

Ombudsman's Determination

Applicant	Ms Y
Scheme	Teachers' Pension Scheme (the Scheme)
Respondent	Teachers' Pensions (TP)

Outcome

1. I do not uphold Ms Y's complaint and no further action is required by TP.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Ms Y's complaint against TP is that it will not agree to pay benefits to her son or grandchild when she dies.

Background information, including submissions from the parties

4. On 5 March 2015, Ms Y telephoned TP and asked whether benefits could be paid to her son or grandchild in the event of her death.
5. TP wrote to Ms Y on 13 March 2015, explaining it was bound by the Teachers' Pensions Regulations 2010 (**the Regulations**), that govern the Scheme. It said these did not allow for her son or grandchild to receive benefits when she dies. A pension could only be paid if the person was a surviving nominated partner i.e. wife, husband or civil partner. A Nominated beneficiary i.e. parents, step parents, brother or sister. Or, an eligible child, which would be someone under the age of seventeen, or aged seventeen and over but in full time education.
6. Ms Y raised a complaint on 12 August 2015; she said she was being discriminated against because she had never married. She said in lieu of having a partner her benefits should be payable to a family member.
7. The Department for Education responded on 26 August 2015, and said it was satisfied that TP were correctly applying the Regulations. Therefore, it concluded that Ms Y's son and grandchild were not eligible to receive benefits through the Scheme when she died.

Adjudicator's Opinion

8. Ms Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by TP. The Adjudicator's findings are summarised briefly below:
 - The Regulations lay down the criteria of a member's partner or family member to receive benefits when they die. The relevant sections are 90, 91 and 93, which are added as an appendix to this determination.
 - Section 90 provides for benefits to be paid to a surviving spouse or nominated partner, Section 91 provides for benefits to be paid to a surviving nominated beneficiary i.e. parent, step-parent, brother or sister and Section 93 provides for benefits to be paid to an eligible child.
 - TP had correctly applied the Regulations that govern the Scheme. Therefore, Ms Y's son and grandchild were not eligible to receive a survivor pension.
9. Ms Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms Y provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Ms Y for completeness.
10. TP accepted the Adjudicator's opinion.

Ombudsman's decision

11. I do not consider that TP have done anything wrong in not agreeing to pay benefits to Ms Y's son or grandchild when she dies.
12. When Ms Y started paying into her pension she nominated her son to receive a pension in the event of her death. At this point her son met the criteria as an eligible child under Section 93 of the Regulations; this is no longer the case. Sections 90 and 91 of the Regulations have never applied to Ms Y's son or grandchild.
13. Ms Y has said that TP did not make it clear to her that as time went on the benefits would no longer be payable to her son. TP have booklets relating to survivor pensions and death benefits. Therefore, I consider that sufficient information was available to Ms Y that should have alerted her to the fact that her son could not receive a survivor's pension once he was no longer financially dependent. Furthermore, if Ms Y was unsure exactly how the survivor pension would work then she could have spoken to TP and it would have clarified when a survivor pension would be paid.
14. Ms Y believes she is not being treated the same as other teachers. TP's actions would only be classed as discriminatory if Ms Y was being treated differently to other unmarried members of the Scheme with children and grandchildren. I do not consider that she is being discriminated against because she is not married.

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15. Ms Y has said she would have re-considered becoming a teacher had she known that her pension benefits would not be paid to her son or grandchild. I sympathise with Ms Y as she has paid contributions into the Scheme for her entire career and she feels she is not being treated the same as other teachers. However, TP are bound by the Regulations of the Scheme and Ms Y's son and grandchild do not fit the criteria to receive a survivor's pension in the event of Ms Y's death.
16. Therefore, I do not uphold Ms Y's complaint.

Anthony Arter

Pensions Ombudsman
18 October 2016

Appendix:

The Teachers' Pensions Regulations 2010

90 Nomination of surviving nominated partner

(1) A person (A) may nominate another person (B) to receive a pension by giving the Secretary of State a declaration signed by both A and B that the condition in paragraph (2) is satisfied.

(2) The condition is that-

- (a) A is able to marry, or form a civil partnership with, B,
- (b) A and B are living with each other as if they were husband and wife or civil partners,
- (c) neither A nor B is living with a third person as if they were husband and wife or civil partners, and
- (d) either B is financially dependent on A, or A and B are financially interdependent.

91 Nomination of surviving nominated beneficiary

(1) A person (A) may nominate another person (B) to receive a pension by giving written notice to the Secretary of State if Conditions 1 and 2 are satisfied.

(2) Condition 1 is that A has reckonable service which has not been used to calculate a retirement pension payable to A.

(3) Condition 2 is that-

- (a) A is neither married nor a civil partner,
- (b) no nomination made by A under regulation 90 (nomination of surviving nominated partner) has effect,
- (c) B is A's parent, step-parent, brother or sister,
- (d) B is neither married nor a civil partner,
- (e) where B is A's parent, brother or sister, either B has never married nor formed a civil partnership or B is widowed or a surviving civil partner,
- (f) where B is A's step-parent, B is widowed or a surviving civil partner,
- (g) where B is A's brother or sister, B is not an eligible child of A,
- (h) B is not living with another person as if they were husband and wife or civil partners, and

93 Meaning of "eligible child"

(1) For the purpose of these Regulations, a person (C) is the "eligible child" of another person (D) if-

(a)

(i) C is a child of D born during D's lifetime or within 12 months after D's death,

(ii) C was adopted by D, or

(iii) C was accepted by D as a member of the family and was wholly or mainly financially dependent on D at the date of D's death;

(b) C is neither married nor a civil partner and has never married nor formed a civil partnership; and

(c) C satisfies any of Conditions 1 to 3.

(2) Condition 1 is that C is under 17.

(3) Condition 2 is that-

(a) C is 17 or over and under 23,

(b) C is receiving full-time education, and

(c) C has received full-time education since reaching the age of 17 without a break.

(i) B is wholly or mainly financially dependent on A.