

## Ombudsman's Determination

Applicant	Mr H
Scheme	Registered Dockworkers Pension Fund ( <b>the Fund</b> )
Respondent	The Trustee of the Former Registered Dock Workers Pension Fund ( <b>the Trustee</b> )

## Outcome

1. I do not uphold Mr H'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. Mr H has complained that he should have received benefits from the Fund following the death of his brother (**Mr J**). Mr H contends that Mr J was given incorrect information that led to an expectation that death benefits would be due.

## Background information, including submissions from the parties

4. The Trustee annually sent all Members information packs which contained a death benefits nomination form.
5. Following Mr J's death, Mr H enquired about any benefits due to him from the Fund.
6. On 28 July 2017, the Trustee wrote to Mr H in response to his enquiry about his late brother's benefits. The Trustee said:-
7. "I can confirm that according to the scheme rules a nomination is granted if a Member dies in service or within 5 years of retirement. As [Mr J] has been in receipt of his pension since 1982 no further benefits are payable."
8. Mr H was unhappy with this response and complained.
9. On 19 September 2017, the Trustee responded to Mr H's complaint and explained that all members of the Fund are periodically provided with a death benefit nomination form, which is an annual bulk exercise. The Trustee provided a sample of the covering letter and nomination form that would accompany the periodic review. The covering letter says that the potential benefits payable are:-

“A pension for your eligible dependent(s)\*, and

If you die within 5 years of retirement a lump sum payable to your dependent(s).

\*Dependent(s) – includes your spouse, a registered civil partner, or if you are not survived by either a spouse or a registered civil partner, the Trustee may consider any other person who can demonstrate that he or she was financially dependent on you.”

10. The Trustee concluded that it believes the information provided in the covering letter made it clear that the nomination was only relevant in certain circumstances.
11. On 2 October 2017, Mr H completed an Internal Dispute Resolution Procedure (**IDRP**) Complaint Form. In this form he reiterated his complaint that sending out a nomination form was misleading because it gave Mr J the impression that benefits would be paid upon his death. Mr H also said that another member’s nomination form had been erroneously enclosed in some previous correspondence.
12. On 6 December 2017, the complaint was rejected. Sometime after, Mr H appealed and his complaint was passed back to the Trustee to consider.
13. On 8 March 2018, the Trustee responded to Mr H’s complaint, issuing its final response under its IDRP. The Trustee explained that it can only pay out benefits in accordance with the Fund Rules. The Trustee said that the Fund Rules only permit payment of death benefits in limited circumstances. Death benefits can be paid to an eligible dependant of the member. Also, in circumstances where the member dies within five years of taking his pension, a lump sum equivalent to the outstanding balance of five years’ pension payments can be paid.
14. The Trustee said that Mr J had been in receipt of his benefits for over five years so no lump sum was due. The Trustee said that it could not see anyone who met the definition of dependant, so no payment was due.
15. With regard to the Fund’s practice of sending out nomination forms, the Trustee said that it was necessary. It said that the covering letter explained in what circumstances the nomination was required. It said that it needed to send them out to all members to ensure that people who had dependents were given the opportunity to make the Trustee aware of their circumstances.
16. The Trustee also asked Mr H to return the nomination form that was erroneously sent to him.

## **Adjudicator’s Opinion**

17. Mr H’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 can only pay out benefits in accordance with the Fund Rules. When the Trustee issued the nomination form, it included a covering letter which outlined two benefits that could be paid upon death if a Member was receiving a pension.
  - One benefit would have been paid in a situation where a Member died within five years of retirement. This is governed by Rule 6(b) (see Appendix). The Trustee has said that Mr J has been in receipt of his pension since 1982, so it is clear that he had already received his benefits beyond the five year period. It follows that this benefit is not available.
  - The covering letter also outlines potential benefits for eligible dependents. The Trustee defined the term dependants as someone who “includes your spouse, a registered civil partner, or if you are not survived by either a spouse or a registered civil partner, the Trustee may consider any other person who can demonstrate that he or she was financially dependent on (or interdependent with) you.” This is consistent with Rule 8(d)(i)(3) (see Appendix).
  - Mr H has not sought to argue that he is a dependant under the Fund Rules. Based on the information available, the Adjudicator did not believe Mr H met the definition of a dependant as there was nothing to suggest that Mr H was financially dependent on Mr J. The Adjudicator did not believe that death benefits were due under Rule 8(d)(i).
  - Mr H’s main argument is that he feels that the practice of issuing nomination forms is misleading. The Adjudicator disagreed. The nomination form was sent alongside a covering letter that clearly highlighted the circumstances where death benefits would be payable. The covering letter explained the two situations when death benefits would be due, the Adjudicator felt this was consistent with the Fund Rules. The Adjudicator believed Mr J could have only reasonably expected death benefits to be paid to someone who was financially dependent on him. As there was nothing to suggest that Mr H was financially dependent on Mr J, the Adjudicator did not consider there was a reasonable expectation that death benefits would be paid.
  - Furthermore, the Trustee has explained that the reason it sends nomination forms alongside the annual enclosures was to ensure that all members who had dependents were given the chance to make the Trustee aware of their circumstances. The Adjudicator felt this was good practice and the Trustee should not be punished for giving members an opportunity to make it aware of any changes to their personal circumstances.
18. Mr H did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr H provided his further comments which do not change the outcome.
19. Mr H contends that he believed that he was able to nominate someone as a beneficiary despite the fact that they were not a dependant. He has complained that he is not the only person to view the issuing of nomination forms as misleading. Mr H

has said that the member, whose nomination form was mistakenly sent to him, also believes that the process is misleading.

20. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr H.

### **Ombudsman's decision**

21. Mr H believes that, in issuing all members with nomination forms, the Trustee misled his late brother into thinking that benefits would be paid upon his death.
22. I do not believe that the practice of issuing nomination forms can be considered misleading. The Trustee ensured that all nomination forms were accompanied by a covering letter that clearly highlighted the circumstances where death benefits were payable. The covering letter said that benefits payable are:-
- "A pension for your eligible dependent(s), and
  - If you die within 5 years of retirement a lump sum payable to your dependent(s)."
23. The covering letter went on to define dependant as, "any other person who can demonstrate that he or she was financially dependent on you."
24. I am satisfied that the covering letter is consistent with the Fund Rules. Given that Mr J began taking benefits from 1982, it is clear that he died over 5 years from taking his pension, so Mr J should not have expected a lump sum to be paid on his death. Mr J could only have reasonably expected death benefits to be paid to someone who was financially dependent on him. I have seen no evidence to suggest that Mr H was financially dependent on Mr J, so there is nothing to suggest that Mr J had a reasonable expectation that death benefits would be paid.
25. Mr H has also complained that his brother should not have been sent a nomination form because he had been in receipt of benefits for five years; I do not agree. It is true that Mr J would not have been eligible to leave a lump sum benefit, however, I believe the Trustee was right to give Mr J an opportunity to alert it to any dependents who could have been potential beneficiaries had the criteria been met.
26. Mr H has said that he has been in contact with the member whose nomination form, he believes was also incorrectly sent to that member. Mr H said that the other member also believed that he was able to nominate someone who was not a dependent as a beneficiary. However, I am only judging the merits of Mr H's complaint and not what may or may not have occurred in respect of other members, so I will not consider this further.

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27. I find that the Trustee has acted correctly in explaining to Mr J the potential circumstances in which a nomination form would have been required. I do not consider the information provided to Mr J to be misleading, so I have no reason to uphold the complaint.

**Anthony Arter**

Pensions Ombudsman  
23 November 2018

## **Appendix**

### **Former Registered Dock Workers Pension Fund**

#### **Rule 6(b)**

The pension shall be payable for a term of five years certain whether the Pensioner survives for that period or not. If the Pensioner shall die during such period of five years, the pension for the remainder of that period shall be payable according to Rule 18. If the Pensioner survives the said period of five years the pension shall continue to be payable for the remainder of his life. The Trustees may at any time following the death of the Pensioner if they see fit so to do pay the commuted amount of the outstanding balance of pension payable over the five years certain to any one or more of the persons mentioned under Rule 18.

#### **Rule 8(d) – Pensions to Other Dependants**

- (i) If a Member, Pensioner or Deferred Pensioner (“the deceased”) dies without leaving a surviving spouse or civil partner surviving the Trustees shall be empowered at their absolute discretion in each case to pay a pension out of the Fund to or for the benefit of any one or more of the following:
  - (1) any natural or adopted children of the deceased aged under the age of 18 years or whilst undergoing full time education or vocational training until age 23 years;
  - (2) any child (whether or not a natural or adopted child of the deceased) who was at the date of death of the deceased dependent upon him by reason of a disability regardless of age;
  - (3) any other person including a partner of the deceased (whether of the same or opposite sex) if she or he was financially dependent upon the deceased at the date of his death;

Provided that for the purpose of establishing financial dependency it shall be sufficient if it can be shown that there was at the date of death a financial relationship of mutual dependence.

- (ii) Any pension payable under the terms of this sub-Rule shall be paid in such manner and if more than one in such proportions as the Trustees shall think fit. Provided that no such pension shall exceed in aggregate an amount equal to the pension which would otherwise have been payable had the deceased died leaving a surviving spouse or civil partner.

#### **Rule 18 – Trustees’ Discretion**

Any benefit provided on the death of a Member and expressed to be payable in accordance with this Rule 18 shall be payable at the discretion of the Trustees to such one or more of the spouse or civil partner, children and other dependants or relatives of the

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deceased Member or other person whomsoever, including without limitation the personal representatives of the deceased Member, in such manner and if more than one in such proportions as the Trustees shall think fit with power to the Trustees without being bound thereby to have regard to any written nomination made by the Member during his lifetime. Provided that, if any benefit payable hereunder would (if paid) vest in the Crown or the Duchy of Lancaster or the Duke of Cornwall as bona vacantia then the Trustees shall not pay such benefits but may continue hold it as a general accretion to the Fund.