

Ombudsman's Determination

Applicant	Mr D on behalf of the Estate of Miss ND (the Estate)
Scheme	Teachers' Pension Scheme (the Scheme)
Respondents	Teachers' Pensions (TP) Department for Education (DfE)

Outcome

1. I do not uphold Mr D's complaint and no further action is required by TP or DfE.

Complaint summary

2. Mr D complained that TP needlessly delayed the payment of the Scheme death benefits in respect of his daughter, Miss ND. He alleged that TP was provided with ample information to allow it to pay him the death benefits, on behalf of Miss ND's daughter, Miss IY.

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 22 December 2014, Miss ND joined the final salary section of the Scheme, a defined benefit occupational arrangement. From 1 April 2015, Miss ND moved across to the Career Average Revalued Earnings (**CARE**) section of the Scheme. The Scheme is administered by TP, on behalf of the Scheme Manager, DfE.
5. The final salary section of the Scheme is administered in accordance with the Teachers' Pension Regulations 2010 (**the 2010 Regulations**), and the CARE section is administered in line with the Teachers' Pension Regulations 2014 (**the 2014 Regulations**). See Appendix 1 for relevant extracts of the 2010 Regulations and the 2014 Regulations.
6. On 24 January 2019, Miss ND completed an expression of wish form (**EOW**) nominating Miss IY as the sole beneficiary for a death grant lump sum (**the Lump Sum**). The notes enclosed with the EOW said that if the nominee was under the age of 18, the Lump Sum would be paid to their legal guardian.

7. On 12 August 2019, Miss ND signed her Last Will and Testament (**the Will**) and appointed Mr D as the Executor of the Estate. Miss ND named Miss IY as the sole beneficiary of her Estate; however, any payable funds would be looked after by Mr D until Miss IY reached age 25.
8. On 16 August 2019, Miss ND died.
9. On 10 September 2019, Mr D telephoned TP and informed it of Miss ND's death. In response, TP sent Mr D the relevant application for death benefits forms (**the Forms**) to complete and return.
10. On 16 September 2019, Mr D returned the completed signed Forms and requested that the Lump Sum be paid to Miss D's Estate. He said:
 - he was the sole Executor for the Estate, which was left entirely to Miss IY, once she reached age 25;
 - Miss IY now lived with her grandmother, Ms K, who was also Mr D's ex-wife, in Miss ND's house;
 - however the parental responsibility for Miss IY rested with her father, Mr Y;
 - Miss ND and Miss IY had limited contact with Mr Y, and under no circumstances should any information be sought from, or given to Mr Y.
11. On 18 September 2019, TP wrote to Mr D and asked for the Estate bank details, as there was a residual amount payable. However, TP did not disclose what the residual amount was for, or how much was payable.
12. On 26 September 2019, Mr D telephoned TP to query the timescale for payment of the Lump Sum. The TP representative advised that no further information about any death benefits could be provided until he provided a copy of the Estate bank details.
13. On 30 September 2019, Mr D sent TP a copy of the Estate bank details.
14. On 16 December 2019, Mr D telephoned TP as he had not yet heard from TP about the death benefits payable to the Estate. The TP representative told Mr D that TP was awaiting details of Miss ND's salary and service from her former employer before any payments could be made.
15. On 23 December 2019, Mr D sent TP a copy of the Grant of Probate for the Estate. He said that it appeared that TP was only prompted to contact Miss ND's former employer, due to his telephone call on 16 December 2019.
16. On 2 January 2020, TP asked Miss ND's former employer to confirm Miss ND's salary and service information and to complete a 22a bereavement form.
17. On 10 January 2020, TP wrote to Mr D and explained that:-
 - the Scheme was administered in accordance with the 2010 Regulations.

- Regulation 82(7) provided that in the absence of a valid EOW, the Lump Sum was payable to a surviving spouse, a civil partner, a surviving nominated partner, or, if no such person existed, it would be paid to the personal representative as part of the Estate.
- Miss IY was nominated as the beneficiary for the Lump Sum, but as she was age 15, the Lump Sum was payable to her father as her legal parent/guardian. So, it could not pay the Lump Sum to Mr D.
- To prove that Miss IY lived with Ms K, it required sight of a residency/guardianship order. It also asked Mr D to confirm who received any child benefits for Miss IY.

18. On 21 January 2020, Mr D responded to TP's letter and said:-

- It was recently explained to him that the payment of the Lump Sum was discretionary and did not form part of the Estate. Nor was TP required to comply with the Will.
- There was nothing in the 2010 Regulations that said the Lump Sum had to be made payable to the biological father if a beneficiary was under the age of 18. Nor was there any reference regarding TP's discretionary ability to override the Will or the Grant of Probate in its decision making.
- Mr Y was not involved in Miss IY's day-to-day care, nor had he ever had any involvement. Ms K received child benefit support for Miss IY. There was no residency or guardianship order in place.
- He (Mr D) provided day-to-day care for Miss IY during the school holidays and was involved in Miss IY's welfare and education while also providing financial assistance.
- It was unclear why he was unable to be provided with details about the Lump Sum. He was told that it was a matter regarding the General Data Protection Regulations (**GDPR**), although it was unclear on what basis this applied.
- He understood that TP was yet to receive confirmation that the salary and service details it held for Miss ND, were correct. It should explain how it planned to expedite this situation and obtain the necessary information from the former employer.
- If he did not receive a response within five working days, he would escalate his complaint.

19. On 24 January 2020 and 19 February 2020, TP emailed Miss ND's former employer to follow up on its request for her salary/service date and the completed 22a bereavement form.

20. On 19 February 2020, Miss ND's former employer sent TP the required information.

21. On 2 March 2020, Mr D wrote to TP and said that the Lump Sum should be paid to him, so that he could manage the funds on behalf of, and in the best interests of, Miss IY. In support of this he said:-

- Mr Y was intermittently involved in Miss IY's life, and occasionally made inconsistent child maintenance payments. However, since Miss ND's death he had not made any maintenance payments. There was no reason to believe that Mr Y would be any more reliable in future, or that he would use the Lump Sum for Miss IY's benefit.
- Mr Y's inconsistent involvement in Miss IY's life was well documented. Mr Y had a history of criminal activity and a conviction for violent affray. There was also a documented incident of violence towards Miss IY.
- He (Mr D) owned the house that Miss ND and Miss IY lived in. After Miss ND's death he continued to pay the mortgage on the house for Miss IY and Ms K to live in, this was in addition to paying the mortgage on his own property.
- There were no plans to apply for a residency or guardianship order as neither himself nor, Ms K had the funds to pursue this option. Nor did they want to add to Miss IY's grief with any animosity from potential legal proceedings.
- A number of discussions occurred prior to Miss ND's death about how best to care for Miss IY. Both Miss ND and Miss IY did not wish for Miss IY to live with Mr Y. It was not believed that Mr Y would have Miss IY's best interest in mind, so he (Mr D) was made the Executor of the Estate while Ms K lived with and cared for Miss IY.
- He held a lasting power of attorney (**POA**) for Miss ND's health/welfare and for her property and financial affairs. However, the POA for property and financial affairs was not registered due to Miss ND's diminishing health. He was also the sole Executor for the Estate, which he and Miss ND believed the Lump Sum would be payable to.
- His claim for the Lump Sum to be paid to the Estate was strong and would be supported by Ms K and Miss ND's close friends and colleagues.

22. In addition to the request for the payment of the Lump Sum, Mr D also submitted a complaint about TP's handling of the payment of the death benefits. He said:-

- TP was informed of Miss ND's death on 10 September 2019, at which time he was told it would take five weeks to pay any death benefits. There was a delay in contacting and requesting details from Miss ND's former employer. The delay in paying the death benefits meant that Miss IY was without any funds to contribute towards her welfare.

- It was unclear how far TP had progressed its investigation into who any death benefits should be payable to. TP had not contacted Ms K for information about her role as Miss IY's care giver.
 - TP failed to ensure that Miss ND understood the way in which the Lump Sum would be payable after her death. Miss ND's wishes were for Miss IY to receive all the Scheme benefits, through the Estate, so that Miss IY's finances could be managed going forward. This was why Miss ND completed the EOW nominating Miss IY.
 - His interpretation of regulation 82(7) of the 2010 Regulations, was that, if Miss ND did not complete an EOW nominating Miss IY, the Lump Sum would have been paid to the Estate. By not informing Miss ND that the Lump Sum could possibly be paid to Mr Y, TP had failed in its duty of care towards Miss ND and Miss IY.
 - TP should pay the Lump Sum to the Estate or suspend any potential payments to allow for a thorough investigation into who should be paid any benefits.
23. On 9 March 2020, TP telephoned Mr D and explained that the relevant Regulations for this case were the 2014 Regulations. After the telephone call, TP emailed Mr D and said that the Lump Sum would not be paid until it concluded its investigation. However, if it was not paid within two years of TP being notified of Miss ND's death the death benefits would incur a tax charge.
24. On 18 March 2020, TP wrote to Mr D and provided a response to his complaint under the Scheme's Internal Dispute Resolution Procedure (**IDRP**) and explained that:-
- Regulation 138 of the 2014 Regulations provided the same provisions as regulation 82(7) of the 2010 Regulations. Miss IY was nominated to receive the Lump Sum, so it was not payable to the Estate. The Lump Sum was three times the value of Miss ND's final pensionable earnings at her date of death.
 - Provided the Lump Sum was paid within two years of it being notified of Miss ND's death, it was not taxable and did not form part of the Estate.
 - The notes enclosed with the EOW made clear that it could not pay the Lump Sum to a minor under the age of 18. In instances where the nominee was under the age of 18, the Lump Sum would generally be paid to the surviving parent. However, if the child was not living with the surviving parent, TP held discretion to pay it to any person having care of the child.
 - Regulation 179 of the 2014 Regulations provided the same discretionary provisions as regulation 113 of the 2010 Regulations. It would contact Ms K to request information about Miss IY's living arrangements and the benefits she received for Miss IY.
 - Should the Lump Sum be payable to any person other than Mr D, TP was required to protect the individual/s personal data under GDPR.

- TP aimed to pay any death benefits within five weeks of being notified. However, this was dependent upon receiving the completed Forms and all the necessary information to make any payments. It could take months due to the complexity of an individual situation, disputes or obtaining certain documentation.
- If there was no surviving adult, Miss IY was entitled to a short-term pension for six months based on Miss ND's full pensionable earnings (**the short-term pension**). Thereafter she would receive a long-term child's pension, payable until she either left full time education, or reached age 23 (**the long-term pension**).
- The short-term and long-term pensions would be backdated to Miss ND's date of death, with interest paid for the period of delay.

25. On 24 March 2020, TP wrote to Ms K and asked her to provide:

- confirmation that she and Miss IY lived at the same address and to confirm whether she was solely responsible for Miss IY's day-to-day care;
- in addition to child benefits from the Department of Work and Pensions (**DWP**) how, and by who else, was Miss IY financially supported;
- confirmation that the child benefits were paid to herself; and
- any other information that was relevant to Miss IY's circumstances.

26. On 9 April 2020, Mr D emailed TP and said that Miss ND spoke with social services, on 27 March 2018, to enquire about arrangements for Miss IY, in the event of her death. Although, it is not clear what the outcome of that conversation was. Miss ND also spoke with her former employer's secretary who she told "under no circumstances was [Miss IY's] father to get access to the pension".

27. On 24 June 2020, Mr D escalated his IDRP complaint to DfE.

28. On 9 July 2020, Mr D submitted further information in support of his IDRP complaint to DfE and said:-

- TP had not provided a sufficient response to his initial IDRP complaint of 2 March 2020. Further, his IDRP complaint submitted to DfE on 24 June 2020 had not been responded to, and when DfE acknowledged the complaint, it asked for information he had already sent.
- Since April 2020, he had received no further updates from TP about its investigation. He was aware that TP had written to Ms K, who had told him that she had provided TP with any information requested.
- He had asked for any procedural documents that TP used for decision making; however, TP was not forthcoming with this information. Nor was he provided with any details of the Lump Sum and short-term and long-term pensions.

- He had been referred to the different Regulations which he believed were incorrect, irrelevant, misquoted or incorrectly applied. He did not believe that TP could simply apply the Regulations as it saw fit without guidance, which is why he had continually requested sight of any such document/guidance.
 - TP failed in its duty of care towards Miss ND, despite knowing the full extent of her illness prior to her death. TP had also failed to effectively respond to this element of his IDRPs complaint. TP had simply referred to notes enclosed with the EOW when Miss ND nominated Miss IY as her beneficiary.
29. On 28 July 2020, DfE acknowledged Mr D's IDRPs complaint. It explained that it was unable to meet its usual timescales to provide a response due to delays caused by the Covid-19 pandemic. It expected that it would be in a position to respond to his complaint by 7 August 2020.
30. On 7 August 2020, DfE responded to Mr D's IDRPs complaint and said:-
- It was responsible for ensuring TP acted in accordance with the 2010 and 2014 Regulations, and that the process followed by TP in applying the relevant regulations was appropriate.
 - It had reviewed TP's previous explanation of how and why certain Regulations were applied in the payment of the Lump Sum. It was satisfied that TP was correct in its explanations, in that, the Lump Sum is payable to Miss IY, not the Estate.
 - It was clear that there were unreasonable delays by TP in the progression of its investigation. It apologised for the delays and referred the matter onto the departmental contract manager, who looked after the TP contract.
 - Mr D was not entitled to details of the value of the Lump Sum and the short-term and long-term pensions. This information contained Miss IY's personal information and could only be released to the individual identified to be her legal guardian or principal care giver.
 - Enclosed was a decision document which TP used to guide the application of the relevant regulations and how to administer discretion under those regulations.
 - TP does not provide financial advice to the Scheme membership, so it was unable to advise Miss ND on the best course of action regarding the nomination of beneficiaries. However, the EOW made clear that if a nominee was under the age of 18 the Lump Sum would be paid to their legal guardian.
 - TP's confirmation that the Lump Sum and the short-term and long-term term pensions would not be released until its investigation was complete was an indication that TP would not act without conducting appropriate due diligence. Consequently, it was satisfied that TP acted appropriately in asking Mr D, as the Executor, for details, and proof, of who Miss IY's care giver was before making any payments.

- It instructed TP to write to Ms K again to request the proof that she was Miss IY's primary care giver. If, after a reasonable period it had still not identified who Miss IY's principal care giver was, TP was required to contact Mr Y, as the surviving parent, to request additional Information.
- TP had acted in accordance with the relevant Regulations and the complaint was not upheld.

31. On 13 August 2020, Ms K wrote to TP and said:

- she had been living with Miss IY since February 2019, and from August 2019, she started to receive child benefits for Miss IY;
- she owned her own house, where her two sons were currently living, on which she continued to pay the mortgage;
- it was Miss ND's wish that Mr D be responsible for any financial matters relating to Miss IY, so the Lump Sum should be paid to him as Executor of the Estate;
- she was unable to handle any of Miss IY's financial affairs as she was subject to an individual voluntary arrangement whereby her finances were managed by a third party; and
- Mr Y should not be responsible for Miss IY's physical and financial welfare.

32. On 1 September 2020, TP responded to Ms K and asked her to provide confirmation of the child benefits she received from the DWP. It asked her to confirm who paid the council and utility bills for Miss ND's house, and for confirmation of any other financial support that Miss IY received, which could be in the form of bank statements.

33. On 12 September 2020, Mr D sent TP a breakdown of the utility and council tax bills he paid for on Miss ND's property and the personal allowance he paid to Miss IY. He explained that Ms K paid for all the household food for herself and Miss IY.

34. On 2 October 2020, TP wrote to Ms K to follow up on its letter of 1 September 2020, as it had not received a response.

35. On 19 October 2020, Mr D wrote to TP and provided it with Miss IY's child benefit reference number. He said that this should act as confirmation that Miss IY was financially reliant on Ms K as the recipient of the benefit, and on himself. He believed that the provision of bank statements to confirm this was overly intrusive.

36. On 31 December 2020, Miss IY wrote to TP and asked it to provide Mr D with any information regarding its investigation. She also asked for details of the Lump Sum and the short-term and long-term pensions.

37. On 26 January 2021, TP wrote to the firm responsible for drafting the Will, Thornes Legal Limited (**the Solicitors**) and asked it if a trust fund had been set up for Miss IY. On the same day, TP wrote to HM Revenue and Customs (**HMRC**) benefits and credit office and asked for confirmation of who received the child benefit for Miss IY.

38. On 1 February 2021, Mr D asked TP for an update on its investigation, and whether it needed any additional information. In response, TP provided Mr D with an overview of its current investigation.
39. On 10 February 2021, HMRC responded to TP and said that it could only provide information to the child benefit claimant.
40. On 16 February 2021, TP wrote to Ms K, as it was yet to receive a response to its letters of 1 September 2020 and 2 October 2020.
41. On 17 February 2021, TP sent both Mr D and Miss IY copies of its investigation into who, and how, the Lump Sum should be paid.
42. On 21 February 2021, Mr D wrote to TP and said that he was still yet to receive confirmation of the value of the Lump Sum and the short and long term pensions. He said that enclosed in the investigation file was a note which said he had refused to provide TP with the contact details for Mr Y. This was incorrect as he was never asked to provide any details. He only requested that Mr Y was not contacted. It was unclear why TP required further confirmation of the child benefit which Ms K received. Ms K's statement that she received the benefits, in addition to the child benefit reference number, should have been sufficient confirmation.
43. On 21 February 2021, Ms K responded to TP and explained that she did not understand why she needed to provide proof that she was the recipient of the child benefit. Mr Y only started making child maintenance payments in December 2020, which she passed onto Mr D to help pay the household bills.
44. On 27 April 2021, TP wrote to Ms K and said that her letter of 21 February 2021 was only received on 27 April 2021. Regulation 179 of the 2014 Regulations provided for benefits that could be paid to a beneficiary's care giver if the beneficiary was below the age of 18. There was no proof that she was Miss IY's carer, which was why it required confirmation from the DWP, or HMRC, regarding the child benefits she received. Bank statements would act to highlight receipt of any such benefits.
45. On 6 May 2021, TP wrote to Mr D and said that it had not yet received a response from the Solicitors, nor was HMRC able to provide any information about the child benefits. If it was unable to confirm that Ms K was Miss IY's carer, it may need to contact her father.
46. On 10 May 2021, TP wrote to the Solicitors to follow up on its letter of 26 January 2021.
47. On 14 May 2021, Mr D wrote to TP and said:-
 - It should have received enough information to confirm that Ms K was Miss IY's primary care giver and was in receipt of child benefits.

- There was no clear reason why it had not provided any figures for the Lump Sum of the child's pension. Nor was it clear under which section of the Scheme the benefits would be calculated.
 - Ms K's letter of 13 August 2020 made clear that she was Miss IY's care giver. It was clear that TP had not contacted anyone else in Miss IY's life to obtain confirmation that Ms K was Miss IY's primary care giver.
 - He provided the contact details for Mr Y but said that there would be very little gained in contacting him. There was nothing that Mr Y could say, or provide, that would disprove that Ms K was Miss IY's primary care giver.
 - TP should direct any enquiries it had about the Will to himself, instead of contacting the Solicitors. Due to the value of Miss ND's estate, no steps had been taken to set up a trust for Miss IY.
 - TP had still not provided a copy of the policies and procedures it referred to when conducting such an investigation, and also in how it interpreted and applied the 2010 Regulations and the 2014 Regulations.
 - Mr Y had not paid his last two child maintenance payments.
48. On 22 May 2021, Miss IY wrote to TP and said that she did not live with Mr Y and that she lived with Ms K in the house owned by Mr D. She wished for Mr D to look after her finances, in line with the Will.
49. On 20 July 2021 and 18 August 2021, TP telephoned Ms K as she had not replied to its letter of 27 April 2021. In response, Ms K telephoned TP and said that she would send it copies of documents relating to the child benefit and maintenance payments she received for Miss IY.
50. On 1 September 2021, TP emailed Ms K as she had not yet provided any evidence regarding the child benefit and maintenance payments. It explained that it was now almost two years since TP was made aware of Miss ND's death. If the Lump Sum was not paid before the end of the two-year period, the Lump Sum would be taxable.
51. In September 2021, TP, and Mr D corresponded via email and it was decided that the Lump Sum would be paid into the Estate bank account with the intention that a Trust was setup for Miss IY. TP said that it required evidence of the Trust as soon as it was reasonably available.
52. On 7 September 2021, TP wrote to Mr D and said that a Lump Sum of £82,944 had been paid into the Estate bank account. Miss IY was due a short-term pension from 17 August 2019 to 16 February 2020. This was the equivalent of six months of Miss ND's full pensionable salary worth £13,824. Thereafter, Miss IY was entitled to a long-term yearly pension of £1,795.66 from 17 August 2019, increased up to £1,825.37.

53. Between September 2021 and November 2021, Mr D corresponded with TP about the tax deductions from Miss IY's short-term and long-term pensions. He also said that interest should have been paid on top of the Lump Sum and the pensions. TP provided Mr D with all the necessary tax related information he required and agreed that interest was due on all the payments. Interest on the Lump Sum was due from 23 December 2019, the date TP received the Grant of Probate, worth £234.07. It calculated that the interest due on the pension arrears amounted to £57.95.

Mr D's position

54. TP caused unnecessary delays in deciding who to pay the death benefits from the Scheme to following Miss ND's death. He accepted that he and Ms K were not forthcoming with some information. However, some of the information requested was overly intrusive such as the request for bank statements. He provided TP with several alternative people to contact to gather evidence for its investigation; however, TP chose not to act on this.
55. He repeatedly asked TP to provide a copy of any procedural guidance documents used in the interpretation of any Regulations around its decision making. TP did not provide this information. The extracts of the decision-making document provided under IDRPs were insufficient.
56. He believed that he should be reimbursed for the excess work and hours he put into corresponding with TP to resolve the matter. This excluded the general hours he worked as the Executor for the Estate. When considering the unreasonable requests for information that TP were making, he was forced to "jump through unnecessary hoops and TP were being obstructive". TP made an offer of £250 in recognition of the delays identified by DfE (**the Offer**). He believed that the Offer was inadequate, and it should increase this amount.
57. As a result of TP's inability to conduct its investigation in a timely, effective, and transparent manner, he was left with no option but to consult two separate solicitors. He incurred fees of £1,020 in discussing how TP could be made to act in a timelier manner, and in seeking a special guardianship for Miss IY. TP should consider reimbursing the fee of £1,020 that he incurred due to its inability to conduct a timely investigation.

TP's position

58. Miss ND nominated Miss IY as the beneficiary for the Lump Sum; however, at the time, Miss IY was below the age of 18. The notes enclosed with the EOW made clear that the Lump Sum could not be paid directly to an individual under the age of 18. In cases such as these, the Lump Sum would normally be paid to the surviving parent. However, Miss IY did not live with Mr Y. So, TP required confirmation of Miss IY's living arrangements before any benefit could be paid.
59. In addition to the Lump Sum, Miss IY was eligible to receive a long-term pension. Furthermore, as there was no surviving adult, she was also entitled to a short-term

pension for six months based on the value of Miss D's final pensionable earnings. The long-term pension was based on a split calculation as Miss D was in two separate sections of the Scheme. Each of the pensions could only be paid to Miss IY's primary care giver.

60. To prove who was Miss IY's primary care giver, TP asked for confirmation of a residency/guardianship order, if there was one. It also said that it could accept confirmation of who received any child benefits on behalf of, and for, Miss IY. Despite multiple requests for this information, both Mr D and Ms K were reluctant to provide any such confirmation.
61. It understood that Mr D was aggravated when it was said that he would not provide the contact details for Mr Y, when he believed he had not been asked to provide them. Mr D believed that this inference would influence the outcome of any complaint under the Scheme's IDRP. However, this was not the case as Mr D had said in a letter "under no circumstances should any information be sought from, or given to, [Mr Y]." This was recognised by DfE and did not act to interfere with the outcome of the complaint under IDRP.
62. At each stage of the IDRP, Mr D was provided with information regarding an internal decision document used by TP when making decisions based on discretion. There is not a separate document to account for every scenario that may unfold when investigating who to pay death benefits to. The only other information regarding its procedures related to the calculation of benefits, via its computer system; however, this information was commercially sensitive and not available.
63. TP can only administer the Scheme in accordance with the 2010 Regulations and the 2014 Regulations. It was unsure why Mr D held the belief that there were other internal procedures/documents that it used that were being withheld from him. The Regulations provided the use of discretion in certain circumstances, which applied in this case.
64. TP was not prepared to compensate Mr D for any work he did in relation to his role as the Executor of the Estate. Nor was it prepared to cover any legal costs he may have incurred by consulting any solicitors. The decision to obtain legal advice was a decision that Mr D made, so it was up to him to pay any associated costs.
65. A decision was made to pay the Lump Sum and the arrears for the short-term and long-term pensions to the Estate bank account. This decision was made after TP consulted with its legal counsel on the best course of action as the end of the two-year period was nearing.
66. It recognised that there were some delays caused by TP during its investigation of who to/how to pay the death benefits. In recognition of this, it made the Offer to Mr D, which remained open for him to accept.

Adjudicator's Opinion

67. Mr D's complaint was considered by one of our Adjudicators who concluded that further action was required by TP or DfE. The Adjudicator's findings are summarised in paragraphs 68 to 82 below.
68. TP accepted that there were some delays in its investigation into who the recipient of Miss IY's benefits should have been. It explained that there was no dispute that Miss IY was the beneficiary of the relevant death benefits, nor was there a dispute regarding the EOW or the Will. What TP called into question, during its investigation, was who the death benefits should be paid to, as Miss IY was under the age of 18 and did not live with her father, Mr Y.
69. Having reviewed the relevant regulations, the Adjudicator was satisfied that TP was the appropriate decision maker under the 2010 Regulations and the 2014 Regulations. In particular, the Adjudicator agreed that, in accordance with regulation 179 of the 2014 Regulations, before any payments could be released, TP needed to satisfy itself, as the decision maker, who was responsible for Miss IY's care.
70. TP needed to identify all of Miss IY's potential care givers and collect sufficient information about their personal and financial circumstances relating to Miss IY, in order to establish who had guardianship of Miss Y. This was necessary before deciding to whom to pay the benefits. The appropriate level of enquiry could vary depending on the facts and circumstances of the case. In more complicated cases, a higher level of enquiry would be appropriate. It was for the decision maker to weigh the evidence.
71. During the course of TP's investigation, Mr D and Ms K were asked to provide evidence of who paid the household bills for the house Miss IY resided in, and who received child benefit and maintenance payments. Mr D confirmed that he owned, and paid the mortgage on, the house Miss IY and Ms K resided in, and while he did not live with them, he was involved in Miss IY general care/welfare.
72. The Adjudicator took note of, and was satisfied by, the steps taken by TP in its requests for information from Mr D and Ms K. TP could not be held accountable for the fact that Ms K did not wish to provide confirmation that she was the recipient of Miss IY's child benefits DWP. It was suggested that if Ms K did not wish to provide bank statements, she could have provided a copy of any of the DWP letters she received about the payment of child benefits, but she did not.
73. The Will made clear that Miss IY was the sole beneficiary for any funds derived from the Estate. There was no dispute over Mr D's role as the Executor, or his responsibility to manage Miss IY finances until she reached age 25. However, the Lump Sum was a discretionary benefit and did not form part of the Estate. TP did take the Will into consideration; however, it was not bound by it.
74. The primary contention, during TP's investigation of who the recipient of the relevant death benefits should have been, was that the process was overly protracted. This, in

part, was due to Mr D and Ms K's reluctance to provide basic information about who received the child benefits for Miss IY. If this information had been provided sooner, then it was likely that the death benefits would also have been paid earlier than they were.

75. There were also a number of unnecessary delays by TP, the first of which was the time taken by TP to contact Miss ND's employer to gather the necessary salary/service information to calculate the Lump Sum. Although, it was surmised that even if the information had been requested at an earlier date, it would not have made any material difference to when the death benefits could be paid. This was because TP still required confirmation of who was Miss IY's care giver.
76. The second unnecessary delay was due to the time it took TP to initially contact Ms K, September 2019 to 24 March 2020, to request information about the child benefit payments she received. Overall, the Adjudicator took the view that no one party was responsible for all of the delays encountered during TP's investigation. Mr D, Ms K and TP all shared joint accountability for the delay in the death benefits being paid.
77. The Lump Sum and pension arrears were eventually paid to the Estate on the understanding that Mr D would set up a Trust for Miss IY. TP took this course of action after it obtained legal advice on the matter, and because the end of the two-year period was approaching.
78. TP's decision to pay the Lump Sum and pension arrears to the Estate, without the information it sought did conflate the issue. This was because it demonstrated that TP did not necessarily need confirmation to allow it to exercise discretion in paying the benefits to the Estate. Further, given Mr D and Ms K's reluctance to provide confirmation about the child benefits, it would have been reasonable for TP to have sought legal advice sooner than it did. Although, the Adjudicator took the view that this should not necessarily be held against TP as it was attempting to undertake a sufficient level of due diligence before making any payments.
79. The Adjudicator did not agree that the Offer appropriately reflected the level of distress and inconvenience Mr D suffered due to TP's errors. However, it was explained that the Pension Ombudsman (**TPO**) could only accept, and investigate, complaints brought by potential beneficiaries, or on behalf of an individual who is unable to act in their own capacity, such as a minor or on behalf of an Estate.
80. Mr D had not brought the complaint as a potential beneficiary, as there was never a dispute over Miss IY's entitlement to the Lump Sum and the short term and long-term pensions, it was concerning who the benefit should be paid to on her behalf. Nor was the complaint brought on behalf of Miss IY. The complaint was made by Mr D, as the Executor, on behalf of the Estate. Consequently, the Adjudicator could not make any recommendations for the Offer to be increased.
81. The Adjudicator disagreed with Mr D's assertion that TP was not forthcoming with the procedural documents that he requested. DfE provided a copy of a decision-making document used by TP to help with the application of discretion in relation to relevant

regulations. Thereafter, it was unclear what further information Mr D wanted. It was unlikely that TP held a document that covered multiple scenarios that might occur in exercising discretion regarding the payment of death benefits.

82. There was no requirement for TP to reimburse the fees of £1,020 that Mr D incurred in consulting two separate solicitors. The matter under investigation was relatively straightforward, in that, all that was required in order to reach a decision was confirmation of who received the child benefit payments on behalf of Miss IY. It was Mr D's choice to consult two solicitors, one of which was about setting up a Trust for Miss IY, a requirement of the Lump Sum, and pension arrears being paid to the Estate.
83. Mr D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr D provided his further comments which I have considered but they do not change the outcome, I agree with the Adjudicator's Opinion. The additional points raised by Mr D were:-
- He did not accept the view that he, Ms K and TP were all jointly responsible for the delays identified. It was his belief that any delays were attributable only to TP. Ms K was also not party to the complaint brought to TPO for investigation, so her reluctance to provide any requested information should not be held against her.
 - He suggested a number of alternative forms of evidence that TP could request in order to satisfy itself of who Miss IY's primary care giver was, yet TP chose to ignore his suggestions. TP also ignored correspondence from Miss IY confirming that Ms K was her care giver and that she would like the benefits paid to Mr D.
 - He had to request, on more than one occasion, a breakdown of the payments made to the Estate to satisfy himself that the correct level of benefits had been paid.
 - Initially, TP told him that there were no procedural guidance documents that he could be provided with. However, this was incorrect as DfE provided him with a copy of a decision-making document used by TP to help with the application of discretion in relation to relevant regulations. He, also did not agree that this was the only procedural document available to TP and DfE. The failure to provide him with appropriate guidance contributed to the delay in paying the death benefits.
 - The 2010 Regulations and the 2014 Regulations provided TP with a significant level of discretion in how, and to whom, to pay the death benefits. However, it appeared that no consideration had been given to whether or not TP fettered its discretion regarding the process it used to resolve the matter.
 - He disputed the claim that the case was relatively straight forward and that he should not be reimbursed the fees of £1,020 incurred by consulting various solicitors. The case was complex in nature, required lengthy correspondence with TP to eventually have the Lump Sum and pension arrears paid to the Estate. If the

case was straightforward, then this would call into question why TP took so long in paying the benefits.

- He did not agree that the Offer sufficiently addressed the distress and inconvenience caused by TP. If the Offer was increased, it would be payable to Miss IY.

84. TP and DfE accepted the Adjudicator's Opinion and did not provide any additional comments on the matter.

Ombudsman's decision

85. There are a number of different elements to Mr D's complaint; however, the central basis of his complaint is in relation to the delay in the payment of the Lump Sum and the short-term and long-term pensions. Mr D has inferred that, despite providing detailed information about who acts as Miss IY's care giver, TP delayed its own investigation.
86. I note that after the death of Miss ND, there has been no contention of who the recipient of the Lump Sum should have been or that Miss IY was entitled to receive short-term and long-term pensions. That is, the Will and the EOW made clear that Miss ND's wishes were for Miss IY to be the sole beneficiary of any Scheme benefits and also any residual benefits derived from the Estate. Consequently, I am satisfied that TP has acted in accordance with Regulation 82 of the 2010 Regulations, and Regulation 133 of the 2014 Regulations.
87. I understand that Mr D has implied that consideration should be given as to whether TP fettered its discretion of who to pay any benefits to. For TP to fetter its discretion it would need to be demonstrated that TP followed an overly rigid policy which prevented it from fully exercising the discretion provided to it by the 2010 Regulations and the 2014 Regulations. Based on the evidence available I do not agree that TP fettered its discretion. I believe that Mr D's main point of contention is not how TP exercised its discretion, but instead how it conducted its investigation and what it required to satisfy itself on who should be the recipient of the death benefits on behalf of Miss IY, as she was a minor.
88. As Miss IY was a minor, TP sought confirmation of who Miss IY's primary care giver was. In doing so, TP asked both Mr D and Ms K for details of: Miss IY's living arrangements; who was financially responsible for her; and confirmation of who received child benefits from the DWP for Miss IY.
89. I agree with the Adjudicator that the process of gathering this information was overly protracted given its simple nature. I note Ms K's reluctance to provide any confirmation of the child benefits she received for Miss IY, be it a bank statement or letters from HMRC or DWP. While I appreciate that this is not something that was within Mr D's control, it was not within TP's control either. Despite Ms K not being a party to Mr D's complaint, it was appropriate to consider her involvement and whether

her inaction attributed to delays in TP's investigation and the payment of the relevant benefits.

90. I note the suggestions offered by Mr D to help TP satisfy itself about who Miss IY's care giver was. I also appreciate that Miss IY herself wrote to TP to confirm that Ms K was her care giver and that she wanted the death benefits paid to Mr D on her behalf. I agree that this information would have helped TP to satisfy, in part, the requirements of regulation 179 of the 2014 Regulations, and there is nothing to suggest that TP did not take this information into account. That said, third party written statements are not, in and of themselves, a sufficient means to confirm who was Miss IY's care giver. I find that TP's requests for evidence of who received the child benefits, on behalf of Miss IY, were a legitimate means of determining who her primary day to day care giver was.
91. I consider that TP could have exercised its discretion in paying the Lump Sum, and the short-term and long-term pension arrears to the Estate when it became clear that it was unlikely to receive the evidence it required from Ms K. However, I find that it would not be reasonable to penalise TP for adhering to an adequate level of due diligence when determining who should receive the Lump Sum, the short-term and long-term pension arrears and an ongoing child's pension for Miss IY.
92. With regard to Mr D's requests for TP and DfE to provide him with any and all procedural guidance available that might assist TP in understanding how to apply the relevant 2010 Regulations and the 2014 Regulations. It is unfortunate that TP did not initially provide Mr D with a copy of the decision-making document which DfE provided under the Scheme's IDRP.
93. The document provided by DfE, and the details provided under Regulation 179 of the 2014 Regulations, make clear that TP must satisfy itself who a beneficiary's care giver is when they are a minor. Given the discretion provided to TP, it was for TP to decide what information would satisfy this requirement, which TP explained to all concerned parties. It is unclear what the material difference would have been if Mr D had been provided with any additional procedural documents, if indeed any existed.
94. While there was a significant amount of correspondence between all of the concerned parties, which may have potentially over complicated matter, I am unable to agree that the matter was so complex that Mr D was left with no other option than to obtain legal advice. TP set out what was required to progress the matter, and that information was not provided. The costs Mr D incurred were borne out of a decision he himself made; TP should not be responsible for any form of reimbursement for legal fees.
95. I agree that there were some unnecessary delays caused by TP during its investigation, the delay in contacting Miss ND's former employer to confirm Miss ND's salary and service information and to complete a 22a bereavement form; the delay in contacting Ms K for information; and a further delay in exercising its discretion to pay the Lump Sum to the Estate. However, once the relevant death benefits were paid,

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TP applied interest on those payments, for the relevant period, and made the Offer to Mr D. While I note Mr D's comments in relation to the Offer, and I do understand Mr D's considerable frustration, the complaint was brought to TPO on behalf of Miss ND's Estate. An Estate is an entity that cannot suffer distress and inconvenience and therefore I make no finding as to whether the Offer is appropriate or not. If Mr D wishes to accept the Offer, he should contact TP.

96. I do not uphold Mr D's complaint.

Anthony Arter CBE

Pensions Ombudsman

7 March 2024

Appendix 1

The Teachers' Pension Scheme Regulations 2010 (SI2010/990) (as amended)

Regulation 82 provided that:

“(1) A person (“the appointor”) may nominate another individual (“the nominee”) for the purpose of this Part by giving written notice to the Secretary of State.

(2) A nomination under paragraph (1) ceases to have effect if—

(a) the appointor revokes the nomination by giving written notice to the Secretary of State,

(b) the appointor subsequently nominates a different person in place of the nominee, or

(c) the nominee dies.

(3) The nominee is the appointor’s death grant beneficiary for the purpose of this Part if the nomination has effect at the date of the appointor’s death.

(4) Where the appointor nominates more than one individual under paragraph (1), the notice must state in relation to each nominee—

(a) the share of the death grant to be paid to the nominee, and

(b) whether, if the nominee predeceases the appointor, the Secretary of State must treat the notice as stating that the deceased nominee’s share of the death grant be paid—

(i) to the surviving nominee or, if there is more than one, to the surviving nominees in accordance with paragraph (5), or

(ii) to the appointor’s personal representatives as part of the appointor’s estate.

(5) Where the share of the deceased’s nominee’s death grant is to be paid to the surviving nominees it is to be paid to them in shares such that the proportion which each surviving nominee’s share bears to each of the other surviving nominee’s shares is the same as it was in the nomination.

(6) Any death grant paid under this Part must be paid to the appointor’s death grant beneficiary or, if more than one, death grant beneficiaries in the shares determined in accordance with paragraphs (4) and (5).

(7) But where there is no death grant beneficiary, the death grant must be paid to the appointor’s surviving spouse, surviving civil partner or surviving nominated partner or, if there is no such person, to the appointor’s personal representatives as part of the appointor’s estate.”

Teachers Pension Scheme Regulations 2014 (SI2014/512) (as amended)

Regulation 133 provided that:

“(1) For the purpose of a death grant, a person (P) is a member’s “death grant beneficiary” if—

(a) P is an individual;

(b) the member has nominated P to receive a death grant or a share of a death grant on the member’s death; and

(c) at the date of the member’s death, the nomination has effect.

(2) A member may nominate P by giving written notice to the scheme manager.

(3) The nomination ceases to have effect if—

(a) the member revokes the nomination by giving written notice to the scheme manager,

(b) the member subsequently nominates a different person in place of P, or

(c) P dies.

(4) If a member nominates more than one death grant beneficiary, the notice must state—

(a) the share of the death grant to be paid to each beneficiary; and

(b) whether, if a beneficiary dies before the member, the beneficiary’s share must be paid—

(i) to the surviving beneficiaries in accordance with paragraph (5), or

(ii) to the member’s personal representatives as part of the member’s estate.

(5) If a beneficiary’s share is to be paid to the surviving beneficiaries it is to be paid to them in shares such that the proportion which each surviving beneficiary’s share bears to each of the other surviving beneficiaries’ shares is the same as it was in the nomination.”

Regulation 137 provides the meaning of an eligible child:

“(1) In these Regulations, a person is an “eligible child” of a member who dies (D) if—

(a) the person—

is D’s child and was born before D died or within 12 months after D’s death,

was adopted by D, or

(iii) was accepted by D as a member of D's family and was wholly or mainly financially dependent on D at the date of D's death;

(b) the person has never married or formed a civil partnership; and

(c) the person meets Condition 1, 2 or 3.

(2) Condition 1 is that the person is under 17.

(3) Condition 2 is that the person—

(a) is 17 or over and under 23;

(b) is receiving full-time education; and

(c) since reaching 17, has received full-time education without a break.

(4) Condition 3 is that the person—

(a) is incapable of earning a livelihood by reason of physical or mental impairment;

(b) because of that impairment, was dependent on D at the date of the D's death; and

(c) is not wholly maintained out of money provided by Parliament or raised by council tax by a local authority (including a non-metropolitan district council for an area for which there is a county council).

(5) For the purpose of Condition 2—

(a) a person is receiving full-time education if the person attends a full-time vocational training course which runs for a period of at least 2 years;

(b) a person does not cease to receive full-time education if the person takes a single break of up to a year (or such longer period as the scheme manager may determine in the circumstances of the particular case); and

(c) a person who ceases to receive full-time education is taken to receive it up to and including the week which includes whichever of the following days occurs first after the end of the term in which the person ceases to receive it—

the first Monday in January,

the first Monday after Easter Monday,

the first Monday in September.”

Regulation 138 provided that:

“On the death of a member (D), a death grant is payable as follows—

(a) to D's death grant beneficiary;

- (b) if there is more than one death grant beneficiary, to those beneficiaries in the shares determined in accordance with regulation 133(4) and (5); or
- (c) if there is no death grant beneficiary—
 - (i) to D's surviving adult; or
 - (ii) if there is no surviving adult, to D's personal representatives as part of D's estate.”

Regulation 179 provides:

“(1) Where a person (P) to whom a benefit is payable has not reached 18 or is incapable by reason of infirmity of mind or body of managing P's affairs, the scheme manager may—

- (a) pay the benefit to any person having the care of P, or
- (b) apply it as the scheme manager thinks fit for the benefit of P or P's dependants.

(2) Where on the death of a person (D) the total of any sums due to D and any sums payable to D's personal representatives under these Regulations does not exceed the amount specified in any order made under section 6 of the Administration of Estates (Small Payments) Act 1965(1) which applies to D's death, the scheme manager may, without requiring the production of probate or other proof of title, pay the amount due—

- (a) to D's personal representatives, or
- (b) to the person, or to or among any one or more of any persons, appearing to the scheme manager to be beneficially entitled to D's estate.”