

## Ombudsman's Determination

Applicant	Miss K
Scheme	Teachers' Pension Scheme ( <b>the Scheme</b> )
Respondent	Teachers' Pensions ( <b>TP</b> )

## Outcome

1. I do not uphold Miss K's complaint and no further action is required by TP.

## Complaint summary

2. Miss K complained that TP did not recognise her as Mr S' partner when he died. This resulted in her not receiving his death grant or surviving partner's pension from the Scheme.
3. Miss K submitted that she lived with Mr S for 16 years, so she asked for TP's decision to be reversed.

## Background information, including submissions from the parties

4. Mr S was an active member of the Scheme, a defined benefit pension arrangement. His Normal Retirement Age was 60. The sponsoring employer was the University of Hertfordshire (**the Employer**). TP has said that Mr S did not nominate anyone to receive Scheme benefits in the event of his death.
5. Mr S was divorced from Mrs S in February 2002. They had an adult son.
6. While Mr S did not remarry, Miss K has said that she lived with Mr S as his partner since 2002. They had always each owned a house registered in single names.
7. Mr S had a brother, Mr D, and Miss K has a brother, Mr K.
8. In 2011, Mr S suffered lung issues, and he underwent an operation at Royal Papworth Hospital (**Papworth Hospital**).
9. In October 2011, Mr S wrote his will. Mr D was a named beneficiary and the sole Executor. Miss K was not named in Mr S' will.

10. On 6 October 2016, due to continuing poor health, Miss K has said that Mr S attended a meeting with the Employer's pension manager to discuss the possibility of taking a lump sum from the Scheme to allow Mr S and Miss K to travel.
11. In February 2017, Mr S was assessed by Papworth Hospital for a lung transplant, and in May 2017, he was put on a lung transplant waiting list.
12. On 15 May 2017, TP published a general news bulletin on the Scheme's website, which stated the following:

"Important information for unmarried partners.

Following a recent court ruling, it's no longer necessary to nominate an unmarried partner to receive a pension in the event of your death, but you may wish to make a partner nomination so that we have the most up-to-date contact details. A partner nomination can be made here. If you're not married or in a civil partnership but are in a long term relationship, your partner may be entitled to a survivor's pension, depending on certain criteria being met: you have been living with that person as if you were married couple or in a civil partnership for at least two years; you can marry or register a civil partnership with that person; neither party is living as if married or in a civil partnership with a third person; and that person is financially dependent on you or you are financially interdependent with that person at the point of your death."

13. In June 2017, Miss K was admitted to Watford General Hospital (**Watford Hospital**) for an operation.
14. On 10 July 2107, Mr S was also admitted to Watford Hospital. He was diagnosed with a brain tumour and was subsequently admitted to the National Hospital for Neurology and Neurosurgery (**NHNN**).
15. On 5 November 2017, Mr S died. He was 59 years old.
16. The Teachers' Pensions Regulations 2010 (SI 2010/9900 (**the Regulations**)) are applicable to this complaint and relevant extracts are set out below in paragraphs 17 and 18.
17. Section 82 of the Regulations is in respect of the person to whom a death grant is payable and states the following:

"(1) A person ("the appointor") may nominate another individual ("the nominee") for the purpose of this Part by giving written notice to the Secretary of State.

(2) A nomination under paragraph (1) ceases to have effect if—

(a) the appointor revokes the nomination by giving written notice to the Secretary of State,

(b) the appointor subsequently nominates a different person in place of the nominee, or

(c) the nominee dies.

(3) The nominee is the appointor's death grant beneficiary for the purpose of this Part if the nomination has effect at the date of the appointor's death.

(4) Where the appointor nominates more than one individual under paragraph (1), the notice must state in relation to each nominee—

(a) the share of the death grant to be paid to the nominee, and

(b) whether, if the nominee predeceases the appointor, the Secretary of State must treat the notice as stating that the deceased nominee's share of the death grant be paid—

(i) to the surviving nominee or, if there is more than one, to the surviving nominees in accordance with paragraph (5), or

(ii) to the appointor's personal representatives as part of the appointor's estate.

(5) Where the share of the deceased's nominee's death grant is to be paid to the surviving nominees it is to be paid to them in shares such that the proportion which each surviving nominee's share bears to each of the other surviving nominee's shares is the same as it was in the nomination.

(6) Any death grant paid under this Part must be paid to the appointor's death grant beneficiary or, if more than one, death grant beneficiaries in the shares determined in accordance with paragraphs (4) and (5).

(7) But where there is no death grant beneficiary, the death grant must be paid to the appointor's surviving spouse, surviving civil partner or surviving nominated partner or, if there is no such person, to the appointor's personal representatives as part of the appointor's estate."

18. Section 90 of the Regulations is in respect of the nomination of a surviving partner and states the following:

"(1) A person (A) may nominate another person (B) to receive a pension by giving the Secretary of State a declaration signed by both A and B that the condition in paragraph (2) is satisfied.

(2) The condition is that—

- (a) A is able to marry, or form a civil partnership with, B,
- (b) A and B are living with each other as if they were husband and wife or civil partners,
- (c) neither A nor B is living with a third person as if they were husband and wife or civil partners, and
- (d) either B is financially dependent on A or A and B are financially interdependent.

(3) A nomination ceases to have effect if—

- (a) either A or B gives written notice of revocation to the Secretary of State,
- (b) A makes a subsequent nomination under this regulation,
- (c) either A or B marries, forms a civil partnership or lives with a third person as if they were husband and wife or civil partners, or
- (d) B dies.

(4) B is A's surviving nominated partner if—

- (a) the nomination has effect at the date of A's death, and
- (b) the condition in paragraph (2) was satisfied for a continuous period of at least 2 years ending on A's death."

19. On 10 November 2017, a representative of the Employer emailed TP. He attached a form titled "Teacher Death – Service and Salary" (**Form One**). This set out Mr S' service and salary information and next of kin. TP has said that Mr S' next of kin in Form One was not Miss K<sup>1</sup>.

20. In his email, the Employer's representative made the following points:-

- Miss K had requested him to forward two pension forms to TP. These were: "Nomination for death grant" (**Form Two**) and "Nomination of partner" (**Form Three**), which Miss K had completed.

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<sup>1</sup> The relevant section has been redacted in the evidence submitted to The Pensions Ombudsman.

- Miss K told him that Mr S had wanted her to receive his pension benefits, but he had been too ill to sign the Forms. Form Two was not signed by Mr S in the signature space, but there were illegible scribbles on page three. It was undated. Form Three stated that Miss K was Mr S' nominated partner, and they had lived together for 16 years. It was signed by Miss K as Mr S' partner, but not by Mr S. It was also undated.
- He could not personally say what Mr S' wishes had been for the payment of his pension benefits.

21. On 25 November 2017, Miss K wrote to TP. She enclosed the following documents:-

- "Death notification and application for death benefits" (**Form Four**). It was unsigned and undated.
- Certified copy of an entry for Mr S' death (**the Death Certificate**), dated 9 November 2017. The Death Certificate stated that Mr D had been the informant of Mr S' death.
- Decree absolute for Mr S' marriage to Mrs S.

22. In Miss K's letter, she made the following points:-

- Although prior to his death Mr S could hold a pen, he had difficulty in controlling its movement. So, he had not been able to sign Form Two in the space provided but had attempted to write his signature on page three.
- His handwriting had been witnessed by an independent party on 28 October 2017.
- Mr S had bought Miss K engagement and wedding rings and they had planned to marry on 27 January 2017. They had also tried to marry in NHNN. On 3 November 2017, their rings had been blessed.

23. On 27 November 2017, TP wrote to Miss K and asked her to complete, sign and return Form Four, and confirm which certificates she was enclosing as evidence.

24. On 28 November 2017, TP wrote to Miss K and said that it could not proceed with her claim for Mr S' death grant and surviving partner's pension (**the Claim**) until she had provided evidence that she had been Mr S' partner. Acceptable documents were as follows:-

- Evidence from one of the following: home loan or mortgage in joint names, rent book in joint names, council tax bill showing both names, or shared bank account or investment; or
- Evidence from two of the following: confirmation of shared spending, wills naming each other as the main beneficiary, nomination as the main beneficiary of life assurance, or utility bills showing both names.

25. In December 2017, Miss K wrote to TP with the following points:-
- She and Mr S had closed their joint bank account in 2009.
  - All her utility bills were paid by direct debit. Mr S contributed by paying money into her bank account and paying grocery bills.
  - She was named as Mr S' next of kin at Papworth Hospital, Watford Hospital and NHNN.
26. On 13 December 2017, Miss K sent evidence to TP to support the Claim. All of Miss K's evidence is listed in the Appendix.
27. In Miss K's letter, she made the following points:-
- She and Mr S had first met in 2002. Mr S lived with her in her property until she sold it in 2005. They then both moved to Mr S' property. In 2006, she bought another property, which they planned to renovate together.
  - Due to tax implications, she and Mr S had agreed that in Miss K's will, she would leave most of her assets to her children and grandchildren.
  - Mr S had bought a plot at a church where they both planned to scatter their ashes.
  - They had been joint card members of Costco.
  - Since 2002, they had shared the same doctor and dentist.
28. On 3 January 2018, TP wrote to Miss K with the following points:-
- It had processed the application for Mr S' death benefits, and a death grant of £173,020.80 was payable to the personal representative of Mr S' estate.
  - In respect of a decision on the partner's pension, it still required further evidence as set out in paragraph 24 above.
29. On 13 January 2018, Miss K had a telephone call with TP. She has submitted that TP said that it had everything it needed except the grant of probate, but it had sufficient information to be satisfied that she was Mr S' partner.
30. On 22 January 2018, Miss K appointed Debenhams Ottaway as her representative (**the Representative**).
31. On 13 February 2018, the Representative wrote to TP with the following points:-
- Miss K understood that she would receive the death grant as Mr S' surviving long-term partner.
  - Miss K was not Mr S' personal representative and no grant of probate had been issued.

- It asked for clarification about whether the death grant would be paid to the personal representative, as this was not Miss K's understanding.
- It wanted confirmation that the death grant would be paid directly to Miss K, otherwise there would be detrimental inheritance tax implications.

32. On 19 March 2018, the Representative requested an update from TP.

33. On 5 April 2018, TP emailed Miss K and asked permission to discuss the Claim with the Representative. It also made the following points:-

- In the absence of a valid nomination form, eligibility for paying benefits to a long-term partner was covered by a judgment by the Supreme Court for Ms Brewster (**the Brewster Ruling**) in February 2017. In this case, the Judge said that certain documents must be provided in order to confirm a two-year continuous relationship prior to death, and that there was financial interdependence during that time.
- It accepted evidence of a joint bank account for 2005, but evidence for holding a joint account in 2016 and 2017 was outstanding.
- It also accepted transactions in a Costco account as evidence of shared spending, but one more piece of evidence was outstanding.
- It required evidence of shared utility bills.
- It did not accept as evidence an unsigned draft copy of Miss K's will. In any event, it did not state that Mr S was the main beneficiary.
- Neither the GP letter nor the estate agent letter could be accepted as evidence of interdependence.
- If further evidence could not be provided, it would need a grant of probate to pay the death grant to Mr S' estate, and it would not be able to assess Miss K's eligibility for a surviving partner's pension.

34. Later the same day, Miss K telephoned TP. She said that she and Mr S were advised by their accountant to own their two properties separately and in single names. Consequently, all their utility bills, including council tax, were in single names. TP asked for a copy of the accountant's advice. TP also telephoned the Representative to confirm the outstanding evidence.

35. On 10 and 15 April 2018, Miss K emailed further evidence to TP. Miss K also made the following points:-

- She and Mr S had agreed to keep individual properties until they bought a single house together. They moved into Miss K's property in 2011. Mr S did not want to let his property, so they moved between the two houses.

- She had provided evidence to show that Mr S had paid joint bills, they had lived together at both properties, and had a joint bank account.
  - They were engaged and planned to get married on Mr S' sixtieth birthday. They were going to retire to the country.
  - She was aware that Mr S had written a will in November 2011 and that Mr D was the sole Executor. Miss K said that Mr D believed this was Mr S' last will. She said that Mr S' property was to be bequeathed to his parents. Mr S' son was not a beneficiary of Mr S' will.
  - In 2015 and 2016 they had agreed to write new wills naming each other as beneficiaries. She had submitted her will as evidence, but it appeared that Mr S had not got round to writing his new will.
  - Mr S always intended to pay off the mortgage for Miss K's property.
  - He had intended Miss K to receive his pension, and his family to receive his property.
  - Mr S was estranged from his son.
36. On 19 April 2018, the Representative telephoned TP for an update. It also emailed further evidence to TP.
37. On 27 April 2018, TP wrote to the Representative with the following points:-
- Miss K submitted Form Two with no signatures, dates or an independent witness declaration. Miss K stated that Mr S signed page three.
  - Miss K sent a second version of Form Two with a signature date of 28 October 2017. The same scribbles were on page three. A witness name and telephone number had been added with a date of 28 October 2017, but there was no witness signature or address. So, Form Two was invalid.
  - Mr S died eight days after Miss K said he signed Form Two. However, TP was advised that he had recently undergone emergency brain surgery, which left him incapable of making decisions.
38. On 3 May 2018, Miss K's accountant wrote to TP to confirm that it had met with Mr S and Miss K in 2007 and had advised that Miss K should purchase her property in her name only. It said that their principal private address at the time was Mr S' property and their intention was to renovate and sell Miss K's property.
39. On 4 May 2018, Miss K telephoned TP for an update. She said that she was under financial pressure due to the length of time the Claim was taking. On the same day, TP wrote to the Representative. TP's points are set out below in paragraphs 40 to 49.



40. As Form Two was invalid, Mr S' death grant would be paid to a surviving adult, being a spouse, civil partner, or unmarried partner, and in the absence of a surviving adult, it would be paid to Mr S' estate. If it was to be paid to Mr S' estate, TP would need to have sight of grant of probate.
41. Miss K had completed and submitted Form Three, but it was undated and not signed by Mr S, so it was not valid.
42. Since the Brewster Ruling, the completion of a nomination form was not required, but a partner needed to meet the Scheme's eligibility criteria before receiving a partner's death benefits.
43. The Scheme's eligibility criteria were as follows:
  - the member and partner had lived together as if they were a married couple or in a civil partnership in an exclusive committed long-term relationship for at least two years; and
  - the member and partner were free to marry or to enter into a civil partnership; and
  - either the partner was financially dependent on the member, or the member and partner were financially interdependent.
44. For Miss K to prove financial interdependency with Mr S, she needed to provide evidence to show that she had relied on their joint finances to support her standard of living. Evidence of financial interdependence included the following:
  - confirmation that they lived in a shared household;
  - shared household spending;
  - shared bank accounts or investments;
  - having a joint loan or mortgage;
  - having wills naming each other as main beneficiary;
  - holding a mutual power of attorney; and
  - Miss K being named as the main beneficiary of life assurance.
45. Miss K had provided evidence to show that she had previously lived at the same address as Mr S, and that they had a joint bank account from 2005 to 2009, when it was closed. It also accepted transactions in a Costco account as evidence of shared spending.
46. Evidence to date had not shown that Mr S and Miss K had been living together as a married couple during the two years prior to Mr S' death. Miss K had informed TP that she had a different address to Mr S at the time of his death.
47. It had received information naming another person as Mr S' next of kin.

48. It was not satisfied that Miss K met the Scheme's eligibility conditions to be accepted as Mr S' partner.
49. It requested contact details for Mr S' son.
50. On 14 May 2018, Miss K emailed TP and said that she had new evidence to support the Claim. She did not state what the evidence was.
51. On 31 May 2018, TP telephoned Mr D, who confirmed that Mr S' son was 29 years old.
52. On 5 June 2018, TP emailed Miss K and the Representative with the following points:-
  - Given Mr S' son's age and the fact that he was working, he was not considered as Mr S' dependent.
  - It had received the grant of probate naming another person as the Executor of Mr S' estate.
  - It wanted to pay the death grant to the Executor and asked Miss K for any further representations by 25 June 2018.
53. On 6 June 2018, Miss K emailed two letters to TP from one of Mr S' colleagues. The first letter said that when he visited Mr S at NHNN on 27 October 2017, Mr S had understood their conversation and was responsive. A doctor had told the colleague that Mr S was able to respond to questions appropriately by using his hands. The doctor also acknowledged that Mr S understood questions and was appropriately responsive. The second letter confirmed that Mr S had always referred to Miss K as his partner, and that they had lived together in both of their houses.
54. In Miss K's email, she also stated the following:-
  - Their dentist and doctor had confirmed that they were long-term partners and their records showed that they shared the same address.
  - She was named as Mr S' next of kin at Papworth Hospital and NHNN.
  - His colleagues knew her as Mr S' partner and that they had lived together. They also knew that Mr S had intended Miss K to receive his pension benefits.
  - They were both living at Mr S' property until they had both been hospitalised in 2017. They had planned to stay at Miss K's property when he was released from hospital as it had ground floor accommodation. Mr S' property was a fifth floor flat with no lift. This had also been the case in 2012 when Mr S was recovering from his previous operation.
  - She had spent most nights at the hospital with Mr S since August 2017.

- As Mr S' property was to be left to his family, she had continued to use her property's address for correspondence purposes.
  - Mr S had contributed to her household bills, and holiday and livings costs were shared between them. She had provided evidence to show that they had been sharing expenses since 2002.
55. On 7 June 2018, TP wrote to NHNN and asked who Mr S' next of kin was.
56. On 12 June 2018, NHNN telephoned TP and said that Miss K was not named as his next of kin. On the same day, TP wrote to Mr S' GP surgery and asked who Mr S' next of kin was.
57. On 14 June 2018, the GP surgery wrote to TP and said that its records did not include Mr S' next of kin, but there were numerous entries on his records confirming that Miss K was his long-term partner.
58. On 19 June 2018, there was a telephone discussion between Miss K, Mr K and TP. The following points were made:-
- Mr K said that Miss K was dyslexic and not in good health.
  - Mr K submitted that Miss K met the eligibility criteria for both the death grant and the pension. The information she had submitted demonstrated that she and Mr S were partners and that they had a combined household.
  - Mr K quoted the Churchill v Roach case to support the Claim.
  - TP said that Miss K must satisfy the Scheme's eligibility criteria.
  - TP agreed to review the Claim.
59. In the Churchill v Roach case in 2002, the Judge found that although the claimant and deceased had lived in separate but interconnecting houses, their lives had been "inextricably intertwined" and the claimant had been maintained by the deceased and was not his cohabitee.
60. After the telephone discussion, Mr K emailed two pictures to TP. One was from September 2013 showing Miss K and Mr S with Miss K's daughters, and the other was from October 2017, showing Miss K and Mr S with Miss K's grandchildren.
61. On 20 June 2018, Mr K emailed a third picture to TP taken on the day of Mr S' funeral showing a flower arrangement from Miss K's daughter that spelt "grandad".
62. On 26 June 2018, TP wrote to Miss K with the following points:-
- It confirmed that TP administered the Scheme in accordance with the Regulations. Following the Brewster Ruling, while there was no longer a requirement for the completion of a nomination form, the criteria set out in section 90 of the Regulations still needed to be met for nominating a surviving partner.

- The evidence Miss K had submitted showed that she and Mr S had lived together, and they had a joint bank account. However, the circumstances changed on the purchase of Miss K's property in 2006 and when the joint bank account was closed in 2009.
  - They had separate properties in their own names.
  - Miss K's draft will showed that in March 2016, Miss K considered Mr S as her partner, but that they were living at separate addresses. Mr S was to receive a monetary gift, while the remainder of her estate was bequeathed to her family. Miss K was not named in Mr S' will.
  - During the time leading up to Mr S' death, Miss K was not named as Mr S' next of kin with the Employer or NHNN.
  - The evidence Miss K had submitted showed that Mr S had given Miss K some money, but it did not appear to be a substantial amount compared to the expected expenses of a married couple or a couple living as if they were married.
  - It had received a statement from a third party confirming that Miss K was Mr S' girlfriend.
  - It rejected the Churchill v Roach case as not being relevant to the Claim.
  - It did not determine that the evidence Miss K provided met the criteria set out in section 90 of the Regulations. So, Miss K was not entitled to benefits from the Scheme.
  - Miss K could raise a complaint with the Department for Education (**the DfE**) if she wished.
63. On 7 August 2018, TP wrote to Miss K and asked if she intended to continue to pursue the Claim.
64. On the same day, Papworth Hospital emailed Miss K and said that its records showed that she was Mr S' next of kin. Mr S' father, who was the second next of kin, had been transferred over to its records automatically from the National Spine database used by GPs. On Papworth Hospital's records, it stated that Miss K was Mr S' partner. On 12 August 2018, Miss K shared this information with TP.
65. Miss K also provided evidence to TP to show that Mr S' PayPal account had Miss K's property as the registered home address and Mr S' property as the registered business address.
66. On 13 August 2018, TP emailed Miss K and said it would review the additional evidence.

67. On 21 September 2018, TP wrote to Miss K and told her why she did not meet the Scheme's eligibility criteria. The evidence showed that Mr S had given Miss K some money, but it was not a substantial contribution compared to the expenses of a married couple or a couple living together as if they were married. While the evidence showed that Mr S had a relationship with Miss K, it could not determine that the evidence provided met the required criteria in section 90 of the Regulations.
68. On 8 October 2018, Miss K provided evidence to TP to show that her PayPal account was registered in Mr S' name at his property. She submitted that this confirmed that they were interdependent and had lived together.
69. On 28 November 2018, TP wrote to Miss K and said that the additional evidence had been reviewed but the Claim still did not meet the required criteria.
70. On 3 December 2018, TP paid the death grant to Mr S' estate.
71. On 6 December 2018, Miss K submitted her complaint to the DfE. She made the following points:-
  - She and Mr S became engaged to be married in November 2013. They had then started to look for a home together.
  - She had visited Mr S in Watford Hospital each day apart from when she visited family in Hong Kong. While she was away, she telephoned Mr S every day.
  - When Mr S was moved to NHNN, she stayed overnight with him.
72. On 3 January 2019, the DfE replied to Miss K's complaint with the following points:-
  - Miss K had provided evidence to show that:
    - she and Mr S had lived together;
    - she was recorded as Mr S' next of kin;
    - Mr S referred to Miss K as his partner;
    - they were engaged to be married; and
    - Mr S had provided a degree of financial support to Miss K.
  - TP had established that:
    - they were recorded as living at separate addresses for council tax purposes;
    - Miss K was not mentioned in Mr S' will;
    - she was not named as next of kin with the Employer;
    - they had not had a joint bank account since 2009; and
    - there was very limited evidence of shared household bills.

- It did not dispute that Miss K was in a relationship with Mr S or that they were engaged to be married.
- It upheld TP's previous decision because it was not satisfied that she and Mr S had lived together as though they were a married couple, or that the limited financial support that Miss K had received from Mr S could be considered as similar to the financial dependency or interdependency of a married couple.

73. On 13 January 2019, Miss K asked the DfE to reconsider its decision, which it did not.

74. In her submissions to The Pensions Ombudsman (**TPO**), Miss K said in summary:-

- She does not accept that she was not financially dependent on Mr S. They were a modern couple living together in each other's houses. Mr S supported the running costs of their partnership with weekly contributions to bills and food. She submitted evidence of this, together with evidence of joint Costco and Paypal accounts.
- In 2016 she and Mr S wrote new wills which mirrored each other. Mr S kept his in his office, but it was not found after his death.
- In August 2017, she and Mr S had started to move to Miss K's property for when he returned from NHNN. This was why, on 26 October 2017, she had used her property's address when completing Form Two and Form Three. These two Forms were completed while Mr S was in NHNN and were witnessed by two nurses and a friend. This was evidence that Mr S wanted her to receive his pension benefits. The next day, she gave the two Forms to Mr S' secretary to deliver to the Employer's pension department. A date was then added to the Forms, but she does not know by whom.
- As Mr S was either unwell or in hospital from February 2017, he mainly gave her cash. While in NHNN, Mr S gave her a cheque for £500 and around £700 in cash.
- She has provided evidence of Mr S transferring money to her bank account.
- Mr D refused to let her into Mr S' property after his death. She also did not have access to Mr S' bank statements and paperwork. This included a business account which he used to pay for food and other bills.

75. In its submissions to TPO, TP said in summary:-

- In 2002, Mr S enquired about a transfer value in relation to his divorce. So, he was aware that his spouse could be entitled to a spouse's pension.
- In 2016, Mr S registered to use the Scheme's website. In October 2016 he was sent a Personal Identification Number (**PIN**), and in March 2017 he was sent a login password reminder and another PIN. This demonstrated that Mr S did use the Scheme's website and would have been aware of the information available on it.

- Mr S did not make an online death grant nomination or notify it of a partner online and the Scheme did not receive any paper forms prior to Mr S' death. It also did not receive any enquiries from him about potential benefits following his death.
- Miss K had informed it that a representative of the Employer had discussed the best pension options for Mr S while he was in hospital, but Mr S did not take any subsequent action, as he believed he had another five years to live.
- It had received an application to receive Mr S' death grant from Mr D, who was Mr S' next of kin. In his role as sole Executor of Mr S' estate, Mr D had provided the grant of probate.
- While there was evidence of Mr S making regular payments of £50 per month to Miss K in 2013, he had paid her a total of £402 during the two-year period before his death. He had also paid £242.49 to the joint Costco account, which Miss K said was for their living expenses, and he spent £259.77 on PayPal. He also paid £123 to Miss K's M&S account.

## Adjudicator's Opinion

76. Miss K's complaint was considered by one of our Adjudicators who concluded that no further action was required by TP. The Adjudicator's findings are summarised below:-
- 76.1. The role of the Pensions Ombudsman (**the PO**) was to consider whether TP made a properly informed decision. If the PO was not satisfied that the decision has been taken properly, he could ask the decision-maker to look at the matter again. However, the PO would not usually replace the decision with a decision of his own or say what the subsequent decision should be.
- 76.2. A decision-maker must consider and weigh all the relevant evidence, but the weight to attach to any piece of evidence was for the decision-maker to decide. In fact, a decision-maker could, if it wished, attach no weight at all to a piece of evidence. The only requirement was that the evidence is considered.
- 76.3. Section 82 of the Regulations said that a member may nominate another individual to receive a death grant, and section 90 of the Regulations said that a member may nominate another individual to receive a surviving partner's pension, subject to certain conditions being met, by giving written notice to the Secretary of State. The purpose of Form Two and Form Three was to allow members to nominate individuals in accordance with sections 82 and 90 of the Regulations.

- 76.4. Miss K said that Mr S signed Form Two, on 28 October 2017. However, there was no member signature in the designated signature space, and while there was a witness name, there was no witness signature. Miss K said that the scribble on page three was Mr S' signature. Form Three was not signed by Mr S at all, and it was undated. Consequently, TP did not accept Form Two or Form Three as being valid nominations by Mr S before his death.
- 76.5. While the Adjudicator appreciated that Mr S may have attempted to sign Form two, as it was not signed by a witness, TP was correct in not accepting it as a valid death grant nomination. TP was also correct in not accepting Form Three, as it was not signed by Mr S.
- 76.6. Section 82 of the Regulations also said that in the absence of a valid nomination, the death grant must be paid to the member's surviving spouse, surviving civil partner or surviving nominated partner or, if there was no such person, to the member's personal representative. As Mr S and Miss K were not married or in a civil partnership, Mr S' death grant would normally have been paid to Mr S' estate.
- 76.7. However, TP recognised that in the absence of a valid nomination, eligibility for paying death benefits to a partner was covered by the Brewster Ruling. This meant that if certain criteria were met for at least two years prior to the member's death, a surviving partner could be eligible to receive pension death benefits, without having been nominated by the member.
- 76.8. The Scheme's criteria (section 90 of the Regulations) for paying death benefits to a surviving partner who is not a spouse or civil partner was as follows:
- 76.8.1. the member and partner lived together as if they were a married couple or in a civil partnership in an exclusive committed long-term relationship for at least two years; and
- 76.8.2. the member and partner were free to marry or to enter into a civil partnership; and
- 76.8.3. either the partner was financially dependent on the member, or the member and partner were financially interdependent.
- 76.9. So, Miss K was required to provide evidence of meeting the Scheme's criteria for at least two years prior to Mr S' death. Acceptable evidence included: confirmation that they lived in a shared household, shared household spending, shared bank accounts or investments, having a joint loan or mortgage, having wills naming each other as main beneficiary, holding a mutual power of attorney, or being named as the main beneficiary of life assurance.



76.10. Miss K and the Representative provided a range of documents to support the Claim. However, as Mr S and Miss K owned separate houses in single names, she was not able to provide evidence of a joint mortgage or household utility bills being in joint names. Also, they did not have any joint investments, they did not have a joint bank account after 2009, they did not name each other as main beneficiaries in their wills, they did not have mutual power of attorney, and Miss K was not named as a beneficiary of any life assurance.

76.11. So, the only acceptable evidence Miss K could provide was to show that they were living in a shared household, or they shared household spending. TP accepted that Miss K provided evidence of Mr S making some financial payments to her during the previous two years, but it did not consider the amounts to be sufficient to show Miss K's financial dependency on Mr S, or their interdependency. This, together with the fact that they each owned a property in single names, were the reasons that TP also did not accept that Mr S and Miss K had lived together as though they were a married couple.

76.12. The Adjudicator was satisfied that TP had sight of all Miss K's evidence, and on several occasions, she was given the opportunity to provide any further information that might have been helpful in supporting the Claim. Having considered the available evidence, and for the reasons set out in paragraph 76.11 above, TP decided not to pay Miss K the death grant or the surviving partner's pension.

76.13. The Adjudicator acknowledged that it was more likely than not that Mr S and Miss K had been in a meaningful long-term relationship, and that Mr S had intended Miss K to receive his death benefits in the event of his death. However, TP correctly interpreted the Regulations, and the decision was properly made.

77. Miss K did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Miss K's relevant comments are as follows:-

- Mr S' bank statements for the period 2015 to 2017 showed the following transactions:
  - 18 April 2015 - two cash withdrawals of £500 each;
  - December 2015 – January 2016 – payments to Asda, purchase of cinema tickets and a meal to celebrate Mr S' birthday;
  - 18 March 2016 - £50 cash withdrawal;
  - 9 February 2017 – payment to Miss K for £35;
  - 5 June 2017 – payment to Miss K of £33; and
  - Many purchases at Morrisons and Costco. Morrisons was a short drive from her property.

- Mr S gave the three cash withdrawals to her.
- In 2017, Mr S had spent £160 and £469.30 on the purchase of furniture for her property.
- TP was incorrect in stating that they were living at separate addresses.
- Although, she was having her post sent to her property, at the time of Mr S' death, she was living at Mr S' property. She had keys to Mr S' property and she had belongings there.
- They had accompanied each other on hospital appointments. Mr S had looked after her after she had been admitted to Watford Hospital.
- Mr S had been able to communicate with her and his friends up to the date of his death. She had a video recording to confirm this.
- The Employer had updated Mr S' LinkedIn profile and it said that she was his partner.

78. I have considered Miss K's comments, but they do not change the outcome; I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

79. I empathise with Miss K's position and the additional comments she has made. She submitted a wide range of evidence while making her complaint, which strongly suggests that she and Mr S were in a long-term relationship, and they considered each other as partners. However, in determining Miss K's complaint, I can only consider whether TP weighed all the relevant evidence and made a properly informed decision.
80. It is unfortunate that Form Two and Form Three were invalid. I appreciate that Mr S may have attempted to sign Form two, but it was not signed by a witness. Form Three was not signed by Mr S at all. So, in accordance with section 90 of the Regulations, Miss K was required to provide sufficient evidence to show that she and Mr S had lived together as if they were a married couple or in a civil partnership in an exclusive committed long-term relationship for at least two years, they were free to marry or to enter into a civil partnership, and either Miss K was financially dependent on Mr S, or they were financially interdependent.

81. Miss K provided numerous documents to TP that indicated they were long-term partners and there had been a degree of financial interdependency between them. However, the Scheme's criteria is clear about what documents are acceptable for evidencing section 90 of the Regulations: confirmation that they lived in a shared household, shared household spending, shared bank accounts or investments, having a joint loan or mortgage, having wills naming each other as main beneficiary, holding a mutual power of attorney, or being named as the main beneficiary of life assurance.
82. Miss K's and Mr S' specific circumstances meant that they did not own or rent a property in joint names, they did not have a joint bank account, their wills did not name each other as main beneficiaries, they did not hold a mutual power of attorney and they did not have life assurance. While Miss K did provide some evidence of financial support from Mr S, TP did not find it sufficient. So, TP was not satisfied that the Scheme's criteria had been met.
83. While I have great sympathy for Miss K's position, I am satisfied that TP considered and weighed all the relevant evidence it was provided and allowed Miss K several opportunities to provide further evidence. On this basis, I find that TP made a properly informed decision not to uphold the Claim.
84. I do not uphold Miss K's complaint.

**Anthony Arter CBE**

Deputy Pensions Ombudsman

2 May 2024

## **Appendix**

### **Evidence Submitted:**

#### **Official documents**

1. Mr S' decree nisi and decree absolute.
2. Certified copy of the death certificate.
3. Miss K's birth certificate.
4. Copy of Mr S' last will.
5. Unsigned copy of Miss K's last will.

#### **Bank accounts**

6. Joint bank account statements for 2005 and 2008, addressed to Mr S' property.
7. Miss K's bank account statements for 2013 showing Mr S' £50 per month payments for household bills.
8. Miss K's bank account statements showing transfer payments from Mr S in August 2015, July 2016, and during the period June to November 2017. Also showing payments to joint Costco account.
9. Confirmation that Miss K's cheque book and paying-in book had been sent to Mr S' property.
10. Mr S' bank account statements for the period 2011 to 2017.

#### **Other financial accounts**

11. Renewal letter from Costco in 2015 and 2016, naming both Mr S and Miss K on the account.
12. Costco statement dated August 2017, showing Mr S as a member on Miss K's card.
13. Letter from Costco dated November 2017, confirming that Miss K had been a member since 2006, and Mr S had been added to her membership as a spouse's card member in July 2006. The letter said that rewards had accrued jointly from purchases made by each of them.
14. eBay transaction statements for both Mr S and Miss K. Items were delivered to their respective addresses.
15. Joint account Tesco card statements for the period 2017 to 2018.
16. Statements for PayPal accounts showing purchases by Mr S and Miss K, delivered to both properties.

**Medical**

17. Record of a thoracic assessment for Mr S in 2011, confirming that his father was next of kin and Miss K was "other" contact.
18. Record from Papworth Hospital dated October 2011, naming Miss K as Mr S' next of kin.
19. Hospital doctor's record dated March 2015, stating that the doctor spoke to Mr S' wife.
20. A note from Papworth Hospital saying that Mr S was accompanied during a visit by Miss K, his partner.
21. Letter from Mr S' and Miss K's dental practice dated January 2017, confirming that they were both registered at the practice.
22. Records from Papworth Hospital dated February 2017, naming Miss K as Mr S' next of kin.
23. Letter from Papworth Hospital confirming Miss K's accommodation for two nights in February 2017.
24. Confirmation of Mr S' lung transplant assessment in August 2017.
25. Confirmation of Mr S' transfer from Watford Hospital to NHNN in August 2017.
26. Computer print-out from NHNN in August 2017, stating that Miss K was Mr S' partner and next of kin and they both lived at Miss K's property.
27. Medical note from Mr S' and Miss K's GP surgery dated November 2017, confirming that Miss K had previously lived at Mr S' property, and its records showed numerous entries stating that Mr S and Miss K had been long-term partners. Mr S was registered at the same time and at the same address as Miss K.
28. Email from Papworth Hospital dated August 2018, stating that its records showed Miss K as Mr S' next of kin and partner.
29. Letters about Mr S sent to Miss K at her property from Papworth Hospital, dated September and October 2018.
30. Release of Records Consent Form dated October 2018 completed by Miss K showing Mr S' latest address as being her property and his former address being his property.
31. Mr S' hospital patient property list.

**Postal deliveries**

32. Royal mail tracking label dated November 2012 addressed to Mr S at Miss K's property.
33. Envelope delivered in 2017 addressed to Mr S at Miss K's property.
34. Envelope addressed to Miss K at Mr S' property.
35. Health insurance letter addressed to Mr S at Miss K's property.
36. Two Saga letters, addressed to Mr S at Miss K's property.

**Estate agent**

37. Letter from the estate agent dated 22 November 2017, confirming that Mr S and Miss K had been looking for a bungalow to buy together since February 2016. It offered to help sell their current properties.
38. Letter from the estate agent dated 22 November 2017, confirming the value of Miss K' property.

**Vehicles**

39. Car insurance schedule showing Mr S and Miss K as named drivers for the same vehicle for 2013 and 2017.
40. Car repair invoice dated 10 January 2008 for Miss K at Mr S' property.
41. Confirmation of payment from Miss K to Mr S in April 2016 for car repair.

**Telephone**

42. Statement showing that Mr S' British Telecom (**BT**) telephone account had Miss K's email as his recovery email address.
43. BT telephone statement showing that Mr S telephoned Miss K in February, March and May 2017.
44. BT telephone cancellation notice for Mr S' property, sent to Miss K's email address.

**Other**

45. Written note Mr S kept on him in the event of getting lost while travelling abroad. His address on the note was Miss K's property.
46. Receipts for purchase of engagement and wedding rings in 2013.
47. Service sheet for the blessing of the engagement rings.

48. Two letters from Mr S' colleague. One stating that during a hospital visit in October 2017, Mr S had understood their conversation, the other confirming that Mr S had always referred to Miss K as his partner, and that they had lived together in both of their houses.
49. Mr S' funeral service schedule that says Miss K was his devoted partner.
50. Letter to Miss K from the local church dated October 2018, inviting her to a remembrance service.
51. Copy of Mr S' LinkedIn profile updated by the Employer after his death, which said that Miss K had been his partner.