

## Ombudsman's Determination

Applicant	Mr T
Scheme	Local Government Pension Scheme ( <b>the Scheme</b> )
Respondents	Peninsula Pensions ( <b>Peninsula</b> ) Devon County Council ( <b>the Council</b> )

## Outcome

1. I do not uphold Mr T's complaint and no further action is required by Peninsula or the Council

## Complaint summary

2. Mr T's complaint concerns the Council's decision not to pay an outstanding amount of pension arrears to his late father's Estate.
3. He has also said that it was Peninsula's responsibility to investigate and determine whether, or not, Mr GT had a surviving spouse or dependent at his date of death.

## Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
5. Mr GT was a member of the Scheme, a defined benefit occupational arrangement, administered by Peninsula. Peninsula is the shared administration service for the Scheme on behalf of the Council and Somerset County Council.
6. The Scheme is administered in accordance with Local Government Pension Scheme Regulations 2013 (**the Regulations**).
7. The Regulations state that:  
"Payments due in respect of deceased persons  
82.—

(1) Paragraph (2) applies if, when a person dies, the total amount due to that person's personal representatives under the Scheme (including anything due at that person's death) does not exceed the amount specified in any order for the time being in force under section 6 of the Administration of Estates (Small Payments) Act 1965 and applying in relation to that person's death<sup>1</sup>.

(2) An administering authority may pay the whole or part of the amount due from its pension fund to—

(a) a person's personal representatives, or

(b) any person or persons appearing to the authority to be beneficially entitled to the estate, without the production of probate or letters of administration of the person's estate.

(3) Such a payment discharges that authority from accounting for the amount paid."

8. The Council serves as the administering authority for the Scheme and is responsible for ensuring the Scheme is administered in accordance with the Regulations. This includes making decisions on the payment of death and ill health benefits.
9. On 19 January 2019, Mr GT died.
10. At the time of Mr GT's death, he was married to Mrs PT, however, they had been separated for almost 10 years. Mr GT also had a son, Mr T.
11. On 23 January 2019, Peninsula received a notification from the Department for Work and Pensions (**DWP**) informing it of Mr GT's death. DWP did not hold any further contact details other than Mr T's, so it provided Peninsula with Mr T's details as Mr GT's next of kin.
12. On 7 February 2019, Peninsula wrote to Mr T and said that there was an outstanding gross payment of £484.90 due to his father's Estate (**the February Letter**). This accounted for a portion of Mr GT's pension payable between 1 January 2019 and 19 January 2019 (**the Arrears**). The amount would be payable upon receipt of a copy of Mr GT's Will or letters of administration. If neither document was available, then Mr T would be required to sign a form of indemnity. The letter also said that "there are no other benefits payable to either the Estate or to a family member".
13. On 9 February 2019, before Mr T had received the February Letter, he wrote to Peninsula and informed it that Mr GT had died. He said that he was the next of kin and responsible for the Estate and asked whether there was a widow's pension payable to his father's surviving spouse, Mrs PT.
14. Between 9 and 13 February 2019, Mr T says he telephoned Peninsula and told it that Mr T had a spouse, Mrs PT, and provided her contact details and address. Peninsula

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<sup>1</sup> The limit at the time of Mr GT's death, and the current limit, on the amount disposable on death without a grant of representation is £5000.

says that it does retain a note that the telephone call took place, but there was no detailed record of the conversation, or the address provided for Mrs PT.

15. On 13 February 2019, Peninsula wrote to Mrs PT, using Mr GT's address, and said that she may be due a widow's pension and asked her to complete and return enclosed declaration forms.
16. On 27 February 2019, Mr T wrote to Peninsula and said that he had telephoned it and explained that Mr GT had a surviving spouse who lived in a care home. He also told Peninsula that, due to the size of his father's Estate, there was no requirement for letters of administration or a Grant of Probate. He provided a copy of Mr GT's death certificate, a copy of his Will and the Estate's bank details and said that the Arrears should be paid to the Estate.
17. On 6 March 2019, Peninsula responded to Mr T and asked him to complete and return a form of indemnity. It said, on receipt of the signed form of indemnity, it would arrange for the Arrears to be paid to Mr GT's Estate.
18. On 14 March 2019, Mr T returned the completed form of indemnity to Peninsula with the Estate bank details.
19. On 20 March 2019, Mr T provided Peninsula with the contact details for Mrs PT's daughter and son-in-law and asked it to send any correspondence about the widow's pension to them. He also asked for copies of all correspondence.
20. On 2 May 2019, Mr T wrote to Peninsula and said that he had not yet received the Arrears.
21. On 17 May 2019, in response, Peninsula said that as Mrs PT was Mr T's widow, she was the legal next of kin. So, it had made the decision to pay the Arrears to her.
22. On 23 May 2019, Mr T submitted a formal complaint to Peninsula and said that he had completed the form of indemnity, so the Arrears should have been paid to the Estate.
23. On 6 June 2019, Peninsula responded to Mr T's complaint and explained that the administering authority held "absolute discretion" to pay a death grant sum to a nominated beneficiary, next of kin or personal representative. It took the same discretionary stance for the payment of the Arrears. Mrs PT was eligible for a widow's pension, so the Council decided to pay the Arrears to her.
24. On the same day, Mr T asked for his complaint to be investigated under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**). He said that:-
  - Mr T's Will made it clear that he was the Executor of the Estate. He had signed and returned the form of indemnity, so the Arrears should have been paid to the Estate, not Mrs PT.

- He had told Peninsula that Mrs PT no longer lived at Mr GT's address because she was living in a care home due to the onset of dementia. Despite this, Peninsula had written to her at Mr GT's address.
- Peninsula had paid the Arrears to Mrs PT without informing him.

25. On 12 August 2019, Peninsula responded to Mr T's stage one IDRP and explained that:-

- When it sent the February Letter, it had not yet been made aware that Mr GT had a surviving spouse. The documentation it received from DWP only held Mr T's details.
- It was unable to locate a recording of the telephone call when Mr T informed it that Mrs PT did not live at Mr GT's address.
- It apologised that he had been sent a form of indemnity. The form should not have been sent to him once it was aware of Mrs PT.
- The Council held absolute discretion on who it paid the Arrears to and its decision to pay the Arrears to Mrs PT remained unchanged.

26. On 12 September 2019, Mr T asked for his complaint to be reconsidered under stage two of the Scheme's IDRP. He added that Peninsula had inferred that it was the administering authority for decisions regarding death benefits. However, its stage one IDRP response said that the Council was the administering authority. He believed absolute discretion, regarding death benefits, was unnecessary and only required if there was a dispute between the claimants, which there was not.

27. On 11 November 2019, Peninsula responded under stage two of the Scheme's IDRP. It did not uphold Mr T's complaint and said that:-

- There was a crossover in the post of the February Letter and Mr T's letter of 9 February 2019. If it had received his letter of 9 February 2019, before DWP's notice of Mr GT's death, it would not have sent the February Letter.
- While the February Letter did say that there were no benefits payable, this was in respect of Mr GT's pension, not the widow's pension.
- The letter of 27 February 2019 did provide confirmation that Mr GT had a surviving spouse, but it did not include any contact details for Mrs PT. So, it made the decision to send details about the widow's pension, for Mrs PT, to Mr GT's address.
- The payment of the Arrears was considered to be the same as the payment of a death grant sum. As Mr GT was still married to Mrs PT, a decision was made to pay the Arrears to her, in addition to the widow's pension.

- The Arrears were paid in accordance with Regulation 82 of the Regulations. This meant that if the amount payable did not exceed the amount specified in the Administration of Estates (Small Payments) Act 1965 (**the Small Payments Act**), which was £5,000 at the time, it could make the amount payable to a personal representative, or a beneficiary entitled to the Estate.
- The Council did not assume that there was any dispute among the claimants. The payment was made in line with its usual processes.

## Adjudicator's Opinion

28. Mrs T's complaint was considered by one of our Adjudicator's who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised in paragraphs 29 to 38 below.
29. The Regulations stated that the Council may pay a death grant sum to a nominated beneficiary, relative or financial dependent, at its "absolute discretion". But the Arrears were the result of benefits due to Mr GT between 1 January 2019 and 19 January 2019, so it was not a death grant sum.
30. The Arrears were payable in accordance with Regulation 82 of the Regulations. This stated that the administering authority may pay all, or part, of the amount to a personal representative or "any person or persons appearing to the authority to be beneficially entitled to the estate".
31. The Council was the appropriate decision-maker, and it had correctly interpreted and acted in accordance with the Regulations. The payment of any sums, as a result of death, were payable at the Council's discretion. Additionally, as the value of the Arrears was below £5,000, the limit specified in the Small Payments Act (as amended), this further extended the Council's discretion regarding to whom it paid the Arrears.
32. The Council made the decision to pay the Arrears to Mrs PT, as Mr GT's legal spouse and next of kin. In reaching this decision, the Council relied upon the absolute discretion provided to it under the Regulations and also Regulation 82. It also considered that apart from a widow's pension, there were no further benefits payable.
33. The payment of the Arrears was discretionary and did not form part of the Estate, so it was reasonable to pay the Arrears to Mrs PT, as Mr GT's surviving spouse. The Council had considered all of the relevant factors when reaching its decision. Its decision was not perverse.
34. The form of indemnity should not have been sent until after the administering authority had reached a decision about who to pay the Arrears to. Peninsula should have taken steps to inform Mr T that the Estate was not necessarily entitled to the Arrears. Instead, it took Peninsula nearly two months, and Mr T contacting it, to inform him that the Arrears were paid to Mrs PT. Peninsula's actions amounted to

poor administration and would have added to the distress Mr T was experiencing during an already difficult time.

35. It was Peninsula's responsibility to ask appropriate questions in order to identify any potential beneficiaries. Peninsula did not appear to query whether there were any other beneficiaries. Peninsula's letter of 7 February 2019 did not provide any information about dependents benefits, instead the purpose of the letter was to settle the Arrears.
36. The letter also said that other than the Arrears, no further benefits were payable to the Estate or to a family member. The Adjudicator considered that, at the time, Peninsula had not made any enquiries on whether there was a spouse or dependent, so the statement was incorrect and should not have been included.
37. Had Mr T not provided Peninsula with Mrs PT's details it was unclear whether it would have paid the Arrears before it was satisfied that the correct decision had been reached by asking the correct questions. If it was not for Mr T's proactivity, it was unlikely that Peninsula would have asked whether there was a surviving spouse or any other dependent. Ultimately, this could have resulted in Mrs PT not receiving the widow's pension that she was due. Peninsula's actions, or lack thereof, in asking the correct questions amounted to maladministration.
38. Under both stage one and two of the Plan's IDRP, Peninsula provided an explanation as to why Mr T was incorrectly sent the form of indemnity, it also apologised. The Adjudicator's view was that Peninsula's apology was sufficient and there was no requirement to provide any further form of redress.
39. Mr T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr T provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr T. In summary Mr T has said:-
  - He made a claim, on behalf of the Estate, on 27 February 2018, before Peninsula had written to Mrs PT's daughter about the widow's pension.
  - Peninsula was provided with a copy of the Will which did not make any provision for Mrs PT to benefit from Mr GT's Estate. So, the Council should have paid the Arrears to Mr GT's Estate.
  - The Council had not taken into consideration relevant factors when it decided to pay the Arrears to Mrs GT. So, he considered its decision was a perverse one.

## **Ombudsman's decision**

40. Mr T's complaint concerns the Council's decision not to pay the Arrears to the Estate of Mr GT.
41. I need to consider whether the Council has complied with the Regulations in deciding who should have received the Arrears. I must also consider whether the Council exercised its discretion in accordance with common law principles: that only relevant factors should be considered; the Scheme provisions, as well as the law, were construed correctly; the right questions were asked; and that the decision reached should not be perverse.
42. The Regulations state that the payment of a death grant is at the "absolute discretion" of the Council. I understand that the contended benefit was not a death grant, but instead, outstanding Arrears. However, the Council has explained that the payment of the Arrears was treated similarly to how it would exercise its discretion in the distribution of a death grant.
43. Regulation 82 states that if the total benefit due is less than the limit set in the Small Payments Act (£5,000), it may pay the amount to a personal representative, or anyone who appears to the Council to be beneficially entitled to the Estate. Given the value of the Arrears, I am satisfied that the Council has acted in accordance with the relevant regulations and the legislation and that it was for the Council to decide how and to whom the Arrears should be paid.
44. In reaching its decision to pay the Arrears to Mrs PT, the Council considered the Will, Mr T's claim on behalf of the Estate, that Mrs PT was the surviving spouse of Mr GT and that there were no additional benefits payable other than a widow's pension. I acknowledge that it was purely due to Mr T informing Peninsula and the Council about Mrs PT, that it was made aware of her existence and that she was eligible for a widow's pension. So, I agree with the Adjudicator that Peninsula failed in its duty to ask relevant questions on whether Mr GT had a spouse/partner or any other next of kin. This amounted to maladministration.
45. However, once Peninsula and the Council were aware of Mrs PT, I find that the Council took into account only relevant information before reaching its decision. While Mrs PT was not mentioned in the Will, this does not mean that she was not beneficially entitled to a claim on the Estate. So, it is my view that the payment of the Arrears to Mrs PT was a reasonable conclusion to make, albeit with the aid of Mr T.
46. I understand that Mr T will be disappointed with this outcome. However, I find that the Council has properly exercised its discretion, regarding the Arrears, in accordance with the Regulations. I find that the Council took into account all relevant matters and no irrelevant ones in reaching its decision.

47. I consider that the process followed by the Council was flawed to the extent that it did not seek out details of any other potential beneficiaries until Mr T made it aware of Mrs PT. However, the decision to pay the Arrears based on the evidence/information the Council held was reasonable.
48. I do not uphold Mr T's complaint.

**Anthony Arter**

Pensions Ombudsman

12 October 2022