CAS-75177-D7L2

Ombudsman's Determination

Applicant	Ms N
Scheme	Pension Protection Fund (**PPF**)
Respondent	The Board of the Pension Protection Fund (the **Board**)

Outcome

1. I do not uphold Ms N's complaint and no further action is required by the Board.

Complaint summary

2. Ms N's complaint is that the Board has not awarded her surviving dependant's compensation.

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. Relevant extracts from the Pensions Act 2004 (the **Act**) and the Pension Protection Fund (Compensation) Regulations 2005 (the **Compensation Regulations**), are provided in the Appendix.

5. In 2005, Ms N's father commenced receiving his pension from the Railways Pension Scheme – Fastline Shared Cost Section (the **Scheme**).

6. In March 2013, the Scheme transferred to the PPF. As a pensioner member, Ms N's father continued to receive his pension in full, paid as 100% PPF compensation.

7. Ms N's father died on 1 February 2021. Ms N was then age 39.

8. The same month the PPF informed Ms N that she did not qualify for surviving dependants' compensation. Ms N complained and submitted a copy of a 'Form of Request' (the **Form**)[1] to the Trustees of the Scheme, which her father had signed in April 1998. Ms N said:-

[1] The Form's pre-prepared worded statement says:

- PPF's 'Compensation payments for survivors' booklet (the **Booklet**) clearly stated "…following the death of a member will depend on the rules of the member's former pension scheme"[2].

- Her father would not have agreed to anything binding that left his family with nothing.

- Her father had only accessed a small amount of his pension. The rest of the money within the fund belonged to him. He paid for the fund with his wages, and the morally correct decision was that his wishes about the distribution of that money after his death be honoured.

9. The PPF's stage one response was issued on 11 March 2021. It said:-

9.1 The PPF was created through government legislation to ensure members of eligible pension schemes that had failed and were unable to pay members their pensions still received a significant proportion of the pension to which they were entitled.

9.2 The PPF did not receive an amount of money for each member of a scheme that it became responsible for. Rather members were paid PPF money. This was funded by a levy collected from eligible UK pension schemes, recovered assets from pension schemes that had transferred to it, investment returns and recoveries from insolvent employers.

9.3 Under the legislation that governed the PPF, survivors' benefits were only payable to a spouse, civil partner, eligible relevant partner or any children under the age of 18, or over 18 up to age 23 who were in full-time education or with a qualifying disability.

9.4 Ms N's quote from the Booklet referred to whether a spouse, civil partner or relevant partner were eligible to receive benefits.

9.5 When the Scheme transferred to the PPF its rules no longer applied and members were paid compensation in line with the legislation that governs the PPF. So, the Form was no longer valid.

"I hereby direct that any lump sum amount in respect of my membership of the above Scheme which may become payable on my death shall not be paid to my Estate but shall be paid to the Trustee appointed to receive it under Rule 18C of the Scheme.

I understand that this direction is irrevocable and binding on me and on my Estate and all interested persons."

Rule 18C provided that lump sum death benefits were paid at the discretion of the Scheme Trustees.

[2] The extract applies to compensation for spouses, civil partners, or relevant partners.

9.6 The legislation governing the PPF could only be changed by Parliament. If Ms N wished to take the matter further, she should contact her local Member of Parliament who could raise the matter with the relevant Minister.

10. Dissatisfied with the PPF's response, Ms N submitted comments on 12 March 2021. The PPF maintained its position with its stage two response on 7 April 2021. On 9 May 2021, Ms N requested that her complaint be further considered under stage three of the appeal process. The Board's Reconsideration Committee issued its decision on 9 June 2021 not upholding Ms N's complaint. Later that same month, Ms N complained to The Pensions Ombudsman (TPO).

Ms N's position

11. Ms N says:-

11.1 She disagrees with the Board's decision. Her father had always promised her his pension to support her as she suffers with multiple sclerosis and has no way of providing for herself. Despite knowing this the Board has still denied her claim.

11.2 The signed Form declared that her father's pension was to be hers following his death, yet this has been dismissed.

11.3 The Board has continued to argue against her father's wishes and even used offensive language such as 'handicapped' when conversing with her.

11.4 This ordeal has been going on for months and has caused her great distress that has affected her health.

11.5 The Board's decision has left her without financial security and is opposing the outcome her father believed would happen after his death.

11.6 She does not understand why the Board is able to disregard the signed Form which proves how her father wanted his pension to be handled in favour of its own personal agenda, as they have no signed documents that her father approved its scheme (the PPF).

The Board's position

12. The Board says:-

12.1 Once a scheme transfers to the PPF, it is deemed to be wound-up, and the members are entitled to PPF compensation rather than the benefits that would have been payable under the former scheme.

12.2 In Ms N's circumstances, the death benefit provisions of the former Scheme are not relevant when determining Ms N's entitlement to PPF compensation.

12.3 Regulation 7(4)(b) of the Regulations provides that where a surviving dependant is incapable of engaging in full-time paid employment due to a condition that falls within the definition of a disability under the Disability Discrimination Act 1995[3], PPF compensation is payable until the surviving dependant attains age 23.

12.4 So, in accordance with the legislation that governs PPF compensation, a surviving dependant over the age of 23 is not eligible to receive PPF compensation following a member's death.

12.5 The word 'handicapped' was used in its stage one response to Ms N's complaint. However, it was quoting from the former Scheme rules. Nonetheless, it accepts that the word is outdated. It apologised to Ms N and sent her flowers and would like to take this opportunity to apologise to Ms N again. However, because it was directly quoting from the former Scheme rules it does not consider that this amounts to maladministration.

12.6 It handled Ms N's complaint appropriately and decisions were given at each stage of the complaints process in a suitable and timely manner.

Adjudicator's Opinion

13. Miss N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Board. The Adjudicator's findings are set out below:-

13.1 The matters brought to TPO comprised both a complaint of maladministration and a reviewable matter (under paragraph 16 of Schedule 9 to the Act). This did not, however, affect the outcome and the case had been looked at as a whole.

13.2 Ms N said she did not understand why the Board was able to disregard the signed Form which proved how her father wanted his pension to be handled.

13.3 The PPF was brought into being by the Act. It was not, itself, a pension scheme; nor was it an insurance scheme. It was intended to provide compensation for the members of an occupational pension scheme which was unable to pay the benefits which had been promised to them. Briefly, the circumstances in which the PPF would accept a pension scheme were:

- the pension scheme was a defined benefit arrangement and commenced winding-up after April 2005;
- a qualifying insolvency event had occurred in relation to a sponsoring employer;
- an insolvency practitioner had confirmed that a scheme rescue was not possible; and

[3] Since replaced by the Equality Act 2010.

- the assets of the pension scheme were less than would be needed to provide benefits at or greater than the level of PPF compensation for the members.

13.4 The above conditions applied in the case of the Scheme, and it transferred to the PPF in March 2013. At that point, the Scheme, effectively, ceased to exist and its members became eligible to receive compensation from the PPF.

13.5 The amount of PPF compensation payable and the terms and conditions under which it was paid are set out in the Act and the Compensation Regulations.

13.6 As a pensioner member when the Scheme transferred to the PPF, Ms N's father continued to receive his pension in full (that was 100% PPF compensation).

13.7 When Ms N's father died, he did not leave any beneficiaries who qualified for PPF compensation under the Regulations. The Form he signed in April 1998, which gave the former Scheme Trustees discretion on the payment of lump sum death benefits, effectively fell away after he had received his pension from the Scheme for five years[4].

13.8 Regulation 7(4)(b) entitled a surviving dependant, who was incapable of engaging in full-time paid employment due to a disability, to be paid PPF compensation until they reached age 23.

13.9 As Ms N was 39 when her father died, she did not qualify for surviving dependant's compensation. The Board had no discretion in this matter.

13.10 While the Adjudicator empathised with Ms N's position, the Board was required to administer the PPF in accordance with the Act and the Compensation Regulations. The Board had done that.

13.11 Ms N said the PPF had used offensive language such as ‘handicapped' when conversing with her. The PPF had explained that it was directly quoting from the former Scheme's Rules. While the Adjudicator understood that the word had caused Ms N upset, the PPF's direct quote from the former Scheme Rues did not amount to maladministration. Nonetheless, the PPF had apologised to Ms N and sent her flowers and had apologised again. The Adjudicator considered that to be reasonable and sufficient in the circumstances.

13.12 Similarly, the Adjudicator considered that the PPF had been timely in its response to each stage of Ms N's complaint.

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[4] Under the Scheme, Ms N's father's pension was effectively guaranteed to be paid for five years. If he had died within the first five years of receiving his pension a lump sum equal to the value of the pension payments which were due to be paid between his death and the end of 5 years may have been payable to one or more eligible beneficiaries at the discretion of the Scheme Trustees.

13.13 As there were no grounds for me to interfere in this matter, the Adjudicator’s opinion was that Ms N’s complaint could not be upheld.

14. Ms N accepts that changing the relevant legislation is outside of my remit but has asked that I issue a formal decision on her complaint.

15. Ms N says that she has contacted her local MP, who has forwarded their concerns to the Secretary of State for Work and Pensions. Ms N says:

> “Ultimately, we feel this is the cruel misdoing of the PPF and the resolution is not morally satisfactory”.

16. I agree with the Adjudicator’s Opinion.

Ombudsman’s decision

17. The Adjudicator is correct in his reasoning (see paragraph 13 above), so although I also empathise with Miss N’s position there are no grounds on which I can uphold her complaint.

18. I do not uphold Ms N’s complaint.

Anthony Arter

Pensions Ombudsman
31 March 2022

Appendix

Pensions Act 2004

19. As relevant Section 162, 'The pension compensation provisions', provides

"(1) Schedule 7 makes provision for compensation to be paid in relation to a scheme for which the Board assumes responsibility in accordance with this Chapter, including provision for—

(a) periodic compensation to be paid to or in respect of members,"

20. As relevant paragraph 23(1)(b) of Schedule 7 provides:

"Regulations may provide for compensation to be payable, in such circumstances as may be prescribed, to or in respect of—

…

dependants of prescribed descriptions of persons of prescribed descriptions…"

Pension Protection Fund (Compensation) Regulations 2005

21. Regulation 1 defines a "surviving dependent" as:

"(a) a child of the family who is financially dependent on the member, and who is aged less than 18; or

(b) a child of the family who is financially dependent on the member, who is aged less than 25[5] and who is—

(i) either attending a qualifying course; or

(ii) incapable of engaging in full time paid employment due to a condition that falls within the definition of a disability under the Disability Discrimination Act 1995[6];"

22. As relevant Regulation 4, 'Compensation for surviving dependants' provides:

"(1) A person shall be entitled to periodic compensation under paragraph 23 of Schedule 7 to the Act (compensation in form of dependants' benefits) in the circumstances prescribed in this regulation.

…

[5] However, Regulation 7 effectively means the cut-off date is age 23.

[6] The Disability Discrimination Act 1995 has been replaced by the Equality Act 2010.

(3)…, in the case of a surviving dependant the circumstances are where the surviving dependant provides—

(a) in the case of a natural child of the member, a birth certificate or other evidence demonstrating to the satisfaction of the Board that he was the natural child of the member;

(b) in the case of an adopted child of the member, the adoption certificate demonstrating that he was the adopted child of the member…; or

(c) in the case of any other child who is a dependant of the member at the date of the member's death, evidence demonstrating to the satisfaction of the Board that he was a dependant child of the member at the date of the member's death,

to the Board…"

23. As relevant Regulation 7, 'Period of payment' provides:

"(3) Except where paragraph (4) applies, periodic compensation shall be paid until the surviving dependant attains the age of 18.

(4) This paragraph applies where the surviving dependant—

(a) is attending a qualifying course—

(i) until the surviving dependant leaves the qualifying course; or

(ii) attains the age of 23;

whichever is the earlier; or

(b) is incapable of engaging in full time paid employment due to a condition that falls within the definition of a disability under the Disability Discrimination Act 1995, until the surviving dependant attains the age of 23."