

Ombudsman's Determination

Applicant	Mrs S
Scheme	Royal Mail Defined Contribution Plan (the Plan)
Respondent	The Plan Trustees (the Trustees)

Outcome

1. I do not uphold Mrs S' complaint and no further action is required by the Trustees.

Complaint summary

2. Mrs S has complained about the decision made by the Trustees to pay a proportion of the death benefits payable from the Plan following her son's death to Ms A.

Background information, including submissions from the parties

3. On 30 March 2010, Mr S began employment with Royal Mail.
4. On 30 March 2011, Mr S became a member of the Plan, which was a defined contribution arrangement set up by his employer. Zurich was the administrator of the Plan (**the Administrator**).
5. On 13 June 2017, Mr S died while in pensionable service. Due to the circumstances of Mr S' death the police attended and there was the need for an inquest.
6. Mr S' salary when he died was £19,460.27 and the following benefits became payable from the Plan:-
 - A death in service lump sum of £77,841.08, representing four times Mr S' salary. This was payable to a Beneficiary as defined under the Plan Rules.
 - A death in service lump sum of £38,920.54 representing two times Mr S' salary. This was payable to a Dependant as defined under the Plan Rules.
 - A fund value of £13,332.26.

7. The total death benefit was £130,093.88 and was payable at the Trustees' discretion. Relevant extracts from the Plan Rules are set out in the Appendix. Mr S did not complete a nomination of beneficiary form during his employment.
8. On 1 August 2017, Mrs S and her husband, Mr Z S, completed a Death Benefit Beneficiary Information Form. They provided the Death Certificate, the Coroner's Certificate and confirmed that Mr S did not leave a will. They also confirmed that they paid the funeral expenses and that the value of Mr S' only assets were Royal Mail shares and his car. His liabilities were his car instalments and a student loan guarantee for his sister of £2,000.
9. Mrs S also confirmed that Mr S did not leave a widow, widower or civil partner or a partner with whom he had a relationship similar to marriage or civil partnership. He did not leave any children. His parents, grandmother and sisters were still alive but were not financially supported by Mr S. Ms A lived with Mr S and shared ordinary costs of living with him.
10. Mrs S also included a statement that set out her and her husband's position. It said in summary:-
 - They did not think Ms A should be awarded any of the death benefits as she had not been planning a future with Mr S. The Coroner had indicated that Mr S had committed suicide and they believed that Ms A's words might have been the trigger for this.
 - The Coroner had described the relationship between Ms A and Mr S as unstable and Ms A had been thinking of leaving Mr S.
 - According to her Police statement, Ms A had said that Mr S was suffering from depression and had been having thoughts about suicide. She did not do anything to help and did not inform them (Mrs S and Mr Z S) about this life-threatening situation.
 - They did not believe Ms A was financially dependent on Mr S:-
 - Ms A was able to work at least up until Mr S' death even if she was unable to work afterwards.
 - If Ms A was thinking of leaving she could not have counted on Mr S' continued financial help.
 - The Coroner had said that according to Ms A Mr S had been spending a lot of money every week on drugs. So, he had no money to help her financially.
11. Mrs S also set out that there had been a change to the health and financial status of her husband:-

- Apart from ordinary gifts there had been no need for Mr S to support them financially as they were able to work and had been employed.
 - On 26 January 2017, Mr Z S had an accident and was now on sick leave. His doctor's prediction was that he would be able to go back to work in six to eight months. His paid medical leave expired on 27 July 2017 and could not be prolonged.
 - At age 59, it was practically impossible for Mr Z S to find a job. As a result, he would probably be forced to claim unemployment benefit which was only around £200 a month.
 - They were sure that they could have counted on Mr S's financial help if he had been alive.
12. On 12 December 2017, the Administrator sent an email to Mrs S and stated that it could not comment on the points raised about Ms A and the grounds under which she may consider herself to be a Beneficiary. However, it could confirm that it was currently waiting for the Coroner to conclude the inquest and for the Registrar's certificate of death to be issued. If it felt more detailed information from the Coroner would help the Trustees to make its decision it would request this.
13. On 29 January 2018, Mrs S emailed the Administrator to say that she had contacted the Coroner and asked whether material from his investigation could be used by the Trustees.
14. On 15 February 2018, Mrs S emailed the Administrator to say that she had not yet had a response from the Coroner. However, she stated that when Ms A ended the relationship with Mr S his last words before his death were that she would regret it. This confirmed that the relationship had ended on Ms A's initiative.
15. On 20 February 2018, the Administrator acknowledged Mrs S' evidence and that the information that had been shared was very personal. It stated that it would now be submitted to the Trustees.
16. On 18 April 2018, the Administrator passed the decision regarding payment of the death benefits to the Trustees' discretions committee (the **Discretions Committee**).
17. Section 7 of the Terms of Reference for the Discretions Committee sets out the Powers of the Committee:
- “7. The Committee may exercise on behalf of the Trustees the powers, duties, and discretions in relation to the Plan in relation to discretionary benefits.
- 7.1 The Trustees' discretions in relation to the award of benefits payable on the death of a member of the Plan (including, without limitation, the exercise of the Trustees' discretions on the identity of the beneficiaries and the amount of benefit to or on behalf of such beneficiaries.”

18. On 30 May 2018, the Plan's Insurer, Zurich, sent a letter to Mrs S to confirm the payment of funeral costs totalling £1,541.13 had been deducted from the total death benefit and paid to Mrs S by way of reimbursement. Zurich also confirmed that the following benefits would be paid to her:-

Pension funds from the Plan	£7,960.75
Death in service life cover	£77,841.08
Total	£85,701.83

19. On 16 August 2018, Mrs S made a complaint to the Trustees under stage one of the Plan's internal dispute resolution procedure (**IDRP**). She said in summary:-

- A proportion of the death benefits had been paid to another party and she had not been informed who that was.
- Mr S was Polish, and it was unacceptable in Polish culture to grant a benefit to a person who failed to attend the funeral. In addition, according to Polish tradition and law only relatives, the spouse and adopted children were eligible for benefits.
- It was upsetting that an unknown person had been treated on equal terms with Mr S' parents and had priority over his sisters.
- She believed that contributions paid to a pension fund were inheritable and consequently this part of the benefit should be paid to Mr S' sole heirs.
- She did not understand why the fact that Mr S had nominated her to receive the death benefits had been ignored.
- She did not think the process of providing the information for the Trustee's decision was impartial or fair.
- Correspondence from the Administrator initially indicated that Ms A was taken into account with regard to the benefits. However now that Mrs S had demonstrated that Ms A was not in a relationship with Mr S an anonymous beneficiary had appeared.
- A letter of objection to the granting of the death benefits to an unknown party was provided that was signed by 71 people.

20. On 23 October 2018, Mrs S provided additional comments to be considered as part of her complaint. She stated that the additional information should only be reviewed if it was in fact Ms A who had received the remaining amount of the death benefits rather than an unknown party:-

- She had informed the Trustees that Ms A's relationship with Mr S had ended at the time of his death.

- The Trustees had disregarded the most important circumstances of the case, that there was no financial dependency in the last moments of Mr S' life. Ms A claimed Mr S had no money due to spending it on drugs and alcohol and so he did not pay the bills. If this was the case, she was not financially dependent on him.
 - Morally it was wrong for Ms A to receive any benefits as she knew about Mr S' suicidal thoughts and did nothing. In addition, Ms A had also violated Mr S' personal rights by searching his possessions to find drugs. During the ensuing row Ms A informed Mr S that she was leaving. This row and break up ended with Mr S' death.
 - By stating that she wanted to leave Mr S Ms A gave up future financial dependence. The police photographs of the flat showed empty drawers and possessions packed in cardboard boxes and bags. Ms A also stated to the Police that she and Mr A had not been living together for long periods of time and frequently split up.
 - Ms A did not fulfil a basic moral obligation towards Mr S as she did not attend his funeral.
21. On 14 January 2019, Mrs S raised additional complaint points regarding the actions of Royal Mail employees and the rate of pay that had been used to calculate Mr S' outstanding pay.
22. On 18 January 2019, the Trustees sent a letter to Mrs S. In summary, the Trustees said:-
- They were originally advised that in order to comply with data protection legislation it was not possible to disclose the other recipient's name. However, they accepted that it would be unjust to Mrs S if they did not explain the factors they took into account in reaching their decision. This necessitated the disclosure of the recipient who was Ms A.
 - They could not respond to complaints about employment issues, in particular in relation to Mr S' last salary. However, they understood that Royal Mail would be looking at the comments and would respond to Mrs S separately.
 - The Plan Rules stipulated what death benefits were due on the death of a member.
 - They were under a duty to exercise their discretion to distribute the death benefits in accordance with the Plan Rules and legislation. If a member had completed an expression of wish form, they would take the member's nomination into account, although they were not bound by the nomination and might decide not to follow it. They had no record of a nomination form completed by Mr S.

- Under the Plan Rules, they may pay four times the deceased members salary and the value of their Plan account to one or more Beneficiaries. The two times salary benefit was only payable to a Dependant.
- The Trustees' duties in regard to deciding who to pay the death benefits to were:
 - ask correct questions (for example who the potential Beneficiaries were; on what basis did they have a claim);
 - direct themselves correctly in law (which in this case meant understanding the scope of their powers under the Plan Rules);
 - take into account all relevant but no irrelevant factors; and
 - avoid arriving at a perverse decision (that is a decision which no reasonable set of trustees would arrive at).

23. The factors the Trustees took into account in reaching their decision were:-

- Mr Z S was not working at the time due to ill health and was on benefits.
- It was likely that Mr S would have provided financial support in view of this.
- Mr S acted as guarantor in respect of his sister's loan.
- Mr S provided his parents and sisters with gifts including money from time to time.
- Mrs S met the funeral expenses.
- Mr S and Ms A had been in a relationship for approximately seven years, albeit an on-off relationship.
- In March 2017 Mr S had entered into a tenancy agreement jointly with Ms A.
- Mr S had nominated Ms A to receive death benefits payable by Commsave Credit Union Ltd.
- Mr S and Ms A claimed tax credits as a couple.
- Ms A's current financial situation.

24. The Trustees also responded to the points raised in Mrs S' letter dated 16 August 2018. The Trustees said:-

- There was no prohibition under UK law in awarding death benefits to a person who did not attend the deceased's funeral. In addition, benefits may be awarded to a wider group of people than a spouse or children and there was no general

prohibition under UK law to award death benefits to a person unknown to close family.

- They understood by guarantor that Mr S would only have been obligated to repay the loan if his sister failed to do so. However, it did not mean that Mr S had a primary obligation to repay the loan.
- Mrs S' belief that in the UK contributions paid to a pension fund were inheritable was incorrect.
- Mr S did not complete a nomination form in respect of his benefits, and after enquiring they understood that he had not made a will.
- They made their own enquiries to gather the information needed to come to a decision.
- In summary, they were satisfied that they had complied with their duties in relation to the distribution of death benefits payable from the Plan.

25. On 21 January 2019, the Secretary to the Trustees (**the Secretary**) sent an email to Mrs S and attached the Trustees' response.

26. On 6 February 2019, Mrs S emailed the Secretary and stated that she was emailing on an informal basis and would like an answer to the following queries:-

- Who did the Trustees identify as the Beneficiary and the Dependent and which factors were used to determine each category of person?
- Why did the Trustees not take into account and considered irrelevant the fact that they were Mr S' parents and that until 15 July 2016 Ms A was married to Mr A?
- What did, "he hadset up home" actually mean?
- When and how was Ms A nominated to receive the Commsave Credit Union Ltd benefits?
- What period did the "current financial situation" refer to?
- Why had the Trustees not referred to the letter of objection to its decision signed by 71 independent persons?

27. On 10 July 2019, Mrs S sent an email to the Secretary and requested that the complaint be reconsidered. She stated that the points raised in her letters dated 16 August 2018 and 23 October 2018, had not been taken into account.

The Trustees' position as submitted by Hogen Lovells

28. Hogan Lovells submits on behalf of the Trustees:-

- The Trustees understand that the circumstances leading up to Mr S' death are very emotive, and the Discretions Committee was fully aware of those circumstances when it made its decision.
- The Trustees considered all the evidence but, ultimately, took a different view about the events leading up to Mr S' death than the view taken by Mrs S and Mr Z S. They also concluded that there was evidence of financial interdependency between Mr S and Ms A. For example, the fact that Mr S and Mrs A had moved into a flat and jointly signed a tenancy agreement (for which Ms A would be solely responsible following Mr S' death) and that they shared bills and claimed tax credits as a couple. They did not take the view that the argument Mrs S and Ms A had immediately prior to Mr S' death culminating in Ms A's statement that she was leaving Mr S had the effect of terminating financial dependency.
- Ms A was also an eligible beneficiary as a "...person with whom the Member was living prior to death."
- The Trustees saw evidence to the effect that neither the police nor the coroner took the view that Ms A was responsible for Mr S' death and they did not consider that Ms A's behaviour following Mr S' death detracted from her eligibility to be considered for benefits.
- The Trustees did not ignore Mrs S' and Mr Z S' claim as parents of Mr S, not least as they did award them two-thirds of the death benefits.
- The Trustees made their own enquiries via the Administrator and did not rely on information provided by Royal Mail In reaching their decision.
- The Trustees sincerely apologise that Mrs S' email of 10 July 2019 went unanswered. At the time it was sent the Secretary was on extended sick leave following surgery. At that point in time there were insufficient resources to cover his role. As a result, the email was overlooked.

Mrs S' position

29. Mrs S submits:-

- She has provided evidence to the Trustees that Ms A was not entitled to any benefits in relation to the death of Mr S. In her opinion Ms A does not deserve any payment for moral reasons.
- The decision to award the benefits to Ms A was incomprehensible and the Trustees had not made a proper assessment of the actual nature of Mr S and Ms A's relationship at the time of Mr S' death.

Adjudicator's Opinion

30. Mrs S' complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees. The Adjudicator's findings are set out in paragraphs 31 to 39 below.
31. Mrs S had raised a number of other issues within her complaint that were not related to the payment of the death benefits. These had been put to Royal Mail and were not dealt with in the opinion.
32. The Adjudicator explained that the Pensions Ombudsman could only interfere in the decision-making process had the Trustees:-
 - failed to take into account all relevant factors or took into account irrelevant factors;
 - asked the wrong questions;
 - misdirected themselves on a point of law, for example, by adopting an incorrect interpretation of the relevant rule; or
 - arrived at a perverse decision, that is, a decision no reasonable decision-maker properly advising himself of all the relevant circumstances, could reach.
33. The Plan Rules set out the definitions of Beneficiaries and Dependant and that the Trustees have discretion to decide what factors they give weight to in deciding if an individual meets the relevant definition. For the decision to be properly made, it must be reached by the Trustees as the decision-maker, but the Discretions Committee can act on behalf of the Trustees in relation to discretionary benefits in accordance with its Terms of Reference. The Adjudicator explained that in this case, the decision to award Ms A a proportion of the death benefit was made by the Discretions Committee, so the decision could not be challenged on that basis.
34. A decision-maker must consider and weigh all the relevant evidence, but the weight attached to any piece of evidence was for the decision-maker to decide. In fact, a decision-maker could, if it wished, attach no weight at all to a piece of evidence. The only requirement was that the evidence was considered. The Discretions Committee set out the information that was taken into account when it made its decision about how to pay the death benefits. The Discretions Committee decided that Mrs S and Mr Z S were Beneficiaries and that Ms A was a Dependant. The Adjudicator explained that the fact that Mrs S did not agree with the Discretions Committee's decision did not make the decision improper. To show the decision was improper Mrs S would have needed to provide evidence that the decision was made in consideration of irrelevant, irrational, or improper factors. From the information provided the Adjudicator could not see that this was the case.

35. The decision to consider Ms A as a Dependant was based on the fact that Mr S and Ms A had signed a tenancy agreement together, were jointly paying bills and had been making joint tax credit applications. Also, the relationship had been in existence for around seven years, even if it was an on-off relationship.
36. Mr S did not complete a nomination form to express his wishes regarding the distribution of death benefits and he did not leave a will. This meant the Discretions Committee was not able to use these as part of its decision-making. However, Mr S had made a nomination regarding benefits payable on death from Commsave Credit Union Ltd and this was in favour of Ms A. The Discretions Committee also considered the information provided by Mrs S regarding the relationship between Mr S and Ms A. In the Adjudicator's opinion the Discretions Committee did not consider improper facts when deciding to whom the death benefits should be paid and the decision to consider Ms A as a Dependant was not an unreasonable one.
37. One of the specific obligations on trustees and decision-makers acting on behalf of trustees is to consider all relevant information which is available to them and to ignore irrelevant information. Mrs S had asserted that Polish culture and traditions had been ignored in the decision-making process and that morally Ms A was not entitled to any death benefits. The Adjudicator empathised with Mrs S and the difficult circumstances of her son's death, but the Discretions Committee could only consider the payment of benefits based on the legal position in the UK and who was entitled to benefits based on the definitions in the Plan Rules.
38. In the Adjudicator's opinion the decision to award a proportion of the death benefits to Ms A was one that a reasonable trustee or decision-maker could have made based on the facts. The decision that Mrs S and Mr Z S were Beneficiaries and Ms A was a Dependant was made by considering all the relevant information. The Adjudicator's view was that there had been no maladministration, and the complaint should not be upheld.
39. The Adjudicator noted that Mrs S' email request to move to stage two of the Plan's IDRPs was not responded to. In the Adjudicator's opinion the failure to operate the IDRPs properly was maladministration by the Trustees. However, at that time Mrs S had already had substantial correspondence with the Administrator and the Trustees. In the Adjudicator's view the failure to respond further would have been upsetting to Mrs S but did not warrant the Ombudsman's minimum award of £500 for non-financial injustice.
40. As Mrs S did not accept the Adjudicator's opinion, the complaint was passed to me to consider. Mrs S has provided her further comments, which I have considered, but they do not change the outcome.

Mrs S' further comments

41. Mrs S submits:-

- The Trustees did not fully take into account the student loan agreement that Mr S had secured for his sister by a promissory note.
- The Trustees only considered whether Ms A was responsible for Mr S' death in terms of criminal liability and not the fact that she was ending the relationship and was in the process of moving out. If she was already leaving Mr S then she could not be considered to be financially dependent on him.
- The Trustees provided a catalogue of factors but had not indicated what importance had been given to them and which were decisive, and which were not. This meant that the decision was ambiguous and did not clearly show that Ms A was a beneficiary or a dependant. Such a decision was against the Rules of the Plan.
- In 2019 Mr S' sister became ill and incapable of work.

Ombudsman's decision

42. In cases such as this, where the decision whether to provide benefits payable under the Rules is a discretion to be exercised by the decision-maker, my role is to consider whether the Plan Rules were correctly interpreted, and the decision of the Trustees was reached in a proper manner. I may only interfere with the exercise of the Trustees' discretion if they have acted improperly in reaching their decision in the sense that they have failed to:

- direct themselves correctly in law (in particular the Trustees must adopt a correct construction of the Plan Rules);
- take into account all relevant matters and no irrelevant ones;
- ask correct questions; and
- arrive at a decision that is not perverse.

43. I find that the Trustees took account of all potential beneficiaries, and considered how the lump sum should be distributed, in accordance with the Plan Rules. The Trustees have fully detailed the circumstances relevant to the decision, including that they considered the student loan and the nature of Mr S' relationship with Ms A. I am satisfied that the Trustees acted properly within its discretion to make such a decision.

44. The Trustees did consider the on-off nature of the relationship between Mr S and Ms A and the information put forward by Mrs S. However, Ms A did live with Mr S at the time of his death, and she did share a tenancy and bills with him even if it was accepted that this may not have continued to be the case in the future.

45. Mrs S has raised that Polish culture was ignored and that it was morally wrong for Ms S to receive a proportion of the death benefit. I find though that the Discretions Committee was right to only consider the payment of benefits based on the legal position in the UK and the Plan Rules rather than making a moral judgment. The Trustees responded to Mrs S' questions regarding their decision, albeit Mrs S is only entitled to the information that is relevant to her own entitlement to the death benefit. The failure to provide detailed information about Ms A's entitlement does not make the decision ambiguous or against the Plan Rules.
46. I empathise with Mrs S that her daughter became ill, however this was not the position in 2018 when the decision to award the death benefit was made. So, it is not information that the Trustees could have considered.
47. A perverse decision is taken to mean a decision that no reasonable decision-maker, properly directing itself, could arrive at in the circumstances. I accept that the Trustees could have made a different decision and paid all of the death benefits to Mrs S and Mr Z S. However, I am satisfied that the decision the Trustees made, falls within the bounds of what was reasonable and that the decision was made in the correct manner. Mrs S' dissatisfaction with the way the Trustees distributed the death benefits does not make the Trustees' decision perverse. I find no basis on which to direct the Trustees to make a fresh decision under the Plan Rules.
48. I agree with the Adjudicator that the failure to consider Mrs S' complaint under stage two of the IDRPs was maladministration by the Trustees. While this was upsetting for Mrs S it does not warrant a payment for distress and inconvenience.
49. I do not uphold Mrs S' complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
12 October 2023

Appendix

Extracts from the Plan Rules

Definition of Beneficiary and Dependant

1. 'Beneficiaries' means:

"one of more of:

(a) The Member's surviving spouse or Civil Partner, parents, grandparents (including his or her adoptive parents and grandparents or step-parents and step-grandparents) children (including children conceived before the Member's death and born after, adopted children and step-children) siblings and other relatives);

(aa) the spouses or Civil Partners of all those Beneficiaries listed in paragraph (a);

(ab) the descendants (and the spouses or Civil Partners of those descendants) of all those Beneficiaries listed in paragraph (a);

(b) any person with whom the Member was living prior to the date of death;

(c) the Member's Dependants;

(d) any person other than a creditor with an interest in the Member's estate;

(e) any person or body named by the Member in writing to the Trustees as a person the Trustees should consider for a discretionary benefit; or

(f) Any person who has incurred funeral expenses or who is entitled to remuneration in relation to funeral arrangements for the Member."

2. As relevant, 'Dependant' means:

"...any person who in the opinion of the Trustees is financially dependent upon or interdependent with the Member or was so dependent or interdependent prior to the time of the Member's death. This includes anyone for whom in the Trustees' opinion the Member might reasonably have been expected to provide.

The Trustees' decision as to whether an individual is a Dependent of the Member is final."

Death Benefits – death of an Active Member

3. As relevant, Rule 14.1, provides:

“If an Active Member... dies prior to his or her 75th birthday, the Trustees will pay in accordance with Rule 14.5: (a) subject to Rules 14.2 and 14.3, a lump sum equal to four times Annual Pensionable Pay; plus (b) a lump sum equal to the value of the Member's Account (if any) at the date that the payment is made; and (c) subject to Rule 14.2, where there is a Dependant, a Dependant's lump sum equal to two times Annual Pensionable Pay.”

4. As relevant, Rule 14.5 provides:

“A lump sum benefit payable on the death of a Member will be held by the Trustees upon trust with power to pay or apply the same within two years from the date on which the Trustees first learned of the relevant death.

- (a) The Trustees may pay the lump sum payable in accordance with Rule 14.1(a), 14.1(b) ... to or for the benefit of one or more Beneficiary in such proportion as the Trustees in their discretion decide...
- (b) The Trustee will pay any lump sum due under Rule 14.1(c) to a Dependant or Dependents as the Trustees see fit.”