

## Ombudsman's Determination

Applicant	Mrs R
Scheme	F. Hinds Pension Scheme ( <b>the Scheme</b> )
Respondents	Trustees of the Scheme ( <b>the Trustees</b> ) & F. Hinds Ltd ( <b>the Principal Employer</b> )

## Ombudsman's Determination and reasons

1. I do not uphold Mrs R's complaint and no further action is required by either the Trustees or the Principal Employer.
2. My reasons for reaching this view are explained in more detail below.

## Complaint summary

3. Mrs R complained that the Trustees have declined to pay her a spouse's pension from the Scheme, following the death of her husband.

## Background information, including submissions from the parties

4. Mr R worked for the Principal Employer for a number of years before he retired in 1997 and started to receive his pension from the Scheme.
5. At the time Mr R retired and started to receive his pension, he and Mrs R were living together, but were not married.
6. On 13 December 2013 Mr and Mrs R were married.
7. On 6 June 2014 Mr R sadly passed away.
8. Shortly after, Mrs R telephoned the Scheme and was informed that she did not qualify for a spouse's pension, because the Scheme Rules were such that the marriage must have subsisted for at least six months for a spouse's pension to be payable.
9. In this case, Mr and Mrs R were married on 13 December 2013 and the Scheme Rules required that their marriage must have subsisted for at least six months prior to Mr R's death for Mrs R to qualify for a spouse's pension. As the marriage had not subsisted for the required six months, the Scheme declined to pay Mrs R a spouse's pension.

10. The Trustees did, however, confirm that the Principal Employer had the discretion to fund such an award if it thought it was appropriate to do so.
11. As a result, the Trustees contacted the Principal Employer to ask it to consider whether it would be willing to fund such a discretionary payment in Mrs R's case.
12. On 11 August 2014, the Principal Employer's Board met to consider, among other things, the question of Mrs R's application for a spouse's pension. Having considered the matter carefully, the Board decided that it did not want to create a precedent of funding discretionary pensions and it was felt that any extra monies paid by the Principal Employer to the Scheme, over and above those required, should be used to reduce the Scheme's deficit.
13. On 29 August 2014, the Trustees wrote to Mrs R with the outcome of the Board's deliberations and to explain the rationale behind its decision.

### **Adjudicator's Opinion**

14. Mrs R's complaint was considered by one of our Adjudicators who concluded that no further action was required by either the Trustees or the Principal Employer. The Adjudicator's findings are summarised briefly below:
  - The Trustees had correctly identified the relevant section of the Scheme Rules and had applied this rule correctly.
  - Mrs R's marriage to Mr R had subsisted for less than six months at the point Mr R passed away and she did not, therefore, qualify under the Scheme Rules to receive a spouse's pension.
  - The Trustees correctly identified that, while they did not have the discretion to award Mrs R a spouse's pension outside of the provisions of the Scheme Rules, the Principal Employer did have such discretion.
  - The Trustees asked the Principal Employer whether it would be willing to fund Mrs R's application and they declined to do so.
  - The Principal Employer had exercised their discretion reasonably and had explained the rationale behind their decision.
15. Mrs R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs R provided her further comments many of which were not new. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mrs R for completeness.

### **Ombudsman's decision**

16. I am aware that Mrs R has argued that she has been treated unfairly by the Trustees and the fact that she and Mr R had lived together as man and wife for over 20 years

should count for something. While I have enormous sympathy for Mrs R's situation and the arguments that she has put forward, my role does not extend to considering whether she has been treated fairly in the general sense, I can only consider whether there has been maladministration or a breach of law.

17. In this regard, I am satisfied that the Trustees correctly identified the relevant section of the Scheme Rules and applied these requirements appropriately for the circumstances of Mrs R's application. I do not consider, therefore, that the Trustees have acted with maladministration in this regard.
18. I turn next to the question of the discretion exercised by the Principal Employer and, in this respect, there is little I can add to the explanation provided in the Opinion.
19. I can appreciate why Mrs R feels that she has been treated unfairly, but neither the Trustees nor the Principal Employer are obliged to act in Mrs R's best interests, they are quite entitled to prefer wider interests and/or take into account the interests of the other Scheme Members when reaching their decision. The rationale behind the decision has been explained to Mrs R and, against such a background, I could only interfere if the decision was perverse. That is plainly not the case; the explanation provided is rational, even though, understandably, Mrs R does not agree with it.
20. Therefore, I do not uphold Mrs R's complaint.

**Anthony Arter**

Pensions Ombudsman  
25 May 2016