

## Ombudsman's Determination

Applicant	Mr D
Scheme	Teachers' Pension ( <b>the Scheme</b> )
Respondent	Teachers' Pensions ( <b>TP</b> )

## Outcome

1. Mr D's complaint against TP 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, TP shall pay Mr D £500 for the significant distress and inconvenience he has suffered.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr D has complained that funds from his late father's pension were paid in full to his sister although he was a joint executor to the estate.

## Background information, including submissions from the parties

4. Mr D's father, Mr R, was a retired member of the Scheme in receipt of pension benefits.
5. Mr R sadly passed away on 5 January 2017. In the Grant of Probate issued on 3 April 2017, Mr D and his sister, Ms Y, were named as executors of the estate.
6. On 18 January 2017, TP received a 'Notification of the death of a person to a Government Department or other specified body' form in which the Registrar notified it of Mr R's death. Ms Y was the named informant on this document; her address details were also provided.
7. On the same date, TP issued a letter to Ms Y saying that it required confirmation of certain details to allow it to pay any benefits which might be due. It enclosed a 'Death notification and application for death benefits form' (**the Death Notification Form**) for completion. TP has said that Ms Y only completed Part A of this form at this stage, which concerned notification of the deceased member's details.
8. On 26 January 2017, TP sent Ms Y a letter saying:

“Thank you for notifying us of your father’s death and please accept our condolences at this time.

According to our records there may be a residue of pension due to your father’s estate.

Payment of any residual amount must be made into a bank account. Can you please therefore provide, in writing, the name of the bank, name of the account holder(s), branch sort code and the account number into which you wish the payment to be made. Once this information is received we will proceed in finalising your father’s Teachers’ Pensions account.”

9. Mr D subsequently contacted TP to notify it of Mr R’s death, unaware that it already knew, and asked what was due to the estate.

10. On 19 April 2017, TP replied to Mr D saying:

“Thank you for your web mail. Please accept my condolences.

I can confirm that [Mr R’s] pension has been finalised and details of the final pension and tax have been issued to the informant.”

11. On 11 May 2017, Mr D replied saying that as co-executor, he would need copies of the information supplied to the informant. He enclosed a copy of the Grant of Probate.

12. On 12 June 2017, TP sent Mr D a copy of the letter it said it had issued to Ms Y on 17 March 2017. This said there was a residue of pension owing to Mr R’s estate that amounted to £550.33 net, which represented the pension due from 25 December 2017 to 5 January 2017, and payment would be issued in 7-10 days.

13. Mr D subsequently submitted a complaint to TP saying he could not understand why the payment was released without his signature as co-executor. He complained again on 26 September 2017, saying that TP did not carry out the necessary due diligence in releasing these funds and suggested that if funds had been misappropriated due to failings by TP, it should be attempting to recover them.

14. On 3 October 2017, TP responded saying:-

- The application it received had been completed and signed by one person and requested that payment was made to that person.
- In regard to the processes it followed, it assessed each account on the information it held. It did not request any further information in respect to the Grant of Probate as the amount due to be refunded was less than £5,000.
- If Mr D believed this payment had been applied for fraudulently, then he had a right to contact his local police station or report this to other authorities. It did not believe that it had followed an incorrect process and therefore was unable to assist any further.

15. On 21 December 2017, Mr D wrote to the Department for Education about his complaint. The main points were:-
- Upon the death of his father a will was left splitting everything 50/50 with his only other sibling, Ms Y.
  - Whilst they were waiting for the joint probate application to go through, Ms Y, without his knowledge, wrote to TP filling out an application for monies due which they duly paid to her. He had asked TP to write to his sister asking her to repay the funds, but it did not appear that it had done this.
16. On 17 January 2018, TP replied saying:-
- The Department for Education had received Mr D's appeal and asked it to conduct a further review.
  - The statutory regulations that governed the operation of the Scheme provided that any residue of pension payable on the death of the member was payable to their representative on application.
  - An application for payment had been received along with the documentation necessary to allow payment to be made to the representative. A Grant of Probate was not needed in this instance as the sum payable was less than £5,000. Payment of the residue had been administered in accordance with the regulations.
  - It was clear however, that Mr D was a joint executor of Mr R's will, a fact TP had not been made aware of at the time. As such TP had undertaken to write to the other executor in an effort to seek a mutually satisfactory resolution.
17. Following this, Mr D wrote to TP saying that he would like a copy of the application form submitted for payment as the one which TP had sent him was blank. TP provided this on 21 February 2018, with the informant's details redacted.
18. On 11 April 2018, TP wrote to Mr D saying:-
- A pension was not payable from the date of a member's death. There was no overpayment of Mr R's pension due to the prompt notification of his death by Ms Y.
  - Regulation 113 (of the Teachers' Pension Regulations 2010) stated: "Where on the death of a person (D) the total of any sums due to D and any sums payable to D's personal representatives under these Regulations does not exceed the amount specified in any order made under section 6 of the Administration of Estates (Small Payments) Act 1965 which applies to D's death, the Secretary of State may, without requiring the production of probate or other proof of title, pay the amount due to D's personal representatives, or to the person, or to or among

any one or more of any persons, appearing to the Secretary of State to be beneficially entitled to D's estate."

- As the amount due was under £5,000, it was up to TP (on the Secretary of State's behalf) to determine the person or persons appearing to be beneficially entitled to Mr R's estate.
- The Death Notification Form was received from Ms Y and from that and subsequent phone calls, TP determined that she was the person appearing to be beneficially entitled to Mr R's estate.
- It was satisfied that the payment had been correctly made and no adjustments would be required.

19. The complaint was subsequently referred to this Office for an independent review.

20. On 19 October 2018, TP confirmed, in response to the Adjudicator's query, that it did write to the person in receipt of the death benefit on 17 January 2018, however, there had been no reply or further developments since.

21. On 2 November 2018, TP provided its formal response. This said:-

- As per Regulation 113 of the Teacher' Pension Regulations 2010 (**the Regulations**), the payment made was allowed where the amount pertaining to the Administration of Estates (small Payments) Act 1965 was less than £5,000.
- Hence, as the amount due to Mr R's estate was under £5,000, after which probate was required, it was up to TP, acting on behalf of the Secretary of State to determine the person or persons appearing to be beneficially entitled to it.
- All the initial notifications of Mr R's death, including the Death Notification Form, were received from the informant. It was up to this person to ensure that this amount was added to the estate and should Mr D believe he is due any part of this payment, he must take it up with the other executor directly.

22. On 16 November 2018, Mr D made the following comments:-

- If TP was entitled to "determine the person or persons appearing to be beneficially entitled" in this case and it then transpired that a fraudulent application was made by someone presenting themselves as the sole beneficiary, TP ought to be concerned about this. Instead it had refused to do anything further.
- It was not possible to pursue the matter himself with no evidence. If he wanted to pursue a fraud case, he would need the signed declaration form to clearly show that Ms Y had signed herself off as sole beneficiary to the estate.
- TP's refusal to provide certain information on the grounds of data protection was nonsense as he had provided them a copy of the probate and was therefore

aware of her contact details. Instead, he felt TP was covering up the fact it had no signature and perhaps based the entire payment on some telephone calls.

- TP's claim that it followed its internal procedures was not a "get out clause" it could use. If those procedures were fundamentally flawed, they should be improved.

23. On 27 November 2018, the Adjudicator asked TP further questions in respect to the process it followed in paying the benefit in question.

24. On 7 December 2018, TP replied saying:-

- The process it followed from the point at which it was notified of the death of Mr R was that it issued a letter to the death informant, this requested that the enclosed application form was completed and returned to TP as soon as possible. Initially, only Part A was received on 23 January 2017 (the notification part of the form) so on 26 January 2017, TP replied requesting the bank account details for which payment was to be made into.
- On 6 February 2017, TP received a letter asking for payment to be made by cheque. In that letter, the individual, who was the death informant and the person who completed the application form, confirmed they were executor of Mr R's will.
- On 17 February 2017, TP wrote to confirm it was unable to make payment by cheque and required bank details which in any event had been provided on 16 February 2017. TP was satisfied that the person who had completed the application was Mr R's personal representative and beneficially entitled to his estate. Therefore, payment was issued in the expectation that it would be added to Mr R's estate and distributed accordingly.
- TP received official notification of the death of Mr R directly from the Registrar. That document confirmed the informant and their qualification as such, therefore TP issued its letter of 18 January 2017. TP's letter of 26 January 2017, confirmed there may be a residue of pension due to Mr R's estate and therefore expected the person completing the Death Notification Form to be Mr R's representative or the person beneficially entitled to his estate.

## **Adjudicator's Opinion**

25. Mr D's complaint was considered by one of our Adjudicators who concluded that it should be partly upheld. The Adjudicator's findings are summarised below:-

- The question at hand was whether TP carried out appropriate checks before paying the residual pension. Regulation 113 of the Regulations was not particularly prescriptive on the process to be followed for payments falling under the Administration of Estates (Small Payments) Act 1965. It set out that such

payments may be made without requiring the production of probate or other proof of title to the deceased's personal representatives, or, to the person, or to or among any one or more of any persons, appearing to the Secretary of State to be beneficially entitled to the deceased's estate.

- TP highlighted that the Grant of Probate was specifically not required as per the Regulations and considered its actions to be in line with these. However, the actions it took followed a fairly loose application of the Regulations. TP was permitted to pay the benefit in question to the deceased's personal representative/s or person/s appearing to be beneficially entitled to the estate, but the assumption underlying this was that it would take steps to satisfy itself that the person applying for these benefits actually fell into one of these two categories. TP did not do this.
- Further, it was unclear why TP felt the criteria had been satisfied as its explanation lacked detail. It appeared that TP received official notification of the death of Mr R from the registrar and received a document, presumably the death certificate, on which it was stated that Ms Y was the death informant. It seemed that TP issued the Death Notification Form to Ms Y on the basis that her name and personal details matched those of the death informant on the death certificate.
- TP had also previously said "the Death Notification Form was received...and from that and subsequent phone calls, TP determined that she [Ms Y] was the person appearing to be beneficially entitled to Mr R's estate." However, it would be difficult to determine one's entitlement to a deceased person's estate from phone calls and there was the potential for fraudulent activity within such a medium.
- It appeared that TP was satisfied of Ms Y's eligibility due to her name being on the death certificate as the death informant and because she came forward to make the claim. Whilst Ms Y was named as the death informant, it was difficult to see how this tied her to being Mr R's personal representative or entitled to his estate. Further, completion of the Death Notification Form was not in itself verification of one's entitlement.
- Although TP was not obliged to request a Grant of Probate, on the basis of the lack of other information it seemed to hold, it would have been prudent of it to request this or a similar document to tie the knowledge it had, this being Ms Y as the death informant and daughter of Mr R, to her entitlement to the estate. Doing so would have meant that Ms Y's joint executor status would have come to light.
- However, if TP had taken action to properly establish the personal representatives and/or the beneficiaries of Mr R's estate, it would still have been entitled, under the Regulations, to have made the payment to just one of the personal representatives. The Regulations did not require the monies to be paid equally to the beneficiaries of the deceased's estate; the monies were paid in

the expectation that they will be paid to the estate. It was then for the executors to ensure the beneficiaries received what was due to them. Should that not have happened here, this would be a matter for Mr D and Ms Y to deal with as executors of their late father's estate.

- Whilst TP should have done more to establish that the payment was being made to a person entitled to/personal representative of Mr R's estate, the overall outcome was not wrong. However, TP could have done more to assist Mr D once it had been made aware that he was a joint executor of Mr R's estate and had raised concerns about the payment of the monies. TP's lack of assistance would have caused Mr D significant distress and inconvenience.
- Mr D's complaint should be upheld to the extent of the distress and inconvenience caused to him. TP should pay Mr D £500 in for the significant distress and inconvenience he suffered as a result of its handling of the matter.

26. Mr D accepted the Adjudicator's Opinion. TP did not accept the Adjudicator's Opinion and made the following comments:-

- It must ensure that a member's pension position was promptly finalised after their death to prevent causing any additional distress to the family. Its process is to issue the letter to the death informant straightaway after notification of death, requesting that the enclosed application form is completed and returned as soon as possible.
- However, it was not always the case that the death informant was the person to whom the death grant or residue was to be paid. The application form clearly stated that it should be completed by the person to whom the death grant or residue was to be paid. If this was not the informant/person to whom the application form was sent, the form must be passed to the person to whom the death grant or residue was to be paid. Therefore, TP was entitled to believe that the person completing the application was the person to whom the residue was to be paid.
- To question whether the person completing the application was such a person could be perceived to be questioning their integrity and could cause distress at an already upsetting time.
- The Opinion had stated that it was unclear what led to the person who completed the application confirming they were executor. This information was provided in response to a letter it had sent where it confirmed there may be a residue of pension due and requested in writing the bank account into which the payment was to be made. To question whether such statements were correct could be interpreted as questioning an individual's honesty.
- It was satisfied that the payment of the residue of pension was being made to the person "appearing to be beneficially entitled to Mr R's estate." This was on

the basis that they had completed the application form as the person to whom the residue was to be paid.

- A request for a Grant of Probate when not required could cause the administrators of an estate further costs, administration and distress, particularly if there was no requirement to apply for Probate, for example, if the estate was not a particularly high amount.
- The residue payment was made to the “person appearing to be beneficially entitled to Mr R’s estate” in the expectation that it would be added to the estate and distributed by the executors accordingly. If this did not take place, it was a matter outside of its control and should be taken up as a civil matter with the appropriate authorities.
- Mr D’s complaint appeared to be that he expected to receive half of the residue payment as a personal payment, however, even if it had paid him half, he was only entitled to add this to his father’s estate to be distributed accordingly.
- It did not agree that it should have done more to establish that the payment was being made to a person entitled to, or personal representative of, Mr R’s estate. It made the payment on the understanding that it would be distributed as part of Mr R’s estate and did not know what more could have been done.
- It disagreed that it had caused Mr D significant distress and inconvenience. It had at all times attempted to explain to Mr D why this payment was made to the person concerned. It had been unable to provide Mr D with certain information as it was bound by the Data Protection Act, but it had provided what it could. It did not believe it should be penalised for any suggested lack of assistance simply for abiding by overriding legislation.
- It believed the amount of compensation of £500 was punitive, bearing in mind that Mr D’s complaint appeared to be that he expected to receive half of the residue payment, this being to the value of £275.16.

27. On 6 March 2019, TP confirmed to us that the informant’s name, qualification and address details were contained within the ‘Notification of the death of a person to a Government Department or other specified body’ document received from the Registrar. It also said it first received a copy of Mr R’s death certificate on 23 January 2017 with the application for death benefits completed by the death informant.
28. The complaint has now been passed to me to consider. I agree with the Adjudicator’s Opinion and I will therefore only respond to the key points made by TP for completeness.



## Ombudsman's decision

29. TP's decision to accept Ms Y as Mr R's personal representative, or the person appearing to the Secretary of State to be beneficially entitled to his estate, appears to be based on the fact that Ms Y was named as the death informant on a document received from the Registrar and the death certificate, and as she provided her details in response to its request for information on who the residue of pension should be paid to.
30. However, aside from matching this information, I cannot see that an exercise was carried out where TP verified that the person claiming the residue of pension met the criteria above. Instead, TP seems to have issued the relevant information to the death informant in the expectation that they would pass this on to the correct individual. This in my view is a process which relies on the honesty of the person initially written to, as opposed to one with checks and balances. Whilst TP's position in not wishing to upset family members at a difficult time is understandable, it would be counterproductive if this objective were to override that of paying the monies to the correct person.
31. I accept that, in this instance, TP ultimately made payment to an appointed executor of Mr R's estate, so I do not find that TP has made an administrative error, however, the monies were not distributed as a part of the estate.
32. Although, I understand that TP was not able to release certain information due to data protection concerns, I do not consider that it was particularly helpful to Mr D when he made enquiries into benefits due to the estate. TP's position was that an application for the residue of pension had been completed by a certain person who had requested payment be made to them and should he have any concerns, this was a matter for reporting to the police or other authorities.
33. Mr D would understandably have been confused and concerned at this time and the tone of TP's written correspondence would only have added to this. Although, TP might not have been in a position to name to whom the residue of pension had been paid, it did not provide any explanation or guidance as to its wider process and objectives when paying these benefits, as it has done in responses to this Office, and there is a distinct lack of sympathy on its part in a difficult matter.
34. In its letter of 17 January 2018, TP acknowledged that Mr D was a joint executor and said it would write to the other executor in an effort to seek a mutually satisfactory resolution. Mr D, however, was never updated as to whether this was done and by 11 April 2018, TP had reverted to its previous stance in saying that the correct process had been followed and no further action was needed, causing him further confusion.
35. Therefore, I partly uphold Mr D's complaint.

**Directions**

36. Within 21 days of the date of this Determination, TP shall pay Mr D an award of £500 in recognition of the significant distress and inconvenience he has suffered due to the way in which it has handled this matter.

**Anthony Arter**

Pensions Ombudsman  
20 March 2019