

Ombudsman's Determination

Applicant	Mr N
Scheme	Teachers' Pension Scheme (the Scheme)
Respondents	Teachers' Pensions (TP) Department for Education (the Scheme Manager)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by Department for Education

Complaint summary

2. Mr N has complained that due to a lack of communication from TP the death benefit lump sum payable in respect of his late brother (Mr D) was taxed incorrectly.

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. On 19 September 2007, Mr D moved into a teaching role and was enrolled in the Scheme.
5. On 20 March 2008, TP wrote to Mr D to update him that his decision to opt out of the Scheme would take effect from 1 March 2008.
6. On 18 February 2010, TP wrote to Mr D to confirm that from 25 October 2009 his employment would be treated as pensionable service.
7. On 4 December 2011, Mr D died.
8. On 5 December 2011, TP wrote to Mr D's mother, Mrs N, to offer its condolences and to inform her that it needed confirmation of certain details in order for any potential benefits to be paid. It included a death benefits application from and guidance notes.

9. On 24 January 2012, Mrs N wrote to TP with the completed death benefits application form and a copy of Mr D's death certificate. Mrs N explained that Probate was in process and would be forwarded to TP once it was received.
10. In 2012, Mrs N contacted the Pension Protection Fund (**PPF**) in relation to another matter and to update it that Mr D had died.
11. On 13 July 2012, the PPF informed Mr N that there were no eligible survivors and that it would only be in contact if there were eligible children to be notified. The PPF file was then closed, but Mr N argues this later caused confusion about whether a death grant was available from the Scheme.
12. In September 2013, TP calculated the value of the death grant as £68,452.11 while it awaited the Grant of Probate. TP did not contact Mrs N or Mr N to update them of this as this information could only be provided after the Grant of Probate had been received.
13. In April 2017, Mrs N died.
14. On 19 December 2017, TP wrote to Mrs N and explained that upon review of its records the Grant of Probate was still outstanding and would be required before any payment could be made.
15. On 29 December 2017, Mr N responded to TP, and explained that he believed the matter was closed. In reply, he sent the death certificate and Grant of Probate for both Mrs N and Mr D.
16. On 5 February 2019, TP wrote to Mr N confirming the total death grant was £68,452.11 and that there were tax deductions of £30,803.45, meaning the net payment was £37,648.66.
17. On 17 April 2019, Mr N wrote to TP to contest the fact that no further steps were taken to request the Grant of Probate until December 2017. In summary he said:-
 - TP should have made it clear that the Grant of Probate certificate was required before payment could be made and an unauthorised tax charge could become payable.
 - This letter also stated that the "appropriate action will now be taken." Mr N questioned what this action was.
 - TP only contacted Mrs N again in December 2017 requesting the Grant of Probate, which was sent by Mr N, and nothing was heard from TP until February 2019.
 - When the money was paid on 8 February 2019 there was no explanation where it had come from until a letter arrived on 20 February 2019.
 - TP had a responsibility to follow up with potentially life changing amounts of money.

- In a previous case dealt with by The Pensions Ombudsman (**TPO**) a complaint had been made where Scottish Widows (**the Scottish Widows case**) had provided three reminder letters requesting probate documents within a two-year period. That complaint was upheld by TPO.

18. On 18 September 2019, TP provided a formal response to the complaint:

- The Scottish Widows case Mr N referred to was about a provider not updating the applicants that there was a two-year limit in its reminder letters and so was not relevant.
- Under “Section 5 – To be signed by the beneficiary” of the death benefits application form there was a declaration which stated that the enclosed literature was read and understood and that there was a two-year limit before the lump sum was subject to a tax charge (Appendix 1).
- The notes accompanying the death benefits application form also stated that if the value was above £5,000 then a Grant of Probate would be required.
- Mr N had explained that a Grant of Probate was obtained on 27 April 2012 but was not sent to TP. Mr N had said this was because he had received a letter from the PPF which he believed stated that the matter was closed. The value of the death grant cannot be disclosed or sent until the Grant of Probate was received.
- After receiving the death certificates and Grants of Probate relating to Mrs N and Mr D the employment checks were completed for a second time in error. This delayed payment of the death grant until February 2019.

19. On 4 November 2019, Mr N provided his comments on the formal response. In summary he said:

- The Scottish Widows case was relevant in that three reminders were sent within a two-year period and that in this case TP had sent no additional reminders.
- Was the “appropriate action” taken to establish the value of survivor benefits and why this took almost two years to confirm. He also questioned why an update was not sent once the value of £68,452.11 had been calculated in September 2013.
- It took until December 2017 for a review of this case and £30,803.45 transferred into his account without explanation.
- TP’s handling of this case amounted to maladministration.

20. On 25 November 2019, TP responded to Mr N;

- The Scottish Widows case was partially upheld on the basis that Scottish Widows had not informed the Applicant of the two-year time limit but did provide three reminders. In this case, Mrs N was aware of the two-year time limit and signed to say that she understood this.

- Standard wording had been used in the letter dated 30 January 2012 including a comment that said, “the appropriate action will now be taken”. At that stage Mrs N had provided a letter that said she was in the process of obtaining a Grant of Probate, and it had previously been explained that this was required before payment could be made.
 - It took a long time to establish the value of the death grant as information had to be obtained from Mr D’s employers, and TP could not progress without this information. Notes in the death grant application form also stated, “Until all relevant information and documentation is received the Teachers Pensions’ cannot process your claim.” At the time the death grant application form was issued TP was still awaiting the Grant of Probate.
 - TP apologised for the error in contacting Mr D’s employer again in 2018/19 which was caused by an administration oversight. However, this would not have changed the taxation of the death grant by HMRC as the two-year window had already been exceeded.
 - An error in postal service meant that a letter sent on 5 February 2019 did not arrive until 20 February 2019, during which time the death grant payment was made. This error was the result of postal services and outside of the control of TP.
21. On 31 January 2020, Mr N complained to the Scheme Manager under stage one of the Internal Dispute Resolution Procedure (**IDRP**) and reiterated the points outlined in his initial complaint to TP.
22. On 12 February 2020, the Scheme Manager provided its response to IDRP stage one:
- TP contacted Mr D’s employer to clarify his service history in February 2012. There was confusion as to whether the contributions had been paid into the Local Government Pension Scheme or into the Scheme. This issue was only resolved in September 2013. For this reason, it had not been possible to calculate the value of the death grant until that date.
 - In December 2017, a letter was sent to Mr N as the Grant of Probate was still outstanding.
 - TP started the service clarification process again in January 2018 meaning that the death grant was not paid until February 2019. TP apologised for this error; however, it did not change the fact that the death grant would still have been subject to tax.
 - The responsibility for ensuring relevant documentation was provided within the required timescale lay with whoever was making the application.
 - The death grant application form completed by Mrs N in 2011, clearly advised that she signed on the understanding that if a payment was made more than two years

after the date that TP was made aware of the death of the member, then it would be subject to taxation.

- This information was also provided in the notes section as part of the application to receive the death grant.

Adjudicator's Opinion

23. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by Department for Education. The Adjudicator's findings are summarised below:-

- TP had made Mrs N aware that the Grant of Probate was required before payment could be made and that it was required before the value of the death grant could be disclosed. Mrs N had responded to confirm that she understood and would provide the Grant of Probate once it was available.
- The Adjudicator agreed with Mr N that it would have been reasonable for TP to provide reminders or updates on the death grant process. However, there was no requirement for TP to do so. TP acted on the understanding that the Grant of Probate would be provided when it was available, which had been confirmed by Mrs N.
- TP did take a long time to calculate the amount of death grant available. However, this information could not be provided to Mr N without the Grant of Probate in accordance with TP's policy at the time.
- The Adjudicator was of the opinion that it would have been beneficial for TP to provide a reminder for the Grant of Probate once the death grant had been calculated but was not required to do so.
- The Adjudicator agreed with Mr N that TP took an unnecessarily long time to review this case and provide a request for information in 2017. However, TP had not acted outside the Scheme Regulations (the **Regulations**) by providing this update as late as it did. TP has explained that it now contacts member's and beneficiaries to avoid this same situation.
- Although there were some procedural shortcomings, the Adjudicator did not believe that the complaint could be upheld because TP had requested the Grant of Probate and could not make payment or provide further information until this was received. That the Grant of Probate was not provided in a timely manner was not as a result of maladministration by TP.

Ombudsman's decision

24. The central basis of Mr N's complaint is in relation to the fact that TP did not follow up on its requirement for the Grant of Probate to be provided. Mr N has argued that if TP

had repeated the request for the Grant of Probate it would have been provided and the tax charge could have been avoided.

25. I appreciate Mr N's point that TP could have followed up on its request for the Grant of Probate which would have potentially avoided the tax charge. However, TP gave appropriate advice regarding what was required to progress the death grant payment process. So, TP was not required to follow up on the matter as it was awaiting further information before it could do so. I find that TP gave clear information within the guidance notes that made it clear that without the Grant of Probate the death benefits process could not continue. Mrs N had confirmed that she understood this was the case and that the Grant of Probate would be provided once it was available. I find that TP has acted appropriately, and it is unfortunate that the Grant of Probate was not provided within the two-year limit.
26. TP requested the Grant of Probate after being notified of Mr D's death and Mrs N agreed that it would be provided once it was available. Mr N has argued that TP's lack of communication has led to an unnecessary tax charge on the death grant. Based on the Regulations at the time, TP has acted appropriately and was not required to follow up on this request as they had been notified that the Grant of Probate would be provided once it was available.
27. While I appreciate it might have been best practice for TP to have followed up the matter with Mrs N, I find this is poor administration rather than maladministration. The onus was on the person applying for a death grant to proactively provide the required and requested information. I understand that a separate matter regarding the PPF caused some administrative issues for Mrs N. While it is unfortunate that the information provided by the PPF has caused confusion, this does not impact the complaint against TP.
28. TP has apologised that it did not review its records sooner and contact Mrs N earlier. However, TP had clearly set out what was required and was not legally required to provide a further request for the Grant of Probate. Prior to the two-year limit the assumption was that the Grant of Probate would be provided, as had been agreed. The result being that if a check had taken place before the two-year limit TP would have continued to wait for the Grant of Probate.
29. In summary it had been agreed by both Mrs N and TP that the Grant of Probate would be provided once it was available. As it was not provided TP could not disclose the value of the death grant and the two-year limit was passed. It is unfortunate that the tax charge has been incurred and I can understand Mr N's frustration, but I do not find that TP is responsible for this impact on Mr N.
30. I do not uphold Mr N's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
05 November 2024

Appendix 1

Taxation of “Defined Benefit Lump Sum Death Benefits” where payment of the death grant is delayed for more than 2 years, or a death grant is paid in respect of a member over 75.

Income Tax (Earnings and Pensions) Act 2003

636AA Taxable lump sum death benefits

(1) The following are the lump sums mentioned in section 636A (4) and (4ZA).

... (3) A drawdown pension fund lump sum death benefit under paragraph 17(1) of Schedule 29 to FA 2004, a flexi-access drawdown fund lump sum death benefit under paragraph 17A (1) of that Schedule, a defined benefits lump sum death benefit or an uncrystallised funds lump sum death benefit—

(a) paid in respect of a member of the scheme who had reached the age of 75 at the date of the member's death, or

(b) paid in respect of a member of the scheme who had not reached the age of 75 at the date of the member's death, but not paid before the end of the relevant 2-year period in respect of the member's death.

[The definition of the relevant 2-year period is contained in 636AA (6) of ITEPA 2003 as follows]

636AA Taxable lump sum death benefits

“relevant 2-year period”, in relation to a death, means the period of 2 years beginning with the earlier of—

(a) the day on which TP of the scheme mentioned in section 636A (4) or (4ZA) (as the case may be) first knew of the death, and

(b) the day on which that scheme administrator could first reasonably have been expected to have known of it.