

Ombudsman's Determination

Applicant	Miss Y
Scheme	Kenwake Pension Scheme (the Scheme)
Respondent	Kenwake Pension Trustees Limited (the Trustee)

Outcome

1. I do not uphold Miss Y'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 Y's complaint concerns the Trustee's decision not to award her a dependant's pension following her uncle's death.

Background information, including submissions from the parties

4. Miss Y's uncle was a pensioner member of the Scheme when he passed away in January 2015.
5. In January 2018, Miss Y contacted the Scheme to enquire if any benefits from her uncle's pension were payable, following his death. On 8 January 2018, the Trustee responded to Miss Y's query. The Trustee explained that as her uncle had been in receipt of the pension for more than five years and, as he was not married at the time he passed away, under the Rules of the Scheme (**the Rules**), no benefits were payable from the Scheme.
6. The Trustee informed Miss Y that its record showed an overpayment had occurred because a payment was made to her uncle after his death. Consequently, the Trustee asked Miss Y to arrange for the overpayment to be repaid by her uncle's estate.
7. Unhappy with the Trustee's decision, Miss Y complained through both stages of the Scheme's internal dispute resolution procedure (**IDRP**). Miss Y believed that she was entitled to a pension from the Scheme as she was her uncle's next of kin.

8. Miss Y's complaint was not upheld at either stage of the IDRP. In the IDRP stage two decision dated 16 April 2018, the Trustee said:

"I can confirm that under Rule 5.5, if a member leaves no spouse entitled to a pension and the Trustee so determines there will be a pension paid to such one or more of the Members Related Dependants as the Trustees decide.

The definition of Related Dependants is a defined term as follows:

'in relation to the member, any parent, grandparent, brother or sister of his or the issue of any such person who in the opinion of Trustees is substantially financially dependent on the Member. It does not include a person born after the date the Member retired, left service or died whichever is earlier'."

9. The Trustee explained to Miss Y that after considering the information she had provided, it was its view that she was not substantially financially dependent upon her uncle, prior to his death. This was because there was no evidence of ongoing financial dependency that would warrant a dependant's pension to be awarded.
10. Disappointed with the IDRP decisions, Miss Y referred her complaint to us and made the following comments:-
- She does not know what other evidence she can provide to show she was financially dependent on her uncle, prior to his death. The bank statements show he made large payments to her. He had lent her money for a car and she paid him back £160 a month.
 - She helped him to move into sheltered accommodation using her redundancy money. He paid her a total of £23,000 during the last 15 months of his life to cover bills.
 - She lost her home as she became ill after redundancy and could not work to pay her mortgage. She and her children are currently living at a friend's house while she tries to get back on her feet.
 - Although her physical health is improving, mentally she is depressed and has lost confidence. Losing her only family member has been very hard as they were very close.
 - The Trustee says that she was not substantially financially dependent on her uncle but, from September 2013 to December 2014, one month prior to his death, he paid her £23,000 in cheques. Additionally, he paid various bills she had by cheque.
 - The bank statements show her lack of income and how the payments she received from her uncle assisted her for 18 months. Her uncle paying the large sums to her proves that she was financially dependent on him.
 - Her uncle did not expect to die, hence not naming her as a beneficiary but he made provisions for her while he was ill which showed his intention.

11. In response to Miss Y's complaint the Trustee provided a copy of the Rule that allows a dependant's pension to be paid, following a member's death and, it provided a copy of the definition of Related Dependant. The Trustee also made the following comments:-

- The Trustee's IDRP stage two decision remained unchanged. This is because, after considering the evidence Miss Y had provided, the Trustee concluded the evidence did not indicate that she was 'substantially financially dependent' on her uncle.
- Additionally, the evidence did not show that Miss Y was receiving regular financial payments to suggest that she was financially dependent on her uncle, each day, prior to his death.

Adjudicator's Opinion

12. Miss Y'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 Trustee's role is to administer the Scheme in accordance with the Rules that govern it. The Rules give the Trustee full discretion to determine if an individual meets the criteria for a dependant's pension to be paid, following a member's death.
- The role of the Ombudsman in such disputes is to consider whether the procedure the Trustee followed, in exercising its discretion to determine if a dependant's pension should be paid to Miss Y, was reasonable. There are however, some well-established principles which the Trustee was expected to follow in exercising its discretion. Briefly, it:
 - must take into consideration all relevant matters and no irrelevant ones;
 - must ask itself the correct questions;
 - must direct itself correctly in law in particular, it must adopt a correct construction of the Rules/Regulations; and
 - must not arrive at a flawed decision.
- A flawed decision is taken to mean a decision which no reasonable decision maker, properly directing itself could arrive at in the circumstances. If the Ombudsman is not satisfied that the above principles have been properly followed, he can ask the Trustee to reconsider the matter. However, the Ombudsman will not replace the Trustee's decision with a decision of his own, nor can he tell them what their subsequent decision should be.
- In this case, the Trustee did not consider that Miss Y was entitled to a dependant's pension. It confirmed that it based its decision on the fact that the evidence did not

show that Miss Y was substantially financially dependent on her uncle or that she was financially dependent on her uncle, each day, prior to his death.

- After reviewing the Rule pertaining to a dependant's pension and having read the definition of a Related Dependant, it was the Adjudicator's opinion that the Trustee had acted in accordance with the Rules. It was also the Adjudicator's view that the Trustee took all relevant matters into consideration, prior to making its decision on Miss Y's application, as it had considered the large payments Miss Y's uncle made to her, prior to his death.
- The Adjudicator sympathised with the financial situation Miss Y was now in and the Adjudicator appreciated that losing her only family member has been very distressing for Miss Y. However, it was the Adjudicator's opinion, that I would not direct the Trustee to reconsider its decision concerning Miss Y's application for a dependant's pension.
- Therefore, the Adjudicator's opinion was that this complaint should not be upheld.

13. Miss Y did not accept the Adjudicator's Opinion and in response made the following comments:-

- The Rules of the Scheme are that a financially dependent relative is entitled to benefits.
- With regard to evidence of this, prior to her uncle's death, her uncle's statements and cheques show large payments being made to her. He made the large payments because he was ill at the time.
- Prior to her uncle's death he paid for bills and shopping in cash as most people his age did. He never made large payments at any other time which is evidence of his declining health and the provision he made for the forthcoming months. If the level of payments he made is not evidence of her financial dependency, she does not know what is.
- Her uncle was unable to leave the house prior to his death but, the funds transferred were used at this time.
- The Trustee is skirting round the issue not to recognise her dependency on her uncle, prior to his death. At his age, with bad health, what more do they expect?
- Her dependency was on shopping and bills which he settled in cash at the bank or in the supermarket. Who keeps such receipts?

14. The complaint was passed to me to consider. I agree with the Adjudicator's Opinion and will therefore only respond to the key points made by Miss Y, for completeness.

Ombudsman's decision

15. Rule 5.5 of the Scheme Rules states:

“If the Member leaves no spouse entitled to a pension under this Rule and the Trustees so determine there will be paid a pension or pensions to one or more of the Member's Related Dependants as the Trustees decide.”

16. The Scheme Rules define related dependants as:

““Related Dependants” means in relation to the Member any parent, grandparent, brother or sister of his or the issue of any such person who in the opinion of the Trustees is substantially financially dependent on the Member. It does not include a person born after the date the Member retired, left Service or died whichever is earlier.”

17. I understand Miss Y's disappointment that the Trustee has not awarded her a dependant's pension and, I truly sympathise with her current financial situation. However, I find that the Trustee considered Miss Y's application in accordance with the Rules.

18. I find that the procedure the Trustee followed to decide if a dependant's pension was payable to Miss Y was reasonable. It is also my view that the Trustee considered all relevant matters and no irrelevant ones, when making its decision because it considered the large payments Miss Y received from her uncle, prior to his death. Consequently, I will not direct the Trustee to reconsider its decision not to pay Miss Y a dependant's pension.

19. Therefore, I do not uphold Miss Y's complaint.

Anthony Arter

Pensions Ombudsman
28 February 2019