

Ombudsman's Determination

Applicant	Mr N
Scheme	Thomas Roberts Group Pension Fund (the Scheme)
Respondent	Thomas Roberts Pension Fund Trustees Limited (the Trustee)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by the Trustee as there is no outstanding injustice to be remedied.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N's complaint concerns the contingent spouse's pension previously described to him, when compared to that provided for under the relevant Scheme provisions. Mr N says he was not informed of the significance of the term "qualifying spouse" in the Scheme rules.

Background information, including submissions from the parties

4. Mr N retired in November 1990. His first wife sadly passed away before his retirement.
5. Rule 7 of the Consolidating Trust Deed and Rules dated 28 September 1978, (the **1978 Rules**), provides for a widow(ers) pension of 1/160th of the member's final pensionable salary for each year of contracted out service: "the Widow's Minimum Annuity."
6. The 1978 Rules state that on death after retirement, the surviving spouse or dependant shall be entitled to an annuity payable for life: "the Residual Pension." Rule 7(B) of the 1978 Rules states:

"if the person entitled to the Residual Pension is a Widow and the Member or former Member was not married to her at the date of his [retirement] on pension or leaving service respectively the Residual Pension shall not exceed the Widow's Minimum Annuity".

7. The rules of the Scheme in force at the time of Mr N's retirement are contained in the Scheme's trust deed and rules dated 28 March 1988 (the **1988 Rules**). Rule F5(B) of the 1988 Rules says:

"The Pensioner's Spouse shall be entitled to an annual pension for life equal to 2/3 of the pension payable to the Pensioner at the date of his death."

8. However, Rule F5(C) of the 1988 Rules provides an exception to the above rule. It states that if the widow(er) is not married to the pensioner at the time of his or her retirement, or at the date of leaving pensionable service, the widow(er) shall be entitled to, subject to Rule J2: guarantee in respect of excess "Requisite Benefits", such pension as he/she may be entitled to under the contracting out rules contained in the Social Security Pensions Act 1975 (the **SSPA 75**)
9. The SSPA 75 required that the Scheme contain a rule to the effect that the weekly rate of the widow's pension will not be less than the widow's GMP (**WGMP**). That is, a weekly rate of pension not less than 50% of the member's GMP.
10. Rule J2(A) of the 1988 Rules defines "Excess Requisite Benefits" as the portion of the Scheme benefits that exceeds the GMP, or WGMP where appropriate. Where a male member had an entitlement to Excess Requisite Benefits as at 28 March 1988, Rule J2(B) states that his widow's benefits shall not be less than her benefits under SSPA 75 and her Excess Requisite Benefits as at 28 March 1988.
11. The current Scheme provisions are contained in the consolidating Deed dated 6 December 1994 (the **Deed**). Clause 4 of the Deed says the right to, and calculation of, Scheme benefits shall be determined by the applicable provisions listed in appendix A to the Deed. Appendix A details the deeds and rules constituting the Scheme. However, clause 4 provides an exception to this where appendix B: provisions replacing the contents of appendix B to the principal deed of the current rules, expressly provides otherwise. Or the trustees, with the consent of the principal employer, decide that appendix B shall apply instead.
12. Rule F5(B) contained in the Deed, stipulates that, where the pensioner was a member or deferred member on 5 October 1991, the spouse's pension payable on death in retirement shall be determined by the corresponding provisions of the applicable deeds in force before the Deed came into effect.
13. On 24 March 1998, Mr N was sent a revised explanatory booklet dated April 1998 (the **Booklet**).
14. The covering letter, (the **March 1988 Letter**), enclosing the Booklet said:
- "In view of all the changes brought about by the Pensions Act 1995 and the recent benefit improvements the Trustees have produced a revised Explanatory Booklet, a copy of which is enclosed for your information.

The Explanatory Booklet sets out those benefits that are payable to current and future employed members and some parts of it may not be relevant to you now or may not exactly reflect those benefits that were applicable when you retired. However other parts of the Explanatory Booklet will still be relevant and hopefully you will find it of use.”

15. The March 1998 Letter goes on to say:

“For those pensioners whose pension commenced after 5 October 1991 the section on Death after Retirement on page 11 will apply.

However, for those pensioners whose pension commenced prior to 5 October 1991 the benefits payable to their widow, widower or dependant on their death are slightly different from those set out on page 11.

For these pensioners the amount of the spouse's/dependant's pension, which is payable for life, will be two-thirds of the pension being paid to the pensioner at the time of his/her death increased by 20%. The adjustments for age difference/children mentioned on page 11 will still be applicable.”

16. Page 11 of the Booklet says:

“DEATH AFTER RETIREMENT [original emphasis]

WITH DEPENDANTS

If you die after retirement your widow(er) or **Dependant** will receive a pension of two-thirds of your revalued pre-commutation pension i.e. two-thirds of your initial pension at the date you retire, before any exchange for a cash lump sum, increased in line with increases granted to pensions in payment since your retirement.”

If your widow(er) or **Dependant** is more than ten years younger than you the pension will be reduced. This reduction is decided by the **Trustee** but will not exceed 2.5% for each year in excess of the ten years.”

17. In the introduction, it states that further information about the Scheme is available from the Scheme Secretary. It also says:

“It is impossible to state in a booklet of this size all that is contained in the full **Trust Deed and Rules** and in the event of there being any difference between them, the **Trust Deed and Rules** will prevail.”

18. Mr N remarried in 2002. His wife is more than 10 years younger than him. At the time he remarried, Mr N did not make enquiries concerning the spouse's pension.
19. Around April 2017, Mr N requested details of the benefits payable in the event of his death from the administrators of the Scheme. He was provided with a statement dated 3 April 2017 (the **Statement**), in which they defined “qualifying spouse” as the

spouse he was married to at the time of leaving the Scheme. They said that a spouse who did not satisfy this condition, would receive a reduced pension.

20. Mr N was quoted an estimated spouse's pension of £1,455 per annum. His total pension at the time amounted to £15,178 per annum. The administrators confirmed that the spouse's pension would be reduced if his spouse was more than ten years younger than him.
21. Following an exchange of correspondence with the Trustee, during which Mr N was asked to provide a copy of his wife's birth certificate, his complaint about the same issue was rejected by the Trustee. His subsequent appeal was also turned down.
22. The Trustee has explained that the Scheme rules that applied at the time of Mr N's retirement are clear on the position. If the widow was not married to the member at the date of his retirement, then the widow is only entitled to the WGMP. In Mr N's case, his widow will also be entitled to a widow's requisite benefit. The Trustee has also pointed out that, where the widow is more than ten years younger than the member the widow pension's will be reduced.
23. Mr N says it is unreasonable to expect that he would have been aware of the correct basis. His further comments are set out below.
 - He and his wife were given a reasonable expectation of the benefits she would receive on his death. The March 1998 Letter did not give any indication that the spouse's pension would be reduced, or be calculated on a different basis to that described to him. While the letter specifically mentioned changes made to the Scheme, it referred to a two-thirds spouses pension plus 20%.
 - The term "qualifying spouse" was not defined in any of the previous correspondence sent to him. It is unreasonable to expect that he would have been aware of its significance.
 - Having reviewed the literature on the Scheme, he is now even more convinced that the information was "misleading and grossly unfair", as it was lacking in detail.
 - He considers that he was badly misled as the correct basis of the spouse pension was never explained to him. The position only became clear because of his own "due diligence." It could have been far worse had the position come to light in different circumstances.
 - The Trustee had a duty to inform him of the "fine details" of the Scheme provisions. The Statement would not have then come as such an unpleasant surprise.
24. The Trustee's further comments are detailed below.
 - The March 1998 Letter was not personalised. Nor was the Booklet designed to cover all the benefit permutations for all members' potential circumstances. The Booklet states that it does not detail the Scheme's full provisions. As such, the

Booklet does not override the relevant rules which set out the benefits payable to Mr N's surviving spouse.

25. Mr N has pointed out that the spouse's pension is significantly reduced in his case, and amounts to less than 10% of his current pension. In his view, his wife should be awarded the level of pension which, he considers, that they were given a reasonable expectation, she would receive on his death.

Adjudicator's Opinion

26. Mr N'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:-
- There was nothing in the information that was provided to Mr N that indicated that the benefits described to him at the time would not apply in his case. However, the general position is, a misstatement does not give rise to an entitlement.
 - Mr N now has less opportunity to mitigate the loss of the expected higher widow's pension.
 - His level of disappointment is likely to be greater, than it would otherwise have been, had he found out the correct basis sooner.
 - When he complained about the issue, Mr N was asked to provide a copy of his wife's birth certificate. This likely compounded the issue when his appeal was rejected.
 - An award of £500 in recognition of the significant non-financial injustice caused to him would put the matter right.
27. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N has provided his further comments, but these 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 N for completeness.

Ombudsman's decision

28. Mr N's says the details provided on page 11 of the Booklet amount to considerably more than a misstatement. In his view, they suggest a "severe lack of transparency" between the Scheme rules and the information contained in the Booklet.
29. Mr N contends that his wife is entitled to the pension that was described to him at the time. He has explained that, since becoming aware she will receive a significantly reduced pension on his death, when they expected a much larger pension, his wife's health has deteriorated considerably.

30. The interpretation of the Scheme's spouse's provisions that apply in this case is not in dispute. Mr N's issue is that the contingent spouse's pension is materially lower than he was led to believe.
31. Neither the Booklet nor the March 1998 Letter gave any suggestion that the widow's pension payable on marriage after retirement, would be calculated on a materially different basis to that described in the communication. The Booklet highlighted that a reduction would apply if Mr N's wife was younger than him by more than 10 years. However, it should have also highlighted that the widow's pension would be limited to the WGMP, plus any excess requisite benefit, if his widow was not married to him at the time of his retirement. I find the omission sufficiently serious to justify a finding of maladministration on the part of the Trustee.
32. However, in the absence of a valid legal claim, Mr N's wife will only be entitled to the level of dependant's benefits provided for under the Scheme rules that apply to him. There is nothing to suggest that the Trustee made a promise to him such that would give his wife an entitlement to the higher spouse's pension he is claiming.
33. In reaching my view, in relation to the alleged financial loss, I have considered that Mr N has not proven he acted on the misinformation to his financial detriment. Or that he would have acted materially any differently if he had known the true position. I have also taken into account the fact that he did not make any enquiries about the spouse's pension when he remarried in 2002.
34. I find that the offer of £500 made by the Trustee is sufficient to put right the significant non-financial injustice it caused to Mr N, and therefore do not make an additional award. Mr N should contact the Trustee if he wishes to accept the offer.
35. I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
18 December 2018