

Ombudsman's Determination

Applicant	Mr N
Scheme	Teachers' Pension Scheme (the Scheme)
Respondents	Teachers' Pensions (TP) Department of Education (DfE)

Outcome

1. Mr N's complaint against TP is upheld in part. To put matters right, TP shall follow the recommendations in paragraph 70 below.

Complaint summary

2. Mr N has complained that TP has:
 - turned down his retrospective application to receive a dependant child's pension following the death of his father, Mr HN, in 2006;
 - refused to transfer the payment of his late mother's widow's pension to him when she died in 2015; and
 - repeatedly provided misleading information regarding his entitlement from the Scheme.

Background information, including submissions from the parties

3. Mr N's parents, Mr HN, and Mrs N were both teachers and were members of the Scheme which was a defined benefit arrangement.
4. On 31 August 1982, Mr HN retired. As part of his application for retirement benefits, he provided details of his dependants. He named his wife and his son, Mr N. Mr N was age 13 at the time.
5. In 1986, Mrs N retired.
6. On 26 September 2006, Mr HN died.

7. Mr N and Mrs N completed an application form for death benefits, Mrs N was then awarded a widow's pension.
8. On 14 June 2015, Mr N sent an email to TP. He said in summary:-
 - Both his parents were teachers who had taught until retirement. He gave up his career to care for them both when they each developed cancer.
 - His father died in 2006 and now his mother was currently dying with days to live. As a result of caring for them he was left jobless and unable to pay his bills.
 - Was there any way that his parents' pensions could be transferred to him as he was now facing homelessness as he had given up everything to care for them.
9. On 19 June 2015, Mrs N died.
10. On 6 July 2015, Mr N telephoned TP. Mr N kept notes of the telephone call which said in summary:-
 - He was not able to claim his mother's pension.
 - His father's pension could not be transferred to Mr N as it had already been paid to his mother as a widow's pension. A widow's pension ceased when its recipient died.
 - Mr N could have been nominated to receive the pension before his father died, however he would not have been advised about this because a surviving widow would automatically have the pension paid to her.
 - The only thing that could be done in the circumstances was to put in a letter of appeal explaining the situation with the completed application for death benefits. If he could prove financial dependency on his parents because he gave up his career to look after them, then there was discretion to award him a pension on appeal.
11. On 14 July 2015, Mr N sent the completed application for death benefits to TP.
12. On 29 July 2015, Mr N telephoned TP and his call notes said:-
 - He only needed to supply a death certificate and evidence of financial dependency.
 - In the absence of a parent making a nomination, a child could only receive the pension after death if that child was disabled. Mr N informed TP that his father was not told of his right to nominate him, otherwise he would have done so given the circumstances of Mr N's agoraphobia.
13. On 9 November 2015, Mr N sent a letter to TP (**the application letter**) and said he wanted to make a claim for death benefits due to financial dependence because of

caring responsibilities and long-term psychological illness and disability. His position was:-

- During the 1980s at secondary school, he was subjected to extreme levels of verbal bullying which resulted in psychological damage and severe agoraphobia.
 - As a result, he became very dependent on his parents not only for emotional support but also financially as he was unable to progress his education or leave the house to undertake any form of work.
 - He had many years of being housebound and then, after working with psychological services, he was able to pass A levels as a mature student. He attended university locally and obtained a law degree and postgraduate diploma. His parents gave up their retirement time to sit outside in the car every day while he studied inside as he was unable to attend or stay in school or university without their presence.
 - He provided medical records from 1990 to 1998 to verify his psychological issues. Between 1998 and 2001 he managed some on/off work but only with the assistance of his parents sitting outside.
 - Shortly after this his mother had a heart attack and deteriorating arthritis so he had to increasingly assist her. In addition, his father started to suffer from health difficulties and was diagnosed with cancer.
 - His father died in September 2006 and then all the bank accounts were transferred into joint names for Mrs N and Mr N to share bills, except for a Post Office account which was to receive his benefit payments.
 - His mother developed bowel cancer in 2007. She then died on 19 June 2015.
14. On 11 November 2015, TP sent a letter to Mr N and acknowledged the application letter.
15. On 29 February 2016, Mr N sent a letter to TP chasing a response to the application letter.
16. On 6 April 2016, Mr N telephoned TP to chase a response to the application letter. TP informed him it was still considering the application.
17. On 20 April 2016, TP sent a letter to Mr N which said in summary:-
- No further benefits were due to his late mother's estate and there were no dependant benefits due.
 - His mother had been receiving a widow's pension due to his father's death which had now ended as she had sadly died.

- His mother had a member record. However, it could confirm that no funds were due as she had a refund of contributions on 1 December 1963 and all funds had been withdrawn.
18. On 11 May 2016, Mr N sent a letter to TP which said that he had been told previously that both his mother and father had pensions. He had been supplied with reference numbers for two pensions. In addition, he had previously been informed that he could qualify for these pensions by providing evidence of his disability and financial dependence. He had provided the requested evidence with the application letter.
19. On 10 January 2017, Mr N sent a letter to TP and asked to make a complaint.
20. On 25 January 2017, TP sent a letter to Mr N and said in summary:-
- Following Mr N's telephone call of 6 April 2016 his enquiry was referred to the technical team for guidance. It apologised that the outcome of this enquiry was not relayed to him.
 - Mrs N did not have any pensionable service to her credit under the Scheme. For a survivor's pension to be paid, a female member of the Scheme was required to have undertaken pensionable employment on or after 6 April 1988. As Mrs N's service ended prior to this date, there was no entitlement in respect of her teaching service.
 - It confirmed that on 22 January 1982, Mr HN did name Mr N as a dependant. However, Mr N did not enter his own details as a dependant on the death benefits application form after Mr HN's death. The beneficiary was named as Mrs N, to whom the widow's pension was paid.
 - With reference to his late father, Mr N would be required to provide documentary evidence that he was financially dependent on Mr HN at the time of his death (as opposed to interdependent). He also needed to prove, in accordance with the regulations in place in 2006, that he had been continuously incapacitated since age 17.
 - This was its final response to the complaint but if he were unhappy, he could raise a complaint under the Scheme's Internal Dispute Resolution Procedure (IDRP).
21. On 13 February 2017, Mr N sent a letter to TP and asked how the complaint could be closed if he could supply more evidence.
22. On 1 March 2017, TP sent a letter to Mr N which said in summary:-
- The last letter it had sent was the final reply about Mr N receiving his late mother's widow's pension. The reply provided information about the possibility of Mr N claiming a dependant child's pension in his own right which was a separate matter.

- Subject to proof of financial dependence, Mr N could claim a dependant child's pension in respect of his late father's teaching service. He should have done this when he completed the death benefits application form in October 2006 if Mr N was financially dependent on his late father at that time.
 - If Mr N was able to prove that he was financially dependent on his father at the time of his death, then his entitlement to a dependant child's pension would commence from that date.
23. On 14 March 2017, Mr N sent a letter to TP and said that it had a legal duty to advise each nominated beneficiary of their entitlement to receive the widow's pension. TP also owed a legal duty to either provide detailed financial advice or advise each nominated party of the need to seek independent financial advice. This was to enable all the parties to jointly make an informed decision as to who should accept the nomination. Each party also needed to sign a document to state that they had been properly advised.
24. On 11 April 2017, TP sent a letter to Mr N and said in summary:-
- Employees of TP were not registered or required to give financial advice. If an individual did not understand something they could ask TP for clarification, but guidance on which financial decisions might be made must come from a registered financial advisor.
 - No financial advice was required as to who should receive the widow's pension as there was only one person to whom such a pension could be paid. This was in accordance with the regulations governing the Scheme.
 - When his father nominated him, it was as a dependent child rather than a financially dependent adult. Regardless of the lack of nomination it was still open to Mr N to have named himself as a financial dependant at the time of his late father's death and to have provided documentary evidence to support his claim. This was what he was currently being asked to do.
 - It could only reiterate that there was no provision for a widow's pension to be passed on to a surviving child on the death of a widow. A surviving financially dependent child must prove a separate entitlement to a dependant child's pension, and this is normally done at the time of the supporting teacher's death.
25. On 14 November 2017, Mr N sent a letter to TP and provided evidence of financial dependence to support his application for a dependant child's pension in respect of Mr HN's entitlement. This included that he lived at home and his father paid the household bills, as well as paying for a car for Mr N, his car insurance and for holidays.
26. On 8 December 2017, TP sent a letter to Mr N which said in summary:-

- To be entitled to a dependant child's pension Mr N would need to have become incapacitated whilst being a child (under age 17 or in full time education) and continue to be incapacitated.
- In the application letter Mr N explained that he had worked between 1998 and 2001. Also, when he first enquired about the possibility of his entitlement to a pension from TP, Mr N had said that he had given up his career to care for his parents. In the circumstances he did not meet the condition of continued incapacity and was not eligible to receive a dependant child's pension.

27. On 9 February 2018, Mr N sent a letter to TP which said that he wished to appeal the decision to not award both the widow's pension and the dependant child's pension. He set out the grounds for his appeal which were in summary:-

- The TP death benefit claim forms that he completed in 2006 with his late mother contained misleading and confusing information. The information in section 6 said:

“Under the Teachers Pensions Regulations, a single teacher had the opportunity to nominate ONE financially dependent relative that is a parent, brother, sister or stepparent to receive a pension upon their death.”

- The claim form clearly said one relative, and this misled him and his mother to believe that they had a choice between her receiving the widow's pension or Mr N receiving the dependant child's pension but not both. This meant they did not make a claim for a dependant child's pension at that time.
- TP did not inform him and his late mother that they should seek financial advice following his father's death in 2006. Any institution offering a financial product or service where key choices needed to be made was under a duty to either provide financial advice or advise of the need to seek independent financial or legal advice.
- He was supplied with deliberately misleading information over a two-year period regarding his entitlement and the evidence that was required to support his death benefits claim. There was also a deliberate concealment that he had been nominated by his father to receive the dependant child's pension.
- He had been discriminated against under the Equality Act 2010 as he had a lifelong disability that could vary in intensity at any given time. He had been able to do some work but in a reduced capacity and at a much lower level than he would have been capable of had he not been disabled.
- Promissory estoppel applied to the promises made by TP that the pension would be payable subject to certain evidence being supplied. He took action to supply the relevant evidence, at a financial detriment to himself, thus forming a contract to provide the pension.

28. On 9 March 2018, Mr N sent a letter to TP and said that TP was mistaken on several points in its letter of 8 December 2017. These were in summary:-

- In his initial enquiry email he indicated that he had given up making any attempt to get better while caring for his parents and not that he had given up his career especially to care for his parents. He acknowledged that the wording may have been ambiguous, but it was an initial enquiry rather than a statement of the full facts of the situation.
- He had already been told by a psychologist that he was unlikely to be cured of his agoraphobia as it was too deeply ingrained after 35 years to be reversible.
- His incapacity was permanent and continuing. The very nature of mental incapacity meant that there would be periods when it fluctuated in severity. However, it remained a continuous affliction and lifelong incapacity that affected his daily ability to function normally at work.
- At the date of his father's death, he was incapacitated and unable to work.
- The medical report prepared by his GP stated that Mr N had worked for two years out of the past 30 years. The medical report made it quite clear that he had a permanent lifelong incapacity.

29. On 23 March 2018, TP sent a letter to Mr N saying:-

- Full consideration had been given to Mr N's appeal against the decision not to pay a dependant child's pension to him.

The Scheme was bound by the Teachers' Pension Regulations (**the Regulations**) which confirmed that a pension is payable to a child who, while incapacitated, has reached age 17, or ceased to be in full time education and continues to be incapacitated.

- The definition of incapacity in Schedule 1 of the Regulations was:
"A person is incapacitated:

While he is incapable by reason of infirmity of body or mind of earning his livelihood and is not maintained out of money provided by Parliament or raised by rates, or council tax levied by local authorities."

Unfortunately, as Mr N had undertaken a period of paid employment, it was unable to consider that incapacity as defined in the Regulations had been continuous since age 17 or on ceasing to be in full time education.

30. On 12 February 2019, the DfE sent a letter to Mr N which said that it did not consider that TP had adequately or fully responded to the original complaint. As a result, the DfE referred the case back to TP for further consideration of their decision and handling of the complaint. It apologised for the delay while the case was reviewed.

31. TP's subsequent response was:-

- Mr HN completed an application to claim his retirement benefits in 1982 and provided information about his dependants. Regulation 65 of the 1976 regulations, which were in place when Mr HN retired, provided for the nomination of beneficiaries:

“This regulation applies to a man teacher who is unmarried and to any woman teacher.”

- As Mr HN was married, he could not make a nomination in respect of an alternative beneficiary.
- It enclosed a copy of a letter dated 5 October 2006, which was sent to Mrs N following her husband’s death, which referred to leaflet 450. Leaflet 450 contained the following information:

“Child(ren) – must be unmarried, under the age of 17 and/or since reaching age 17 must be in continuous full-time education or training lasting at least two years for a trade or profession without a break of more than one academic year or incapacitated by age 17 and unable to earn a living due to ill health”.

- It enclosed a copy of the completed application for death benefits and covering letter of 10 October 2006 from Mr N, then age 37. In his letter Mr N gave his addressee details as “Mr N LLB.Hons. Dip. Legal Prac.” Given the indication of legal qualifications it was reasonable to think that Mr N understood the information provided.
- Section 7 of the accompanying notes dealt with the eligibility criteria for children to claim a dependant’s pension. This included:

“Section 7 – Eligible Children”

...

“An eligible child must be: Incapacitated before age 17 and unable to earn a living due to ill health (Please provide a letter from a doctor to confirm and details of any benefits received from the state).

- Section 7 of the form for providing children’s details was crossed through.
- At that point Mrs N and Mr N had information relating to pensions which may be payable to children who were incapacitated by age 17 and unable to earn a living due to ill health. They had also completed the application for death benefits and crossed through the part relating to children’s details. It seems neither of them thought that Mr N was eligible for a dependant child’s pension at that time.

- There was no indication to TP that Mr N was dependant or incapacitated when Mr HN died on 26 September 2006. Then on 14 June 2015, TP received an email from Mr N that stated he gave up his career to care for his parents.
 - In his letter to TP on 9 February 2018 Mr N referred to notes which accompanied the death benefits claim form in respect of his father in 2006. He said that section 6 led to him and his mother believing that they could only claim one pension. This note was not relevant in the case of Mr HN because he was married and left a widow.
 - Mr N was informed in telephone calls and by letter that a pension could be payable to a child if they were disabled at the time of the member's death and advised to make an application. He was also provided with the information regarding what to include in the application. It was not confirmation that a pension would be paid.
 - Mr N informed TP in the application letter that, with some adjustments by his employer, he was able to work between 1998 and 2001. So, he did not meet the eligibility criteria of becoming incapacitated while a child with continuing incapacity.
 - It apologised for the delays he had experienced in receiving a detailed reply to his complaint. As a goodwill gesture it offered £100.
32. On 10 August 2019, Mr N sent a letter to the DfE and referred to his previous points. He also said:-
- He rejected the offer of £100.
 - The previous reply ignored the legal matter of promissory estoppel.
33. On 3 September 2019, the DfE sent a letter to Mr N which said in summary:-
- TP had confirmed to Mr N in its letter dated 12 February 2019 that he did not qualify for any death benefits under the Regulations. It could confirm that TP was correct in advising him that he was not eligible to claim death benefits.
 - Mr N's letter referred to promissory estoppel which he said TP had failed to acknowledge in its response to him. It was unclear why he believed promissory estoppel to be applicable in his case, however it did not believe it applied in this case.

Adjudicator's Opinion

34. Mr N's complaint was considered by one of our Adjudicators who concluded that further action was required by TP regarding Mr N's application for a dependant child's pension. The Adjudicator's findings are summarised below in paragraphs 35 to 50:-

Dependant child's pension

35. Mr N applied for a dependant child's pension on the basis that:

- he was financially dependent on his father at the time of his death in 2006, and
- he had been continuously incapacitated.

However, this application was declined.

36. Mr N referred to the Equality Act 2010 and said that the decision not to award the dependant child's pension was discrimination. In order to show that he had been discriminated against, Mr N needed to provide details of a comparable situation and that he had been treated less favourably. Mr N has not done this and so, in the Adjudicator's opinion, he has not demonstrated that he has been discriminated against.

37. TP stated that the reason the application for a dependant child's pension was declined was that Mr N had undertaken a period of paid work between 1998 and 2001. Mr N had also said in the email of 14 June 2015 that he had given up his career to care for his parents.

38. Mr N clarified his comments regarding giving up his career and confirmed that he meant he had given up the opportunity of improving his health and starting a career as he was a carer for both of his parents. He also stated that the employment that he had undertaken was variable where the employer had made adjustments so that he could carry out the role. In addition, he was only able to stay at work when his parents had sat in their car outside the building. Mr N also provided details of his medical conditions and medical evidence to support the fact that he suffered from agoraphobia and anxiety.

39. The summary of test in section E22 in the Regulations is:

"a pension is payable to a child who, while incapacitated, has reached age 17, or ceased to be in full time education and continues to be incapacitated."

40. The definition of incapacity in Schedule 1 of the Regulations is:

"A person is incapacitated:

... while he is incapable by reason of infirmity of body or mind of **earning his livelihood** and is not maintained out of money provided by Parliament or raised by rates, or council tax levied by local authorities." [Adjudicator's emphasis in bold]

41. The Regulations did not contain a specific definition of "livelihood." The Oxford English Dictionary definition for livelihood is:

"a means of living, a source of maintenance."

42. In the Adjudicator's opinion, at the time that Mr N worked he lived with his parents and was entirely financially dependent on them. He was not able to support himself independently from his employment and indeed appeared to have only been able to undertake that employment with the aid of his parents.
43. In the Adjudicator's view, TP had not applied the relevant test correctly when deciding whether Mr N was eligible for a dependant child's pension. The Pensions Ombudsman's approach to Trustee decision making is that it is not the Pensions Ombudsman's role to interfere with the decision but to ensure that the correct principles have been followed in the decision-making process, The principles are set out in the case of *Edge v The Pensions Ombudsman* [1999] and are that the decision-maker must:
- ask themselves the correct questions;
 - adopt a correct construction of the scheme rules;
 - take into account all relevant factors and ignore all factors which are not relevant; and
 - not exercise their discretion in a perverse manner.
44. In the Adjudicator's opinion, TP had not applied the relevant test correctly as it had not asked the correct questions. TP made the decision that undertaking any work precluded payment of the dependant child's pension.
45. In the Adjudicator's opinion, TP should have asked for more details about the employment that Mr N undertook before deciding whether he was eligible for a dependant child's pension. The failure to do so meant TP had not asked itself the correct questions. In the Adjudicator's view this failure was maladministration, and this part of Mr N's complaint should be upheld.

Transfer of widow's pension

46. For Mr N to have received a survivor's pension following Mrs N's death she would have had to have undertaken pensionable employment on or after 6 April 1988. Mrs N retired from teaching in 1986. In the Adjudicator's opinion TP was correct in saying that Mr N did not have any entitlement to survivor's benefits with regard to his late mother's teaching career.
47. Mrs N was being paid a widow's pension in relation to Mr HN's teaching career which was payable for her lifetime only. The Regulations did not contain any provision to transfer a widow's pension to another individual following their death. In the Adjudicator's opinion there was no maladministration with regard to the payment of the widow's pension to Mrs N and the failure to transfer this pension to Mr N following her death.

Provision of information

48. Mr N has said that he has repeatedly been given incorrect information regarding his pension entitlement from the Scheme. The Adjudicator reviewed the exchanges of information that took place. Mr N provided his own notes on telephone calls that he recorded for his own purposes. The Adjudicator did not have the corresponding information from TP. In the Adjudicator's opinion, some of the information provided could have been better suited to Mr N's situation but following the initial calls correct information was given by TP.
49. Mr N has said that he was told in telephone calls that he would be able to claim death benefits if he provided the necessary information that was requested by TP, and this amounted to promissory estoppel. In the Adjudicator's opinion, TP did not make a promise that it would pay death benefits to him if he provided the requested information. He was able to make an application that would be considered under the Regulations, but this was not a guarantee that he would receive the benefits he was applying for. In the Adjudicator's view, promissory estoppel did not apply in this situation.
50. In addition, Mr N was provided with correct information regarding how to make an application in the letters he received from TP. In the Adjudicator's opinion, TP had not misled Mr N regarding the Scheme benefits and so there had been no maladministration.
51. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. TP and Mr N provided further comments. Mr N's comments were extensive so only the main points have been provided in paragraphs 52 to 59. I have however considered all the issues raised in Mr N's and TP's submissions.

Mr N's further comments

52. The Adjudicator had erred with regard to the law on agency when considering whether or not TP was bound by the statements of its telephone staff. It could be irrelevant in law whether someone had actual authority. If they had apparent authority, they were considered to be in the same position in binding a company by what they said as someone with actual authority.
53. The telephone line he called was the "Teachers' Pensions Helpline". As such, anyone answering a call was held out by TP as being someone with apparent authority to be able to answer questions about the Scheme. This meant anything said in relation to the questions surrounding the Scheme, was binding on TP as if they had actual authority to answer those questions. If they gave out factually incorrect information such as "all you need to do is X and you will qualify to receive a pension", then that statement is contractually binding on the company and estoppel applied.
54. The Adjudicator's assessment that, TP did not make a promise that it would pay death benefits to him if he provided the requested information was incorrect. He was promised both pensions by their representatives during conversations he had. He also changed his position as a result by spending time and money gathering medical evidence which amounted to estoppel.

55. Accordingly, TP's representatives on the specialised "Teachers Pension Helpline" answered questions about the Scheme and the Regulations and made binding statements on behalf of TP in respect of:
- He qualified for both pensions based on information provided on 6 July 2015.
 - He qualified for his mother's pension based on information provided on 29 July 2015 which was a re-affirmation considering they were already bound by their 6 July reply.
 - He qualified for a dependant child's pension based on the written statement in TP's Letter of 1 March 2017.
 - He qualified for an orphan's pension based on the written statement in TP's letter of 1 March 2017.
56. He also asserted that TP deliberately concealed information from him at the time his father died. He and his mother were not advised in 2006 of their right to have the widow's pension transferred into his name so he could receive it outright for life in place of his mother. Then TP later concealed that his father had made a nomination in his favour.
57. The fact that the widow's pension was automatically transferred to the spouse as part of the Terms and Conditions of the Pension raised questions of reasonableness under the Unfair Contract Terms Act. Automatically transferring the Pension to a surviving widow when there could be other family members who could make a claim was unfair and the rights of potential beneficiaries were being concealed from them.
58. He also believed the claim form guidance provided in 2006 was grossly misleading both by how poorly it was written and by omission and ambiguity. This made making a claim as a nominated child was nearly impossible.
59. He did not agree that simply asking TP to reconsider his eligibility for the dependant child's pension was a suitable resolution as TP could simply say it reconsidered, and the answer was still no. Any decision by the Ombudsman needed to be decisive and to make an actual award.

TP's additional comments

60. It did not think that promissory estoppel applied in this case and disagreed with Mr N that he was promised both pensions by TP representatives.
61. It had listened to the telephone call recordings and the content of the telephone calls on 6 July 2015, and 29 July 2015 differed from the information in Mr N's file notes. No promises were made that Mr N had an automatic entitlement to any pensions but rather he was told he could provide evidence that would be considered by TP.
62. I note the additional points raised by TP and Mr N, but they do not change the outcome

Ombudsman's decision

63. Mr N's argument is that the information he was provided with regarding his entitlement to his mother's widow's pension and his application for a dependant child's pension amounted to a binding promise that now entitles him to both pensions.
64. I agree with Mr N that the helpline's purpose is to provide information regarding Scheme entitlement, and it would be expected to provide factually correct information. However, I do not agree with Mr N's assertions with regard to the principles of apparent authority and agency. The nature of a helpline is that it provides help and guidance to Scheme members and potential beneficiaries. However, in many situations the call handlers rely on the information being provided to them by the individuals calling in order to tailor their responses. Where more detailed information is needed then the telephone call is followed up with a letter to give specific details that are based on the Scheme members situation.
65. I have listened to the call recordings from July 2015, and reviewed the correspondence sent to Mr N. I agree with TP that there were no promises made that Mr N would automatically receive any pension benefits that arose from the deaths of Mr HN or Mrs N. TP has explained the process of making an application but submitting an application is not a guarantee of payment. It is normal practice to have to provide additional information and complete application forms in order to claim pension benefits that have specific criteria regarding eligibility, as is the case here.
66. Mr N does not have any entitlement to his mother's widow's pension. At the time his father died his mother was the appropriate beneficiary and there was no relevant circumstance that would have led to the pension being paid to Mr N instead. The purpose of a widow's pension is to provide financial support to a dependant spouse on a scheme member's death. Following the Regulations and paying the widow's pension arising from Mr TN's teaching service to Mrs N was not unfair. I do not see any need for TP to have given Mr N any further information about the alternative eligibility for unmarried teachers or where there was no surviving spouse as these scenarios were not relevant to his circumstances.
67. Mr N has been provided with information regarding how to apply for a dependant child's pension. I do not agree that there has been a promise that he would receive this if he made an application but rather that TP would test his circumstances against the relevant criteria contained in the Regulations to decide if he is eligible after due consideration. Mr N has submitted information regarding his financial dependence, his medical history, and the fact that he has carried out some work in a supported capacity.
68. However, I do agree with the Adjudicator that TP should have requested clarification from Mr N regarding the work he carried out between 1998 and 2001. It was unclear from the information he provided whether the 'work' he carried out was sufficient to amount to evidence that he was capable of "earning his livelihood" for the purposes of the incapacity test in the Regulations, and it would appear that assumptions (to some

extent understandable) were made that he would not satisfy the incapacity test on the basis of passing remarks in his correspondence. However, in my view, it clearly would have been better to have sought more specific and detailed clarification from Mr N before making the decision that he did not satisfy the test. On that basis, I also agree that TP should, once it has sufficient evidence from Mr N to apply to that test, reconsider whether Mr N should be paid the dependant child's pension based on the nature of this work and whether or not it was sufficient to meet the test of earning his livelihood. Mr N is correct that this reconsideration may still mean that he is not eligible for the dependant child's pension.

69. I uphold this complaint in part.

Directions

70. Within 28 days of this Determination:

- TP shall request further information from Mr N regarding the nature of his employment between 1998 and 2001 and, once received, reconsider his application for a dependant child's pension based on this information.

Dominic Harris

Pensions Ombudsman
28 May 2024