

Ombudsman's Determination

Applicant	Mrs R
Scheme	The Members of the Senedd Pension Scheme (The Scheme)
Respondents	Members of the Senedd Pension Scheme Pensions Board (The Trustee)

Outcome

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

Complaint summary

2. Mrs R has complained that the benefits payable to her from the Scheme are lower than she had expected.

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. In 2007, Mr R joined the Scheme as an Assembly Member of the Senedd (**Assembly Member**). The Scheme is administered by The Senedd Commission (**the Scheme Administrator**) on behalf of the Trustee.
5. The Scheme is an occupational defined benefit arrangement set up under trust and is a Public Service Pension Scheme approved by HM Treasury in accordance with the Public Service Pensions Act 2013.
6. The Independent Remuneration Board of the Senedd (**the Remuneration Board**) was established by the National Assembly for Wales (Remuneration) Measure in 2010, to set pay and allowances for Members of the Senedd. Under section 20 of the Government of Wales Act 2006, the Remuneration Board had the power to make provision for a pension scheme for Members of the Senedd. The Scheme was created under this power and the Remuneration Board could amend the Scheme Rules in accordance with its statutory power. Any variation to the Scheme Rules required the consent of HM Treasury.

7. On 24 April 2014, the Remuneration Board began a consultation with Assembly Members regarding future pension arrangements. As part of the consultation, the Scheme Administrator published a document which was made available to Assembly Members and members of the public. The document set out the proposed changes to the Scheme Rules for Assembly Members and all parties were encouraged to give their response. (see Appendix 1)
8. On 21 May 2014, the consultation was closed.
9. On 4 July 2014, a second consultation document was published and made available to Assembly Members and members of the public who were invited to comment on the proposals.
10. On 15 August 2014, the second consultation was closed.
11. On 26 February 2016, the Scheme Administrator sent a letter to Mr R. Enclosed was an explanatory booklet which explained the upcoming changes to the Scheme, which were due to commence in May 2016. The booklet contained information regarding the new lump sum benefits payable, including the death in service lump sum, which was stated as being two times his annual salary as an Assembly Member. The letter gave Mr R the option to set up a meeting should he have wished to discuss these changes with the Scheme Administrator.
12. On 6 May 2016, the proposed changes to the Scheme came into effect (**the Commencement Date**).
13. On 8 March 2018, a Scheme valuation report (**the Report**) prepared by the Government Actuary's Department was sent to Mr R. On page 23 of the report, it incorrectly stated that the death in service lump sum payable was four times his salary.
14. On 18 May 2019, Mr R signed a handwritten Will. It stated that he wished that all his belongings, assets and pensions should be transferred to his wife Mrs R, and daughter Ms AR. The Will stated:

“I would like to say in my senses Saturday 18th May 2019 [sic] That all of my belongings my assets and pension should be transfer [sic] to my Wife [Mrs R] and my Daughter [Ms AR] if anything happens to me. This should be considered as a final will”.
15. On 13 September 2019, the Scheme Administrator emailed Mr R. It informed him that a consultation was in progress to consider changes to the Scheme, including an option for members who reach age 75 to stay in the Scheme to continue building benefits, or to come out of the Scheme and stop paying contributions. It explained the tax implications of taking the first option. It stated it would write again to Mr R once the outcome of the consultation was known and to make contact should he have any questions in the meantime.

16. On 22 January 2020, Mr R attended a Pensions drop-in session for Assembly Members.
17. On 24 January 2020, the Scheme Administrator emailed Mr R regarding the drop-in session he attended. It confirmed that, if Mr R decided to leave the Scheme at age 75, he would have the option to draw the tax-free cash element of his pension at that time. It stated his pension would then be paid to him when he stood down as an Assembly Member and advised it would write to him closer to the time with all available options.
18. On 24 January 2020, Mr R replied with his thanks.
19. On 16 June 2020, Mr R died prior to reaching age 75.
20. Upon Mr R's death, Rule 55 of the National Assembly for Wales Members Arrangement of Pension Scheme rules (**the Scheme Rules**) 2016 was applicable for death benefits (see Appendix Two):

“55.2 The annual amount of a Pension payable under this Rule to a Surviving Adult Dependant shall be the aggregate of:

- a. five eighths of the Death Benefit Pension of the deceased Member which was accrued up to the day immediately preceding the Commencement Date; and
- b. subject to the transitional provisions in Schedule 6 {transitional provisions}, one-half of the Death Benefit Pension of the deceased Member which was accrued on and from the Commencement Date”.

21. The other applicable Scheme Rule was Rule 62 which applied to lump sum benefits:

“62.7 Subject to Rule 62.8 below, the amount of a gratuity granted under this Rule in respect of an Assembly Member shall be whichever of the two following amounts is the greater of:

- a. the amount equal to:
 - (i) three times the individual's Gratuity Salary at the time of his or her death if that death occurred prior to 1st November 2002; or
 - (ii) an amount equal to four times the individual's Gratuity Salary at the time of his or her death if that death occurred on or after 1st November 2002 but before the Commencement Date; or

(iii) an amount equal to two times the individual's Gratuity Salary at the time of his or her death if that death occurred on or after the Commencement Date".

22. Schedule 6 of the Scheme Rules covered which benefits were subject to transitional provisions (see Appendix three).
23. On 29 June 2020, Ms AR emailed the Scheme Administrator asking if it could contact her regarding the benefits due to Mrs R from the Scheme.
24. On 30 June 2020, Ms AR again emailed the Scheme Administrator.
25. On 2 July 2020, the Scheme Administrator sent an email to Mrs R and advised her of the benefits due to her under the Scheme. It stated that these benefits included a widow's pension and a death in service lump sum payment which was two times Mr R's final annual salary. It also stated that Mr R did not complete a death in service nomination form to confirm who he wished to receive the death in service lump sum. Therefore, the Scheme Administrator requested that Mrs R complete a form attached to the email so it could arrange to pay her these benefits.
26. On 2 July 2020, the Scheme Administrator also emailed Ms AR. It stated that the widow's pension payable to Mrs R would be equal to Mr R's salary for the first three months. Therefore, for the period 17 June to 16 September 2020, Mrs R would receive a widow's pension equal to Mr R's salary. After that time a widow's pension would be payable at a rate of five eighths of Mr R's pension built up to the date of his death. It also stated that the widow's pension would be increased in accordance with inflation each April.
27. On 6 July 2020, Ms AR sent an email to the Scheme Administrator stating that Mr R was covered by the transitional provisions. Therefore, she disagreed that Mrs R was due a death in service lump sum of two times Mr R's annual salary and that it should be four times his annual salary.
28. On 7 July 2020, the Scheme Administrator emailed Ms AR and clarified the benefits Mrs R was entitled to. It stated that the transitional provisions covered the benefits from the widow's pension due to Mrs R, which is why the widow's pension remained at five eighths of the pension that Mr R would have received on the day of his death. However, the provisions did not cover the death in service lump sum. It stated that the commencement date for the death in service lump sum was 6 May 2016 for all members and for other benefits the commencement date was 6 May 2021. Therefore, it advised that the widow's pension was a protected benefit and was calculated based on Mr R's final salary. However, it stated that the death in service lump sum was not a protected benefit and the amount set out in the rules was two times the member's annual salary for all members, except in certain circumstances not relevant to Mrs R's case.

29. On 21 July 2020, the Scheme Administrator emailed Ms AR requesting a copy of the death certificate, marriage certificate, and a completed beneficiary form to arrange to bring the benefits into payment.
30. On 21 July 2020, the Scheme Administrator also sent an email to Mrs R regarding the same matter, with a letter attachment setting out the benefits she was due.
31. On 24 July 2020, Mrs R replied. She stated that Ms AR was dealing with the matter on her behalf, and she had also instructed a solicitor to investigate the benefits she was due. She asked that the Scheme Administrator bear with them until they were ready to proceed.
32. On 24 July 2020, the Scheme Administrator replied. It advised that, until it had the relevant information, it was not able to pay any benefits due from the Scheme. It stated that as soon as it received the information it requested, it would put the widow's pension into payment and pay the death in service lump sum.
33. On 2 October 2020, a letter of complaint was sent by Sanders Witherspoon LLP (**the Solicitor**) on behalf of Mrs R. In summary:
 - It stated that the Scheme was a private law contract between the members and the Trustee, however, public law principles still applied regarding the legitimate expectations of the members and beneficiaries.
 - It was of the view that, in Mr R's case, a change to the death in service benefit to a multiple two times the annual salary was wholly unlawful. It stated this decision was made "ultra vires of the powers of the Assembly and Board". Further, that Mr R clearly expressed his opposition to this variation and that he had a reasonable expectation his beneficiaries would receive four times his annual salary for the death in service lump sum as stated in the Report.
 - It believed its client's Human Rights were engaged, Article 8 right to respect for private and family life, Article 14 Prohibition from Discrimination, and Article 1 of the First Protocol Protection of Property. It stated this was "in addition to offending the protections against unlawful discrimination afforded" by the Equality Act 2010 (**EA 2010**), under which it stated age was a protected characteristic.
 - The changes to the Scheme Rules in 2016 were made without effective consultation which, in its view, invalidated their effect. It also stated that there seemed to be no logic to set 1 May 2016 as the date when the new rules came into place.
 - The provisions made for its client by way of a widow's pension seemed woefully inadequate by comparison to provisions made for other beneficiaries. It stated it had been made aware of a situation regarding a widow of a "newer" member of the Scheme, whose widow received a higher settlement than offered to its client

despite a considerable disparity in the length of service between that member and Mr R.

34. On 6 October 2020, the Scheme Administrator wrote to Mrs R. It stated that it had a duty to pay her benefits and it needed information before it could do so.
35. On 9 October 2020, Mrs R responded. She asked the Scheme Administrator to correspond with the Solicitor from this point onwards.
36. On 9 October 2020, the Scheme Administrator replied to Mrs R. It advised that it had received her email and the letter from the Solicitor. It stated it would contact the Solicitor moving forward.
37. On 13 October 2020, a Grant of Probate for Mr R's estate was issued to Ms AR.
38. On 26 October 2020, the Scheme Administrator sent a stage one Internal Dispute Resolution Procedure (**IDRP**) response to the Solicitor regarding Mrs R's letter of complaint. In summary:
 - It apologised for the confusion caused by page 23 of the Report and acknowledged incorrect information was provided within it. It clarified that the death in service lump sum payable was two times the annual salary and not four times the annual salary.
 - As set out in paragraph 2.3 of the Report, the Scheme Rules prescribed the level of benefits and the circumstances in which benefits were payable to former members and their dependents. As such, the Trustee only had the power to pay benefits as set out in the Scheme Rules.
 - The Report did not create a contractual obligation and was not a statement upon which Mr R could have reasonably relied as a statement of the benefits payable from the Scheme. As stated in paragraph 2.9 "other than the Trustees, no person or third party is entitled to place any reliance on the contents of this report, except to the extent explicitly stated herein".
 - Mr R was aware of the changes which were introduced to the Scheme with effect from 1 May 2016. It enclosed a copy of the letter dated 26 February 2016 and explanatory booklet which were sent to Mr R at the time. Included in the letter was a description of the lump sum benefits payable in the event of a member's death while in service as an Assembly Member.
 - The Scheme Rules were amended by the Remuneration Board in 2016 in accordance with its statutory powers, and these changes received HM Treasury approval.
 - Mrs R was entitled to benefits payable as set out in the Scheme Rules. The Trustee could only pay benefits in accordance with the Scheme Rules and to do

otherwise would be a breach of trust. From the information provided, it could not see how Mrs R was treated differently because of any protected characteristic under the EA 2010. It confirmed that payment of a widow's pension was due to her, in addition to a death in service lump sum two times Mr R's salary.

- It stated that legislation contained non-discrimination and equal treatment provisions which were applicable to occupational pension schemes, and the Trustee had a duty to ensure that the Scheme Rules complied with the requirements in this respect. Having considered the information provided in the letter of complaint together with the Scheme Rules, it did not consider that the relevant Scheme Rules were discriminatory on the grounds of age.

39. On 15 December 2020, the Solicitor replied. It asked the Scheme Administrator to begin making payment to Mrs R as soon as possible and stated that the requested documents would be provided to its office shortly. It enclosed a handwritten letter and forms completed by Mrs R, which stated that she wished the death in service lump sum benefits to be paid to Mrs AR.
40. On 16 December 2020, the Scheme Administrator replied to the Solicitor. It advised it had received the documents and had arranged for the widow's pension and arrears to be paid in full on 31 December 2020. It requested details of Mr R's personal representatives as he had not completed a nomination form with regard to the death in service lump sum.
41. On 16 December 2020, the Scheme Administrator wrote to Mrs R. It confirmed the benefits to be paid to her and when they would be paid.
42. On 22 December 2020, the Scheme Administrator sent a letter to Mrs R confirming that it had received the Grant of Probate and had arranged to pay the death in service lump sum of £135,298.00 to Ms AR.
43. On 22 December 2020, the Scheme Administrator wrote to Ms AR. It confirmed it had paid her the death in service lump sum of £135,298.00.
44. On 19 February 2021, Mrs R complained to The Pensions Ombudsman (**TPO**).
45. On 19 November 2021, Mrs R sent a letter to the Scheme Administrator to invoke stage two of the IDRP. In summary:
 - She apologised for invoking the process late but cited her ill-health as the main reason for the delay.
 - She did not agree to receive a lump sum two times Mr R's annual salary as he never signed any documentation to accept this amount.
 - She expected to receive a lump sum four times Mr R's annual salary.

- None of the Assembly Members were consulted about the change to their death in service benefits decreasing from four times their annual salary to two times their annual salary.
- Mr R planned to withdraw £100,000 when he turned 75 years of age and he spoke to the Scheme Administrator about this in March 2020. Therefore, Mrs R should be entitled to this payment as it had been agreed it would be paid to him.
- The Scheme was ageist and discriminatory.

46. On 21 December 2021, the Trustee replied to Mrs R. It stated:

- All pensions payable to surviving adult dependents were calculated in accordance with Rule 55 of the Scheme Rules.
- A pension based on five-eighths of the pension Mr R would have received had he retired at the date of his death and a death in service lump sum two times Mr R's annual salary were payable to Mrs R.
- While it was required to consult with affected parties before making changes to the benefits payable under the Scheme Rules, it did not require members' consent to make the changes.
- It was satisfied that Mr R was aware of the changes as it had been provided with a copy of a letter dated 26 February 2016, which was sent to Mr R, and which also included an explanatory booklet explaining what the changes were and how they would affect the members.
- It was of the view that the Scheme amendments made in 2016 were within its power, that appropriate consultation was carried out, and that Mr R was included in the consultation process.
- Mr R discussed with the Scheme Administrator his intention of commuting part of his pension when he reached age 75. However, it was explained to Mr R at the time that to do this he would need to give notice to the Trustee that: (i) he wished to opt out of the Scheme, and (ii) confirm how much of the pension he wished to commute into a lump sum. Mr R did not give notice to this effect and in any event, he died before he reached age 75.
- Mr R continued to participate in the Scheme up to his death and, as he died before he reached age 75, he was not entitled to commute part of his pension into a lump sum and death in service benefits became payable to his beneficiaries. The Trustee did not have the discretion or power to augment or pay different benefits under the Scheme Rules.
- Due to the nature of pension schemes and the benefits they offered, legislation provided that specified rules, practices, actions, or decisions adopted by pensions

schemes were not in breach of the non-discrimination and equal treatment obligations.

- Having considered the information provided by Mrs R in her stage two letter, the Trustee did not consider the relevant Scheme Rules were discriminatory on grounds of age.

47. On 2 January 2022, Mrs R contacted TPO stating that she was unhappy with the stage two response. She advised that Mr R did meet with the Scheme Administrator in March 2020, and made his intentions clear to withdraw the maximum amount from the Scheme, which was approximately £100,000. She stated that this was the amount outstanding on their mortgage and Mr R spoke about his intention afterwards to his family, his staff, and his friends. She advised that at no point was he asked to provide written documentation, and nothing was ever issued to him requesting it. She stated that, if he had received a request to provide written confirmation, he would have sent it. She stated that she was not clear why the Scheme Administrator had continued taking payments from Mr R for his pension after he passed the age of 70 in 2016. As such, she felt he had contributed to the Scheme for an extra four years and approximately three months with no justification.
48. On 6 April 2022, TPO wrote to the Scheme Administrator to request a Formal Response to Mrs R's complaint.
49. On 29 April 2022, the Scheme Administrator sent its Formal Response to TPO. It reiterated previous comments it had made regarding Mrs R's complaint. It also stated that Mr R remained a final salary member until his death, therefore his pension was calculated on final salary and not Career Average Revalued Earnings (**CARE**) provisions.
50. On 15 June 2022, Ms AR met with the Trustee regarding her experience as a new Assembly Member.
51. On 27 June 2022, the Scheme Administrator emailed Ms AR. It provided information regarding the consultations which took place in 2016, before changes were made to the Scheme. It also confirmed Mr R's pension was subject to transitional protections and therefore was based on final salary provisions. It reiterated that the death in service lump sum was not subject to transitional protections and the reduction in this benefit applied to all members from the commencement date on 6 May 2016.
52. On 17 July 2022, Ms AR contacted TPO. She stated that she had recently asked the Remuneration Board if it had any responsibility for pension and death in service. She stated that it had finally accepted after over a year of advising that the Remuneration Board was a separate entity to the Scheme Administrator and Trustee, that they were intertwined.

53. Ms AR also stated that in her view the Remuneration Board had exercised its discretion for other deceased members, however it had not for Mr R. She stated that after speaking to other Assembly Members who began their term in 2007, none of them had agreed during any conversation with the Remuneration Board to cut their death in service benefits. Therefore, she stated that it was utterly invalid and very convenient that the Remuneration Board did not wish to revisit it now.
54. On 15 February 2024, TPO emailed the Scheme Administrator to clarify whether it had any correspondence or information regarding any meeting Mr R may have had with members of the Remuneration Board in March 2020.
55. On 26 February 2024, the Scheme Administrator responded. It stated that it had reviewed its correspondence relating to Mr R to determine what engagement there had been with him in 2020. It advised it had not been able to identify any meeting which took place in March 2020. It confirmed that Mr R attended a Pensions drop-in session on 22 January 2020.
56. The Scheme Administrator also stated that in its email correspondence with Mr R in January 2020, it explained to him that there would be an opportunity for him to take a tax-free cash option at age 75 if he decided to leave active membership of the Scheme at that point. However, it reiterated that Mr R would not have been eligible to receive the tax-free cash option until he was 75 years of age and as he died before he reached this age, death in service benefits became payable.

Adjudicator's Opinion

57. Mrs R's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised below:-
 - Under the Scheme Rules Mrs R was entitled to a widow's pension upon Mr R's death. The widow's pension payable to Mrs R was covered by the transitional period as a protected benefit.
 - As Mr R was an active member of the Scheme and died before he reached the age of 75, Mrs R was also entitled to a death in service lump sum. The transitional period did not cover unprotected benefits such as lump sum payments and under Rule 62, the Trustee had full discretion over payment of any death in service lump sum. Therefore, the Trustee was correct in stating that it was not within its power to pay any other benefits to Mrs R.
 - The Trustee was legally bound by the Scheme Rules. Under Rule 62.7(a) (iii) an amount equal to two times Mr R's annual salary at the time of his death became payable. Mr R died before he reached the age of 75, while he was still a member of the Scheme, and after the Commencement Date. Therefore, the Adjudicator

agreed with the Trustee that a death in service lump sum payment, amounting to two times his annual salary, became payable.

- It was evident that Assembly Members were consulted about the change to their death in service benefits decreasing from four times their annual salary to two times their annual salary. There is clear evidence that the Board did consult Assembly Members regarding these changes and the amendments it made were within its power. Indeed, the documents it published for this purpose are still available online to members of the public. Before the changes were applied, Mr R also received an email with a booklet which explained the proposed changes and the date they were due to be implemented. Consequently, he was, or should have been, aware of the changes which were made to the Scheme.
- Further, under the powers afforded to the Remuneration Board in section 20 of the Government of Wales Act 2006, the Trustee was not obliged to gain consent from Assembly Members before introducing the proposed changes to the Scheme. The Trustee was acting within its powers when it brought in these changes which were agreed and signed off by HM Treasury. Therefore, Mr R was not required to give his consent for these changes to the Scheme to become applicable.
- The Trustee acknowledged that the Report it sent to Mr R in 2018 incorrectly stated the level of death benefit lump sum amounts payable. However, the Trustee was not bound by this information. In the same document it stated that “no person or third party was entitled to place any reliance on the contents of the Report”. The Trustee apologised for this mistake and during the same time period and on further occasions, provided the correct information to Mr R. In the Adjudicator’s view, this was the correct action to take in these circumstances and the Trustee was not bound to follow this incorrect information.
- Mrs R stated that Mr R planned to withdraw £100,000 from the Scheme upon reaching age 75, and that she should be entitled to this payment as the Scheme Administrator agreed it would be paid to him. Mr R received advice about his options upon reaching the age of 75 and the Adjudicator stated she had not seen any evidence demonstrating that he requested to apply for this payment. Notwithstanding, Mr R died before he reached age 75, while he was still a member of the Scheme, so this payment was not available. As a result, Mrs R received a death in service lump sum which she elected to be paid to Ms AR.
- In the Adjudicator’s opinion, Mrs R received the benefits she was entitled to according to the Scheme Rules, and she could not find that there was ageism or discrimination in how the Trustee applied the rules. The Adjudicator did not find Mrs R’s argument convincing that the Scheme was discriminatory. Although Mrs argued that she was aware of another beneficiary who received a higher pension than the amount she received the adjudicator did not feel this was relevant to Mrs R complaint. Each case was assessed on its own merit and different

circumstances would apply. As such, the Trustee was required to look at each case and ensure the Scheme Rules were correctly applied. In Mrs R's case, the Adjudicator was satisfied that the Scheme Rules were interpreted and implemented correctly.

58. Mrs R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms AR provided her further comments which are summarised below:-

- The board which administered pensions and death in service lump sums (**the Pensions Board**), at the bequest of the Remuneration Board had powers under exceptional circumstances to speak with the pension board members, carry out a vote and support the member's family.
- A meeting was carried out under exceptional circumstances in the case of another Assembly Member, so such a meeting should have been carried out for Mrs R when Mr R died.
- The rules on exceptional circumstances should be shared with Ms AR because the Trustee has exercised these rules before, and it is crucially important to this case to determine why there was one rule for one member from the same party and another for another member.
- The behaviour by the Trustee and Remuneration Board was discriminatory towards Mr R and this may be due to the colour of his skin, or his political affiliation.
- The Pensions Board felt that the Remuneration Board imposed conditions which made members substantially worse off than before and this was not fair or right. It felt that TPO should be aware of this before making a final decision.
- Those responsible for the members' pensions were not holding the members as their primary concern.

59. On 10 May 2024, the Trustee responded:-

- It followed the relevant provisions of the Scheme Rules throughout and the benefits payable upon Mr R's death were correct in accordance with the Scheme Rules. There was no basis upon which the Trustee would be required to pay a different amount.
- There were no exceptional circumstances which would have required an extraordinary meeting to determine the position of benefits payable upon Mr R's death. Therefore, no meeting was held and there was no requirement to hold such a meeting.

- Any reference to other member cases was not relevant. The Trustee reviewed each member's case on an individual basis as it was required to do. It made a decision in line with its duties, the Scheme Rules, and applicable legislation.
- It strongly rejected the suggestion that the actions or decisions taken were in any way related to Mr R's race or political affiliation. There was no discriminatory action towards Mr R, nor was there in relation to the handling of the benefits payable following his death. Mr R's case was addressed entirely in accordance with the application of the relevant Scheme Rules.
- It fundamentally disagreed with Ms AR's view that it was not holding its members as its primary concern. The Trustee always approached its decision-making and actions in accordance with its legal duties as a trustee. In this respect, the Trustee had a duty and legal obligation to act in accordance with the Scheme Rules at all times. To do otherwise would be a breach of trust.

60. I have considered Ms AR's comments and the response from the Trustee, but they do not change the outcome, I agree with the Adjudicator's Opinion.

Ombudsman's decision

61. My role is to consider whether the Scheme Rules have been followed correctly and if the decision made by the Trustee was a proper one.
62. It is a fact that the Trustee consulted with Assembly Members regarding the changes to their applicable benefits decreasing from four times their annual salary to two times their annual salary. Therefore, the subsequent amendments it made to the Scheme were communicated to Assembly Members and were within its power to make.
63. The Scheme Rules were interpreted and implemented correctly. Upon Mr R's death, Mrs R was entitled to receive a widow's pension which was protected under the transitional provisions. As Mr R remained a member of the Scheme until his death, Mrs R was also entitled to receive a death in service lump sum two times that of Mr R's annual salary. Mrs R currently receives a widow's pension which is paid in line with her entitlement under the Scheme Rules. The death in service lump sum was paid to Ms AR, as Mr R's personal representative, and upon Mrs R's instruction. Therefore, Mrs R received the correct benefits she was entitled to receive under the Scheme Rules.
64. There was no evidence of any discrimination or unfairness in the way the Trustee applied the Scheme Rules. Mrs R entitlement to benefits was assessed on an individual basis, in accordance with the Scheme Rules, and I do not agree that it would have been appropriate for the Trustee to hold a meeting for exceptional circumstances in this case as the circumstances were not such that any meeting was necessary. There was no basis upon which the Trustee could have paid Mrs R

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different benefits to those she was entitled to even if I were to accept that Mr R disputed the changes to the Scheme Rules during his lifetime.

65. I do not find that the Trustee acted in an unfair or discriminatory manner in the way in which it applied the Scheme Rules. I find that the Trustee applied the Scheme Rules correctly and the benefits paid to Mrs R are correct.

66. I do not uphold Mrs R's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman

21 May 2024

Appendix One

From the consultation paper (April 2014)

Death in Service and surviving spouse/partner pensions

32. Spouse pensions in relation to accrued rights will be at the rate under the current scheme – i.e. 5/8th of the Member's salary. For those Members who are eligible for transitional protection (grandfathering), this rate will continue to apply for the five year grandfathering period. However, there will be a change to the Death in Service lump sum for all from the start of the next Assembly and a change to the future rate for the surviving spouse/partner pension.

33. In our previous consultation we set out options on the cost of various DiS lump sum benefits and surviving spouse/partner pensions. We proposed at that stage that surviving spouse/partner pension should be 3/8ths (37.5%) of the deceased's pension.

34. The majority of those who responded to our consultation felt that the current rate of DiS lump sum (4 x salary) and survivor/spouse pensions (5/8ths) should be maintained and that, whilst rare, this was an important benefit that provided security for an Assembly Member's family and dependents. Having considered the various consultation responses and the relative merits and cost of DiS and survivor pensions, we now propose that the level of DiS lump sum benefit will be 2 x salary with a surviving spouse/partner pension of ½ of the member's annual pension.

Although having a higher percentage of surviving spouse/partner pension may be more expensive than, for example, increasing the DiS lump sum multiple to 3 or 4 x salary, we have concluded that, overall, survivor's pension is a more appropriate way to make provision for a deceased member's family.

35. In our April 2014 consultation document we explained that the cost of providing a DiS benefit rises rapidly as the age of a member increases. We presented a number of models that could be used to limit this benefit by age. We received mixed and conflicting responses to this aspect of our consultation: some respondents suggested that this could act as a disincentive for those considering standing for election; others felt that it would discriminate against older Assembly Members; some favoured the proposal.

Appendix Two

55 PENSIONS FOR SURVIVING ADULT DEPENDANTS

- 55.1 Subject to the provisions of this Rule and to Rule 61 {dependant's pensions on death of a Member survived by both a Surviving Spouse and a Partner}, a Surviving Adult Dependant of a Member shall be entitled to receive a Pension under this Rule.
- 55.2 The annual amount of a Pension payable under this Rule to a Surviving Adult Dependant shall be the aggregate of:
- a) five-eighths of the Death Benefit Pension of the deceased Member which was accrued up to the day immediately preceding the Commencement Date; and
 - b) subject to the transitional provisions in Schedule 6 {transitional provisions}, one-half of the Death Benefit Pension of the deceased Member which was accrued on and from the Commencement Date.
- 55.3 Subject to Rules 55.4 and 55.6, a Pension payable under this Rule to a Surviving Adult Dependant shall continue for his or her life notwithstanding any remarriage.
- 55.4 Subject to Rules 55.5 and 55.6, a Pension that becomes payable under this Rule to a Surviving Adult Dependant on or after 6th April 2006, shall continue for life notwithstanding that such individual was cohabiting with another person at the date of the Member's death.
- 55.5 Notwithstanding anything in these Rules and in particular notwithstanding the provisions of Rules 55.3 and 55.4 above:
- a) the widow of a Member who had a Guaranteed Minimum Pension under these Rules shall, upon his death, be entitled to a Pension for the remainder of her life at a rate equivalent to a weekly rate of not less than half the Guaranteed Minimum Pension of that Member; and
 - b) the widower of a Member who had such a Guaranteed Minimum Pension, shall, upon her death, be entitled to a Pension for the remainder of his life at a rate equivalent to not less than half of that part of the Member's Guaranteed Minimum Pension which is attributable to earnings factors for the Tax Year 1988-89 and subsequent Tax Years.
- 55.6 During any period specified in section 17 of the Pension Schemes Act 1993 as being a period during which a Category B retirement pension, widowed mother's allowance or widow's pension is payable under that section, the widow of a person shall, notwithstanding the provisions of Rules 55.3 and 55.4 above, be entitled to a Pension under Rules 55.1 and 55.2 above.
- 55.7 Where a Member dies in circumstances in which, apart from this paragraph, a Surviving Adult Dependant's pension calculated in accordance with Rule 55.2

would be payable to a Surviving Spouse married by that Member within the period of six months ending with his or her death and it appears to the Trustees that his or her death within six months was to be foreseen by the Member at the date of the marriage, then if:

- a) there are no children of that marriage; and
- b) the Member was married to the Surviving Spouse after the termination of his or her service in contracted-out employment in respect of which the Surviving Spouse's pension is payable; and
- c) the rate of the Surviving Spouse's pension payable would be in excess of the widow or widower's guaranteed minimum pension calculated in accordance with Rule 55.5(a) or 55.5(b) as appropriate, the Trustees may direct that any part of the Surviving Spouse's pension which is in excess of the widow or widower's guaranteed minimum pension shall not be payable...

...62 GRATUITY ON DEATH IN SERVICE

62.1 Where an Assembly Member (including any individual who holds office as Counsel General under section 49 of the Act) has died at a time when he or she was in office, the Trustees may, if they think fit in their discretion to do so, grant a gratuity under this Rule in respect of that individual.

62.2 Any gratuity granted under this Rule may be payable at the Trustees' discretion as follows:

- (a) to the person or persons nominated in any nomination made by the Assembly Member for the purposes of this Rule which was in force at the time of his or her death in such shares as the Trustees decide; or
- (b) if no such nomination was in force at that time or, pursuant to Rule 62.4 below, to the extent that a nomination is treated as not being in force, to the individual's personal representatives.

62.3 Before paying any gratuity granted under this Rule, the Trustees will deduct from it any tax (including any interest payable to HM Revenue & Customs and any penalties) due in relation to that benefit and pay it to HM Revenue & Customs.

62.4 Where an Assembly Member nominates more than one person for the purposes of this Rule, he or she may also specify the proportion of the gratuity to be granted to each such person which the Trustees will consider when granting a gratuity under Rule 62.1 above.

62.5 The Trustees shall treat a nomination made for the purposes of this section by any Assembly Member as not being in force at the time of the individual's death to the extent that:

- (a) any person nominated was the individual's spouse at the time the nomination was made but has subsequently ceased to be the individual's spouse; or
- (b) they are of the opinion that the payment of the gratuity to any person nominated is not reasonably practicable in all the circumstances.

62.6 A nomination for the purposes of this Rule must be made, and may be revoked, by a notice in writing given to the Trustees; and such a notice must be in such form as the Trustees may require.

62.7 Subject to Rule 62.8 below, the amount of a gratuity granted under this Rule in respect of an Assembly Member shall be whichever of the two following amounts is the greater of:

- (a) the amount equal to:
 - (i) three times the individual's Gratuity Salary at the time of his or her death if that death occurred prior to 1st November 2002; or
 - (ii) an amount equal to four times the individual's Gratuity Salary at the time of his or her death if that death occurred on or after 1st November 2002 but before the Commencement Date; or
 - (iii) an amount equal to two times the individual's Gratuity Salary at the time of his or her death if that death occurred on or after the Commencement Date; and
- (b) the aggregate of the Participant Contributions paid by that individual, and not refunded to him or her, together with Interest on each such Participant Contribution from the date on which it was paid.

For the purposes of this Rule 62.7, where the individual is no longer a Participant but is a serving Assembly Member, "Gratuity Salary" means his or her AM Ordinary Salary at the time of his or her death.

62.8 The amount of the gratuity in Rule 62.7 above shall be subject to an overall maximum of four times the Permitted Maximum.

Appendix Three

SCHEDULE 6 TRANSITIONAL PROVISIONS

Application

1. Before 4 April 2023¹ the transitional provisions in this Schedule applied to a Member who was a Participant, aged 55 or over on 1 April 2012, and who was in continuous Reckonable Service between 1 April 2012 and the Commencement Date.
2. With effect from 4 April 2023² the transitional provisions in this Schedule shall apply to the Participants described in paragraph 1 above, and shall also apply in respect of a Member who:
 - (a) was –
 - (i) a Participant under age 55 on 1 April 2012, who was in Reckonable Service on 1 April 2012 and who continued to be in Reckonable Service on the Commencement Date, and
 - (ii) who exercises the option described in paragraph 3 below; or
 - (b) was a Participant in respect of whom paragraph 4 below applies.

Option to apply the Transitional Provisions retrospectively

3. A Member who meets the criteria in paragraph 2(a)(i) of this Schedule may exercise an option to retrospectively apply the Transitional Provisions in this Schedule 6 to all of the Member's continuous Reckonable Service between the Commencement Date and 6 May 2021. Affected Members will receive a remediable service statement including an option form from the Scheme.
4. If a Participating MS who died after the Commencement Date but before 6 May 2021 would have met the criteria in paragraph 2(a)(i) of this Schedule had they continued to be in Reckonable Service on 6 May 2021, any and/or all of the deceased Member's Surviving Adult Dependant(s), Dependant(s) or Relevant Child(ren) may exercise an option to retrospectively apply the Transitional Provisions in this Schedule 6 to all of the Member's continuous Reckonable Service between the Commencement Date and 6 May 2021. The deceased Member's Surviving Adult Dependant(s), Dependant(s) or Relevant Child(ren) will receive a remediable service statement including an option form from the Scheme.
5. An election made in accordance with paragraph 3 or 4 above:
 - (a) must be given by notice in writing to the Trustees,
 - (b) must contain all relevant information as requested by the Trustees,

- (c) must be made within 6 months of the date of the remediable service statement described in paragraph 3 above, or such later time as the Trustees consider reasonable in the circumstances,
- (d) will take effect from the date on which the notice is received by the Trustees, and (d) shall be irrevocable.

Transitional Provisions for Participants

6. If this Schedule applies to a Participant, their Pension under Rule 41 or Rule 42 shall be calculated with the following modifications:

- (a) references to the Commencement Date shall be replaced with 6 May 2021 in (and for the purposes of) the following definitions and Rules but if the Presiding Officer exercises their power under section 4 of the Act to vary the date of the next ordinary general election to the Welsh Parliament, it means the day after the poll at that election:
 - (A) The definition of “CARE Benefits” and “Pre-CARE Benefits” and “Contribution Factor” in Rule 2.2;
 - (B) Rule 29.2 {Contributions by Participating MSs};
 - (C) Rule 30 {Contributions by Participating Office Holders};
 - (D) Rule 32.2 {entitlement of pensioner MSs};
 - (E) Rule 33.3 {entitlement of pensioner office holders};
 - (F) Rule 37.1 {effective date and persons affected};
 - (G) Rule 38.1 {Amount payable to Pensioner MSs};
 - (H) Rule 39.1 {Amount payable to Pensioner Office Holders};
 - (I) Rule 40.1 {effective date and persons affected};
 - (J) Rule 41.1 {Amount payable to Pensioner MSs};
 - (K) Rule 42 {Amount payable to Pensioner Office Holders};
 - (L) Rule 55.2(b) {Pensions for Surviving Adult Dependants}; and
 - (M) Schedule 1, paragraphs 9d. and 9e., 10b. and 11d. and 11e.

Transitional Provisions for Widows, Widowers and Children

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7. If this Schedule applies to a Participant, any Pension payable upon their death shall be calculated with the following modification: (a) in Rule 55.2 references to the Commencement Date shall be replaced with 6 May 2021