

Ombudsman's Determination

Applicant	Mr E
Scheme	Sainsbury's Pension Scheme (the Scheme)
Respondent	J Sainsbury Pension Scheme Trustees Ltd (the Trustee)

Outcome

1. I do not uphold Mr E's complaint and no further action is required by the Trustee.

Complaint summary

2. Mr E's complaint concerns the Trustee's decision to pay a large proportion of the death benefits to Ms S, who was the partner of his late father, Mr R. He believes the death benefits should have been split equally between him and his two siblings.

Background information, including submissions from the parties

3. Mr R was employed by Sainsburys (**the Company**) and was an active member of the Scheme when the Scheme closed to future accrual in September 2013. Mr R then became a member of the Sainsbury's Retirement Savings Plan (**the Plan**).
4. On 12 November 2016, Mr R died.
5. Following Mr R's death, there was correspondence between Mr E and the Trustee concerning the death benefits payable from the Scheme.
6. The Plan is administered by Legal & General, and any death benefits due from the Plan have been paid to the relevant beneficiaries. This complaint does not concern any benefits payable from the Plan, so Legal and General is not a party to the complaint.
7. In October 2017, the Trustee wrote to Mr E and informed him that it had decided to split the death benefits between him, his two siblings and Ms S.
8. In June 2018, Mr E complained to the Trustee through the Scheme's internal dispute resolution procedure (**IDRP**), about its decision concerning the distribution of the death benefits.

9. On 9 August 2018, the Trustee responded to Mr E, but did not uphold his complaint. In summary the Trustee said:

- In his letter to the Trustee Mr E claimed that the Trustee had not asked him or his siblings to submit information about their personal circumstances. However, the Trustee had written to Mr E on 18 November 2016, enclosing an Information Request Form (**the Form**), for him to complete.
- Section four of the Form requested details of all those financially dependent on Mr R at the date of his death. Mr E completed the Form but left this section blank.
- Section seven of the Form requested “any further information that you feel should be brought to the attention of the Trustee in its consideration as to whom death benefits should be paid.”
- Mr E provided a letter in relation to this section. Therefore, the Trustee did not find that it failed to seek information about the financial position of Mr R’s children, at the time of Mr R’s death.
- The Trustee did not hold any copies of expression of wishes forms for Mr R. It was not a requirement that an expression of wish form was completed for payment of death benefits.
- There were no particular tests or requirements that need to be met, in order for an individual to be eligible for payment of some or all of a lump sum death benefit.
- Dependence was one of the many relevant factors that should be taken into account. The Trustee properly took into account the information it had, in relation to this, when making a decision as to how to distribute the death benefits payable in this case.
- The Trustee received information from Ms S about her relationship with the late Mr R, which it considered in full, along with the information Mr E had submitted with the Form, before making its decision.
- The Trustee had never exercised its discretion based on “whims”. It recognised the importance of the decisions concerned and, in this case, obtained detailed legal advice throughout the decision making process.
- The Trustee did not consider irrelevant facts, nor failed to consider relevant ones, when it made its original decision. All potential beneficiaries were considered fairly and impartially.

Summary of Mr E's position

10. Mr E said:

- Under the Sainsbury's Pension Scheme Rules (**the Rules**), there were a range of potential beneficiaries that could be considered to receive a lump sum payment following a member's death.
- His own definition of spouse was a wife or husband.
- He was unaware that the death benefits fell outside of Mr R's estate, and thought the death benefits would have been shared equally between him and his siblings.
- The Trustee contacted Ms S several times, but it never contacted him or his siblings separately or offered them legal advice as it did with Ms S.
- He disputed that Ms S was dependent on Mr R, prior to his death, as she claimed disability allowance.

Summary of the Trustee's position

11. The Trustee said:

- The Benefits Committee (**the Committee**) had delegated authority from the Trustee to distribute death benefits.
- The Committee spent significant time considering the background information and taking professional legal advice before coming to its decision on payment of the death benefit.
- The Trustee was satisfied that the Committee requested relevant information from the potential beneficiaries and that it:-
 - Followed up with requests for more information where there were uncertainties about what was and was not received.
 - Carefully considered all relevant information provided on behalf of each potential beneficiary and did not consider irrelevant information.
 - Followed a robust procedure when determining the scope of potential beneficiaries and their share of the benefits.
- On 12 May 2017, the Trustee received a letter from Mr E's solicitor, detailing a complex proposal (**the proposal**), in which Mr E and his siblings would purchase Ms S' share of the property she owned with the late Mr R, but create a life interest for her.
- The Committee was prepared to consider the proposal, but it felt it should do so only after giving Ms S the opportunity to comment.

- The Committee had concerns about Ms S' capacity to comment on such a "technical proposal", particularly as, at the time of Mr R's death, she was subject to an insolvency order. Therefore, access to a defined level of legal support was provided to her.
- It was clear that Mr E and his siblings had access to equivalent support, so it could not be seen how offering Ms S legal advice was unfair.
- When Mr E completed the Form he only mentioned his siblings. Although he had mentioned Ms S in the covering letter, he did not list her as someone to whom death benefits could be payable.
- Both Mr E and Ms S were asked for, and provided, information to (i) evidence their relationship with the deceased and (ii) support any potential claims they may have to the lump sum death benefits.
- As Ms S and Mr R were living together at the time of Mr R's death, the Committee undertook further investigation to determine her status and whether she would be considered a dependant of Mr R.
- Such dependency would not only be a relevant factor for entitlement to consideration as a potential recipient of the lump sum benefit, but also in relation to the possible payment of a dependant's pension.
- This was why evidence was requested from Ms S that was not required from Mr E or his siblings. As they were the late Mr R's children, Mr E and his siblings were automatically potential beneficiaries.
- It was unfortunate that Mr E was unaware that the pension scheme fell outside the intestacy rules. However, the Trustee did not believe that this affected the Committee's own action or decision.
- Section four of the Form contained a section requesting details of those financially dependent on Mr R at the time of his death, without any suggestion that this was conditional on intestacy or otherwise. This section was left blank by Mr E.
- The Committee carefully considered the information provided by both Mr E and Ms S. It noted that Ms S had lived with Mr R for a significant time, in a marital type relationship, prior to his death.
- Evidence was provided as to financial outgoings of the household and it was also noted that Ms S was bankrupt at the date of Mr R's death, which reduced the likelihood of her having access to alternative sources of income or capital as support.
- So, the Committee determined that, on the balance of the evidence received, the test for dependency under the Rules had been satisfied.

- Mr E asserted that Ms S claimed disability allowance and concluded that as a result, she could not have been dependent on Mr R prior to his death. The Trustee could not comment about the eligibility requirement for disability living allowance. However, the Committee was satisfied that there was sufficient evidence of dependency and/or interdependency in order for Ms S to qualify as a beneficiary in accordance with the Rules.
- It was standard process, following a member's death, to search all records related to the member, locally where the member worked and centrally.
- After completing this process following Mr R's death and carrying it out again following Mr E's complaint, no completed expression of wish form was found.
- The Trustee's decision regarding the distribution amounts was communicated to all beneficiaries in October 2017, and it received Mr E's complaint in relation to this decision on 13 June 2018. The Trustee did not uphold his complaint.
- In September 2018, the payments were made before the two year anniversary of Mr R's death. So, a special death benefit charge did not occur and no further tax was due on the payments.
- This was not a straightforward case for the Trustee. The Committee undertook a proportionate fact find, took legal advice and exercised its discretion within a year of Mr R's death.
- It was agreed to split a considerable lump sum between Ms S, as Mr R's co-habiting partner, and his three adult children, in proportions that the Trustee felt appropriate.
- The Committee's view was that there was no reason to change the decision that has been made in this matter, nor had there been any maladministration in the process followed.

The Pensions Ombudsman's position on Death Benefits

12. Entitlement to death benefits are largely dictated by the particular rules of the scheme. Sometimes, the benefits are discretionary and provided by decision of the trustees or another designated person. The decision maker will be required to ensure that they have followed the correct procedure and have exercised their discretion in an appropriate way, but the Ombudsman will not be able to intervene merely because he thinks that the decision-maker could have reached a different decision.
13. If errors in the decision making are established, the appropriate remedy will often be to require the decision maker to retake the decision. If financial loss has been caused, the Ombudsman may direct that compensation be paid.
14. In addition to, or instead of financial compensation, the Ombudsman may make an award for distress and inconvenience if there has been maladministration.

Maladministration covers various different types of failings in how a scheme has been administered or how members were dealt with.

15. Usually, if the Ombudsman finds that the decision was taken incorrectly or the outcome was flawed, the Ombudsman will direct the trustees to re-consider their decision. The Ombudsman may require the trustees to take some additional steps before doing so.

Adjudicator's Opinion

16. Mr E's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised below:-
 - Entitlement to death benefits is determined by the Rules. The Rules determine the circumstances in which death benefits may be paid, to whom they may be paid, the conditions which they must satisfy, the amount of the benefits, and the way in which decisions about benefits must be taken. An extract of the relevant Rule is set out in the Appendix.
 - The Rules require that provision of benefits is ultimately a matter of discretion for the Trustee. This limits the extent to which the Ombudsman can intervene. The Ombudsman's role is to ensure that the decision making process was correctly followed. The Ombudsman can only intervene if the decision maker: failed to take something relevant into account or took something irrelevant into account; reached a decision no reasonable person could have reached; failed to ask the correct questions as determined by the Rules; or failed to construe and follow the Rules correctly.
 - In this case the death benefits consisted of a payment of one or more lump sums, and the Rules allow the Trustee to use its discretion to decide how and to whom the death benefits are paid.
 - The Rules set out whether anybody is entitled to receive a lump sum payment. There is no requirement that the lump sum must be paid only to dependants, nominees or successors. Under the Rules, the lump sum can be paid to a number of individuals, including the deceased member's children, anyone dependent on the member and any person nominated for this purpose by the member.
 - For the decision to have been properly made, it must have been made by the Trustee, as set out in the Rules. In this case, the decision to split the death benefits between the late Mr R's three children and his partner Ms S, was made by the Committee. The Committee has delegated authority from the Trustee to decide on the distribution of death benefits.
 - Before deciding how to exercise its discretion, the Trustee must identify the people to whom benefits could be paid under the Rules (the potential

beneficiaries). In this case, the potential beneficiaries were the late Mr R's relatives, such as Mr E and his siblings, Mr R's partner Ms S, a nominee or any person entitled under the member's will to any interest in the individual's estate.

- The Trustee was not under an obligation to specifically identify every possible individual who might fall within the range of possible beneficiaries. The obligation was to undertake reasonably sufficient enquiries and gather adequate information, to enable it to exercise its discretion.
- The degree of investigation would depend on the factual circumstances. For example, if a member was married with children, living with their spouse or partner and children, and had nominated their spouse, or partner and children, the trustees would be justified in distributing the death benefits to the spouse or partner and children, without much more investigation. Each case turned on its facts.
- In this case, it was the Adjudicator's view that the Trustee took adequate steps to ascertain the range of potential beneficiaries. The Trustee had sent the Form to Mr E, after being informed of Mr R's death. The Form asked Mr E to list all the potential beneficiaries, which included partners.
- Part of this complaint was that the Trustee had exercised its discretion in a way that allowed an individual to receive a proportion of the death benefits to which they were not entitled.
- However, Mr E's dissatisfaction with Ms S receiving a proportion of the death benefits does not make the decision improper. There would need to be more, such as consideration of irrelevant, irrational or improper factors. In the Adjudicator's opinion, the Trustee did not consider improper factors when deciding to whom the death benefits should be paid.
- In the Adjudicator's view, the Trustee correctly considered Ms S as a potential beneficiary under the Rules, when deciding to whom the death benefits should be paid. The Trustee was aware that the late Mr R and Ms S were in a long term relationship and were living at the same address at the time of his death. Additionally, Ms S was going through bankruptcy proceedings at that time. In the Adjudicator's view, it was not unreasonable for the Trustee to conclude that Ms S was dependent on Mr R prior to his death.
- One of the specific obligations on trustees and decision makers acting for trustees was to consider all relevant information which is available to them and to ignore irrelevant information.
- In this case, Mr E asserted that the Trustee did not properly consider that Ms S was in receipt of a disability allowance. Therefore, she could not have been financially dependent on Mr R at the time of his death, as she would not have been entitled to disability allowance if she was.

- The Adjudicator did not agree with Mr E's assertion because the Trustee was aware that Ms S and the late Mr R were in a relationship and living together at the same address. Also, Ms S was subject to a bankruptcy order at the time of Mr R's death. Therefore, in the Adjudicator's view, it was reasonable for the Trustee to conclude that, on the balance of probabilities, Ms S was financially dependent on Mr R, at the time of his death.
 - Ms S being in receipt of disability allowance was not a sufficient reason for the Trustee to conclude that she was not dependent on the late Mr R. "Dependent" does not have to mean totally dependent, and is usually taken to mean interdependent. HMRC accepts mutual dependency as sufficient to qualify as a dependent. So, it was reasonable for the Trustee to take that view.
 - The Adjudicator explained that, as well as being obliged to correctly interpret and apply the law and rules, trustees who were exercising a discretion may not act "erratically and without reason." Trustees must not act unreasonably they must have a proper basis for acting in a particular way and they must follow a fair procedure. Importantly, there will generally be a range of decisions which would not be considered to be unreasonable
 - The Ombudsman's role is not to substitute his own decision for that of the trustees. The fact the trustees have chosen one option rather than another will not be enough to render that decision capricious, even if the Ombudsman would not have reached the same decision himself.
 - In the Adjudicator's opinion, the Trustee's decision was not flawed because it is one that a reasonable trustee or decision-maker could have made on the facts. The Trustee obtained relevant information before making its decision.
 - In the Adjudicator's view, the Trustee's decision to pay a proportion of the death benefits to Ms S did not amount to maladministration. This was because, in the Adjudicator's view, the Trustee ascertained the potential beneficiaries and obtained and considered relevant information before it made the decision to split the death benefits between Ms S and the late Mr R's children.
17. Mr E did not accept the Adjudicator's Opinion and in response made a number of comments which were:
- The Form he completed and returned to the Scheme informing it of his father's death and that he and his siblings had a potential claim/entitlement, did not make it clear that the Scheme benefits might fall outside of his father's estate.
 - The Trustee did not include an extract of the Rules or the details that deals with death in service with the Form. He questioned why the Trustee failed to do so, and said that he completed the Form after checking the UK government's guidelines on probate without a will.

- As his father died as a widower while co-habiting, he ticked that box on the Form. He then completed section seven on the Form, which asked if there was any more information that he felt should be brought to the attention of the Trustee, when considering to whom the death benefit due should be paid, to provide details below. He “clearly responded” with “please see enclosed letter.”
 - In the enclosed letter he explained that his father was a widower who was co-habiting. To support this, he provided a copy of his late mother’s death certificate and Ms S’ details.
 - He did not deliberately withhold information from the Trustee. If that was his intention, he could have omitted Ms S’ details from his initial communication with the Trustee.
 - The Form was not clear and did not provide enough information to potential beneficiaries. Had it been clearer, he would have provided further information that was easily and readily available.
 - His solicitor had informed the Trustee that his father had four step-children. He quoted an extract of the Rules which details to whom death benefits can be paid and questioned why the Trustee had not contacted the four step-children.
 - He had provided his mother and father’s death certificates so searches could have been done, on national databases, or the Trustee could have contacted the step-children through him.
 - He and his siblings did not claim financial dependency because they were told that the pension fell outside of his father’s estate, so felt no need to provide financial information.
 - The Trustee never sought to establish or provide free and independent legal advice to him or his siblings, as it did for Ms S.
 - He believed the Trustee gave little consideration to his late father’s wishes. Financial protection was put in place on the house to benefit his children. No consideration regarding his siblings’ financial situation was considered, as no financial information was requested by the Trustee.
 - His late father’s children and step-children were not considered at all and he and his siblings have been treated appallingly.
18. As Mr E did not accept the Adjudicator’s Opinion, the complaint was passed to me to consider. Mr E provided his further comments which do not change the outcome; I agree with the Adjudicator’s Opinion.

Ombudsman's decision

19. Mr E has raised a number of issues in relation to what the Trustee ought or ought not to have done in relation to providing legal advice to him or his siblings. Having read the correspondence from the Trustee and Mr E, I note that the legal advice was offered to Ms S in relation to the proposal that Mr E had made, in relation to the property that Ms S owned, with the late Mr R.
20. My role as the Ombudsman is to determine if the Trustee correctly paid the death benefits in accordance with the Rules. Therefore, I will not comment on whether or not the Trustee should have offered legal advice to Mr E or his siblings in relation to the financial proposal in respect of the property.
21. Rule 6.2 of the Rules, as set out in the Appendix, permits the Trustee to use its "absolute discretion" to determine to whom death benefits should be paid. Rule 6.2 also prescribes which individuals can be treated as potential beneficiaries.
22. Having considered the information that all parties to the complaint have provided, I find that the Trustee undertook reasonably sufficient enquiries and gathered adequate information, to enable it to exercise its discretion, in accordance with the Rules, when it decided to whom, and in what proportion, the death benefits should be paid. I accept there were a number of other potential beneficiaries to whom the death benefits could have been paid. However, I do not find that the Trustee acted incorrectly in deciding to split the death benefits between Mr E, his two siblings and Ms S.
23. In any event, I cannot make a finding in favour of any of Mr E's siblings or his late father's step-children as they are not parties to this complaint.
24. So, while Mr E may disagree with Ms S being paid a proportion of the death benefits, I do not find that the Trustee's decision was flawed.
25. I do not uphold Mr E's complaint.

Anthony Arter

Pensions Ombudsman
2 October 2020

Appendix

Relevant extracts of the Sainsburys Pension Scheme

“ ...

6.2 Lump Sum

6.2.1 Any lump sum payable on death of a Member will be payable by the **Trustees** on **Death Benefit Trusts** as set out in this **Rule 6.2**.

6.2.2 The **Trustees** may pay or apply the whole or any part of such sum or sums in in such shares and in such manner as the **Trustees** in their absolute discretion determine to or for the benefit of such one or more of:

- (a) the **Spouse** of the **Member**
- (b) the children and remoter descendants of the grandparents of the **Member** or his **Spouse**;
- (c) any other children and remoter descendants of the grandparents of the **Member** or his **Spouse**;
- (d) the remoter ancestors of the **Member** or his **Spouse**;
- (e) any spouse, widow or widower (whether or not remarried) of any of the persons described in paragraph (a) to (d) above;
- (f) any person in any way dependant on a **Member**;
- (g) any persons (including charities, societies or clubs) who or which are entitled to an interest in the **Member's** estate in accordance with the **Member's** will;
- (h) any persons who would be entitled to an interest in the **Member's** estate in the event that the member dies intestate;...

6.2.4 In the event of a dispute arising as to whether any person is eligible to benefit in accordance with the Provisions of this **Rule 6.2**, the decision of the **Trustees** shall be final...

6.2.8 In exercising their discretion under this **Rule** the **Trustees** must take account of but will not be bound by any wishes of the **Member** expressed on a nomination from received by the **Trustees** before the **Member's** death...”