

Ombudsman's Determination

Applicant	Miss Y
Scheme	Local Government Pension Scheme (the Scheme)
Respondent	South Yorkshire Pensions Authority (the Administrator)

Outcome

1. I do not uphold Miss Y's complaint and no further action is required by the Administrator.

Complaint summary

2. Miss Y has complained that the Administrator did not allow her to nominate her sister to receive her ongoing pension in the event of her death.

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 Scheme is governed by the Local Government Pension Scheme Regulations 2013 (**the Regulations**).
5. Miss Y wrote to the Administrator and requested that her sister receive her ongoing pension upon her death. On 3 April 2020, Miss Y discovered that the Administrator had rejected this request. She complained about this to the Administrator, but it did not uphold her complaint.

The Regulations

6. Regulations 47 and 48 set out specific categories of people that can be nominated to receive a Scheme member's pension upon the member's death.
7. Under Regulation 47, a member can nominate their surviving spouse, civil partner or cohabiting partner to receive their pension upon their death.
8. Under Regulation 48, a member can nominate their child or children to receive their pension upon their death.

Summary of Miss Y's position

9. The Administrator's refusal to allow her to nominate her sister to receive her ongoing pension upon her death is an act of unlawful discrimination under the Equality Act 2010. This is because Scheme members are allowed to nominate a spouse, civil partner, cohabiting partner or children to receive their pension upon their death, even if they have paid the same amount of money into the Scheme as Miss Y.
10. She should be allowed to nominate her sister to receive her ongoing pension upon her death, or have her pension increased.
11. The Regulations should be changed to contain a provision that allows single people to nominate an adult dependant to receive an ongoing pension in the event of their death.

Summary of the Administrator's position

12. It did not commit unlawful discrimination by refusing Miss Y's request to nominate her sister to receive her ongoing pension upon her death.
13. It acted in accordance with the Regulations and it does not have authority to act outside the Regulations that govern the Scheme.
14. It does not have the authority, under the Regulations, to increase Miss Y's pension in recognition of its refusal to allow her to nominate her sister to receive her ongoing pension in the event of her death. It would be unfair to other Scheme members for it to do so.

Adjudicator's Opinion

15. Miss Y's complaint was considered by one of our Adjudicators, who concluded that no further action was required by the Administrator. The Adjudicator's findings are summarised below:-
 - The Administrator has a responsibility to administer the Scheme in keeping with the Regulations. The Administrator does not have authority to make or change legislation, and accordingly, does not have authority to change or supplement the Regulations in order to honour Miss Y's request.
 - The Administrator acted in accordance with the provisions stipulated in the Regulations when denying Miss Y's request for her sister to receive her pension after her death. So, there has been no maladministration.
 - There is no provision within the Regulations or relevant legislation that provides for an increased pension to be paid to a Scheme member in recognition of the fact that no partner or children's pensions would be payable in the event of their death. Nor is there is any legislative provision granting the Administrator discretionary powers to pay an additional benefit to a Scheme member in these circumstances.

- It was therefore the Adjudicator's view that it is not within the Administrator's authority to pay Miss Y an increased pension on the basis that she is not allowed to nominate her sister to receive her pension upon her death. So, the Administrator's refusal to do so did not amount to maladministration.
 - Miss Y considers that the Administrator's decision not to allow her nomination is an act of unlawful discrimination under the Equality Act 2010. Miss Y would need to prove that she has been treated less favourably than other Scheme members who are in the same position as her. There is no evidence that she has, so there is no evidence that she was discriminated against.
16. Miss Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Miss Y provided further comments and documents, which I have considered, but which do not change the outcome. I agree with the Adjudicator's Opinion.

Miss Y's additional comments

17. Miss Y has stated that:-

- The Regulations are discriminatory and do not comply with the public sector equality duty (**PSED**) under the Equality Act 2010. This is because single Scheme members are denied benefits afforded to other Scheme members who have paid the same amount of money into the Scheme.
 - Other pension schemes, such as the BT plc pension scheme, do not discriminate. They made provision for adult dependants similar to Miss Y's request.
 - Miss Y is not complaining about the Administrator, as the matter is outside its authority and responsibility. The subject of her complaint is the Regulations.
 - The Secretary of State for Housing, Communities and Local Government is responsible for changing the Regulations, and it failed to act on her complaint. On 22 December 2020, it informed her that the Regulations were reformed in 2014 and the Government would not act on her complaint about them.
 - This matter has contributed towards Miss Y's life being destroyed.
18. Miss Y has also stated that she is not sure whether the Pensions Ombudsman has the jurisdiction and terms of reference to resolve her complaint. She asked for detailed clarification regarding this.
19. Miss Y has also stated that she wrote a letter to Queen Elizabeth II (**the Queen**) dated 31 January 2022, and produced a document regarding the PSED. She asked the Queen to confirm the powers of the Pensions Ombudsman and consider her complaint about the Regulations being discriminatory but did not receive a response.

Ombudsman's decision

20. The role of the Administrator is solely to administer the Scheme in keeping with the Regulations. The Administrator did so, and I am satisfied that the Regulations have been followed correctly. Miss Y's complaint is essentially that the Administrator refused to act contrary to the Regulations. As the Administrator did not do so and the Regulations have been followed, there is no basis upon which I can uphold this complaint, as there has been no maladministration.
21. I agree with the Adjudicator's view that in administering the Regulations, the Administrator did not discriminate against Miss Y. Discrimination occurs when one person is treated less favourably than another in the same category. Miss Y has compared her treatment to the treatment of those in a different category to herself. This is because she is a legally single person with no children or dependants, as defined under the Regulations. Accordingly, her being treated differently to those outside this category does not amount to discrimination and I do not agree that the Regulations are discriminatory.
22. I understand that Miss Y was dissatisfied with the Administrator's refusal to contravene or alter the Regulations to provide her with her stated objective of having her pension paid to her sister upon her death. However, Miss Y had a responsibility, upon joining the Scheme, to study the Regulations and assess whether the Scheme was suitable for her personal circumstances. The Administrator cannot be held responsible for difficulties she experienced as a result of her failure to do so. Similarly, I cannot comment on the administration of other pension schemes, as it does not affect my assessment of whether there was maladministration in the handling of the Scheme.
23. I understand that Miss Y also seeks clarification about how to take her complaint further. She stated that she specifically asked the Ministry of Housing, Communities & Local Government, now called the Department for Levelling Up, Housing and Communities (**DLUHC**), to look into her complaint that the Regulations are discriminatory. She stated that in its response to this, DLUHC informed her that the relevant legislation was last reformed in 2014 and the Government would not act on her complaint. So, she has already been informed that the body with the authority to change the relevant legislation will not do so and I do not have the authority to change the legislation.
24. I do not uphold Miss Y's complaint.

Anthony Arter

Pensions Ombudsman
30 December 2022