

## Ombudsman's Determination

Applicant	Ms E
Scheme	Girls Day School Trust Pension Scheme (the <b>Scheme</b> )
Respondents	GDST Pension Trustees Limited (the <b>Trustees</b> ) Conduent HR Services (the <b>Administrators</b> )

## Outcome

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

## Complaint summary

3. Ms E's complaint about the Trustees and the Administrators of the Scheme is that they refused to award her the death benefits from her late ex-husband's pension in the Scheme.

## Background information, including submissions from the parties

4. Ms E is the ex-wife of Mr N, a former member of the Scheme.
5. On 12 November 2003, Ms E says that Mr N completed a death benefit nomination form (the **Form**) with her as the beneficiary. For lump sum benefits, the Form said -

"Any nomination will be revoked automatically by...your later marriage or divorce. If you wish your original nomination to stand you must confirm this in writing to The Pensions Trust...The Pensions trust has discretion over who is to receive the benefit..."

6. For a dependant's pension, the Form said the same as above and added -

"If on your death there is no valid nomination, The Pensions Trust has discretion to pay the benefits to any eligible beneficiary but has the right to retain all or part of the benefit within the Scheme..."

Who can receive the Dependant's pension?

- (a) Your spouse or former spouse
- (b) Anyone living with you and habitually sharing expenses with you for more than a year...
- (c) Any person financially dependent on you..."

7. Ms E and Mr N divorced in 2014.
8. Mr N passed away on 7 August 2015.
9. On 21 August 2015, Ms E says that she contacted the Scheme as Mr N had told her that she was the beneficiary of his pension. She says that she was told to put her request in writing to the Trustees.
10. On 2 September 2015, the Administrators wrote to Ms E saying that payment of the benefits was at the Trustees' discretion and they would be in touch.
11. On 25 September 2015, Ms E emailed a statement to the Trustees, giving details of her relationship with Mr N.
12. On 5 September 2016, the Administrators informed Ms E that the Trustees had "considered the potential recipients for the benefit payable from the Scheme...and concluded that their view is that, on the basis of the information you have supplied in, there does not appear to have been any residual financial dependency. Accordingly, they have decided not to make a payment from the Scheme to yourself".
13. On 13 September 2016, Ms E informed the Scheme that she disagreed with the decision. On 7 October 2016, she started the internal dispute resolution procedure (**IDRP**).
14. On 3 January 2017, the Trustees wrote to Ms E under the IDRP. They added that the Form completed by Mr N had become void on his divorce and Ms E did not meet any of the criteria for an eligible beneficiary.
15. Ms E brought her complaint to us.

## **Adjudicator's Opinion**

16. Ms E'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:
  - Our role is to review the decision of the Trustees, and find out if they have acted in accordance with the Definitive Deed and Rules of the Scheme (the **Rules**). Personal circumstances will not override the Rules, and the Trustees are bound by the Rules.

- The Form completed by Mr N made clear that any nomination would be revoked automatically on divorce.
  - Ms E was divorced from Mr N in 2014, therefore, any death benefit nomination completed in her favour, would have become void on their divorce.
  - Rules 21.1 and 59.3 of the Rules set out the eligible beneficiaries of Mr N's benefits in the event of his death. Ms E is no longer an eligible beneficiary under the Rules.
  - Ms E says that she reached a verbal agreement with Mr N that she would be entitled to his benefits when he passed away. Unfortunately, there is no allowance for such an agreement in the Rules and the Trustees are not bound by any such agreement.
  - The Trustees' decision is in accordance with the Rules. They have taken all relevant issues into account, and disregarded any irrelevant factors. I am therefore not persuaded that the decision is perverse.
17. Ms E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms E provided her further comments but these 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**

18. Ms E says that she has been treated unfairly and we have "sided with other parties". She says that we should have separate Adjudicators dealing with each party to the complaint.
19. I think that Ms E has some misunderstandings about what I and my office do, and it might be helpful if I described our role. We are an independent organisation set up by law and we look at the facts without taking sides. We are an impartial adjudicator of complaints about pension matters. For members of pension schemes using the Pensions Ombudsman's services, it is an alternative to using the Courts. We have statutory powers to investigate complaints of "injustice", where this has been caused by "maladministration".
20. I have considered afresh the decision made by the Trustees and the way that they reached it. I am satisfied that it was in accordance with the Scheme rules. These include within the class of potential beneficiaries anyone nominated in writing. Although the Trustees explained during IDRPs that the nomination form had lapsed on divorce, when they made their original decision they did in fact consider Mrs E among the class of beneficiaries but decided not to award a benefit to her.
21. The Trustees were bound to consider anyone named on a death benefit nomination form, such as that completed by Mr N. However, they were not bound to make an

**PO-15966**

award to that person. The Trustees were also entitled to consider the age of any nomination and whether circumstances had changed since the nomination was made.

22. The Trustees were entitled to consider the fact that Mr N and Ms E had divorced since the original nomination was made. The nomination form itself told members that any nomination to a spouse would be revoked by divorce. There was no subsequent confirmation or nomination by Mr N in her favour.
23. The Trustees considered their discretion, and correctly decided, taking into account the information provided by Ms E, that Ms E was not financially dependent on Mr N. Accordingly, the decision by the Trustees was not so unreasonable as to be perverse.
24. While I empathise with Ms E's position, the decision made in this case is within the range of reasonable outcomes that could have been reached in these circumstances. It is not within my remit to step into the role of the Trustees and determine to whom the death benefits should be payable.
25. In cases such as this, I would only look to remit the decision back to the Trustees if it was so irrational that no reasonable decision-maker could have reached the same decision. I can see no basis on which their decision should be viewed as irrational.
26. Therefore, I do not uphold Ms E's complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
18 September 2017

## Appendix

### Definitive Deed and Rules of the Scheme

#### Definitions

“Spouse” means the Member’s husband or wife at the time of the Member’s death including the spouse of a Same Sex Marriage.

“Relation” means:

- (a) any Survivor, parent or remoter ancestor or descendant of the Member or of the Member’s spouse/Civil Partner; or
- (b) the spouse/Civil Partner of any such parent, ancestor or descendant or
- (c) any brother or sister, or uncle or aunt (whether of the whole or half-blood) of the Member or of the Member’s spouse/Civil Partner; or
- (d) any spouse/Civil Partner or descendant of any such person and for this purpose a relationship acquired by legal adoption shall be as valid as a blood relationship and a step-child shall be deemed to be a descendant.

In this definition “spouse” includes a spouse of a Same Sex Marriage.

“Survivor” means (subject to Rule 62 for children)

- (a) any Dependant of the Member; or
- (b) any individual who is (or was at the date of the Member’s death) in the Trustee’s opinion financially dependent on the Member to more than a nominal extent or cohabiting with and habitually sharing expenses with the Member or having financial interdependence with the Member.

#### Rule 21.1

The Trustee shall, subject to Rule 21.2, pay (either in one payment or in a series of two or more payments) or apply (by making payments to the Trustee) any lump sum benefit payable under the Scheme in respect of the death of a Member within two years of the earlier of the date the Trustee could reasonably have known of the death and the date when it first knew of the death to or for the benefit of such one or more of:

- (a) a person or organisation nominated for this purpose...by the Member in writing;
- (b) any Relation;
- (c) the personal representatives of the member; and

**PO-15966**

and in such shares as the Trustee decide.

**Rule 21.2**

In exercising their powers under Rule 21.1, the Trustee is not obliged to identify every person within the descriptions in (a) to (c) of that Rule.

**Rule 59.3**

Upon the death of an Early Leaver, the following pensions will be paid:

- (a) to the Member's surviving Spouse or Civil Partner any GMP payable under Schedule 1 and any Reference Scheme Survivor's Pension;
- (b) to a Nominated Survivor one-half of the Early Leaver's deferred pension calculated at the date of his death, less any amount payable to a Spouse or Civil Partner under (a) above.