

Ombudsman's Determination

Applicant	Mrs R
Scheme	Principal Civil Service Pension Scheme (the Scheme)
Respondent	Civil Service Pensions (MyCSP)

Outcome

1. Mrs R's complaint is upheld and to put matters right MyCSP should, with Cabinet Office guidance, put a suitable procedure in place and use that to assess Mrs R's circumstances to see whether she meets the criteria for living together as a married couple.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs R's complaint is that MyCSP stopped her widow's pension as it considers she is now in a relationship equal to that of a husband and wife. As a result of a delay in suspending the widow's pension, Mrs R is now required to repay an overpayment.

Background information, including submissions from the parties

4. On 17 May 2015, Mrs R wrote to MyCSP saying that from 1 June 2015, she would be "living with another person as a couple". She said "we share the same house", but she remained financially independent; responsible for her house and all running costs associated with it. Finally, Mrs R asked what the definition of a "couple" was.
5. MyCSP responded saying Mrs R was no longer entitled to a widow's pension from the Scheme, and a net overpayment of £851.58 had become payable. MyCSP confirmed the Scheme rules state a widow's pension ceases "if a person who is entitled to a pension, marries, or begins to cohabit with another person as a partner in an exclusive, committed long-term relationship."
6. Mrs R disputed this saying her personal circumstances did not fall into the definition of what a "couple" was. She reiterated her financial position but said she received a monthly rental income from her partner to assist with household bills. Mrs R said her circumstances were no different to that of a war widow and felt she was being discriminated against.

7. MyCSP wrote to Mrs R saying that as administrator, it was duty bound to recover the overpayment which, regrettably, it had failed to suspend. The net overpayment had therefore increased to £2,611.20. MyCSP also confirmed its view that the act of living with a partner was enough to constitute cohabiting as husband and wife.
8. MyCSP offered Mrs R a suggested repayment plan and it confirmed the actual rule under the Scheme relevant to her widow's pension being suspended. The appropriate extract from Rule 4.5 says "(a) if his widow, before attaining the age of 60, remarries or was living or begins to live with a man as his wife ...".
9. Mrs R raised a formal complaint and MyCSP issued its stage 1 decision under the Internal Dispute Resolution Procedure (**IDRP**) on 5 February 2016. It acknowledged the error in continuing to pay the widow's pension beyond 1 June 2015, and offered Mrs R £250 in recognition of any distress and inconvenience caused. But, MyCSP was satisfied it was correct to suspend the widow's pension because it considered Mrs R was financially "interdependent" as she received rental income and appeared to be in an exclusive, committed and long-term relationship with her partner.
10. The stage 1 decision was appealed by Mrs R who said she did not fall into the category of living with a man as his wife, and in law that there was no recognition for heterosexual couples unless they were married. Mrs R said she had no rights over her partner and was not named as his next of kin. Furthermore, she reiterated she was financially "independent" but then said the rental income she received was not spent but it was "saved". She requested her widow's pension be reinstated on compassionate grounds as she was not "living with a man as his wife".
11. MyCSP confirmed Mrs R did not meet the criteria for having her widow's pension reinstated on compassionate grounds because "living as a couple" satisfied its own interpretation of the Scheme rules as living with a man as his wife.
12. Mrs R appealed and requested her complaint be considered under stage 2 of the IDRP. She said a recent court ruling by Mrs Justice Andrews¹ found that opposite sex couples could only have recognition of their rights, benefits and protections if they were married, and she had none of these rights because she was not married.
13. Cabinet Office upheld MyCSP's original decision. It said the term "living together as a married couple" or "living with a man as his wife" was not defined in legislation, but guidance had been taken from the Department for Work and Pensions (**DWP**). And, the definition of "couple" was, as per the Oxford English Dictionary, "two people who are married or otherwise closely associated romantically or sexually". Cabinet Office went on to say that a decision maker (MyCSP) must consider if the whole relationship of two people who are not married to each other is compatible with that of a couple who are married to each other. It said the relationship of a married couple was characterised as having emotional, financial and social aspects.

¹ Steinfeld and Keidan v Secretary of State for Education

14. Cabinet Office said it was not unreasonable for MyCSP to suspend the widows pension on the grounds Mrs R had informed it she would be living with another person as a couple. And, she had not retracted that statement or disputed she was not cohabiting with another person as a partner in an exclusive, committed, long-term relationship. In response to the Justice Andrews ruling, Cabinet Office said it was not relevant because that challenge was about a heterosexual couple being allowed to enter into a Civil Partnership, whereas Mrs R's dispute was about continued rights to her widow's pension based on the "living with a man as his wife" definition, not the established rights, benefits and protections that may flow from marriage.

Adjudicator's Opinion

15. Mrs R's complaint was considered by one of our Adjudicator's who concluded that further action was required by MyCSP. The Adjudicator's findings are summarised briefly below:
- It is not the role of The Pensions Ombudsman to decide if Mrs R is entitled to a widow's pension. This organisation must act impartially and ensure MyCSP made an informed decision based on Mrs R's circumstances and the definition within the Scheme rules.
 - The rules mention to "live with a man as his wife", but the Adjudicator said a more up-to-date meaning of that term was living together as a married couple (**LTAMC**). Whilst that term may not be defined in legislation, LTAMC is about determining whether the whole relationship of an unmarried couple is comparable to that of a married couple.
 - The Adjudicator considered Mrs R's complaint did not rest on a point of law. Therefore, he said he would not comment on the Justice Andrews case as it was not relevant to her own complaint. Mrs R's complaint was simply that she was not married and she had no rights and protections of a "wife", whereas the case in question concerned an opposite sex couple challenging their rights to enter into a civil partnership.
 - MyCSP stopped the widow's pension on the grounds Mrs R was cohabiting with her partner. Its attention was then focussed on her finances and it said Mrs R was financially interdependent on her partner as he gave her money each month. The financial information was however confusing and contradictory in the Adjudicator's view, and MyCSP should have made further enquiries to clarify certain facts; for example, what was the money spent on and did it go towards joint activities. (Mrs R later said the money was not spent but it was in fact saved).
 - The Adjudicator also highlighted the fact that MyCSP had made no enquiries about the general relationship of Mrs R and her partner, including any future plans. No enquiries had been made around any social acknowledgement of their

relationship as a couple. The Adjudicator felt a prudent decision maker would have considered those aspects before making a decision that Mrs R and partner were in fact LTAMC. This decision making process appeared to follow the understanding of Cabinet Office but MyCSP had not done this.

- Throughout the complaint, Mrs R had argued that because she was not married, she had no financial rights over her partner and vice versa. But the Adjudicator said that could have been down to personal choice as opposed to a denial of legal rights. Even if Mrs R and her partner had agreed to leave their respective estates to family, that did not mean they were not considered to be LTAMC.
 - The Adjudicator found that MyCSP had not handled matters well when dealing with the suspension of Mrs R's widow's pension and the ensuing overpayment that followed. The tone of its letters were insensitive and they could have been more polite when requesting repayment of the £2,611.20 overpayment. It was maladministration on the part of MyCSP to allow the overpayment to increase in failing to suspend the widow's pension when it had first decided Mrs R was no longer entitled to receive it. In respect of the failure, MyCSP offered Mrs R £250 compensation and the Adjudicator considered that amount was reasonable under the circumstances.
 - The Adjudicator said MyCSP had not considered all the facts, nor had it followed the assessment guidelines which Cabinet Office itself had highlighted in its own appeal decision letter of 5 July 2016. In fact, it was concluded that whilst Cabinet Office upheld MyCSP's decision, it had reached a different conclusion to MyCSP. Mrs R should therefore have her case remitted back to MyCSP in order that it could reconsider the relevant facts and then make an informed decision as to whether Mrs R's relationship with her partner could be considered that of LTAMC.
16. Mrs R, and to a lesser degree MyCSP, did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Both Mrs R and MyCSP provided some additional comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, but I will, for completeness, add some of my own comments in response to recent submissions made by Mrs R and MyCSP.

Ombudsman's decision

17. Mrs R wrote to this organisation on 5 December 2016 saying she wanted a revised Opinion issued, or for her complaint to be passed to an Ombudsman. Mrs R has, in my view, produced no new evidence to support her case. She has made reference to earlier submissions and the Adjudicator's Opinion. Her main points are summarised below, and MyCSP's brief comments of 19 December 2016, follow immediately thereafter.

- Mrs R has no confidence in MyCSP to undertake a “fair and balanced review” of her circumstances, and believes its handling of matters had been very poor.
- She said the Adjudicator had no validity to “proffer an opinion” on LTAMC as an updated meaning of “living with a man as his wife”; different interpretations of such wording could result in discrimination.
- The Adjudicator included no findings in his Opinion about Mrs R being treated unfairly in comparison to that of a war widow, where a war widow’s pension is paid for life regardless of relationship status. Mrs R feels she is being discriminated against under Article 14 of the Human Rights Act 1998.
- Mrs R repeated her views on the Justice Andrews case, saying that to obtain state recognition of a relationship, where all rights, benefits and protections flow from such recognition, marriage would be the only way to obtain formal recognition. And she says that “marriage” is the more up to date meaning of living with a man as his wife.
- Mrs R clarified her financial circumstances surrounding the money her partner gives her each month. She said it is saved and not spent; it is not put towards joint leisure activities, shopping trips or holidays. Mrs R said she is currently applying for ill-health early retirement due to a medical condition as she feels her future is uncertain.
- Mrs R repeated earlier submissions about her legal rights because she is not married, therefore she has no financial rights, is financially independent, cannot claim a widow’s pension, has no rights to obtain medical information or make treatment decisions for her partner; and is the sole owner of her house and on death it passes to her estate.
- Finally, Mrs R says Justice Andrews does not agree with the term LTAMC, and for opposite sex couples to achieve compatible rights they must be married. LTAMC does not apply to her because of the significant lack of rights in her relationship compared to a couple whose financial affairs might be linked, or those who may enjoy legal support of jointly owned assets, and those with partner rights with the medical profession.
- MyCSP say living with a man as his wife means “cohabitation” with another person in an exclusive, committed long-term relationship, a term which encompasses aspects of social and emotional commitment (as per DWP guidance on the meaning of LTAMC). They say Mrs R has not disputed she was cohabiting with a person as a partner in an exclusive, long-term committed relationship. Therefore, it was felt the decision to stop payment of her widow’s pension was correct. However, MyCSP did not rule out considering any new evidence that Mrs R may have chosen to provide.

- MyCSP consider the Opinion says it must carry out a “DWP type investigation” to assess all social, emotional aspects of Mrs R’s relationship with her partner. MyCSP disagree with the Opinion on the basis it does not have the capability to investigate social and emotional aspects of a member’s relationship, and in such cases, a declaration confirming the relationship “will usually suffice”.
 - MyCSP say if Mrs R is not cohabiting with another person as a partner in an exclusive, committed long-term relationship, and there is no emotional quality to that relationship such as mutual love, support, devotion or sexual relations, Mrs R simply needs to say so. But, MyCSP say that Mrs R must bear in mind it is a criminal offence to make an untrue declaration of entitlement to continue receiving a widow’s pension.
 - On the basis that Mrs R declared her position of cohabitation but chose not to clarify her relationship with her cohabitee as something other than an exclusive, committed long-term relationship, MyCSP maintain it was reasonable to stop her widow’s pension.
 - Finally, MyCSP say it has had no cause to investigate social and emotional aspects of someone’s relationship as there is a common understanding of what “living together as a couple means”; and is rarely disputed by members. However, it does agree there needs to be a process in place for when members dispute this and it will be reviewing this with the Cabinet Office to ensure a “suitable” procedure is in place.
18. There is no dispute that MyCSP have handled this matter badly, particularly how it communicated the initial overpayment to Mrs R, which was then followed by the mistake, and later a request for the higher overpayment.
19. I disagree with Mrs R when she says it could be discriminatory unless the Adjudicator only considers the ‘actual’ wording in the Scheme rules. The Adjudicator has delegated authority from myself to express a view on the matter and I am satisfied that reference to LTAMC, a term commonly used within DWP, is a reasonable interpretation and up to date meaning of the term in the Scheme rules “to live with a man as his wife”. Mrs R has herself said that “marriage” is an up to date meaning of “to live with a man as his wife”, therefore it seems she is content to stray from the actual wording contained in the Scheme rules in defence of her own case.
20. Mrs R’s main point of contention is around legal rights, or the lack of rights she feels she has, because she says she has to be “a wife” to have these rights. I do not agree with that. The application of the Scheme rule 4.5 does not depend on the widow having rights and protections from remarriage; if it did, and after the specific wording of “remarries”, it would not continue to say “.... **or** was living or begins to live with a man as his wife.” The Scheme rules are therefore clear that a widow’s pension can

cease not just on remarriage, but also where the widow begins living with someone in a relationship which is considered to be similar to that of a married couple.

21. Mrs R's comment about a war widow's pension, does not, with the greatest of respect, have a bearing on her own complaint. Any decision made by UK Government only applied to the Armed Forces Pension Scheme, with appropriate (and significant) pension funding from the Ministry of Defence, for veterans who may have lost their lives defending their country. The same cannot be said of the Scheme.
22. I acknowledge the point about the Justice Andrews case but that also has no bearing on Mrs R's complaint, as explained in paragraph 20 above. Mrs Justice Andrews has set no legal precedent. That case only highlighted the fact that an opposite sex couple could not enter into a civil partnership which is only recognised legally for same sex couples.
23. Mrs R again clarified her financial circumstances and that the money her partner gives her each month is not spent but saved. In my view that could mean Mrs R is not financially independent. She has disclosed further information about her health and says the money is being saved because her future is uncertain. That implies she believes, that because of her health, her financial future is uncertain hence she is saving the money her partner gives her. That might demonstrate a degree of financial interdependency by the fact her partner is funding a future 'nest egg' in order to secure her financial future..
24. MyCSP maintained its position on the grounds that Mrs R said would be living with another person as a couple. And, that usually implies cohabitation and association with another person as a partner in an exclusive, committed long-term relationship. Given that Mrs R strongly contested having her widow's pension stopped, MyCSP should have taken measures from the beginning to assess her circumstances and not simply informed her they were going to suspend the widow's pension, and then continue to pay it for many months before realising they had not in fact suspended it.
25. MyCSP's actions in its failure to suspend the pension resulted in a greater overpayment and that was maladministration which has caused distress to Mrs R.
26. I can see that Mrs R has not denied she is in an exclusive, committed long-term relationship with her partner but her silence cannot be interpreted as guilt, or acknowledgement of MyCSP's own view that her relationship with her partner encompasses elements of emotional, social and financial aspects which is generally expected through cohabitation or LTAMC. Whilst I can understand MyCSP's assumptions, MyCSP never actually asked Mrs R those questions, it has just assumed there is a common understanding of what living together as a couple means. Further, MyCSP openly admit it does not have the capability to investigate social and emotional aspects of a member's relationship. It has however said a declaration will usually suffice but a declaration was never sent to Mrs R in this case.

27. The actions taken by MyCSP severely contradict its understanding of this potentially complex area. My personal view on this matter is not relevant as to whether Mrs R and her partner are in fact LTAMC. But what is relevant, is that MyCSP, as a decision maker, made its decision on confusing and contradictory financial information, and because Mrs R chose not to dispute the actual status of her relationship, MyCSP then assumed Mrs R met the role of a wife.
28. I am not going to direct MyCSP to undertake a DWP style investigation into Mrs R's social and emotional circumstances. The Opinion does not say that must happen either. However, if MyCSP or Cabinet Office want further guidance on this they have access to the legal and policy teams within DWP who have experience in this area.
29. Mrs R, in this case, has only stated her financial position with some detail, and said she has no rights or protections as a wife. She has not provided any information about her relationship with her partner, nor has she said whether she agrees with the Oxford English Dictionary definition of what a "couple" is, and if that applies to her and her partner.
30. However, it is the process I am concerned with in this complaint, and MyCSP failed to make an informed decision or act in such a way which would be expected of a prudent decision maker. It may be that in this particular case, all MyCSP wish to do is write to Mrs R with a declaration for her to sign clearly setting out her position, that her cohabitation with another person is not in an exclusive, committed long-term relationship with no emotional quality to that relationship (mutual love, support, devotion or sexual relations) and that she fully understands it would be a criminal offence to make an untrue declaration. That would be a fairer process of informed decision making as opposed to the various assumptions MyCSP made, and the fact that Mrs R has, too date, chosen not to deny the status of her relationship.
31. I am making no direction in this case for compensation because the previous £250 offer to Mrs R is not unreasonable and in my view she has not suffered 'significant' distress or inconvenience. Mrs R can accept the £250 award that has been offered to her if she wishes to do so, but she must contact MyCSP herself in that regard.
32. Therefore, I uphold Mrs R's complaint to the extent that MyCSP must reconsider her entitlement to a widow's pension using a suitable LTAMC assessment.

Directions

33. Within 28 days of this determination, MyCSP must, with guidance from the Cabinet Office (and/or DWP), put in place a suitable procedure to assess whether an unmarried member fits the criteria for LTAMC or cohabitation in an exclusive, committed long-term relationship, and apply that assessment to Mrs R's social, emotional and financial circumstances.
34. This assessment can include a legal declaration of entitlement with appropriate caveats and warnings for any false claims made.

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35. If it is found that Mrs R does meet the criteria for LTAMC, then she must repay the £2,611.20 overpayment and MyCSP will agree a reasonable repayment plan with her.

Anthony Arter

Pensions Ombudsman
31 January 2017