

Ombudsman's Determination

Applicant	Ms E
Scheme	Teacher's Pensions (The Scheme)
Respondents	Teachers' Pensions (TP)

Outcome

1. Ms E's complaint against Teachers' Pensions is partly upheld, but there is a part of the complaint I do not agree with. To put matters right for the part that is upheld, TP shall pay Ms E compensation of £500 for the significant non-financial injustice she has suffered.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Ms E's complaint is that TP have refused to pay her a widow's pension although Mr E was her long term partner and they were due to be married four days before his death. In addition, TP have told her that she is not eligible to receive a death grant despite being the sole nominee for this.

Background information, including submissions from the parties

4. Mr E was a member of TP and had retired in 2003.
5. As Mr E had no pensionable service after 31 December 2006, he could not nominate an unmarried partner to receive his pension and the only way he could provide for Ms E was as her husband, under Regulation 92 of the Teacher's Pensions Regulations (TPR) 2010 (**the Regulations**).
6. Ms E and Mr E were due to be married on 8 April 2016. Mr E passed away on 4 April 2016. As Ms E was not married to Mr E at the time of his death, no pension was payable to her.
7. Ms E made a complaint to TP and wrote to the Department for Education (**DfE**) to consider her case under the Internal Dispute Resolution Procedure. She asked them to exercise discretion and reconsider their decision not to pay her a pension.

8. DfE responded to Ms E on 13 July 2013 to say that discretion could not be applied in her circumstances as it was outside of the statutory provisions. As Mr E died before the planned wedding, Ms E was not entitled to receive a widow's pension.
9. Mr E had also nominated Ms E on his death grant nomination form.
10. On 17 March 2016, TP wrote to Mr E and confirmed that they had received his death grant nomination and said:

“I can confirm that the individual(s) recorded on your application, together with the appropriate apportionment (if applicable), have been accepted for the death grant and our records have been noted accordingly. The nomination will remain valid until such time as you inform us that you wish to revoke or alter it.”
11. Regulation 87 sets out when a death grant would be payable. As Mr E was in receipt of an ill health pension for more than 12 years when he died, no supplementary death grant was payable. Ms E was unhappy that the TP had sent an acceptance form as she felt misled by this. She raised a further complaint about this with TP.
12. TP said that under the Regulations, a death grant ceases to become payable if a member had been in receipt of their retirement benefits for more than five years. This is because the death grant in the case of a retired member is equal to five times the annual rate of the member's pension less the amount that has been paid to the member since the pension became payable. As Mr E had received benefits for over five years, no death grant was payable in this case.
13. TP accepted that they had caused confusion in relation to the death grant form. They apologised for the confusion and offered £200 compensation to Ms E for the distress and inconvenience caused to her as a result of this.

Adjudicator's Opinion

14. Ms E's complaint was considered by one of our Adjudicators who concluded that further action was required by TP. The Adjudicator's findings are summarised briefly below.
15. The Scheme is a statutory arrangement and TP are bound to follow the regulations that apply. The Pensions Ombudsman does not have the power to force TP to act contrary to the Regulations.
16. Ms E accepts that TP are applying the Regulations to her case. Ms E would like TP to exercise discretion in her circumstances as she was due to be married to Mr E four days before he died. However, TP do not have any such discretion under the Regulations that govern the Scheme. They cannot override the Regulations and there is therefore no scope for TP to pay a pension to Ms E. The Adjudicator did not therefore uphold this part of the complaint.

17. In relation to the death grant nomination form, TP accept that they caused confusion and had offered £200 compensation to Ms E. However, the Adjudicator did not consider £200 compensation was adequate in the circumstances.
18. The Adjudicator considered that TP should pay Ms E compensation of £500 for the significant non-financial injustice she has suffered. As Ms E was expecting to receive a death grant based on incorrect information given by TP, she would have felt understandable shock, upset and frustration when she was told that she would not be entitled to such a grant. Ms E has accepted this part of the Adjudicator's Opinion.
19. However, Ms E did not accept the Adjudicator's Opinion in relation to the widow's pension and the complaint was passed to me to consider. Ms E has 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 E for completeness.

Ombudsman's decision

20. In response to the Adjudicator's Opinion, Ms E accepts that she was not entitled to the death grant and accepts £500 compensation for the significant non-financial injustice she suffered.
21. However she disagrees with the Adjudicator's Opinion relating to the widow's pension. She says that had she married Mr E before he died, she would have had automatic entitlement to the widow's pension. She believes she is being discriminated against because of her status and that this is an infringement of her Human Rights. She says:

“ There is no notion of fairness to deny financial benefit to a surviving unmarried partner when a married partner would have an automatic right to that benefit...The regulations, regarding rights to a pension, should apply equally whether one is married or unmarried.”
22. Ms E believes she has suffered significant financial injustice, in addition to non-financial injustice, as she was financially dependent on Mr E and they lived in every respect as a married couple. She is moving out of the home she shared with Mr E for 10 years to a less desirable area as she cannot afford the rent on her sole income. Her standard of living has declined significantly.
23. Ms E has made reference to the case of **Brewster v Northern Ireland Local Government Officers' Superannuation Committee [2013] NICA 54 (Brewster)**. She has asked for her complaint to be looked at again in view of the favourable decision to Ms Brewster and the similarities to her situation. She says the facts of the case are comparable to her own and that the complaint should be reviewed in light of the Brewster judgement.

24. The Brewster case related to the requirement of completing a nomination form in the case of unmarried couples. This requirement was found to be in breach of ECHR article 14 (right to protection from discrimination), read in conjunction with Protocol 1 article 1 as married couples were not required to complete a nomination form for payment of retirement pensions to certain survivors.
25. Ms Brewster's appeal was successful as the requirement in the 2009 Regulations, that the appellant and her partner should have made a nomination, was dis-applied on the basis that the nomination form amounted to unlawful discrimination and as such Ms Brewster was entitled to receive a survivor's pension under the scheme.
26. Ms Brewster was disqualified from receiving a pension solely because her partner had not nominated her to receive benefits in accordance with the relevant regulation. The regulations relevant to Ms Brewster made provision for unmarried couples.
27. Ms E's case is not comparable to the Brewster case as the regulations do not make provision for unmarried couples in Ms E's situation. Rather, the Regulations specifically state that Ms E would have to be married to Mr E in order to be eligible to receive a widow's pension, as Mr E had no pensionable service after 31 December 2006.
28. Sadly, Mr E died days before the marriage and therefore, Ms E is not eligible for the widow's pension as set out in the Regulations. Therefore, I do not uphold this part of the complaint.

Directions

29. Within 21 days of this decision, TP shall pay £500 for the significant non-financial injustice caused to Ms E as a result of their confirmation that the death grant nomination form had been accepted which was misleading.

Anthony Arter

Pensions Ombudsman
7 March 2017