

Ombudsman's Determination

Applicant	Mr D
Scheme	Royal London Annuity (the Annuity)
Respondent	Royal London (RL)

Outcome

1. I do not uphold the complaint and no further action is required by RL.

Complaint summary

2. Mr D holds lasting Power of Attorney (**POA**) for Mr G (his stepfather). He has complained that RL will not pay the Annuity due to Mr G into Mr D's UK bank account, which is in his name only.

Background information, including submissions from the parties

3. The original annuity was in Mrs D's name and when she died the Annuity was due to Mr G.
4. On 23 April 2017, Mr D emailed RL enquiring about how to arrange for the payment of the Annuity now due to Mr G, as Mr G did not have a UK address or bank account.
5. On 2 May 2017, RL replied to Mr D and confirmed it would require a POA document nominating Mr D to act on Mr G's behalf.
6. On 30 May 2018, Mr D wrote to RL referring to the previous correspondence in 2017. He confirmed that Mr G was willing to sign a POA agreement to allow Mr D to deal with any issues relating to the Annuity. However, Mr G did not have a UK address, or a UK bank account and Mr D was unsure how to progress the matter.
7. On 8 June 2018, RL emailed Mr D and said it could not provide legal advice regarding how to proceed with the POA. Mr D would have to seek his own legal advice on the matter.
8. The same day Mr D replied to RL saying he was not seeking advice about the POA, but how to resolve the issue of Mr D not having a UK address or bank account.

9. On 14 June 2018, RL wrote to Mr D and confirmed the annual Annuity of £211.80 was payable to Mr G for the remainder of his lifetime. RL could start to make the Annuity payments to Mr G but his postal address in the Netherlands was required.
10. On 17 September 2018, POA documents were signed by Mr G.
11. On 5 October 2018, following a further enquiry from Mr D, RL wrote to him and said:-
 - It required confirmation of Mr G's full postal address and a certified copy of a POA.
 - The POA must cover Mr G's property and financial affairs.
 - Once Mr D was appointed as an "Attorney", RL would need confirmation that all future correspondence for the Annuity should be sent care of Mr D's home address.
 - If Mr G did not wish to appoint Mr D as his Attorney, then RL could contact Mr G directly and start to pay the monthly Annuity payments by UK cheque.
 - It should be noted that even if Mr D secured a POA, the Annuity could only be paid directly into a UK based account bearing Mr G's name or by UK cheque directly to Mr G.
12. In response Mr D provided RL with a certified copy of the POA documents
13. On 15 October 2018, RL wrote to Mr D acknowledging the POA documentation and confirming it would take ten working days to be assessed.
14. On 24 October 2018, Mr D emailed RL following the letter of 5 October 2018 and explained that he had already provided Mr G's postal address in the Netherlands and sent the certified copy of the POA. Mr D also said if RL continued to insist that it was not possible to pay the pension in line with the instructions in the POA, he would expect RL to provide a specific section in the Annuity policy rules that allowed RL to override a specific instruction given directly by the policy holder. Alternatively, Mr D would accept a section of Annuity policy rules that allowed RL to use its discretion in such matters. Mr D asked for RL to use its discretion to pay Mr G's Annuity to Mr D's account as requested.
15. On 9 November 2018, RL wrote to Mr D and said:-
 - The certified copy of POA had been referred to its legal department as the POA has been set up outside of the UK.
 - The Annuity would need to be paid directly into a UK based account where the relevant person was the sole or joint account holder. In other words, it would not normally agree to make payments in another person's name.

16. On 18 December 2018, RL wrote to Mr D and said:-
 - The POA had been registered.
 - All future correspondence would be issued to Mr D's address.
 - Any future transactions would be processed in line with the requirements set out in the POA documentation.
17. On 8 January 2019, RL wrote to Mr D and enclosed a cheque made payable to Mr G for £423.60 in respect of the Annuity due between 30 January 2017 and 20 December 2018. RL also confirmed that future monthly payments would be paid by cheque, via Mr D, until it received a completed "Direct Credit Information" form (**the Form**) providing a UK based bank account bearing Mr G's name.
18. On 12 January 2019, Mr D emailed RL and requested that the Annuity be paid directly to him as Mr G did not have a UK bank account. Mr D returned the Form and the cheque to RL.
19. On 21 January 2019, RL thanked Mr D for returning the Form and said:-
 - The details required on the Form were for a UK bank account in the name of Mr G.
 - Although Mr D was named as having POA, RL was unable to make payments into a bank account in Mr D's name only.
 - As the cheque had been returned RL had marked it void and as a temporary measure the Annuity had been suspended.
20. On 30 January 2019, Mr D complained to RL as he felt it had failed to abide by the POA.
21. On 4 February 2019, RL wrote to Mr D in answer to his complaint and said:-
 - All annuity payments had to be reported to HMRC for audit purposes.
 - It also had to demonstrate that anti-money laundering due diligence checks had been carried out. As such it was unable to pay the Annuity to a bank account held solely in Mr D's name irrespective of the POA requirements.
 - The Annuity policy documents would not refer to payee details specifically as these would be determined at the time the Annuity was being claimed.
 - RL did not have the system functionality to facilitate the regular payment of the Annuity into an overseas bank account.
 - In order to try and help Mr D, RL provided details of a company that could allow a bank account to be set up in the UK and allow the transfer of funds to Mr G bank account in the Netherlands. It said it was "...aware of a company called

“TransferWise,” who operate a borderless bank account, which would allow the annuity to be paid into a UK bank account as well as transfer the funds to an overseas bank account...Please note, we are not recommending or endorsing this company...”.

- If the facility for paying the pension into an overseas bank account became available, then RL would contact all its customers that were overseas.
22. Mr D’s position is that the POA provides specific instructions that he considers RL should follow. Other pension providers have accepted the POA and paid monies to a bank account in his name only.
23. RL’s position is that it does not have the facility to pay any annuity payments into a bank account overseas. It had confirmed to Mr D that the Annuity had to be paid into a UK bank account bearing Mr G’s name, or a joint account if Mr D preferred. The Annuity could also be paid by cheque to Mr G. The POA does not override HMRC’s audit requirements.

Adjudicator’s Opinion

24. Mr D’s complaint was considered by one of our Adjudicators who concluded that no further action was required by RL. The Adjudicator’s findings are summarised below:-
- RL’s decision to not pay annuities into an overseas bank account was a commercial decision it was entitled to make.
 - The Adjudicator considered that RL was entitled to decide how to meet the HMRC audit requirements and any due diligence checks, even if other providers had paid Mr G’s pension entitlement into a bank account in Mr D’s name only.
 - The Adjudicator appreciated that it was frustrating for Mr D to set up a bank account to include Mr G as an account holder even though he had Mr G’s POA, but RL had explained this to Mr D several times.
 - The Adjudicator considered RL had tried to help and advised Mr D of a company that offered a “borderless” bank account.
 - The Annuity could be paid, just not in the manner Mr D preferred.
25. Mr D did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. He provided his further comments which do not change the outcome. Mr D said:-
- The reasons that have been given by RL for not meeting his request to pay the Annuity into his bank account have been “lies” and “excuses”.
 - He does not agree that there is any prohibitive policy document, or preventative legislation to stop RL paying the Annuity into a bank account in his name only.

- At no point had RL outlined specifically, that paying the Annuity into a bank account in his name only would fail the HMRC audit requirements.
 - He considered the POA provided a clear instruction so this should satisfy any HMRC audit requirements.
 - It was not appropriate for the Adjudicator to introduce “commercial decision making” which had never been argued previously.
 - He and Mr G had spent considerable time and effort trying to resolve matters and had met the expense of providing the POA to RL. They have both been significantly distressed dealing with this matter following Mrs D’s death.
26. RL also responded and said that the HMRC would consider any payment of Mr G’s pension to Mr D as an “assignment of monies” and under Section 172 of the Finance Act 2004 (see appendix) this would be deemed an unauthorised payment.
27. An unauthorised payment is a payment made outside of HMRC tax rules and this means there will be tax charge. The tax charges are intended to stop unauthorised payments and are an unauthorised payment charge of 40%, an unauthorised payments surcharge of 15% and a scheme sanction charge of 40%.
28. I note the additional points raised by Mr D, but I agree with the Adjudicator’s Opinion.

Ombudsman’s decision

29. Mr D is unhappy that although there is a signed POA nominating him to act for Mr G, RL will not accept the instructions to pay the Annuity directly into Mr D’s bank account. Mr D has argued that there is nothing to stop RL paying the Annuity into his bank account; other providers have done so.
30. RL, as a general rule, do not make electronic payments into overseas bank accounts. In this case, the intended recipient of the Annuity, Mr G, does not live in the UK and does not hold a UK bank account. RL has not said that Mr G is not eligible to receive the Annuity, or that it cannot be paid. RL has confirmed the methods by which the Annuity can be paid to Mr G, none of which are satisfactory to either Mr G or Mr D. Given the particular circumstances I find no fault with RL’s decision not to make payments into overseas bank accounts. It is not my role to interfere with RL’s policy regarding overseas payments.
31. RL has said as the Annuity is due to Mr G, it cannot pay the Annuity into a bank account into Mr D’s name only. RL has said if it paid the Annuity as Mr D has requested, then this will not meet its anti-money laundering due diligence checks, and HMRC’s audit requirements.
32. I acknowledge that it has been a difficult time for both Mr D and Mr G. RL did inform Mr D of the acceptable ways in which it could pay the annuity. I appreciate it is not by

the method Mr D would prefer, but I do not consider that RL has done anything wrong.

33. It is for RL to decide how to meet the required due diligence checks and audit requirements, even if other pension providers have paid Mr G's pension entitlement into Mr D's bank account. This is a financial and audit compliance decision which RL is entitled to make.
34. Mr D believed that it was wrong for the Adjudicator to refer to, what he considered to be "new" evidence by describing the decisions made by RL as "commercial", which was not a ground raised by RL. I do not believe this is the case that it is 'new' evidence. In using the word 'commercial' I have taken it that the Adjudicator was explaining that RL's actions were as a result of business or compliance decisions that it was entitled to make.
35. It is up to Mr D and Mr G to decide now how they wish the Annuity to be paid within the framework set out by RL; Mr D should contact RL to make the appropriate arrangements.
36. I do not uphold the complaint.

Anthony Arter

Pensions Ombudsman
15 October 2020

Appendix

Extract from Section 172 of Finance Act 2004

Unauthorised member payments

Assignment

- (1) Subsection (2) applies if a member of a registered pension scheme (or the member's personal representatives)- assigns or agrees to assign
 - (a) any benefit, other than an excluded pension, to which the member (or any dependant, nominee or successor) has an actual or prospective entitlement under the pension scheme, or
 - (b) any right in respect of any sums or assets held for the purposes of any arrangement under the pension scheme.
- (2) Unless the assignment or agreement is pursuant to a pension sharing order or provision, the pension scheme is to be treated as making an unauthorised payment to the member (or to the member's personal representative in respect of the member).