

Ombudsman's Determination

Applicant	Mrs E
Scheme	ReAssure Number Three Personal Pension Scheme (the Scheme)
Respondent	ReAssure Limited (ReAssure)

Outcome

1. Mrs E's complaint is upheld and, to put matters right, ReAssure shall reconsider its decision about the distribution of death benefits under the Scheme in accordance with the New Rules.
2. ReAssure shall also pay Mrs E £1,000 for the serious distress and inconvenience caused to her.

Complaint summary

3. Mrs E's complaint concerns the distribution of benefits from the Scheme following the death of her late husband, Mr E.

Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the salient points.
5. The Scheme was previously known as Barclays Life Personal Pension Plan and was established by way of deed on 9 May 1988. Subsequently, five deeds of amendment, dated respectively 14 July 1988, 14 January 1992, 5 April 2004, 17 May 2006 and 29 February 2012, amended the Scheme.
6. On 10 January 2017, ReAssure issued a sixth Deed of Amendment, the 2017 Deed of Amendment. Under the 2017 Deed of Amendment, ReAssure replaced the existing rules with new rules (**the New Rules**) which took effect from 6 April 2015. With effect on and from the date of the deed, the Scheme also became known as The ReAssure Number Three Personal Pension Scheme (**the Scheme**).
7. Mr E (**the member**) held a Personal Pension Plan with the Scheme which he took out before the adoption of the 2017 Deed of Amendment and the New Rules. In March 1993, he placed the benefits of the Scheme in trust in favour of his then wife (**the Trust**).

8. In 1998, Mr E separated and divorced his ex-wife and met Mrs E. Mr and Mrs E subsequently married and had two children together.
9. In September 2017, Mr E died, and Mrs E informed ReAssure about his death.
10. On 9 October 2017, ReAssure wrote to Mrs E and said that the death benefits payable upon Mr E's death were written in trust for the benefit of a third party.
11. On 19 October 2017, Mrs E replied that the other party was Mr E's ex-wife.
12. On 10 November 2017, ReAssure wrote to Mrs E and said that Mr E had not revoked the Trust on divorce, so the benefits were payable to the ex-wife.
13. On 15 December 2017, Mrs E's solicitor, Cyril Jones & Co, wrote to ReAssure and said that there was a dispute over the benefits.
14. On 15 January 2018, ReAssure wrote to Cyril Jones & Co and said it was legally obliged to pay the ex-wife as the Trustee of the Trust (**the Trustee**).
15. On 22 February 2018, Cyril Jones & Co wrote to ReAssure. It said that Mr E's Will and his estate was in favour of Mrs E.
16. On 20 March 2018, ReAssure wrote to Cyril Jones & Co and gave it four weeks to identify if the Trust had been amended or overridden and to provide the appropriate evidence.
17. On 25 March 2019, Mrs E raised a formal complaint with ReAssure.
18. On 29 March 2018, Cyril Jones & Co replied to ReAssure and confirmed that Mr E had failed to amend the named beneficiary on the Trust.
19. On 15 May 2018, ReAssure wrote to Cyril Jones & Co and reiterated it would only pay the Trustee of the Trust. ReAssure also advised that Mr E's Will did not override the individual trust because the benefits fell outside the estate.
20. On 1 June 2018, the ReAssure paid the benefits to the ex-wife as the Trustee of the Trust.
21. On 18 April 2019, ReAssure issued its final response to Mrs E's complaint. ReAssure reiterated that the Trust arrangement meant that the benefit did not form part of Mr E's estate. ReAssure had to pay the named beneficiary of the Trust which was Mr E's ex-wife. ReAssure had asked for evidence that the Trust had been revoked or amended but no evidence was submitted and ReAssure was satisfied it had paid the money correctly.
22. In January 2020, ReAssure wrote to The Pensions Ombudsman (**TPO**), in response to an informal approach made on behalf of Mrs E, and said that the New Rules only applied on the member's death when the policy was not subject to a trust. The death benefits ceased to belong to the member as soon as they were placed in a trust. ReAssure said that the Trustee of the Trust became owner of any death benefits

payable and the discretion to pay the benefits was lost. ReAssure said it would not change its decision.

23. Mrs E asked TPO to investigate formally, her position was:

- She met Mr E in 1998. They had paid jointly into the Scheme for 15 years and had two dependants together.
- Mr E had forgotten to change the Scheme documents, but he had no relationship with his ex-wife or any dependants with her and would not have wanted her to be his final beneficiary.
- Mr E would have wanted his children to benefit from the Scheme and if he had the full documentation, he would have amended the documents.

24. On 27 June 2021, TPO wrote to ReAssure and asked for its formal response.

25. On 6 July 2021, ReAssure responded and referred TPO to its correspondence from January 2020, which said that ReAssure would not change its decision and this was its final response.

26. On 14 August 2023, TPO wrote to ReAssure and asked whether it had updated its procedures following the 2017 Deed of Amendment and the adoption of the New Rules. It also asked whether it had considered the impact on members and notified them of the change and the possible implications.

27. On 10 October 2023, ReAssure replied. The New Rules allowed for discretion, but the death benefits were written into trust. The trust made the Trustee the legal owner of the benefits which overrode the discretion of ReAssure. There were a few options that could be used to amend the Trust, but these had to be initiated by the Trustee of the Trust. ReAssure said it was not its responsibility to have informed the Trustee of these options, but irrespective, it had written to the ex-wife in May 2018 to say it would accept a letter from her renouncing her claim.

28. On 16 October 2023, TPO wrote to ReAssure and said that it had failed to advise whether it updated its procedures after the adoption of the New Rules and whether it had considered the impact on members and updated them as such.

29. On 8 November 2023, ReAssure responded and said that the change was a change of name only and it had not contacted any of the members about this. ReAssure did not consider this request for information relevant. It said that the changes it made were not about death benefits. ReAssure said that ultimately, as the benefits were in trust, the discretionary powers under the New Rules did not apply.

ReAssure's position

30. ReAssure's position was:-

- The New Rules allowed for discretion when paying death benefits, but these only applied on the member's death when the policy was not subject to a trust. The death benefits ceased to belong to the member as soon as they were placed in a trust. The Trustee of the Trust became owner of any death benefits payable and the discretion to pay the benefits was lost.
- There were a few options that could be used to amend the Trust, but these had to be initiated by the Trustee. It was not ReAssure's responsibility to inform the Trustee of these options, but irrespective, it had written to the ex-wife, in May 2018, to inform her that it would accept a letter from her renouncing her claim.
- As the benefits were placed in trust, the discretionary powers under the New Rules did not apply.

Mrs E's position

31. Mrs E's position was:-

- She had paid jointly into the Scheme with Mr E for 15 years and they had two dependents together.
- Mr E had forgotten to change the Scheme documents, but he had no relationship with his ex-wife or any dependants with her and would not have wanted her to be his final beneficiary.
- Mr E would have wanted his children to benefit from the Scheme and if he had the full documentation, he would have amended the documents.

Caseworker's Opinion

32. Mrs E's complaint was considered by one of our Caseworkers who concluded that maladministration had occurred, and further action was required by ReAssure to put matters right. The Caseworker's findings are summarised below:-

- Under the Barclays Life Personal Pension Scheme Rules (the rules prior to the 2017 Deed of Amendment), where a trust existed, ReAssure had no discretion as to whom to pay the benefits on a member's death.
- ReAssure's discretion was limited to cases where there was no trust. Rule 9.15 of Barclays Life Personal Pension Scheme Rules stated that, subject to Rule 13.5, if a member died and no survivor's pension became payable under Rule 9.1 and Rule 9.2, the Scheme Administrator could, as soon as practicable and subject to Rule 9.16, pay a lump sum in a number of ways:

- Rule 9.15(1) stated that the lump sum could be paid in “accordance with any specific provisions regarding payment of such sums under the contract or contracts applying to the Arrangements in question”.
- Rule 9.15(2) applied only where the preceding option was inapplicable. The rule stated, “if (1) is not applicable and at the time of the Member’s death the Scheme Administrator is satisfied that the policy is subject to a valid trust, to the trustees from time to time of the trust”.
- Rule 9.15(3) then continued “if (1) and (2) are not applicable, at the discretion of the Scheme Administrator to or for the benefit of any one or more of the following in such proportions as the Scheme Administrator decides.”
- However, through the adoption of the New Rules, ReAssure subsequently changed how death benefits were dealt with on a member’s death:
 - Rule 16.2 of the New Rules stated that, on the death of a member, ReAssure could, at its discretion, apply the member’s individual fund for the benefit of one or more of their Eligible Recipients at such times and in such ways as set out under Rule 16.2, as it determined appropriate.
 - Rule 16.2 set out the ways ReAssure could exercise its absolute discretion. For example, Rule 16.2.1 stated that ReAssure could make payment to the Eligible Recipient or to the Trustees of any trust (including any other pension scheme or any discretionary trust). Rule 16.3 also stated that ReAssure could at any time establish any trusts for the purposes of Rule 16.2 on whatever terms it deemed appropriate.
- Mr E had died in September 2017, when the New Rules applied. ReAssure had identified that the New Rules applied, but the evidence showed that it either failed to apply the New Rules or failed to understand the change and implications created because of their adoption.
- ReAssure told TPO that the New Rules allowed for discretion but that the discretion ceased to apply because the benefits were placed into trust. However, Rule 16.2 was clear and unambiguous; it did not say that ReAssure’s discretion was limited or confined to cases where there was no trust in favour of a nominated trustee and beneficiary.
- Rule 16.2 gave ReAssure absolute discretion to decide whether to pay the individual member’s benefits to the “Eligible Recipients or to the trustee of any trust”. There was no provision that the payment had to be made to the Trustee of the Trust. In fact, the rules clearly gave ReAssure the option to either pay the benefits to an Eligible Recipient or to any trust.
- To apply the New Rules properly, ReAssure had to exercise discretion and consider any eligible recipients as well as any trusts. By failing to consider other Eligible Recipients and treating the Trust as binding over its discretion, ReAssure

had failed to comply with the rules in force at the time of Mr E's death and continued to act as if the old rules were in force; this in the Caseworker's Opinion was maladministration.

- ReAssure's adoption of the New Rules changed the benefits for members on death significantly. TPO asked ReAssure if it had updated its procedures following the adoption of the New Rules and whether it had notified the members impacted by the changes, which included Mr E. ReAssure told TPO that there was no mailing list to update the members because the change was a change of name only. ReAssure's response suggested it failed to update its internal processes to allow it to administer the New Rules properly and it was unaware of the implication for members. ReAssure's response contradicted the 2017 Deed of Amendment and the Recital therein which specified that the then "Current Deed" was changed in its entirety with the New Rules with effect from April 2015. The response was also inconsistent with the substance of the New Rules and the changes made with regard to members' benefits on death.

33. For these reasons, the Caseworker was of the view that ReAssure had failed to apply the New Rules to the death benefit claim, and had failed to exercise discretion in deciding to whom the benefits should be paid. The Caseworker was of the opinion that ReAssure should re-consider its decision promptly and make a payment for non-financial injustice for the distress and inconvenience caused by its maladministration.
34. The Opinion was issued on 22 December 2023 and required a response by 11 January 2024, although an extension was allowed upon request by ReAssure until 22 January 2024.
35. On 22 January 2024, ReAssure's complaint handler informed the Caseworker that ReAssure was not able to respond. On 25 January 2024, the Caseworker was informed that ReAssure would respond the following week, but no response was received until 7 February 2024, when ReAssure said that it disagreed with the Opinion. ReAssure did not say why it disagreed and did not provide any further substantive comments.
36. On 12 February 2024, the Caseworker asked if ReAssure wished to provide more substantive comments or expand upon its reasons for disagreeing with the Opinion and, on 22 February 2024, the Caseworker informed ReAssure's case handler that the case would be passed to the Ombudsman for a decision unless the objections were received by 29 February 2024.
37. On 12 March 2024, ReAssure's case handler informed TPO that it had requested policy information for it to review. In reply, on 18 March 2024, the Caseworker advised that TPO had given ReAssure ample time to provide its reasons for objections and the case was going to be passed to the Ombudsman for a Determination.

Ombudsman's decision

38. The death benefits payments applicable after the death of Mr E were subject to an individual Trust, but once ReAssure adopted the New Rules, it ceased to be under any obligation to pay the death benefits to the individual Trust. In accordance with Rule 16, ReAssure had discretion as to who it could pay the benefits: -
- Rule 16.1 stated that “the Provider [ReAssure] shall apply the Member’s.....Individual Fund for the benefit of such one or more of his Eligible Recipients.....in such one or more of the ways set out in Rule 16.2 as the Provider in its absolute discretion may determine”.
 - Rule 16.2 provided for one of the ways ReAssure could exercise its absolute discretion as, “payment of a lump sum death benefit to the Eligible Recipient or to the trustees of any trust (including any other pension scheme or any discretionary trust)”.
39. ReAssure was asked whether the member was given advance notice of changes to the Scheme rules which might impact his rights under the Scheme, but ReAssure’s position was that the change was a change of name only. This was clearly incorrect and misleading.
40. ReAssure accepted that the New Rules allowed for discretion, but it argued that the discretion only applied on the member’s death when the death benefits were not subject to a trust. I find this to be incorrect and inconsistent with the New Rules which were in force at the time of the member’s death. ReAssure said that the Trustee of the Trust became owner of any death benefits payable and the discretion to pay the benefits was lost. ReAssure had therefore not exercised discretion as required by the New Rules, which were clearly in force at the date of the member’s death and I find that this amounted to maladministration.
41. ReAssure failed to put matters right and failed to provide any reasons or explanations for objection to the Caseworker’s Opinion, despite being given ample opportunity to do so. This further exacerbated the distress and inconvenience for Mrs E and it stands to reason that she should be compensated for this.
42. ReAssure should review its decision in accordance with its discretionary powers when deciding who to pay the benefits in compliance with the New Rules.
43. I uphold Mrs E’s complaint.

Directions

44. Within 28 days of the date of the Determination, ReAssure shall:
- a. pay Mrs E £1,000 in recognition for the serious distress and inconvenience she has suffered as a result of this matter;

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- b. reconsider the decision about the distribution of death benefits promptly and in accordance with the New Rules;
- c. notify Mrs E of its new decision, providing a detailed analysis on how the decision was reached;
- d. if that decision is in favour of Mrs E, arrange payment of the outstanding benefits; and
- e. pay any outstanding income tax, if payable as a result of the discretionary payment being made outside of the HMRC two-year time limit, which began on the date of Mr E's death.

Anthony Arter CBE

Deputy Pensions Ombudsman
20 May 2024

Appendix

The New Rules under 2017 Deed of Amendment

Rule 16. BENEFITS FOLLOWING DEATH OF MEMBER

16.1 On the death of a Member or a Survivor the Provider shall apply the Member's or Survivor's Individual Fund for the benefit of such one or more of his Eligible Recipients and in such proportions and at such time or times and in such one or more of the ways set out in Rule 16.2 as the Provider in its absolute discretion may determine (subject to Rule 17.1 and any other restrictions imposed by or under the Rules).

16.2 The ways referred to in Rule 16.1 are:

- 16.2.1 payment of a lump sum death benefit to the Eligible Recipient or to the trustees of any trust (including any other pension scheme or any discretionary trust) for the benefit of persons including that Eligible Recipient;
- 16.2.2 designation as available for the payment of Drawdown (but only for an Eligible Recipient to whom the Act permits Drawdown to be paid on that occasion);
- 16.2.3 purchase of an Annuity payable to the Eligible Recipient (but only for an Eligible Recipient to whom the Act permits an Annuity to be purchased on that occasions); and
- 16.2.4 (if the Eligible Recipient is unconnected) reallocation within the Scheme to any new or existing Individual Funds held in respect of that Eligible Recipient in their capacity as a Member.

16.3 The Provider shall have power at any time:

- 16.3.1 to declare or otherwise establish trusts for the purposes of Rule 16.2.1, on such terms as the Provider in its absolute discretion may consider appropriate (and for the avoidance of doubt Rule 7.4 shall apply to any costs, charges or expenses incurred in doing so); and
- 16.3.2 to admit any individual as a Member for the purposes of a reallocation within Rule 16.2.4

16.4 For the purposes of Rule 16.2.4, an Eligible Recipient is unconnected if, immediately before the death of any individual to which the reallocation is attributable, he was not connected with that individual for the purposes of section 172B of the Act.

- 16.5 Any nomination of an individual by the Provider in connection with Drawdown (including any designation of funds or any other selection or determination or other act which in the opinion of the Provider amounts to or implies such nomination) shall count as a nomination by it as a Scheme Administrator for the purposes of the Act.
- 16.6 If a Dependant, for whom Drawdown, was being provided following the death of a Member, ceased to be a Dependant, the Provider shall apply the Dependant's Individual Fund in accordance with this Rule 16 as if it were the Member's Individual Fund being applied on the death of the Member (but not in accordance with Rule 16.2.1 unless payment of a lump sum death benefit is permitted by the Act).
- 16.7 A dependant's annuity purchased in the Dependant's name shall provide a pension for the Dependant on such terms as the Dependant shall decide. Where the Dependant does not select the insurance company to provide the Dependant's Annuity the Provider shall do so, such annuity providing such benefits as the Provider in its absolute discretion decides.
- 16.8 Neither the Provider nor the Scheme Administrator shall be obliged to consider for the purposes of this Rule 16 any Eligible Recipient of whose eligibility it is unaware having made reasonable enquiries.
- 16.9 To the extent that the Provider is unable to apply any Individual Fund which the preceding provisions of this Rule 16 require it to apply, it shall allocate it to the General Fund.