

Ombudsman's Determination

Applicant	Miss ED (represented by Mrs D)
Scheme	Aegon Master Trust (The Trust)
Respondents	Aegon The Board of Trustees (the Trustees)

Outcome

1. I do not uphold Miss ED's complaint, and no further action is required by Aegon or the Trustees.

Complaint summary

2. Miss ED does not agree with the Trustees' decision to award the Trusteeship of her benefits from the Trust to Mrs N. Miss ED would like the Trusteeship to be granted to her mother, Mrs D.

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 D was a member of the Trust which was administered by Aegon. Mr D was married to Mrs D, and they had two children, including Miss ED.
5. On 28 March 2018, Mr D and Mrs D divorced.
6. On 25 September 2019, Aegon wrote to Mr D providing him with a new nomination form (**Nomination Form**) regarding who he wished to receive lump sum benefits (**the Benefits**) from the Trust in the event of his death.
7. On 9 October 2019, Mr D telephoned Aegon. He enquired how he should complete the Nomination Form. He stated that his sister, Mrs N, was his next of kin and advised Aegon that he wished his children to receive the Benefits from the Trust. He advised Aegon that he wanted the Benefits to be set up in a trust for his children with Mrs N as the trustee.

8. On 24 October 2019, Mr D sent the completed Nomination Form to Aegon. He had selected Mrs N as his sole beneficiary.
9. On 17 November 2019, Mr D died intestate.
10. On 22 November 2019, Aegon wrote to Mrs D. It informed her that she was a potential beneficiary of the Trust.
11. On 8 January 2020, Mrs D wrote to Aegon. She informed it that Mr D did not have a Will and she was going to apply for Letters of Administration for his estate. Mrs D explained that she and Mr D were divorced and provided details of their two children who at that time, were both under 18 years of age and dependent upon Mr D. She stated that Mr D was financially providing for their children prior to his death.
12. On 22 May 2020, Mrs D was granted Letters of Administration for Mr D's estate.
13. On 25 June 2020, Aegon wrote to Mrs N and advised her that she was the beneficiary of the Trust, and that it had arranged to pay the Benefits to her. On the same day, it also advised Mrs D that the Benefits would be paid to another beneficiary.
14. On 3 July 2020, Mrs D complained to Aegon that she would have expected the Benefits to have been paid to Mr D's two children as his only dependants. She asked Aegon to hold its payment of the Benefits until her complaint was resolved.
15. On 7 July 2020, Mrs D formally complained to Aegon and asked it to provide a copy of the Trust Rules.
16. On 14 July 2020, Aegon responded to Mrs D. It advised her that it was considering her complaint and would contact her again shortly.
17. On 17 July 2020, Aegon responded to Mrs D and supplied a copy of the Trust Rules. It stated that under rule 2.3 it had full discretion to decide how to distribute the Benefits. It advised that it had considered the information supplied by Mrs D, but had decided to follow the Nomination Form and pay the Benefits to Mrs N.
18. On 4 August 2020, Mrs D complained under the Trust's Internal Dispute Resolution Procedure (**IDRP**) as she was not happy with its response. She stated that the Benefits should go to her two children as Mr D's only dependents.
19. On 3 September 2020, Aegon wrote to Mrs D. It acknowledged that it had not considered all available information in reaching its decision. It confirmed that it would review its decision, by considering this information. Aegon also offered £500 to Mrs D for the distress and inconvenience caused to her.
20. On 6 September 2020, Mrs D responded. She provided the following information:
 - The court order pertaining to her divorce with Mr D.
 - Details of financial settlement reached with Mr D.

- Bank statements showing regular payments made by Mr D to Mrs D for the maintenance of their children.
 - A letter from the Child Maintenance Service.
 - An extract of the coroner's report.
 - A letter from the CEO of Worcestershire Royal Hospital.
 - Social media messages posted by Mr D which related to the two children.
21. On 10 September 2020, Aegon confirmed receipt of the information from Mrs D, which it stated it would pass to the Trustees, to enable them to review its decision.
 22. On 28 September 2020, the Trustees called a meeting to decide which beneficiaries to pay the Benefits to. They listened to the call Mr D made to Aegon on 9 October 2019. They concluded that he sounded lucid and of sound mind. Further, they had reviewed the material provided by Mrs D and agreed that the Benefits should be held on trust on behalf of Mr D's two children until they reached the age of 21.
 23. On 29 September 2020, Aegon wrote to Mrs N. It advised her that it had reviewed its decision to pay the Benefits to her and was instead going to pay the Benefits into a trust for Mr D's two children. It asked her if she was willing to be a trustee of this trust.
 24. On 10 October 2020, Mrs N responded to Aegon. She agreed to be a trustee on behalf of Mr D's two children and stated that she would set up a trust fund as soon as possible.
 25. On 16 October 2020, Aegon wrote to Mrs N. It advised her that before it could pay the Benefits to her it needed her to establish a trust (**the Children's Trust**) with a trustee bank account. It advised that as Mr D stipulated that he wanted the Benefits to become payable when the two children reached the age of 21, a Discretionary Trust Structure would need to be established. Aegon also advised Mrs N that it required a second professional trustee to be appointed before it could pay the Benefits.
 26. On 20 October 2020, Aegon wrote to Mrs D with its response. It stated that new information had come to light, namely, it had become aware of a telephone call made by Mr D to Aegon on the same day he signed the Nomination Form. It stated that during this call, he made it clear he wanted the Benefits to be paid to Mrs N to hold in trust for the benefit of the two children. Aegon advised Mrs D that the Trustee had carefully considered this telephone call and concluded that Mr D sounded lucid, and his intentions were clear.
 27. On 25 October 2020, Mrs D wrote to Aegon. She outlined her dissatisfaction with Mrs N as a trustee of the Children's Trust. She stated that Mrs N had no relationship with the children and, as such, was not best placed to manage the Children's Trust on their behalf. She asked Aegon to reconsider its decision and instead allow her to manage the Children's Trust along with a professional trustee. Mrs D asked a number of questions regarding how the Children's Trust would be set up and run. She also

asked it to clarify if she had any further right of appeal or if she needed to pursue her complaint with The Pensions Ombudsman (**TPO**).

28. On 11 November 2020, Aegon contacted Mrs N to set up the Children's Trust.
29. On 18 November 2020, Aegon wrote to Mrs D. It advised her that it took responsibility for several errors it had made when deciding the beneficiaries of the Trust. First, it had not considered a telephone call made by Mr D on the same day he completed the Nomination Form. This was why it had originally organised to pay the Benefits to Mrs N, as it was unaware of the wider context of his nomination. Secondly, it accepted that it had not sufficiently considered the children's dependency upon Mr D. Finally, it acknowledged it had failed to adequately handle Mrs D's initial complaint. It advised her that her feedback was being given to the relevant team and training was planned to ensure that in future all material was considered, and the right questions were asked.
30. Further, Aegon apologised to Mrs D for the distress and inconvenience caused to her and reiterated its offer of £500 compensation. It stated that it would not be appropriate to answer her questions regarding the running of the Children's Trust, and the trustees would be best placed to answer these questions once it was set up. Aegon also advised Mrs D, that her complaint would be progressed to stage two of the Trust's IDRPs and referred to the Trustees at their next meeting on 8 December 2020.
31. On 19 November 2020, Mrs D responded. She stated that the Trustees were not bound by the Nomination Form, and she assumed that applied to telephone calls as well.
32. On 20 November 2020, Aegon contacted Mrs N to inform her there was a dispute about the administration of the Trust and it could not yet pay the Benefits into the Children's Trust.
33. On 25 November 2020, Aegon informed Mrs D that the Trustees were considering stage two of the IDRPs. In the meantime, it advised that a payment of £500 was due to her in recognition of its previous failings in considering all the available evidence and in processing her complaint.
34. On 8 December 2020, the Trustees met to consider Mrs D's complaint.
35. On 10 December 2020, the Trustees sent a letter to Mrs D. They advised her that stage two of the IDRPs was now complete and confirmed that their decision remained that Mrs N and a professional trustee would manage the Children's Trust. They explained that they had made this decision after considering the evidence provided by Mrs D as well as the Nomination Form and evidence of Mr D's intentions.
36. On 22 December 2020, Mrs D wrote to Aegon. She stated that she did not agree with the Trustees' decision.
37. On 16 March 2021, Aegon paid the Benefits to the Children's Trust.

38. On 14 October 2022, Aegon paid £500 to Mrs D in recognition of the distress and inconvenience experienced.

Aegon's position

39. The Trustees were satisfied that they had discretion under the Trust Rules to distribute the Benefits in the manner they had decided. The Children's Trust had been set up for the benefit of Mr D's two children with Mrs N appointed as a trustee along with a professional trustee.

Miss ED's position

40. Mrs D responded on behalf of Miss ED and stated that Aegon chose to ignore evidence of Mr D's state of mind prior to his death and did not consider obtaining character testimonies from his friends and former managers, or the medical evidence she provided. She said that Aegon had not contacted the children to ask how they felt about Mrs N running the Children's Trust and that she had not seen any evidence that Aegon had considered the information that she shared. She also stated that she had not seen the correspondence between Aegon and Mrs N, or a transcript of the telephone call with Mr D. She said that she expected this information to be available to her to review.

41. During the investigation into the complaint Mrs D shared various documents with TPO regarding the administration of the Children's Trust. She said that the Children's Trust was not being run in their best interests and was making a loss.

Adjudicator's Opinion

42. Miss ED's complaint was considered by one of our Adjudicators who concluded that no further action was required by Aegon and the Trustees. The Adjudicator's findings are summarised below:-

- Under the Trust Rules (relevant extracts can be found in the Appendix), the Trustees had full discretion regarding the payment of the Benefits upon Mr D's death. In her opinion, while there were errors in the Trustees initial decision-making process, this was corrected before they made their final decision. The decision they made to appoint Mrs N as the Trustee of the Children's Trust, was within a range of decisions which was reasonable for the Trustees to have made.
- While the Trustees were not bound by the Nomination Form, they were required to take it into account, along with any further submissions made about Mr D's wishes and any evidence of financial dependency upon Mr D.
- The Trust Rules provided that a trust could be set up with a professional trustee and managed by an additional suitable candidate. In this case, the Trustees selected Mrs N to act as one trustee which followed Mr D's wishes, as evidenced

by the Nomination Form and corroborated by the telephone call he made in October 2019. This resulted in the Children's Trust being set up so the Benefits from the Trust could be paid to the two children, including Miss ED.

- In the Adjudicator's view, the Trustees conducted reasonable enquiries to establish that there was no evidence that Mr D was not lucid or unable to make decisions prior to his death. The Trustees were not obliged to conduct any further enquiries in this regard, such as contacting the children or making enquiries with Mr D's friends or the hospital he attended.
- The Trustees ensured that the children's best interests were provided for by requiring a professional trustee to run the Children's Trust in conjunction with Mrs N.
- There was no requirement that Mrs D, as the children's mother, should be the trustee of the Children's Trust. In any event, this was not in line with Mr D's wishes. Ultimately, Mr D wished for the Benefits to be paid to the children once they reached the age of 21 and this is what the Trustees have ensured.
- It is not the Ombudsman's role to determine who should be responsible for managing the Benefits from the Trust or to substitute the person he believed may be best placed to run the Children's Trust.
- The Trustees made several errors when they initially decided to pay the Benefits of the Trust to Mrs N. They acknowledged these errors, remedied them, and apologised to Mrs D. They paid £500 compensation to Mrs D for the significant distress and inconvenience caused to her by these errors.
- The Trustees were not bound to share confidential information they received from all parties when considering how to exercise their discretion, as they must adhere to General Data Protection Regulations (**GDPR**).
- In the Adjudicator's opinion, the Trustees were correct to review the information provided by all parties to this complaint and then amend their decision to pay the Benefits to the Children's Trust. They reviewed their decision taking into account all relevant information, which is what the Ombudsman would have expected had they failed to amend their original decision.

43. Miss ED did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mrs D provided further comments on behalf of Miss ED, which do not change the outcome. In summary she said:-

- As her mother and legal guardian, Mrs D was better placed to manage the trust for her and her brother along with a professional trustee to ensure funds are maximised.

- She did not believe TPO had shared appropriate explanations, nor confirmed that it had actually viewed documentation from Aegon or listened to the telephone call made by Mr D which was crucial.
- She did not understand why Mrs N was better placed to manage the Children's Trust as she had no relationship with them. She believed that Aegon had spoken to Mrs N and confirmed with her that she was the correct person to manage the fund. If this was so, she felt that this was a one sided heavily biased view.
- TPO had not been clear about why Mrs N should be trustee and not her mother as her legal guardian.

44. I agree with the Adjudicator's Opinion and note the additional points raised by Mrs D on behalf of Miss ED.

Ombudsman's decision

45. The Adjudicator set out the criteria by which the Trustees' discretion is examined, which is that I will only interfere with a decision made if the Trustees acted improperly in reaching their decision, in that:

- They failed to take into account all relevant factors or took into account irrelevant factors;
- They asked themselves the wrong questions;
- They misdirected themselves on a point of law, for example, by adopting an incorrect interpretation of the relevant rule; or
- They arrived at a perverse decision, that is, a decision no reasonable decision maker properly advising themselves of all the relevant circumstances, could reach.

46. Rule 2.3(1) of the Trust Rules allows that a trust could be set up with a professional trustee and managed by an additional suitable candidate. In this case, the Trustees selected Mrs N to act as one trustee along with a professional trustee. It is clear, as evidenced by the Nomination Form and corroborated by the telephone call Mr D made in October 2019, that Mr D considered that this should be Mrs N. The Trustees agreed with that wish. I am satisfied on reviewing the evidence in this case that the Trustees considered relevant factors and followed a reasonable process when exercising their discretion in appointing Mrs N to be a trustee of the Children's Trust. I am also satisfied that they explained the basis for that decision correctly.

47. There is no legal requirement that Mrs D, as the children's mother, should be the trustee of the Children's Trust.

48. While I acknowledge Miss ED's comments in relation to the telephone call made by Mr D, sharing appropriate explanations and viewing documentation from Aegon I am

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satisfied that during the course of TPO's investigation all relevant submissions and evidence were properly considered.

49. I do not uphold Miss ED's complaint.

Dominic Harris

Pensions Ombudsman
6 December 2024

Appendix

SCHEME RULES:

16.1 DEATH BEFORE TAKING BENEFITS

If an active member or a deferred member dies, the Trustees shall hold on the Discretionary Trusts an amount equal to the value of the Member's Balance. Rule 7.5 and Rule 7.4 shall apply to the Member's Personal Retirement Account pending application of the amount under this Rule in accordance with the Discretionary Trusts.

2.3 DISCRETIONARY TRUSTS

- (1) Any cash sum payable on the death of a member shall be held by the Trustees with power (to be exercised, if at all, within twenty-four months of the later of the Member's death and the Trustees being notified of the death) to do all or any of the following:
- a) to pay all or any part of the sum to any one or more of the following persons:
 - i) the Named Class; or
 - ii) the persons entitled under his or her will to any interest in the estate.
 - b) to determine all or any part of the sum will be held upon trust for any one or more of the persons referred to in (a) above, on such trusts (including discretionary trusts) with such powers and provisions as the Trustees think appropriate; or
 - c) to pay all or any part of the sum to the deceased's personal representatives, to be held by them as an accretion to his or her residuary estate for all purposes.

"Named Class" means in relation to a deceased Member -

- (a) any person, charity, club or society notified to the Trustees in writing by the deceased as a possible recipient of a benefit arising on his or her death. Provided that the Trustees may (but are not obliged to) enquire as to the objects of any such club or society and, if satisfied they are not lawful in the United Kingdom or any other sovereign state, they will not exercise any discretion in favour of that club or society; and
- (b) the following relatives (and their spouses or civil partners and descendants) of the deceased or of his or her Spouse - the Spouse, children, parents, grandparents, brothers, sisters, uncles and aunts (including those relatives of the half-blood and stepchildren and illegitimate, legitimated or adopted children); and
- (c) any other person who, in the Trustees' opinions, was dependent in anyway on the deceased (or his or her Spouse) or for whom, in the Trustees' opinion, the deceased may have been expected to provide.

