

Ombudsman's Determination

Applicant Mrs N

Scheme British Telecommunications Staff Superannuation Scheme (**the Scheme**)

Respondent BT Pension Scheme Trustees Limited (**the Trustee**)

Outcome

1. I do not uphold this complaint and no further action is required by the Trustee.

Complaint summary

2. Mrs N's complaint relates to her attempts to secure Death Benefits in respect of her late, ex-partner, Mr N, and his membership of the Scheme.

Background information, including submissions from the parties

3. Mr N was a member of the Scheme.
4. In October 1989, Mr N wrote to the Scheme Administrator stating that Mrs N should be nominated as his next of kin. He also provided a completed 'Direction of Death benefit form,' which related to a Death Benefit payment to be made to his executors on death. Mr N did not complete and return a nomination form for a Dependant's Pension.
5. On 12 March 1995, Mr N wrote to the Scheme stating that his relationship with Mrs N had broken down and he had left the family home. Mr N's pension came into payment on 27 March 2008.
6. At this time, the Scheme Administrator (**the Administrator**) wrote to Mr N, reminding him that he had not made a nomination for a Dependant's Pension.
7. On 9 October 2018, Mr N passed away.
8. Mrs N contacted the Administrator on 12 November 2018 and enquired about her entitlement from the Scheme, saying she was the sole beneficiary of Mr N's pension.

9. Having spoken with Mrs N on 27 December 2018 the Administrator sent her an Adult Dependant Pension application form which she returned, partially completed, on 10 January 2019.
10. On the same day, the balance of Mr N's remaining monthly pension due from the Scheme before his death, £654.51, was paid to the executor of his estate.
11. In February 2019, the Administrator wrote to Mrs N setting out a timeline of communications between herself and the Scheme. This letter also included a statement that:

"The Trustees, or their delegated representatives are obliged to act within the Scheme's Rules. The Scheme's Rules set out the benefits which the Trustee shall pay in relation to the Scheme. As [Mr N] has been in receipt of his pension for more than 5 years from the Scheme, there is no discretionary death benefit payable. As the Scheme notes that [Mr N] was divorced at the time of his death, the opportunity has been given to you to make an application for a dependant's pension."
12. On 13 March 2019, after further correspondence between Mrs N and the Administrator, the Delegated Authority Panel of the Scheme met to review Mrs N's application.
13. The test it had to follow when reviewing an Adult Dependant Pension application, as stated on the application form, was as follows:

"An adult dependant's pension may be payable at the discretion of the Trustee only if there's no surviving legal spouse or civil partner and the dependant was wholly or partly financially dependent on the deceased at the time of their death. Financial dependency means a sharing of day to day living expenses to a significant extent, so that the loss of the deceased's contribution has resulted in, or will result in, a material reduction in the standard of living of the dependant."
14. On 18 March 2019, the Administrator wrote to Mrs N informing her that her application for an Adult Dependant Pension had been declined as the test had not been met.
15. On 5 May 2019, Mrs N invoked stage one of the Independent Dispute Resolution Process (**IDRP**) as she was not happy with the decision made by the Delegated Authority Panel.
16. On 2 September 2019, The Administrator issued its stage one IDRP response. It did not uphold the complaint.
17. On 18 June 2020, Mrs N contacted the Administrator confirming that she wanted her complaint to be reconsidered under the IDRP's second stage.

18. On 11 September 2020, the Trustee issued the stage two IDRP response. The Trustee confirmed that the stage one IDRP response was appropriate, and its decision was that Mrs N was not eligible for either a Death Benefit payment or a pension from the Scheme.

The Position of the Trustee

19. Mrs N is not entitled to a Death Benefit Payment, Dependant's Pension, or Adult Dependent Pension under the Rules of the Scheme (**the Rules**) because she does not satisfy any of the relevant criteria to qualify for any Death Benefit payments.

Mrs N's Position

20. Mrs N was expecting to be awarded a pension from the Scheme based on Mr N's stated intentions, specifically in his Will where it was stated:

"BT Pensions Department should also be informed. Again, the relevant documentation is attached. When [Mrs N] and I were together I named [Mrs N] as my 'partner' and as such she should receive half of any pension due to me. It is entirely up to her if she wants to pursue the possibility of this."

The Adjudicator's Opinion

21. The Adjudicator appreciated that Mrs N was expecting to be awarded a pension based on Mr N's stated intentions, specifically those stated in his Will.
22. However, the Adjudicator informed Mrs N that the Pensions Ombudsman is unable to make a direction for an applicant to receive something to which they are not entitled under the Rules.
23. So, even if it were Mrs N's understanding that she was entitled to a pension from the Scheme based on the statements made by Mr N, this did not mean that such an award would be made unless there was a legal basis for it within the Rules. This was not maladministration on the part of the Trustee and so it cannot be held responsible for any non-payment.
24. The Adjudicator understood that there were three awards that could potentially be made under the Rules in the event of a member's death and detailed them in turn, considering if any of them applied to Mrs N's circumstances:

Lump Sum Death Benefit payment

25. The lump sum death benefit is the five-year guarantee, equal to five times the annual pension of the member at their date of death, including increases but less the pension and lump sum already received. The Rules in relation to this death benefit are comparable to the Principal Civil Service Pension Scheme and the provision relating to the five-year rule is in Section 3.9(b):

"(b) Where a civil servant retires on or after 1 July 1987 and dies after a pension or, if it came into payment before 6 April 2006, an annual

compensation payment has come into payment, and paragraph (ba) does not apply the following sums will be calculated:

- (i) five times the annual rate of pension or annual compensation payment in payment to him at the date of death (including any contributed pension payable under section 14 and any increase under the Pensions (Increase) Act 1971, as amended but excluding any additional pension resulting from an election under rule 3.1a);
- (ii) the total of lump sums and pension or annual compensation payment already paid to him including any contributed lump sum and pension paid under section 14.

If the sum in (ii) is less than the sum in (i), a supplementary death benefit equal to the difference between these two amounts may be paid to the person nominated by him for a death benefit under rule 3.8, or (in the absence of a valid nomination) to his personal representatives.”

26. So, the Adjudicator explained that under this provision, a Death Benefit payment can only be made if the death of a member occurs within five years of retirement. Whereas Mr N had the benefit of his pension for more than five years from the Scheme, so a payment under this provision could not be considered or made.

Nominated Dependent Pension and Adult Dependent Pension

27. The rules regarding a Nominated Dependant and an Adult Dependant Pension are set out in the Scheme Rules under, “Part V General Rules applying to chosen benefits” and section 12, “Benefits on Death” at Rule 12.1. which states:

“If a Member dies and leaves a Nominated Dependant that Nominated Dependant may at the absolute discretion of the Trustees receive a pension for life. “Nominated Dependant” means an adult person nominated by a Member to the Trustees in writing. A person will not be a Nominated Dependant unless at the date of the Member’s death the Member was neither married nor in a civil partnership and both at the date of the nomination by the member and the date of the member’s death the Trustees are satisfied the Nominated Dependant was wholly or partly financially dependent on the member. A nomination may be revoked by written notice to the Trustees and will be revoked if the Member subsequently marries or enters into a civil partnership. If there is no spouse or civil partner or Nominated Dependant, but the Trustees are satisfied that the Member left an adult Dependant, the Trustees may with the agreement of the Principal Company treat that Dependant as a Nominated Dependant for the purposes of these Rules....”

28. A Dependant is defined in the Rules as:

“Dependant” means any person who in the opinion of the Trustees is wholly or partly financially dependent on the Member or other person concerned, or was so dependent at the time of the Member's (or other person's) death. The Trustees' decision as to whether someone is another person's Dependant will be final. However, a person's spouse, civil partner and children under the age of 23 will always be regarded as that person's Dependents.”

29. The Adjudicator agreed that as Mr N did not complete the formal nomination process for a Nominated Dependant, Mrs N could not be considered for a pension under this provision.
30. The Adjudicator also stated that this benefit has a two-stage test, requiring evidence of part or whole financial dependency on the member at the time of both the nomination, and the member's death.
31. As Mr N did not complete a formal nomination, Mrs N was considered for an Adult Dependant Pension. This is a one stage test. Mrs N was unable to provide any evidence of part or whole financial dependency on the member at the time of his death in 2018 as they had separated in 1995.
32. She stated on her Adult Dependant Pension application form, “at time of relationship solely”. This was in response to the question, “Were you financially dependent on the deceased?”. As a result, the Trustee was unable to pay her an Adult Dependant Pension as there was no evidence that she was financially dependent on him at the time of his death.
33. The Adjudicator also explained that the Pensions Ombudsman could only interfere in the decision-making process had the Trustee: -
 - taken irrelevant considerations into account;
 - failed to take any relevant considerations into account;
 - committed some other procedural impropriety, or
 - acted in such a way that no reasonable body, properly directing themselves, could act.
34. It was the Adjudicator's opinion that in this case none of these factors applied as the Trustee had considered the relevant Rules and the evidence provided by Mrs N and so had made its decision considering all the relevant facts.
35. Mrs N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs N provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will only respond to any points made by Mrs N for completeness.

Ombudsman's decision

36. Having reviewed all the correspondence in this matter, I agree with the Adjudicator that Mrs N is not entitled to any of the Death Benefits payable under the Rules, it is therefore my decision that this element of her complaint cannot be upheld.
37. Mrs N does not satisfy any of the relevant criteria to qualify for any Death Benefit payments set out in the Rules. I consider that the Trustee has followed the correct process, considered only relevant and no irrelevant information in reaching its decision not to make an award to Mr N's ex-partner, Mrs N. They separated in 1995 and Mrs N has been unable to provide evidence that she was still wholly or partly financially dependent on him at the time of his death in 2018, as is required under the Rules.
38. However difficult it may be, it remains open to Mrs N to provide further evidence of her part or whole financial dependency on the former member at the time of his death, which could then be reconsidered by the Trustee.
39. Mrs N has also complained about delays and expressed dissatisfaction in the way in which her application was dealt with.
40. I have looked carefully at this aspect of the complaint, but there is no evidence of any undue delays or mishandling of the complaint. I do not make a finding of maladministration and no redress is warranted.
41. I do not uphold the complaint.

Anthony Arter
Pensions Ombudsman

28 October 2022