

## Ombudsman's Determination

Applicant	The Estate of the late Mrs E (the <b>Estate</b> )
Scheme	Balfour Beatty Pension Fund (the <b>Fund</b> )
Respondent	The Trustees of the Balfour Beatty Pension Fund (the <b>Trustees</b> )

## Outcome

1. I do not uphold the Estate's complaint and no further action is required by the Trustees of the Fund.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. The late Mrs E received a letter from the Trustees in September 2015, which provided the option of taking a lump sum (a trivial commutation lump sum benefit) or continuing with her existing spouse's pension. Mrs E died shortly after receiving the letter. The Estate has said that if Mrs E had been able to do so, she would have signed the paperwork and returned it to the Trustees. The Estate is seeking payment of the lump sum.
4. The monthly spouse's pension payments have now ceased. The Estate said they were "duped" into sending in the death certificate which terminated the pension payments.

## Background information, including submissions from the parties

5. On 2 September 2015, the Trustees of the Fund wrote to the late Mrs E offering to exchange her annual spouse's pension of £2,784.36 for a one off lump sum of £25,796.98 which would be taxable. The offer was being made following changes in legislation; the offer to accept the lump sum was open until 30 November 2015.
6. Shortly after receiving the letter Mrs E became seriously ill and was admitted to hospital. Sadly, Mrs E passed away on 5 October 2015.
7. Mr E, son of the late Mrs E, recalls that his mother had mentioned some pension paperwork; however, he has explained, in the distressing circumstances of her illness, the letter was not discovered until after her death and it had not been signed.

8. Mr E telephoned the administrators of the Fund and requested guidance on receiving the lump sum payment. Mr E was asked to send in the death certificate, and was advised that the request for the lump sum payment to be paid would be assessed.
9. On 15 October 2015, the Trustees wrote to the Estate and advised that no further benefits were due. This letter was in relation to the monthly spouse's pension, it was not in relation to the request to have the lump sum trivial commutation benefit paid. The Trustees confirmed that this was still being assessed at that time.
10. The Estate made a complaint; it considered that the late Mrs E would have signed the offer letter for the lump sum if she had been able to do so and that the Fund should honour the lump sum offer.
11. The Trustees said that as the offer letter was not signed they could not know what Mrs E had intended to do, and therefore no payment could be made from the Fund.
12. The Trustees referred the matter to its pension lawyers to consider some discretion could be used to award the lump sum payment to the Estate, but after consideration, confirmed it would not do so because the paperwork was unsigned.

### **Adjudicator's Opinion**

13. The complaint was considered by one of our Adjudicators who concluded that no further action was required by The Trustees of the Fund. The Adjudicator's findings are summarised briefly below:
  - The offer being made to Mrs E may not have been one that she would have automatically accepted. To receive the lump sum (which would have been taxable), she would be giving up her existing spouse's pension. Prior to her illness, the letter was opened by Mrs E, but it was unsigned. Because of this it cannot be confirmed with any certainty that Mrs E had decided that the lump sum option was more appropriate for her or her financial circumstances at that time.
  - Without a signature it was not possible for the Trustees to determine that prior to the illness Mrs E would have elected the lump sum, therefore, our Service could not recommend that the lump sum be paid.
  - On being diagnosed with a terminal illness it was likely that Mrs E would have wanted to sign the form if she had been able to do so. The Trustees were therefore asked to consider if, by using its discretion, the lump sum could be paid. The Trustees confirmed this very point was considered and they raised it with their pension lawyers, who advised that the lump payment could not be paid. In making this final decision the Trustees said it had taken into consideration the rapid deterioration of Mrs E's health.

- Our Service can ask the Trustees to consider or reconsider its original decision; however, it cannot overturn the decision that was made. As discretion had been considered but rejected the complaint was not upheld.
  - As the benefit Mrs E received from the Fund was a spouse's pension this could only be paid during the lifetime of Mrs E (and to her alone). No further pension benefits could be paid beyond her death, and because of this the death certificate was required. It was therefore correct for the administrators of the Fund to request sight of the death certificate and then cease all future payments of the monthly spouse's pension.
14. The Estate did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
  15. The Estate have said that the Trustees have not considered Mrs E's sudden and totally unexpected death, the Estate has confirmed that it believes that Mrs E would have intended to sign the form to receive the lump sum prior to the diagnosis.
  16. The Estate has described the illness in detail and asked for consideration that Mrs E's deterioration was rapid and the medication that she was prescribed left her unable to communicate effectively or fully understand what was happening.
  17. The Estate has confirmed its belief that once diagnosed with a terminal illness then the lump sum payment option would have been signed. The Estate has asked an Ombudsman to consider that if Mrs E had lived beyond her diagnosis, power of attorney would have been sought. At this point the lump sum payment would have been signed for.
  18. These comments made by the Estate, do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by The Estate for completeness.

### **Ombudsman's decision**

19. There is no doubt that the Trustees wrote to Mrs E making an offer to exchange her existing spouse's pension for a one off trivial commutation lump sum benefit.
20. Although a lump sum offer may seem attractive, for many it is not something that suits their own personal and/or financial circumstances. Regardless of any amount involved, an individual needs to weigh what they are giving up (in this case a guaranteed annual income) in exchange for a taxable lump sum. An individual may then consider how the lump sum might be invested differently to provide a return, or may decide use it for other purposes. There should be a considered thought process in order to determine what is right for that individual.

21. Without Mrs E's signature confirming her decision it cannot be determined by the Trustees, the Estate, or indeed myself, what Mrs E would have wanted prior to her diagnosis.
22. Therefore, I cannot agree that prior to being diagnosed, Mrs E would have elected the offer and signed the paperwork to receive the lump sum. The Trustees, in my view can only act on the instructions of its members (or its personal representatives, if for example a power of attorney was in place, which was not the case here). Where an instruction does not exist the Trustees should not be placed in a situation where they are making assumptions on behalf of their members.
23. Whilst I acknowledge that, following a terminal diagnosis, Mrs E was likely to have chosen the lump sum option, the fact remains that she had seen the Trustee's offer letter but had not acted on it. I do sympathise with the Estate, however, the form remained unsigned and as such the Trustees needed to come to their own conclusion in respect of making the lump sum payment without a signed discharge form. This would have been in the knowledge that it was not a death benefit and that the payment was in exchange for a spouse's pension to which the Estate was not entitled.
24. All trustees have a fiduciary duty to ensure that benefits are paid correctly and in accordance with the Trust Deed and Rules of the Fund. The lump sum offer was to Mrs E alone and was strictly in exchange for the spouse's pension that she was receiving.
25. As I have said in paragraph 23 above, it was not a death benefit and in normal circumstances there would be no obligation on the Trustees to pay it to the Estate. Had the Trustees not contacted Mrs E when they did, on her death, there would be no further pension benefits payable to the Estate. I am satisfied they have considered the Estate's request to make a discretionary lump sum payment (to the Estate) following the untimely death of Mrs E. The Trustees have decided that, despite the diagnosis, it cannot make a lump sum payment to the Estate. Although the circumstances are distressing I believe the Trustees made the correct decision.
26. I accept the view of the Estate that had Mrs E survived her diagnosis and a power of attorney had been in place before the 30 November 2015 deadline, a lump sum payment could have been authorised. However, this did not happen, and although I understand the argument, a power of attorney was not in place, and so it is not something that I can take into consideration
27. Therefore, I do not uphold the Estate's complaint.

**Anthony Arter**  
Pensions Ombudsman  
30 November 2016