

## Ombudsman's Determination

Applicant	Miss Y
Scheme	Local Government Pension Scheme ( <b>LGPS</b> )
Respondent	Rhonda Cynon TAF County Borough Council ( <b>the Council</b> )

## Outcome

1. I do not uphold Miss Y's complaint and no further action is required by the Council.

## Complaint summary

2. Miss Y's complaint against the Council concerns the provision of incorrect information regarding her entitlement to a survivor's pension on the death of her late partner, Mr R. Miss Y also believes she should be entitled to the death grant as she was the sole beneficiary nominated by Mr R.

## Background information, including submissions from the parties

3. Mr R was a member of the LGPS which is governed by the LGPS Regulations 1997 (**the Regulations**). Under the Regulations, the Survivor's Guide regarding a co-habiting partner's pension, states:

"Event not possible as survivor pensions for co-habiting partners did not exist until 1 April 2008, and only then for members with active membership on or after that date."

4. On 11 June 2016, Mr R completed a Death Grant Expression of Wish Details (for members contributing on or before 1 April 2008), (**the Form**), nominating Miss Y as the sole beneficiary. The Form also informed Mr R that:

"A death grant is automatically payable:

- If you die within 5 years of receiving your pension from the Rhondda Cynon Taf Pension Fund and are under age 75 at the date of death.

...This form is ONLY applicable for the payment of a Death Grant, and has no relevance to the payment of a survivor's pension in the event of your death...Please note that the Pension Fund is NOT legally bound by this form,

because in order for the tax advantages to apply, it must retain absolute discretion with regard the allocation of your death grant payment.”

5. Mr R returned the Form to the Council and he received an acknowledgement letter, dated 15 June 2016. This letter confirmed the details had been registered and that if he had any queries regarding this matter, he should contact the Pensions Helpdesk.
6. On 3 October 2016, Mr R died.
7. On 9 October 2016, the Council sent Miss Y a letter acknowledging Mr R’s death and offering condolences. It also said:

“The last pension payment made to your late partner was dated the 29 September 2017 and was in respect of pension for the whole of September. There is therefore a balance of pension due to the estate for the period of 1 October 2017 to the 3 October 2017 amounting to £14.47 gross. This amount is payable on sight of the death certificate (original) which will be returned. In order to establish if you are entitled to receive a survivor’s pension please complete and return the enclosed survivors pension application.”
8. On 25 October 2017, the Council sent Miss Y a letter acknowledging receipt of the death certificate. In its subsequent letter of 30 October 2017, the Council informed Miss Y that her information has been passed to a senior officer to ascertain if all the necessary criteria had been met in accordance with the Regulations.
9. On 1 November 2017, the Council sent Miss Y a letter providing her with incorrect information that said:

“I am pleased to confirm that having reviewed your survivor’s application form and accompanying information it has been determined that all the criteria has [sic] been met in accordance with the regulations. Therefore, you will be awarded a survivors pension.”
10. On 22 November 2017, the Council sent a further letter to Miss Y confirming that the remaining balance of the pension would now be transferred to the late Mr R’s estate. It also added:

“Details of your dependant’s pension will follow under separate cover. I can confirm that a death grant is only payable if the member has been on pension for less than 5 years and is under the age of 75. As your partner had been on pension since 25 August 2011, there is no death grant payable.”
11. On 5 December 2017, the Council sent Miss Y another letter saying that under the Regulations in force at the time Mr R retired, there was in fact no provision for payment of survivor’s pension. The Council apologised and said that it was never its intention to cause her further distress.
12. Following Miss Y’s telephone call to the Council, on 12 December 2017, the Council sent a letter to Miss Y clarifying the matter further. It said:

“I confirm that under the LGPS Regulations 1997 which were in force, as at the time Mr R terminated his employment on 22 June 2004 and his pension benefits were deferred, there was no entitlement to a survivor’s pension, members had to be married in order for their spouse to receive a dependant’s pension. Under the LGPS regulations 2008, there was a provision introduced for survivors benefits for cohabiting partners...in respect of members who were in active membership as at 1 April 2008...I confirm there was no such provision for those members who left before 1 April 2008 with a deferred pension.”

13. On 27 December 2017, Miss Y sent the Council a letter expressing her dissatisfaction. She said:

“This is not acceptable and the pain and distress you have put on me [sic]. Mr R and myself have been together for thirty six years, plans were in place to get married but Mr R had another stroke and passed away. We were financially dependent on one another both disabled and in ill health...this pension dept is not fit for purpose my case was passed around the office by six persons [sic]...I will not accept an apology as if it’s just an error...the pension is to be paid to myself...”

14. On 15 February 2018, the Council sent Miss Y a letter explaining:

“Your late partner requested an expression of wish form during June 2016. This was issued to him along with notes of guidance that confirmed that a death grant would only be payable if death occurred within 5 years of the date of retirement. As your late partner’s pension had been brought into payment from 25 August 2011, a death grant would only be payable if his death had occurred before 25 August 2016. As such, the expression of wish was put in place to facilitate the payment of a death grant if only one became payable, it did not confer any definite entitlement to a death grant. Indeed, in August 2016, there was only an entitlement to a small death grant remaining which extinguished on 25 August 2016...In your case, as the Co-habiting partner of a deceased member, the regulations stipulate that there is no entitlement to a pension as your late partner terminated [sic] prior to the introduction of spouse’s pensions for co-habiting partners. The regulations only allow for spouse’s pension for co-habiting partners if the member terminated their membership of the scheme after 1 April 2008. Having reviewed the details of your case, I can only apologise for any distress and inconvenience that this error has caused you...”

15. In March 2018, Miss Y raised a formal complaint under the LGPS’ internal dispute resolution procedure (**IDRP**).
16. In May 2018, the Council sent Miss Y a response under stage one of the IDRP that partly upheld her complaint. The Council offered £750 in recognition of the distress and inconvenience suffered as a result of its error.

17. In July 2018, Miss Y appealed the IDR stage one decision, through stage two of the IDR. In her submissions, Miss Y referred to the 1 November 2017 letter from the Council that informed her that “all the criteria has [sic] been met in accordance with the Regulations.” She believed the letter to be legally binding, on the basis of which she should be paid survivor’s pension.
18. On 3 October 2018, the Council sent Miss Y a response under the IDR stage two, which maintained its previous stance and added:

“This administrative error does not have the effect of nullifying the regulatory obligations placed upon those administering the pension fund which clearly do not allow a survivor’s pension to be paid in this instance. The payment of this benefit is not discretionary in that factors determining whether it is paid or not are either met or they are not met, and an error in communicating the decision to you does not override these factors. You were under the belief that you were entitled to a Survivor’s Pension when in fact you were not entitled to it. This situation existed from 1<sup>st</sup> November 2017 to the 5<sup>th</sup> December 2017.”
19. In December 2018, Miss Y brought her complaint to The Pensions Ombudsman. In her submissions, Miss Y said she believes she should be entitled to a survivor’s pension as per the initial incorrect letters provided by the Council. She also believes the letters with incorrect information should be legally binding on the Council to pay her the survivor’s pension. Miss Y also said the Council’s error caused her significant distress and financial hardship as she could not afford to pay for the funeral.
20. In February 2019, the Council sent us a formal response upholding its previous decision and added that £750 was paid to Miss Y on 29 May 2018.

## **Adjudicator’s Opinion**

21. Miss Y’s complaint was considered by one of our Adjudicators who concluded that no further action was required by the Council. The Adjudicator’s findings are summarised below:-
  - The Adjudicator appreciated that Mr R nominated Miss Y as the sole beneficiary of the death grant. However, the Adjudicator was satisfied that the Form Mr R completed in June 2016, provided him with sufficient information regarding the entitlement to a death grant. The Form stated that the death grant would only become payable if Mr R died within five years of receiving his pension and if he was under age 75. As Mr R had been in receipt of the pension since 25 August 2011, upon his death in October 2016, he had already received pension payments for longer than the five year period. So, the entitlement to a death grant had been extinguished at the time of Mr R’s death. The Adjudicator noted that the Form also said that it is not legally binding on the Council to pay the death grant to the beneficiary named in the Form. It also provided contact details for Mr R if he had further enquiries. However, the Adjudicator has seen no evidence of Mr R making further enquiries prior to his death.

- With regard to the entitlement to a survivor's pension, the Council has admitted that it provided incorrect information to Miss Y between 1 November 2017 and 5 December 2017, so there is no dispute that maladministration occurred. The Adjudicator noted that the Council apologised to Miss Y and paid her £750 for the distress and inconvenience suffered. It also said that Miss Y did not suffer financial loss.
  - Essentially, under the Regulations, there was no provision for a survivor's pension for co-habiting partners until 1 April 2008, when the Regulations were amended. Unfortunately, Mr R terminated his membership in June 2004 prior to the changes made to the Regulations, so Miss Y is not eligible for a survivor's pension. The provision of incorrect information does not override the Regulations and the Council has no discretionary power to make awards other than those defined by the Regulations.
  - The fact that the Council provided Miss Y with incorrect information on a few occasions between November and December 2017, would have caused her non-financial injustice rather than financial loss. So, the Adjudicator disagreed with Miss Y that she has suffered a financial loss, as she was never entitled to the death grant or a survivor's pension.
  - In the Adjudicator's view, Miss Y has suffered a loss of expectation, albeit it significant. The Pensions Ombudsman's approach regarding non-financial injustice is that no award will be made unless the injustice is significant. On the other hand, if the non-financial injustice is significant then awards should properly reflect this. The Council has offered Miss Y £750 in recognition of the non-financial injustice she suffered. The Adjudicator was of the view that the award is more than what an Ombudsman might have awarded had the Council made no such offer.
22. Miss Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Miss Y provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Miss Y for completeness.
23. Miss Y does not believe that the Adjudicator has investigated her complaint sufficiently. She says the Adjudicator should have listened to phone calls between Miss Y and the Council and found out where "the rest of Mr R's pension had gone that he paid into." Miss Y also believes that the Council has hidden behind the regulations not to pay her the death grant / survivor's pension.

### **Ombudsman's decision**

24. My role is to examine the Council's decision-making process, and decide whether it has, as far as possible, identified all potential beneficiaries; properly reviewed the merits of each one according to the Regulations; and made a decision which was within the range of decisions which it was reasonable for the Council to have made.

25. LGPS is governed by statutory regulations, and the Council should only pay benefits to those persons who satisfied the eligibility criteria set out in the Regulations. Under the Regulations there was no provision for a survivor's pension for co-habiting partners. Such a provision only became applicable from 1 April 2008, when the Regulations were amended. As Mr R terminated his membership in June 2004, prior to the changes, Miss Y is not entitled to a survivor's pension.
26. With regard to the death grant entitlement, I have great sympathy for Miss Y, being nominated as the sole beneficiary in the Form. However, I find that the Form had sufficient information saying that the benefit would only become payable if Mr R died within five years of receiving his pension and if he was under age 75. As explained by the Adjudicator, Mr R had been in receipt of the pension since 25 August 2011, upon his death in October 2016, he had already received pension payments for longer than the five year period therefore Miss Y is not eligible to receive the death grant.
27. The Council has properly considered Miss Y as a potential beneficiary, considered all relevant factors, ignoring irrelevant ones and made its decision in accordance with the criteria set out in the Regulations.
28. I consider that Miss Y has suffered a loss of expectation rather than a financial loss and that the Council's provision of incorrect information regarding her entitlement has raised that expectation.
29. However, I find that £750 paid by the Council in recognition of the non-financial injustice suffered is sufficient redress. I do not uphold Miss Y's complaint.

**Anthony Arter**

Pensions Ombudsman  
19 September 2019