

## Ombudsman's Determination

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| Applicant  | Mrs M  |
| Scheme     | Sal Pension Scheme ( <b>the Scheme</b> )                     |
| Respondent | The Trustee of the Sal Pension Scheme ( <b>the Trustee</b> ) |

## Outcome

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

## Complaint summary

2. Mrs M has complained about the Trustee's decision not to award her a pension following the death of her partner, Mr S.

## Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. Mr S became a member of the Scheme in 1989. In March 2017 he left the Scheme, and his benefits were deferred.
5. The Scheme is a Royal and Sun Alliance (**RSA**) defined benefits scheme.
6. On 31 October 2018, Mr S died.
7. In November 2018, Mrs M submitted to RSA: a completed questionnaire, Mr S' death certificate, Mr S' bank statements, her own bank statements, payslips, P60, birth certificate and her son's birth certificate.
8. Mrs M informed RSA that she was Mr S' partner when he died, and that she and her son had lived with him for several years. She said that while Mr S was "still technically married to [Mrs R] from whom he had been separated for around eleven years and to whom he had already provided a financial settlement on separation", Mrs M contended she should be entitled to a dependant's pension as his partner.
9. RSA responded and said that the Scheme benefits were payable as defined in the Trust Deed and Scheme Rules (**the Rules**). RSA said:

“A discretionary dependant’s pension is payable at the discretion of the Trustee and with the approval of RSA. Such discretion is only exercised if a spouse’s pension is not payable.”

10. On 30 January 2019, the Scheme’s administrator wrote to Mrs M. It confirmed a Qualifying Spouse’s pension would be paid to Mr S’ widow, Mrs R, a death benefit lump sum would be paid to Mrs M and a dependent children’s pension would be paid to Mrs M’s son.
11. In October 2019, Mrs M made a complaint to the Trustee. She said:-
  - She had been in a relationship with Mr S since July 2012, and they had been engaged for three and a half years.
  - Mr S and his wife had not spoken since 2014 when they had discussed getting a divorce. Mrs R would not agree to pay half of the £440 fee and they did not proceed with the divorce plans. Mrs M provided copies of text messages from 2014 which reflected this conversation.
12. On 28 November 2019, the Trustee responded to the complaint under stage two of its Internal Disputes Resolution Procedure (**IDRP**). The complaint was expedited straight to stage two following a phone conversation between Mrs M and the Scheme’s administrator. The Trustee said:-
  - It did not dispute that Mrs M was financially dependent on Mr S when he died, or that her son was entitled to a dependant’s pension.
  - However, the Trustee had a legal duty to pay benefits in accordance with the Rules, under which it is the Qualifying Spouse who is legally entitled to a pension.
  - The definition of ‘Qualifying Spouse’ stated that it made no difference whether a spouse lived with the member or not at the time of death.
  - It had no discretion to pay a dependant’s pension to any other adult because Mr S had a Qualifying Spouse when he died.
  - It could therefore not pay Mrs M a dependant’s pension.
13. On 25 October 2021, Mrs M made a complaint to The Pensions Ombudsman (**TPO**).
14. In September 2023, the Trustee issued its formal response to TPO. It said that the Rules imposed an obligation on the Trustee to make payment of a prescribed fraction of 2/3rds of Mr S’ prospective pension to Mrs R, as his qualifying spouse. The Rules dictate that no benefit may be provided which would exceed the Scheme Maximum which is 2/3rds of the member’s maximum pension. The Rules therefore do not make allowance for the payment of a discretionary dependant’s pension to Mrs M.
15. Extracts from the Scheme Rules are provided in the Appendix.

## **Mrs M's position**

16. Mrs M submitted:-

- She should be entitled to a dependant's pension from the Scheme because she was Mr S' partner, and they were engaged to be married when he died.
- She and her son relied on Mr S' salary and were dependent on him.
- Mr S had been separated from his wife for several years and he had paid her a financial settlement when she moved out of the marital home.
- Mr S would not have wanted Mrs R to receive a pension. He had not been in touch with her since 2014 when they had texted each other about getting a divorce.

## **The Trustee's position**

17. The Trustee submitted:-

- Mr S was married at the time of his death and his wife met the Scheme's definition of Qualifying Spouse.
- Under the Rules, there is no discretion as to the recipient of the Qualifying Spouse's pension, so it does not have the power to award the pension to someone other than the Qualifying Spouse.
- A dependant's pension is payable to an adult at the discretion of the Trustee. Such discretion is only exercised if a spouse's pension is not payable.
- It does not dispute that Mrs M was a dependent of Mr S, but under the Rules, this does not entitle her to a pension.

## **Adjudicator's Opinion**

18. Mrs M'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 Trustee's role is to administer the Scheme in accordance with the Rules.
- The Rules set out the eligibility for payment of death benefits for members with deferred benefits. They clearly state that if a member is legally married, the person they are legally married to is eligible for the Qualifying Spouse's pension.
- There is no dispute that Mr S was still married to Mrs R when he died, albeit they were separated and not living together.
- The definition of 'Qualifying Spouse' in the Rules specifically states that being "not ordinarily resident with the Member" does not preclude a spouse from eligibility for

payment of a spouse's pension. So, the Trustee correctly paid Mrs R a Qualifying Spouse's pension.

- It is not disputed that Mr S and Mrs M were living together as a couple when Mr S died, or that Mrs M was dependent on Mr S.
- Rule 6.8 of the Rules provides that the Trustee may use its discretion to pay a dependant's pension only if the financial state of the Fund is not adversely affected to any material extent by the award of that pension. This would require certification from the Scheme's Actuary.
- As a Qualifying Spouse's pension was payable, the Trustee chose not to exercise its discretion to also award a dependant's pension. In the Adjudicator's view, this was not unreasonable as paying both a Qualifying Spouse's pension and a dependant's pension would affect the funding of the Scheme because the latter would not have been funded for. In other words, paying both pensions would adversely affect the financial state of the Fund so the Trustee would be unlikely to obtain actuarial certification to the contrary.
- In the Adjudicator's view the Trustee had not made any errors in its decision to pay a Qualifying Spouse's pension to Mrs R and not pay a pension to Mrs M.
- The Adjudicator was unable to conclude that the Trustee should pay Mrs M a dependant's pension and in his opinion this complaint should not be upheld.

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

- RSA's decision is morally wrong, and it should change the Rules to give pension rights to couples who cohabit but remain married to a third party.
- The Ombudsman should change the law for situations like this or add a clause to the Rules.
- She has suffered financial hardship, and her health has suffered since Mr S died.
- Mrs R is in a better financial position and needs the pension income less than she does.
- Mr S said he had completed an Expression of Wish form in respect of his RSA pension.

20. I have considered Mrs M's comments, but they do not change the outcome, I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

21. Mrs M's complaint concerned the Trustee's decision not to award her a pension following the death of her partner, Mr S.

22. With regard to Mrs M's comments that I should change the law or the Rules, I should clarify that neither of these options are within my remit if I so wished. I can only consider whether there has been any financial or non-financial injustice caused as a result of maladministration and, if so, make directions to put matters right.
23. It is not for me to say whether I agree with the Trustee's decision or whether, in its position, I would have reached the same decision. My role is limited to ensuring the decision-making process is correctly followed. The decision-maker must take into account all relevant matters and no irrelevant ones. It must not make a perverse or improper decision, namely a decision that no reasonable decision-maker, properly directing itself, could arrive at. If I am not satisfied that the decision has been taken properly I can direct the decision-maker to look at the matter again.
24. The Rules set out clearly that if a member is legally married at the date of death, the person they are married to is eligible for a Qualifying Spouse's pension of 2/3rds of the deceased member's prospective pension, regardless of whether they were living together at that time. Mrs R was married to Mr S when he died and so, in accordance with the Rules, she was entitled to the Qualifying Spouse's pension.
25. The Rules set out strict limits on the amount of pension benefits payable upon the death of a member. Paying more than the 2/3rds of Mr S' prospective pension would exceed the scheme maximum. The Trustee therefore had no discretion to award a pension to Mrs M since the maximum pension was in payment to Mrs R.
26. RSA has confirmed that no Expression of Wish form was completed by Mr S.
27. While I sympathise with Mrs M's current health and financial problems, these do not impact the outcome of this investigation. I appreciate that Mrs M feels strongly that she is deserving of pension benefits from the Scheme and she feels that the Rules are unfair. However, there is no evidence that the Trustee failed to consider all the relevant matters in reaching its decision.
28. I find that the Trustee has interpreted the Rules correctly, followed the correct process, considered only relevant and no irrelevant information in reaching their decision not to award a pension to Mrs M.

I do not uphold Mrs M's complaint.

**Anthony Arter CBE**

Deputy Pensions Ombudsman  
23 January 2024

## Appendix

### Trust Deed and Rules of Sal Pension Scheme

1. As relevant, rule 5.3, 'Death in deferment', provides:

"If a Deferred Pensioner dies the following benefits will be payable –

**(1) Qualifying Spouse's pension**

If the Deferred Pensioner leaves a Qualifying Spouse, the Qualifying Spouse will be entitled to a pension, starting on the day after the Deferred Pensioner's death. Its initial annual amount will be 2/3rds of the Deferred Pensioner's Prospective Pension inclusive of his or her GMP as the Deferred Pensioner's Widow or Widower

...

**(2) Widow/widower's or Civil Partner's pension**

If a Deferred Pensioner leaves a spouse who is not a Qualifying Spouse, that person may be entitled to a GMP.... If a Deferred Pensioner leaves a Civil Partner who is not a Qualifying Spouse, that person shall be entitled to a pension, starting on the day after the Deferred Pensioner's death..."

**(3) Qualifying Children's pension**

...

**(4) Return of Compulsory Contributions (if any)**

If no pension becomes payable under (1), (2) or (3)..."

2. "Qualifying Spouse" means:

"(a) In relation to a Member who ceased to be in Pensionable Service after 5 April 1997

...the person who at the Member's death was his or her only spouse (whether or not ordinarily resident with the Member), except that, in relation to a Deferred Pensioner or Pensioner, a spouse will not be treated as the Qualifying Spouse if their marriage took place after the Member ceased to be in Pensionable Service and less than 6 months before the Member died. Provided that the Trustee may decide to waive the above exception in individual cases."

3. As relevant, rule 6.7 'Payment of discretionary benefits and increased to members and others' provides:

(1) The Trustee may with the Company's approval (but only if the conditions set out in (2), (3) and (5) below are satisfied) –

...

(b) award a pension to or in respect of any person who, in the Trustee's opinion, is ... financially dependent on a deceased Member. For this purpose a person who is or was financially interdependent with the Member shall be deemed to have been financially dependent on the Member...

(2) No benefit may be provided under (1) above which would exceed the Scheme Maximum or be inconsistent with the Scheme's status as a Registered Scheme. ...”

4. Rule 6.8, 'Payment of pensions to former employees and others', provides:

“(1) The Trustee may (but only if the conditions set out in (2) and (3) below are satisfied) agree with any of the Employers to award a pension from the Fund to –

(a) a former employee of that Employer (whether or not within the definition of Employee in the Rules); or

(b) ...or any dependant of any former employee as referred to in (a) above.

...

(2) No pension may be awarded under (1) above unless the Actuary certifies that, in his opinion, the financial state of the Fund is not, by the award of that pension, adversely affected to any material extent.

(3) No pension may be provided under (1) above which would exceed the Scheme Maximum or be inconsistent with the Scheme's status as a Registered Scheme.”

5. As relevant, Appendix 1, Part 1 'Scheme Maximum' provides:

“ ...

#### **(D) 3. Dependants' Pensions**

Any pension for a Dependant, when aggregated with the pensions, other than those provided by surrender of the Members own pension, payable to that Dependant under all Associated Schemes, shall not exceed an amount equal to 2/3rds of the appropriate maximum Aggregate Retirement Benefit payable to the Member immediately before his death under paragraph (C)1. or 2. above (if the Member dies

in Service the appropriate maximum will be that applicable to retirement on grounds of Incapacity), ignoring any restriction for the Member's Retained Benefits but taking into account the amount of any Retained Dependant's Death Benefits, as increased in accordance with paragraph (D)4. below (if appropriate).

...”