

Ombudsman's Determination

Applicant	Mrs H
Scheme	British Coal Staff Superannuation Scheme (the Scheme)
Respondents	Coal Pension Trustees Limited Services (the Trustee)

Outcome

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

Complaint summary

2. Mrs H complained that the Trustee would not award her an adult dependents pension (**ADP**) following the death of her ex-husband, Mr H.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. Mr H was a member of the Scheme from 1955 until 1990 when his pension became payable immediately.
5. On 30 September 2017 Mr H died, aged 77.
6. At the time of his death, Mr H was in receipt of an annual pension of £13,069.80 from the Scheme.
7. On 3 October 2017, the Trustee was notified by one of his sons that Mr H did not leave a spouse or anyone financially dependent upon him.
8. Mrs H was married to Mr H from 1961 until their divorce in 1995. They had not lived together since that time. As part of the divorce settlement, Mr H was bound to make regular weekly maintenance payments to Mrs H of £35. This amount did not increase and was paid from 1995 up until Mr H's death.
9. Mr H lived alone and never re-married.
10. In July 2019, Mrs H contacted the Trustee and made a claim for an ADP. She said that at the time of Mr H's death she was financially dependent on him because she

relied on the maintenance payments she received from him. The questionnaire Mrs H completed in July 2019 for her claim for ADP showed her annual income at the time of Mr H's death, not including the maintenance payments from Mr H, was £8,085.80. This comprised of her state retirement pension of £6,718.40 plus a pension from Derbyshire County Council of £1,367.40.

11. The relevant rule from the British Coal Staff Superannuation Scheme Rules (2009 Annex) is provided below:

Rule 29 (1) (bb) "If a contributor dies, whether after retirement or while in service, without leaving a widow, the Committee may in their discretion award the pension that would have been payable to his widow...to a person who in their opinion was financially dependent on the Contributor at the date of his death..."

12. On 7 November 2019, the Trustee's Discretions and Appeals Sub-committee (**the DASC**) met to consider the facts of Mrs H's case. It said the award of an ADP to Mrs H would not be appropriate as it did not consider her to be financially dependent on Mr H at the time he died. The DASC said it:

"...determines financial dependency as being that which would normally be seen in the case of a married couple, so the claimant's day to day living expenses being met by the member, or at least shared. This would typically mean the couple living together, having a joint bank account and sharing the cost of food, utilities and housing."

13. On 11 December 2019 and 6 February 2020, the DASC met again to consider appeals from Mrs H regarding her ADP claim. On both occasions, the DASC said the award of an ADP to Mrs H would not be appropriate as there was insufficient evidence of financial dependency.
14. Mrs H made a complaint to the Trustee under its Internal Dispute Resolution Procedure (**IDRP**). She said she had taken on some of the caring duties for Mr H towards the end of his life when he had dementia.
15. On 11 March 2020, the Trustee reviewed the case papers under stage one of the IDRP. The Trustee said it could not uphold the complaint and would escalate it to the full Trustee Committee of Management (**COM**) for its consideration. It asked for more details of Mrs H helping to care for Mr H when he was suffering with dementia.
16. Mrs H's daughter provided further details of how Mrs H helped look after Mr H when he was suffering with dementia.
17. On 23 and 24 June 2020, the COM met to consider Mrs H's claim for ADP. Having considered the facts, the COM agreed with the DASC's decision not to award Mrs H an ADP.

18. The Trustee has confirmed that the DASC and the COM had been supplied with the details of Mrs H's bank statements, proof of her income and copies of all correspondence from Mrs H and her daughter when it considered her claim for ADP.

Mrs H's position:

19. She was financially dependent on Mr H at the time of his death because she was reliant on the £35 a week divorce settlement. It has never increased from the initial amount, but she calculates this would be worth £67 a week in today's money. She is retired and struggling financially.
20. Mr H would not allow her to work full time and did not pay her any housekeeping during their marriage.
21. She visited Mr H daily to help with housework and making food towards the end of his life when he suffered with dementia, often three times a day. She never received any payment for this.
22. She believes that not all the relevant correspondence was forwarded to the Trustee for consideration, including her bank statements, proof of income and her daughter's letter regarding the matter.

The Trustee's position:

23. Mrs H does not meet its criteria of financial dependence upon Mr H at the time of his death, and so is not entitled to an ADP.
24. Mr and Mrs H had been divorced for 22 years. They had lived separately and been responsible for their own living expenses for this time. There is no evidence of Mrs H's day-to-day ordinary living expenses were met by Mr H, or even shared.
25. The Trustee and DASC both considered the existence of the maintenance payments at the time of making the decision and when revisiting the decision. The existence of maintenance payments is not conclusive evidence of financial dependency. Mrs H has not provided any evidence of what the £35 a week was used for or her other outgoings compared to her income.

Adjudicator's Opinion

26. Mrs H's complaint was considered by one of our Adjudicators who concluded that no further was required by the Trustee. The Adjudicator's findings are summarised below:
 - It is not the Ombudsman's role to decide whether Mrs H is entitled to an ADP. The Ombudsman must act impartially and ensure that the Trustee has abided by the Scheme Rules, asked relevant questions, considered all relevant evidence and explained the reason(s) for its decision in a transparent way. If there are flaws in the decision-making process, the Ombudsman can require the Trustee to look at Mrs H's

case again. However, the weight which is attached to any of the evidence is for the Trustee to decide, including giving some of it little or no weight.

- The Scheme Rules set out that the Trustee can use its discretion to award an ADP to a person who, although not married to the member at the time of their death, was financially dependent on them.
 - The Trustee said that to meet its definition of financial dependence for the purposes of being awarded an ADP, two people would typically be living together and have a joint bank account. The Trustee also said that Mr H would either have had to have been meeting the costs of Mrs H's day-to-day living expenses such as food, utilities and housing, or as a minimum sharing these costs. Mrs H has not contended that any of these criteria were met.
 - Mrs H said that the maintenance payments she received from Mr H accounted for around 18% of her total income. The Adjudicator appreciated the cessation of these payments would have impacted Mrs H to some extent but, in his opinion, it was reasonable for the Trustee to conclude that these payments did not mean Mrs H was financially dependent on Mr H.
 - Mrs H said that she visited and cared for Mr H daily when he was ill towards the end of his life. The Adjudicator expressed his admiration for this, but said this was not relevant to determining whether Mrs H was financially dependent on Mr H.
 - Mrs H expressed concern that the Trustee had not had sight of all the relevant correspondence before making its decision. The Trustee confirmed that the DASC and the COM were supplied with all the correspondence from Mrs H and her daughter regarding the matter, as well as details of her income from her bank statements. There is nothing to suggest that this was not the case.
 - It is for the Trustee to apportion weight (if any) to the relevant evidence as it sees fit. However, it should be able to justify why one opinion is preferred over another. In the Adjudicator's view, the Trustee had sufficient information to make a considered decision about whether Mrs H should be awarded an ADP, and it has followed the Scheme Rules to reach its decision. In the Adjudicator's opinion, the Trustee thoroughly assessed all the available evidence against the Scheme Rules and did not reach a flawed decision. Further, Mrs H has not supplied evidence that contradicts the original decision reached.
27. Mrs H did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs H, via her daughter, provided further comments which are summarised below:
- At one stage, one of Mr and Mrs H's sons temporarily stopped Mr H's standing order to Mrs H. It was reinstated immediately as it was a Court Order. Mrs H's daughter has provided bank accounts showing the weekly amounts of £35 going into Mrs H's account.

- She disagrees with the Trustee's definition of "financial dependence", in particular the inclusion of sharing the cost of utility bills because no divorced couples would do so.
 - Mrs H was only allowed by Mr H to do small jobs such as cleaning work when they were married, so all her household income came from him. She was therefore financially dependent on him.
 - Aside from the £35 a week maintenance payment, Mrs H's income was only her State Pension and a small school pension of just over £100 per month.
 - Mr H paid into the Scheme and accumulated a lot of money which is now lying dormant. Part of this should, by rights, be paid to Mrs H, as Mr H had a legal obligation to her.
28. I have considered Mrs H's comments but they do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

29. Mrs H complained that the Trustee would not award her an ADP following the death of her ex-husband, Mr H. Mrs H disagrees with the Trustee's definition of "financial dependence" and contends that she was financially dependent on Mr H at the time of his death.
30. It is not for me to say whether I agree with the Trustee's decision or whether, in its position, I would have reached the same decision. My role is limited to ensuring the decision-making process is correctly followed. The decision-maker must take into account all relevant matters and no irrelevant ones. It must not make a perverse or improper decision, namely a decision that no reasonable decision-maker, properly directing itself, could arrive at. If I am not satisfied that the decision has been taken properly I can direct the decision-maker to look at the matter again.
31. The Scheme rules set out that an ADP would only be payable on death "to a person who in their opinion was financially dependent on the Contributor at the date of his death."
32. The Trustee said that it "determine[s] financial dependency as being that which would normally be seen in the case of a married couple, so the claimant's day to day living expenses being met by the member, or at least shared. This would typically mean the couple living together, having a joint bank account and sharing the cost of food, utilities and housing."
33. The Trustee concluded that Mrs H did not meet this definition of financial dependence.
34. There is no evidence that the Trustee failed to consider all the relevant matters in making its decision. It is clear from the evidence provided that the Trustees considered the existence of the maintenance payments, Mrs H's ordinary living

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expenses, income and her personal circumstances. I do not consider the Trustee's definition of "financially dependent" to be unreasonable and consequently its decision not to consider that Mrs H was financially dependent on Mr H at the time of his death, cannot be viewed as perverse or improper.

35. I find that the Trustee has followed the correct process, considered only relevant and no irrelevant information in reaching their decision not to award an ADP to Mrs H.

36. I do not uphold Mrs H's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
21 September 2023