

## Ombudsman's Determination

Applicant	Mr T
Scheme	HSC Pension Scheme ( <b>the Scheme</b> )
Respondent	HSC Pension Service

## Outcome

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

## Complaint summary

3. Mr T disagrees with the decision of HSC Pension Service not to reinstate his mental health officer (**MHO**) status following a break in service where he continued to work in the field of mental health.

## Background information, including submissions from the parties

4. Mr T left HSC employment via redundancy on 20 December 1995. At the time he left employment, he had MHO status. MHO status was granted to members in relevant mental health employment and provides them with the option of retiring before the Scheme's normal retirement age, without reduction to their benefits. MHO status only applies to members who were granted such status before 1 April 1995 and who had not had a break of more than five years in the Scheme.
5. Mr T returned to HSC employment on 12 November 2001. In the period between, Mr T continued to work in mental health related roles in the private sector.
6. At the time Mr T returned to HSC employment, he queried reinstating his MHO status. His employer replied on 29 May 2002:  
  
"MHO status no longer applies to any new members who join the HPSS Superannuation Scheme after 1<sup>st</sup> April 1995, unless they have held MHO status within the previous 5 years.

Your current employment commenced on 12 November 2001 and you have not held MHO status within the previous 5 years, therefore MHO status will not be granted to your current post.”

7. Mr T says that it was not until 2016 that he discovered that mental health work performed outside of HSC could be considered for reinstating MHO status. Mr T therefore made an application, via the Scheme’s internal dispute resolution procedure (**IDRP**) to have his MHO status reinstated. His request was rejected under both stages of the IDRP on the basis this his break in service (of almost six years) is outside of the five years stated in The Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995 (**the Regulations**)<sup>1</sup>.
8. Mr T disagreed with the IDRP response and therefore made a complaint to this service.

### **Adjudicator’s opinion**

9. Mr T’s complaint was considered by one of our Adjudicators who concluded that no further action was required by HSC Pension Service. The Adjudicator’s findings are summarised briefly below:-
  - The Regulations support HSC Pension Service’s decision that Mr T could not have his MHO status reinstated, as his gap in HSC employment is more than five years.
  - It appeared that Mr T had misunderstood what was meant regarding the ability of HSC Pension Service to take account of mental health work outside of HSC employment. The information on the HSC Pension Service website (and supported by the Regulations) confirms that some eligible employment outside of HSC can count towards the 20 years needed to “double up” membership (i.e. that once a member has reached 20 years’ service as an MHO, service accrued beyond that is doubled. This allows those with MHO status to retire earlier at age 55 without reduction). The Regulations and HSC Pension Service policy allows a member from age 50 to request that previous employment that is not HSC related to be considered for “doubling”. Neither the policy or the Regulations state that members will be reinstated with MHO status, only that their eligible employment will allow them to, essentially, retire earlier, but without contributing more to their final benefits.
10. Mr T did not agree with the Adjudicator and submitted the following:

“Technicalities should not outweigh fairness. there should be the ability to look at each case in an individual way, look at the circumstances and make a determination given these unique circumstances. it appears

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<sup>1</sup> See Appendix I

the Superannuation branch hides behind technicalities and barely known conventions and takes no account of what is right and proper.

I know I do the same work as someone who holds MHO status, I work alongside these staff, to be tripped up by an archaic time frame, which has no basis in law or precedent in any other scheme, is just unfair and unjust.”

11. As Mr T does not accept the Adjudicator’s opinion, the complaint was passed to me to consider. Mr T’s further comments do not change the outcome. I agree with the Adjudicator and I will therefore only respond to the key points made by Mr T for completeness.

### **Ombudsman’s decision**

12. While Mr T may feel that his position is unfair and that each case should be considered on its own merits, my role is to consider whether Mr T has been treated in accordance with the Regulations, I cannot direct HSC Pension Service to act outside of the Regulations, regardless of Mr T’s personal circumstances or feelings on the matter.
13. The Regulations have been interpreted correctly by HSC Pension Service, in their application to Mr T’s service. He had a break in service of more than five years and therefore he is not eligible to have his MHO status reinstated. There is also nothing within the Regulations that provides HSC Pension Service with a discretion to consider any circumstances except the length of the break in service, or that allows HSC Pension Service to take account of Mr T’s non-HSC employment to reinstate his MHO status in the way that Mr T is requesting.
14. Therefore, I do not uphold Mr T’s complaint.

**Anthony Arter**

Pensions Ombudsman  
26 April 2018

## Appendix I

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

#### PART IX

##### SPECIAL PROVISIONS FOR CERTAIN MEMBERS

###### *Mental health officers*

76.—(1) Subject to paragraph (2), this regulation applies to a member who at the coming into operation of these Regulations— 51

- (a) is in superannuable employment under the scheme as a mental health officer; or
- (b) has accrued rights to benefits under the scheme arising out of a previous period in which the member was engaged in such employment and at no time since the last occasion on which the member was so engaged has had a break in superannuable employment for any one period of 5 years or more.

...

(6) For the purposes of calculating the 20 year period referred to in paragraph (5)—

- (a) there shall, in the case of a member who has reached age 50, be taken into account any period before he became a mental health officer in which he was employed on the staff of a hospital used wholly or partly for the treatment of persons suffering from mental disorder and in which he devoted the whole or substantially the whole of his time to the treatment and care of such persons unless it would be more favourable to the member (or, if the member has died, to the persons entitled to benefits in respect of the member) to disregard this paragraph.

- (b) superannuable service does not include additional service bought under regulation 67 (Right to buy additional service).

...

(14) In this regulation, “mental health officer” means—

- (a) an officer working whole-time on the medical or nursing staff of a hospital used wholly or partly for the treatment of people suffering from mental disorder, who devotes all, or almost all, of his time to the treatment or care of persons suffering from mental disorder;

- (b) any other officer employed in such a hospital who is within a class or description of officers designated by the Department as mental health officers for this purpose; and

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(c) a specialist in part-time HPSS employment who devotes all, or almost all, his time to the treatment or care of people suffering from mental disorder and who satisfies the requirements of paragraph (15).