

Ombudsman's Determination

Applicant	Mrs Y
Scheme	Skandia Personal Pension Plan (the Plan)
Respondent	Old Mutual Wealth Pension Trustee Limited (the Trustee)

Outcome

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

Complaint summary

3. Mrs Y has complained about the Trustee's distribution of death benefits. This matter was reconsidered by the Trustee, but the outcome has not changed. She has said the Trustee has failed to take account of recent information and arguments she has raised, and not provided an adequate explanation for the decision reached.

Background information, including submissions from the parties

4. On 3 July 2013, Mr Y sadly passed away. At the time he and Mrs Y were married. He was the named policyholder of the Plan.
5. Mrs Y applied for death benefits from the Plan on 25 July 2013, attaching relevant evidence. This included a settlement agreement between Mr Y and his ex-partner. This confirmed:-

“Thereafter the Trustee [Mr Y's ex-partner] will be solely responsible for the financial maintenance of the Minor Children...

The Donor [Mr Y] voluntarily agrees to contribute towards his sons' additional school expenses which include their uniform, school trips and books, whilst they remain in full time education or reach 18 whichever is the sooner. The exact sum to be agreed between the Trustee and Donor.”
6. Around this time Mr Y's ex-partner, and mother to Mr Y's two children, submitted a claim on the children's behalf. The Trustee queried this information and requested further detail, which was subsequently supplied.

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7. On 20 August 2013, the Trustee wrote to Mrs Y to explain that having considered her claim, and the second claim, it had decided to pay benefits on the basis of one third to her, and one third to each of Mr Y's children.
8. Mrs Y wrote to the Trustee to query the decision, highlighting why the decision was at odds with the settlement agreement and explaining her misunderstanding that her submission and claim for benefits would be sufficient for full benefits to be paid to her. She argued that had she been invited to make further submissions to support her claim, she would have done so. She also queried the accuracy of the information the Trustee had been provided with by the other claimant.
9. The Trustee acknowledged Mrs Y's letter and confirmed the matter would be reconsidered subject to further information being provided. Mrs Y provided additional evidence for consideration.
10. On 9 September 2013, Mrs Y provided evidence of the costs associated with Mr Y's funeral for consideration by the Trustee.
11. On 11 September 2013, the Trustee responded to Mrs Y, confirming that its decision had not changed.
12. Mrs Y subsequently raised a complaint. The complaint was not upheld on the basis that the Trustee was satisfied that it had reviewed all the relevant information, requested further detail where necessary and reached a reasonable decision. It could not disclose the information provided by other parties to the Trustee for confidentiality reasons.
13. The complaint was referred to this Office for consideration. The Adjudicator recommended that the decision be remitted to the Trustee on the basis that further relevant arguments had been submitted by Mrs Y which needed consideration. That proposal was accepted as a resolution to that complaint by both parties. The Adjudicator's Opinion letter stated:-

 "... it [the Trustee] should reconsider the matter in light of these arguments and provide Mrs Y with an explanation of its decision."
14. On 12 May 2017, Mrs Y submitted a detailed summary of her outstanding concerns for the Trustee to address.
15. On 12 June 2017, the Trustee board met to discuss the complaint and the arguments raised by Mrs Y.
16. On 30 June 2017, the Trustee issued its response by letter containing the unanimous view of the Trustee. It maintained that the decision to split the benefits three ways was appropriate, highlighting that there was uncertainty about Mr Y's future financial contributions to both Mrs Y and the children. However, it did not individually address the points raised by Mrs Y in her letter of 12 May 2017.

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17. In its letter the Trustee also reviewed the previous decision, and concluded that there had been a material fact noted in error, but that it had not influenced the decision reached.
18. Dissatisfied with the Trustee's response, Mrs Y referred the matter back to this Office.

Adjudicator's Opinion

19. Mrs Y's complaint was considered by an Adjudicator who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised briefly below:-
 - The current complaint was about the Trustee's most recent decision. The Adjudicator could not revisit the previous decision as the complaint about that decision had been resolved. However, there would be some crossover between the decisions because the factors under consideration would be similar.
 - The Adjudicator was satisfied that the Trustee's letter demonstrated that it had reconsidered the matter, taking account of the new arguments and submissions from Mrs Y, as required by the resolution to the previous complaint.
 - This reconsideration within the letter was distinct to the Trustee's comment on the events previously complained about. The issue as a whole had been considered afresh.
 - Whilst the Trustee's letter may not be as detailed as Mrs Y had expected, that did not equate to maladministration. The Trustee had considered the facts and information, and provided an explanation.
 - There are no minutes of the Trustee's meeting, but minutes are not a prescribed requirement of trustee meetings in the case of non-occupational pension schemes. The Trustee's draft letter containing the outcome of the discussion was a suitable alternative to minutes and contained the majority of information normally minuted.
 - It was not unreasonable for the Trustee's explanation to focus on the determining factor in its consideration, and in doing so the explanation could be concise, assuming all the other facts and information were considered.
 - It was a discretionary decision and it was for the Trustee to place as much or as little weight on particular factors as it considered appropriate. There was no reason for the Trustee to be asked to reconsider the matter and provide a more detailed response if the outcome would not be different from that already reached.
 - The Trustee had identified and paid benefits to legitimate beneficiaries.
 - Although it was correct for the Trustee to take account of the settlement agreement, and that limited Mr Y's financial commitment to his children, the Plan

Rules take precedence over the settlement agreement. Under the Plan Rules the children were dependants until the age of 23. So although the settlement agreement limited Mr Y's financial commitment until age 18, and in respect of school expenses, the Adjudicator considered the Plan Rules allowed a wider definition of dependency.

- The Trustee's explanation for the decision was that the extent of dependency on Mr Y by his children and Mrs Y was uncertain and could change over time, therefore splitting the death benefits equally was appropriate. The Adjudicator took the view that this was a reasonable stance and explanation for the decision taken. That did not mean Mrs Y's arguments were irrelevant, just that the Trustee had placed greater weight on a different line of argument.
- The Adjudicator was satisfied that, when considering the matter, the Trustee had gone to appropriate lengths to investigate the accuracy of the claims. It had asked questions of the other claimants and received additional evidence, including the view of Mr Y's parents. These were reasonable enquiries in the circumstances.
- The Trustee had requested confirmation of the funeral costs borne by Mrs Y, but under the Plan Rules the Trustee was not required to make a specific disbursement to her to cover them. The Adjudicator thought it reasonable that the Trustee ask for sight of this, but was not committed to paying these costs from the Plan.
- The Adjudicator concluded that the Plan Rules allowed the Trustee very broad discretion on how death benefits were paid, and was satisfied that the decision reached was not irrational, having considered the relevant information and having identified the relevant beneficiaries.

20. Mrs Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs 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 Mrs Y for completeness.

Ombudsman's decision

21. Mrs Y argues that she would not have accepted the previous complaint as closed if she had known the Trustee would merely state that the case had been reviewed and the original decision upheld. She expected a full response to the issues raised over the duration of the complaint procedure. Instead she considers the Trustee has avoided responding to the original complaint and many of the issues raised in the correspondence. There has been no response to the original complaint or many of the additional issues.
22. The original complaint was resolved when the Adjudicator put forward the offer from the Trustee to reconsider the matter in light of all the additional arguments made by Mrs Y. The flaws highlighted by Mrs Y and the Adjudicator were the reason why the

Trustee offered to reconsider the death benefit claim. I do not agree that the Trustee was required to review its handling of the matter when making its revised decision on the issue of the claim. The original complaint had been through the Trustee's complaint handling procedure, The Pensions Advisory Service dispute resolution process and had been considered by the Adjudicator. If there were flaws in the decision making process undertaken by the Trustee, as the Adjudicator concluded there were, the appropriate remedy was for the Trustee to reconsider the matter as a whole, not provide further comment on the flaws.

23. It is correct that the Adjudicator has not revisited issues raised under the previous complaint when considering this complaint. The two are distinct. The previous complaint was in respect of the Trustee's original decision and this complaint is about the reconsideration.
24. Mrs Y considers the Adjudicator's view that the Trustee's letter is sufficient reflects a process that is aimed at removing an aged complaint from this Office's statistics rather than actually dealing with the complaint and is "scandalous". The Adjudicator had previously expressed the view that the Trustee's 30 June 2017 response was inadequate and a fuller explanation should have been provided.
25. I do not agree that Mrs Y's complaint has been hurried by the Adjudicator. The Adjudicator did not accept the initial response from the Trustee and requested more evidence of the decision making process be provided. It may be that the Adjudicator's initial view was that the letter was insufficient, but the Adjudicator is entitled to alter his or her view over the course of their investigation.
26. Mrs Y considers that the Adjudicator has missed significant points of her complaint when issuing their Opinion, but I disagree. The Adjudicator has focussed on the relevant issues when considering complaints of this nature; whether the Trustee asked the relevant question; whether the relevant information and nothing irrelevant was relied upon; and, whether the outcome was rational in the circumstances.
27. Mrs Y highlights that under the settlement agreement the children were not financially dependent on Mr Y, and argues that the Trustee should explain why the settlement agreement is deemed irrelevant. As the Adjudicator acknowledged, the settlement agreement is a relevant consideration, and the Trustee has said that all of the evidence has been considered. I have no reason to think the settlement agreement was not considered given it has been accessible to the Trustee since the outset of the claim.
28. However, whilst no explicit explanation has been given as to why the settlement agreement was not given greater weight, this leads into the wider argument about the extent to which the Trustee was required to explain its decision. The Trustee, in providing its explanation, has relied on the uncertainty about the extent of dependency going forward, for both Mrs Y and the children. I view this as a valid argument. There are three parties that clearly meet the definition of beneficiary and dependent under the Scheme Rules. The Scheme Rules, in defining the children as

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beneficiaries, takes precedence over the separate settlement agreement between Mr Y and his former partner. Therefore the three beneficiaries share equal rights under the Scheme Rules.

29. Mrs Y has queried the information available to the Trustee when making the revised decision and whether it had access to the full file. The Trustee has confirmed that each of the directors of the Trustee had access to the full file when making the decision, and I consider that to be sufficient confirmation. Mrs Y might highlight that the file included statements from the other claimants which she disputes, but the Trustee will also have had sight of her arguments which discredit those claims.
30. Mrs Y may not accept the decision of the Trustee, and may wish that it had explained its reasoning in more detail, but neither of those points are sufficient for me to uphold the complaint. The Trustee did provide its rationale, even if that was not the logic Mrs Y would have chosen to apply to the same question. I am also satisfied that the Trustee reviewed the relevant evidence in reaching its conclusion, and that the decision reached is a reasonable one in the circumstances.
31. Therefore, I do not uphold Mrs Y's complaint.

Anthony Arter

Pensions Ombudsman
2 March 2018