

## Ombudsman's Determination

Applicant	Ms E
Scheme	Local Government Pension Scheme ( <b>the Scheme</b> )
Respondents	London Pensions Fund Authority ( <b>LPFA</b> ) Local Pensions Partnership ( <b>LPP</b> )

## Outcome

1. The complaint is upheld. If LPP had not provided Mr N with incorrect information, it is more likely than not that he and Ms E would have married in order to guarantee her entitlement to a pension from the Scheme. Consequently, Ms E is entitled to a survivor's pension under the Scheme following his death.

## Complaint summary

2. Ms E's complaint is that her partner, Mr N, was told she would receive a survivor's pension in the event of his death. It later transpired he had been misinformed.

## Detailed Determination

### Material facts

3. 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.
4. Mr N was a member of the 1997 section of the Scheme until 12 April 1991, when he left employment. The Scheme is an occupational pension scheme.
5. On 13 April 1991, Mr N started to receive his pension from the Scheme.
6. The Scheme is administered in accordance with the Local Government Pension Scheme Regulations 1997 (**the 1997 Regulations**).
7. Rule 40 of the 1997 Regulations states:  
  
“(1) If an active member dies leaving a surviving spouse, the spouse is entitled to a short-term pension.

(2) It is payable for three months after the members death.

...

(5) Where the deceased was a pensioner member, the short-term pension is equal to his retirement pension immediately before the death.”

8. Rule 41 states:

“(1) If a member dies leaving a surviving spouse, the spouse is entitled to a long-term pension.

(2) If the deceased was an active or pensioner member, the long-term pension is payable from the end of the period for which the short-term pension is payable.

...

If the deceased was a pensioner member, the long-term pension is equal to half his retirement pension immediately before the date of death.”

9. The 1997 Regulations were subsequently amended to introduce a survivor’s pension for un-married partners. However, this provision was only applicable to un-married partners of members in active service on or after 1 April 2008.
10. In May 2017, Mr N contacted the ‘Ask Pensions Helpdesk’, which was part of LPP, to check whether Ms E, his co-habiting partner, would be entitled to a survivor’s pension after he died as he was in serious ill health (**the Telephone Call**). He was advised that Ms E would receive a survivor’s pension and only had to send in a copy of his death certificate in the event of his death. Ms E says that based on this information, they elected not to get married.
11. Shortly after Mr N’s death in September 2017, Ms E sent LPP a copy of the death certificate.
12. In October 2017, Ms E contacted LPP and was informed that she was not entitled to a survivor’s pension as Mr N left the Scheme before 1 April 2008. Ms E explained that Mr N was informed she would receive a pension on his death. She asked for a transcript of the Telephone Call.
13. On 12 October 2017, LPP wrote to Ms E (**the Letter**). LPP acknowledged that the information it had provided during the Telephone Call was incorrect. LPP explained that Mr N was a member of the 1997 section of the Scheme. Consequently, a survivor’s pension is only payable to a spouse, civil partner or eligible children. Ms E was provided with a summary of the Telephone Call, which is set out in Appendix 1.
14. On 2 November 2017, Ms E received a further letter from LPP confirming that a balance of £103.64 was due to Mr N’s estate. LPP reiterated that she was not entitled to a survivor’s pension as Mr N was not an active member of the Scheme on 1 April 2008.

15. Ms E complained that Mr N was given incorrect information during the Telephone Call and had acted in reliance on that information. She again asked for a complete transcript of the Telephone Call.
16. On 23 December 2017, LPP acknowledged that Mr N was again given incorrect information during the Telephone Call and apologised. It confirmed that the member of staff who had given the incorrect information had been retrained. Ms E was offered £500, for the distress and inconvenience she had suffered as a consequence of the misinformation (**the Offer**).
17. Ms E did not accept the Offer and asked for her complaint to be escalated. She also asked for further details concerning the survivor's pension.
18. On 5 March 2018, LPP confirmed that if Ms E had been eligible for a survivor's pension, she would have received a pension at the short-term rate of £311.75 (gross) per month (**the Short-Term Pension**) for a period of three months and then a long-term pension of £142.06 (gross) per month (**the Long-Term Pension**).
19. On 7 September 2018, LPP replied to Ms E's complaint under Stage One of the Internal Dispute Resolution Procedure (**IDRP**) on behalf of the LPFA. LPP explained that:-
  - 19.1. The 1997 Regulations do not contain provisions for payment of a survivor's pension to unmarried partners of members who left employment before 1 April 2008.
  - 19.2. As Mr N left employment on 12 April 1991, Ms E was not entitled to a survivor's pension.
  - 19.3. The 1997 Regulations were amended in 2008, to allow a survivor's pension to be paid to co-habiting partners. However, this benefit improvement was not applied retrospectively. It acknowledged that Mr N had been given incorrect information during the Telephone Call. Consequently, he would have assumed that a pension would be payable to Ms E following his death.
  - 19.4. Ms E would have suffered additional distress at a time that would already have been extremely difficult. However, the Offer was sufficient in the circumstances and remained open to Ms E to accept.
20. Ms E did not accept the Offer and then appealed the decision. She said that if Mr N had been given accurate information at the time, he would have married her to ensure that she received a pension following his death. Ms E explained she had been his partner for 18 years. She estimated that she had suffered a financial loss amounting to £34,000 in respect of the survivor's pension.

21. On 1 February 2019, LPP issued its response under Stage Two of the IDRPs and upheld the Stage One decision. LPP restated that Ms E was not entitled to a survivor's pension under the 1997 Regulations. When making its decision, it had considered the fact that Mr N had been given inaccurate information in May 2017. However, it could not conclude that Mr N would have chosen not to marry Ms E as a consequence of his reliance on that information.

### **Summary of LPP and LPFA's position**

22. There is no dispute that Mr N was provided with incorrect information during the Telephone Call. However, the Scheme must be administered in accordance with the relevant regulations. The 1997 Regulations apply in this case.
23. The 1997 Regulations do not contain provisions for a survivor's pension for unmarried partners of members who left the Scheme before 1 April 2008.
24. It is clear from the Telephone Call that Mr N was "against marriage in principle," because of his two previous marriages. So, even if Mr N had been provided with the correct information in May 2017, it is unlikely that he would have married Ms E at the time.
25. The only payment due in this case is the amount of £103.64, payable to Mr N's Estate.

### **Summary of Ms E's position**

26. Ms E says she is not disputing LPP's interpretation of the then 1997 Regulations. However, if Mr N had been given the correct information, he would have married her. Mr N was not provided with details of the eligibility criteria for the survivor's pension despite requesting this during the Telephone Call. If he had received this information, he then would have known the correct position and married her.
27. Ms E has explained that after the Telephone Call, Mr N's health deteriorated significantly. So, his ability to follow up matters, for example the information he requested on the survivor's pension, was extremely limited.
28. Ms E says LPP should have provided a full transcript of the Telephone Call, as this would have helped establish exactly what was said at the time.
29. Ms E does not agree with the assumption that Mr N "was against marriage in principle". Mr N did not believe that marriage was essential to a successful relationship as he had been married twice. However, if Mr N had been correctly informed that the survivor's pension would only be payable to a spouse or civil partner on his death, he would have married her to help secure her financial future after his death.
30. Ms E says she provided LPP with a letter from Mr N's daughter, his ex-wife, their neighbours, and the MacMillan nurse who looked after him after his diagnosis. These letters are written testimonies; they confirm Mr N had mentioned to each of them

separately that he would have married her to ensure she was looked after financially after his death. (See Appendix 2 for extracts from the testimonies).

31. Ms E says that before Mr N's death, they made joint wills as a sign of their commitment. She is named on the grant of probate and is the sole beneficiary of Mr N's Estate.
32. In June 2017, Ms E says they took out a loan for £8,000 (**the Loan**) and subsequently had some repairs completed to their home. Mrs E said that they fitted a new garage door and repaired their driveway. The work was completed in July 2017.
33. Ms E has explained that they made several financial commitments on the understanding that she would receive a survivor's pension after his death. One of those commitments was applying for the Loan to help pay for the instalment of a new garage door and repaving the driveway. The Loan was taken out on the understanding that she could use some of the survivor's pension to keep up with the monthly repayments. Ms E has also explained that:

“The driveway was the original one built in the late sixties. It had been patched and was a mixture of paving slabs and tarmac and the whole of it was breaking up. The paving slabs were cracked and uneven and the tarmac was reduced to rubble in places and was dangerous to walk on. The garage door was the original heavy wooden door and was rotten and prone to falling down on our heads.”
34. Mr N did not have any savings. At the time of his death, Ms E says she had £1,305 in a savings account which she had set aside for utility bills, car and home insurance. She also held £6,015 in an individual savings account (**ISA**), which was intended to help towards the cost of repairing the front porch of their home; the back fence; a leaking garage roof that needed replacing; and a leaking conservatory roof. Without the monthly contributions she received from Mr N, and the survivor's pension she expected to receive from the Scheme, she has struggled to maintain the house and cover the associated annual expenses.
35. When she found out that she was not entitled to the Short-Term and Long-Term pension, she used part of her savings in her ISA to repay the Loan. She was unsure whether she would be able to keep up with the monthly repayments going forward and did not want to risk falling behind with the payments. However, this caused her additional financial hardship as she had to reconsider how best to use her remaining savings. She was conscious of the fact that she would be without Mr N's monthly contributions towards the house, or the Short-Term and Long-Term Pension she thought she was entitled to.
36. Ms E says she has experienced considerable distress as a consequence of the misstatement on the part of LPP. She cannot move on with her life until her complaint has been resolved. Having to deal with this matter over the last five years has severely impacted her mental health. The Offer is insufficient given the extent of LPP's maladministration.

## Conclusions

37. Having reviewed the 1997 Regulations, I agree that the survivor's pension is only payable to a spouse, civil partner or any eligible children. I note that from 1 April 2008, the 1997 Regulations were amended to provide a survivor's pension to eligible co-habiting partners. However, as Mr N was not an active member at that point in time, having left the Scheme in 1991, the change in the provisions is not applicable in Ms E's case.
38. The issue here is that Ms E would have received a survivor's pension if she and Mr N had been married on his date of death. However, during the Telephone Call, Mr N was provided with a clear and unambiguous statement concerning the eligibility criteria for a survivor's pension, which was inaccurate and misleading.
39. The statement made by LPP was that being married was not a requirement for payment of a survivor's pension. This error is sufficiently serious to warrant a finding of maladministration. Nonetheless, LPP and the LPFA have a duty to act in accordance with the 1997 Regulations. While the provision of incorrect information can amount to maladministration, it does not, in of itself, confer an entitlement.
40. Ms E considers that it would not be equitable for LPP to go back on the statement but has not raised any specific legal arguments as to how that may be achieved. However, my proceedings are intended to be informal. In the case of *Grievson v Grievson* [2011] 066 PBLR, Mr Justice Lewison said at paragraph [28] in a case where a member had not specifically raised the issue of estoppel that:

“generous allowance must be made for the fact that [the complainant] was unrepresented and for the fact that the process of complaining to [TPO] is an informal procedure. [The complainant's] complaint did allege that the transfer value that he had been offered departed from the previously agreed actuarial values and that he had suffered injustice because he was no longer able to plan for his retirement. In my judgment that was a sufficient allegation to raise the question of estoppel.”
41. I consider it necessary to suggest potentially available legal causes of action.

## Estoppel

42. Ms E's complaint shares numerous similarities with the case of *Catchpole v Trustees of the Alitalia Airlines Pension Scheme* [2010] EWHC 1809. In summary, Mr Catchpole's co-habiting partner asked the Trustees if they needed to be married in order for her to receive a survivor's pension. She was misinformed that this was not necessary. The Judge found that Mr Catchpole and his partner would have married if they had been given the correct information. The judge, Warren J, found that all the necessary ingredients for an estoppel by representation defence were present. Moreover, it did not matter that the incorrect information had been given to Mr Catchpole's partner; the information had effectively been provided to both parties.

Accordingly, I will consider whether an estoppel by representation is present in this case as well.

43. Where there is evidence that an unequivocal representation has been made by a party, upon which the member reasonably relies to their detriment, then estoppel by representation should be considered as a cause of action. If the individual succeeds in this argument, it will prevent the other party from going back on the representation.
44. To succeed in an estoppel by representation, the applicant needs to establish that there was an unambiguous representation on which they relied in good faith to their detriment. These requirements were elaborated in the case of *Steria v Hutchison* [2006] 64 PBLR. In that case, Neuberger LJ said:

“When it comes to estoppel by representation or promissory estoppel, it seems to me very unlikely that a claimant would be able to satisfy the test of unconscionability unless he could also satisfy the three classic requirements.

They are:

(a) a clear representation or promise made by the defendant upon which it is reasonably foreseeable that the claimant will act,

(b) an act on the part of the claimant which was reasonably taken in reliance upon the representation or promise, and

(c) after the act has been taken, the claimant being able to show that he will suffer detriment if the defendant is not held to the representation or promise. Even this formulation is relatively broad brush, and it should be emphasised that there are many qualifications or refinements which can be made to it”.

45. Regarding the test of “unconscionability”, Neuberger LJ said:

“...If one had to identify a single factor which a claimant in an estoppel case has to establish in order to obtain some relief from the court it would be [SIC] unconscionability - see per Robert Walker LJ in *Gillett v Holt* [2000] Ch 198 especially at 225 and 232”.

46. Ms E has claimed if Mr N had been provided with the correct information in the Telephone Call, he would have married her before he died. Consequently, she would have been entitled to a survivor’s pension payable from the Scheme. I need to consider whether this is supported by the evidence. In particular, whether the necessary criteria for an estoppel by representation defence has been met or not.
47. In May 2017, Mr N informed LPP that he had received a terminal diagnosis. Having reviewed LPP’s summary of the Telephone Call, I am satisfied that he was sufficiently clear concerning his prognosis. LPP has not disputed this.
48. Mr N also informed LPP that he and Ms E were not married but were living together as partners and enquired whether she would still be entitled to receive a survivor’s pension following his death. In response, LPP made a clear representation that

marriage was not a requirement for payment of the survivor's pension, as Ms E was his co-habiting partner. Although the Letter does not provide a complete transcript of the Telephone Call, it is likely to be an accurate account of the conversation that took place between Mr N and the representative, who was acting on behalf of LPP. I note the Letter indicates that Mr N did not want to get married, out of principle. I have addressed this point further in paragraphs 53 to 55 below.

49. During the Telephone Call, Mr N was given the reasonable expectation that the Scheme would provide Ms E with a pension on his death. Moreover, he was also given the reasonable expectation that there was no requirement for him to marry Ms E to safeguard her financial future. Mr N was not provided with any other information at the time that may have caused him to question the accuracy of the representation, nor was he signposted to the Scheme regulations or asked to read the Scheme booklet (and, in view of that context and the prognosis of his illness, I am satisfied that it was also reasonable to rely on that telephone call alone, rather than continue to make more detailed enquiries).
50. I am satisfied on reviewing the evidence that the information Mr N was given at the time amounted to an unequivocal representation. I am also satisfied that it was reasonably foreseeable he would rely on that information without following up his request for confirmation in writing. It is important to note that Mr N did not receive any information in writing from LPP concerning the survivor's pension, despite requesting this.
51. The issue for me to decide is whether Mr N acted on the information to Ms E's eventual detriment. If so, I need to consider the appropriate means of remedying any financial loss Ms E has suffered as a result of their reliance on the representation.
52. Given Mr N's personal circumstances, I find that it is more likely than not that Mr N would have acted on the representation. It is clear from the evidence that he sought to reassure himself that, after his death, Ms E would be "taken care of." Otherwise, there would have been no reason for him to make the telephone call to LPP at that point in time.
53. LPP has inferred that Mr N was, in principle, against marriage having been married twice before. Based on the evidence, I can find no basis on which to conclude that Mr N would not have married Mrs E, given his obvious concern for her financial wellbeing. Indeed, if Mr N had been ambivalent about protecting Ms E's financial wellbeing after his death, he would not have made the Telephone Call.
54. The fact that Mr N telephoned LPP and made enquiries concerning the eligibility criteria for the spouse's pension is indicative of his willingness to ensure that Ms E was financially cared for through the Scheme after his death. Had they married, Ms E would then have been provided with a pension from the Scheme after Mr N's death. By providing Mr N with incorrect and misleading information, LPP denied Mr N the opportunity to ensure that Ms E would be provided with a regular income from the Scheme on his death.



55. Importantly, in this case there is clear evidence that Ms E and Mr N would, on the balance of probabilities, married had the correct information been provided. I have reviewed copies of the four testimonials Ms E provided to LPP. I have no reason to doubt their authenticity. It is clear from these testimonials that Mr N was in a caring and committed long term co-habiting relationship with Ms E and that they were financially interdependent. I agree that the testimonials support Ms E's assertion that had LPP not provided incorrect information Mr N would have elected to marry her to ensure that she was taken care of after his death. Consequently, I find that the three conditions necessary for a defence of estoppel by representation have been met in Ms E's case.
56. Regarding the more general question of "unconscionability", having considered Ms E's complaint, I find that any opportunity to put matters right, or mitigate her financial position, was lost when Mr N died. Consequently, Ms E will continue to suffer financial injustice unless LPP is held to the representation.
57. LPFA is ultimately responsible for the administration of the Scheme. Consequently, it would be appropriate in the circumstances for LPFA to provide Ms E with a survivor's pension to remedy any financial injustice she has suffered as a direct result of LPP's maladministration.

### **Change of position**

58. It would appear Ms E has raised the issue of the Loan to demonstrate that she has a change of position defence. Given that I have already concluded estoppel by representation applies in Ms E's case, and prevents LPP from going back on the representation, it is not necessary for me to consider change of position.

### **Non-financial injustice**

59. The maladministration I have identified has likely compounded any distress Ms E was already suffering during a difficult time; LPP missed several opportunities to make Mr N aware of the correct position. Consequently, Ms E is entitled to a distress and inconvenience award in recognition of the severe distress and inconvenience she has suffered as a direct consequence of the administrative error on the part of LPP.
60. I uphold Ms E's complaint.

### **Directions**

61. Within 28 days of the date of this Determination, LPP and LPFA shall:
- 61.1. pay Ms E an amount equivalent to the Short-Term Pension she would otherwise have been entitled to under the Scheme (**the Short-Term Sum**);
  - 61.2. pay interest on the Short-Term Sum from the date each instalment of the Short-Term Pension would otherwise have been payable to the date of actual payment. The interest referred to above shall be calculated at the base rate for the time being quoted by the Bank of England;

- 61.3. pay Ms E an amount equivalent to the arrears of Long-Term Pension she would otherwise have been entitled to under the Scheme. This shall be paid from the due date of each instalment up to the date of actual payment (**the Long-Term Sum**). The Long-Term Sum shall be adjusted to reflect any increases in payment that would have been awarded each year on the Long-Term Pension up until the date of this Determination;
- 61.4. pay interest on the Long-Term Sum from the date Ms E would otherwise have been entitled to receive the Long-Term Pension up until the date of actual payment. The interest referred to above shall be calculated at the base rate for the time being quoted by the Bank of England;
- 61.5. pay Ms E future instalments of pension equivalent to the rate of the Long-Term Pension, together with any pension increases due each year; and
- 61.6. pay Ms E an overall award of £2,000, in recognition of the severe level of distress and inconvenience she has suffered as a result of this matter.

**Dominic Harris**

Pensions Ombudsman  
17 December 2023

## **Appendix 1**

### **Summary of the Telephone Call**

“Mr [N] spoke to one of our agents and asked whether he could donate some of his pension to his partner of 18 years and stated that he was not married and didn’t want to get married in principle. Our agent advised that the pension does have provision for a spouses and co-habiting partner’s pension and that he can nominate a co-habiting partner.

Mr [N] advised LPP that he had terminal cancer and has been given a date he is expected to live [sic] and that he had read that he can provide some of his pension to his partner. Mr [N] asked what the difference between a spouses and co-habiting partner’s pension [sic]. The agent explained that there is no real difference other than the co-habiting partner had to meet the criteria to be eligible. I have included a copy of this criteria.

Mr [N] requested for the documentation to be issued to him for this and that agent explained that there was in fact no form required to nominate. It was explained that when Mr [N] passes away then we would need to be contacted by co-habiting partner to apply for the pension and we would write to his partner with further details.

Mr [N] asked if the pension would be a fixed percentage amount and the agent confirmed that it is not something we can advise at this stage as there are various factors based on service in the scheme that would make a difference to how much is paid. The agent confirmed that this would be calculated at the time the pension is due to be paid.”

## **Appendix 2**

### **Extracts of the testimonials provided by Ms E**

#### **Mrs S', Mr N's daughter, testimonial**

“...I don't understand their reasoning regarding dad's attitude to marriage.

He was a lapsed Catholic convert who had already been married twice. Of course he was uncomfortable with the concept of a third marriage. But his actions prove that he was prepared to make you his wife to protect you. You had financially planned your retirements together and he sought advice to make sure that would happen, and they were the ones that told him he didn't have to get married to do that. Dad not marrying was down to them, so I can't believe the cheek of using that against you.

...

I know dad's pension would be helping you out right now. I feel bad that at the end he wasn't doing well and that he left you with loans and credit card debt to sort out. Your household bills were combined, and lifestyle choices/financial plans were made together. Their negligence has impacted your future and I have seen you struggle not just with money, but with your physical and mental health. This resulting burdens of having to cope with trying to sort this whilst grieving have caused extra stress in your life [SIC]. This has impacted you both financially and personally.”

#### **Mrs N's, Mr N's ex-wife, testimonial**

“...We spoke about the situation, and he said that it wasn't necessary to get married as [Ms E] had entitlement [to a survivor's pension]. We spoke of whether he would have married, and he said several times to me that he would have got married had it been necessary. He was told by the pensions agent that it was neither necessary to marry nor to complete nomination forms.

...

I witnessed his statements that he would have married had it been necessary.”

#### **Mr YN and Mrs EN, Mr N's neighbours, testimonial**

“We discussed their marital status and advised [Mr N] he should be officially married. [Mr N] assured us that he had gone into the legal position with the pensions company, and he was certain after a long phone call, that it didn't matter, as by law [Ms E] was classed as his wife and would benefit from any savings or pensions. He said if it had been necessary, he would have got married to secure [Ms E's] future income.”

**Mrs YN's, Mr N's Macmillan Nurse, testimonial**

“... I am writing to confirm that when faced with the terminal cancer diagnosis it was of the utmost importance that he ensured that his partner, [Ms E], would be left financially stable after he died. He discussed with me that he had contacted his pension/insurance companies and explored whether he and [Ms E] needed to be married and was advised that this was not necessary. [Mr N] and [Ms E] would have been happy to marry if required”.