

Ombudsman's Determination

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| Applicant | Miss R |
| Scheme | ICI Pension Fund (the Fund) |
| Respondent | ICI Pensions Trustee Limited (the Trustee) |

Outcome

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

Complaint summary

3. Miss R is unhappy with the Trustee's decision not to award her pension death benefits even though her late father, Mr R nominated her as a sole beneficiary in the Expression of Wish Form (**the Form**).

Background information, including submissions from the parties

4. In the Form dated 24 March 1999, Mr R nominated Miss R as a sole beneficiary to receive a death in service lump sum benefit. The Form said it is at the Trustee's discretion over the payment of the lump sum death benefits and the Form is not binding on the Trustee.
5. In March 2004, Mr R left ICI's employment and became a deferred member of the Fund. Entitlement to a death in service lump sum ceases when active membership of the Fund ceases.
6. Mr R's death benefits are regulated by Rule 30 C and Rule 27(4) of the 1967 Fund Rules. Relevant sections of the rules are set out in the Appendix.
7. Sadly, on 5 September 2016, Mr R passed away.
8. On 30 September 2016, Mr R's ex-wife, Mrs R contacted the Trustee to inform it of the death of Mr R. She provided the Trustee with the details of Miss R and Mr R's partner who lived at the same address.

9. On 12 October 2016, the Trustee sent Miss R a letter offering her its condolences. It also asked Miss R to send a death certificate and enclosed a Nominated Dependant's application form for her to complete and return. It added that:

“For a claimant to qualify for a Nominated Dependant's pension under the Rules of the ICI Pension Fund, they must satisfy the Trustee that:

They were financially dependent on the member at the date of death, and for at least 12 months immediately prior to death.

Their personal circumstances are such that they could not reasonably to support themselves adequately financially.”
10. On 21 November 2016, Miss R completed and returned the application form.
11. On 29 November 2016, the Trustee sent Miss R a letter asking for more information which was a copy of her Birth Certificate, bank statements, proof of her income and assets and proof of outgoings.
12. On 16 January 2017, the Trustee sent Miss R a letter acknowledging her application form however still requiring the previously requested information.
13. On 13 February 2017, the Trustee sent Miss R a chaser letter asking for the information.
14. On 20 February 2017, Miss R sent the Trustee a letter informing it that she was currently waiting for a new Birth Certificate which she subsequently provided in March 2017. She also informed the Trustee that:

“As stated on my earlier submission, I did not reside with my father, so I am unsure as to the reason you require bank statements from myself. If however this is a requirement then I will send these to you. I also did not have a joint account with my father. My father lived with his girlfriend and I would have to speak to her to ask for his bank account statements if you want these. However, my father did not work for the last 2 years of his life due to the motor neurone disease.”
15. On 7 April 2017, the Trustee sent Miss R a letter saying that if she does not meet the criteria under the Fund rules, she may not be eligible for the death benefit.
16. In August 2017, Miss R sent a letter to the Trustee raising concerns with regard to her father's pension being mis-sold.
17. On 2 November 2017, the Trustee sent Miss R a response that explained:

“Under the Rules...a child's pension can only be paid to the child of a deceased member who is under the age of 18 (or 19 in full-time education) unless the child is dependent on the member at the date of his death by reason of injury or mental or physical illness.

The Trustee has a discretion under the Fund's rules to pay a "nominated dependants" pension where:

The nominee can be shown at the date of the member's death to be (and to have been for the 12 months prior to that date) financially dependent upon that nominator;

Broadly, there is no liability upon the Fund for the payment of a widow or widower's pension; and

The Trustee of the Fund is satisfied that the nominee's personal circumstances are such that he or she could not reasonably be expected to support himself or herself adequately financially.

HMRC tax legislation

Under HMRC's tax regulations, a pension can only be paid to the child of a deceased member up to the age of 23, unless the child qualifies for a dependant's pension because of mental or physical impairment.

Based on the information that you have provided, our understanding is that you were not dependent upon your father because of mental or physical impairment."

18. Unhappy with the Trustee's decision, in April 2018, Miss R raised a formal complaint under the Fund's two-stage internal dispute resolution procedure (**IDRP**). In her submission, Miss R said that she was 22 when she first started her enquiry and she believes that she should be entitled to at least the money that her father had paid into his pension. She also wanted to know who would receive the benefit if not her.
19. The complaint was not upheld at either stage of the IDRP. The Trustee maintained its stance and its key points were:

"As your father was unmarried at the time of his death, there is no spouse's pension payable.

Your father included you in his nomination form which related to the lump sum that would have been payable if your father had died whilst he was in employment with ICI. As he left employment with ICI before his death this lump sum is not payable, and the nomination form is no longer applicable.

The Trustee has considered a separate nominated dependant's application in respect of your father's service and has found that the requirements for payment of a nominated dependant's pension have been met. Therefore, the Committee can confirm that the refund referred to above will not be payable to your father's estate."

20. On 30 November 2018, the Trustee sent us a formal response that maintained its previous stance and added:

“Under 1967 rules, where a member dies in service, a lump sum death benefit is payable. Where such a lump sum is payable the Trustee has discretion to pay it to “such one or more of the Death Benefit Class”...the Trustee can only pay benefits in accordance with the Rules of the Fund and it is satisfied that, having carefully considered Miss R’s position and the evidence that she has provided, there is no basis of entitlement that would enable the Trustee to pay any benefit from the Fund to Miss R, and therefore no payment can be made to her...The Trustee...has not received any evidence from Miss R to indicate that she satisfies [the relevant] criteria...Miss R stated that “I was no longer dependent on him [at the date of his death] but I am his only child”- and so the Trustee is not able to pay Miss R a nominated dependant’s pension.”

Adjudicator’s Opinion

21. Miss R’s complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator’s findings are summarised below: -

- The Adjudicator was satisfied that the Form completed by Mr R was in respect of a death in service lump sum which is only payable, under the Rule 30, if the member was in active service at the time of their death. As Mr R left his employment in 2004, he was no longer an active member of the Fund and his Form was no longer applicable.
- Under Rule 27(4), a child’s pension can only be paid to the child of a deceased member who is under the age of 18 (or 19 in full-time education) unless the child is dependent on the member at the date of his death by reason of injury or mental or physical illness.
- Under HMRC’s tax regulations, a pension can only be paid to the child of a deceased member up to the age of 23, unless the child qualifies for a dependant’s pension because of mental or physical impairment. However, this does not require a scheme to pay a child’s pension up to the age of 23 if its rules differ. The Adjudicator noted that at the time of Mr R’s death, Miss R was age 22 and not in full-time education and was not dependent upon Mr R because of mental or physical impairment and as such she did not qualify for a child’s pension under the Fund rules.
- The Trustee has a discretion under the Fund rules to pay a “nominated dependant’s” pension where:

“the nominee can be shown at the date of the member’s death to be (and to have been for the 12 months prior to that date) financially dependent upon that nominator

there is no liability upon the Fund for the payment of a widow or widower’s pension and

the Trustee of the Fund is satisfied that the nominee's personal circumstances are such that he or she could not reasonably be expected to support himself adequately financially."

- The Adjudicator noted that Miss R said she was not financially dependent upon Mr R therefore, she also did not qualify as a nominated dependant under the Fund rules.
 - The Adjudicator was of the view that the Trustee made sufficient enquiry to identify all the potential beneficiaries. The Trustee considered all relevant information, including the Form completed by Mr R and Miss R's circumstances at the date of Mr R's death. It was the Adjudicator's view that the Trustee, in reaching its decision, has taken into account all relevant factors, ignoring irrelevant ones, and that Miss R does not qualify as a beneficiary under the Fund rules, so the Trustee is unable to pay benefits to her.
22. Miss R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Miss R 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 R for completeness.
23. Miss R said that she accepts that the Trustee must follow the Fund rules. Miss R referred to the fact that the Trustee has considered a separate nominated dependant's application and found that this person has met the requirements for payment of a nominated dependant's pension. Miss R wants her father's wish that she should receive benefits to be granted. She said that she recently found out that the beneficiary is Mr R's girlfriend, who was contacted by the Trustee a year after Mr R's death. Miss R is not happy it took the Trustee such a long time to identify another beneficiary when in fact she was a sole beneficiary nominated in the Form and should have been entitled to the benefits.

Ombudsman's decision

24. My role is to examine the Trustee's decision-making process and decide whether the Trustee has, as far as possible, identified all potential beneficiaries; properly reviewed the merits of each one according to the Rules; and made a decision which was within the range of decisions which it was reasonable for the Trustee to have made.
25. I have great sympathy for Miss R's situation. I appreciate that being the only next of kin, she believes that she should be entitled to receive some benefits as Mr R wished when nominating her as a sole beneficiary. However, the nomination Form only applied to lump sum death benefits payable upon a death in service. Mr R left his employment in 2004 therefore no lump sum was payable. The benefits which were potentially payable took the form of dependent's pensions. . The Trustee considered Miss R under the criteria for a child's pension and a nominated dependant's pension, but as she was 22 at the time her father passed away she was not eligible for a

child's pension. She also confirmed that she was not financially dependent upon her father so she was not eligible for a nominated dependants pension either. It is clear that the Trustee, in reaching its decision, has considered Miss R as a potential beneficiary and has taken into account all relevant factors, ignoring irrelevant ones and made its decision in accordance with the criteria set out in the Rules.

26. Miss R has commented that she is not happy with the time it took the Trustee to identify another beneficiary who did qualify for a dependent's pension. However, the fact that another person is entitled to a pension under the Rules does not affect whether Miss R is entitled under the Rules. The only relevance of the other person's entitlement is to explain why no refund of contributions is payable to Mr R's estate. I find that the Trustee properly investigated whether Miss R was eligible for death benefits and has correctly concluded that she is not.
27. Therefore, I do not uphold Miss R's complaint.

Karen Johnston

Deputy Pensions Ombudsman
8 March 2019

Appendix

Rule 27(4) states:

“Children who are entitled to a share in a pension or cash benefit
... Provided also that the Trustees shall have discretion where a child has
attained the age of 18 and is continuing to receive full-time secondary
education at a school or other establishment for secondary education to treat
such child as if he were under the age of 18 for all the purposes of these
Rules
whilst such full-time secondary education continues but not after the child
attains the age of 19.”

Rule 30 C states:

“(ii) Where a cash payment is expressed to be payable in accordance with this
Rule 30(C) on the death of a Contributing Member, the Trustees may pay or
apply it to

or for the benefit of: -

(a) such one or more of the Death Benefit Class, or

(b) to that Member's personal representatives,

in such amounts, at such times and in such manner as the Trustees in their
absolute

discretion may decide, subject to the following provisions of this Rule...

(vi) For the purpose of this Rule, the expression "Death Benefit Class" means
in

relation to a Contributing Member: -

(a) any spouse of the Member,

(b) any child, brother or sister of the Member or of his/her spouse,

(c) any parent, grand-parent or descendant of a grand-parent of the
Member or of his/her spouse,

(d) any individual who is shown to the satisfaction of the Trustees to

have been at any time within five years prior to his/her death wholly or in part financially dependent on the Member, or towards whose maintenance and support (whether wholly or in part) the Member had been contributing during that period...”