

Ombudsman's Determination

Applicant	Mrs N
Scheme	Police Pension Scheme (the Scheme)
Respondents	Equiniti Paymaster (EP), Metropolitan Police

Outcome

1. I do not uphold Mrs N's complaint and no further action is required by EP and Metropolitan Police.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs N has complained that she is entitled to receive a pension from the Scheme following the death of her ex-husband, (**Mr N**), as stated in the Court Order of 12 October 2009.

Background information, including submissions from the parties

4. Paragraph 1d of the Court Order states, "subject to the service of the Order upon the Pension Trustees, irrevocably assign to the Applicant [Mrs N] all benefits due to a spouse or former spouse in the event of his [Mr N] death within his Metropolitan Police Pension by 4.00pm on the 20 November 2009."
5. On 10 December 2009, EP, the Scheme administrator wrote to Mrs N's solicitors confirming the requirement in paragraph 1.d of the Court Order has been noted and all benefits due to a spouse or former spouse in the event of Mr N's death will be payable to Mrs N.
6. On 23 October 2009, EP received a General Order from Mrs N's solicitor which was not a Pension Sharing Order, Pension Sharing Annex or Earmarking Order that would usually be required to apply a split of pension benefits.
7. On 29 October 2009, EP sent a letter to Mr N and on 17 February 2011, a further copy was supplied to Mrs N's solicitors, Breeze & Wyles Solicitors LLP, as per the

Court Order made on 12 October 2009. This detailed a cash equivalent transfer value (**CETV**) and contained several enclosures in relation to pensions and divorce.

8. On 8 June 2015, Mrs N wrote to EP following the death of Mr N and requested that the Court Order made on 12 October 2009 be executed and for her to receive Mr N's Scheme pension.
9. On 8 September 2015, EP wrote to Mrs N stating that she was not entitled to any benefits from the Scheme following the death of Mr N. It further said the Court Order that was in place whilst Mr N was in receipt of his pension, ceased at the time of his death, making any benefits payable to Mrs N no longer applicable.
10. On 27 April 2015, EP wrote to Mrs N stating that although the Court Order states all benefits due to a spouse on Mr N's death would be payable to her, as Mr N did not re-marry there was no spouse's benefits payable and subsequently no pension payable to Mrs N.
11. On 22 November 2015, Mrs N complained to Metropolitan Police under the first stage of the internal dispute resolution procedure (**IDRP**).
12. On 9 February 2016, the IDRP stage one decision was sent by Metropolitan Police. It stated that under section C1 of The Police Pension Regulations 1987 the award of a pension is only payable to a widow of a regular policeman, by virtue of her marriage to the officer or former officer at the time of his death. The decision maker held that although the Court Order assumes that the officer is entitled to assign the benefit of the widow's pension to another person, including to a former spouse, neither EP nor the Metropolitan Police have the authority to do so, as they are bound by the Regulations.
13. On 13 April 2016, Mrs N appealed the decision, reiterating that as per paragraph 1.d of the Court Order made on 12 October 2009, she is entitled to Mr N's pension benefits.
14. On 13 June 2016, Metropolitan Police at stage two of the IDRP upheld the stage one decision and confirmed that it is bound by the Scheme Regulations and it did not have the authority to vary how the Scheme regulations are applied.
15. On 27 January 2017, Metropolitan Police wrote to this office and said it acknowledges that "on receipt of the Court Order in 2009, EP could have made it clearer that assignment of pension is not possible and that widow's pensions cannot be payable to ex-spouses under the rules of the Police Pension Scheme 1987. However, the 'Dependant's benefits on death in retirement' section of the CETV information sheet sent to Mr N and Breeze & Wyles Solicitors LLP does state 'there is no provision for a partner other than a legal spouse of the former police officer'".
16. On 17 December 2017, Mrs N emailed this office and confirmed that had she known that Court Order was not going to be implemented she would have asked for it to be reworded to make it clear and she would have wanted the Court Order to be taken

into account when the assets were being divided. She further said she made the decision to live in the UK with the understanding that the Court Order will be complied with based on what she has been told by the courts and her solicitor.

17. On 3 January 2018, Metropolitan Police emailed this office, and said no information was issued by EP in relation to the subject matter before 12 August 2009.

Adjudicator's Opinion

18. Mrs N's complaint was considered by one of our Adjudicators who concluded that no further action was required by EP and Metropolitan Police. The Adjudicator's findings are summarised briefly below:-below: -
- The Scheme Regulations state that "a widow is entitled to a pension based on all the deceased officer's pensionable service if she was married to an officer before he ceased to be a regular police officer and was married to him when he died. A widow who married after the officer's retirement will be entitled to a pension based on the officer's service after 5 April 1987." As Mr N was not married at the date of his death, the payment of a widow's pension is not applicable. The Adjudicator appreciated paragraph 1.d of the Court Order makes it clear that the intention was for all benefits due to a spouse or former spouse in the event of Mr N's death to be payable to Mrs N. However, under the Scheme Regulations a spouse's pension may only be paid to a surviving spouse or civil partner. There is no provision for it to be paid to a former spouse. So, there was no entitlement or right that was already present that could be assigned to, or would accrue in future for Mrs N. Unless she had remained married to Mr N, or Mr N had re-married.
 - Mrs N has said that EP, in its letter to her solicitors on 10 December 2009, confirmed that all benefits due to a spouse or former spouse in the event of Mr N's death will be payable to her. The Adjudicator accepted that EP did confirm that it noted the content of the Court Order. Further, she appreciated that EP could have made it clearer to Mrs N from the outset that the Court Order could not be implemented under her current circumstance or should have qualified the wording of its letter to EP of 10 December 2009 in the context of the Scheme Regulations.
 - However, the Adjudicator was of the opinion that the content of EP's letter to Mrs N of 10 December 2009 was technically correct at the time it was issued. So, she was not persuaded that EP is responsible for the position in which Mrs N now finds herself. The Adjudicator also said that the onus was on Mrs N and her solicitors to have taken greater care in establishing the specifics of any potential assets which she might be able to claim in the divorce and, sought further clarification on the matter from the respondents at the appropriate time.
19. 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 therefore only respond to the key points made by Mrs N for completeness.

Ombudsman's decision

20. Mrs N contends that a Court Order that has been made which involved taking actions which are outside a Scheme's Regulation must be executed. However, the Court Order cannot create a benefit which is not due under the Regulations. As explained by the Adjudicator in the Opinion, under the Scheme Regulation's a death benefit is only due to a surviving spouse or civil partner, there is no provision for a former spouse. The Court Order attempts to assign benefits that may never accrue, and in fact did not accrue. There is no benefit due which is capable of being assigned by the Order.
21. I find that it was the responsibility of Mrs N, along with her solicitors, to have fully investigated the benefits payable from the Scheme prior to settling the divorce proceedings. This would be in line with how any other potential asset would be investigated, to ensure that any assets Mrs N may have been able to claim in the divorce would be received, either immediately or upon Mr N's death, whichever was appropriate.
22. Therefore, I do not uphold Mr N's complaint.

Karen Johnston

Deputy Pensions Ombudsman
21 March 2018