CAS-31561-N2V0

Ombudsman's Determination

Applicant	Mrs S
Scheme	Teachers' Pensions Scheme (**the Scheme**)
Respondent	Teachers' Pensions (**TP**)

Outcome

1. I do not uphold Mrs S' complaint and no further action is required by TP.

Complaint summary

2. Mrs S has complained that TP did not do enough to notify her that, following the death of her husband, death benefits were due. The delay in paying the death benefits meant that the payment was treated as an unauthorised payment, which caused additional taxation.

Background information, including submissions from the parties

3. The complaint has been brought to my Office by Mrs S, the widow of Mr S. Mr S retired in 2005; he sadly died in May 2008.

4. TP was not informed of Mr S' death and on 11 July 2008, Mr S' monthly pension payment was rejected by his bank. As a result, the payment of his benefits was suspended.

5. On 15 July 2008, 12 August 2008 and 2 September 2008, TP wrote to Mr S regarding the rejected payment.

6. On 23 September 2008, TP received notification from Prudential that Mr S had died. Prudential also requested information regarding any potential beneficiaries.

7. On 26 September 2008, TP replied and confirmed that it had not been notified of Mr S' death by either a spouse or an informant. As a result, it could not provide Prudential with further information.

8. There was no valid Death Grant Nomination on Mr S' record, so TP said that it did not know of any potential beneficiaries.

9. In 2014, TP began to receive notifications of possible deaths from the General Register Office. This process meant TP was advised of cases where there had been a match between a reported death and scheme members. As a result of this new process, TP registered Mr S as a potential deceased member. On 18 August 2014, TP wrote to Mr S and asked him to complete a form with respect to his entitlement to benefits. The form contained several conditions of payment, one of which said, “A teacher’s pension ceases upon the death of the pensioner. It is the responsibility of his or her personal representative to inform us immediately to prevent any overpayment.” This form was re-sent to Mr S on 1 September 2014. Mrs S has said that she did not open either of these letters until over a year later.

10. On 16 September 2015, Mrs S contacted TP and informed it of Mr S’ death. In response, TP sent her the forms required to complete the death benefit application.

11. On 11 December 2015, Mrs S contacted TP to explain that she had not received the documentation. The documentation was re-sent on the same date.

12. On 11 February 2016, the completed documentation was returned to TP. However, the required certificates were not enclosed.

13. A year passed before the certificates were received by TP, on 2 March 2017.

14. On 21 March 2017, TP wrote to Mrs S and confirmed that it had progressed the death benefits application. It said that the death benefits consisted of a Supplementary Death Grant (**SDG**) and backdated payment of a widow’s pension. Because Mr S died within five years of taking his benefits, his estate was entitled to the SDG. The SDG is five years’ pension minus any benefits that have already been paid.

15. In Mr S’ case the SDG amounted to £31,482.87. As the payment was paid two years after TP was informed of Mr S’ death, HMRC classed it as unauthorised so it was subject to additional tax. This is outlined in Section 206 of the Finance Act 2004, which states:-

> “(1B) The special lump sum death benefits charge also arises where –
>
> …(c) the lump sum death benefit is not paid before the end of the period of two years beginning with the earlier of the day on which the scheme administrator first knew of the member’s death and the day on which the scheme administrator could first reasonably have been expected to have known it.”

16. TP informed Mrs S that it would supply information related to a widow’s pension once she had confirmed that she had not co-habited or remarried since Mr S died.

17. On 26 March 2017, Mrs S, acting as executor of the estate, authorised TP to pay the tax on the unauthorised payment.

18. In April 2017, Mr S’ death benefits, including the backdated widow’s pension, were paid.

19. Mrs S, through a representative, complained that TP should have done more to trace her and pay the death benefits. Mrs S said that she suffered from severe depression, which meant that she was unable to inform TP of Mr S' death. The resulting delay has meant the SDG is classed as an unauthorised payment, which has caused her to pay more tax.

20. TP responded and said that it would not have been appropriate, under Data Protection legislation, for TP to trace and contact Mrs S directly. It said that all correspondence was correctly addressed to Mr S' home address. It also noted that Mrs S continued to reside at this address after Mr S had died. In conclusion, TP said that it paid the appropriate death benefits. The 40% tax charge on the SDG was deducted in accordance with HMRC rules and with Mrs S' agreement. It said that once it had been officially notified of the death, it paid the benefits within an appropriate timeframe.

Adjudicator's Opinion

21. Mrs S' complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised below:-

- While the Adjudicator was sympathetic to Mrs S' position, he said that the Ombudsman would only intervene in circumstances where an applicant has suffered as a result of maladministration.

- The Adjudicator was satisfied that the death benefits were paid over two years after TP should have reasonably known of Mr S' death. As a result, Section 206 of the Finance Act 2004 applied and, so, the benefits were subject to the unauthorised payment rules.

- Mrs S' complaint that TP should have done more to resolve the death benefits claim was also rejected. Mrs S said that TP owed a duty of care to all potential beneficiaries and should have contacted Mrs S as soon as Mr S' bank rejected his benefit payment. The Adjudicator did not accept this argument. He said that there was no suggestion that Mr S' bank notified TP that Mr S had died. Furthermore, TP was quick to respond to the rejected payment. Within five days, TP wrote to Mr S and explained that his bank had rejected the payment. The Adjudicator said that this gave an opportunity for Mrs S to notify TP of Mr S' death. While the Adjudicator understood that there were reasons why Mrs S felt unable to do so, he did not believe this could be attributed to any maladministration on TP's part.

- Mrs S also argued that TP missed an opportunity to pay the benefits when it was informed of Mr S' death by Prudential. TP argued that it could not have acted upon Prudential's advice as this would not be consistent with the Data Protection Act. TP also confirmed that it responded to Prudential and explained that it could not provide any case information until it was advised of Mr S' death by a potential beneficiary. In the Adjudicator's view, TP could not progress the application for death benefits until it was notified of the death by a potential beneficiary.

- The Adjudicator accepted that it was clear that the delay in payments of death benefits caused increased taxation; however, he did not agree that this was the result of any maladministration caused by TP.

22. Mrs S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

23. Mrs S provided her further comments which do not change the outcome. She has argued that:-

- It is not enough for TP to say that it could not begin to process death benefits until it was prompted to by a potential beneficiary. She said that TP should have acted on the information supplied by Prudential.

- Mrs S' representative suggested that TP should have sent somebody around to Mrs S' house to ensure that she was aware of the death benefits that she may have been entitled to. He said that the cost of this could have been taken from any benefits that were paid.

24. TP has also provided further comments. It said:-

- It followed the correct procedure following the rejection of Mr S' benefit payment.

- It could not request for further information from HMRC, as HMRC does not confirm deaths to third parties.

- It is reasonable to expect that the person responsible for winding up the deceased's estate will take the necessary action on any letters addressed to the deceased. Three letters were sent to Mr S in 2008 at the address shared with Mrs S but no reply was received. Furthermore, no reply was received to the two letters sent to him in 2014. Therefore, it was likely that any letter sent to Mrs S at the same address would have been similarly ignored.

Ombudsman's decision

25. I am sympathetic to the position in which Mrs S found herself following the death of her husband. However, I will only intervene where there has been maladministration which has caused an Applicant loss.

26. Mrs S has argued that TP should have realised that she was a potential beneficiary when Prudential contacted TP to inform it of Mr S' death. She said that this should have prompted TP to contact her regarding potential death benefits. I disagree, TP could not have acted upon Prudential's advice as this would have contravened the Data Protection Act. TP acted correctly when it informed Prudential that it could not

provide further information until Mr S' death had been confirmed by either a spouse or an informant.

27. I disagree with the suggestion made by Mrs S' representative, that TP should have sent somebody around to Mrs S' house to ensure she was aware of any potential death benefits. There was no valid Death Grant Nomination on Mr S' file, so TP would not have had sufficient reason to approach Mrs S. Furthermore, I would not expect TP to travel to all potential beneficiaries to make them aware of any potential death benefits that may be due. On a financial level, this is disproportionate and would cause significant funding consequences. Practically, it would be hard for TP to ascertain who was a potential beneficiary in situations where it only had limited information regarding members' circumstances.

28. While I have considerable sympathy for the position that Mrs S has found herself in and understand her frustration, I do not find any maladministration on the part of TP.

29. I do not uphold Mrs S' complaint.

Anthony Arter

Pensions Ombudsman
6 May 2020

Appendix

Finance Act 2004

206 Special lump sum death benefits charge

…(1B) The special lump sum death benefits charge also arises where-

(a) A lump sum death benefit is paid to a non-qualifying person, by a registered pension scheme in respect of a member of the scheme who had not reached the age of 75 at the date of the member's death,

(b) The lump sum death benefit is-

(i) A drawdown pension fund lump sum death benefit under paragraph 17(1) of Schedule 29,

(ii) a flexi-access drawdown fund lump sum death benefit under paragraph 17A(1) of Schedule 29,

(ii) (a) a defined benefits lump sum death benefit,

or

(iii) an uncrystallised funds lump sum death benefit, and

(c) the lump sum death benefit is not paid before the end of the period of two years beginning with the earlier of the day on which the scheme administrator first knew of the member's death and the day on which the scheme administrator could first reasonably have been expected to have known of it.