

Ombudsman's Determination

Applicant	Miss N
Scheme	Yule Catto Group Retirement Benefits Scheme (the Scheme)
Respondents	Synthomer (UK) Ltd (the Trustees)

Outcome

1. I do not uphold Miss N'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 N has complained because she has not been granted a spouse's or dependant's pension from the Trustees.

Background information, including submissions from the parties

4. Mr R had been in receipt of his benefits from the Scheme for seven years when he died in November 2016. At the time of his death, Miss N was in a cohabiting relationship with Mr R and had been for 31 years.
5. Following Mr R's death, the Trustees informed Miss N that she was not entitled to a spouse's pension as she was not legally married to Mr R. They also told her that she was not entitled to a dependant's pension. Unhappy with this, Miss N complained to the Trustees, at both stages of their internal dispute resolution procedure (**IDRP**) and asked them to reconsider their decision.
6. The Trustees responded to Miss N on 18 May 2017, but did not uphold her complaint. They said:

"the Trustees have reviewed your original application, all documentation received during both the first and second stages of the procedure and the appropriateness and adequacy of this. They have also considered the legal advice provided by their pension solicitors with regard to the application of the Scheme Rules and in particular to whom any benefits become payable on the death of a pensioner member. In doing so they have determined that the original decision be upheld."

The Trustees explained to Miss N why she did not qualify for a spouse's pension and also why Mr R's expression of wish form was not applicable in this case.

7. Dissatisfied with the Trustees' response Miss N referred her complaint to this Office and said:-
 - Mr R signed up for the pension on the grounds that if he died, she would benefit as his spouse. If he had been aware that she would not have benefitted from this pension, he would have sought alternative provision for her.
 - Mr R had enquired about this on numerous occasions and was always informed that although they were not married, she would benefit from his pension. The expression of wish form he completed at the time of commencing his pension stated that she was his cohabiting partner and sole beneficiary.
 - She has provided evidence that they were in a relationship for 31 years and were still together at the time of his death but, the Trustees have said she cannot receive a pension from the Scheme as she was not legally married to Mr R.
 - She believes this is discrimination. She did not marry her partner because she believes marriage is an archaic concept and she wanted to retain her independence as a woman. The Trustees state that under the Scheme Rules the benefit can be paid to a civil partner but not to a cohabitee. She did not feel marriage should be a necessity merely for financial gain.
8. In response to her complaint the Trustees have provided details of the Rules applicable to Mr R's pension and also explained why the Trustees are unable to pay Miss N a spouse or dependant's pension. They also provided correspondence that was sent to Mr R throughout the period he was drawing his pension.

Adjudicator's Opinion

9. Mr N' 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:-
 - The Ombudsman cannot change the rules of a scheme, or direct that trustees use their discretion to award benefits if there is no provision within the rules of that scheme to allow them to do so. The Ombudsman's role is to consider whether trustees have administered the scheme in accordance with the rules that govern it.
 - Mr R was a member of the CNH membership category of the Scheme and his benefits are governed by SCHEDULE PART III (B) VIII; Section 6 states:

“Dependant’s Annual Rate of Pension – applicable to Rule 7 (a) III

Applicable to the surviving spouse of a Member and on the spouse’s death or if there is no surviving spouse to any child or children who are dependants.”

- The Trustees have said that they took legal advice on the above wording and that it was confirmed that the word “spouse” has its natural meaning as the legal spouse or civil partner of the member and not a financially dependent cohabitee. Miss N has confirmed that she was not married to Mr R, however, she had been in a cohabiting relationship with him for 31 years at the time of his death. While the Adjudicator sympathised with Miss N’s position, in the Adjudicator’s opinion, the Trustees’ decision not to pay her a spouse’s pension does not amount to maladministration. Miss N was not legally married to Mr R at the time of his death and therefore, under the Scheme Rules, could not be classed as a spouse. The Adjudicator appreciated that Miss N believes that the Trustees’ decision not to pay her a spouse’s pension amounts to discrimination. However, the Adjudicator disagreed, as the same rule would apply to a man who was not married to his deceased partner.
 - The Trustees have said that after investigating, they can find no evidence that Mr R was ever informed that Miss N would receive a spouse’s or dependant’s pension in the event of his death, although they were not married. It has also provided copies of correspondence that was sent to Mr R at the time he joined the Scheme, the statements he received as well as information he was sent when he applied to take benefits. There is no mention of a dependant’s pension in any of this correspondence. Consequently, it is the Adjudicator’s view that Mr R ought to have been aware that Miss N would not receive a pension should he predecease her.
 - The Adjudicator accepts that Mr R had completed an expression of wish form that named Miss N as his only beneficiary. However, this was in relation to the payment of a lump sum on death benefit. The benefit statements Mr R was sent, prior to his death, had informed him that if he died within five years of retirement, a lump sum death benefit would be payable and a pension of 50% would be paid to his widow. Mr R died seven years after he started receiving his benefits from the Scheme and consequently, in any event, the expression of wish form he completed was no longer valid.
 - In the Adjudicator’s opinion, the Trustees correctly interpreted the Scheme Rules; there is no discretion allowing them to award benefits to a financially dependent cohabitee. Consequently, the Ombudsman would not direct the Trustees to pay Miss N a spouse’s or dependant’s pension.
 - It was therefore the Adjudicator’s opinion that this complaint should not be upheld.
10. Miss N did not accept the Adjudicator’s Opinion and in response reiterated that the Scheme Rules are discriminatory towards long term cohabitees. Miss N also said:

- She and her deceased partner cohabited for 31 years, in a jointly mortgaged property with three children, they were a financially interdependent couple, and they made an informed decision not to get married.
 - Her partner only signed up for the pension because he was told that it would benefit her as his common law wife. The product he was sold is not fit for purpose and it should be treated in the same way as the PPI mis-selling.
 - Miss N referred to the Supreme Court decision of the Brewster case, in which Miss Brewster was awarded a survivor's pension.
11. Miss N's further submissions did not change the Adjudicator's Opinion and the matter was passed to me to consider.

Ombudsman's decision

12. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Miss N.
13. The Scheme Rules state that a spouse's pension is payable following the member's death. After taking legal advice, the Trustees confirmed that the word spouse has its natural meaning as the legal spouse or civil partner of the member. Therefore, while I sympathise with Miss N's position, the Rules do not have a provision for a survivor's pension to be paid to a dependent cohabitee. Therefore, I find that the Trustees are acting in accordance with the Rules of the Scheme in relation to not paying Miss N a dependant's pension, because she was not legally married to the deceased Scheme member.
14. Miss N has made reference to the Brewster case as she considers her complaint should be resolved in the same way. Assuming Brewster did apply, the scheme in that case was the Local Government Pension Scheme, and the claim was brought under European Convention on Human Rights (ECHR), not the Equality Act 2010, as ECHR applies to the Local Government Pension Scheme as an emanation of the state. It is a state scheme unlike the one in which Miss N's deceased partner was a member and Brewster is unlikely to apply to private occupational pension schemes.
15. However, in any event, Miss N's circumstances are different from Miss Brewster's in that the scheme in which Miss Brewster's deceased partner was a member had a provision for payment of benefits to unmarried partners the Scheme does not have such a provision.
16. There is no evidence to verify that Miss N's partner was told by the Trustees that Miss N would receive a spouse's or dependant's pension after his death.

PO-17430

17. Therefore, I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman

27 September 2017