

Ombudsman's Determination

Applicant	Miss W
Scheme	Nestle UK Pension Fund (the Fund)
Respondent	The Trustees of the Nestle UK Pension Fund (the Trustees)

Outcome

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

Complaint summary

3. Miss W complains that the Trustees have wrongly rejected her application for a dependant's pension from the Fund because, in her view, she has shown that she was financially dependent on her brother, Mr W, at the time of his death in June 2016. Miss W also contends that she was told that if she could prove financial dependency on Mr W under such circumstances the benefits available to her from the Fund would be superior than a refund of Mr W's contributions to the Fund with interest of £787.70 which she received in January 2017.

Background information, including submissions from the parties

4. In October 2015, Mr W, a deferred pensioner in the Fund, received details of the pension and tax-free cash available to him assuming a retirement date of 1 November 2015.
5. Mr W was single. He suffered from cancer and did not apply for payment of these benefits prior to his death on 5 June 2016.
6. After Miss W notified the Trustees of Mr W's death, they asked her to complete the information form (**the Form**) and return it with the appropriate certificates to assist them decide who should receive the death benefits available from the Fund.
7. In late June 2016, Miss W responded "none" to each of the following questions on the Form requesting details of (a) any other person who was dependent, or interdependent, financially or otherwise, on the deceased at the time of death (b)

anyone other than Mr W who shared the household expenses and (c) any maintenance or other similar payments made by Mr W to anyone.

8. By signing the declaration on the Form, Miss W confirmed to the Trustees that:
 - the answers which she gave were correct to the best of her knowledge; and
 - in the event of any monies being paid to her by the Trustees, then it would be on the basis that the information which she gave on the Form was correct.
9. The Trustees requested further information from Miss W in October 2016, which she duly provided. Miss W subsequently complained in December 2016, about the length of time being taken by the Trustees making their decision and their failure to respond satisfactorily to her enquiries.
10. In January 2017, the Trustees notified Miss W that she did not qualify for a dependant's pension in the Fund and had awarded her a tax free lump sum of £787.70 representing a refund of Mr W's contributions with interest.
11. Miss W was unhappy with this decision because if her application had been successful, she would have received a dependant's pension of £918.25 pa from the Fund, i.e. 50% of Mr W's pension at the date of his death.
12. Miss W's complaint was considered under the Fund's Internal Dispute Resolution Procedure (**IDRP**). At Stage One IDR in March 2017, the Trustees accepted that the time taken to pay the lump sum could have been shorter, i.e. around four instead of seven months if there had been no delays. In recognition of the distress and inconvenience caused to Miss W by the delays, the Trustees offered her a goodwill compensation payment of £300 which they subsequently increased to £500 at Stage Two IDR in December 2017. Miss W says that she is willing to accept this improved goodwill payment.
13. The Trustees did not, however, uphold Miss W's contention that she should receive a dependant's pension from the Fund. In their Stage Two IDR decision letter they said:

"You are not legally entitled to receive an annual pension from the Fund on the grounds of financial dependency on the late Mr W. Nor is there sufficient evidence of the misinformation you allege you were given on the phone in respect of claiming a dependent's pension..."

The issue of whether a dependant's allowance is legally payable involves two key considerations:

- (a) the criteria under the Fund rules; and
- (b) the facts and circumstances regarding financial dependency.

Your application to the Trustees under Stage Two of the IDRP does not challenge the point made in the Stage One decision that you were not nominated as a dependent by your late brother, whether in the period you were caring for him or at any time. Under the rules, this is a relevant condition for the payment of an annual dependant's pension. If there is no Form, the Trustees have discretion whether to waive the requirement for the Form and decide whether a dependent's pension should be paid in any event...

The purpose of the requirement to nominate someone and for such nomination to be accepted by the Trustees is to assist the Trustees in understanding the member's circumstances and wishes and to ensure payments are made for the proper purposes of the Fund...

Notwithstanding the absence of nomination, the Trustees have also considered the financial information/bank statements you have supplied in support of your claim for financial dependency.

The evidence demonstrates three key points in relation to your complaint:

- (a) you were able to continue your employment in the period since Mr W passed away;
- (b) it was the Department for Work and Pensions (**DWP**) which supported you financially in the period you were caring for Mr W and there was no direct payment of regular living expenses from him to you that would evidence he was supporting you financially; and
- (c) you have continued to receive payments from DWP since Mr W's death and as a result, from the evidence you have provided, it would seem that your overall monthly income has been at around the same level before and after his death

It is not possible to ascertain from the evidence precisely what was said in your phone discussion...Given the legal nature and detailed requirements of the Fund in relation to dependant's pensions, as well as the training and experience our administrators have, it does not seem likely that you would have been given detailed guidance on a phone call. Further, it does not seem likely that you would have been told such a pension would be payable without the need for due consideration to be given to the relevant criteria under the Fund rules...In the event, your application for a pension has been fully considered and there has been no loss caused by any alleged misinformation provided to you..."

14. Miss W said that:

- for several years, Mr W had been dependent on her care for his many long-term illnesses;
- in return, Mr W had supported her, a single parent, both emotionally and financially;

- as brother and sister, they did not consider that it was necessary to have this financial agreement in writing because providing informal support for each other was what family members did at difficult times;
- during the months leading up to Mr W's death, she cared for him on a full-time basis and went on long term sick leave from her job to do so;
- she sacrificed potential overtime payments in this period which she could have used to pay for her living expenses;
- she was dependent on Mr W to cover this potential shortfall in her salary;
- Mr W's DWP benefits were consequently paid into her bank account under special rules (as detailed on her bank statements) to support both households;
- she is Mr W's sole beneficiary in his will and has clearly demonstrated her financial dependency upon him at the time of his death;
- Mr W had been aware that her salary would be reduced by 50% after six months' sick leave and consequently transferred some funds into her bank account as a gift to continue supporting her financially after his death; and
- both she and her son suffer from chronic mental health problems.

15. Miss W also said that:

"As to the comments regarding the signing of the declaration...I was unaware of the context. I maybe should have taken legal advice, never previously facing a situation as such. I presumed by dependent they meant spouse or children of the deceased. I was under a lot of stress and anxiety at the time having to deal with the funeral arrangements of a second sibling in a 5-month period.

As to the DWP, I believe it is common knowledge that there are benefits to claim under special rules for someone who is suffering from a mental illness. I contacted DWP on several occasions to obtain confirmation of this unfortunately without success although they informed me they would provide me with it.

I believe I provided Nestle with adequate information to suggest financial dependency at their request. I previously stated brother and sister do not feel the need to have such legal agreement, and over a short period prior to his passing I would suggest there was more than enough evidence provided. Mr W had not worked for Nestle for a number of years and possibly did not feel the need to nominate anybody to benefit from his pension as he probably hoped he would never have to face that situation and would claim it himself.

...Mr W gave me his pension forecast letter and asked me to claim this upon his death, being the sole beneficiary of his last will and testament neither he or I expected this to be a problem."

16. The Trustees said that:

- Miss W has not supplied adequate evidence of the amount and duration of Mr W's financial support to her whilst she cared for him to meet the criteria of financial dependency or mutual dependence stipulated in the Fund rules;
- Miss W completed the Form to show that no-one was dependent on Mr W or interdependent with him financially or otherwise and that he had not made any maintenance payments to her;
- the one-off payments into her bank account by Mr W were "legacy payments" for her future needs and not for immediate financial support;
- these payments did not consequently demonstrate financial dependency just as leaving a lump sum payment to her through his will did not;
- the bank statements show that Miss W had around £17,500 in savings at the time Mr W passed away which supports their view that the one-off payments were not for her immediate needs;
- the DWP benefits paid into her bank account under special rules did not prove that Miss W was financially dependent on Mr W;
- although they have not seen the correspondence DWP sent to Mr W and Miss W about the special rules, in their view, the DWP benefits were a state supplement paid to her on a temporary basis whilst her employment income might have been affected and to also provide for Mr W's financial needs; and
- Miss W's circumstances did not meet the criteria specified for dependent's pension in the Fund rules.

Adjudicator's Opinion

17. Miss W's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees. The Adjudicator's findings are summarised briefly below:-

- In accordance with the Fund's Trust Deed and Rules (**the Fund Rules**), the definition of a "Dependant" is any person who was, in the opinion of the Trustees, financially dependent on the member or whose relationship with the member was one of mutual dependence or who was dependent on the member because of physical or mental impairment and who was nominated by the member and accepted by the Trustees as a dependant.
- There are consequently two specific criteria to be met by Miss W for a dependant's pension in the Fund to be paid to her, i.e.:
 1. she had to be nominated by Mr W as his dependant and the Trustees subsequently accepted this nomination; and
 2. there was clear evidence of her financial dependency on Mr W or mutual dependence between them.

- Most pension schemes allow members to nominate the person or persons to whom they would wish any death benefits to be paid but such nominations are not binding on the trustees. However, any nomination form would be one of the factors to be considered in reaching a decision. Mr W did not, however, complete a form nominating Miss W to receive the benefits available from the Fund on his death so she failed to meet the first criterion for a dependant's pension.
- Miss W completed the Form to show that she was not dependent on/interdependent with Mr W financially or otherwise and that Mr W had not made any maintenance payments to her. By signing the Form, she had therefore declared to the Trustees that she did not meet the second criterion.
- It was therefore reasonable for the Trustees to have concluded in January 2017, that Miss W did not qualify for a dependant's pension in the Fund and awarded her a tax free lump sum of £787.70 representing a refund of Mr W's contributions, with interest, instead.
- Whilst considering Miss W's complaint under IDRPs, the Trustees decided to give Miss W another opportunity to submit evidence demonstrating that she was financially dependent on Mr W or that there was mutual dependence between them.
- Given that the available evidence clearly showed that Miss W did not meet either of the criteria for a dependant's pension, the Trustees did not have to do this and could arguably have declined her appeal under IDRPs based on the answers which she gave on the Form and the fact that she had not been nominated by Mr W to be his dependant.
- However, the Trustees decided to investigate at their discretion Mr W's domestic personal and financial situation, as well as that of any potential beneficiaries such as Miss W, to ensure that they had acted reasonably when making their original decision.
- They concluded that even if they had chosen to waive the first criteria for a dependant's pension, the evidence supplied by Miss W was insufficient to demonstrate that the amount and duration of Mr W's financial support to her whilst she cared for him met the criteria of financial dependency or mutual dependence and she did not therefore qualify for a dependant's pension.
- The Trustees were only expected to make their decision on the basis of information available to them at the time. But there is nothing improper in taking account of later evidence when reviewing a decision in so far as it bears on the circumstances of the original decision. Caution needs to be taken, however, in revisiting earlier decisions but this is exactly what the Trustees did.
- HMRC allows trustees, or their scheme administrators, to pay a defined benefit lump sum death benefit tax free if it is made within two years of a member's death

(or at the time they could reasonably have been expected to have known of the member's death). HMRC recognises that the trustees should be given adequate time to investigate a deceased member's family background and establish all the relevant facts before deciding who should receive the death benefits. Trustees are also entitled reasonable time to fully investigate complaints (at both stages of the Internal Dispute Resolution Procedure).

- The Trustees have, however, conceded at Stage One IDRPs, that the time taken to pay the lump sum could have been shorter, to around four instead of seven months. The delays constitute maladministration on the part of the Trustees and in recognition of the distress and inconvenience caused to Miss W by them, the Trustees offered her £500 compensation as a gesture of goodwill. This offer was fair because the Pensions Ombudsman's awards in relation to distress and inconvenience are modest, generally in the region of £500, and are not intended to punish the respondent.
- It was clear that according to the Fund Rules, the Trustees have absolute discretion on whether to accept a member's nomination of a dependant and apply such conditions to the payment of the dependant's pension as they consider fit. Even if Miss W had been nominated as a dependant by Mr W, there would have been no guarantee that she would have received a dependant's pension from the Fund. Only if the Trustees were satisfied after obtaining and considering all relevant evidence carefully that she could be accepted as a dependent would she then qualify for such a pension.

18. Miss W did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Miss W 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 Miss W for completeness.

Ombudsman's decision

19. When considering how discretion has been exercised by the Trustees, I will generally look at whether:
- the correct questions have been asked;
 - the applicable scheme rules or regulations have been correctly interpreted;
 - all relevant but no irrelevant factors have been taken into account; and
 - the decision arrived at must not be perverse, that is a decision that no reasonable body would make.
20. In this context, a perverse decision is one which no other decision maker, properly directing itself, would come to in the same circumstances. However, the weight which is attached to any of the evidence is for the Trustees to decide including giving some of it little or no weight.

PO-15462

21. I will not generally interfere in the exercise of a discretion unless I consider the decision process was in some way flawed or the decision reached was one that no reasonable body faced with the same evidence would have taken.
22. If the decision-making process is found to be flawed, the appropriate course of action is for the decision to be remitted for the Trustees to reconsider. I cannot overturn the decision made by the Trustees just because I might have acted differently.
23. I can only reach a view on the evidence available. It is my opinion that the Trustees have acted in accordance with the above principles and within the powers given to it by the Fund Rules and have also followed the correct procedure when making their decision for Miss W's application for a dependant's pension from the Fund. Furthermore, I consider that the Trustees have properly considered all the relevant information available at the time and the decision made was therefore within the bounds of reasonableness.
24. Whilst I fully appreciate the points which Miss W has raised and fully sympathise with the unfortunate circumstances in which she now finds herself, I do not consider that they are the result of any maladministration on the part of the Trustees.
25. I do not therefore uphold Miss W's complaint.

Anthony Arter

Pensions Ombudsman
20 June 2018