

Ombudsman's Determination

Applicant	Mrs L
Scheme	Caterpillar Pension Plan (the Plan)
Respondent	Caterpillar Pension Trust Limited (the Trustee)

Outcome

1. I do not uphold Mrs L'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. Mrs L's complaint is about the payment of death benefits under the Plan of her late husband, Mr L, who passed away on 13 December 2016. She disagrees with the Trustee's decision not to pay the death benefits to her.

Background information, including submissions from the parties

4. On 11 January 2006, Mr and Mrs L married in Thailand. Following the wedding, Mrs L, a Thai national, moved back to Peterborough to live with Mr L.
5. At this time, Mrs L worked in Peterborough and was able to send money back to Thailand, which paid for her two children to attend secondary school.
6. Mr and Mrs L visited Thailand once a year to allow Mrs L to spend time with her family. In 2011, after returning from Thailand, Mrs L was unable to find any employment in Peterborough. Whilst unemployed, Mrs L asked Mr L to help fund her children's education, but he refused. As a result, Mrs L moved to Ulverston in Cumbria to take up new employment.
7. When Mrs L next spoke to Mr L, he said that he did not want her to return to the marital home. As a result, Mr and Mrs L continued to live apart.
8. On 13 December 2016, whilst a Member of the Plan, Mr L passed away.

9. As Mr L's widow, Mrs L was entitled to some benefits from Mr L's Guaranteed Minimum Pension (**GMP**). However, Mrs L complained that she should be entitled to further death benefits under the rules of the Plan (**the Rules**).
10. On 13 November 2018, the Trustee responded to Mrs L's complaint. It said that it did not consider Mrs L a beneficiary under the Rules. The Trustee said that Mrs L did not meet the criteria of a spouse under Section K(a) of the Rules (see Appendix) as she was not living with Mr L when he passed away. Furthermore, it said that Mrs L did not meet the criteria of a dependent under the Rules or the Finance Act 2004 (**the Finance Act**) (see Appendix). It explained that this was because, at the time of Mr L's death, Mrs L was married to Mr L but not financially dependent on him.
11. With regard to the payment of the GMP death benefits, the Trustee explained that the rules governing GMP death benefits were different to those of the Plan. The GMP death benefits were payable to a widow and, as Mrs L was married to Mr L at the date of his death, she was eligible.

Adjudicator's Opinion

12. Mrs L'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 Rules state that a spouse is defined as a person who is both, married to and living with, a Member at the date of the Member's death. Mrs L has confirmed that she was not living with Mr L when he passed away. The Adjudicator said that he believed it was clear that Mrs L did not meet the criteria of a spouse, as set out in Section K(a) of the Rules.
 - The Rules say that a Trustee may deem a person a Spouse, outside of the Section K(a) criteria, where the person was dependent on the Member, to a substantial extent, at the date of his death. This must be agreed upon by the Principal Employer and the person can only be deemed to be a spouse if they meet the definition of dependant under the Finance Act. Mrs L confirmed that she could no longer rely on Mr L to provide for her and her children, which forced her to move away from Peterborough and take employment elsewhere. As a result, the Adjudicator did not believe that Mrs L can successfully argue that she was dependent on Mr L. Although, Mrs L was married to Mr L when he died, she would not have met the definition of dependent under the Finance Act.
 - The Rules clearly state the definition of spouse. In Mrs L's case, the Trustee has decided that Mrs L did not meet this definition. The Adjudicator believed there was nothing to suggest that the Trustee's decision was incorrect. It follows that he did not believe Mrs L should have been paid death benefits above the level provided by the GMP.

13. Mrs L did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
14. Mrs L provided her further comments which do not change the outcome. Mrs L said that she was not satisfied as she felt that the pension she was receiving was too small. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs L for completeness.

Ombudsman's decision

15. Mrs L has disagreed with the Trustee's decision not to pay her any death benefits beyond those that were paid with respect to Mr L's GMP.
16. The Rules provide for death benefits to be paid to a Member's spouse where certain conditions are met. Also, where a Member is not survived by a spouse, the Trustee may, if the Principal Employer agrees, deem any person, who in the opinion of the Trustee was dependant on the Member, to a substantial extent, to be a spouse.
17. Under Section K(a) of the Rules, a spouse is defined as:-

"The person to whom a Member, Deferred Member or Pensioner was married at the date of the Member's, Deferred Member's or Pensioner's death, and who was living with the Member, deferred Member or Pensioner at the date of the Member's, Deferred Member's or Pensioner's death."
18. In order for Mrs L to qualify as Mr L's spouse, she had to be living with him on the date of his death. Mrs L has confirmed that she was not living with him at the time of his death, so she cannot be considered a spouse.
19. Section K(a) allows the Trustee, in agreement with the Principal Employer, to deem any person dependent upon the Member, at the date of his death, to be deemed a spouse.
20. The Trustee has the discretion to deem someone a spouse if it is satisfied that the person is substantially dependent upon the Member. When considering whether that discretion has been correctly applied, I will only uphold a complaint if I find that the Trustee's decision was "perverse", that is a decision that no reasonable Trustee could have reached.
21. The Trustee said that it did not believe Mrs L satisfied the definition of dependant under the Rules, as she was not dependant on Mr L to a "substantial extent". Mrs L has confirmed that she was living apart from her husband at the time of his death. In addition, she confirmed that she could no longer rely on Mr L to provide for her or her children. Both of these factors illustrate an independence from Mr L. I find that the Trustee properly took into account Mrs L's personal circumstances when considering Mrs L's claim for Mr L's death benefits and I do not believe the Trustee's decision was perverse.

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22. Therefore, I do not uphold Mrs L's complaint.

Anthony Arter

Pensions Ombudsman
5 February 2019

Appendix

The Rules

Rule F1.3 Spouse's or Civil Partner's pension

- (1) The Trustees must pay the Member's Spouse or Civil Partner an annual pension for life.
- (2) In the case of a Member who has died on or before his NRD, the Spouse's or Civil Partner's pension is 50% of the pension which would have been payable to the Member had he retired for a reason of Incapacity under Rule D3 (Active Member's Incapacity retirement) except that, for the purpose of calculating the period of Pensionable Service which the Member would have completed to NRD, the whole of that period shall be counted at the date of his death.
- (3) In the case of a Member who has died after his NRD, the Spouse's or Civil Partner's pension is 50% of the Member's Formula Pension which he would have received if he had retired from Pensionable Service at the date of his death.

Section K (Definitions)

Spouse

- (a) The person to whom a Member, Deferred Member or Pensioner was married at the date of the Member's, Deferred Member's or Pensioner's death, and who was living with the Member, Deferred Member or Pensioner at the date of the Member's, Deferred Member's or Pensioner's death. A person shall be treated as being married if he is recognised as being in a marriage which is lawful in the jurisdiction in which it took place at the date of the Member's, Deferred Member's or Pensioner's death.

If a Member, Deferred Member or Pensioner is not survived by a Spouse or Civil Partner the Trustees may, if the Principal Employer agrees, deem any person who in the opinion of the Trustees was dependent upon that Member, Deferred Member or Pensioner to a substantial extent at the date of his death to be the Member's, Deferred Member's or Pensioner's Spouse or Civil Partner. However, unless the Trustees and the Principal Employer otherwise agree, no person shall be deemed to be a Spouse or Civil Partner unless they are dependant for the purposes of Part 2 of Schedule 28 or the Finance Act 2004.

Finance Act 2004

Part 2 Schedule 28

- (4) A person who was not married to, or a civil partner of, the Member at the date of the Member's death and is not a child of the Member is a dependant of the Member if, in the opinion of the scheme administrator, at the date of the Member's death –
- (a) the person was financially dependent on the Member
 - (b) the person's financial relationship with the Member was one of mutual dependence, or
 - (c) physical or mental impairment