

## Ombudsman's Determination

Applicant	Mrs Y
Scheme	Merchant Navy Officers Pension Fund ( <b>the Fund</b> )
Respondent	Merchant Navy Officers Pension Fund Trustee Limited ( <b>the Trustee</b> )

## Outcome

1. I do not uphold Mrs Y's complaint and no further action is required by the Trustee.

## Complaint summary

2. Mrs Y's complaint against the Trustee is that:
  - the calculation and payment of benefits following the death of her cousin, Mr S, was incorrect; and
  - the payment made did not accord with the formula provided on the Fund's website.

Mrs Y would like Mr S' estate to receive a lump sum of five times Mr S' pension.

## Background information, including submissions from the parties

3. Mrs Y is the cousin of the late Mr S and the legal representative of the late Mrs N's estate. Mrs N was the mother of the late Mr S. Mrs Y is represented by her brother, Mr Y.
4. Mr S was a member of the Fund from 1 September 1972 until 31 July 1989, when he became a deferred member. The Normal Pension Age (**NPA**) in the Fund was age 61.
5. In July 2014, the Old Section of the Fund underwent a buy-out. As a result, benefits accrued pre-6 April 1978, were insured with Rothesay Life, and separated from the New Section benefits of the Fund. Consequently, Mr S' service was divided into Rothesay Life benefits covering the period from 1 September 1972 to 5 April 1978 (**Old Section benefits**), and the New Section of the Fund benefits from 6 April 1978 to 31 July 1989 (**New Section benefits**).

6. As part of the buy-out process, the Trustee says it carried out a detailed examination of the Trust Deed and Rules which had been amended over time. It discovered that there had been a misinterpretation of the 1992 Trust Deed and Rules which was effective from 1 December 1992. Rule 9.2 says:

“A Member who dies having postponed his retirement beyond [NPA] shall be treated for all purposes of these rules as if he had retired on the day immediately preceding his death.”
7. However, clauses 3.1 and 3.2(i) of the same Deed says:

“3.1 This Trust Deed and scheduled Rules and Appendices are adopted as the Trust Deed and Rules regulating the Scheme with effect from the 1<sup>st</sup> day of December 1992 or other dates stated under the Rules in substitution for the recited Trust Deed and Rules but so that:

3.2(i) benefits payable to or in respect of Members who have on that date ceased to be in service shall be in accordance with the Trust Deed dated 2 January 1978 as amended from time to time.”
8. On 14 July 2014, Mr S died at age 63, before applying to receive his deferred pension from the Fund.
9. As Mr S left service in 1989, before December 1992, his benefits were payable in accordance with the Fund’s 1978 Trust Deed and Rules. Rule 12(e) sets out the benefits that would be payable on ‘Death of Member before commencement of deferred pension’. This rule was amended by a deed of amendment dated 23 June 1983, under which the benefit was incorporated into Rule 11.
10. Rule 11 (as amended) sets out benefits that will be payable on the ‘Death of a Member’. Rule 11(a)(ii) says:

“If being a male Member he shall leave no surviving widow, a sum equivalent to the amount of his own contributions in respect of his “Post-1978 Service” with interest assessed as under Rule 3(u)”.
11. Rule 3(u) of the 1978 Trust Deed and Rules refers to interest compounded at two point five percent annually, and calculated to the fifth day of April prior to any payment becoming due, or to the date of death.
12. On 29 August 2014, Mr S’ solicitors notified the Fund administrator of Mr S’ death and, shortly afterwards, the Fund administrator issued an initial letter to Mr S’ next of kin, his mother Mrs N.
13. On 22 October 2014, the Fund administrator received the completed death benefit claim forms from Mrs N.
14. In respect of Mr S’ Old Section benefits, Rothesay Life made a payment to Mrs Y in her capacity as Mr S’ legal representative.

15. In respect of Mr S' New Section benefits, the Fund administrator paid Mrs N £4,816.23 on 15 November 2014. It said this was the sum of the refund of contributions due, plus interest.
16. Following the death of Mrs N in June 2017, Mrs Y's brother, Mr Y, emailed the Fund administrator on 21 June 2017. He queried the amount paid to Mrs N in respect of Mr S' death benefits.
17. After viewing a page on the Fund's website regarding death of a deferred member after NPA, Mr Y contacted the Fund administrator again on 29 June 2017. He pointed out that the website said:

"If you die after leaving service and after Normal Pension Age, but before you have started to take your pension, the following benefits will be payable: A lump sum of 5 times member's pension (the member's pension is the amount that would have been payable if you had retired on the day before you died)."
18. In July 2017, the Trustee carried out an investigation and identified that the full interest due in respect of the New Section benefits at the time of Mr S' death, had not been paid to Mrs N. The Trustee sent a letter to Mrs Y in her capacity as the legal representative of Mrs N's estate, notifying her that an additional lump sum payment of £3,957.75 was due. This was subsequently paid on 10 August 2017.
19. The Fund administrator informed Mrs Y that the payment made in respect of the Old Section benefits was correct, and included the correct amount of interest.
20. In August 2017, Mr Y invoked stage one of the internal dispute resolution procedure (**IDRP**) on behalf of Mrs Y about the calculation and payment of benefits following the death of their cousin.
21. Mr Y was unhappy with the response from the Trustee and decided to proceed under stage two of the IDR. In its stage two response, the Trustee said:

"the Trustee regrets that the benefit paid was not calculated in accordance with the basis [Mr Y] read on the website, but as the actual benefit was calculated correctly and in accordance with the Trust Deed and Rules, the Trustee is unable to uphold [Mr Y's] complaint".
22. During our investigation, the Trustee said that the Fund administrator apologised for the error, and made a payment in respect of the outstanding interest to Mrs Y. It also said, in relation to the Fund website, that the benefits payable to and in respect of members, are determined by the Trust Deed and Rules, and can vary according to a member's individual circumstances and their period of service in the Fund.
23. The Trustee provided some additional information and clarification. It said it had not been possible to "adequately trace the previous version of the [Fund's] website" but that it could "anecdotally" state the following:

- “The discrepancy between post NRA death benefits for pre and post 1992 leavers came to light during due diligence carried out by an insurer around 2014 in preparation for a buy-out of pre-1978 [Fund] benefits.
- Prior to this point, the website contained information indicating a five year guarantee death benefit payable for any deferred member who dies after NPA and hadn’t claimed his / her pension.
- The website was not updated when the discrepancy came to light.
- The website was updated when the complaint on behalf of [Mr S] was received, as explained to [Mr Y] at the time.
- The correct benefit, according to the Trust Deed and Rules has been paid.
- The website has always indicated that, notwithstanding its contents, the [Fund’s] Trust Deed and Rules will always prevail.”
- In addition, the Trustee provided a breakdown of the calculations used by the administrator to determine the amount of outstanding interest due to Mrs N’s estate. It said the figure in 2017 was “derived from a detailed manual calculation with interest at 2.5% per annum from the end of each Fund year until the date of death”.

## **Adjudicator’s Opinion**

24. Mrs 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 first part of the complaint is the handling and payment of the death benefits due following the death of Mr S. In respect of the New Section benefits, the Trustee accepted that the full interest due at the time of Mr S’ death had not been correctly calculated and paid to Mrs N. It was the Adjudicator’s view that as the death benefits and interest had now been paid to the estate, Mrs Y has not suffered a financial loss.
- The second part of Mrs Y’s complaint is that the payment made was incorrect as it was not calculated by the formula set out on the Fund’s website. The death benefits paid were not in accordance with the information Mr Y read on the Fund’s website.
- The starting point for considering how benefits will be calculated in different circumstances is the Trust Deed and Rules. The guidance on the website that Mr Y read in June 2017, was applicable to members who had been in service on 1 December 1992. This did not apply to Mr S. Rule 11(a)(ii) of the 1978 Trust Deed

and Rules (as amended), sets out benefits that will be payable on the 'Death of a Member', and specifically, in Mr S' circumstances. Further, Rule 3(u) sets out the calculation basis for interest. From the information provided, the Adjudicator was satisfied that these provisions have been correctly applied.

- There is no dispute that when Mr Y viewed the Fund's website in June 2017, the information it provided indicated that death benefits would be calculated in a different way to that set out in Rule 9.2. This information was only partially correct as it did not apply to all members' individual circumstances. However, the Adjudicator was of the view that it was not reasonable for Mr Y to rely on this information alone when trying to establish what death benefits would have been paid from the Fund.
- The guidance on the Fund's website now says: "For members who left service before 1 December 1992, they are treated in the same way as the death of a deferred member under Normal Pension Age". It was not until August 2017, that the website was updated to clarify the benefits payable on death post NPA.
- Despite the Trustee's delay in clarifying the information on the Fund's website, the Adjudicator was satisfied that the information was for guidance only, and that the benefits were calculated in accordance with the Trust Deed and Rules. The Trustee can only pay the benefits provided for in the Trust Deed and Rules and this has now been done.

25. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

26. Mr Y provided his further comments which do not change the outcome. Mr Y said:-

- It is unacceptable for any organisation, particularly in the modern era, to state in very clear and obvious language, the benefits that would be due, "only to find somewhere within the reams of Terms & Conditions that what has been stated is, in fact, not the case".
- There have been a number of studies that show it is almost unheard of for anyone to read lengthy terms and conditions, particularly on the internet where people click the "Accept" icon to receive services etc. This makes it all the more important for organisations and companies to state clearly and honestly the services and/or benefits they provide so as not to mislead. Organisations that do not, should be held to account.
- It is extremely disturbing that, as far as he knows, the Trustee has "made no attempt whatsoever to contact others who have deferred their pensions to make it clear that they too, dependent on their contribution dates, may not be entitled to receive a lump sum equal to 5 times their pension for their estate upon their deaths". Placing a note on the web site that everything is subject to

the 'Terms & Conditions' "does nothing to make those members who were potentially misled by previous statements aware of this situation."

- He had observed a pattern from the Trustee that is disturbing because it suggests "rightly or wrongly...that [the Trustee is] pursuing questionable practices that are designed to pay out less, at the expense of members":
  - The Trustee was aware of "the incorrect benefit description that remained uncorrected on the website for years".
  - The Trustee admitted that the benefits in respect of the New Section Benefits were incorrect and it only corrected this when questioned. How often are underpayments sent out that are not questioned, particularly at a time when family members are still grieving?
  - The Trustee is seemingly unwilling to contact others who may have been misled by the clear but incorrect statements on its own website.
- At the very least, he expected a recommendation that all members with deferred pensions be contacted to ensure that they are aware that they too may have been misled by the statements on the website.

27. I agree with the Adjudicator's Opinion and I will therefore only respond to the points made by Mr Y for completeness.

### **Ombudsman's decision**

28. I note the Trustee accepted that the full interest due in respect of the New Section Benefits had been incorrectly calculated and paid to Mrs N. I agree with the Adjudicator's view that as the death benefits and interest has now been paid to the estate, the estate has not suffered a financial loss.

29. I have noted Mr Y's assertions about the clarity of terms and conditions. For schemes such as the Fund, it is not uncommon for there to be some guidance for members which provides general information about the scheme, including when benefits will be payable. I do not agree with Mr Y's assertion that he was misled as to the benefits that ought to have been paid at the time of Mr S' death. I agree with the Adjudicator that unfortunately, the information on the website was not incorrect, but it was not applicable in the circumstances of Mr S' death. Despite what Mr Y read, it did not change the benefits payable under the Trust Deed and Rules.

30. I am satisfied that as Mr S left service on 31 July 1989, Rule 9.2 did not apply to him. Rule 11(a)(ii) of the 1978 Trust Deed and Rules (as amended), sets out benefits that will be payable on the 'Death of a Member', and specifically, in Mr S' circumstances. Further, Rule 3(u) sets out the calculation basis for interest. I agree with the Adjudicator that these provisions have been correctly applied.

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31. I have noted Mr Y's concerns about other members who may have been affected by the previous version of the website, and the reason he believes the Trustee has not contacted these members. I accept that it is a pity that the information on the website was not clear. However, it is not my role to prescribe ways in which a scheme must be run and when considering a complaint before me, I do so based on the individual facts of that complaint. Ultimately, it is Rules of the Fund that will need to be applied when benefits are due. The Trustee has confirmed that this notice has always been on the Fund's website. I make no finding in relation to whether or not the Trustee should contact deferred members who left employment before December 1992. The guidance on the website has been updated to reflect the correct position.
32. I do not uphold Mrs Y's complaint.

**Anthony Arter**

Pensions Ombudsman  
27 November 2019