

Ombudsman's Determination

Applicant	Mrs H
Scheme	Railways Pension Scheme (RPS)
Respondents	Railways Pension Scheme 1994 Pensioners Section Committee (the Committee)
	RPMI Limited (RPMI)

Outcome

1. Mrs H's complaint against the Committee and RPMI 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), the Committee RPMI shall pay Mrs H £1,000 for serious non-financial injustice.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs H has complained that she has never received payment of a pension she became entitled to on the death of her husband.

Background information, including submissions from the parties

Background

4. Overall responsibility for the RPS lies with the Railways Pension Trustee Company Limited (**RPTCL**). The RPS Trust provides that each section of the RPS may set up a committee to control its own arrangements. If a section does not set up a committee, RPTCL is then responsible for the exercise of any discretionary powers in respect of that section. Mrs H's husband was a member of the 1994 Pensioners Section of the RPS. This section has a committee (the **Committee**). RPMI administers the RPS. It is a wholly owned subsidiary of RPTCL. It acts under delegated authority from RPTCL or the Committee.
5. Mrs H's husband, Mr H, died on 3 October 1995. On 10 January 1996, Mrs H's son, Mr ZH, wrote to RPMI notifying it of his father's death. He said his mother was in India but would be returning to London the next month. Mr ZH provided his address and asked RPMI to contact him if RPMI required further information.

6. RPMI wrote to Mr ZH, on 17 January 1996, informing him that a sum of £164.17 was due to his father's estate. RPMI also said that his mother might be entitled to a pension and asked him to arrange for a "Declaration of Marriage" form to be completed and returned, together with her birth and marriage certificates.
7. RPMI received the Declaration of Marriage form on 10 September 1996, together with a claim form and an expired passport. The declaration had been completed with Mrs H's details and was signed in her name. The month and year of marriage had been entered but not the day. The address given was the same as that provided by Mr ZH.
8. In July 1997, RPMI contacted the Department of Social Security (**DSS**) requesting a copy of a translation of Mr H's death certificate. It said it had been advised that the original was in Gujarati and that the DSS had obtained a translation in order to pay benefits to Mrs H. RPMI said there were RPS benefits payable to Mrs H, but it required sight of the death certificate. The DSS provided RPMI with a certified copy of the death certificate on 23 July 1997. On 30 July 1997, Mr ZH sent RPMI a copy of a letter from the DSS to Mrs H, at his address, confirming her entitlement to a widow's payment.
9. RPMI decided it could not pay a widow's pension without sight of a marriage certificate. It noted it had received a passport but also that Mrs H's middle initial seemed to vary across the documents it had received. RPMI suggested that, in the absence of a marriage certificate, Mrs H could claim as a dependent adult if she could show financial dependency. It sent Mr ZH an adult dependant's claim form.
10. RPMI received the completed form on 17 September 1997. It had been completed with Mrs H's details and said she lived at Mr ZH's address. The form had been signed in Mrs H's name and witnessed by a Mr Hussain at a separate address.
11. On 24 September 1997, RPMI sent Mrs H a cheque for £180.38 in respect of the amount due to Mr H's estate plus interest. It informed her that her claim for a dependant's pension would be discussed by the Committee in November. Shortly before the Committee's meeting, RPMI wrote to Mrs H again asking for more information about her financial dependency. The Committee approved payment of a dependant's pension for Mrs H on 18 November 1997.
12. RPMI wrote to Mrs H, on 25 November 1997, informing her that a pension of £26.47 would be paid every four weeks. It paid the pension by cheque at this time because it had been informed, by Mr ZH, that Mrs H did not have a bank or building society account.
13. In April 2003, RPMI wrote to Mrs H asking her to complete a form as part of a regular security review of pensions. The letter was sent to Mrs H at a different address to the one used earlier. The form was completed and signed in Mrs H's name and witnessed by a GP. The witness declaration stated that the witness was confirming that Mrs H was alive because she was known to them or they had satisfied

themselves of her existence. The GP signed the form and stamped it with the address of the health centre at which he was based.

14. In June 2005, RPMI wrote to Mrs H acknowledging receipt of a notification of change of payment details. The letter was sent to the same address as the security form. Mrs H's pension was thereafter paid into a Santander account in her name. RPMI has explained that it was notified of the Santander account by telephone. However, it does not hold archived records of telephone calls dating back to 2005.
15. In January 2016, the Department for Work and Pensions (**DWP**) wrote to Mrs H informing her that she had been overpaid because she had not declared her occupational pension. Mrs H subsequently wrote to RPMI with a Subject Access Request asking for all information held over the past 20 years. She said her correct address was the one used by the DWP and provided a copy of its letter, together with a copy of her passport.
16. In response, RPMI said it would suspend Mrs H's pension until her details were verified. It said the Data Protection Act did not cover deceased individuals and, therefore, it was not obliged to provide information relating to Mr H.
17. On 22 February 2016, Mr ZH wrote to RPMI informing it that he was no longer acting for his mother. He said he had set up a joint account with his mother, on her instruction, 20 years ago and had been withdrawing the pension at yearly intervals for distribution to his father's dependants. Mr ZH said one of his sisters had now taken over his mother's financial activities.
18. On 11 April 2016, solicitors acting for Mrs H contacted RPMI requesting a copy of its file relating to Mrs H. The solicitor said Mrs H had not signed the 2003 declaration and had been in India at the time. It provided a copy of a page from Mrs H's passport, which it said showed a visa for a returning resident stamped 27 May 2004 (the date is not clear on the copy supplied).
19. On 11 May 2016, RPMI requested Mrs H's authority to provide information to the solicitor. The solicitor sent Mrs H's authority for it to act for her to RPMI on 20 May 2016. On 13 June 2016, RPMI provided a copy of its file and details of payments made to Mrs H's account since 2000/01. There was further correspondence between Mrs H's solicitor and RPMI over the period to December 2016.
20. Mrs H signed an affidavit on 15 June 2016 which was witnessed by her solicitor. In this, she explained, amongst other things, that her relationship with Mr ZH had broken down in or about 2000. The breakdown was related to the sale of a property Mrs H had bought with Mr ZH in 1987. She also said she had not signed the 2003 form and had spent three years in India at this time.
21. On 30 June 2017, Mrs H's son, Mr AH, submitted a complaint to RPMI on her behalf. Mrs H provided authority for Mr AH to act on her behalf. RPMI acknowledged receipt of the complaint and said that, in view of the nature of complaint, it would require further verification as to Mr AH's capacity to act for Mrs H. It suggested getting Mrs

H's authority witnessed by a solicitor. In response, Mr AH said it was not possible to obtain a witnessed signature because his mother had travelled to India. RPMI acknowledged receipt of Mr AH's letters. It explained it had received a claim form for a dependant's pension which had been witnessed by someone who was not a relative of Mrs H. It said Mrs H's pension had initially been paid by cheques payable to her and later into a Santander account in her name. It said it had received a security form completed by Mrs H and witnessed by her GP. RPMI referred Mr AH to the two-stage internal dispute resolution (**IDR**) procedure.

22. Mr AH submitted a stage one complaint on 5 September 2017. RPMI acknowledged receipt on 16 September 2017 and said the complaint had been referred to its legal team for advice. It provided an update on 14 October 2017 saying it was having to make extensive investigations. It issued a further holding letter and an apology for the length of time taken on 25 November 2017.
23. RPMI issued a stage one IDR decision on 12 December 2017. It did not uphold the complaint on the grounds that it had received signed and witnessed authority from Mrs H, had paid her pension by cheques to Mrs H as payee and, latterly, into an account registered in her name. RPMI enclosed a bank mandate form for Mrs H to complete and return in order that it could reinstate her payments.
24. Mr AH submitted a stage two complaint on 17 January 2018. RPMI acknowledged his letter on 7 March 2018. It said the complaint would be considered by the Committee at its next meeting on 21 May 2018. At its meeting, the Committee decided there had been no process failure and RPMI had acted correctly. It decided RPMI was not responsible for any fraudulent activity which may have been carried out. It did not uphold the complaint. It agreed to reinstate Mrs H's pension, backdated to the date of suspension. RPMI was tasked with obtaining details of the bank account to which it should be paid. RPMI notified Mr AH of the decision on 5 June 2018.

Mrs H's position

25. It is submitted on Mrs H's behalf:-
 - She was not aware that she was due to receive a pension because she was estranged from her husband at the time of his death.
 - The Committee and RPMI have not paid a single penny to her since 1996.
 - She was not aware that her son and daughter-in-law were taking her pension payments at their address. She never stayed at this address.
 - RPMI and the Committee had a duty to honour the agreement it had with Mr H to pay the pension to Mrs H.
 - RPMI and the Committee are responsible for Mrs H having been defrauded of her pension payments.

- She did not complete or sign any forms relating to the RPS. She can provide her passport to show that she was out of the country in 2003/04.
- She did not give Mr ZH power of attorney or any other authority to act on her behalf. She did not give authority for anyone to act on her behalf or to collect any monies.
- RPMI maintained communication without sight of any power of attorney.
- She did not sign any application forms or give authority for the use of Mr ZH's address for communication.
- She never used or gave permission for the use of the Santander account.
- RPMI and the Committee failed to carry out checks to ensure that the correct recipient was receiving the pension. For example, there was no face-to-face meeting with Mrs H.
- The RPS should now pay Mrs H the pension payments from 1995 to 2017, together with interest and compensation.
- RPMI and the Committee have deliberately hampered the investigation and required the use of solicitors, which resulted in fees amounting to £5,500. They could have advised Mrs H's family to obtain power of attorney but failed to do so.

Adjudicator's Opinion

26. Mrs H's complaint was considered by one of our Adjudicators who concluded that further action was required by the Committee. The Adjudicator's findings are summarised below:-

- The Adjudicator began by acknowledging the difficult circumstances of the case. She noted that Mrs H was in poor health and acknowledged that it would be very difficult for her to have to deal with these matters at this time.
- The Committee was ultimately responsible for ensuring that the correct benefits were paid to the correct recipient under the RPS rules. That responsibility was founded in both common law and statute.
- For example, Section 249A of the Pensions Act 2004 required the trustees or managers of an occupational pension scheme to "establish and operate internal controls which are adequate for the purpose of securing that the scheme is administered and managed (a) in accordance with the scheme rules, and (b) in accordance with the requirements of the law". "Internal controls" were defined as:-

- arrangements and procedures to be followed in the administration and management of the scheme;
 - systems and arrangements for monitoring that administration and management; and
 - arrangements and proceedings to be followed for the safe custody and security of the assets of the scheme.
- The Committee could, therefore, be expected to have adequate procedures in place to ensure that a benefit was paid to the correct recipient.
 - The question was, therefore, whether the Committee (or RPMI acting on its behalf) had taken adequate steps to ensure that Mrs H received the pension she was entitled to.
 - RPMI was notified of Mr H's death by Mr ZH. It then took steps to establish whether Mrs H was entitled to a pension. Those steps included requesting sight of her birth and marriage certificates. This was standard practice for occupational schemes and, in the Adjudicator's view, represented adequate procedure.
 - When it was unable to obtain these documents, the Committee and/or RPMI declined to pay a widow's pension. Mr ZH was, however, informed that Mrs H might be able to claim an adult dependant's pension. This was done by way of a claim form which was independently witnessed. On the basis of this form and the other evidence which had been provided at the time, the Committee approved a pension for Mrs H. This was paid to her by way of a cheque payable to her (as payee only) and sent to the address provided by Mr ZH. The Adjudicator noted that this was the same address to which the DSS had written notifying Mrs H of her state benefit. Making the cheques 'payee only' provided additional security. In her view, the Committee and RPMI had taken adequate steps to ensure that Mrs H received her pension at this time.
 - The Adjudicator noted the suggestion that there should have been a face-to-face meeting with Mrs H. In her view, requiring the claim form to be independently witnessed was sufficient for the Committee and RPMI to then rely on the information provided.
 - In 2003, RPMI issued a security form for Mrs H to complete to confirm that she was in receipt of her pension. The Adjudicator acknowledged that Mrs H had stated that she was in India at this time. She had provided a copy of a returning resident visa stamp. Unfortunately, the date on the stamp was insufficiently clear for the year to be made out. However, the form was witnessed by a GP, who had signed it and address stamped it. The GP in question had since retired but did appear to have been working at the health centre address given in 2003. Although the form only asked the GP to confirm

that Mrs H was alive, he was to do so by saying she was either known to him or he had satisfied himself of her existence. In the circumstances, it was reasonable for RPMI to rely on this form to continue paying Mrs H's pension as before.

- In 2005, RPMI began paying Mrs H's pension into a Santander account in her name. It had explained that it was notified of the change of payment method by telephone, but it no longer had a record of the call. It stated that, as far as it was aware, the only name on the account was Mrs H's. It pointed out that it wrote to Mrs H notifying her that it had changed the payment method. It seemed more likely than not that it was Mr ZH who provided RPMI with the account details. He was the party providing information to RPMI at this time. Mrs H does not appear to have made contact with RPMI or the Committee in person at any time then or since. Mr ZH subsequently informed RPMI that the account was a joint account for him and his mother. However, this was after it had suspended payment.
- In her 2016 affidavit, Mrs H appeared to be saying that she was not aware of the Santander account. It was possible for an individual to set up an account in another person's name if they were in possession of their personal details. It was not within the scope of the Pensions Ombudsman's investigation to consider whether this was what had happened. Fraud was a criminal activity and should be reported to the police. The question for the Ombudsman was whether the Committee and RPMI had taken appropriate steps to ensure that Mrs H continued to receive her pension.
- The Adjudicator noted that the account was ostensibly in Mrs H's name only and RPMI had confirmed the change of payment details by writing to her at the address to which the previous security form had been sent. In her view, RPMI had taken appropriate steps to ensure it was paying the pension to Mrs H.
- Mr AH had suggested that the Committee and RPMI had been unhelpful during the course of his mother's complaint and the subsequent investigation. The matter was first brought to the Committee's attention in January 2016. RPMI suspended pension payments in February 2016 pending further evidence from Mrs H. It was then contacted by solicitors acting for Mrs H. The Adjudicator noted there was a delay of a month before RPMI requested authorisation to provide information to the solicitors. In view of the fact that it had suspended Mrs H's pension, it could, in her view, have acted more promptly. Having reviewed the subsequent correspondence between RPMI and Mrs H's solicitors, the Adjudicator said she had not identified any further unreasonable delays at this time.
- Mr AH submitted a complaint on 30 June 2017. This was received by RPMI on 5 July 2017. It requested further information on 11 July 2017; five working

days. It then responded to Mr AH's subsequent letter within 10 working days. These were more acceptable response times.

- RPMI directed Mr AH to the two-stage IDR procedure. He submitted a stage one complaint on 5 September 2017 and RPMI issued a decision on 12 December 2017; three months later. The Adjudicator acknowledged that interim letters were issued apologising for the delay and explaining this was because legal advice had been sought. However, in the circumstances, this was a long time; particularly since the material facts of the case appeared to have been established by then.
- Mr AH submitted a stage two complaint on 17 January 2018. The Committee dealt with this at its next meeting on 21 May 2018; four months later. In view of the seriousness of the matter and the fact that the case concerned an elderly lady whose pension had been suspended, in the Adjudicator's view, there were grounds for dealing with the case much sooner. The Committee did not appear to have considered whether there were grounds for dealing with the case outside its normal cycle of meetings.
- In summary, it was the Adjudicator's view that the Committee and RPMI had taken appropriate steps to ensure Mrs H's pension was being paid to her. There were no grounds for upholding this element of her complaint. However, both the Committee and RPMI were very slow to deal with Mrs H's complaint. The Adjudicator said she had seen no evidence to suggest that this was a deliberate attempt to frustrate matters. Nevertheless, it would have caused Mrs H unnecessary distress and inconvenience at a very difficult time for her. This element of her complaint could be upheld.
- The Adjudicator noted that Mr AH had explained that he and/or Mrs H had incurred solicitor's fees amounting to £5,500. The Ombudsman did not, as a matter of course, direct reimbursement of legal fees on the grounds that an application to him was free and did not require legal representation. Mr AH had suggested that RPMI had required the use of solicitors. The Adjudicator acknowledged that RPMI had suggested getting Mrs H's signature witnessed by a solicitor at one point. However, Mrs H had already appointed solicitors to act for her by then and witnessing a signature would not incur fees of £5,500. In her view, there were no grounds for finding that either the Committee or RPMI should reimburse Mrs H's legal fees.
- The Adjudicator suggested that, in order to put matters right, the Committee should pay Mrs H £1,000 for serious non-financial injustice in line with the Ombudsman's current guidance. The Committee agreed to this.

27. However, Mrs H did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr AH provided 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 Mr AH for completeness.

Ombudsman's decision

28. The Committee is responsible for ensuring that any benefits payable under the RPS rules are paid to the correct recipient. It must ensure that there are sufficiently robust systems in place to enable this to happen. In Mrs H's case, it is alleged that this did not happen and she did not receive the pension to which she is entitled.
29. My role is to consider whether the Committee, and RPMI acting on its behalf, took appropriate steps to ensure Mrs H was receiving her pension. The alleged fraudulent activity on the part of Mrs H's son is not within my remit and should, more properly, be a matter for the Police. This is, however, something which Mrs H and her family will have to take forward, if they wish to. My investigation and determination concern only the actions taken, or not taken, by the Committee and RPMI.
30. My Adjudicator noted that Mrs H had never been in touch with the Committee or RPMI personally. All information and forms came to them via Mrs H's son. In and of itself, I do not find that this was sufficient to suggest that there was anything untoward happening in Mrs H's claim. It is often the case that a family member assists with the application for a spouse's or dependant's pension on the death of a member. The Committee took appropriate steps to ensure the claim was legitimate by requiring the form to be independently witnessed. In addition, the pension was paid by way of a cheque in Mrs H's name and payee only.
31. In 2003, RPMI issued another form for Mrs H to complete. This time, the form was witnessed by a GP. I acknowledge that Mrs H has explained that she was out of the country at this time. She has offered to provide her passport with a visa for a returning resident stamped 27 May 2004. This is not necessary for my purposes, and would, in any event, only confirm that Mrs H had returned to the UK in May 2004; not that she was out of the country in April 2003. I do not need to trouble Mrs H for further evidence as to her whereabouts in 2003/04. The question which concerns me is whether it was appropriate for RPMI to accept the witnessed form as sufficient evidence for it to continue to pay Mrs H's pension as before.
32. I find that it was. RPMI required the form to be witnessed by certain categories of individual; one of whom was a GP. By doing so, it had taken steps to ensure that Mrs H's details would be checked by someone whom it could consider to be totally independent. I find that this was an appropriate level of security for it to continue to pay Mrs H's pension as before.
33. There is then the question of the Santander account. RPMI was informed that this account had been set up in Mrs H's name. At the time, it appears that it was not aware that it was a joint account with Mr ZH. It is unfortunate that RPMI has been unable to provide more information about the notification of change of payment details. This may be something the Committee needs to consider for the future. I do not, however, consider this to affect the outcome of Mrs H's case.

34. Whilst it would have been preferable for RPMI to have kept a better record of the notification, I do not find that it was maladministration for it to implement the change. The account was in Mrs H's name and RPMI wrote to her notifying her of the change at the address on the 2003 security form. These were reasonable steps for it to take.
35. I do not find that there was maladministration on the part of the Committee or RPMI in the payment of Mrs H's pension from 1996 to 2016. I do not uphold this part of Mrs H's complaint.
36. Mrs H has also complained that the Committee and RPMI have been unhelpful and obstructive during the complaint procedure. I do find that both RPMI and the Committee were slow to respond despite the circumstances of Mrs H's case. The suspension of payment should have prompted RPMI and the Committee to treat the case with a greater degree of urgency than they did. I agree, however, that the evidence does not indicate that the lack of urgency was intended to frustrate the complaint. It will, nevertheless, have added unnecessarily to Mrs H's distress at an already difficult time. I uphold this part of her complaint.
37. On the question of legal fees, I do not find that there are grounds for requiring the Committee or RPMI to reimburse Mrs H or Mr AH. Whilst the IDR procedure was slow, it was progressed and it did not require any legal representation; nor did an application to me. Mr AH may have been of the opinion that the Committee and/or RPMI were being unhelpful but this did not warrant engaging a solicitor or incurring fees of £5,500. He has suggested that RPMI should have suggested Mrs H's family obtain a power of attorney. It was not RPMI's place to do so.

Directions

38. Within 21 days of the date of my Determination, the Committee shall pay Mrs H £1,000 in respect of the serious non-financial injustice that has occurred.

Anthony Arter

Pensions Ombudsman
18 December 2018