

## Ombudsman's Determination

Applicant	Mrs D
Scheme	Medusa Pension Scheme ( <b>the Scheme</b> )
Respondent	The Trustee of the Medusa Pension Scheme ( <b>the Trustee</b> )

## Outcome

1. Mrs D's complaint is upheld and to put matters right, the Trustee, Mr D, shall issue a new decision to Mrs D. He shall also award a further £500 to Mrs D for the significant distress and inconvenience caused by not complying with the previous Directions within the required timeframe.

## Complaint summary

2. Mrs D has complained that Mr D did not comply with the Deputy Pensions Ombudsman's Directions on her original complaint, which was about Mr D's decision on the distribution of death benefits from the Scheme.
3. Mrs D asks that I replace Mr D's decision with my own.

## Background information, including submissions from the parties

4. Mrs D originally brought a complaint to us in 2018 (case reference PO-19497). Mrs D's late father was a member trustee of the Scheme, along with his brother, Mr D. After her father's death, Mr D (Mrs D's uncle) in his role as the Trustee, made the decision not to award Mrs D any death benefits from the Scheme.
5. My Office considered Mrs D's complaint and, on 12 February 2019, the Deputy Pensions Ombudsman issued a Determination, upholding the complaint.
6. The Deputy Pensions Ombudsman's Directions were that, within 21 days of the date of the Determination, Mr D had to:
  - Re-consider the decision to distribute death benefits under the Scheme.
  - In re-considering the matter, Mr D had to invite Mrs D to make any further submissions in support of her claim to a share of the distribution.

- In communicating the new decision, Mr D had to highlight the Scheme Rules used in making the decision and state the reasons for him appropriating the shares.
  - Pay Mrs D £500 in recognition of the significant distress and inconvenience caused by the lack of procedural fairness in making the original decision.
7. On 4 March 2019, Mr D wrote to Mrs D with some further questions about the relationship she had with her late father, which he said would assist in his reconsideration of his decision. He also asked Mrs D to provide her bank details so that he could pay the £500 award for distress and inconvenience.
  8. On 12 March 2019, Mrs D wrote to Mr D in response to his questions. She told Mr D that she felt several of the questions were more personal than she felt was necessary but answered them anyway for full clarity. Mrs D asked Mr D to send her a cheque for the £500 award payment.
  9. Having received no response, Mrs D wrote to Mr D for a final time on 29 April 2019, reminding him that he was obligated to comply with the Deputy Pensions Ombudsman's directions by 5 March 2019. Mrs D has said she received no reply.
  10. During my Office's investigation of this new complaint, Mr D told my Office that he could not pay the £500 award for distress and inconvenience to Mrs D because she did not provide her bank details, and he was not able to send a cheque to her.
  11. Mr D also told my Office that he did make a new decision and issued this to Mrs D sometime in May 2019. However, he does not have any evidence to show when or by what method he issued the new decision to Mrs D. Mr D has told my Office that his lawyer had notes on file, from April 2019, to show that they were in discussions about making the new decision, but the lawyer is not prepared to share evidence of such notes because of lawyer/client privilege.
  12. On 12 June 2020, Mr D sent my Office a letter containing the decision he claimed he made in May 2019. He had recently recreated this based on notes, draft letters and conversations with his lawyer.
  13. Mr D recently made arrangements for the £500 award to be sent to Mrs D via a PayPal account, and Mrs D has confirmed receipt of this.

## **Adjudicator's Opinion**

14. Mrs D's complaint was considered by one of our Adjudicators who concluded that there was maladministration. The Adjudicator's findings are summarised below:-
  - The Deputy Pensions Ombudsman directed Mr D to make a new decision within 21 days of the date of the Determination dated 12 February 2019. This would have been 5 March 2019. Given that Mr D first wrote to Mrs D on 4 March 2019, it would not have been possible for him to receive the information needed to make a new decision by 5 March 2019.

- Although Mr D had said that he issued a new decision sometime in May 2019, there was no evidence to support this.
  - Mr D is responsible for appropriately administering the Scheme, which includes retaining proper records. Such an important document as a decision on the apportionment of death benefits payable from the Scheme should be retained. So, Mr D should be able to provide evidence of the decisions made in relation to the Scheme.
  - In the Adjudicator's view, it was more likely than not that Mr D did not issue a new decision in May 2019. In any event, this would have fallen outside of the 21 day deadline set by the Deputy Pensions Ombudsman on 12 February 2019.
  - Mrs D had asked that I replace Mr D's decision with my own. However, the Adjudicator said that my role was to look at whether the decision-maker had followed the Scheme Rules. If I thought the decision-maker had reached its decision in the wrong way, I would usually order them to make the decision again in the proper way. I did not have to agree with the decision that had been reached, and I would not intervene just because I thought the decision-maker could have reached a different decision.
  - Mr D had put his new decision in writing, which he should issue to Mrs D, retaining a record of how and when this is sent. Having reviewed the letter of 12 June 2020, the Adjudicator was satisfied that Mr D had followed the terms set in the Deputy Pensions Ombudsman's Directions on how to make the new decision.
  - Mr D had now sent payment of £500 to Mrs D for the original distress and inconvenience award directed by the Deputy Pensions Ombudsman. He had asked for Mrs D's bank details on 4 March 2019, but Mrs D asked for a cheque. While Mr D did take steps to try and pay this within the original deadline of 5 March 2019, he could have communicated further to come to an agreement with Mrs D on how to make the payment.
  - Mr D did not comply with the Deputy Pensions Ombudsman's Directions within a reasonable timeframe and it had taken a further complaint to produce the new decision. This had likely caused Mrs D further unnecessary upset, so Mr D should make an additional award of £500 to recognise the overall serious distress and inconvenience his acts and omissions had caused.
15. Mr D accepted the Adjudicator's Opinion, but Mrs D did not. So, the complaint was passed to me to consider. Mrs D's further comments are summarised below:-
- She disagreed with the Opinion on the basis that Mr D had repeatedly shown a "cavalier attitude towards this process" and so she could not trust him to make an informed and unbiased decision when dividing the death benefit.
  - She provided a chronology of events in relation to the Scheme, with an explanation of their importance.

- As an organisation that is holding trustees to account, she said my Office should ensure that all processes are followed. In this instance, Mr D should be forced to account for all funds in and out of the Scheme, and provide reasonable minutes for his decisions.
  - Mr D has remade his decision under duress and disregard to my Office. The decision has been made on “unprovable” and “contentious” factors. So, she expected my Office to hold Mr D to account and ask for more documentary evidence to support his decision.
  - Considering my Office had stated that it was more likely than not that Mr D did not issue a new decision in May 2019, she questions how Mr D could be trusted to make a new, fair decision.
  - She cannot trust Mr D, because of the mishandling of her late father’s pension benefits as well as Mr D’s behaviour the years before her late father died. She does not believe Mr D could be impartial. So, she asks me to substitute the Mr D’s decision with my own.
  - She quoted a previous decision, P00816, where she believes the Pensions Ombudsman at the time, substituted the trustee’s decision for his own.
16. I note the additional points raised by Mrs D, but I agree with the Adjudicator’s Opinion.

### **Ombudsman’s decision**

17. Mr D has claimed that he issued a new decision in May 2019 but has not provided any information to substantiate this. Further, Mrs D has said that she did not receive a new decision at that time, which is why she complained about Mr D’s failure to comply with the Deputy Pensions Ombudsman’s Directions. Taking this into consideration, it is clear that Mr D has failed to follow the required decision-making process.
18. Although Mr D has recreated his decision from May 2019 in his letter dated June 2020, this is insufficient. Mr D should not be relying on a replica of the decision he claims to have made. Rather, Mr D should hold records of: the decision-making process at the time; the decision itself; and copies of the communications issued to the potential beneficiaries involved. Consequently, as he has not provided information demonstrating any of the above, Mr D is required to: reconsider his decision; retain information demonstrating how the decision was reached; inform Mrs D of the outcome; and record how and when he contacted her.
19. I understand Mrs D does not agree with the decision outlined in Mr D’s letter sent to my Office on 12 June 2020. She has questioned why my Office has not asked Mr D to demonstrate how he has reached this decision. However, as explained in paragraph 18 above, I cannot accept the June 2020 letter as Mr D’s new decision.

There is no evidence of the May 2019 decision for us to investigate, so I am unable to comment on this.

20. I also acknowledge that Mrs D has reservations about Mr D's ability to make an informed and impartial decision based on past experiences. However, this does not mean that I should make the decision in place of him. While Mrs D believes that the Pensions Ombudsman has previously done this, I do not agree that this was the case in P00816. Rather, the Pensions Ombudsman at the time directed the respondents to reconsider their decision. This is what the Deputy Pensions Ombudsman had directed Mr D to do in Mrs D's previous complaint but, there is no record of him having done so.
21. Once Mr D has complied with my Directions, should Mrs D disagree with his subsequent decision, she will be able to bring a complaint about this to my Office, after raising the complaint through the Scheme's Internal Dispute Resolution Procedure. Only at that point, would we be able to assess Mr D's decision.
22. Taking this into account, it is clear that Mr D committed maladministration and that Mrs D has been impacted by this. The circumstances around the decision are sensitive and Mrs D should not have repeatedly been made to contact Mr D. This is particularly after the Deputy Pensions Ombudsman had found that there had been procedural errors and unfairness in the decision-making process of Mr D's first decision. So, I consider that Mrs D has suffered significant distress and inconvenience.
23. I uphold Mrs D's complaint.

## **Directions**

24. Within 28 days of the date of this Determination, Mr D shall:-

- Issue a new decision that provides clear reasoning on how the decision has been reached, ensuring that the decision-making process has been recorded and the Edge<sup>1</sup> principles have been followed.
- Write to Mrs D to inform her of the new decision, retaining a record of how and when this is issued.
- Pay Mrs D £500 for the significant distress and inconvenience caused.

**Anthony Arter**

Pensions Ombudsman  
04 November 2020