

Ombudsman's Determination

Applicant	Mrs N
Scheme	BAE Pension Scheme (the Scheme)
Respondents	BAE Pension Fund Trustees (the Trustees)

Outcome

1. I do not uphold Mrs N's complaint and no further action is required by the Trustees.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs N's complaint is that the Trustees have incorrectly assessed how the survivor's pension benefits under the Scheme should be split. In particular, the Trustees have decided to split the survivor's pensions between Mrs N and another woman (**Ms S**).

Background information, including submissions from the parties

4. Mr N was Mrs N's husband and a Member of the Scheme. On 12 August 2013, he passed away. Mr and Mrs N had been married for over 40 years at the time, and Mrs N was Mr N's legal wife at the date of his death.
5. For clarity, Mr N was also a member of the BAE Systems Executive Pension Scheme. However, as the survivor's pension benefits under both schemes have been apportioned to the same parties in the same way, and under the same provision, I have just referred to the Scheme for simplicity. However, my Determination applies to benefits from both survivor's pensions.
6. On 15 July 2014, the Trustees wrote to Mrs N and confirmed what benefits she would receive from the survivor's pension. In particular, she was to be awarded a lump sum and gross annual pension equivalent to 50% of the total survivor's pension payable from the Scheme. The remaining benefits would be payable to Ms S, who Mr N had been in a relationship with at the date of his death. However, as Mr N's legal wife, Mrs N felt that she should receive everything.

7. The relevant rules for the Scheme state:

“Rule 8.1 – “If the Member dies leaving a surviving spouse or civil partner, the surviving spouse or civil partner will receive a survivor’s pension for life determined in accordance with Rules 8.3 to 8.5 inclusive, except that:

8.1.1 - if the Member and the spouse or civil partner were not living together as husband and wife at the date of the Member’s death and, in the opinion of the Trustees, the marriage or civil partnership had broken down, the Trustees may decide in their discretion to reduce or not to pay a pension to the spouse or civil partner;

Rule 8.1.2 - if the Member was in the opinion of the Trustees living at the date of death as husband and wife with a person of the opposite sex to whom he or she was not legally married...the Trustees may decide in their discretion to treat that person as the Member’s surviving spouse or civil partner;

Rule 8.1.3 - if the circumstances set out in Rule 8.1.1 and 8.1.2 both apply, the Trustees may decide in their discretion to treat either one of those persons as the Member’s surviving spouse or civil partner or to apportion the survivor’s pension between them on such basis as they think fit...”

8. Mrs N feels the Trustees have failed to exercise their discretion appropriately. She acknowledges that Mr N had not been living with her at the time of his death, and that he may have been living with Ms S since 2012. However, she emphasises that she therefore had a marriage with Mr N for over 40 years, whereas Ms S only co-habited with Mr N for a relatively short space of time. She also states that Mr N was always committed to honouring his financial responsibilities towards her and that they had been in the process of separating their finances equally before he died.
9. Mrs N has provided evidence that she and Mr N had been discussing their finances shortly before his death, and that Mr N wanted to provide for her. In particular, the minutes of a mediation meeting held on 12 July 2013 confirm that both parties agreed there should be an equalisation of pension income.
10. Mrs N has also provided evidence which she feels indicates the marriage had not completely broken down. In particular, she has provided a copy of an email from Mr N dated 5 January 2013, in which he says “I would really like to see you and understand [if] there is any chance for us in the future”.
11. On 14 March 2013, there was another email from Mr N to Mrs N, in which Mr N said:
- “...this is an interim agreement between ourselves...but not at this stage a legal settlement and divorce...A full and final divorce settlement will be achieved at a time to be agreed when the Barn is eventually sold...My intent is to achieve close to 50/50 as possible”.

12. On 2 August 2013, there was a further email from Mr N to Mrs N, in which Mr N said:

“...more data...will be needed for our final settlement when we eventually sell the Barn and divorce. But...from my side that will be a long way off to allow you to stay in the Barn in the interim and establish your way ahead”.
13. Lastly, Mrs N has argued that, even if she and Mr N had divorced, she would have received more benefit from the Scheme than she does now. For example, she states she would have obtained a Pension Sharing Order, which would have entitled her to the equivalent of the full survivor's pension.
14. Overall, she does not agree it is reasonable for the Trustees to apportion the survivor's pension benefits equally.
15. In responding to Mrs N's complaint, the Trustees stated they had exercised their discretion in line with the relevant rules of the Scheme. In particular, they said they had evidence to show that Mr and Mrs N's marriage had broken down at the date of Mr N's death. Furthermore, they also had evidence that Mr N was living with Ms S as husband and wife at the date of his death.
16. The Trustees did not provide Mrs N with the evidence they had been provided by Ms S to support their decision. The reason for this was because they considered the information to be sensitive and they did not want to breach Data Protection legislation. When the complaint was escalated, however, the Trustees provided a number of documents to our Office to support their decision in relation to the survivor's pension benefits.
17. In particular, the Trustees provided two letters from Wolferstans solicitors – who represented Mr N – dated 16 January 2014 and 4 February 2015. The letters confirm that Mr N had a lease on his own flat from April 2012 to April 2013, but that he did live with Ms S throughout this time and up until the date of his death.
18. The Trustees have also provided evidence that Mr N and Ms S were in the process of buying a property together. In particular, they have provided a copy of the results of a property survey, which was completed on 31 July 2013. The report was addressed to both Mr N and Ms S and dated 1 August 2013. The Trustees have also provided an invoice for the survey, addressed to both Mr N and Ms S and dated 6 August 2013.

Adjudicator's Opinion

19. Mrs N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees. The Adjudicator's findings are summarised briefly below:
 - The Trustees have a discretionary power under Rule 8.1 of the Scheme to apportion the survivor's pension benefits under certain circumstances.

- The Trustees had sufficient evidence to show that Mr and Mrs N were not living together at the date of his death.
 - The emails Mrs N has provided between her and Mr N do indicate a potential reconciliation. However, the more recent emails consistently referred to divorce.
 - The Trustees had sufficient evidence that Mr N and Ms S were living together as husband and wife at the date of his death. In particular, the fact they were co-habiting and buying a property together meant it was reasonable for the Trustees to treat them as husband and wife. The conditions under Rule 8.1 were therefore satisfied.
 - The Trustees had confirmed that they felt a 50/50 split was reasonable, as it took into consideration both the significant amount of time Mr N and Mrs N were married, as well as the relationship Mr N had developed with Ms S before he died.
 - By paying Mrs N part of the relevant benefits, the Trustees had also ensured she had been considered as a financial dependent of Mr N.
 - Overall, there had been no maladministration and, as such, the complaint was not upheld.
20. Mrs N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs N provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mrs N for completeness.

Ombudsman's decision

21. The Trustees have a discretionary power under the Scheme to decide how to pay survivor's pension benefits. I can only interfere with this power in certain circumstances. In particular, the case of *Edge v Pensions Ombudsman* [2000] Ch 602 Court of Appeal sets out the circumstances in which I might decide to remit a decision back to the Trustees and ask them to reconsider it. These circumstances may be summarised as follows:
- the wrong question has been asked,
 - the decision maker has misdirected itself in law (i.e. has made an incorrect construction of the Rules), or
 - the decision was perverse (i.e. a decision which no reasonable decision maker would make).
22. I agree with the Adjudicator that the Trustees obtained the relevant evidence before deciding that the criteria under Rule 8.1 were satisfied. This meant they could then apportion the benefits between Mrs N and Ms S. I also consider that their decision to split the benefits 50/50 is not perverse, particularly as they have provided a

reasonable explanation for this decision. Whilst Mrs N may not agree with this, it is not one that a reasonable decision-maker would never reach.

23. It may be helpful for me to emphasise that my role is not to decide whether I agree with the Trustees' decision itself. I would like to be clear also that, by not upholding Mrs N's complaint, I am not saying that I believe her relationship with Mr N was equal to Ms S's relationship with Mr N.
24. I find that the Trustees have followed the Scheme rules and, in exercising their discretion, they have carefully considered all relevant information and have ignored irrelevant ones. I consider that it was a proper exercise of their discretionary power.
25. Therefore, I do not uphold Mrs N's complaint.

Anthony Arter
Pensions Ombudsman
28 February 2017