

PENSION SCHEMES ACT 1993, PART X
DETERMINATION BY THE PENSIONS OMBUDSMAN

Applicant	Mr Barry Gooch
Scheme	Tomorrow Personal Pension Plan (the Plan)
Respondent	Liverpool Victoria Friendly Society (LV=)

Subject

Mr Gooch complains that LV= have failed to disclose the information they relied on, and the reasoning, for their decision not to award death benefits to him. He says that he has a legitimate interest and there may have been maladministration in the decision of the N M Pensions Trustees Limited (**the Trustee**).

The Pensions Ombudsman's determination and short reasons

The complaint should be upheld primarily because the Trustee made its decision on evidence as to Mr and Mrs Gooch's relationship which was partial and, in some respects, unsubstantiated and without obtaining any evidence on the matter from Mr Gooch.

DETAILED DETERMINATION

The Plan's Rules

“6.6 Payment of lump sum death benefits

...

6.6.4 Where Rule 6.6.2 or 6.6.3 does not apply, the Trustee shall pay or apply any lump sum payable under this Rule 6.6 to or for the benefit of one or more of the Relatives, Dependants, personal representatives (or executors) or nominated beneficiaries of the deceased Member or any person who is entitled to an interest in the Member's estate, in such shares as the Trustees shall decide.”

Material Facts

1. N M Pensions Trustees Limited (a company owned by LV=) is the sole trustee of the Plan and Windsor Life (now ReAssure) is the provider. Mrs Gooch was a member of the Plan with benefits under policy number K55492811.
2. The application form completed by Mrs Gooch on joining the Plan contained a section for nomination of a recipient of lump sum death benefit. Mrs Gooch named her husband, Mr Gooch.
3. Mr and Mrs Gooch lived in Spain. She died on 24 January 2009. Mr Gooch rang to inform Windsor Life on 9 February 2009. He subsequently provided a copy of the death certificate and a copy of Mrs Gooch's Spanish will in which she left all her possessions in Spain to Mr Gooch and Mrs Gooch's brother, to be split equally between them.
4. Over subsequent months the Trustee received information from third parties, being members of Mrs Gooch's family, about the relationship between Mr and Mrs Gooch, the circumstances of Mrs Gooch's death and events following it. I have not seen all of the material. Initially the Trustee declined to provide it to my office on the basis that it was confidential. They then provided some of it, after consent had been obtained, but heavily redacted. I have the same powers as a court when it comes to requiring the production of evidence, but in this case I have not pursued the matter further as I did not find it necessary.
5. I do not repeat all the information and allegations here that I *have* seen, but note that some of it (in the form of news reports) contained implications of a very grave nature, which there no subsequent evidence to support. There were other,

comparatively less grave, but still serious, allegations about Mr Gooch, and minor allegations about another member of his family.

6. Included in the allegations were assertions that Mrs Gooch was planning to divorce Mr Gooch and that they were not living together at the time of her death.
7. The Trustee held a meeting on 2 July 2010 to review the case. The decision, which was to pay the whole lump sum of over £100,000 to another person, was signed off on 5 July 2010.
8. Mr Gooch says that he was informed on the telephone by the Trustee in September 2010 that he would not receive any portion of the death benefits. Coles Miller Solicitors, representing Mr Gooch, wrote to Windsor Life on 12 August 2011, asking for details of the policy and the reasons for the payments made under the Plan. The Trustee wrote to Mr Gooch's solicitors on 5 October saying that they had exercised their discretion under the trust deed and rules, and they did not have an obligation to disclose their reasoning. They also saw no reason to provide copies of all correspondence considered by them when exercising their discretion.
9. Mr Gooch's solicitors approached the Pensions Advisory Service (**TPAS**), who wrote to LV= on 8 March 2012, with reminders on 3 April, 27 April, 1 June (which produced a promise of a reply), 15 June (which produced a further promise) and 29 June. TPAS then suggested that Mr Gooch should complain to my office.
10. In their response to my office dated 13 March 2013, the Trustee said –

“The Trustee have exercised their discretion under the governing Trust Deed & Rules and believe they are not under a duty to disclose the reasons behind their decisions nor to provide copies of the evidence that has been collected as a result of the investigations.

Often the Trustee will be made aware of potentially sensitive information as a result of investigations and clearly this would have implications from a data protection / confidentiality point of view. In the light of the need to act sensitively and to protect personal data we take the stance that we will not disclose the reasons for the decisions or details of evidence collected to interested parties.

That said, as part of the decision making process we have collated information and communication from various parties to help the Trustee to consider the position. Significant weight in the decision making was apportioned to this. The evidence we collated satisfied us that Mr & Mrs Gooch [sic] relationship had broken down irretrievably with Mr Gooch no longer living at the marital home with Mrs Gooch looking to obtain a divorce. The evidence also indicated Mrs Gooch's desire on where any assets held outside of Spain should be apportioned."

11. In subsequent correspondence the Trustee said that it had not initially shared with Mr Gooch the information it had obtained "due to the confidential nature of the information provided".
12. In correspondence with my office Mr Gooch has briefly countered such parts of the evidence obtained by the Trustee as he has seen.

Conclusions

13. The Trustee has discretion as to the recipient of the death benefits. My role is to decide whether there was maladministration in the exercise of the Trustee's discretionary power in not awarding Mr Gooch any portion of the death benefits, not to decide whether Mr Gooch should have received any of the death benefits. I must therefore consider whether the Trustee: asked the correct questions; directed itself properly in law; took into account all relevant, but no irrelevant factors; arrived at a decision that is not perverse, i.e. a decision which a reasonable person in the same position could have made.
14. If there is evidence that directly supports other persons as recipients of the death benefit (for example, which concerns their own financial position, their dependency on Mrs Gooch and so on) I have not seen it. The evidence that I have seen is solely directed to whether Mrs Gooch would have wished Mr Gooch to be the recipient. All of it comes from Mrs Gooch's side of the family and therefore from people who themselves had an interest in the Trustee's decision.
15. Whilst I can understand why the Trustee might not have wished to disclose its sources, it could have obtained Mr Gooch's evidence on the matter without doing so. It could, for example, have put the allegations to Mr Gooch in its own words (in fact it would have benefited from doing that, over providing all the

material, because it could have been clear which parts of the evidence it thought were relevant and avoided comment on irrelevant matters). At the very least it could have asked Mr Gooch for a statement concerning the state of his and Mrs Gooch's relationship.

16. Instead the Trustee made a decision based on partial evidence, much of which was hearsay and some of which was in the form of unsubstantiated news reports that should have been set aside immediately.
17. So I consider that the matter should be remitted back to the Trustee for a fresh decision to be made, following requesting and obtaining comments and evidence from Mr Gooch. In reaching a fresh decision the Trustee will have to disregard the fact that the benefits have already been paid.
18. There were two further administrative failures.
19. Mr Gooch has complained that he was not given reasons. That complaint would not have arisen if he had been asked to give his own evidence and been told whether any award had been made to him. Mr Gooch was the first person to have notified Windsor Life of Mrs Gooch's death; he provided relevant material and was the person named on the nomination and her nearest family member. He had a reasonable expectation that he might receive the benefit and should, at the least, have been given the courtesy of being told that he was not to receive any.
20. Second, LV= did not ever reply substantively to TPAS' reasonable enquiries over the three and a half months before TPAS gave up. These matters will have caused Mr Gooch some unnecessary distress.

Directions

21. Within 14 days of the date of this determination the Trustee is to give Mr Gooch an opportunity to respond to any material allegations about his relationship with Mrs Gooch and make such further statements about that relationship as he wishes.
22. The Trustee is then to make such further enquiries as it considers relevant and within 28 days of receiving Mr Gooch's response and statement as above it is to:
 - make a fresh decision about distributing the death benefits under the Plan, disregarding the fact that an equivalent sum has already been paid;

- record the material taken into account in reaching its decision and;
 - give a summary of the reasons for its decision to Mr Gooch.
23. If the fresh decision results in a payment to Mr Gooch, simple interest is to be added to the payment calculated at the average base rate for the time being payable by the reference banks from 5 July 2010 to the date of payment.
24. In the event that any tax liability results from any payment to Mr Gooch, it is to be settled by the Trustee.
25. Within 21 days of the date of this determination, LV= should pay compensation of £150 to Mr Gooch in respect of the distress referred to in paragraph 19 and 20 above.

Tony King
Pensions Ombudsman

4 November 2014