb was admitted to hospital on 16 January 2013. He underwent tests on 31 January 2013. Mrs Webb has said that they were made aware that cancer cells had been detected on 1 February 2013. Further tests were carried out on 6 February 2013, and Mr Webb was discharged from hospital on 7 February 2013.
4. SCAS say that a member of their HR team (**Ms P**) was asked to liaise with Mr and Mrs Webb to discuss his pension options. They say that she offered to meet with Mr and Mrs Webb but this offer was declined. Mrs Webb says that she does not recall being offered a meeting. SCAS say the offer of a meeting was made verbally and they do not have a record of the date. They say that Ms P's recollection is that she made the offer via Mr Webb's manager, **Mr F**, when she learnt that Mr Webb was to be admitted to a hospice.
5. One of Mr Webb's managers, **Mr B**, met with him on 14 February 2013. Mr B subsequently wrote to Mr Webb, on 27 February 2013, outlining the points raised. He said that the meeting had been held to discuss Mr Webb's sickness absence beginning on 4 January 2013. Mr B described the meeting as an informal review under SCAS' Sickness and Capability policies. Amongst other things, Mr B noted that, following Mr Webb's admission to hospital in January 2013, an abdominal malignancy had been found and further investigations had revealed a secondary tumour on the outside of his colon. He noted that Mr Webb had been discharged home on 8 February 2013, but was again admitted to hospital on 23 February (sic). Mr B said that a telephone consultation had been scheduled for 26 February 2013, and, after a brief conversation, a further appointment had been made for 12 March 2013. He went on to say that Mr Webb's health issues were ongoing and his GP had signed him off until 17 April 2013. Mr B said it was clear that Mr Webb would be

absent from work for a considerable period of time. He said that he would arrange and conduct a “first formal capability review” when Mr Webb was well enough to attend. Mr B said that it had been agreed that he would be Mr Webb’s main contact for the purposes of the sickness and capability procedures. He said that Mr F and the area manager (**Mr BI**) were also maintaining close and regular contact with Mr and Mrs Webb.

6. Mr Webb had an outpatient’s appointment on 18 February 2013. Mrs Webb has explained that they were told that secondary cancer cells had been detected and her husband was told he did not have much time. Mrs Webb has provided a transcript of a number of text messages sent by her husband on 18 February 2013, to employees at the SCAS. Messages sent to Mr BI said that secondary cells had been detected, he was waiting to see what treatment was planned and was due to have an appointment with oncologists. Similar messages were exchanged with Mr B.
7. Mr Webb was readmitted to hospital on 22 February 2013. SCAS say that, on or about 22 February 2013, Mr Webb’s managers arranged for him to continue to receive full pay beyond 24 June 2013, which was when his pay would have been reduced to half.
8. Mrs Webb says that, on or about 25 February 2013, she had a conversation with a friend, **Mrs V**, whose husband had also worked for SCAS and who had also died in service. Mrs V has provided a statement in which she confirms that she had a conversation with Mrs Webb regarding pension options for Mr Webb. She says that her husband had been given estimates for ill health retirement and death in service and that she was aware there was a significant difference in the benefits. Mrs V says that she suggested that Mrs Webb discuss taking ill health retirement with Mr Webb and stressed the need to do so sooner rather than later. She says that she explained to Mrs Webb that, although her husband had opted for ill health retirement, he had died before he had signed the relevant paperwork and, as a result, she had received approximately £70,000 less than she might otherwise have done. Mrs V says that she is aware that Mrs Webb spoke with “managers at SCAS” about the matter. Mrs Webb says that she passed this information on to Mr F.
9. Mrs Webb says that she showed or gave a note to Mr F, on 25 February 2013, saying that she had been informed that she would be better off financially if they went for ill health retirement rather than death in service. She says that she did not keep a copy of the note. SCAS say that they have spoken to Mr F and that he does not recall this.
10. Mr Webb was transferred to a hospice on 1 March 2013. SCAS say that, on 7 March 2013, Ms P contacted SCAS’ pensions/payroll administrators, McKesson Information Solutions UK Limited (**McKesson**), to request a pension estimate based on ill health retirement because she had been told that Mr Webb had been admitted to the hospice. SCAS say that she did this on her own initiative.
11. Mr F visited Mr Webb on 7 March 2013. Mrs Webb has said that she signed some forms, on that day, providing her bank details.

12. On 8 March 2013, McKesson issued a benefit forecast for ill health retirement on 31 March 2013. SCAS say that this date was chosen as an estimated date by Ms P and, had an application for ill health proceeded, NHS Pensions would have confirmed the actual date.
13. Mr Webb died on 11 March 2013. The Scheme has paid death in service benefits. At Mrs Webb's request, NHS Pensions provided estimates of the alternative ill health retirement benefits. They quoted a serious ill health lump sum of £154,311. The death in service lump sum is £85,857. The spouse's pension is the same for either option.

Additional information provided by NHS Pensions

14. NHS Pensions were asked to provide some additional information about the process for claiming ill health retirement and/or a serious ill health lump sum. They explained that, in order to apply for a serious ill health benefit whilst still in NHS employment, there is a four-step process:
 - The member should obtain form AW33E from their employer. They need to complete their part and ask their doctor(s) to provide information. The AW33E should then be returned to the employer, together with any supporting evidence, for them to complete their part and send it to NHS Pensions.
 - NHS Pensions then send the case papers to their medical advisers. They have explained that, where the member has a life expectancy of less than 12 months, their medical advisers can provide a 48 hour turnaround.
 - NHS Pensions then provide a decision for the member and the employer. They have explained that, from receipt of an application to providing a decision, they would estimate the time taken to be approximately 72 hours.
 - If the application is successful, the employer should provide the member with forms AW8 and AW341. The member should complete these forms if they want to commute their benefits for a one-off lump sum. On receipt of these forms, NHS Pensions will calculate the benefits. They have said that, where the member is terminally ill, they can provide estimates of benefits in two to three days.
15. The forms referred to above are also all available on the NHS Pensions website.
16. NHS Pensions also provided copies of the information which was available on their website in March 2013. They provided an Ill Health Retirement Factsheet which (amongst other things) explained that, if the member was terminally ill, benefits could be taken as a lump sum. It referred to a Terminal Ill Health Factsheet. This factsheet explained about the eligibility requirements for a lump sum payment and the forms to fill in. It included examples of the way the benefit would be calculated.

Summary of Mrs Webb's position

17. There has been a significant amount of correspondence between the parties in this case. It would not be helpful or practical to reproduce all of it in this document. What follows is a summary of the key issues which Mrs Webb has raised taken from this correspondence and from submissions to the Pensions Ombudsman Service.
18. Mrs Webb feels that neither she nor her husband were given sufficient advice about his pension options by SCAS. She acknowledges that SCAS staff were not authorised to give financial advice but says that she would not have needed this advice if she had been made aware of the options available to her husband. She says that the commuted lump sum option is clearly the best option.
19. Mrs Webb says that SCAS were made aware of her husband's condition on 18 February 2013, at the latest. She accepts that she did not inform SCAS that her husband was dying and had a very short time to live. She considers that SCAS were given sufficient information for them to determine that her husband had only a short time left. She has pointed out that they are a professional medical organisation. She believes that "alarm bells should have been ringing" five weeks before her husband died.
20. Mrs Webb refers to the telephone consultation arranged for 26 February 2013, which had been cancelled because her husband had been too unwell. She considers that, if SCAS had not appreciated the urgency of the situation before, they knew or ought to have known on 26 February 2013, that her husband was terminally ill and he would not survive long enough for them to complete their usual procedures. She points out that SCAS did not take any action when her husband was admitted to the hospice.
21. Mrs Webb points out that she requested information about ill health retirement from NHS Pensions after her husband's death and was able to demonstrate that, in urgent cases, these can be provided in a matter of hours.
22. Mrs Webb says that Mr F was made aware that they wanted to apply for ill health retirement on 25 February 2013. She says that they were not made aware that there would be forms to complete for this to go ahead. She says that, had she been aware of the financial consequences, she would have had a conversation with her husband and he would have signed the necessary forms.
23. Mrs Webb has pointed out that her husband was extremely ill at the time and was not well enough to discuss matters. In response to the assertion that, as a team leader, her husband would have been aware of the necessary process, she says that no employee can have an in-depth knowledge of every policy. She says that he was not aware of the commuted lump sum option.
24. Mrs Webb is of the view that the HR staff at SCAS were not aware of the option to take a commuted lump sum. She has explained that she was able to discover information about this option in one evening of searching on the NHS Pensions website. She believes that SCAS staff did not know the process well enough and, as

a result, did not ask her or her husband for a prognosis and did not realise that the ill health retirement process could be expedited when life expectancy was short.

25. Mrs Webb says that the assumption has been made by SCAS' legal team that she and her husband were not expecting his death. She says that they have come to this conclusion because appointments were made for dates after his death and because her husband was discussing possible treatment. She has explained that they were both too exhausted to notice the date of the appointment. She has also explained that her husband put on a brave face when discussing his condition with anyone other than her.
26. Mrs Webb says that she was unaware of the importance of meeting with SCAS' HR and therefore considered the offer of a meeting and any telephone calls as an unnecessary intrusion.
27. Mrs Webb says that the number of days of outstanding annual leave quoted by SCAS has not been agreed and no evidence has been provided to substantiate the figure quoted. She says that, if he had been properly advised by SCAS, her husband would have waived his entitlement to any outstanding leave.

Summary of SCAS' position

28. Similarly, what follows is a summary of the key elements of SCAS' response taken from their correspondence and formal responses.
29. SCAS say that Mr and Mrs Webb would ordinarily have been informed of retirement options as part of their sickness absence and capability process. They have provided copies of their policy documents setting out this process in detail. They say that ill health retirement was not something which would be discussed with an employee immediately following a diagnosis where the employee anticipated receiving treatment. With reference to chronic illnesses and terminally ill staff, the sickness absence policy states,

“Extra sensitivity should be used when managing sickness absence for staff who are suffering from a life threatening illness and/or who are terminally ill ... Advice should be sought from HR and additional advice will need to be sought from the Payroll department on pension matters where the member belongs to the NHS pensions scheme.”
30. SCAS say they are not allowed to provide advice on which pension option an employee should take. They say that this advice can only be provided by an appropriately qualified person who is authorised to do so by the Financial Conduct Authority. They say that they will try and provide an employee with all the information they need to understand their options.
31. SCAS say that they were not aware of the seriousness of Mr Webb's condition. They say they have spoken to the members of staff who were in touch with Mr and Mrs Webb at the time and that they have said that they were not told that Mr Webb's

condition was terminal or that he only had a few weeks to live. In particular, they say that neither Mr B nor Mr BI were told that Mr Webb's doctor had confirmed the seriousness of his condition, or that he had been told that he had only a short time left. They say that Mr B became aware that Mr Webb's condition might be terminal when he visited him on or about 26 February 2013, because of the deterioration in his condition. They say he was not aware that the prognosis was that Mr Webb had weeks rather than months left. They say that Mr BI and Mr F made the assumption that Mr Webb's condition was terminal when they were told he had been transferred to the hospice but had not been told this.

32. SCAS say that it is not reasonable that they should have known, on the basis of Mr Webb's treatment alone, how serious his condition was or how long he had left. They point out that the staff members who were in touch with him did not have the medical knowledge to make those kinds of assumptions.
33. SCAS say that the ill health retirement process could not commence until they received an application from Mr Webb. They say they did not receive such an application. They have spoken to Mr F and he does not recall being told that Mrs and Mr Webb wanted to pursue ill health retirement. They have also pointed out that they would have needed an instruction from Mr Webb and would only have been able to act on Mrs Webb's instruction if he had been unable to act for himself.
34. SCAS accept that Mrs Webb may not have been aware of the process needed to initiate ill health retirement. However, they believe that Mr Webb, as a team leader, would have known about it. They argue that it is not reasonable to presume that an employer could initiate matters without input from the employee. They say that the usual process would be to hold a meeting with the employee before requesting an estimate of benefits from NHS Pensions and that a meeting was offered by their HR staff but it was declined.
35. SCAS say that their HR staff were aware of the commuted lump sum option but acknowledge that they may not have known it by that phrase. They say that, had there been a meeting with Mr and Mrs Webb, their HR staff would have mentioned this option. They also say that, had the ill health retirement process proceeded, this option would have been included in information supplied by NHS Pensions.
36. SCAS say that it was not a foregone conclusion that taking ill health retirement would be the better option financially for Mr Webb; this depends upon an employee's pension benefits and associated entitlements. They do not have access to the relevant information, which is held by NHS Pensions and McKesson.
37. SCAS have explained that they keep a physical receipt log and ask members of staff to sign to acknowledge receipt of information about their pensions. They have provided a copy of the receipt signed by Mr Webb in 2010, acknowledging receipt of his "NHS Choice Pack", relating to the introduction of the 2008 scheme. They say that Mrs Webb would also have received this information in 2010/11 as a former member

of staff. SCAS also say that they signpost members of staff to the NHS Pensions website.

38. SCAS have referred to the NHS Pension Scheme Employer's Charter and say that they understand their role in an ill health application to be as set out in this document. They believe that this comprises undertaking the necessary administrative procedures and providing Scheme members with information. They do not consider that it was feasible for them to have determined, in February/March 2013, that Mr Webb had less than 12 months to live and that they should have implemented the faster serious ill health procedure. They consider that it was reasonable for them to follow the normal sickness absence procedure.
39. SCAS have suggested that, due to the length of time it would take NHS Pensions to process an application for ill health retirement, it would not have been possible for an application to have been completed prior to Mr Webb's death. They note that it is not until step four of NHS Pensions' process that matters can be significantly expedited such that a benefits calculation can be provided in 48 hours. They point out that this step can only be taken once information has been submitted to NHS Pensions, including two medical assessments.
40. SCAS have explained that, at the date of his death, Mr Webb had 117 hours of unused annual leave. They point out that this is added to his pensionable service under the Scheme Regulations (Regulation C2(5)). This extended Mr Webb's pensionable service to 2 April 2013. SCAS say that, even if an application for ill health retirement had been made, Mr Webb would have been deemed to have died in service.

Conclusions

41. The circumstances of this case make it particularly difficult for both parties and I am not unconscious of that. The task before me is to determine what responsibilities SCAS had in the particular circumstances of Mr Webb's case and whether they discharged these in a proper manner.
42. Mrs Webb considers that not enough was done by SCAS to advise her and her husband of the options available to them under the Scheme. She uses the words "advise" and "advice" in her correspondence but I see that she accepts that the SCAS staff were not authorised to give financial advice. The giving of financial advice is now a strictly regulated activity and members of SCAS staff would not be expected, nor authorised, to give such advice. It may be more accurate, therefore, to say that Mrs Webb considers that not enough was done by SCAS to provide her and/or her husband with relevant information about his options. I think it would be fair to say that Mrs Webb considers that SCAS should have been alert to the fact that her husband might have less than 12 months to live and have obtained estimates of ill health retirement benefits, including the option to take a serious ill health lump sum, on his behalf.

43. There are statutory requirements relating to the provision of information about pension schemes. At the relevant time, these were the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (SI1996/1655) (as amended). These regulations set out in some detail the kind of information which was to be provided and in what circumstances. However, responsibility for the provision of the statutory information lay with the trustees or managers of the scheme. In this case, that would have been NHS Pensions.
44. That is not to say that SCAS had no responsibility for providing Mr Webb with information about the Scheme. Section 1 of the Employment Rights Act 1996, requires employers to provide employees with a written statement setting out the essential terms of their employment contract. This must include any terms and conditions relating to "pensions and pension schemes". However, this information can be very basic and would not encompass the kind of information which Mr and Mrs Webb required.
45. The question of whether and to what extent an employer has a duty to provide information about pension scheme options for an employee has been considered by the Courts on a number of occasions. In *Scally v Southern Health & Social Services Board* [1991] IRLR 522, the House of Lords found that, in a limited set of circumstances, a duty to inform employees about a contractual right could be implied into a contract of employment. The circumstances are that: the terms of the contract have not been negotiated with the individual employee; a particular term of the contract makes a valuable right available contingent upon the individual taking some action; and the employee cannot reasonably be expected to know of the term unless it is drawn to his attention. In the *Scally* case, the employees had a right to purchase additional pensionable service but were required to exercise that right within a prescribed period of time. This was not brought to their attention in time for them to exercise the right.
46. Subsequent cases have indicated that this implied duty is to be narrowly defined. In other words, it is only a duty to take reasonable steps to inform an employee about any contractual rights. For example, in *University of Nottingham v Eyett & another* [1999] IRLR 87, the employer failed to advise Mr Eyett that his chosen retirement date was financially disadvantageous to him; had Mr Eyett retired in the following month, his retirement benefits would have been calculated at a higher rate. Mr Eyett knew about his early retirement rights and could have worked out the financial implications for himself from a handbook supplied to him. The court found that the employer did not have a duty to advise Mr Eyett that he might be making a mistake. In *Outram v Academy Plastics* [2000] IRLR 499, the court decided that there was no general implied duty on an employer to provide information and/or advice to an employee about a pension scheme in order to prevent economic loss.
47. The first step to determining whether a *Scally* type duty existed should be to consider whether the option to take ill health retirement and a serious ill health lump sum could be said to be a contractual right. The extent to which a contractual right to benefits

under a pension scheme (as opposed to the right to join the scheme) exists is something of a grey area. However, in *Ibekwe v London General Transport Services Ltd* [2003] EWCA Civ 1075, the Court of Appeal was prepared to assume that there was either an implied term in the contract of employment, or a duty of care in tort for the purposes of considering Mr Ibekwe's case. The Court went on to find that the duty amounted to taking reasonable steps to make an employee aware of pension benefits and that the employer would not have breached such an implied term in that case. It might be possible, in the right circumstances, to find maladministration if there had been a breach of the *Scally* duty. I propose, therefore, to take a similar approach to the Court of Appeal and consider whether there has been a breach of a *Scally* type duty in Mrs Webb's case.

48. Assuming that the right to take ill health early retirement and, in particular, to receive a serious ill health lump sum is a contractual right, the question is whether the specific circumstances for a *Scally* type duty exists. Mr Webb's contract of employment was not negotiated with him and he was required to take some action in order to claim his benefits. It remains, therefore, to consider whether he could reasonably have been expected to know about the ill health retirement option unless it was brought to his attention by SCAS.
49. Information about the Scheme was readily available on the NHS Pensions website. This included factsheets specifically about ill health retirement and the serious ill health lump sum option. The factsheets explained what steps were necessary in order for the member to claim these benefits and the necessary forms were also available on the website. The members' guide referenced these factsheets. SCAS have also made the point that Mr Webb would have been aware of the ill health option because, as a manager, he would have helped other members of staff complete the process. Mrs Webb has acknowledged that she was able to locate the information on the NHS Pensions website quite easily when she looked for it.
50. In a previous case (PO-3750, November 2014), the Deputy Pensions Ombudsman found that it was not sufficient for an employer simply to make information available without providing guidance as to where to find it. However, in that case, the member had been specifically directed to a source of information which did not provide all that she needed in order to make an informed decision. I find that the circumstances of Mr Webb's case are different and are more akin to the circumstances of the *Eyett* case. The relevant information was readily available to Mr and Mrs Webb without SCAS needing to draw their attention to it. It may be perfectly understandable that, in the circumstances, they did not take steps to explore the options available to them but this does not mean that there was a responsibility for SCAS to do so on their behalf. I accept that Mr Webb may not have been aware of the serious ill health lump sum option but he would have been aware of the NHS Pensions website and how to source information. I do not find that there was a *Scally* type duty on SCAS to obtain information on ill health retirement for Mr Webb.

51. SCAS have said that the ill health retirement option (including, where appropriate, the serious ill health lump sum option) will be raised in the course of their sickness absence management process. I have, therefore, considered whether SCAS could be said to have assumed a responsibility for obtaining information. Their sickness absence policy does refer to seeking advice from HR and Payroll in cases of terminal illness where the member of staff belongs to the Scheme. There is, however, no provision for obtaining information about retirement options or for discussing these with the member of staff concerned. I do not find that SCAS assumed a responsibility for obtaining the kind of information Mrs Webb considers they should have under their sickness absence policy.
52. Having found that SCAS did not have a duty to obtain further information relating to ill health retirement for Mr Webb, it is not strictly necessary to consider what might have been known about Mr Webb's condition or at what point it might have been known that his condition was terminal. However, as in the *Outram* case, there were close personal relationships between some of the key parties. It is, therefore, worth making the point that any duty would rest with SCAS as an organisation and not with any of the individuals concerned. Any duty would not be any greater nor any less depending upon the nature of the relationship between the SCAS employees involved.
53. I move now to consider whether Mr and Mrs Webb requested ill health retirement at any point. Mrs Webb recalls having raised this with Mr F on or around 25 February 2013. SCAS say that they have asked Mr F about this and he does not recall the matter being raised with him. In order to initiate the ill health retirement process, Mr Webb would have had to have completed Form AW33E. This form can be obtained from SCAS but is also available on the NHS Pensions website. Mrs Webb has said that they were not made aware that there were forms to complete. Given that he had a managerial role, it is likely that Mr Webb would have been aware that most processes involving the Scheme required forms to be completed. It also appears, from her statement, that Mrs V had referred to there being "paperwork" to be completed.
54. It may well be that, having spoken to Mrs V, Mrs Webb may have mentioned the possibility of ill health retirement to Mr F on or around 25 February 2013. However, the evidence does not support a finding that a request for ill health retirement was made at any point. This would have required the appropriate forms to be completed.
55. Had Mr Webb completed a Form AW33E on 25 February 2013, it is possible that the process outlined by NHS Pensions (see above) could just about have been completed by the date of his death. This is reliant on Mr Webb completing the member's section and obtaining supporting information from his doctor(s) on 25 February 2013. The form would then have gone to SCAS for them to complete their section and for their occupational health doctor to complete his/her part of the form. At a minimum, this would have taken 2-3 days. NHS Pensions estimate that they can issue a decision within 72 hours of receiving the form and necessary supporting medical evidence. The decision would have been issued on or around 5 or 6 March

2013. Mr Webb would then have had to have completed forms AW8 and AW341 to indicate a decision to take a serious ill health lump sum. If he had done so straightaway, these forms could have been with NHS Pensions on 7 or 8 March 2013; that is, the Thursday or Friday before his death.

56. SCAS have pointed out that, at the time of his death, Mr Webb had outstanding annual leave which had to be added to his pensionable service. This is a reference to Regulation C2(5). Where a payment is made in respect of leave not taken, the member's pensionable employment is treated as continuing for a period equal to the leave for which the payment is made. In Mr Webb's case, the period of outstanding leave is said to be 117 hours; though I note that Mrs Webb disputes this. Any outstanding leave would have to be added to his pensionable service and would mean that it is likely that he would still have been in pensionable employment on 11 March 2013, even if he had applied for ill health retirement on 25 February 2013. I am not suggesting that Mr Webb would have known about this particular provision; although it is not a particularly obscure part of the Scheme's regulations since it applies whether a member leaves or dies. The fact remains that a period of untaken leave would have had to have been accounted for.
57. Mrs Webb has suggested that her husband would have waived his outstanding leave had he known about the requirement to extend his pensionable employment. It is not at all clear that this option would have been available to Mr Webb. He had a statutory right to annual leave and a statutory entitlement to the equivalent pensionable employment under the Scheme's Regulations. If Mr Webb was going to waive those rights, and I make no finding as to whether he would have been able to do so, this would have required some form of compromise agreement between him and SCAS. This, in itself, would have added further time to the already tight timing for the ill health retirement option. I find it unlikely that this would have been achieved by the date of Mr Webb's death and that this was not due to any maladministration on the part of SCAS.
58. Thus, regardless of what was said to Mr F on or around 25 February 2013, and whether Mr Webb could have been retired on the grounds of ill health prior to his death. I do not find that this was a consequence of any maladministration on the part of SCAS.
59. I am sympathetic to the situation in which Mrs Webb finds herself, but I have not found that there are grounds to uphold her complaint against SCAS.

Anthony Arter

Pensions Ombudsman
6 July 2015