

Ombudsman's Determination

Applicant	Mrs R
Scheme	London International Group UK Pension Scheme (the Scheme)
Respondents	Reckitt Benckiser Health Care UK Ltd (the Scheme Manager); Capital Cranfield Trustees Limited (the Trustee); and Mercer Limited (the Scheme Administrator)

Outcome

1. I do not uphold Mrs R's complaint and no further action is required by the Scheme Manager, the Trustee, or the Scheme Administrator.

Compliant summary

2. Mrs R has complained that the Trustee did not grant her either a Qualifying Spouse's pension or a Dependant's pension.
3. Mrs R is also unhappy that she experienced delays, incorrect information, and poor customer service during the dispute.

Background information, including submissions from the parties.

4. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
5. Mr D held benefits in the Scheme.
6. On 31 August 1991, Mr D and Mrs R married in Pakistan. Throughout their marriage Mr D lived in London and Mrs R lived in Pakistan.
7. Mrs R said that, between 1986 and 1998, Mr D provided her with cash during his visits to Pakistan. She said that he also sent money over with friends during this period.
8. In 1998, Mr D moved out of his address in London and moved into Hulton Care Home, where he stayed between 1998 and 2008.

9. On 13 June 2008, as a result of his deteriorating health, Mr D moved into Hill View Care Home.
10. On 7 January 2015, Mr D died.
11. Shortly after, a death certificate was produced. The death certificate failed to include any next of kin details or reference Mr D's marriage to Mrs R.
12. Following Mr D's death, Mrs R made a claim to the Scheme Administrator for death benefits.
13. The Scheme Rules outline a number of benefits that could be paid upon the death of a member. Those that are mentioned in this complaint have been replicated in the Appendix. The Scheme Rules state that the Trustee should first consider whether there is a qualifying spouse and, if there is, they should be paid a pension in accordance with Rule F4(B)(i) (**a Qualifying Spouse's pension**). If there was no qualifying spouse, in accordance with Rule F5(E), a pension may be paid to any dependants (**a Dependant's pension**).
14. The Scheme Rules also provide for a spouse's Guaranteed Minimum pension. This should be paid to a legal spouse in the event of a member's death and would be paid regardless of whether the beneficiary qualified as a qualifying spouse or dependant.
15. In October 2017, Mrs R sought and obtained legal advice from Nationwide Law Associates. Following this advice, Nationwide Law Associates became Mrs R's Representatives (**the Representatives**).
16. On 4 February 2018, the Scheme Administrator informed the Representatives that it would not pay a Qualifying Spouse's pension based on the information it held. It did not elaborate on why the Qualifying Spouse's pension would not be paid. The Scheme Administrator requested any documentation that showed that Mrs R was financially dependent on Mr D.
17. In March 2018, the Scheme Administrator disputed whether Mr D and Mrs R were married. In response, the Representatives asked what evidence the Scheme Administrator had to substantiate its position.
18. On 21 June 2018, the Representatives provided the Scheme Administrator with bank statements, payment receipts and letters that related to the period 1986 to 1998. These documents showed payments that were made to Mrs R by Mr D during this period and amounted to approximately £2,500. The letters and bank statements provided by the Representatives were not in English, so required translation. Unfortunately, the Representatives were not able to cover the cost of translation and the Respondents have been unable to consider the information contained within these letters and bank statements.
19. In November 2018, the Representatives provided the Scheme Administrator with written statements from Mr L (a family friend) and Mr A (Mr D's landlord between 1986 and 1998). In these statements Mr L and Mr A said that they had taken cash

from Mr D, in the UK, to Mrs R, in Pakistan. They said that they did this during the 1990s and the approximate total value was £2,500.

20. On 6 December 2018, the Scheme Administrator stated that the evidence that Mr D sent money to Mrs R came from a long time prior to his death. The Scheme Administrator requested further evidence of financial dependency around the time of Mr D's death.
21. In January 2019, the Scheme Administrator wrote to the Representatives and asked why Nationwide Law were representing Mrs R on a pro-bono basis. The Representatives responded and said that this question was unprofessional. It also forwarded a letter provided by Hill View Care Home that showed that Mr D resided at Hill View Care Home from 13 June 2008 to 7 January 2015.
22. On 5 March 2019, the Trustee sent a letter to the Representatives and apologised for the length of time Mrs R's complaint had taken to resolve with the Scheme Administrator. The Trustee stated that it was making further enquiries before it reached its decision. It explained that it needed to be satisfied that Mr D and Mrs R were not separated. It also said that it would need to consider whether Mrs R was financially dependent on Mr D.
23. On 2 September 2019, the Representatives sent a letter to the Trustee and stated that there had been no breakdown in the marriage. It said that the letters and bank statements it had provided were enough to evidence this position. It also stated it had no further information to provide. The Representatives requested that the application should be assessed as soon as possible and warned that, if it did not receive a response within 14 days, it would start legal proceedings.
24. On 27 September 2019, the Scheme Administrator sent a letter to the Representatives and said that the decision was with the Scheme Actuary. The Scheme Administrator apologised for how long it has taken to process the death benefit claim.
25. On 30 September 2019, the Trustee updated the Representatives and stated that it would write again once a decision had been made.
26. On 3 November 2019, the Representatives sent a letter to Trustee and enclosed the details of the complaint. The Representatives:-
 - Stated that it had provided a large amount of evidence to show that Mrs R was dependent on Mr D and that they were legally married at the time of his death.
 - Questioned why a decision had not been made, given that the matter has been with the Trustee since March 2019.
 - Said that it found the delay extremely unfair, unreasonable, and unacceptable.

27. On 19 December 2019, the Trustee sent a letter to the Representatives and explained its decision not to award Mrs R a Qualifying Spouse's pension or a Dependant's pension. The reasoning for this decision was that:-
- Having considered all of the evidence, it believed that the marriage had broken down. Mrs R was living apart from Mr D and in another country for at least six years prior to his death.
 - The financial ledgers and correspondence provided as evidence indicated that Mrs R had not received support for several years before his death. So, Mrs R did not meet the definition of a Dependant.
28. On 28 February 2020, the Scheme Manager contacted the Representatives with its Stage One Internal Dispute Resolution Procedure (**IDRP**) response. In its response, it explained that although Mrs R was eligible for a spouse's Guaranteed Minimum Pension, the Trustee would not pay a Qualifying Spouse's pension or a Dependant's pension to Mrs R. It said that:-
- Under rule F5(B) the Trustee cannot treat Mrs R as a qualifying spouse as it believed there were reasonable grounds to suggest a breakdown of the marriage. It said that, in exercising its discretion, it considered factors such as physical and geographical separation, duration of separation and absence of communications.
 - Under rule F5(E) Mrs R would not qualify as a dependant as no evidence had been provided of a continuing relationship between 1998 and 2008, which was the point Mr D went into a care home.
 - It said that it would pay a spouse's Guaranteed Minimum Pension because this could be paid regardless of whether there had been a breakdown of marriage or in the absence of sufficient evidence of dependency so long as a couple remained legally married.
 - It apologised for the length of time taken to reach a decision. It said that the Trustee had taken reasonable steps to ensure that all of the facts had been collected in accordance with the Scheme Rules and that there had been gaps in the information provided.
 - It acknowledged that there was no evidence of a divorce between Mr D and Mrs R.
29. On 9 March 2020, the Representatives asked for the complaint to be considered under Stage Two of the IDR. It said:-
- That the IDR decision was contrary to the Scheme Rules and that it was inconsistent with the facts in Mrs R's case.
 - Rule F5(B) does not provide a specific definition for "breakdown of the marriage". The Representative argued that there had been no breakdown of the marriage because Mr D and Mrs R were not divorced.

- The physical and geographical separation between Mr D and Mrs R was not out of choice but a consequence of immigration rules and the health of Mr D which meant that he was not able to support Mrs R or apply for her to join him.
- Mrs R and Mr D were in regular contact, but those calls had been made via an internet café and it was not possible to provide a record of these calls.
- In relation to evidence of financial dependency, the Representatives stated that it had provided evidence that, until his illness began, Mrs R was financially dependent on Mr D. However, once he moved into a care home, he was no longer able to support her.
- On page 51 of the Scheme Rules the definition of a Dependant includes “widow”. As Mr D and Mrs R were married, Mrs R would qualify under the definition of a widow and should be entitled to the maximum pension.
- Mrs R lives in a rural area of a third world country and is illiterate. Therefore, it has not been possible for her to provide evidence of dependency and communication during the period of Mr D's illness and residence in the care home.
- It had provided evidence from a colleague and friends of Mr D who confirmed that they were not divorced or separated, that they were in contact with each other, and that Mrs R was financially dependent on Mr D.
- It had evidence to show that Mr D and Mrs R were not divorced. It attached a letter, dated 4 January 2020, which confirmed that there had been no divorce. This letter had been stamped by the Office of the Secretary Union Council Mandi Bhalwal (No. 110) Tehsil Sarai Alamgir (Gujrat).

30. On 3 September 2020, the Trustee provided its Stage Two IDRPs response. It said:-

- The Trustee believed that a Guaranteed Minimum Pension was payable to Mrs R and that this would be paid once Mrs R confirmed her bank details. The value of this payment would be £326.40 per year.
- It did not dispute that Mrs R and Mr D were married.
- Separation by reason of breakdown of the marriage is not defined in the Scheme Rules. The Trustee considered a number of relevant factors before reaching the conclusion that there had been a separation by reason of breakdown of the marriage.
- The Trustee also requested further evidence at the Stage One IDRPs decision to show a continuing relationship and acknowledged that this might be more difficult to provide after Mr D went into a care home. Following its Stage One response, it also asked whether evidence was available to show the difficulties experienced by Mrs R in attempting to come to the UK before and after Mr D went into a care home.

- The Trustee provided several opportunities for evidence of communication and financial dependency before and after Mr D had gone into a care home. The absence of this evidence was a factor which the Trustee was entitled to consider when reaching its view that there was a breakdown of the marriage.

31. On 30 November 2020, the Representatives submitted an application to the Pensions Ombudsman.

Caseworker's Opinion

32. Mrs R's complaint was considered by one of our Caseworkers who concluded that no further action was required by the Scheme Manager, the Trustee and the Scheme Administrator. The Caseworker's findings are summarised below:-

- It is not within the Pension Ombudsman's remit to say what decision the respondents should have arrived at. The Pension Ombudsman would only intervene if the decision-making process was flawed, or the original decision could not have been reached by another reasonable decision-maker.
- The Trustee decided that Mrs R did not qualify for a Qualifying Spouse's pension under Rule F5(B). The decision to award a Qualifying Spouse's pension is discretionary. In making the decision, the Trustee considered whether there had been a breakdown in marriage. In order to consider this, it requested any evidence of an ongoing relationship between Mrs R and Mr D. Having reviewed the available evidence, the Trustee decided that Mrs R should not be paid a Qualifying Spouse's pension. The Caseworker was of the view that the Trustee had not made any errors in reaching this decision.
- Under Rule F5(E), if no Qualifying Spouse's pension is payable then the Trustee may decide to pay a Dependant's pension. This decision is also discretionary. The Trustee requested evidence of Mrs R's dependency upon Mr D. However, no evidence was provided that related to anytime after 1998. The Caseworker was of the view that the Trustee had not made any errors in its decision to not pay a Dependant's pension to Mrs R.

33. Mrs R did not accept the Caseworker's Opinion and the complaint was passed to me to consider. The Representatives provided further comments which do not change the outcome.

34. In summary, the Representatives said that the Trustee had made a presumption that the complainant's marriage had broken down and that there was an undue burden placed on Mrs R. It said that the marriage between Mrs R and Mr D was continuous and the geographical distance between Mrs R and Mr D was due to significant issues with the immigration process. The Representatives also said that delays were caused by the respondents and were no fault of their own or Mrs R's.

35. I have considered the additional points raised by the Representatives; however, I agree with the Caseworker's Opinion.

Ombudsman's decision

36. In accordance with the Scheme Rules, the decision whether or not to pay a Qualifying Spouse's pension or Dependant's pension is ultimately up to the Trustee as the Scheme Rules have granted it discretionary powers to make such awards. My role is to consider whether the Scheme Rules have been followed correctly and if the decision made was a proper one.

37. I may only interfere with the exercise of the Trustee's discretion if the Trustee has:

- failed to direct itself correctly in law;
- failed to take into account all relevant matters and no irrelevant ones;
- failed to ask the correct questions; or
- arrived at a decision that is perverse.

38. In order to award a Qualifying Spouse's pension, the Trustee must be satisfied that Mrs R's marriage to Mr D had not broken down. The Trustee asked the Representatives for evidence of an ongoing relationship on multiple occasions; however, the Representatives were unable to supply sufficient evidence of this. While I sympathise with Mrs R she has been unable to provide any tangible and independently verifiable evidence to satisfy the Trustee that the marriage between Mr D and Mrs R had not broken down.

39. The Representatives have argued that Mrs R's circumstances make it hard to show that her marriage had not broken down. However, I would expect there to be some tangible evidence of correspondence between Mr D and Mrs R. I find that the Trustee was right to contemplate the absence of correspondence when considering whether the marriage had broken down. In reaching its decision I find that the Trustee considered all relevant and no irrelevant information regarding Mrs R's eligibility to receive a Qualifying Spouses pension.

40. The Trustee also decided that Mrs R should not be paid a Dependant's pension. It repeatedly asked the Representatives to show that Mrs R was dependent on Mr D immediately prior to his death. The Representatives said that Mr D's financial support ended once he resided at Hill View Care Home in 2008. Based on this evidence, I find that the Trustee considered relevant facts in reaching its decision.

41. Following the Opinion, the Representatives have commented that the primary issue in this matter has been overlooked. It said that the Trustee was incorrect to presume that Mrs R's marriage had broken down and that this presumption was unfair and unduly harsh. The Representatives have argued that the Trustee placed too much emphasis on Mr D's death certificate, which failed to include Mrs R as next of kin.

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42. The death certificate is not the only evidence that the Trustee has considered. The Trustee has been proactive in asking for further information in this case and has given Mrs R a number of opportunities to provide relevant evidence. Mrs R has not been able to supply such evidence and, as a result, the Trustee has decided not to award Mrs R a Qualifying Spouse's pension or a Dependant's pension. I find that the Trustee has taken into account all relevant matters.

43. I do not uphold Mrs R's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman

19 April 2024

The Appendix

The Scheme Rules

Definitions

“...**“Dependant”** means, in relation to an individual, the widow, widower, child, step-child, adopted child or illegitimate child of that individual (including a child conceived but not born at the date of that individual’s death but excluding any child who is over the age of 18 years and not in full-time education or training for trade, profession or vocation) and any individual who, in the opinion of the Trustees, is or was wholly or in part dependent upon the earnings of that individual; ...

... **“Qualifying Spouse”** means, in relation to a deceased Member, Deferred Member or Pensioner, the widow or widower of that individual;...

...F4. PENSIONER’S DEATH BENEFITS

...F4(B) Qualifying Spouse’s pension

- (i) Subject to Rule F5 (General Provisions applicable to Part F), if a Pensioner dies, his Qualifying Spouse shall be entitled to an annual pension equal to one-half of the pension which would have been payable to the Pensioner at the date of his retirement before any communication under Rule E1 (Lump Sum option) and (if not revoked) before any surrender under Rule E2 (Dependant’s Pension Option).
- (ii) The Qualifying Spouse’s pension under Rule F4(b)(i) is payable from and including the day after the Pensioner’s death.
- (iii) The Qualifying Spouse’s pension under Rule F4(b)(i) shall be increased in respect of the period from the date of the Pensioner’s retirement to the date of his death to the extent (if any) that it has been augmented under Clause 21 (Augmentation and Provision of New Benefits or Alternative Benefits)...

...**F5 General Provisions Applicable to Part F**

...**F5 (B) Separated Marriages**

If, at the date of an individual's death, a person is separated from that individual by reason of the breakdown of the marriage, he shall not be treated as a Qualifying Spouse unless the Trustees decide otherwise...

...**Rule F5(E) No Qualifying Spouse**

If a Member, Deferred Member or a Pensioner dies and is not survived by a Qualifying Spouse but it survived by one or more Dependants, the Trustees may pay a pension or pension in aggregate equal to the amount of the pension that would have been payable to the Qualifying Spouse to such one or more of the Dependants as they may decide and in such shares on such terms as they may decide. For this purpose, the Qualifying Spouse will be assumed to be the same age as the Member, Deferred Member or Pensioner...

...**Rule F5(I) Overriding provisions**

- (i) Notwithstanding anything in Part F to the contrary, if a Member or a Deferred Member or a Pensioner dies, and leaves a sole surviving widow or widower, that widow or widower has the right to such pension (if any) as may be payable to her or him under Rule J1 (Guaranteed Minimum Pensions).
- (ii) If the benefits payable on the death of a Member or Life Cover Member are for the time being insured with or arrange (whether wholly or in part) through an insurance company, then the benefits will be subject to such restrictions and will be payable only in such circumstances as the Trustees may agree with the insurance company.