

Ombudsman's Determination

Applicant	Mrs R
Scheme	Local Government Pension Scheme (the Scheme)
Respondent	Tower Hamlets Council (the Council)

Outcome

1. Mrs R's complaint against the Council is partly upheld. To put matters right the Council shall pay Mrs R £1,000 in respect of the significant distress and inconvenience caused.

Complaint summary

2. Mrs R complained that the Council quoted the widower's pension that would be payable from the Scheme in the event of her death, but later confirmed lower benefits were payable. She said that the Council should honour the original widower's pension it quoted, should she predecease her husband.

Background information, including submissions from the parties

3. The Scheme Regulations applicable to Mrs R's complaint are The Local Government Pension Scheme Regulations 1997 (**the 1997 Scheme Regulations**), as amended by The Local Government Pension Scheme (Civil Partnership) (Amendment) (England and Wales) Regulations 2005 (**the 2005 Amendment Regulations**). They provide that:

"1.-(3) These Regulations shall come into force on 5th December 2005, but the amendments made by regulation 3 shall have effect from 1st April 1998...

3.-(1) The Local Government Pension Scheme Regulations 1997(**1**) shall be amended in accordance with this regulation...

20.-(1) The amount of any benefit payable as a result of a person's membership is generally calculated by multiplying his final pay by the appropriate multiplier.

(2) Unless another multiplier is indicated, the appropriate multiplier for a pension is-

the member's total membership

80

...

40. -(1) If an active or pensioner member dies leaving a surviving spouse or civil partner, the spouse or civil partner is entitled to a short-term pension.

(2) It is payable for three months after the member's death.

...

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

Surviving spouse's or civil partner's (SI2005/3069) long-term pension.

41. -(1) If a member dies leaving a surviving spouse or civil partner, the spouse or civil partner is entitled to a spouse's or civil partner's 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.

(3) The long-term pension payable on a deferred member's death is payable from the death.

...

(5) If the deceased was an active member with a total membership of less than two years three months (SI2004/573) or a deferred member, the multiplier for the long-term pension is-

the deceased's total membership

160

...

(6) If the deceased was a pensioner member, the long-term pension is equal to half his retirement pension immediately before the date of death or half his pension before any commutation under regulation 20(3A), whichever is the greater...

42A. For the purpose of calculating the pension to which a surviving civil partner is entitled under regulation 40 or 41 (surviving spouse's or civil partner's short-term or long-term pension) account shall only be taken of the deceased member's membership after 5th April 1988..."

4. Regarding the formula used in calculating death benefits, the Scheme's online member portal (**the online portal**) states:

"Calculating the amount of survivor's pension

For your husband or wife, civil partner or cohabiting partner:

1/160th of your pensionable pay multiplied by the total membership built up at your date of leaving.”

5. Regarding the calculation of death benefits under the Scheme, the Council follows guidance provided in the July 2019 version of the LGPS England & Wales Scheme administrator guide (**The Administrator Guide**), which states:

“Background

The provision of survivor benefits in the [Scheme] has changed over the years meaning that administrators will need to know which regulations the member left under in order to calculate any survivor benefits payable on the death of a member.”

6. On 5 November 1979, Mrs R joined the Scheme, having commenced employment with the Council, the Scheme’s local administrator.

7. Mrs R has said that in June 1998 the Council sent her a copy of the Local Government Pension Scheme Employee’s Guide’ (**the Employee’s Guide**) which stated:

“If you die after you retire, for the first three months your spouse will receive a pension at the same rate as your retirement pension. After that they will receive a [spouse’s] pension of half your retirement pension for life.”

8. On 6 November 1998, Mrs R left employment with the Council and became a deferred member of the Scheme.

9. On 29 November 1999, the Council sent a Benefit Statement to Mrs R (**the 1999 Statement**). With regard to death benefits it stated:

“In the event of your death after your benefits become payable, a widow(er)’s pension may again be available. Any pension would be payable, for the first three months at a rate equal to your own pension at the time of your death and, thereafter, at a rate equal to approximately one half of your pension at the time of your death...”

10. On 9 December 2018, Mrs R wrote to the Council and said:-

- She understood that in the event of her death, a spouse’s pension equivalent to 50% of her retirement pension would be payable.
- The Scheme’s website suggested that the spouse’s pension would be 1/160th of her final pay x the length of active membership. This equated to only £23,020.79 x 18.803/160 = £2,705.
- Her full pension entitlement was £8,731.81, which meant that the spouse’s pension should be £4,366. She would like clarification of the correct figure.

11. On 3 January 2019, the Council wrote to Mrs R and said that in the event of her death the spouse's pension would be equal to her full retirement pension for the first three months. The Council said that this would be followed by a long-term spouse's pension equivalent to 50% of her retirement pension.
12. On 10 February 2019, Mrs R reached the Scheme's normal retirement age of 60.
13. On 11 February 2019, the Council wrote to Mrs R confirming that her retirement benefits had been put into payment from 10 February 2019 (**the February 2019 Quotation**). The letter confirmed benefits including a pension of £8,731.80 a year, plus a lump sum of £26,195.43. In the event of Mrs R's death, a short-term spouse's pension of £8,731.80 per year for three months would be payable, followed by a long-term yearly pension of £2,427.56.
14. On 17 February 2019, Mrs R emailed the Council and said that these details were incorrect. She said that the Council's email of 3 January 2019 had previously confirmed that in the event of her death, her husband would receive a widower's pension of £4,365.90 per year, which was equivalent to half of her pension. So, the Council should send a revised version of the letter sent on 11 February 2019.
15. On 26 March 2019, Mrs R emailed the Council to chase a response to her enquiry. She said the Employee's Guide that she received in 1998 had also provided the information that the Council confirmed in the email of 3 January 2019. So, her husband should receive a widower's pension in accordance with that correspondence, should she predecease him.
16. On 29 March 2019, the Council emailed Mrs R and said that a member's spouse had previously received a widower's pension equivalent to half of the member's pension, in the event of their death. However, the Scheme Regulations had changed and the details provided in the February 2019 Quotation were correct.
17. On 21 April 2019, Mrs R emailed the Council and said that she had been a deferred member since 6 November 1998. So, any changes to the Scheme Regulations should not have any effect on the related benefit entitlements. Consequently, her husband should still receive a spouse's pension equivalent to half of her retirement pension.
18. On 29 May 2019, the Council emailed Mrs R and said that the spouse's annual pension payable at her date of leaving pensionable service, which was in November 1998, was £1,504.24. After subsequent adjustments for inflation, this figure was consistent with the latest spouse's pension quoted of £2,427.56 a year.
19. On 10 June 2019, Mrs R complained under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**) and said:-
 - The 1999 Statement confirmed that in the event of her death after retirement, a widower's pension equal to her own pension at the time would be payable for the first three months. This correspondence suggested that her husband would

subsequently be entitled to a long-term widower's pension equal to half of her own retirement pension. The same information had been provided in the Employee's Guide.

- In its letter of 3 January 2019, the Council again confirmed that a long-term widower's pension would be equivalent to half of her annual pension figure. The Council should honour that entitlement if she predeceased her husband. Since her pension was £8,731.80 a year at the time, the related widower's pension should have been half of that figure, which was £4,365.90 annually.

20. The Council did not respond to this complaint.

The Council's position

21. Mrs R left the Scheme on 6 November 1998, and her related benefits are governed by the 1997 Scheme Regulations. So, the membership used in the calculation of her related spouse's pension is from 6 April 1988 to 6 November 1998, less 27 days deducted for industrial strike action and a further 22 days deducted for a parental break. This equates to 10 years and 166 days of pensionable service.

22. A detailed calculation of the spouse's pension entitlement attached to Mrs R's benefits is as follows:-

- 10 Years 166 Days x £23,020.79 Final Pay x 1/80 = £3,008.48 (short-term pension payable for 3 months).
- 10 Years 166 Days x £23,020.79 Final Pay x 1/160 = £1,504.24 (long-term pension).
- The short-term spouse's pension adjusted for inflation at the date of retirement (10.02.2019): £3,008.48 x 1.6138 = £4,855.09 per annum.
- The long-term spouse's pension adjusted for inflation at the date of retirement (10.02.2019): £1,504.24 x 1.6138 = £2,427.56 per annum.

23. The short-term pension figure, adjusted for inflation on 18 May 2023, was £5,768.16 per year. The annual long-term pension figure on the same date was £2,884.08. The short-term pension figure of £8,731.80 quoted in the February 2019 Quotation was incorrect.

24. The Council has no record of the Employee's Guide that Mrs R has referred to. The Scheme Regulations regarding a spouse's pension are, in any case, complex and such guides are only intended to provide general information and could not cover every specific set of circumstances for all members.

25. Mrs R has not suffered any financial loss as a direct result of subsequent Scheme Regulation changes since she became a deferred member.

Adjudicator's Opinion

26. Mrs R's complaint was considered by one of our Adjudicators who concluded that there had been maladministration by the Council. The Adjudicator's findings are summarised below:

- The Employee's Guide and the 1999 Statement suggested that in the event of Mrs R predeceasing her husband, he would receive a short-term widower's pension equivalent to her own retirement pension for three months, and thereafter a long-term widower's pension of half that amount.
- In the Adjudicator's opinion, the death benefits quoted in those documents were correct at the time they were provided to Mrs R. However, the Council is required to act in accordance with all relevant existing Scheme Regulations.
- The Administrator Guide states that the provision of death benefits in the Scheme has changed over the years. So, the Scheme's administrators are required to know the regulations under which a member left active service to calculate any death benefits that are payable. Mrs R became a deferred member on 6 November 1998. So, in the Adjudicator's view her death benefit entitlements are provided by the 1997 Scheme Regulations.
- On 5 December 2005, the 2005 Amendment Regulations came into force. Section 1(3) stated that, while the 2005 Amendment Regulations should come into force from 5 December 2005, the amendments made under Regulation 3 should come into effect from 1 April 1998.
- Section 3 of the 2005 Amendment Regulations set out the amendments to the 1997 Scheme Regulations, consequently, these amendments were backdated to 1 April 1998 and resulted in the 1997 Scheme Regulations set out in paragraph 3. These regulations override any previous Scheme Regulations or correspondence relating to death benefits under the Scheme.
- In the Adjudicator's opinion, the Council's letter of 3 January 2019 incorrectly confirmed that a long-term widower's pension of half of Mrs R's retirement pension would be payable, should she predecease her husband.
- The Council's error does not mean that it should pay the overstated benefits in the event of Mrs R's death. The Council can only pay the correct death benefits calculated in accordance with the 1997 Scheme Regulations.
- In the Adjudicator's view, the Council's calculations as set out in paragraph 24 above, are based on that requirement. So, there is no evidence of any financial detriment to Mrs R or her husband, should she predecease him.
- In addition to the misinformation provided in the letter of 3 January 2019, the Council quoted an incorrect short-term widower's pension in the February 2019

Quotation. The Council subsequently failed to respond following Mrs R's complaint under the IDR. P.

- In the Adjudicator's opinion these issues amount to maladministration by the Council, which would have caused Mrs R significant distress and inconvenience. So, the Council should offer Mrs R an award of £500 in keeping with the Ombudsman's guidance for non-financial injustice of this type.

27. The Council accepted the Adjudicator's Opinion, Mrs R did not, and the complaint was passed to me to consider. I have considered the additional points raised by Mrs R, but I agree with the Adjudicator's Opinion except in respect of the non-financial award.

Mrs R's additional comments

28. The 2005 Amendment Regulations only changed the Scheme regarding any death benefits that would be payable when a member had a civil partnership and predeceased their partner.

29. The death benefits quoted in the Employee's Guide and the 1999 Statement were not correct at the time they were provided, as they did not reflect the 1997 Regulations that came into force on 1 April 1998.

30. The Council failed to recognise the Employee's Guide and did not respond to her complaint under the IDR. P. So, a £500 award is insufficient recognition of the distress and inconvenience she has suffered.

Ombudsman's decision

31. Mrs R submitted that the 2005 Amendment Regulations only changed the Scheme regarding death benefits that would be payable when a member had a civil partnership and predeceased their partner. She says that on this basis the death benefits quoted in the Employee's Guide and the 1999 Statement were not correct at the time they were provided.

32. The Scheme was governed by The Local Government Pension Scheme Regulations 1995 (**the 1995 Regulations**), as set out in the Appendix, before the 1997 Scheme Regulations became applicable. The 1995 Regulations provide that a short-term spouse's pension equal to a member's retirement pension immediately before their date of death would be payable for three months. Under the 1995 Regulations a long-term spouse's pension equal to half of the member's retirement pension immediately before the date of death would be payable thereafter. I find that the information provided in the Employee's Guide and the 1999 Statement was consistent with these provisions in the late 1990s when Mrs R received it.

33. However, the Employee's Guide and the 1999 Statement were overridden by the 1997 Regulations, as amended by the 2005 Amendment Regulations, which include the Scheme's current regulations for calculating any death benefits in Mrs R's case.

The Council's calculations, as set out in paragraph 22 above, reflect the revised Scheme Regulations. So, I find that the Council has correctly stated the basis for the widower's pension in the event that Mrs R predeceases her husband. There is no requirement for the Council to comply with the overstated death benefits quoted in the letter of 3 January 2019.

34. Mrs R said that the Council failed to recognise the Employee's Guide and did not respond to her complaint under the IDRPs. She said that a £500 award is insufficient recognition of the resulting distress and inconvenience she has suffered. I note that there was a period of over 20 years between June 1998 when Mrs R says she received the Employee's Guide and 26 March 2019, when she enquired about it to the Council. Due to this lengthy passage of time, it is not unreasonable that the Council would not have a copy or knowledge of that version of the Employee's Guide. Ultimately, the Council is, in any event, required to act in accordance with the current Scheme Regulations which always take primacy over any other Scheme literature.
35. Although, the Council failed to respond to Mrs R's complaint under the IDRPs, the email of 29 March 2019 had previously explained that the Scheme Regulations regarding a spouse's pension had changed, and that a long-term widower's pension, equal to half of Mrs R's retirement pension, would not be payable in the event that she predeceased her husband. The Council's subsequent email of 29 May 2019 was consistent on this point since it correctly quoted a long-term widower's pension in accordance with the 1997 Scheme Regulations, as amended by the 2005 Amendment Regulations.
36. However, I find that, in addition to incorrect information being given on two occasions by the Council, it then failed to respond fully to Mrs R's complaint under its own IDRPs. Mrs R will, undoubtedly have suffered serious distress and inconvenience as a consequence, so I find that £1,000 is an appropriate award in the circumstances of this case.
37. I partly uphold Mrs R's complaint.

Directions

38. Within 28 days the Council shall pay Mrs R £1,000 in recognition of the significant distress and inconvenience caused.

Anthony Arter CBE

Deputy Pensions Ombudsman
10 November 2023

Appendix

The 1995 Regulations that governed the Scheme before the 1997 Scheme Regulations states:

Pensioner's spouse's short-term pension

F4.—(1) Subject to regulations F7 (remarriage and cohabitation) and G8(3), if a person who—

(a) was entitled to receive payments in respect of a retirement pension (other than a pension under regulation D19), or

(b) would have been so entitled but for regulation H6 (commutation in exceptional circumstances of ill-health) or Part I of Schedule D5 (re-employed pensioners),

dies leaving a surviving spouse or spouses, that spouse is entitled or, as the case may be, they are jointly entitled to a spouse's short-term pension—

(i) if the spouse has one or more eligible children in his or her care, for six months after the deceased's death, or

(ii) otherwise for three months after the deceased's death.

(2) Subject to regulation F6 (post retirement marriages), where paragraph (1) applies, the annual rate of the short-term pension is a rate equal to the spouse's retirement pension immediately before the date of death or the rate it would have been at that date apart from any payment under regulation H6 or the operation of Part I of Schedule D5.

Pensioner's spouse's long-term pension

F5.—(1) Subject to regulation F7 (remarriage and cohabitation), where regulation F4(1) applies the surviving spouse is entitled or, as the case may be, the surviving spouses are jointly entitled, at the end of the period in respect of which a short-term pension is payable under that regulation, to a spouse's long-term pension.

(2) Subject to regulation F6 (post retirement marriages), where paragraph (1) applies and any new employment for the purposes of Part I of Schedule D5 (re-employed pensioners) was not a local government employment, the annual rate of the long-term pension is half the annual rate of the deceased's retirement pension immediately before the date of death.