

## Ombudsman's Determination

Applicant	Mrs R
Scheme	The Wellcome Trust Pension Plan ( <b>WTPP</b> )
Respondent	Wellcome Trust Pensions Trustee Limited ( <b>the Trustees</b> )

### Complaint Summary

Mrs R is represented by Mr E (her son). Mrs R complained about the decision by the Trustees to distribute the death benefits payable from the WTPP to Ms K following Mr L's death.

### Summary of the Ombudsman's Determination and reasons

The complaint should be upheld because the Trustees did not properly consider all the information available and make further enquiries where necessary when considering the distribution of death benefits from the WTPP following Mr L's death.

### Detailed Determination

#### Material facts

1. The sequence of events is not in dispute, so I have only set out the key points. I acknowledge there were other exchanges of information between all the parties.
2. Mr L was a member of the management section of the WTPP. The sponsoring employer of the WTPP is Wellcome Trust (**Wellcome**).
3. Mr L was also a member of an Unfunded Unapproved Retirement Benefits Scheme (**UURBS**) established by Wellcome, and was covered for life assurance under the Wellcome Trust Excepted Group Life Assurance Scheme (**EGLAS**). Arrangements that only provide death benefits, and do not provide retirement benefits, do not fall within my jurisdiction – and so the payment of benefits arising from EGLAS following Mr L's death will not be considered by me further. References made to the EGLAS in this Determination are included for context only.
4. The executors of Mr L's Estate (**the Executors**) were Mr L's brother Mr E, and a Mr J, both represented by solicitors Moore Barlow (**MB**) (formerly known as Moore Blatch). Mr J was a solicitor at MB.

5. Mrs R is Mr L and Mr E's mother, and is represented in this complaint by Mr E.
6. On 31 July 2015, Mr L wrote to the Director of Human Resources (**HR**) at WTPP by email (**the 31 July 2015 Email**). Mr L titled this email "Declaration of Dependents". The email stated, as relevant:

"...

However, to update my status for the Wellcome LTIP [Long-Term Incentive Plan], the Wellcome UURPS and the Wellcome Pension Plan, could your team please note that [Ms K] is my dependent partner.

I copy her and her family lawyer."

7. Mr J and Ms K were copied into this email.
8. On 13 November 2016, Mr L wrote a Will (**the Will**). Within the Will:
  - It was stated that the Executors and Trustees of the Will were Mr E and Mr J.
  - Ms K was referred to as "my partner and dependent".
  - Mr L left Ms K his two properties, a business, a cash sum, and "all my personal chattels".
  - Mr L left his sister, Ms R, "farmland and forestry" formerly owned by a limited company.
  - Mr L left his two nephews his stamp collection.
  - Mr L left cash gifts each to four individuals and a smaller cash gift to one other individual.
  - Any residuary Estate was to be transferred to a newly established charitable foundation. The five trustees of this foundation, nominated by Mr L in the Will, included Ms K, Ms R and Mr K, a close friend of Mr L.
9. On 30 September 2019, Mr L died.
10. On 10 October 2019, Mr E signed and completed a Beneficiaries Data Form (**BDF**) which was returned to WTPP. In the BDF, in answer to the question "Is there a Spouse/civil partner/partner?" Mr E answered "No", and in reply to 'Any other information' he stated:

"The person named in the Will as 'partner and dependent' is nothing of the sort. We have filed a complaint with the police about her abusive behaviour, where she kept [Mr L] as a virtual prisoner in a squalid basement flat without medical care. Moreover, she systematically stole at least £1/2million from his accounts. She is on probation for her illegal activities ... .

His ex-wife, [Mrs N], has been in and out of mental hospital. She is wholly dependent on the money that has been paid over to her by [Mr L].”

11. In answer to the question “Are there any other dependents or relatives?” Mr E answered “Yes” and listed himself, and Mr L’s mother (Mrs R), and Ms R, and added:

“[Mr L] supported his mother on a regular basis, paying her bills such as council tax and indeed buying a home for her. He always promised that as and when she needed care, he would underwrite the cost of domiciliary and/or a care home.”

12. A short while later, on 23 October 2019, Mr E wrote to the People Services Manager (the **PSM**) at Wellcome (the **October 2019 Email**):

“[Mr L] supported [Mrs R] by buying her a cottage for some £425,000 two years’ ago when my father died; and paying the council tax on that property on a regular basis. He had also promised to support her should she ever need nursing care. She is 92 next month and has an army widow’s pension.

He supported his ex-wife [Mrs N] with a payment of £6,050 every month from his SGHambros account. She has been in and out of mental hospital and is not in materially gainful employment.

I hope this assists your deliberations. Might I take this opportunity to say that the executors and family would be devastated to see a penny go to [Ms K], who has stolen at least £2 ½ million from [Mr L]. Whilst we would be grateful for whatever discretion can be made in favour of [Mrs R] and [Mrs N], we would otherwise much prefer that the funds be retained and given to Wellcome.”

13. On 24 November 2019, Mr E wrote to the PSM. As relevant, Mr E said:

“...we were devastated to learn that you have been trying to contact [Ms K] to pay her monies from the Trust. I am not given to hyperbole, but she is truly evil. ... [She] fraudulently uses his mobile to transfer £20,000 to herself. ....

Rest assured we are taking criminal and civil action.

Please confirm that the trust will pay over such funds as it decides to anyone or any charity, but never to her.

...”

14. On 25 November 2019, the PSM responded to Mr E and confirmed that no decision had yet been made regarding the distribution of the death benefits.

15. On 26 November 2019, MB wrote to the PSM. As relevant, the letter said:

“Whilst I understand that [Mr L] left some indication that [Ms K] should benefit from some of the discretionary monies available, there is a major real and

palpable concern over [Ms K]'s conduct prior to [Mr L]'s death. This includes a significant number of irregular payments made from [Mr L]'s account in the few years prior to the date of his death in excess of £2.5 million. In addition, there is an Inheritance Tax bill of over £800,000, which would be payable by [Ms K] and she may have fled the country. I have real concerns that she will not pay this, which would leave [Mr L]'s family having to sort it out. If you want copies of bank statements to support this, then please let me know.

Contrast this conduct with that of the deceased's mother, [Mrs R], whom he also financially provided for. She is an elderly lady of 92, with very few liquid assets in her name and a very moderate income."

16. In December 2019, to assist the Trustees in exercising their discretion regarding the distribution of Mr L's death benefits, the PSM met with Mr K. Mr K was a close friend of Mr L and had worked with him for many years. The notes from this meeting are as follows:

"[Mr K] believes [Mr L] got together with [Ms K] somewhere between 2008 and 2010. She was his partner and carer. [Mr K] also believes that [Mr L] meant to provide for [Ms K] in some way.

In 2017, [Mr L] and [Ms K] attended [Mr K]'s daughter's wedding together.

He thinks that the relationship did come under some strain which may have been to do with the bar that [Mr L] had bought for her at London Bridge which failed shortly after the terrorist attack in 2017. [Mr L] had also bought her a flat a little while before this.

The last time she was definitely around was in July 2018 when [Mr L] had his stamp collection exhibition here at Wellcome. Mr K felt that there was tension between her and [Mr L]'s family.

[Mr K] believes that [Ms K]'s daughter was a carer for [Mr L] right up to the end. [Mr K] saw [Mr L] not long before he died and when he was there the carer got a call from [Ms K's daughter] to arrange a time to come in.

[Mr K] confirmed that as far as he could tell, [Mr L] was compos mentis in September when he saw him and it did not appear that he was not being taken care of, although given the circumstances he was very unwell."

17. In December 2019, to assist the Trustees in exercising their discretion regarding the distribution of Mr L's death benefits, the PSM met with Mr A. Mr A was a friend of Mr L who had worked with him for many years. The notes from this meeting were:

"[Mr A] thought that [Mr L] had got together with [Ms K] somewhere between 8 and 10 years ago. She was his partner – she attended events with him and invested time and effort into his care.

[Mr L] did provide for her financially – he provided both money and bought her a business (a bar in the London Bridge area). In around 2015/16 he also bought her a flat so that she could stay local to him.

There was some issue about the bar which [Mr L] did not go into details about but after the London Bridge terrorist attack in 2017, the bar did not reopen. It is not known why. [Mr A] thinks that [Ms K] seemed to disappear around this time, but her daughter continued to visit [Mr L] to assist him.

[Mr A] and [Mr K] both visited [Mr L] around 3 weeks before he passed away. He appeared to have a new carer there...but whilst they were visiting, [Ms K]'s daughter telephoned [the new carer] to arrange a time to come to visit the next day. So she was still in contact.

Early to mid-2019, [Mr L]'s family got more involved in [Mr L]'s health. They were discussing a hospice but [Mr L] did not want that – he wanted to remain at home.

When [Mr A] saw [Mr L] for the final time, he would say that [Mr L] was of sound mind, albeit very unhappy.

With regard to [Mr L]'s relationship with his ex-wife Mrs N, it had been a constructive relationship at the end. They were not in regular touch. [Mr L] had bought a house for her as part of the settlement but instead of a lump sum, he invested the amount into a financial product which is still in place and which paid her a monthly allowance,

Mr A also confirmed that [Mr L] bought a house for his mother following his father's death in 2016."

18. In January 2020, to assist the Trustees in exercising their discretion regarding the distribution of Mr L's death benefits, the PSM met with Ms K. The notes from this meeting were:

"[Ms K] said "that she had been with [Mr L] for around 14 years and had known his family for around ten years. She said that she had been unwell, suffering from anxiety and had had a bit of a breakdown. I asked her where she had been and she said she had been in Poland – she had been selling her flat there to pay for her debts here (e.g council tax). However, whilst she was away, her daughter had been going in to care for [Mr L]. She confirmed that she had been to see him in the week before he died.

...[Mr L] had bought her a flat near to him so she could come in to help him.  
...He also helped her set up a company (a bar) in London Bridge ... which unfortunately failed. She also had a bank card for a second bank account with Hambros.

...She agreed to get [up to date bank statements] for the last couple of years.

We then entered a period of non-communication, which she kept promising to get the information, but then she became ill and didn't attend any of the meetings that we arranged.

...[Ms K] visited [the PSM] on 3 March [2020]. She brought with her all her [bank] statements from 2018 and 2019. She also confirmed that the other bank card she had was for an account that [Mr L] had for personal sundries so that she (and others) could purchase food etc for him. She confirmed there was a limit of £400 on this.

The amounts paid were not regular. She confirmed [Mr L] would ask the bank to do the transfer by email from his phone. She provided all the emails that he had sent since 2017. [Mr E] has suggested that she did this herself, particularly the final £20,000 the day before he died. It is unclear if this was the case. This could have been possible but it would have been unlikely that he was unaware of this until nearer the end."

19. On 23 March 2020, a sub-committee of the Trustees of the WTPP met to discuss who should be paid the following death benefits:

19.1. an annual dependant's pension of £134,000, funded £77,000 from the WTPP and £57,000 from the UURBS (the **Dependant's Pension**), and

19.2. a refund of Mr L's contributions to the WTPP which amounted to approximately £227,000 (the **Lump Sum**).

20. The minutes of the meeting said that:

- a decision was made to pay the Dependant's Pension to Ms K.
- in line with the WTPP Rules, the Dependant's Pension could only be paid to a person or persons who qualified as a dependant.
- being a dependant "was an issue of financial dependency and as defined under the relevant rules of the Plan it was necessary for the Trustees to consider whether there was any financial interdependency between [Mr L] and any person such that this person relied on [Mr L]'s income to maintain their standard of living".
- It was decided by the Trustees that Ms K "was the only person who could be said to qualify as a dependant".
- The decision was based on Ms K's personal bank statements from 2017, 2018 and 2019, the Will, the [31 July 2015 email], the BDF completed by Mr E and other correspondence received from Mr E regarding Ms K (including the October 2019 Email), interviews with Ms K, Mr K and Mr A – all of this information and documentation was collated and summarised within a report (the Report) by the PSM alongside the actual background documents.

21. The Report stated, as relevant:

“Potential dependent’s pension

This is payable under the terms of the Plan rules and the Plan trustees have a discretion to pay it to one or more persons who were financially dependent on the Member, as defined in the Plan rules.

Other potential dependants

Based on my investigation, there are no other individuals who would qualify as a Dependant. In particular, I have considered the position of [Mr L]’s mother, [Mrs R], and his ex-wife [Mrs N]. Whilst during his life certain specific payments were made, there was no evidence of any financial dependency that ceased on his death and neither were named in his Will.”

22. Ms K’s personal bank statements from her current account from 14 December 2017 to September 2019, discussed within the Report, showed that payments received from Mr L totalled over £450,000 and that these payments accounted for over 90 per cent of her income. The last payment from Mr L to [Ms K] was £20,000 on 27 September 2019. In the second half of 2019, there were unpaid Direct Debit payments refunded to Ms K’s account (six in July 2019, 14 in August 2019, 11 in September 2019 and four in November 2019) because the balance of her account had fallen below £0.
23. At the same sub-committee meeting, the Trustees also exercised their discretion over the Lump Sum payment consisting of the refund of Mr L’s contributions. The minutes of the meeting stated, as relevant:

“...this benefit was payable by the Trustees under a discretion and under the Plan rules there were various potential recipients of this amount, namely:

- Relatives
- A financial dependant
- A person nominated: and
- The Estate

It was established that [the 31 July 2015 Email] confirmed that [Mr L] was nominating [Ms K] as his dependant partner for the purposes of receiving benefits under the Plan.

There was a lengthy discussion between the Trustees concerning the relative merits of awarding the lump sum to any relative, [Ms K] (as financial dependant and as a person nominated) or the Estate. Having considered the matter it was agreed unanimously that the refund of contributions lump sum should be awarded to [Ms K].”

24. On 15 April 2020, the PSM wrote to Ms K and confirmed that following meetings (on 23 March 2020) of the Trustees she would receive a dependant’s pension (partly

funded by the Wellcome Trust) and a refund of Mr L's contributions made to the WTPP.

25. On 17 April 2020, MB were informed of the decision.

26. On 19 April 2020, MB wrote to the Trustees. As relevant, the letter said:

“... ”

We refer to [previous correspondence outlining concerns the Executors had that Ms K] had obtained sums in excess of £4 million and two properties from [Mr L] by way of theft, fraud, misrepresentation, demanding monies with menaces and undue influence; and putting you on notice that she may have fled the country.

We confirm that we are currently in the process of bringing a claim against [Ms K] for the repayment of these sums. Such investigations may lead to criminal liability for [Ms K] as well as civil liability. We understand that she herself stated that she is currently on probation.

... ”

the executors and family would be devastated to see a penny go to [Ms K], who has stolen at least £2½ million from [Mr L]. Whilst we would be grateful for whatever discretion can be made in favour of Mrs R (Mr L's 92 year old mother) and Mrs N (his mentally ill ex-wife), we would otherwise much prefer that the funds be retained and given to Wellcome.”

27. On 20 April 2020, Wellcome wrote to MB. As relevant, the letter said:

“...a final decision as regards the distribution of benefits has been made by the Trustees and that was the reason [we contacted] you on 17 April 2020.

Having reviewed your letter [of 19 April 2020], it is not considered that there are any reasons to revisit any decisions that have been made.

I am enclosing a copy of the pension plan rules as requested. It is not the policy of the Trustees nor is it appropriate or required for the Trustees to provide details of their reasoning when exercising discretions. As explained before these decisions were taken having regard to all available information and with the benefit of legal advice throughout.

... ”

28. On 29 April 2020, MB wrote to the appointed lawyers for the Trustees of the WTPP (**CMS**), with further allegations about Ms K. As relevant, MB said:

“...You will note that in the second schedule [Ms K] has removed money from [Mr L]'s account after he has passed away, which should provide an indication of why the [Executors] are so concerned. The [Executors] are aware that [Ms



K] threatened [Mr L] and demanded money from him when he was bedbound as a result of his condition and unable to look after himself. ....”

29. On 1 May 2020, MB wrote to CMS. As relevant, MB said:

“...Our clients have now had the benefit of counsel’s advice and are concerned that in exercising their discretion in favour of [Ms K], as set out in the Trustees decision letter dated 15 April 2020, the Trustees have acted in breach of their fiduciary duties and their decision is liable to be set aside as the Trustees have either acted on a positive mistake or failed to give adequate consideration to relevant issues with regard to [Ms K].

...

That despite our clients’ concerns being raised with the Trustees and the Trustees confirming they were under an obligation to make enquiries, they failed to make any proper enquiries. We understand from our clients that neither of them received any further contact from the Trustees following [the PSM]’s email of 25 November 2019 to Mr E, neither was our firm contacted to confirm the state of its enquiries, nor were the Deceased’s mother or ex-wife contacted (both of whom were dependent on the Deceased). While we note, that the Trustees may have relied on a nomination by the Deceased in favour of [Ms K] (if so please confirm and provide us with a copy of such nomination), given the concerns raised about [Ms K]’s conduct the Trustees ought to have called into question the weight to be attributed to such a nomination, especially without further substantive enquiry.”

30. On 4 May 2020, CMS replied to MB’s letter of 29 April 2020. As relevant, CMS said:

“[the Trustees] have carefully considered all evidence available, their powers and legal duties and have reached a decision concerning the various benefits payable following the death of [Mr L].

...in reaching their decision the respective Trustees considered all available evidence including documentation from [Mr L] stating his preference as to the destination of pension and life assurance benefits and information obtained from other relevant individuals. The Trustees were also made aware of the views of your client [Mr E], both in terms of email correspondence dating back to November 2019 and more recently.”

31. In a letter dated 1 May 2020 (although the letter was misdated as it was a response to CMS’ letter of 4 May 2020), MB requested details of the death benefit amounts paid, the minutes of the Trustees’ decision meetings and who the “other relevant individuals” were. MB said that Mr L’s mother (Mrs R) and his ex-wife, Mrs N, were not contacted.

32. On 6 May 2020, CMS replied to MB. As relevant, CMS said:

“Having taken instructions, we are not willing to provide further information concerning the timing of payments of benefits to [Ms K]. [Ms K] is now a beneficiary of the [WTPP] and it is inappropriate for such details to be shared with you.

We are arranging for a copy of the Life Assurance Trust Deed to be provided to you. As regards your request for documentation from [Mr L] stating his preference as to the destination of his pension and life assurance benefits, again it is not appropriate for this to be provided to you.

Finally, we have explained previously that the Trustees undertook a thorough consideration of all relevant information which included considering information obtained from discussions with relevant individuals.”

33. On 25 June 2020, Mercer, the WTPP administrator, responded to MB under stage one of its Internal Dispute Resolution Procedure (**IDRP**). The letter said:

“...The Trustee has followed due process and has considered all relevant facts and ignored irrelevant information. They have carried out due investigations and sort (sic) appropriate information from relevant parties. They have taken legal advice to guide them but reached their own decision. The decision reached by the Trustees is one any reasonable set of trustees might make given the evidence and is in no way perverse.

I therefore do not uphold your complaint.

The decision relied on definitions as set out in the Trust Deed and Rules dated 3 December 2019. In particular the definition of dependent on page 37 and clause 4.6 on page 15 addressing distribution of lump sum death benefits.”

34. On 3 July 2020, the Executors were granted a freezing order from the High Court preventing Ms K disposing of her assets, properties or businesses. She was instructed to list all her assets exceeding £1,000 in value (**Ground 3**). Ms K was prohibited from spending more than £500 a week on ordinary living expenses and obligated to tell the Executors’ solicitors where any money she spent had come from.
35. On 17 July 2020, the Executors were granted a further freezing order from the High Court.
36. On 29 July 2020, CMS wrote to MB. As relevant, CMS said:

“Further to our exchange of emails earlier this week and in compliance with the Court Order dated 17 July 2020 and the authorisation dated 24 July, I can share the following information with you.

Date of payment	Type of payment (lump Sum or Pension)	Amount paid	Account paid to
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28/04/2020	Refund of Contributions	£226,698.91	See below
01/06/2020	Pension	£25,546.75	See below
01/07/2020	Pension	£6,113.24	See below
01/08/2020	Pension	£4,338.39	See below
26/05/2020	UURBS pension	£33,722.33	See below
25/06/2020	UURBS pension	£6,146.02	See below
28/07/2020	UURBS pension	£4,896.02	See below
23/06/2020	Life assurance	£1,400,000.00	See below

All payments have been made to the following account: [Ms K's bank account details – redacted]

Pension amounts referred to are net of tax.

Although not required to do so by the Court Order, my clients have decided as a temporary measure to suspend further payments of pension. Note that the most recent payments are in the process of being paid and could not be stopped.

This suspension is not a decision that has been taken lightly. It is a temporary suspension for 3 months and the expectation of my clients is that during this period the situation should develop such that they may be able to re-start paying the pension. For example, if it is the case that a block is placed on the above account such that payments out cannot be made, our client would expect to be able to recommence paying the pension. Nevertheless, I should re iterate that the Court Order does not require pension payments to cease and my clients reserve the right to re start them if they consider it appropriate.”

37. On 24 September 2020, the Executors were granted a further freezing order from the High Court. The Order said Ms K was compelled to provide a significant number of details of her finances including all recent bank transactions over £500. It was further alleged that she had breached the spending limits imposed by the previous freezing orders (**Grounds 1 and 2**), which allegedly amounted to contempt of a Court Order.
38. On 1 March 2021, Mr E wrote to the Trustees. He alleged that Ms K had breached the freezing order. Mr E said:

“...I understand that you have now received the sealed freezing order...

You will be interested to know that [Ms K] has breached the terms of the freezing order, removing £71,000 from the accounts frozen by order of the High Court. Contempt of court indeed and further evidence of her criminal tendencies were any needed. The judge made it clear in his summing up that the evidence we have provided (which I understand you have now received) set out the case that [Ms K] had obtained over £4 million by way of theft, fraud, misrepresentation, breach of fiduciary duty and by exercising undue influence over a vulnerable, slowly dying man. While it is accepted that this is not yet a committal order to send her to prison, we have two judgements agreeing with our substantive claim, whereas Wellcome's investigations seemingly did not lead you to question [Ms K] at all."

39. On 7 July 2021, a High Court Judge handed down his judgment on the alleged breaches of the recent Court Order, as relevant:

"...

[Ms K] gave evidence and was cross-examined for 1 and ½ days. What emerged was actually a very sad story. [Ms K] was not in a good way and required several breaks during the course of her evidence to compose herself. She told of her life spiralling downwards after the Deceased died and she was alcohol and drug dependent. She clearly has serious mental health problems and is in desperate need of help. She has admitted a certain level of breach of the freezing order and has apologised for that.

But I was left with the feeling that it was unfortunate that this committal application, with the threat of [Ms K] being sent to prison, should have got to a substantive hearing at which [Ms K] had to endure the tremendous pressure of giving evidence and being cross-examined. It was fairly obvious from her evidence that she did not have any clear idea as to what was going on in her life in the weeks following the freezing order (because of drink and drugs) and, while the Court must be concerned to ensure that its orders are complied with, [Ms K] clearly needed rehabilitation, not punishment and certainly there could be no suggestion that she should be committed to prison.

...

[Ms K] says that, following the Deceased's separation and later divorce from his former wife, they started a romantic loving relationship from around 2004. [While the Claimants] ... accept that there was a sexual relationship between [Ms K and Mr L], they claim she was the Deceased's employed carer from the time of his diagnosis in 2012 and they were not living together.

...

[Ms K] was, rightly in my view, offended by any suggestion that she was not in a deeply loving and romantic relationship with the Deceased or that she had taken advantage of him.

...

### Conclusions

Apart from the limited admissions and findings in respect of Grounds 1 and 2...I dismiss the allegations of contempt made by the Claimants.

...

I do not think there was any merit in the allegations in Ground 3 and they should not have been pursued to this stage by the Claimants. I also think the general approach adopted by the Claimants in relation to [Ms K] has been disproportionate and designed to maximise pressure on her, presumably for tactical advantage in the litigation.

...

I remain concerned that the Claimants, knowing that they had to prove, to the criminal standard, breaches of the Orders that would be serious enough to justify [Ms K] being punished by the Court, thought fit to take their Committal Application all the way and subject [Ms K] to the ordeal that it clearly was.”

40. In March 2023, Ms K died.
41. Following the complaint being referred to The Pensions Ombudsman (**TPO**), Wellcome forwarded to TPO 80 emails from Mr L to his bank. These emails were sent between August 2015 and May 2019. Each was entitled ‘Transfer to [Ms K]’ and each requested transfers of funds to Ms K’s bank account. These emails had previously been supplied to the Trustees.
42. One such email, dated 24 May 2017, stated:

“Please transfer £30,000 to [Ms K] to sort out the decoration and furniture for the new flat.”
43. Another of these emails was dated 9 October 2017 and stated:

“As discussed on Friday, please transfer £118,000 to this account by CHAPS to fund the acquisition of a flat in Poland”.
44. Another email, dated 1 November 2017, stated:

“[Please] transfer £40,000 to [Ms K] by CHAPS to pay for refurbishment and furniture for our flat in Poland.”

### **Mrs R’s position, represented by Mr E**

45. Ms K was not Mr L’s partner or dependant.
46. Ms K was not a person of fit and proper standing so the decision to pay death benefits to her should be reconsidered. She benefitted from over £4,000,000 and two

properties between 2012 and Mr L's death in 2019 "by way of theft, fraud, misrepresentation and undue influence", so she should not have been a beneficiary.

47. Ms K has died from an overdose of illegal drugs, reiterating the Executors' original complaint that the Trustees did not acknowledge that the beneficiary of [Mr L]'s pension was not of fit and proper standing.
48. Mrs R, as the deceased's elderly mother, and the deceased's ex-wife, Mrs N, were both dependent on him. Mr L had bought Mrs R a house and Mrs N received monthly payments from Mr L to support her living costs. Neither were contacted by the Trustees when making their decision.
49. The 31 July 2015 Email was not a properly signed and witnessed "letter of wishes".
50. Legal proceedings by the Executors against Ms K were still ongoing when the Trustees met to exercise their discretion over who should be paid the death benefits. The decision should not have been taken until court proceedings had been concluded.

### **The Trustees' position**

51. All relevant issues were considered, including the representations that Ms K was in essence not a proper person to receive any benefits, when the decision who to pay benefits to was taken.
52. Ms K was financially dependent on Mr L and was his only nominated beneficiary.
53. No expression of wish form was completed but an email from Mr L on 31 July 2015 to WTPP asked for Ms K to be recorded as his dependent partner.
54. Mr L's mother or his ex-wife (or the executors) were not nominated beneficiaries in the Will or nominated under the pension scheme.
55. At the point the Trustees made their decisions to make the payment of the death benefits to Ms K, they had before them all relevant information obtained as part of the information gathering exercise, including the Report and all background information connected with the Report.
56. Other potential beneficiaries (Mrs R and Mrs N) were discussed at length at the Trustees meetings before a decision was reached to follow the wishes of Mr L as set out in the 31 July 2015 Email and the Will, and payments made to Ms K. Mrs R and Mrs N were not directly contacted due to their personal circumstances (the former, Mr L's elderly mother and the latter his ex-wife who the Trustees were aware struggled with ongoing mental health problems). The Trustees were aware of the facts that Mr L had bought his mother a house and made some financial provision for his ex-wife (as mentioned by Mr A in the ([PSM's] interview with him), but the Trustees' decision was not to deviate from the terms of Mr L's wishes and will.

57. It was clear that Mr E did not approve of his brother's relationship with Ms K. However, despite numerous accusations of abuse, neglect, fraud and other criminal activity, the Trustees were presented with no real evidence.
58. On 19 February 2025, I sent my Preliminary Decision (the **Decision**) on this complaint to the parties. Both largely accepted the substantive content of my Decision, although Mr E did argue again that a nomination of Ms K was "*not made*", as the 31 July 2015 email was not a "*proper Letter of Wishes*".

## Conclusions

59. Mr L died in pensionable service and as a member of the 'management section' of the WTPP. As a result, certain death benefits became payable. This complaint relates to the decision by the Trustees to distribute the death benefits payable from the WTPP on Mr L's death to Ms K. My role is to consider whether the Rules of the WTPP have been followed correctly and if the decision made by the Trustees was a proper one.
60. Under the WTPP Rules (see Appendix), the payment of death benefits is, generally, at the discretion of the Trustees and can be paid to one or more beneficiaries in such proportions as it thinks fit. However, some aspects are not discretionary – notably the payment of a Dependant's Pensions where there is only one individual that qualifies as a Dependant (see paragraphs 64 and 68 below). I examine key steps in the decision-making process below.
61. The fact that payment of the death benefits is, in the most part, at the discretion of the Trustees limits the extent to which I can interfere with the decision. If the Trustees have followed certain well-established principles in reaching the decision, neither the Courts nor I may interfere with the decision. These principles, broadly, are that the Trustees must:
- take all relevant matters into account and ignore any irrelevant matters;
  - ask itself the right questions;
  - direct itself correctly in law; in particular, it must interpret the WTPP Rules correctly; and;
  - not come to a perverse decision.
62. In this context, 'perverse' means a decision which no reasonable decision-maker could have come to on the basis of the facts of the case.
63. If there are flaws in the decision-making process, I can require the Trustees to look at the matter again. However, I will not usually replace the decision with a decision of my own or say what the subsequent decision should be. The weight which is attached to any of the evidence is for the decision-maker to decide, including giving some of it little or no weight.

## Payment of the Dependant's Pension

### *The Rules*

64. Under Rule 6.1<sup>1</sup> of the WTPP Rules, the 'Dependant' of a member who dies in pensionable service, such as Mr L, "*shall be*" entitled to a Dependant's Pension. That pension would be equal to two-thirds of the pension that Mr L would have received had he remained in service until his normal retirement date and then retired. In the case of Mr L that is a substantial sum.
65. Where there is more than one 'Dependant', the Trustee is then provided with an absolute discretion to "*...decide the amount of the pension (if any) payable to each Dependant...*" (Rule 6.7.2).
66. A Dependant's Pension is payable from the death of the Member, and for the life of the Dependant (Rule 6.7.1).
67. Dependant is defined separately within the WTPP Rules. For these purposes, the key limb of the 'Dependants' definition provides that 'Dependants' means "*any individuals...who in the opinion of the Trustees were, at the time of the death of the Member or Pensioner, financially dependent on the Member or Pensioner or dependent because of disability, or had a financial relationship of mutual dependence with the Member or Pensioner.*"

### *Operating the Rules*

68. For the reasons given above, to the extent that the Trustees identify just one 'Dependant', that individual would then be entitled to the Dependant's pension. On the face of it, this does not involve the exercise of a discretion, rather it is an obligation of the trust. However, if the Trustees identify more than one Dependant then, as a second step, a discretion then arises in how to pay the pension between those Dependents.
69. Therefore, the first question that the Trustees need to address is whether there is any person that would qualify as a Dependant for the purposes of the Rules<sup>2</sup>. This is a factual question. Although the Rules set out that it is "*in the opinion*" of the Trustee (and so importing subjectivity, rather than being a purely objective test), the process of answering that question, and the Trustees' duty in exercising that trust power, is not without some legal guardrails.
70. For example, it is trite law that a power should be exercised in good faith and for a proper purpose. It is, in my view, clear those requirements have been met here. Of

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<sup>1</sup> As Mr L was a member of the management scheme, Rule 6.1 in Schedule 2 is deleted and replaced by the wording in Paragraph 5 of Schedule 3.

<sup>2</sup> And, as this relates to the payment of a pension, also for the purposes of the Finance Act 2004 – although the definition of Dependant in this case fulfils the requirements of the legislation.



more relevance to the issue at hand is a requirement to ensure that the Trustees make a properly informed decision. The Applicant argues that they have not.

71. To the extent that it can be shown that the decision was not made with due consideration (for example, if it was not supported by relevant evidence or that insufficient enquiries were made) then it may be possible and appropriate for me to intervene – although that does not entitle me to impose my own decision, rather it allows me to remit the matter back to the Trustees to consider afresh<sup>3</sup>.
72. *Kerr v British Leyland (CA)* [2005] 17 PBLR (**Kerr**) provides an illustration of this point – and it is of particular relevance to the circumstances in front of me (i.e. whether an individual is a ‘Dependant’), as it relates to a finding of fact rather than the exercise of a pure discretion. In this case, the trustees of the pension scheme decided not to award an incapacity pension on the basis that the member’s health condition was not permanent. However, when making that decision they were, in the Court’s opinion, “... *not properly informed as to the matter before them*”<sup>4</sup>. This conflicted with the “... *duty of the trustee ... to give properly informed consideration to the application*”<sup>5</sup> and, accordingly, the Court of Appeal overturned the first instance decision and put the matter back to the trustee to reconsider.<sup>6</sup>
73. The Supreme Court reviewed, commented on and distinguished the facts of *Kerr* in *Futter v HMRC* [2013] 064 PBLR (04) (**Futter**), when looking at the nature of the ‘error’, and whether that allowed a trustee’s decision to be set aside, noting that:

*“The Kerr case is of interest since (though not reported for 15 years) it is an early example, antedating Mettoy, of the application of something like the Hastings-Bass rule. But I think it is important to note that under the British Leyland scheme the corporate trustee did not have any real discretion about disability benefit. It had to exercise a judgment on an issue of fact (permanent disability from any employment). That is an issue on which the court would be much more ready to intervene if the trustee had failed to grasp the real facts. It is an intermediate situation which is arguably closer to a mistaken judgment on an issue of fact than to the defective exercise of a discretion.”*<sup>7</sup>

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<sup>3</sup> For example, see *Kerr v British Leyland (CA)* [2005] 17 PBLR, per Fox LJ at 35: “*The decision whether to accept the claim is one for the trustee and not for the Court. It seems to me that, in the present case, the decision of the trustee was simply ineffective since the Board did not carry out their duty to give a properly informed consideration to the claim. That however does not entitle the Court to substitute its own view of the claim for that of the trustee.*”

<sup>4</sup> *Kerr*, per Fox LJ at 33

<sup>5</sup> *Kerr*, per Fox LJ at 33

<sup>6</sup> *Kerr*, per Fox LJ at 37.

<sup>7</sup> *Futter*, per Lord Walker at 75. Lord Walker in the next paragraph also went on to say: “*Kerr may be compared with Mihlenstedt v Barclays Bank International Ltd [1989] IRLR 522. That was a comparable case except that there was a preliminary issue of construction as to whether the relevant rule (which began ‘Early retirement due to ill health will be permitted only when ...’) imported a wider discretion. The Court of Appeal decided that the language of the rule was that of obligation and entitlement, and that the judge had erred in supposing that there was a wider discretion. But on the facts the majority of the Court of Appeal held that the trustee had not formed its opinion on an erroneous basis.*”

74. For the avoidance of doubt, I am not of the view that a trustee decision can only be sufficiently informed with complete and perfect knowledge on the part of a trustee. Pragmatism and proportionality must have a role as well. For example, *Futter* recognised that it “*is not enough to show that the trustees' deliberations have fallen short of the highest possible standards*” and that it is “*... only breach of fiduciary duty justifies judicial intervention*”<sup>8</sup> (although, as discussed in paragraphs 72 and 73 above, the decision as to whether an individual is a Dependant is more akin to “*a judgment on an issue of fact*”, such as that found in *Kerr*, rather than the points at play in *Futter*).
75. Similarly, although an Australian authority, *ALCOA of Australia Retirement Plan v Frost* [2012] 119 PBLR (019) (Australia VSCA 238) (**ALCOA**), building on *Kerr*, provides helpful guidance that “*Superannuation fund trustees are bound to give properly informed consideration to applications for entitlements and, if that necessitates further inquiries, then they must make them*”<sup>9</sup>. However, that is again tempered by an acknowledgement that “*...does not mean that a trustee is required to do the impossible. Nor is it to suggest that a trustee is expected to go on endlessly in pursuit of perfect information in order to make a perfect decision. The reality of finite resources and the trustee's responsibility to preserve the fund for the benefit of all beneficiaries according to the terms of the deed means that there must be a limit.*”<sup>10</sup>
76. So, following these cases, if it can be shown that the Trustees have not properly considered who qualifies as a Dependant, and it is a sufficiently material, then I can intervene and ask the Trustees to consider the issue again.

***Was the decision as to who was a Dependent taken properly?***

77. From the evidence I have before me, the Trustees and their advisers recognised at an early stage that this was a decision where it would be necessary to consider the payment of death benefits in detail. There was a large sum of money at stake and it was apparent that any decision to pay benefits in accordance with Mr L’s wishes, including as set out in his 31 July 2015 Email, would very likely be challenged by Mr E.
78. It is clear that the Trustees approached that decision in good faith and with an independent mind.
79. However, a decision needed more than that. It also needed to be properly informed and, in my view, for the reasons I explain below, on balance it was not.
80. As a first step, the Trustees were required to decide who, in their opinion, were Dependents. The Trustees were advised of this requirement, as the Minutes record that “*the key issue for the Trustees [was] to determine whether any person qualified*

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<sup>8</sup> *Futter*, per Lord Walker at 73.

<sup>9</sup> *Alcoa*, per Nettle JA at 59.

<sup>10</sup> *Alcoa*, per Nettle JA at 59.

*as a dependant*". They did this with the benefit of the Report and accompanying papers.

81. The conclusion reached in the Report was that *"there are no other individuals [other than Ms K] who would qualify as a Dependant"*. It went on to confirm that it had considered the position of Mrs R and Mrs N, but that *"there was no evidence of any financial dependency that ceased on his death and neither were named in his will"*.
82. The Minutes reflect that and record that the Trustees, following *"lengthy discussion concerning the information contained in the Report"*, concluded that Ms K *"was the only person who could be said to qualify as a dependant"*.
83. However, in my view, on the facts contained within, and annexed to, the Report, there was not sufficient evidence available to allow the Trustees to safely and reasonably reach that conclusion.
84. Rather, the October 2019 Email (which was attached to the Report), included references to:
  - 84.1. In relation to Mrs R, *"[Mr L] supported [her] by ...paying the council tax on that property on a regular basis"*; and
  - 84.2. In relation to Mrs N, *"he supported his ex-wife ... with a payment of £6,050 every month from his SGHambros account."*
85. Both of these are regular, ongoing payments. In both cases the references would, on the face of it, suggest that Mrs R and Mrs N were, at the point of death, dependent on Mr L. Therefore, to make a conclusion to the contrary, their positions required some further investigation.
86. I have some sympathy for the Trustees, as these references in Mr E's October 2019 Email were not well developed in the original BDF or accompanied by evidence, and were also camouflaged by the animus and allegations directed at Ms K, by Mr E. However, as a starting point they nonetheless suggested that financial dependency did exist.
87. Nonetheless, the October 2019 Email was included in the papers circulated with the Report. Furthermore, these statements were also referenced in the body of the Report itself, albeit without additional detail (such as the amount of the monthly payment to Mrs K) contained in the email itself: *"[Mr E] suggests that his ex-wife ...is wholly dependent on money provided by [Mr L]"*, and *"[Mr E] suggest that [Mr L] supported his mother regularly by paying her bills ..."*.
88. However, in spite of this, both the Report and subsequently the Trustees concluded that there was no one other than Ms K that qualified as a 'Dependant'.
89. Therefore, in my view, the decision to pay the Dependant's Pension to Ms K, on the basis that she was the only person falling within the definition of Dependant, was not supported by the relevant evidence available at the time.

90. Rather, in my view, the Trustees should have made further enquiries about the mother and ex-wife, given the evidence provided by Mr E which, prima facie, did suggest dependency at the date of death. In line with *ALCOA*, I agree that “... *trustees are bound to give properly informed consideration to applications for entitlements and, if that necessitates further inquiries, then they must make them.*”
91. However, The Trustees did not make further enquiries. This was confirmed in the email from the PSM to my Adjudicator on 28 May 2024, which included the following paragraph:

*“At the point the Trustees made their decision to make the payment of the dependant’s pension/ lump sum death benefits they had before them all relevant information obtained as part of the information gathering exercise, including the report I had prepared, and all background information connected with that report. With regard to the other potential beneficiaries (namely [Mr L’s] mother, [Mrs R], and ex-wife, [Mrs N], these were discussed at length by the Trustees at the trustee meeting before a decision was reached by the Boards that the Trustees would follow the wishes of [Mr L] (as set out in his email of 31 July 2015, and his will) and the payment was made to [Ms K]. [Mrs R] and [Mrs N] were not directly contacted due to their personal circumstances (the former, [Mr L’s] elderly mother and the latter his ex-wife who the Trustees were aware struggled with ongoing mental health problems). The Trustees were aware of the facts that [Mr L] had bought his mother a house and made some financial provision for his ex-wife (as mentioned by [Mr A] in my interview with him), but the Trustees’ decision was not to deviate from the terms of [Mr L’s] wishes and will.”*

92. This explanation reinforces my view that further investigations should have been made, and that the decision that Ms K was the only Dependant was not sound. For example:

- 92.1. Firstly, in respect of the Dependant’s Pension, it was not for the Trustees to make a decision “*not to deviate from the terms of [Mr L’s] wishes and will*”. Rather, in the first instance, they were presented with a factual question, to identify who in their opinion fulfilled the criteria of being a ‘Dependant’ as set out in the Rules. This suggests that the Trustees asked themselves, initially, the wrong question<sup>11</sup>.
- 92.2. Secondly, the interview with Mr A, which the PSM mentions, does not provide conclusive evidence that Mrs N and Mrs R were not Dependents, such that it

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<sup>11</sup> A view in part supported by the decision that the Trustees were asked to make at the end of the Report: “*The Trustee of the Wellcome Trust Pension Plan must decide if [Ms K] was a financial dependent when looking at whether a pension is payable*”. The Trustees should also have been asking whether anyone else qualified as a Dependent – specifically Mrs R and Mrs N, as the information provided by Mr E suggested that they were – and not just Ms K. However, notwithstanding this question being included in the Report, I place limited weight on it in my decision, as the Minutes suggest, inconsistently with this question, that the Trustees did consider the correct wider decision – albeit, for the reasons given in this Preliminary Decision, with insufficient information to make a properly informed decision.

would override the comments made by Mr E in his October 2019 Email. The note of the PSM's meeting with Mr A sets out that "[Mr L] *had bought [Mrs N] her house for her as part of the settlement but instead of a lump sum, he invested the amount into a financial product which is still in place and which paid her a monthly allowance*". It is not clear to me whether this is the same as the 'allowance' referred to by Mr E (i.e. "*he supported his ex-wife ... with a payment of £6,050 every month from his SGHambros account*"). On the face of it, it is not (as '*his SGHambros account*' suggests that the allowance is coming directly from Mr L, rather than a separate '*financial product*') – but at the very least this ambiguity required further investigation to be sure.

92.3. Finally, and similarly, although the note of the meeting with Mr A refers to Mr L "*buying a house for his mother following his father's death in 2016*", it does not mention or otherwise deal with Mr E's suggestion that Mr L was continuing to pay Mrs R's council tax at the date of death. Again, in view of this omission, further investigation was required in order to safely conclude that Mrs R was not a Dependant.

93. It does not appear that further investigations were made. The Trustees decided not to contact either Mrs R or Mrs N to make further enquiries of them directly due to their personal circumstances<sup>12</sup>. However, this is not a satisfactory reason for not attempting to obtain more information to confirm whether there was dependency. While I accept it could have been difficult to approach Mrs R and Mrs N directly, it would have been possible to request further evidence from, say, the Executors in the first instance. However, I cannot see from the documentation before me that further enquiries were made of, say, Mr E to seek further information. For example, I cannot imagine it would have been either difficult or disproportionate to ask for evidence of the payments that Mr E suggested were regularly made from the SGHambros account in respect of Mrs N, or of the payment of Mrs R's council tax.

94. This position can be contrasted with the thorough and detailed investigations made of Ms K.

95. As a result, I am of the view that insufficient investigations were made of whether there were any further Dependents – and that therefore the Trustees' conclusion that the Ms K was the only Dependant was not taken with sufficient evidence. Furthermore, the evidence that was available did not support the conclusion. As a result, the decision should be taken again.

96. For the avoidance of doubt, as I have alluded to above, and also deal with further below, I am of the view that the Trustees' investigations into whether Ms K was a Dependant were thorough and appropriate. I am of the view that their decision that Ms K was a Dependant was reasonable – and I do not criticise it in any way.

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<sup>12</sup> I am informed that they "*were not directly contacted due to their personal circumstances (the former, [Mr L's] elderly mother and the latter his ex-wife who the Trustees were aware struggled with ongoing mental health problems).*"

## Payment of the Lump Sum

97. A Lump Sum representing a refund of Mr L's contributions to the WTPP Plan was also payable on his death.
98. The WTPP Rules provide that the Trustees have absolute discretion to pay the Lump Sum to one or more persons in any of the following categories:
- (a) Relatives;
  - (b) Dependants;
  - (c) personal representatives (or executors);
  - (d) and nominated beneficiaries; and
  - (e) any person or body (including a charity) entitled to receive any sum from his estate.
99. In exercising their discretion, the Trustees decided to pay the refund of contributions to Ms K as a *"financial dependant and as a person nominated"*. The Minutes of the relevant meeting state that *"there was a lengthy discussion between the Trustees concerning the relative merits of awarding the lump sum to any relative, [Ms K] (as financial dependant and as a person nominated) or the Estate."*
100. To assist in this decision (and also for the purposes of the payment of the Dependant's Pension), the Trustees embarked on a commendably thorough process, set out in the Report, to investigate whether she fulfilled the definition of 'Dependants' in the WTPP Rules – and concluded that she did so. The Report set out the nature of the financial dependency, recorded the interviews with Mr L's friends and colleagues, as well as Ms K herself, and itemised payments made to Ms K from Mr L's accounts. It included a payment to Ms K only a matter of days before the death of Mr L<sup>13</sup>. Taking this investigation into account, I am content that it was reasonable for the Trustees to conclude that, in their opinion, Ms K was a Dependant, and thus a potential beneficiary for the purposes of receiving the Lump Sum.
101. Mr E contends that the 31 July 2015 Email was not a properly signed and witnessed "letter of wishes". While I agree that the email does not specifically provide a nomination in relation to the distribution of death benefits<sup>14</sup>, it does provide a clear statement from Mr L that he viewed Ms K as his "dependent partner" for the purposes of benefits from the WTPP. Contrary to Mr E's argument, I find there was no reason for the Trustees to disregard this email as an irrelevant factor. For example, as set out in paragraph 7 above, it was sent to Wellcome's Director of HR and copied into

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<sup>13</sup> Mr E argues that this and earlier payments may have been carried out by Ms K herself, and the Report acknowledges that *"it is unclear if this was the case [and that] this could have been possible but it would have been unlikely that he was unaware of this until nearer the end."*

<sup>14</sup> It does not, for example, sit on all fours with the provisions of clause 4.6.6, which sets out that the *"Trustees may have regard to any document signed by the Member... expressing his wishes for the disposal of any sum payable under this Clause. Any person named in the document will be a "nominated beneficiary"*.

Mr J, one of the Executors, without causing any concern at that time. The witnessed Will (made some fifteen months later) also made a similar statement, expressing Mr L's view that Ms K was his "*partner and dependent*" (see paragraph 8 above). The Trustees were, in my view, entitled to consider this information. In any event, for the reasons given above, I am satisfied that it was reasonable for the Trustees to conclude that Ms K was in any event a Dependant, and so eligible to be considered for the payment of the Lump Sum.

102. Mr E also submits that Ms K was not "*a person of fit and proper standing so the decision to pay death benefits to her should be reconsidered*". The WTPP Rules do not require the Trustees to consider a potential beneficiary's personal background or the manner in which they conduct their life when exercising discretion. The question they needed, and did, take into account was whether Ms K was financially dependent on Mr L. To have considered anything further in relation to Ms K would have been to consider an irrelevant matter.
103. Mr E also argued that the decision in relation to the distribution of death benefits should not have been taken until all legal proceedings against Ms K had been concluded. I acknowledge that various references had been made about the Executors taking legal action against Ms K before the Trustees' decision in relation to the distribution of the death benefits was taken on 23 March 2020. However, there was no substantive evidence of this until some months after the Trustees' decision, when the Courts issued a freezing order in July 2020, at which point the Trustees decided to temporarily suspend payments of the dependant's pension payable to Ms K until the final judgment was handed down. I am content that the Trustees acted appropriately in this regard.
104. Accordingly, I am satisfied that the decision that Ms K was a potential beneficiary was reasonable, and so it was proper that she was considered by the Trustees when they exercised their discretionary power.
105. However, it is also necessary to consider whether there were any other beneficiaries who were not considered. To the extent that the Trustees did not identify all relevant beneficiaries (recognising that may not always be possible or proportionate), that may mean that the Trustees failed to take into account all relevant factors and so require the decision to be reconsidered.
106. Mrs R was a "Relative" for the purposes of the WTPP Rules. The Report recognised that Relatives were potential beneficiaries, and the Minutes recorded that the "*there was a lengthy discussion between the Trustees concerning the relative merits of awarding the lump sum to any relative, [Ms K] (as a financial dependant and as a person nominated) or the Estate*". As a result, I find that Mrs R was considered when the Trustees considered the distribution of the Lump Sum and there are no grounds for me to interfere with their decision not to pay it, or a proportion of it, to her.

107. However, Mrs N was not a Relative for the purposes of the WTPP Rules<sup>15</sup>. Rather the only way in which she would have been a potential beneficiary of the Lump Sum in these circumstances was as a Dependant. For the reasons given above in paragraphs 77 to 96 I am of the view that insufficient investigations were made into whether or not Mrs N qualified as a Dependant. As a result, the Trustees' decision-making process was also flawed in relation to payment of the Lump Sum, and so should also be reconsidered.

### **Summary**

108. The complaint shall be upheld and to put matters right the Trustees shall reconsider their decisions regarding the payment of the Dependant's Pension and the distribution of the Lump Sum from the WTPP following Mr L's death.

### **Directions**

109. Within 28 days of the date of this Determination the Trustees shall make further enquiries about Mrs R's and Mrs N's financial dependency on Mr L at the time of his death.

110. Within 28 days of receiving the additional information the Trustees shall consider afresh who to pay the Dependant's Pension and the Lump Sum following the death of Mr L. In reaching any decision about who to pay the Dependant's Pension (in whole or part) or who to pay the Lump Sum to (in whole or part) within the class of potential recipients, the Trustees shall disregard the fact that the Dependant's Pension has already been awarded to Ms K and the Lump Sum has already been paid to Ms K. The information regarding Mrs R and Mrs N's financial dependency shall be considered within the new decisions to determine whether Mrs R and Mrs N are 'Dependants' for the purposes of the WTPP Rules, and the Trustees shall explain their reasons for reaching that decision, including the factors they have taken into account in reaching their new decisions.

### **Dominic Harris**

Pensions Ombudsman  
18 March 2025

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<sup>15</sup> So far as I am aware she was not a Former Spouse, which required her to be a pension credit member of the WTPP, which would have brought her within the definition.



## Appendix

### Extracts from The Wellcome Trust Pension Plan - Fourth Definitive Trust Deed and Rules, dated 3 December 2019.

1. Under Schedules 2 and 3, as relevant Rule 6, 'Dependants' pensions', provides:

#### **"6.1 Dependant's pension on death in Pensionable Service**

The Dependant of a Member who dies in Pensionable Service shall be entitled to receive a pension equal to two-thirds of the pension which the Member would have received if he had remained in Pensionable Service (based on his Final Pensionable Pay at the date of his death) until and had retired upon reaching his Normal Retirement Date."

[as inserted by Paragraph 5 of Schedule 3 in respect of members of the Management Scheme]

#### **6.7 General provisions applicable to Dependant's pensions**

6.7.1 A pension payable to a Spouse or adult Dependant shall be payable from the death of the Member or Pensioner for life.

6.7.2 If a Member...dies leaving more than one Dependant the Trustees, in their absolute discretion, shall decide the amount of the pension (if any) payable to each Dependant, so that if, at the time of the Member's death, there is no Spouse, the Dependant's pension may be payable to an adult Dependant (if any) and/or to any Eligible Children."

2. As relevant, Clause 4.6, 'Payment of lump sum death benefits', provides:

"4.6.1 Where on the death of a Member, Pensioner or other beneficiary an amount is stated to be held on discretionary trust in accordance with this Clause 4.6 or otherwise subject to discretionary distribution by the Trustees, the Trustees shall, subject to the following provisions of this Clause pay or apply all or any part of that sum to or for the benefit of one or more persons in relation to the deceased Member or Pensioner in any of the following categories:

(a) Relatives;

(b) Dependants;

(c) personal representatives (or executors);

(d) and nominated beneficiaries; and

(e) any person or body (including a charity) entitled to receive any sum from

his estate.”

3. 'Definitions', under Schedule 1, provides:

“**Relatives** means in relation to any Member or Pensioner:

- (a) his Spouse and Former Spouses;
- (b) his and his Spouse's lawful or adoptive parents and grandparents;
- (c) his Eligible Children;
- (d) such parents' and grandparents' widows, widowers, children and descendants and their Spouses.

For the purposes of this definition, children and descendants in relation to an individual includes adopted and stepchildren and any other person to whom the Trustees believe that the individual acted as a parent.”

“**Dependants** means:

- (a) the Spouse of the Member or Pensioner at the time of his death;
- (b) the Spouse of a Pensioner at the time his pension came into payment;
- (c) any individuals (other than a child of the Member or Pensioner) who in the opinion of the Trustees were, at the time of the death of the Member or Pensioner, financially dependent on the Member or Pensioner or dependent because of disability, or had a financial relationship of mutual dependence with the Member or Pensioner; and
- (d) any Eligible Children of the Member or Pensioner.”

“**Spouse** means the person accepted by the Trustees as the partner of a Member at the date of his death. Spouse shall for the purposes of this Deed also include a person who is in a same sex marriage with an individual under the Marriage (Same Sex Couples) Act 2013. Spouse shall, for the purposes of this Deed, also include the Civil Partner of an individual (except where otherwise stated) and any reference to marriage or equivalent shall include a civil partnership.”