

Ombudsman's Determination

Applicant	Mr R
Scheme	Teachers' Pension Scheme (the Scheme)
Respondent	Teachers' Pensions (TP)

Outcome

1. I do not uphold Mr R's complaint, and no further action is required by TP.

Complaint summary

2. Mr R has complained that following the death of his wife, Mrs R, an In-Service Death Grant should have been paid to him rather than an Out-of-Service Death Grant.

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. On 1 September 2000, Mrs R became a member of the Scheme which was a defined benefit arrangement.
5. On 10 September 2020, Mrs R was dismissed from her employment.
6. Mrs R applied to an Employment Tribunal (**ET**) to contest her dismissal.
7. In October 2020, a scheduled ET was cancelled due to the impact of COVID-19, a new date was not provided at that time.
8. On 20 April 2021, Mrs R died.
9. On 2 May 2021, Mr R completed an application form to claim death benefits and submitted it to TP.
10. On 13 May 2021, TP emailed Mrs R's former employer, Sandwell Metropolitan Borough Council (**MBC**) and requested that it confirmed that the service and salary details which they submitted to TP were correct and Mrs R's reason for leaving employment.

11. On 26 May 2021, Sandwell MBC confirmed that ill health was not the main factor for Mrs R leaving pensionable service. The reason for leaving employment was provided as 'dismissed.'
12. On 15 June 2021, TP sent a letter to Mr R and said it had processed the application form he had completed and under the Teachers' Pensions Scheme Regulations 2014 (**TPSR**), he was entitled to receive an Out-of-Service Death Grant of £26,643.62.
13. In March 2022, Mr R submitted a complaint to TP and said in summary:-
 - His wife had died in April 2021, and an In-Service Death Grant was not paid because she had been dismissed from her job.
 - His wife had been fighting the dismissal when she suddenly died.
 - Mrs R had worked for 18 years with a clear disciplinary record. He would like TP to exercise discretion and pay the In-Service Death Grant. He and his three sons were devastated and would like TP to look at its decision again.
14. On 22 March 2022, TP sent a letter to Mr R and said in summary:-
 - As administrators of a government public sector scheme, TP was bound to follow regulations set by the Department for Education (**DfE**). As such it was bound by the TPSR and could only act in accordance with the provisions within those regulations.
 - Mrs R was in pensionable employment until 10 September 2020. The In-Service Death Grant was payable only when a member died while employed in a teaching role that was pensionable as part of the Scheme. As per its records at the date of her death, Mrs R was not in pensionable employment. As such, an Out-of-Service Death Grant was paid on 18 June 2021 as per the TPSR.
 - It appreciated his concerns regarding the dismissal of his late wife; however, it must advise that TP did not have discretion to apply when assessing the eligibility for benefits. It understood that its response may be a disappointing one for him, but it must abide by the TPSR, and it assured him that TP had followed the correct process.
15. On 13 July 2022 Mr R sent a letter to TP and said in summary:-
 - He was aware that there were regulations that had to be acted on however there were special circumstances in his wife's case that he felt should be taken into account and discretion used.
 - Mrs R was in paid employment until 10 September 2020 and following this not wanting to rely on benefits, she applied to agencies to start supply teaching as soon as possible. Mrs R was taking her case to an ET and so supply teaching

seemed a good interim measure. Mrs R had an exemplary record in teaching and any charges levelled against her were unfounded.

- The agencies requested a Disclosure and Barring Service (**DBS**) report which Mrs R asked for but did not receive until July 2021, three months after her death. Without the DBS she could not be employed and even if she had received it the use of supply teachers was severely restricted due to COVID-19 as schools quite rightly wanted to reduce the number of people going into classrooms.
- Due to the COVID-19 pandemic the date of the ET was delayed which was completely out of Mrs R's control. Nobody could have foreseen the disruption to all aspects of society that the pandemic brought.
- Although TP paid an Out-of-Service Death Grant within two months, he felt it had not given proper consideration to all the relevant circumstances and the fact that at the age of 42 with her teachers training and years of service Mrs R had spent over half her life in teaching a career that she loved.
- He hoped that this case could be reviewed and due to the extenuating circumstances, the payment be upgraded to an In-Service Death Grant.

16. On 4 August 2022, the DofE sent a letter to Mr R and said in summary:-

- Its responsibility was to ensure that the TPSR had been applied correctly and that the process followed by TP to apply the TPSR has been appropriate. It had considered his appeal carefully and the letter set out the department's decision.
- It was a condition of the TPSR that the member must have passed away while employed in a teaching role that was pensionable for an In-Service Death Grant to be awarded. In Mrs R's case, as she was not in pensionable employment at her date of death, the Out-of-Service Death Grant applied instead, as per the TPSR. As such it considered that TP had acted appropriately in its decision to award this and unfortunately there was no discretion under the TPSR to treat Mrs R as though she was in pensionable employment.
- If he felt, he had been disadvantaged because of the employer's decision to dismiss Mrs R he may wish to raise this in the ET if this was still progressing. The ET may then be able to raise this with the employer to seek compensation for his loss should he be successful.

17. Following the complaint being referred to The Pensions Ombudsman TP and Mr R made the following submissions.

TP's submissions

18. The Scheme is a statutory scheme and as such both the DfE and TP who administer the Scheme on the Department's behalf were bound by the TPSR that applied. Mr R's application for death benefits has been dealt with in accordance with the TPSR.
19. The TPSR 2014 Part 6, Chapter 1 (see Appendix 1) provided the meaning of 'dies in service' and 'dies out of service'. For in service death benefits to be paid, the scheme member must have died while in pensionable service or within 12 months after leaving pensionable service in all eligible employment because they were incapacitated. As Mrs R did not leave pensionable service due to illness, and was out of pensionable service on 20 April 2021, the death benefits had been calculated on an out of service basis.
20. It was not possible to apply discretion and that the benefits which have been paid reflected Mrs R's employment position at the time of her death.

Mr R's submissions

21. He has repeatedly said that he realised that there were regulations, but they needed to be used as guidance. The Oxford English Dictionary definition of a regulation is a prescribed rule which would probably cover 99.9% of cases adequately however due to the COVID-19 pandemic he felt that there should be more flexibility.
22. After Mrs R's employer suspended her on full pay Mrs R became very stressed, and the doctor signed her off as she was obviously not fit for work. She continued to be signed off on sick leave but was told that even if she was off sick the appeal to her dismissal would go ahead without her. She was at this stage so stressed she would have been unable to work as she could not believe her 17 years of loyal service were ending.
23. Mrs R was paid her full salary before her sick leave and so he thought it was fair to say she become incapacitated and unable to work. The rules regarding ill health retirement were as follows:

"Sick leave

Pensionable sick leave – should you become ill you will remain in pensionable service if you are paid at least 50% of the salary you were paid prior to sickness absence including any statutory sick pay you may receive.

Non pensionable sick leave- if you move into non-pensionable sick leave and have not reached your Normal Pension Age you will cease to accrue pension benefits, but you will:

Remain eligible for the "in-service" death grant for one year provided you left pensionable service because you were incapacitated (unfit to be in an eligible employment, despite appropriate medical treatment)"
24. No one was willing to answer how Mrs R was meant to get a new role although she did try as advised by her solicitor:-

- The ET was cancelled in October 2020 due to the COVID-19 pandemic;
 - Her application for supply teaching required a DBS report that came back after her death – again due to the COVID-19 pandemic;
 - Supply teachers were not being used in a number of schools because of the worry about the spread of COVID-19 by introducing too many people into classrooms.
25. Following his wife's death, he had little choice but to settle with Sandwell MBC as it was made clear by the DofE that Mrs R could not be treated as reinstated as she had died. Throughout the process there had been very little compassion shown by the DofE or TP or consideration for the grief the family are feeling,

Adjudicator's Opinion

26. Mr R's complaint was considered by one of our Adjudicators who concluded that no further action was required by TP. The Adjudicators opinion is summarised below:-
- The Adjudicator sympathised with the situation Mr R and his family found themselves in and she agreed that the COVID-19 pandemic led to a set of events that were outside Mrs R's control. Mr R was aware that TP must follow the TPSR, and he was asking for discretion to be applied to recognise the particular set of circumstances that affected Mrs R.
 - The Adjudicator's role in assessing Mr R's complaint was not based on what was fair and reasonable but was limited to a consideration of whether the TPSR and any relevant legislation had been followed properly by TP. This meant that the Adjudicator did not have any discretion to consider the wider circumstances of Mr R's complaint but rather whether TP had acted correctly in how it had applied the TPSR.
 - TP had provided the meaning of "dies in service" within the TPSR which was that a member was in pensionable service at the time of their death. Mrs R did not meet this definition and so the In-Service Death Grant could not be paid to Mr R. Mrs R also did not apply to leave pensionable service due to incapacity and so the sick leave rules that Mr R had provided did not apply.
 - The Adjudicator recognised that Mrs R had found herself in a difficult situation. The COVID-19 pandemic had an impact on her plans to try to move forward after her employment ended and also on the timing of the ET. However, TP could not take these additional factors into account and neither could the Adjudicator.

27. Mr R did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mr R provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr R which are summarised below:-
- He did not agree with a single part of the Adjudicator's opinion; he had asked for his complaint to be viewed with an open mind, and this had not been done.
 - There was no legal reason why the trustees of the Scheme could not use discretion.
 - He did not think that any investigation of his complaint had been carried out.
 - Mrs R died of cancer, and no-one had asked to see her medical records. He suggested that this should be done, and Mrs R should have been offered early retirement due to her short life expectancy.
 - He thought that anyone currently paying into the Scheme would not agree with the outcome either.

Ombudsman's decision

28. Mr R is unhappy that TP paid him an Out-of-Service Death Grant following the death of his wife.
29. My powers are set out in Part X of the 1993 Act¹ and subsequent regulations. This legislation sets out what I can and cannot do. In particular, I must consider the law that applies to the applicant at the relevant time and determine whether it has been applied correctly. I must decide complaints and disputes in accordance with established legal principles, rather than by reference to what I may consider fair and reasonable². This means that my role is to consider if TP has correctly applied the TPSR and any applicable legislation.
30. I do understand Mr R's strength of feeling on this matter, but this does not mean that I can look at his complaint in a different way to that set out in Part X of the 1993 Act. The fact that the Adjudicator followed the same approach when looking at his complaint does not mean that his complaint was not investigated fully but rather that it was considered within the legislative framework that the Pensions Ombudsman must operate.
31. I note Mr R's point regarding retrospectively looking at Mrs R's health. However, as she did not leave her employment due to sickness an application for ill health retirement could not have been made by Mrs R before she died. This is not something that Mr R can apply for on her behalf at a later date either.

¹ See <https://www.legislation.gov.uk/ukpga/1993/48/part/X/enacted>

² *Henderson v Stephenson Harwood* [2005] Pens LR 209 (s12)

32. Mr R has referred to the Scheme trustees. The Scheme does not have trustees but rather TP acts as the administrator of the Scheme and the DfE is the manager of the Scheme. The DfE is ultimately responsible for the operation of the Scheme. The key aspect of Mr R's complaint is that the fact that Mrs R was not employed at the time of her death should be considered, taking into account the wider issues caused by Covid-19. Unfortunately, the DfE has no discretion to apply anything other than the definition of "dies in service" in the TPSR. Mrs R does not meet that definition.
33. Accordingly, I do not uphold Mr R's complaint.

Dominic Harris

Pensions Ombudsman
26 June 2025

APPENDIX 1 - The Teachers' Pension Scheme Regulations 2014

Part 6 Survivor's Benefits

Chapter 1

General interpretation

127 Meaning of "dies in service"

(1) A member (D) dies in service for the purpose of survivor's benefits if—

(a) D dies while in pensionable service under this scheme;

(b) D dies while on non-pensionable family leave immediately following a period of pensionable service under this scheme;

(c) as at the date of D's death, an election under regulation 26 has effect or is taken to have effect; or

(d) paragraph (2) applies.

(2) This paragraph applies if—

(a) D dies within 12 months after leaving pensionable service in all eligible employment because P was incapacitated; and

(b) a retirement pension other than a phased retirement pension does not become payable in relation to that service before D's death.