

Ombudsman's Determination

Applicant	Mrs N
Scheme	Hargreaves Lansdown Vantage SIPP (the SIPP)
Respondent	Hargreaves Lansdown Asset Management Limited (Hargreaves Lansdown)

Outcome

1. Mrs N's complaint is upheld, and to put matters right Hargreaves Lansdown should review again its decision to pay all the lump sum death benefits to Miss A and none to Mrs N.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs N has complained that Hargreaves Lansdown did not comply properly with the terms of the Pensions Ombudsman's investigator's opinion of 10 February 2014 (**the 2014 Opinion**), which Mrs N and Hargreaves Lansdown had accepted, regarding the lump sum death benefits payable under the SIPP following the death of Dr N, her estranged husband.

Background information, including submissions from the parties

4. The pertinent background facts between 2007 and 2014, together with the relevant provisions of the rules governing the SIPP, are set out in the 2014 Opinion which was sent to Mrs N and Hargreaves Lansdown.
5. In summary, Dr N nominated Mrs N in June 2007 to receive any lump sum death benefit that would arise under the SIPP. Dr N and Mrs N separated in 2009, but never divorced. In the same year Dr N started a relationship with Miss A. They moved in together in about September 2009 and she changed her surname to his.
6. Dr N made a new will in April 2010, naming Miss A as his sole executor and main beneficiary. He did not revise his nomination form before he died on 3 October 2010.

7. Hilliers (solicitors acting as administrators of Dr N's estate) sent Hargreaves Lansdown a summary of Dr N's financial dependents. In November 2010 Hargreaves Lansdown decided to pay the lump sum death benefit of £141,710.13 to Miss A.
8. On 7 February 2012, a court consent order was made regarding Dr N's will, under which Mrs N received £184,000 and Miss A received the balance of his estate.
9. When Mrs N complained to Hargreaves Lansdown that she should have received the lump sum death benefit, Hargreaves Lansdown reviewed the case and told Mrs N that it had made the correct decision as Miss A was financially dependent on Dr N.
10. When Mrs N consulted the Pensions Advisory Service, it said that Hargreaves Lansdown had relied on information provided by Hilliers, and had not asked Mrs N herself if she was financially dependent on Dr N. Furthermore, it pointed out that the solicitor at Hilliers who was acting on the matter was actually Miss A's son, although this was not obvious at the time because his surname was different to hers and their relationship had not been divulged.
11. Hargreaves Lansdown agreed to review the matter again. It concluded in March 2013 that its original decision was correct because:
 - Dr N's will made financial provision for Miss A, and
 - Mrs N received money from Dr N's estate on the understanding that Miss A would receive the lump sum death benefit.
12. When Mrs N complained to us and we investigated the matter, the 2014 Opinion expressed the view that Hargreaves Lansdown should:

“...reconsider the whole matter again and reach a fresh decision as to whether Mrs [N] was financially dependent and whether any payment should be made to her.

Redress

Within 21 days of this opinion, if Hargreaves Lansdown agree with my opinion, they will review whether Mrs [N] is due an award from the death benefits lump sum from [Dr N's] SIPP benefits. They will consider the matter in accordance with the SIPP rules and satisfy themselves that they asked the correct questions and have all the relevant information before them before making a decision.

If Mrs N is due an award, then Hargreaves Lansdown will pay interest on the award at the rate quoted by reference banks from November 2010, to the date of settlement.”

13. This was on the grounds that:

- The court consent order did not say that it was made on the basis that Miss A would receive the death benefits from the SIPP;
- Hargreaves Lansdown seemed to have been swayed by the terms of the consent order and the information given to it by Hilliers, and
- Hargreaves Lansdown had not considered whether Mrs N was financially dependent on Dr N, and whether any payment should be made to her.

14. Hargreaves Lansdown told us in March 2014 that it accepted the 2014 Opinion. On 10 April 2014 Hargreaves Lansdown contacted Mrs N's solicitor to say that it had reviewed its previous decision and remained happy with it, on the following grounds:

- Dr N and Mrs N had separated;
- Miss A and Dr N were cohabiting and in a financially dependent relationship;
- The date of the nomination form in favour of Mrs N predated the breakdown of the marriage;
- Dr N subsequently made a will in favour of Miss A, so he clearly intended to provide for Miss A on his death; and
- Because of the court order Miss A did not benefit from the majority of Dr N's estate, and therefore was not provided for in the way that Dr N had intended.

15. Hargreaves Lansdown concluded that paying the lump sum death benefit to Dr N's partner was within the range of decisions that a reasonable person might have reached.

16. In 2015, after further correspondence between Mrs N's solicitor and Hargreaves Lansdown failed to resolve the matter, Mrs N contacted us again.

Adjudicator's Opinion

17. Mrs N's complaint was considered by one of our Adjudicators, who concluded that further action was required by Hargreaves Lansdown. The Adjudicator's findings in his opinion (**the 2016 Opinion**) are summarised briefly below:

- The 2014 Opinion had focused primarily on Mrs N's position, saying that Hargreaves Lansdown "will review whether Mrs [N] is due an award from the death benefits lump sum". It made the point that Hargreaves Lansdown had not considered whether Mrs N was financially dependent on Dr N, and should have done so.

- However, Hargreaves Lansdown's response of 10 April 2014 focused instead on justifying the payment to Miss A; it referred to her cohabitation with Dr N, her financial dependency on him, and her status under Dr N's will. Hargreaves Lansdown should have made clear it had considered the matter from Mrs N's perspective as well, as required by the 2014 Opinion.
- Furthermore, when it reviewed the matter, Hargreaves Lansdown failed to contact Mrs N directly, to ask her to state her case. It was difficult to see how Hargreaves Lansdown could reach a proper conclusion without firstly contacting Mrs N.
- Hargreaves Lansdown said that making payment to Miss A, who was living with Dr Martin and financially dependent on him, and a beneficiary under his will, was within the range of decisions that could reasonably be reached. In other words, it was not a perverse decision. The Adjudicator agreed that the decision to pay Miss A was not a perverse decision justifying the need for the Pensions Ombudsman to order payment to be made to other persons. However, Hargreaves Lansdown's comment missed the point that the 2014 Opinion required Hargreaves Lansdown to take a course of action that it has not taken, namely to investigate Mrs N's claim for benefits. The Adjudicator expected the Pensions Ombudsman to require Hargreaves Lansdown to reconsider its decision as it appeared that it had not asked the correct questions and therefore had not conducted its review properly.

18. The 2016 Opinion concluded that:

"To put matters right, Hargreaves Lansdown should review its decision on the distribution of the lump sum death benefits payable from the SIPP, consider the matter in accordance with the SIPP rules and the terms of the 2014 Opinion, and satisfy itself that it has asked the correct questions and has all the relevant information before making its decision. In particular, before reaching its decision, Hargreaves Lansdown should contact Mrs [N] and ask her to state her case. If Hargreaves Lansdown then decides that Mrs [N] should receive any payment, Hargreaves Lansdown should pay interest on the payment at the rate quoted by the reference banks from November 2010 to the date of payment to Mrs [N]."

19. Hargreaves Lansdown did not comment on the 2016 Opinion.

20. Mrs N's solicitor said that he agreed with the 2016 Opinion that the complaint should be upheld, but he did not agree with the "putting matters right" section (see paragraph 18 above). He said that the only reasonable redress was for Hargreaves Lansdown to be ordered to pay the lump sum death benefit to Mrs N. He said this was on the grounds that:

- Hargreaves Lansdown had, in his view, no intention of changing its original decision since it had already made the distribution;
- As Hargreaves Lansdown had previously reviewed its original decision on several occasions since 2010, any further review would be a sham, with no benefit to Mrs N.

21. The complaint was then passed to me to consider. I agree with the 2016 Opinion, summarised above, and I will therefore only respond to the key points made by Mrs N's solicitor, for completeness.

Ombudsman's decision

22. I have to decide whether to ask Hargreaves Lansdown to consider the decision again, or to substitute its decision with my own decision. I will substitute my own decision only in extreme cases, if I consider that the original decision was perverse. A perverse decision is taken to mean a decision which no reasonable decision-maker, properly directing himself, could arrive at in the circumstances.
23. It is clear from the facts that Miss A was an eligible beneficiary under the rules of the SIPP. Miss A was named as the main beneficiary under Dr N's will. In Rule 21 (Lump Sum Death Benefits) sub-Rule 21.1.5 refers to "any person entitled under the individual's will to any interest in the individual's estate".
24. It is also clear that Mrs N was an eligible beneficiary under the rules of the SIPP. She remained married to Dr N until he died and was the subject of his nomination form. Sub-Rule 21.1.1 refers to "the individual's Relatives" and sub-Rule 21.1.3 refers to "any person or body nominated for this purpose by the Member".
25. Therefore, it follows that a decision by Hargreaves Lansdown to pay all the lump sum to Miss A would not be a perverse decision, and similarly a decision to pay all the lump sum to Mrs N would not be a perverse decision; they are both eligible to receive the lump sum. A decision to divide the money in some manner between Mrs N and Miss A, which Rule 21.1 also permits, would also not be a perverse decision.
26. Having found that Hargreaves Lansdown's decision to pay Miss A was not perverse, the only direction that I can reasonably make is to require Hargreaves Lansdown to review its earlier decision, firstly making sure that Mrs N has been given a fair opportunity to state her case.
27. I am satisfied that, mindful of its professional obligations as the administrator of the SIPP, Hargreaves Lansdown can conduct a proper review with total objectivity.
28. Therefore, I uphold Mrs N's complaint in line with the 2016 Opinion.

Directions

29. To put matters right, within 60 days of this Determination Hargreaves Lansdown shall review its decision on the distribution of the lump sum death benefits payable from the SIPP, consider the matter in accordance with the SIPP rules and the terms of the 2014 Opinion, and satisfy itself that it has asked the correct questions and has all the relevant information before making its decision. In particular, within 10 days of this Determination, before reaching its decision, Hargreaves Lansdown shall contact Mrs N and ask her to state her case in writing within 36 days of this Determination. If Hargreaves Lansdown then decides that Mrs N should receive any payment, Hargreaves Lansdown shall pay interest on the payment at the rate quoted by the reference banks from November 2010 to the date of payment to Mrs N.

Anthony Arter

Pensions Ombudsman
2 June 2016