

Ombudsman's Determination

Applicant	Mrs S
Scheme	Old British Steel Pension Scheme (the Scheme)
Respondents	Open Trustees Limited (the Trustee)

Outcome

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

Complaint summary

2. Mrs S complained that the Trustee did not grant her the right to receive pension benefits following the death of her partner, Mr L.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the key points. I acknowledge there were other exchanges of information between all the parties.
4. Mr L was a member of the Scheme, which was a defined benefit arrangement set up by his employer, British Steel.
5. On 9 January 2013, Mr L completed a Nomination form in respect of lump sum Death Benefits (should such benefits become payable under the Rules of the Scheme). The section "who can I nominate?" contained the wording:

"Any person who the Trustee board consider was wholly or partly dependent on or financially inter-dependent with your earnings at the time of your death – such as a 'common law' partner, fiancé, or fiancée, living at the same address – may also qualify in these circumstances but please note that no spouses pension would be payable."
6. Mr L nominated Mrs S and stated that her relationship to him was as a "civil partner." (although, in fact, a formal civil partnership had not been entered into between Mr L and Mrs S).
7. On 29 March 2018, the Scheme entered the Pension Protection Fund (**PPF**) assessment period as British Steel had insufficient assets to fund the Scheme and

the pension benefits the Scheme was required to pay. The PPF's role is to protect members benefits within final salary pension schemes should the sponsoring employer not be in a position to support its pension scheme financially. Throughout the PPF assessment period the PPF would pay pensions up to the PPF compensation limit, which meant a reduction to Scheme benefits.

8. Mr L died on 13 November 2020. At the time Mr L was receiving a pension from the Scheme and had been for more than 5 years.
9. Mrs S contacted the Trustee to find out how she could claim pension benefits from the Scheme.
10. On 13 May 2021, the Trustee wrote to Mrs S and stated in summary:-
 - No benefits were payable to Mrs S from the Scheme.
 - The Trustee could only pay benefits in accordance with the Scheme rules and overriding law.
 - As the Scheme was in the PPF assessment period the benefits payable to Scheme members had to be reduced. This was so that they did not exceed the amount of compensation that would be payable from the PPF.
 - The PPF does not pay any lump sum benefits on death, so the Scheme was not permitted to do so now either.
 - However, no lump sum would have been payable in any event, as such a payment would only have been made if Mr L had died within five years of starting to receive his pension. Mr L did not meet this criteria.
 - The PPF does not provide for survivor's pension benefits to unmarried partners unless the rules of the underlying pension scheme provided for such benefits.
 - The Scheme rules applicable to Mr L only provided for survivor's benefits to be available to survivors of legal marriages and civil partnerships but not unmarried partners.
 - The Trustee also provided copies of documentation that had been sent to Mr L regarding his pension benefits.
11. On 29 May 2021, Mrs S completed an application form requesting that her complaint was dealt with through the Scheme's Internal Dispute Resolution Procedure. Mrs S stated:-
 - Mr L had left a will and completed a nomination form that left his pension to her. She questioned why Mr L had been given the nomination form if she was not entitled to a pension.

- She believed Mr L was wrongly advised in all correspondence regarding his pension as it was not mentioned that she would not be entitled to receive his pension.
- There were some inaccuracies in the documentation that had been provided by the Trustee.

12. On 29 July 2021, the Trustee provided its response to Mrs S and stated in summary:-

- It could only pay benefits according to the rules of the Scheme and the overriding legislation. It did not have any discretion to deviate from this.
- Mr L was given a nomination form that related to the potential payment of lump sum death benefits from the Scheme, not survivor's pensions. The lump sum death benefits nomination form made it clear that a survivor's pension was not payable to a common law partner.
- Mr L was provided with information in the Members Handbook issued in July 2005. It stated:

"What benefits are payable on death?

Your widow/widower receives a pension equal to one-half of your full pension (which would have been payable before any exchange for a lump sum), taking into account any increases between your retirement and death. This is payable for life and subject to the same annual pension increases as your pension."

The term "widow/widower" is defined as a legal husband or wife."

- The Members handbook also contained information stating that while it may be possible for a lump sum to be payable to a 'common law' partner following the death of a member, a widow/widower's pension would not be payable to a 'common-law' partner in these circumstances. Unfortunately, as it previously explained a lump sum death benefit was not payable following Mr L's death.
- A benefit quotation request form dated 15 January 2008 incorrectly referred to Mr L as being married. It reviewed this document and noted that Mr L had stated that Mrs S was his "common law wife" and his "civil partner" in other documentation. Accordingly, there may have been an element of confusion at this time as to whether or not Mrs S was in a legally recognised relationship or was a co-habiting partner. However, this did not change the outcome.

13. Mrs S contacted the Trustee to say that she was not happy with its response as she still felt that she should be entitled to benefits from the Scheme. She also said that Mr L had not been provided with any information that made him aware that they had to be in a legal marriage before she could receive a survivor's pension.

14. On 30 September 2021, the Trustee issued its written response and reiterated that it was only permitted to pay benefits in accordance with the Scheme rules and overriding legislation. It also stated:

- Under the Scheme rules applicable to Mr L, a spouse's pension was only available to survivors of legal marriages or civil partnerships. The Scheme rules do not provide for spouse's pensions to be available to unmarried partners.
- No lump sum death benefits would be payable from the Scheme in respect of the death of Mr L due to the Scheme's PPF status.
- However, even if the Scheme had not been in a PPF assessment period, no lump sum would have been payable on Mr L's death in any event. This is because a lump sum would only have been paid under the Scheme rules if Mr L had died within five years of starting to receive his pension, which was not the case.
- Mr L was provided with and had access to documentation and information which made it clear that a spouse's pension would only be made available to a survivor of a legal marriage or civil partnership.

Adjudicator's Opinion

15. Mrs 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:-

- The nomination form that Mr L completed in 2013 clearly stated that it was for Lump Sum Death Benefits. The wording provided did indicate that a lump sum may be payable to someone other than a partner in a legal marriage however no spouses pension would be payable. The member handbook also set out that a pension would only be payable on death to a widow or widower who is defined as a legal husband or wife.
- In the Adjudicator's opinion, clear information was provided to Mr L that in the event of his death a spouse's pension would not be paid to Mrs S as they were not married. The Trustee was not able to exercise discretion and had followed the Scheme rules and so, in the Adjudicator's opinion, the Trustee had not made any errors in its decision not to pay a spouse's pension to Mrs S.
- As the Scheme was in the PPF assessment period there were restrictions on what the Trustees could do with regard to the pension benefits. This meant that a lump sum was not payable to Mrs S on Mr L's death. The lump sum nomination form did indicate that a lump sum may be payable, but this was dependent on the circumstances at the time of death.
- The Trustee also indicated that even if the Scheme had not been in the PPF assessment period then a lump sum would not be payable as Mr L did not meet

the Scheme's underlying criteria for the payment. In the Adjudicator's view the Trustee was unable to pay a lump sum to Mrs S regardless of her marital status with Mr L.

16. Mrs S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. I agree with the Adjudicator's Opinion. Mrs S did not make any further comments other than to disagree with the Adjudicator's findings.

Ombudsman's decision

17. Mrs S complained that the Trustee did not grant her the right to receive pension benefits following the death of her partner, Mr L.
18. The Scheme rules set out that a pension would only be payable on death to a widow or widower who is defined as a legal husband or wife. As Mr L and Mrs S were not married or in a civil partnership at the time of Mr L's death I find the Trustee has correctly followed the Scheme rules by not paying a spouse's pension to Mrs S.
19. It is common within the pensions industry for scheme administrators to ask members to complete nomination forms. The completion of the form does not automatically lead to an entitlement of a benefit. These forms are only relevant if the member dies, and a death benefit is payable – which would depend on the circumstances at the time of death. In the case of Mr L, the purpose of him being sent the form was to identify any possible dependants who may have been potential beneficiaries of a lump sum on his death, should such a lump sum be payable at that time.
20. Unfortunately, in this case a lump sum was not payable. A lump sum payment could only have been made if Mr L had died within five years of starting to receive his pension and Mr L did not meet this criteria. Even if this were not the case, the Scheme was in the PPF assessment period at the time that Mr L died and as the PPF does not pay any lump sum benefits on death the Scheme would not have been permitted to do so either.
21. I find that Mrs S is not eligible to receive a spouse's pension or a lump sum from the Scheme following the death of Mr L.

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22. Accordingly, I do not uphold Mrs S' complaint.

Dominic Harris

Pensions Ombudsman
17 February 2023