

Ombudsman's Determination

Applicant	Mrs S
Scheme	The Rank Group Stakeholder Pension Plan (the Plan)
Respondents	Zurich Assurance Ltd (Zurich)

Outcome

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

Complaint summary

2. In summary, Mrs S' complaint is that Zurich has refused to award her any of the lump sum death benefit payable under the Plan in respect of her late husband, Mr S.

Background information, including submissions from the parties

3. Mr S was a member of The Rank Group Stakeholder Pension Plan (**the Plan**). He signed a death benefit nomination form on 24 January 2009, naming his wife, Mrs S, to receive 100% of any lump sum death benefits. The form stated: "Zurich will not be bound by your request, although we will give it full consideration and will usually respect your wishes".
4. In July 2013, Mr S and Mrs S decided to separate. Mrs S left the family home and rented a separate property.
5. On 1 December 2017, Mr S died in hospital, with his mother (**Mrs D**) in attendance. He did not leave a Will. His estate's main asset was the mortgaged family home which he had purchased in his own name. At the time of his death he had debts exceeding £70,000.
6. On 6 December 2017, the sister of Mr S (**Miss A**) notified Zurich of his death.
7. On 14 December 2017, Mrs S completed and returned Zurich's "beneficiaries' enquiry form". She stated: "My husband and I separated in 2013 but had not started legal proceedings or settled our marital assets, we had decided to do this in 2018 at the 5 year separation point."

8. On 18 January 2018, Miss A completed and returned Zurich's "beneficiaries' enquiry form". She stated that both she and Mrs D might have an interest in the Plan's death benefits. They had not seen Mrs S for over four years until she visited Mrs D on the day that Mr S died. Miss A also said that Mrs D had supported Mr S financially after the breakdown of his marriage. Her covering letter said: "Myself as his sibling have also put my name forward as a potential beneficiary, but I feel my Mother should be considered first and foremost for all that she has done for my late brother by going above and beyond to comfort and support her dearly beloved son in times of trouble."
9. On 13 February 2018, Mrs S' solicitors Mayo Wynne Baxter (MWB) told Miss A that Mrs S would apply for letters of administration. MWB asked for details of funeral expenses and any other payments made on behalf of Mr S. MWB explained that Mrs S did not have contact with Mrs D before Mr S died because he had threatened her and told her to stay away from his family. MWB claimed that Miss A had been abusive to Mrs S when she had visited to give her condolences and when she sought to recover Mr S' pet dog. Mrs S copied the letter to Zurich for information.
10. On 28 February 2018, MWB wrote to Zurich to confirm that Mrs S was seeking administration of Mr S' estate.
11. On 4 May 2018, Zurich told MWB that it had decided to pay the lump sum death benefit payable under the Plan to someone other than Mrs S.
12. On 24 May 2018, MWB asked Zurich whether Mr S had changed his nomination form. MWB pointed out that both Mrs D and Miss A were comfortable financially, as they had savings and lived in houses without mortgages.
13. MWB wrote to Zurich on 31 July 2018, to say that as Mr S' surviving legal spouse, despite their separation, Mrs S should receive the lump sum death benefit.
14. Zurich's case assessment notes in September 2018, recorded that Miss A had submitted evidence for herself and Mrs D to show that Mrs D had provided financial help to Mr S before he died, and she had paid his funeral costs.
15. Zurich replied to MWB on 28 September 2018, that it had made full enquiries and considerations before deciding that Mrs S should not be a beneficiary.
16. On 1 October 2018, MWB asked Zurich why Mrs S should not be considered as beneficiary, because despite their separation Mr S had refused to divorce Mrs S.
17. On 3 October 2018, having considered the evidence provided and taken advice from its legal department, Zurich paid all the lump sum death benefit to Mrs D.
18. On 9 October 2018, Zurich emailed MWB to explain that the Plan was established by deed poll, not a trust. As Plan administrator, Zurich had discretion whom to pay,

considering relevant factors and ignoring irrelevant ones. It had made a decision on that basis.

19. In reply, MWB asked Zurich for a copy of the Plan documents and details of the factors that Zurich had considered relevant and irrelevant. MWB said that despite separating Mr S and Mrs S remained on good terms. MWB asked whether Zurich relied on the testimony of third parties. MWB also said that Mrs D and Miss A had disputed Mrs S' claim under the intestacy rules, so were disappointed not to inherit Mr S' estate.
20. On 24 October 2018, MWB asked Zurich again for a copy of Mr S' nomination form. MWB also pointed out that Mr S' 2013 annual benefit statement said that Zurich would pay any death benefits to his surviving partner or dependants, but Mrs D and Miss A were not dependent on him.
21. On 15 January 2019, Zurich sent MWB a copy of the Plan documents. Zurich was of the view that as the nomination form was not binding it was effectively superseded by the marital separation. It said the cost of winding up Mr S' estate was a separate matter.
22. Zurich also said there was no evidence that Mr S and Mrs S were particularly close when he died, or that they would soon have been reconciled. The fact that they were on good terms was not persuasive. The Plan benefits were not part of Mr S' estate, and Zurich was not required to act like a divorce court. The current relationship of Mr S and Mrs S was less persuasive to Zurich than the deceased member's blood ties to his mother and sister. Zurich concluded that other beneficiaries had a stronger claim than Mrs S.
23. A statement from Mr S' former line manager, dated 15 April 2019, said that Mr S had wanted to reconcile matters with Mrs S, and that he had treated her son as his own. He also said that Mr S did not get on well with his family after his father died in 2014; the family did not help him after he became seriously ill and showed contempt for Mrs S. For example, they tried to give away the pet dog that Mrs S had bought for Mr S.

Adjudicator's Opinion

24. Mrs S' complaint was considered by one of our Adjudicators, who concluded that no further action was required by Zurich. The Adjudicator's findings are summarised below:
 - In this case, the relevant Rules were Rule 6.6.3 and 6.6.4 (see Appendix). The decision on whom to pay death benefits must be made by Zurich as administrator. Zurich should consider which people come within Rule 6.6.4, obtain satisfactory evidence and then make a decision under Rule 6.6.3.

- Under the relevant Rules, the payment of death benefits was ultimately a matter of discretion for Zurich. This limits the extent to which the Ombudsman can interfere with the decision. The Ombudsman's role is limited to ensuring the decision-making process was correctly followed. The Ombudsman can interfere with the decision only 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.
- For the decision to be properly made, it must be made by Zurich. In this case, the decision was made by Zurich. Zurich is the correct decision-maker, as provided for in the Rules. Therefore, the decision cannot be successfully challenged on this basis.
- Zurich must apply the law and the Rules correctly. Amongst other things, this means that it can only do things which it has been given the power to do by the Rules.
- Before deciding how to exercise its discretion, the administrator must identify the people to whom benefits *could* be paid under the Rules, that is the range of 'potential beneficiaries'. The potential beneficiaries are defined by the Rules. In this case, under Rule 6.6.4, the potential beneficiaries were the Relatives, Dependants, personal representatives (or executors), Nominated Beneficiaries or Survivors of the deceased Member.
- Zurich had paid the lump sum to Mrs D in accordance with Rule 6.6.3. This was within the scope of the Rules, because Mrs D was one of Mr S' "Relatives" as listed in Rule 6.6.4. Consequently, the decision could not be successfully challenged on this basis.
- The administrator was not under an obligation to specifically identify every possible individual who might fall within the range of possible beneficiaries. The obligation is to undertake reasonably sufficient enquiries and gather adequate information. This is likely to include steps such as establishing whether the member has a Will which contains relevant provisions. The administrator cannot, however, automatically rely on the contents of any Will: it must still exercise its own discretion.
- The degree of investigation would depend on the factual circumstances. For example, if a member was married with children, living with their spouse and children and had nominated their spouse and children, the trustees may be justified in distributing to the spouse and children without much more investigation. Each case turns on its facts.
- In this case, Zurich took adequate steps to ascertain the range of potential beneficiaries, because it obtained information about Mr S' family and

relatives and their circumstances, and it considered how much weight it wished to attach to Mr S' nomination form.

- Once the administrator has identified the potential beneficiaries, it must then exercise its discretion to decide to whom the benefits should be paid.
- The administrator may consider relevant questions and matters which it considers to be important, such as the financial status of the potential beneficiaries, the degree of financial dependency, and the age and need of the potential beneficiaries.
- The administrator does not have to pay benefits to every one of the potential beneficiaries, or to pay each potential beneficiary equally. Provided that other requirements, such as considering all the relevant information, have been complied with, the administrator is permitted to prefer the interests of some beneficiaries over others. The complaint here was that Zurich had exercised its discretion in a way which preferred the interests of one beneficiary, Mrs D, over the interests of the applicant. However, choosing not to prefer the applicant's interests was not, of itself, enough to make the decision improper; there would need to be more, such as consideration of irrelevant, irrational or improper factors.
- Zurich had not considered irrelevant, irrational or improper factors, because it was entitled to take account of the marital separation and the financial support that Mrs D had provided to Mr S.
- Where there is more than one category of potential beneficiaries, the decision maker must consider each category and decide whether or not to award benefits to beneficiaries within each category, rather than considering only one class of potential beneficiaries. In this case, Zurich did consider each category because it obtained written representations from the following "Relatives": Mrs S and Miss A (on behalf of herself and Mrs D). Consequently, Zurich did properly consider whether to award death benefits to the applicant, who was included in the category of Relatives.
- The administrator is entitled to consider a 'nomination' by the member. A nomination is an indication given by the member during his lifetime about the person or people to whom he would like death benefits to be paid in the event of the member's death. It is important to remember that, where the decision maker has a discretion about awarding death benefits, it must not unthinkingly follow the nomination; it is still required to properly exercise its discretion, including by identifying and considering the potential beneficiaries, not just the person nominated by the member. In this case, part of the complaint was that Zurich had not dealt with the nomination by Mr S properly because it ignored the nomination. The Adjudicator considered that this element of the complaint should not be upheld, because Zurich considered the possible beneficiaries appropriately and

exercised its own judgment. It was entitled to take account of the fact that Mr S' nomination had predated his marital separation by several years.

- Part of the complaint was that Zurich, having identified Mrs S as being within the range of potential beneficiaries, did not exercise its discretion to award the benefits to her. However, Zurich was entitled to exercise its discretion in this way, because Mr S and Mrs S had separated several years before, and Mrs D had provided financial support for her son since then.
- One of the specific obligations on decision-makers is to consider all relevant information which is available to them and ignore any irrelevant information. In this case, Mrs S asserted that Zurich did not properly consider the nomination form, and the fact that Mr S and Mrs S had not divorced after separating. However, the nomination form, that Mr D had signed in 2009, made clear that it was not legally binding on Zurich. Furthermore, it predated the marital separation by several years. When Mr S died, he and Mrs S were not living together as man and wife, even though they were still in contact.
- As well as being obliged to correctly interpret and apply the law and the scheme Rules, an administrator who is exercising a discretion may not act "*erratically and without reason*". Broadly, this means that the administrator must not act unreasonably. It must have a proper basis for acting in a particular way and must follow a fair procedure. There will generally be a range of decisions which would not be erratic and without reason which could be taken by administrators when faced with any particular choice. Some of those decisions or outcomes might be more favourable to some members of the Scheme than others. The Ombudsman's role is not to substitute his own decision for that of the administrator. The fact that the administrator has 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 this case, it was alleged, that Zurich, as Plan administrator, had exercised its discretion improperly by not making any payment to Mrs S. In the Adjudicator's view the decision was not perverse. It was one that a reasonable decision-maker could have made. There was evidence in support of the decision, namely that Mr S and Mrs S had ceased to live together as man and wife several years beforehand, and Mrs D had been providing some financial support for Mr S.
- The administrator must follow the proper procedure when making decisions about death benefits. However, not all procedural defects will mean that the decision cannot be allowed to stand. If the procedural failings are early on in the process and the impact of the failing is corrected later on; for

example, the Ombudsman may take the view that the procedural failings do not invalidate the decision.

- The Adjudicator considered that in this case the administrator followed the correct procedure, because it considered the potential beneficiaries and obtained written submissions which it considered before exercising its discretion. It was the Adjudicator's opinion that Mrs S' complaint should not be upheld.

25. Mrs S did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Through her solicitor, Mrs S provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion, and I will therefore only respond to the points made by Mrs S for completeness.

26. Mrs S said that Mrs D had claimed reimbursement from Mr S' estate for his funeral costs and some other sums that Mrs D had paid. If this was the reason for awarding her the death benefits, she would effectively have double recovery.

27. Mrs S pointed out she had contributed financially towards Mr S for 16 years during their relationship and marriage. She had also made a financial contribution subsequently, making some mortgage payments on the property and paying for his television licence and pet insurance.

28. Mrs S also said that her son (Mr D's step-son) had been very close to Mr D, and was a potential beneficiary, but it was unclear whether Zurich had contacted or considered him.

29. Lastly, Mrs S said that Mr S would have amended his nomination form if he had thought it should be changed.

Ombudsman's decision

30. I note that Mrs D claimed reimbursement of Mr S' funeral expenses that she had paid, as well as some other sums. She was entitled to seek reimbursement for these from Mr S' estate, which was administered by Mrs S. The administration of the estate is not a matter for Zurich. It is only concerned with the distribution of the lump sum death benefit.

31. I also note that Mrs S made some financial contributions to Mr S after their marital breakdown. But this point does not alter the fact that Mrs D, as the deceased's mother, was an eligible beneficiary for the lump sum death benefit; Zurich was entitled to exercise its discretion in her favour.

32. The applicant, in respect of this complaint, is Mrs S. She mentioned her son's relationship with Mr D. However, her son is not the applicant, and Mrs S has not been appointed to represent him. This means that I am unable to make a finding which would directly affect him.

33. Lastly, Mrs S contended that Mr S would have amended his nomination form if he had wanted to. However, she has not produced any evidence to show that he was thinking about his nomination before he died in 2017, and in any event the form he signed made clear that it was not binding on Zurich. It was simply one piece of evidence to be considered, and it was for Zurich to decide how much weight to attach to it.

34. To conclude, I do not consider any of the additional points raised to be compelling.

35. I do not uphold Mrs S' complaint.

Anthony Arter

Pensions Ombudsman
31 March 2020

Appendix

Extract from the rules of the Plan

“6.6.3 ...the Scheme Administrator shall pay or apply all or any part of that sum to or for the benefit of one or more of the people who come within Rule 6.6.4 in such shares as the Scheme Administrator shall decide.

6.6.4 A benefit payable under this Rule may be paid to one or more of the Relatives, Dependants, personal representatives (or executors), Nominated Beneficiaries or Survivors of the deceased Member or any person who is entitled to an interest in the Member's estate.”