

Ombudsman's Determination

Applicant	Mrs NiR
Scheme	The Railway Pension Scheme Greater Anglia Section (the Scheme)
Respondents	Railpen (formerly RPMI) Railways Pension Trustee Company Limited (RPTCL) Abellio East Anglia Ltd, t/a Greater Anglia, (the Employer)

Outcome

1. Mrs NiR's complaint is upheld and to put matters right Railpen and the Employer shall each make a payment of £17,506.48 to Mr D's estate.

Complaint summary

2. Mrs NiR has complained, on behalf of the estate of her father, Mr D, that both the Trustee and the Employer unreasonably delayed settling Mr D's benefits, causing the estate to incur an increased tax bill. The gross value of the benefit payable was £116,662.

Background information, including submissions from the parties

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. The structure of the Scheme is that RPTCL, as the Trustee, has overall responsibility for the Scheme and holds the Scheme's assets. The Pension Trust explicitly provides at Clause 2B and Appendix 5 that each section may set up a Pensions Committee to exercise control over its own arrangements. For those sections that do not establish a Pensions Committee, RPTCL exercises any discretionary powers in respect of, and on behalf of, that section.
5. RPTCL is a corporate body owned by all the employers in the railways industry together as a holding company limited by guarantee. Railpen is a wholly owned subsidiary of RPTCL and is responsible for the day-to-day administration of the Scheme and acts under delegated authority from RPTCL or the Committee.

6. Mr D was a member of the Scheme. On 7 June 2018, he died after a short illness. It appears he did not leave a Will, nor did he complete a Nomination Form.
7. An announcement issued by the Employer to his colleagues on 8 June 2018 said "We are in contact with [Ms N], [Mr D's] partner..."
8. On 11 June 2018, the Employer made enquiries about Mr D's next of kin's bank details so that Mr D's salary could be paid into their account. On 13 June 2018, Ms AR, who described herself as Mr D's ex-spouse, emailed Greater Anglia to say that her daughter, Ms NaR, was next of kin and wanted to know how to proceed with notification of Mr D's death and any subsequent claim. She said that she had a document decreed by court that named Ms NaR as sole beneficiary to any life policies that may be in place. She added:

"Siblings from a previous marriage may also try to claim any benefits and so we wish to make sure any funds are divided lawfully. They presently hold the original death certificate but I am sure we can obtain one as I assume it will be one of the requirements."
9. The Employer replied to Ms AR on 14 June 2018. It explained that it would be 'pension management' who would decide on the division of any funds. Ms AR responded by email the same day to ask if she should contact 'pension management' or if it would contact her. The Employer explained that it might be in touch if Mr D had put Ms NaR's or Ms AR's details on any Nomination Form. It also explained that it would not be aware of who would have been named and suggested that Ms AR contact 'pension management.'
10. On 28 June 2018, the Employer advised Railpen of Mr D's death.
11. Railpen responded on 5 July 2018 requesting that a Notification of Death form be completed and returned. The Employer acknowledged this on 9 July 2018 and advised that its HR Department would be completing the Notification of Death.
12. On 10 July 2018, Mrs NiR contacted the Employer to notify it of Mr D's death.
13. On 17 October 2019, Railpen sent an email to the Employer's HR Department chasing for the Notification of Death. It said that no correspondence had been sent to Mr D's next of kin due to this form not being received by Railpen. This was followed by a further chaser on 29 October 2019.
14. On 30 October 2019, the Employer responded to Railpen. It said that it was having difficulty contacting Mr D's family to retrieve the Death Certificate. It had been led to believe there was an ongoing dispute within the family, although this had not been officially confirmed.
15. Railpen chased the Employer for an update on 19 November 2019. The Employer responded on 26 November 2019 to repeat that it was still having difficulty contacting Mr D's family to retrieve the Death Certificate.

16. On 13 January 2020, the Employer sent Railpen the Notification of Death and the Death Certificate. The Employer confirmed the next of kin as Mr D's spouse, Ms N.
17. On 21 January 2020, Railpen sent the relevant claim forms to Ms N to complete and return.
18. On 3 March 2020, Railpen received a letter from Ms NaR regarding the benefits payable. Railpen responded on 13 March 2020 and provided relevant claim forms for her to complete and return. On the same date it sent a chaser letter to Ms N requesting that the claim forms sent to her be completed as they had not been received.
19. On 17 March 2020, Railpen received an email from Mrs NiR advising that she was Mr D's eldest daughter. Railpen responded on 2 April 2020, again providing claim forms to be completed and returned.
20. On 6 April 2020, Railpen received the completed claim forms from Mrs NiR, together with her birth certificate. The birth certificate named her father as Mr R, however the Death Certificate confirmed his name as Mr D, as was held on Railpen's records.
21. On 9 April 2020, Railpen received the completed claim forms from Ms NaR. On the form she confirmed the names of Mr D's other children; Mrs NiR, Ms DR and Mr T.
22. On 27 May 2020, Railpen wrote to Ms DR asking her to complete a claim form and also to confirm Mr T's address. On the same day, it emailed the Employer to ask if it had proof that Mr D had changed his name.
23. It also emailed Ms NaR to confirm it was waiting for information from the other potential beneficiaries before it could proceed any further. It requested proof that Mr D had changed his name and for the receipted funeral bill. It sent a similar email to Mrs NiR.
24. Mrs NiR responded on 29 May 2020. She confirmed that the funeral bill had been sent to Ms DR. She attached an email from the funeral director confirming the funeral bill was paid in instalments, but not confirming who had paid it.
25. On 3 June 2020, the Employer emailed Railpen to confirm that it had no record that Mr D was ever called or known as Mr R.
26. On 8 June 2020, Ms NaR emailed Railpen to confirm she was in receipt of the funeral bill but saying that she was having difficulty finding out how to get evidence of her father's name change. On the same day, Railpen received a letter from Ms DR enclosing her completed claim forms and birth certificate.
27. On 11 June 2020, Railpen emailed Ms NaR to ask if she could contact the UK Deed Poll Office to obtain proof of Mr D's name change. It also asked if she knew Mr T's address. It confirmed that it was still waiting for information from the other potential beneficiaries before any decision could be made regarding payment of the lump sum death benefit.

28. On the same day, Mrs NiR emailed Railpen asking for: confirmation of the amount due to the estate; whether her father had completed a Nomination Form; whether any progress had been made in finding evidence of her father's name change; what the position would be if it was not possible to find Mr T; and would payment of the lump sum death benefit be finalised before the expiry of the two year period.
29. Railpen responded by email. It said that:
- it was unable to confirm the final lump sum death benefit amount;
 - Mr D did not complete a Nomination Form;
 - it had not received next of kin details until January 2020 and no communication from other family members until March 2020;
 - the application for the lump sum death benefit was still awaiting further information from other potential beneficiaries;
 - it needed details of Mr T's address or who could provide it;
 - it had contacted the Employer for proof of Mr D's name change but had been advised it had no proof; and
 - it advised Mrs NiR to contact the UK Deed Poll Office.
30. On 17 June 2020, Mrs NiR raised a complaint under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). However, RPTCL did not treat her complaint under IDRP.
31. Mrs NiR asked what attempts had been made to find possible next of kin and beneficiary details by Railpen and the Employer between June 2018 and January 2020 and why had it taken so long for Railpen to send correspondence, using the same standard form as for her and Ms NaR, to their sister Ms DR when Railpen had her contact details available since March/April 2020?
32. She was also concerned that:-
- The case was not treated as a priority considering the timescale to complete before 28 June 2020.
 - Railpen was unable to provide details of the death in service benefit amount.
 - It had taken Railpen a long time to inform her of being unable to obtain change of name details from the Employer and the need for her to contact the UK Deed Poll Office earlier despite the urgency.
 - Railpen considered it her responsibility to contact the UK Deed Poll Office.
 - Railpen had not answered her question about what would happen if it were unable to contact Mr T.

- She, Ms DR and Ms NaR had all stated that they had had no contact with Mr T for more than 15 years or knew of his whereabouts, but Railpen still persisted in asking for his details. She found this distressing.
 - There were no clear answers given as to whether the case would be completed prior to the two year deadline of 28 June 2020.
 - The service was slow and Railpen was unresponsive despite the sensitivity of the case. She felt Railpen was not focusing on critical areas of member support, including death in service, as it claimed.
 - She did not understand why she and her sisters had to justify to RPTCL to be considered as beneficiaries when their father did not complete a nomination form and they are bloodline relatives. Again this was very distressing.
33. On 19 June 2020, Mrs NiR emailed Railpen to say that Ms DR had contacted the UK Deed Poll Office by email but was getting no response. She asked what she should do.
34. On 28 June 2020, the two year period for the payment of the death benefit by RPTCL expired.
35. On 3 July 2020, Railpen emailed Mrs NiR. It said that it needed proof of Mr D's name change; however, if she was unable to obtain this via HMRC or the UK Deed Poll Office, she should ask the Citizens Advice Bureau for help or arrange to complete a sworn affidavit. It also asked her to contact the Funeral Directors to provide confirmation of who had paid the funeral bill.
36. On the same day, Railpen: wrote to Ms DR to advise that it was still awaiting her claim form and Birth Certificate; wrote to Mrs T to ask if she had any contact details for her son, Mr T; and wrote to Ms N to advise it was still awaiting her claim form and Birth Certificate.
37. On 6 July 2020, Ms DR emailed Railpen to advise that she had submitted her claim forms and Birth Certificate on 5 June 2020.
38. On 24 July 2020, as two years had passed since Railpen was informed that Mr D had died, it wrote to Mrs NiR, Ms NaR and Ms DR to confirm that the lump sum death benefit would now be payable upon receipt of Letters of Administration naming the personal representatives who were administering Mr D's estate (**the Letters of Administration**).
39. On 29 July 2020, Railpen wrote to Ms DR to confirm her Birth Certificate had been received and returned. It advised that it had only received Page 1 of her claim form and that Pages 2 and 3 were still outstanding. The letter also advised that as two years had passed since it was informed that Mr D had died, the lump sum death benefit was now payable upon receipt of the Letters of Administration.

40. On the same day, Railpen wrote to Mrs NiR with a complaint response, rather than an IDRP response.
41. It said the Employer had notified it of Mr D's death on 28 June 2018. On 5 July 2018, it had asked the Employer to complete and return a Notification of Death form and provide the Death Certificate to enable it to contact the next of kin. Subsequently, no further information had been received and it chased the Employer for the information on 17 October 2019. Further requests were sent on 29 October 2019, and 19 November 2019 until a reply was received on 26 November 2019.
42. The reply advised that the Employer had been unable to complete the documents as there had been some difficulty in establishing who the next of kin was and in obtaining a Death Certificate. The Notification of Death form and Death Certificate were eventually received on 13 January 2020.
43. It also said that:-
 - A letter was not sent to Ms DR as her details were overlooked.
 - It had contacted the Employer on 27 May 2020 to verify if it had confirmation of Mr D's name change on its records as this had not been advised to Railpen. The pension record had been set up in the name of Mr D when he was entered into the Scheme and it was not until it had received Mrs NiR's birth certificate that it became aware he had been known by another name.
 - On 3 June 2020, the Employer had confirmed that it had no proof of a name change from Mr R to Mr D. Railpen had then contacted Mrs NiR on 11 June 2020 to establish if she had proof of her father's name change as this would be required before any death lump sum was paid.
 - The benefits payable comprised of a lump sum equivalent to four times the basic salary at 1 April and the return of the value of the 'Personal Retirement Account'. This was the fund built up from pension contributions made by Mr D and the Employer
 - Regarding what would happen if it were unable to contact Mr T, it was no longer necessary to contact all potential beneficiaries as the two year time period had elapsed and distribution of the benefits was not at the discretion of the Trustee, but instead became payable to Mr D's Personal Representatives. Tax would be payable at 45%.
 - In order to proceed, as Mr D had not left a Will, Railpen required Letters of Administration naming the Personal Representatives. Once this was received Railpen would be in a position to make payment to the named Personal Representatives.

- Railpen would write to known beneficiaries requesting a Lump Sum Death Benefit Declaration Form be completed as soon as it had been provided with the Notification of Death form and the Death Certificate.
 - Timescales for the completion of a claim varied depending on the number of potential beneficiaries and the evidence required. It also depended on whether the distribution of the payment needed to be referred to the Trustee. It had not been aware that Mr D had any children until Mrs NiR made contact in March 2020. Up until that point it had been attempting to contact the next of kin provided by the Employer in January 2020.
44. On 3 August 2020, Mrs NiR emailed Railpen advising she had applied for Letters of Administration and asking if it still required a sworn affidavit in respect of the change of name. Railpen replied, the same day, to confirm it still required the sworn affidavit and that it had not received any information regarding the change of name for Mr D. It confirmed it was still awaiting information from other potential beneficiaries but would no longer be chasing for the outstanding information as more than two years had passed since it had been advised that Mr D had died. It confirmed the amount due and that this would be subject to tax deductions.
45. On 28 October 2020, Railpen received a letter from Ms NaR advising that Mrs NiR had taken over all correspondence and had obtained the documentation that was required. She asked if the lump sum death benefits would be split equally by an independent professional or if Mrs NiR would receive the full amount.
46. On the same day, Railpen received from Mrs NiR: a Method of Payment form; Letters of Administration dated 16 October 2020, showing her as the administrator of her father's estate; Employment History; and Death Certificate for Mr D.
47. On 30 October 2020, Railpen emailed Mrs NiR to advise that arrangements had been made to pay £64,142.55, which was the net payment due in respect of the lump sum death benefit. It confirmed that it would arrange to pay the tax due directly to HMRC.
48. On 2 November 2020, Railpen emailed Ms DR to confirm the lump sum death benefit had been paid. On the same day, it received an email from Ms NaR asking if tax had been deducted from the lump sum death benefit. It responded on 3 November 2020 to confirm that 45% had been deducted.

Mrs NiR's position

49. Poor communication between the Employer and Railpen in obtaining the Notification of Death form and Death Certificate in a timely manner caused avoidable delays.
50. Due to the passing of the two year date for payment the benefit was subject to 45% tax payment. The entire process had been stressful.
51. The Employer referred to Ms N as her father's spouse, whereas they were never married. Mr D's final salary was paid into her account. Would this not require appropriate documentation such as the Death Certificate?

52. Ms AR had emailed the Employer stating Ms NaR as Mr D's daughter, and also mentioned other siblings from a previous marriage. Mrs NiR had contacted the Employer on 10 July 2018. Therefore, the Employer had contact details of two of Mr D's daughters - who would hold a Death Certificate. Yet according to the Employer it had no contact details of family members.
53. The Employer also stated that the family had not provided the Death Certificate and that there was a dispute as to who the next of kin was. The family was never asked for the Death Certificate, even though the Employer was provided with contact details in 2018. Also where was the evidence of the alleged dispute of next of kin? No contact was made with the family until December 2019.
54. The Employer only attempted to contact Ms N in August 2018 for the Death Certificate and no further attempts were made until October 2019, when Railpen chased.
55. As the Employer had family contact details in 2018 and was advised she held the original Death Certificate, Railpen could have completed all avenues of assessment to determine beneficiaries well before the two-year deadline.

Railpen's position

56. Although it was informed on 26 June 2018 that Mr D had died, the Death Certificate was not received until 13 January 2020, some 18 months later, due to a dispute regarding who should be listed as next of kin.
57. In addition, documentation received from the claimant named the deceased as Mr R and not Mr D. It was unable to proceed with payment of the lump sum death benefits until the appropriate documentation had been received to confirm a change of name.
58. It requires receipt of particular documentation before it is able to make payment of a lump sum death benefit. This includes the member's Death Certificate, to confirm they have actually passed away, and completion of the relevant claim forms and supporting documentation from any claimants. Unfortunately, some forms such as those for Ms N were not received. If payment was to be made over two years after receiving confirmation that a member had passed away, a legal document was required to allow payment to be made.
59. It has adhered to its duty to obtain the relevant legal documentation and submits that it has properly administered the pension entitlement in respect of the late Mr D in accordance with the Rules of the Scheme.

The Employer's position

60. Mrs NiR's complaint against it appears to be that it failed to provide Railpen with the Notification of Death and Death Certificate within a reasonable time and that was part of the reason the distribution of the benefits did not occur within two years and is now taxable. It disputes such a claim.

61. As far as it is aware there was a dispute within the family as to who was Mr D's next of kin. It was informed by Ms AR that, per a decree of court, that her daughter, Ms NaR, was the sole beneficiary to any life policies that may be in place. If that is correct then Mrs NiR is neither an actual or potential beneficiary and there is therefore a jurisdictional issue in this regard.
62. Mr D seems to have had three daughters (Ms NaR, Mrs NiR and Ms DR) and a son, Mr T. Ms N is his widow. All these individuals would seem to have an interest in the matter.
63. Part of the documentation that it had to send to Railpen together with the Notification of Death form was the Death Certificate. It therefore made attempts to contact Ms N (Mr D's next of kin per its records) by telephone in August 2018 in order to obtain the Death Certificate. However it had great problems in getting hold of her. In the end the Death Certificate was not provided at that time.
64. On receiving Railpen's email of 17 October 2019, further enquiries were made as to why the Notification of Death form had not been sent to Railpen. It was discovered that the reason for this was that it had never received the Death Certificate.
65. In November 2019, it made further attempts to contact Ms N. However, the telephone numbers on file were no longer connected and she no longer lived at the address on file. It then made attempts to contact Mr D's family via social media, through a work place colleague.
66. Ms NaR emailed the Employer, on 23 December 2019, apologising for how long it had taken her to get in contact. The Employer then requested a copy of the Death Certificate on 3 January 2020. It received this on 13 January 2020 and immediately sent the Notification of Death form and Death Certificate to Railpen.
67. The delay was therefore initially caused by Ms N (Mr D's next of kin per the Employer's records) not providing the Death Certificate when requested in August 2018.
68. It should be noted that no follow up about the Notification of Death form was made before October 2019. Once such further enquiries were made the Employer took further steps to obtain the Death Certificate and was able to submit it together with the Notification of Death form a couple of months later.
69. Mr D did not nominate a potential recipient for the lump-sum death benefits. So, Railpen had to contact all 'Potential Beneficiaries' in order to make a distribution.
70. The Employer is not privy to the communications between Railpen and Mr D's family, however from the timeline in Railpen's response it would seem as if part of the delay stemmed from Mrs NiR having failed to provide her siblings' details. Such information was obtained from Ms NaR, at which point Railpen sent a claim form to Ms DR and also requested that she provide details of Mr T's latest address.

71. There seems to have been some difficulty with contacting Mr T and as at 26 July 2020 he still appears to have not been contactable.
72. Additionally, from Railpen's response it would seem as if Ms N's forms were never received.
73. Mr D had changed his name and proof of a name change was therefore required by RPTCL before any death lump sum could be paid out. This issue became known in April 2020 as a result of Railpen having received Mrs NiR's Birth Certificate and noting that there had been a name change.
74. In May 2020, Railpen asked the Employer if it had any proof of a name change from The Employer made enquires however it did not hold any details.
75. Per Railpen's response, on 27 May 2020, Railpen contacted Mrs NiR and Ms NaR to enquire whether they had proof of the name change. It is unclear when the required information was provided although it seems that this was after August 2020.
76. From the timeline in Railpen's response there seems to have been delays in the family providing the relevant information and the tracing of Mr T.

Adjudicator's Opinion

77. Mrs NiR's complaint was considered by one of our Adjudicators who concluded that further action was required by Railpen and the Employer. The Adjudicator's findings are summarised below.
78. Mrs NiR has raised the question of the payment of Mr D's salary to Ms N. As this is an employment matter it is not within my jurisdiction.
79. From the accounts submitted by all parties there appeared to be a general consensus regarding the timeline of events. The question is why it took more than two years to settle the benefits and whether this was reasonable.
80. Under Section 206 of the Finance Act 2004, a special lump sum death benefits charge arises where 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.
81. It was clear that the Employer identified early on that it needed to obtain an original Death Certificate as a matter of urgency. The notice issued to Mr D's colleagues said that Ms N was Mr D's next of kin. However, Ms AR emailed the Employer to say that Ms NaR was the next of kin. She wanted to know how to go about proceeding with the notification of death and any subsequent claim. She also said that other siblings presently held the original Death Certificate but that she was sure she and Ms NaR could obtain one as she assumed this would be one of the requirements.

82. The Employer seemed to have totally ignored this and merely said that 'pension management' would be handling any claim and the division of funds, and that it might be in touch if Mr D had put either Ms NaR's or Ms AR's details on a Nomination Form.
83. Subsequent to this, Mrs NiR contacted the Employer, on 10 July 2018, to notify it of her father's death. Again, this was not followed up or a Death Certificate requested.
84. It was not until 7 August 2018 that anyone at the Employer checked to see if a copy of the Death Certificate had been obtained. The evidence on file shows that the next day the member of staff at the Employer dealing with this said that he was having difficulty contacting the next of kin and that he would sort out the position once he heard from them.
85. However, there is no evidence on the file to show that the Employer had taken any action to contact the next of kin, even though it had contact details for Ms N, Ms AR, Ms NaR, and Mrs NiR. Quite why it thought that it could only obtain the Death Certificate from Ms N and not from any of the other parties was unclear.
86. It may be that, as the Employer suggests, there was some dispute within the family as to who Mr D's next of kin was; certainly the position seemed complex, but there is no evidence of this and the Employer later said this had not been officially confirmed. But, regardless, that was no reason for the Employer to have done nothing. It was its role to gather what information it could and to present it to Railpen and RPTCL to consider, not to make decisions about who might or might not be potential beneficiaries.
87. It seemed that at some point soon after 8 August 2018 the matter was allowed to drop altogether. The Employer's failure to actively pursue the potential beneficiaries and to attempt to resolve the position by obtaining the missing information amounted to maladministration.
88. Railpen was by that time aware that Mr D had died. It had been told by the Employer on 28 June 2018 and had replied on 5 July 2018 to say that a Notification of Death form was required. The Employer acknowledged this on 9 July 2018 and advised that its HR Department would be completing the Notification of Death.
89. While payment could not be made until all the required documentation was received, the Employer had allowed the matter to drop. Railpen was fully aware of Mr D's death and yet it seemed to have taken no action to pursue the provision of the Notification of Death or the Death Certificate until its email of 17 October 2019 to the Employer's HR Department.
90. As a consequence there had been an avoidable delay between 17 July 2018 and October 2019, during which time nothing was done. The failure by Railpen to follow up the provision of essential information in order to present the claim to RPTCL amounted to maladministration.

91. It would only be reasonable to hold back the death benefits if the Employer and Railpen were actively trying to locate all the potential beneficiaries, but there was nothing to show they tried to do so. Instead they simply waited for the family to sort matters out.
92. But it also seemed that neither Mrs NiR, Ms NaR nor Ms AR took any action to pursue matters and enquire as to progress in the interim. Ms AR could say that she was expecting Railpen to contact her, following the Employer's email to that effect on 14 June 2018, but to leave matters for some 15 months without attempting to find out what was happening was inexplicable.
93. It was accepted that all parties did what they could to resolve matters once the case was picked up again in October 2019, but by then the damage was done. There were further issues such as Mr D's change of name and the problems with tracing Mr T, but these would have been equally apparent in August 2018. It was the 15 month delay which directly led to the failure to pay the lump sum benefit within the two-year time limit.
94. The two-year deadline was 28 June 2020 and the benefit was eventually paid on 2 November 2020. So it was not unreasonable to conclude that had the Employer and Railpen taken positive action between July 2018 and October 2019 the benefit would have been settled well within the two year period.
95. RPTCL had discretion under the Scheme Rules to decide who the death benefits should be paid to, but it seemed that it was never even made aware of Mr D's death. It was not for the Employer or Railpen to decide who should receive the benefit and the case should have been referred to RPTCL as early as possible. It would then have been in a position to make a decision about who the death benefits should be paid to or what further enquiries it needed to be made so that it could make that decision.
96. Once the two-year period had expired, the payment of the lump sum death benefit was likely to incur unauthorised pension payment charges that could have been avoided.
97. It was unreasonable for the beneficiaries to be paid a reduced lump sum because the Employer and Railpen failed to actively investigate and identify the potential beneficiaries between July 2018 and October 2019.
98. That said, Mrs NiR and other potential beneficiaries could have done more to mitigate their losses by making further enquiries about progress and providing a copy of the Death Certificate and any other documents at a much earlier stage. For that reason they have to take an equal share of the responsibility for the loss.
99. Mrs NiR accepted the Adjudicator's Opinion. However, Railpen and the Employer did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Both Railpen and the Employer provided their further comments which do not change the outcome.

Railpen's comments

100. While it appreciates there was limited contact between Railpen and the Employer between July 2018 and January 2020, it understands that the Employer made sustained efforts to contact the next of kin during this time but the required information, in order to progress the payment of benefits to potential eligible beneficiaries, was not available from the family.
101. The fact remains that it could not have progressed the case and contacted potential beneficiaries, before having received official confirmation of death in the form of the Death Certificate. Railpen had no formal evidence of the death until January 2020 and the family did not provide this in a timely manner to the Employer. Once the contact details in respect of the next of the kin and the Death Certificate were received, the death was processed by Railpen as soon as possible.
102. Therefore, for these reasons Railpen does not agree that it is liable for the payment of £17,506.48 to the Estate of Mr D

The Employer's comments

103. It is understood that it is accepted that it, and the other parties, did all they could to resolve matters from October 2019 and so its purported maladministration occurred between July 2018 and October 2019.
104. On 13 June 2018, it received an email from Ms AR, who stated:
- “My daughter [Ms NaR] is next of kin to the above and wishes to enquire how to proceed with notification and any subsequent claim. As an ex spouse I have a document decreed by court that names her as sole beneficiary to any life policies that maybe in place. Siblings from a previous marriage may also try to claim any benefits so we wish to make sure any funds are divided lawfully. They presently hold the original death certificate but I am sure we can obtain one as I assume it will be one of the requirements.”
105. On 14 June 2018, a further email was received from Ms AR, in which she wrote:
- “Thank you for this information Khadi. Can you let us know if pension management will be in touch or we have to contact them in first instance as they will require a death certificate etc or is that all dealt with by RPMI who we will contact shortly.”
106. At this time, Ms AR was advised:
- “It would be pensions management who would decide on the division of any funds. We hold next of kin details on file for any final payments of salary but not death in service payments. Hopefully [Mr D] would have completed a death in service form which would be held by RPMI and confirm his wishes. You can contact RPMI on 0800 2 343434.”
107. It also made further contact with Ms AR along similar lines on 15 June 2018 and subsequently by telephone.

108. On 28 June 2018, it advised Railpen of Mr D's death.
109. What is clear then is that as at June 2018 Ms AR, and in all probability her daughter, Ms NaR, were aware that Railpen would require sight of the Death Certificate and so it was not simply a case of it ignoring what Ms AR had to say. In other words, she, and in all probability her daughter too, knew that Railpen would require the Death Certificate and the fact that the Employer did not actually confirm in its email that what Ms AR had said was correct, cannot be viewed as maladministration.
110. Furthermore, Ms AR had stated that "we can obtain one (a death certificate)." By we, she must have been referring to herself and her daughter. At this time it had already begun the process of requesting the death certification from Ms N, the next of kin contact that Mr D had recorded on its file. This is its normal administrative process to use recorded next of kin details on file.
111. It contacted Ms N between June 2018 and August 2018 via telephone and text message specifically requesting the Death Certificate. In May 2019 Ms N acknowledged its messages and apologised for not having been in touch due to difficult living circumstances (having no fixed abode). She still did not, however, provide the death certificate.
112. In the circumstances, by August 2018, it believed that it had taken reasonable steps to obtain the Death Certificate, which Ms AR, Ms NaR and Ms N all knew was required.
113. However, there was then no follow up at all from either the Applicant, any next of kin, or beneficiary or Representative of the Estate, for which there appears to be no reasonable explanation.
114. As previously stated, it had notified Railpen of Mr D's death on 28 June 2018. Railpen acknowledged that notification by email dated 5 July 2018, but there was then no follow up at all from Railpen until October 2019, again for which there appears to be no reasonable explanation.
115. When Railpen did eventually follow the matter up, the Employer made further attempts to establish contact with a member of Mr D's family, in a way that exceeded the normal remit for obtaining administrative documents following a death in service, in that a colleague sent out a Facebook request for contact. It believes this demonstrates that it acted above the normal administrative processes to support the resolution of the outstanding Death Certificate. To provide further context a member of staff who was believed may have known family members of Mr D was requested to attempt contact on 13 November 2019 – the colleague contacted Ms NaR and requested that she contact the station manager.
116. On 20 December 2019, Ms NaR responded to the colleague, apologising that she had only just seen the message and had contacted the station manager accordingly.

117. Eventually the Employer received an email from Ms NaR on 23 December 2019, in which she said that she had spoken to the station manager regarding the fact that someone from HR wanted to speak to Mr D's next of kin. She apologised for how long it had taken her to get in contact and confirmed that she was Mr D's daughter and next of kin. I said she was unsure of why she had been asked to make contact but was more than happy to help.
118. The Employer did then contact Ms NaR and she did, in due course, provide the Death Certificate. But there appears to be no reasonable explanation for her not having made contact before, especially so in light of what Ms AR had said in her first email dated 13 June 2018.
119. In all the circumstances, the Employer submits that primary responsibility for the delay rests with Mr D's next of kin, beneficiaries and/or Representatives of his Estate, for their failure to provide information, in particular the Death Certificate which they knew was required, and in their failure to engage with the process at all until around December 2019/January 2020, and only then because it had once again attempted to establish contact.
120. Furthermore, Railpen also appears to have contributed to the delay by failing to make any effort to follow up with the Employer between 5 July 2018 and 17 October 2019, for which it has no reasonable explanation. In all the circumstances, the Employer submits that there has been no maladministration on its part.

Ombudsman's decision

121. It is RPTCL's responsibility to ensure that benefits falling due under the Scheme are paid in a timely manner to the correct beneficiaries. In this it is supported by Railpen, as the Scheme Administrator, and the Employer whose role it is to gather information to present to RPTCL for it to make a decision. It is not for Railpen or the Employer to assume that role. As the Adjudicator observed there appears to be no evidence that RPTCL was ever made aware of Mr D's death.
122. Railpen says that although it was aware of Mr D's death it could not progress the case and contact potential beneficiaries before having received official confirmation of death in the form of the Death Certificate.
123. But this is to ignore its responsibility to ensure that benefits are paid from the Scheme in a timely manner. The evidence shows that it was made aware of Mr D's death on 28 June 2018. Yet other than its request for a completed Notification of Death form on 5 July 2018 it did nothing until 17 October 2019.
124. The fact that it then chased the Employer for the Notification of Death, followed by further chasers, shows that it recognised this responsibility.
125. The Employer says that between June and August 2018 it made several attempts to obtain the Death Certificate, but with no success. However, this is far from clear from the evidence.

126. Ms AR said in her email of 13 June 2018 that, per a decree of court, that her daughter, Ms NaR, was the sole beneficiary to any life policies that may be in place. The Employer says that if that was correct then Mrs NiR was neither an actual or potential beneficiary and there was therefore a jurisdictional issue in this regard. Yet there is no evidence to show that it attempted to obtain evidence to assess this claim.
127. Ms AR also said "They (Ms NaR's siblings) presently hold the original death certificate but I am sure we can obtain one as I assume it will be one of the requirements." And on 14 June 2018 Ms AR emailed again to say:
- "Can you let us know if pension management will be in touch or we have to contact them in first instance as they will require a death certificate etc or is that all dealt with by RPMI who we will contact shortly."
128. By the Employer's own account the response to this enquiry made no reference to the question of the Death Certificate. The Employer says that the fact that it did not actually confirm in its email that what Ms AR had said was correct, cannot be viewed as maladministration. I disagree.
129. Furthermore, on 10 July 2018, Mrs NiR also contacted the Employer to notify it of Mr D's death. This approach appears to have been totally ignored.
130. Instead the Employer continued to contact only Ms N despite the fact that this was proving unsuccessful. I acknowledge that this may be its normal administrative process, but in circumstances where the normal process is not working and there are other contacts who clearly had access to the required documentation it was incumbent on the Employer to obtain the Death Certificate from one of those other contacts, instead of which the Employer did nothing.
131. So while the Employer says that by August 2018, it believed that it had taken reasonable steps to obtain the Death Certificate, which Ms AR, Ms NaR and Ms N all knew was required, in reality it had done no such thing. It had not confirmed to Ms AR or Ms NaR that they needed to send it a Death Certificate; it had totally ignored the approach from Mrs NiR; and while it had continued to pursue Ms N it had been unsuccessful to the point where it gave up trying.
132. This appears to be a case of no one party taking responsibility for resolving the situation, as a result of which there was an avoidable delay of 15 months and a tax charge was incurred.
133. I agree with the Adjudicator and the Employer that some responsibility for the delay must rest with Mr D's next of kin, potential beneficiaries and representatives of his Estate, something that Mrs NiR has acknowledged. However, this is not to absolve the Employer or Railpen of their share of the responsibility to ensure that the benefits were paid in good time.
134. I consider that Railpen's and the Employer's collective failure to take the appropriate action to obtain the required documentation, and to present it to RPTCL in order that

it could make a decision as to the payment of benefits or to direct what further information it needed to do so, amounts to maladministration.

135. I uphold Mrs NiR's complaint.

Directions

136. Within 28 days of the date of this Determination Railpen and the Employer shall each pay to Mr D's Estate £17,506.48, that being one third of the difference between the gross lump sum death benefit of £116,662 and the sum actually paid of £64,142.55.

Anthony Arter

Pensions Ombudsman
29 April 2022