

## Ombudsman's Determination

<b>Applicant</b>	Ms Jayne Askew
<b>Scheme</b>	Sapa UK Pension Scheme ( <b>the Scheme</b> )
<b>Respondent</b>	Sapa (Pension Trustee) Ltd ( <b>the Trustees</b> )

### Complaint summary

Ms Askew has complained that the Trustees have not paid her a dependant's pension or the lump sum death benefit, following the death of the late Mr Brown.

### Summary of the Ombudsman's determination and reasons

The complaint is not upheld against the Trustees because the decision to award a dependant's pension and whom to award the lump-sum death benefit to is at the Trustee's discretion and I am satisfied that their discretion has been exercised correctly in both instances.

## DETAILED DETERMINATION

### Material Facts

1. Mr Brown was a pensioner member of the Motorcast Section of the Scheme, having retired on 1 January 2005.
2. The provisions governing the pension benefits on death for Motorcast Members after retirement are set out in Section 17, Rule 3 of the Definitive Trust Deed and Rules (**the Scheme Rules**).

Rule 3.1 sets out the provisions for a lump sum death benefit:

On the death of a Motorcast Member (other than a person who is a Motorcast Member by virtue of being a spouse, Dependant or Eligible Child) within five years after his retirement the Trustee shall hold on Trust an amount equivalent in value to the balance of the pension which he would have received during the remainder of the five years but without taking into account any future increase in pension after his death or £1,500 if greater. If such Motorcast Member dies more than five years after his retirement then an amount to £1,500 will be paid on Trust.

Rule 3.3 of the Scheme Rules sets out where a dependant's pension is payable:

Where at the Motorcast members' death he was not married, or in the opinion of the Trustee was not living with his lawful spouse (and whether or not there was any financial dependency), the trustee may pay as a pension an amount not exceeding the amount of pension payable under Rules 3.2 of this schedule to another dependent and, to the extent that the Trustee does so, the rights of the lawful souse are forfeited.

"Dependant" is defined as:

...in relation to any Motorcast Member, any individuals (whether or not Relatives) who, in the opinion of the trustee, are or were at the time of the Motorcast Member's death wholly or mainly dependent upon the Motorcast Member.

"Trust" is defined as:

... In relation to any sum directed to be held on such trusts under this Schedule:

(k) the Trustee may at its discretion pay or apply the whole or any part of that sum to or for the benefit of all or any of the Relatives, Dependents, personal representatives or nominated beneficiaries of the deceased Motorcast Member in such shares as the Trustee may decide....

.... (m) the Trustee may, but without being bound to do so, have regard to any document signed by the Motorcast Member expressing his wishes about the disposal of any sum to be held upon trust, and may issue forms for the purpose, and for these purposes any person named in such document who is not a Relative or Dependent of the Motorcast Member shall be a “nominated beneficiary”;

3. Ms Askew and Mr Brown had been living together as a couple since 1991. During this time Mr Brown provided the main source of income and Ms Askew was a homemaker and provided care for Mr Brown’s granddaughter. The property they lived in, 54 Noon Close, was held in both their joint names as when they began co-habiting Ms Askew contributed a one-off payment to the mortgage and paid Mr Brown’s credit card debts with the proceeds from the sale of her former home.
4. In October 2008 Ms Askew separated from Mr Brown and left 53 Noon Close following allegations made by Ms Askew’s daughter that Mr Brown had sexually abused her as a child. In the following months these allegations were investigated and Mr Brown was due to be charged with eight counts of indecent assault which he was advised of on 3 December 2009. However Mr Brown committed suicide on 8 December 2009, before he had attended the police station.
5. After leaving 53 Noon Close, Ms Askew stayed with friends and family at various properties. She paid them rent of around £40-50 per week on top of her normal monthly outgoings. Ms Askew remained unemployed throughout the period of her separation from Mr Brown, until after his death. She had access to two bank accounts, which were the sources of her income.
6. She had one bank account in her sole name in to which she received job seekers allowance from May 2009 until Jan 2010 of £128.60 every fortnight. After this due to being unwell and unable to look for work she was no longer able to claim this benefit or employment support allowance.

7. Ms Askew also received £67,994.73 from the proceeds of the sale of 53 Noon Close in August 2009, which was paid in to her personal bank account. In late August 2009 £70,000.00 was transferred from this account to a savings account set up for the purpose of holding the money intended to be used for purchasing a house. Ms Askew purchased a new property on 16 July 2010 for £93,000.00.
8. In June 2009 she also received £4,332.00 from Mr Brown as he wished to keep the caravan they had purchased together in 2006, which was also paid in to her personal bank account.
9. The monthly expenditure on Ms Askew's personal account is as follows (balance at end of month in brackets).

2009

- January - £40 (£98.98)
- February - £0 (**£98.98**)
- March - £0 (**£98.98**)
- April - £200 (**£23.78**)
- May - £195.11 (**£214.47**)
- June - £357.51 (**£121.16**)
- July - £256.89 (**£121.57**)
- August - £511.98 (**£4,198.49**)
- September - £1,106.79 (**£1,440.15**)
- October - £844.71 (**£1048.60**)
- November - £1251.11 (**£420.67**)
- December - £452.70 (**£206.51**)

2010

- January – £228.46 (**£106.65**)
- February - £50 (**£116.65**)

10. Ms Askew also had access to a joint bank account she held with Mr Brown which was funded by Mr Brown's income. When Ms Askew wrote to the trustees in February 2010, she said she was using the account for emergencies. In later correspondence she has said that she was using the account to withdraw money to pay for her share of rent and utilities at each of the places she was residing in between October 2008 and July 2010, while she was not receiving job seekers allowance. This was meant to amount to £125.00 per week. Mr Brown was also going to be responsible for her petrol and car maintenance costs.
11. Bank statements show Ms Askew was using the account to make withdrawals over a period of time. Her monthly expenditure on the account was as follows:

2008

- August - £552
- September - £406
- October - £484
- November - £1,087
- December £1,114

2009

- January - £639
- February - £826
- March - £470
- April - £122
- May - £288
- June - £600
- July - £294.34
- August - £182.66
- September - £0
- October - £0
- November - £250

- December - £1073.63

2010

- January - £1,346.48
- February - £0
- March - £0
- April - £349.00

12. Ms Askew had highlighted certain transactions on the statements, which were completed specifically with Mr Brown's permission. These are as follows:
  - On 19 November 2008 a cash withdrawal of £250 for car repairs
  - On 2 December 2008 a payment of £55 in Primark for bedding to be used whilst staying with her daughter
  - On 4 December 2008 a payment of £228 in Ikea for a bed to be used whilst staying with her daughter
13. There were also regular direct debits coming out of the joint account. Some of these were for the benefit of Ms Askew. These were as follows:
  - Orange mobile phone bill
  - AA breakdown cover
  - Tumble dryer insurance, for the appliance owned by Ms Askew
14. Ms Askew had access to Mr Brown's American express account after they had separated. Access to this account was stopped in April 2009, so this was not in use at the time of Mr Brown's death.
15. Following Mr Brown's death in December 2009 Ms Askew tried to claim a dependant's pension; however the Trustees have denied her claim.
16. The Trustees have also awarded the lump sum death benefit of £1,500.00 to Mr Brown's son, Mr Martin Brown. The decision was originally made on the basis that Mr Martin Brown had paid for the funeral expenses. However Ms Askew subsequently supplied the Trustee's with information that show she reimbursed Mr Martin Brown for some of these costs from the estate, following which the Trustee's reconsidered their decision and reached the same outcome.

**Summary of Ms Askew's position**

17. Ms Askew has said she was dependent upon using the joint account which was funded by Mr Brown for her basic living expenses. She has also told us it was Mr Brown's intention for her to remain dependent on him until she could become financially stable. At the time of his death she has said she was still dependent on him as she had no other source of income apart from Job Seekers allowance, which was then stopped in January 2010.
18. Ms Askew has told us the proceeds she received from the sale of 53 Noon close, of £67,994.73 and the £4,332.00 from the caravan were for the purchase of a new home and therefore would not be able to cover her ordinary living expenses. Mr Brown was aware of this intention and allowed her to remain using the joint account, instead of using this money for living expenses. Ms Askew has also said that the Trustees did not request full information on her use of the money she received from Mr Brown, so they have not considered the fact she did not use this money for her living expenses.
19. Ms Askew has also said the drop in withdrawals from the joint account between August 2009 and December 2009, was due to her ill health. This meant she was leaving the house less and therefore making less withdrawals
20. Ms Askew has also told us she thinks the Trustees have acted incorrectly by paying the lump sum death benefit to Mr Martin Brown, as Mr Brown had completed a nomination form which stated she was to be the beneficiary of any lump sum and refused to change this after they had separated
21. She also thinks the Trustees made their decision based on incorrect facts as she reimbursed Mr Brown for the funeral expenses.

**Summary of the Trustees' position**

22. The Trustees have said the award of the dependant's pension is entirely at their discretion and based on the evidence provided, they do not think Ms Askew meets the definition of a dependant as set out in Scheme Rules.
23. The Trustees think that as Ms Askew had the means to pay for her own home from the proceeds of the sale of 53 Noon Close, she was not dependent on Mr Brown at the time of his death. The Trustees also think that as there was drop in withdrawals from the joint account by Ms Askew in the months between receiving the sale

proceeds and Mr Brown's death, that she was using this money to support herself. They do not agree with the submissions made by Ms Askew that the drop in withdrawals was because she was in poor health, as she has also said she was in poor health after Mr Brown's death however there were a larger number of withdrawals during this period.

24. Once 53 Noon Close had been sold, Mr Brown had the statements for the joint account redirected to his Mr Martin Brown's address. The Trustees believe it is reasonable to expect that these statements should have been redirected to Ms Askew, if they had still been financially interdependent. As they weren't, the Trustees do not think this sits well with the submission that Mr Brown and Ms Askew were financially interdependent.
25. Ms Askew had use of the American Express card only until April 2009. Therefore as she was not reliant on the card at the time of Mr Brown's death, the Trustees believe this further shows that she was not a dependant.
26. The Trustees are therefore relying on the submission originally made by Ms Askew in February 2010 that she was only using the joint account for emergencies and to withdraw money when she was not receiving job seekers allowance. They think this shows that Ms Askew was not wholly or mainly dependent on Mr Brown at the time of his death.
27. The Trustees have also said decision to pay the lump sum death benefit to Mr Martin Brown is also at the their discretion. They have said as the nomination form was dated 20 years in the past, and as Mr Brown and Ms Askew had since separated they couldn't rely on it. They have therefore taken in to account the fact that Ms Askew received the proceeds from Mr Brown's estate and from the sale of 53 Noon Close, and that Mr Martin Brown paid the funeral expenses. The Trustees have reconsidered the decision in light of the fact Mr Brown was reimbursed for funeral expenses after their original decision, however they still think the original decision is correct.



## Conclusions

28. The decision relating to whether or not a dependant's pension is payable and who the recipient of the lump should be requires the Trustees to exercise its discretion.
29. In exercising a discretionary power, a decision maker must ask itself the correct questions, direct itself correctly in law, take into account all relevant but no irrelevant factors, and reach a decision which is not perverse (in other words, a decision which no other decision maker, faced with the same circumstances, could reasonably come to). How much weight to give to particular factors is a matter for the Trustees and I can only interfere with a decision if I consider it to be perverse.

### *Dependant's pension*

30. Following the Scheme Rules, in order for the Trustees to be able to award Ms Askew a dependant's pension they must be satisfied that she was wholly or mainly dependent on Mr Brown at the time of his death. Ms Askew's points of complaint relate to the Trustees having reached the incorrect decision as to her dependency on Mr Brown. This is a very emotive case with a difficult set of circumstances that I can appreciate Ms Askew has had to deal with, however I can only look impartially at whether the decision has been reached correctly and is not a perverse outcome.
31. There has been further and more detailed information that has been supplied to me during the course of this investigation especially in regards to Ms Askew's own bank account and income. However during their own decision making the Trustees did obtain all the relevant information needed to form an understanding of the situation, Further to this, I do not think this information means the original decision is unreasonable.
32. The basic facts remain the same that Ms Askew had been separated and living independently from Mr Brown for over 12 months at the time of his death, and that this was not intended to be a temporary situation as steps had been taken to separate their financial affairs including the selling of joint property. Ms Askew did still have access to the joint account and withdrew money and Mr Brown had retained responsibility for some of her direct debits, but the bank statements do show that gradually Ms Askew had begun using more money from her own account which was funded by JSA payments and money she received as part of the separation process. Although Ms Askew considers this money she received due to

separating from Mr Brown as establishing her dependency on him, this was in fact money that she was entitled to due to shared ownership and she was therefore not dependent on Mr Brown in receiving this. At the time this money was partly used for everyday spending as well as a large amount being put aside for the intention of purchasing a property for herself.

33. There appears to be no irrelevant information that has been considered by the Trustee's in reaching their decision as the factors addressed by them have been in relation to establishing the above circumstances, none of which have been or in fact can be factually disputed. The complaint has arisen due to Ms Askew and the Trustee's having a different interpretation of how this set of circumstances should be viewed, including how much weight should be placed on certain factors and what they suggest regarding Mr Brown's and Ms Askew's intentions relating to her financial dependency. This is, however, at the Trustee's discretion to do so providing the outcome isn't perverse. Therefore having considered the outcome they reached in light of the facts presented to them, my decision is that the conclusion reached cannot be classed as perverse.
34. So, although there is no dispute that Ms Askew was still using some of Mr Brown's funds to supplement her income at the time of his death, it isn't unreasonable for the Trustees to have concluded that nevertheless she was no longer wholly or mainly dependent on him. It therefore follows that Ms Askew's complaint regarding the payment of a dependant's pension to her is not upheld and I will not be directing the Trustees to reconsider their decision.

*Lump sum death benefit*

35. The Trustees made the decision to award Mr Browns son, Martin Brown, the lump sum of £1,500.00 after considering that the nomination form completed by Mr Brown to be inaccurate due to a change in circumstances and the length of time since it was completed. They therefore took other factors in to account such as that Ms Askew was already provided for and that Mr Martin Brown had paid for the funeral expenses.
36. As I have said above I can only interfere with a decision if I consider it to be perverse as the decision is entirely at the Trustee's discretion. The Scheme Rules do not bind the Trustee's to follow the nomination form and considering the change in Mr Brown's and Ms Askew's relationship, it wasn't unreasonable for the Trustee's

to have looked at additional factors to identify if there were other potential beneficiaries. Even disregarding the consideration of Mr Martin Brown paying for the funeral expenses, the Trustees have exercised their discretion correctly and have not come to a perverse decision based on the facts.

37. So it follows that Ms Askew's complaint regarding the Trustee's payment of the lump sum death benefit to Mr Martin Brown is not upheld and I will not be directing the Trustees to reconsider their decision.

**Jane Irvine**

Deputy Pensions Ombudsman  
29 May 2015