

Ombudsman's Determination

Applicant Mrs W
Scheme Royal London Pension Scheme (**the Scheme**)
Respondent Royal London

Outcome

1. I do not uphold Mrs W's complaint and no further action is required by Royal London.

Complaint summary

2. Mrs W's complaint concerns Royal London's decision not to award her a death benefit lump sum following the death of her partner, Mr E. She has said that, as executor of his estate, she should be entitled to benefits.

Background information, including submissions from the parties

3. On 17 April 2017, Mr E wrote a Will and made his wife, Mrs E, the executer of his estate. In the Will, he said he wished to leave the residue of his estate to her. This was consistent with his previous Will made on 15 February 1983.
4. Mr E remained married to Mrs E, but he was also in a relationship with Mrs W.
5. On 27 March 2019, Mr E contacted his Independent Financial Adviser (**IFA**) by telephone to make financial arrangements for Mrs E regarding his pension investments. He told his IFA that Mrs E was solely reliant on his income.
6. In April 2019, Mr E was diagnosed with a brain tumour.
7. On 5 June 2019, Mr E transferred two of his pension investments into the Scheme. At the same time, he completed a Nomination Form (**the June Nomination Form**). He nominated two beneficiaries; Mrs E, who he selected to receive 90% of the benefit, and Mrs W, who he selected to receive 10% of the benefit.
8. On the Nomination Form, Mr E was given the choice of how benefits would be paid upon his death. Option one was at the discretion of the Scheme administrator, meaning if Mr E selected this option, Royal London would consider paying benefits and in what proportions to the beneficiaries listed. Option two was a direction from the

member to the Scheme administrator, meaning if Mr E selected this option, Royal London would have to pay the beneficiaries listed as directed by Mr E.

9. Mr E selected and signed “Option one – At the discretion of the scheme administrator” which contained the wording:

“In most circumstances we’ll follow your wishes. However, it’s important to understand that under this option we’re not bound to follow your wishes. We may decide to pay your retirement savings to a different person or persons if your personal circumstances at the time of your death make this an appropriate course of action.”

10. Option one also contained the wording:

“If you choose this option, you can change who you have nominated at any time by writing to us, however, you can’t choose Option 2 below at a later date.”

11. In July 2019, Mr E was informed the tumours had spread and he received an end-of-life diagnosis. Shortly afterwards, he went into a care home to receive end-of-life care.
12. On 5 July 2019, Mr E submitted a new Nomination Form (**the July Nomination Form**) with respect to payment of benefits upon death.
13. As Mr E selected option one on the previous Nomination Form, his only option was to select and sign option one, for benefits to be paid at the discretion of the scheme administrator.
14. Mr E again nominated Mrs E and Mrs W as potential beneficiaries. This time, the benefit was selected to be split equally between both parties, each with a 50% share. On the Nomination Form, Mrs E’s relationship to Mr E was described as “estranged wife” and Mrs W’s relationship to Mr E was described as “partner.”
15. On 12 July 2019, Royal London acknowledged receipt of the July Nomination Form.
16. On 20 July 2019, Mr E completed a new Will appointing Mrs W as executor and beneficiary of his estate. The Will included a Non-Provision Declaration which stated that there was no provision made for Mrs E.
17. On 2 August 2019, a formal safeguarding concern was reported to Adult Services by a member of staff at the care home where Mr E resided. The concern regarded Mrs W’s involvement with Mr E’s financial affairs. Prior to this, a formal safeguarding concern regarding the same matter was also received from the hospital where Mr E had been receiving treatment.
18. On 7 August 2019, Mr E was assessed by Dr Jackie Pace (**Dr Pace**) following the report of the safeguarding concern. In a report of their conversation, Dr Pace noted Mr E’s cognitive impairment and how easily he was led by others. She also stated that Mr E wished to review his Will. Dr Pace concluded that Mr E did have capacity to

make a Will, providing he had not discussed it with anyone who may seek to influence him on the previous day.

19. As a result, during August 2019, SMR Solicitors were asked to attend Mr E and receive instructions from him to draft a new Will. However, SMR Solicitors did not proceed as it was of the view that Mr E lacked testamentary capacity to write a Will.
20. In September 2019, Mr E completed a letter of authority with his IFA, in which he updated his address to receive all correspondence at Mrs W's address. This letter was forwarded to the Trustee on 6 September 2019.
21. On 19 November 2019, Mr E was assessed by another doctor who stated that Mr E lacked mental capacity to handle his own financial affairs.
22. In November 2019, Mrs E and Mrs W each received a letter from Adult Services describing the safeguarding reports and subsequent investigation. Each party was advised not to attempt to make any financial transactions regarding Mr E's finances or assets. In the letter addressed to her, Mrs E was encouraged to make a deputyship application as soon as possible.
23. In November 2019, Mrs W applied to become Mr E's Power of Attorney (**POA**) for his property and financial affairs and for his health and welfare. On 9 January 2020, Mrs W was entered onto the register as Mr E's POA.
24. On 15 January 2020, Mr E died.
25. On 12 May 2020, Royal London emailed Mrs W and advised her that she was a potential beneficiary of the Scheme. It asked her to provide evidence of her financial dependency on Mr E. It said that it needed this information to enable it to exercise its discretion in allocating the benefits of the Scheme to the nominated beneficiaries.
26. In response, Mrs W sent a letter to Royal London dated 25 May 2020, along with documents for the purpose of demonstrating her financial dependency on Mr E. She said that Mr E had made monthly payments of £800 to her for "housekeeping and care". She said that these payments commenced a year before Mr E's death, however she was only able to provide evidence of these payments between July 2019 and January 2020. Alongside this evidence, she provided copies of receipts and invoices for home improvements and car expenses.
27. Mrs W included a statement that set out her position, it said:-
 - She worked with Mr E 45 years ago. They met again just under 10 years ago, they became partners and Mr E moved into her home three years ago.
 - The July Nomination Form said that Mr E wanted the death benefits to be split evenly between Mrs W and Mrs E.
 - Mr E and Mrs E had lived apart for many years, but Mr E continued to pay rent on her flat once he moved in with Mrs W.

- Mr E was extremely concerned that she would not have to worry about finances and his health at the same time, therefore he set up standing orders to Mrs W of £800 per month towards household bills and car running costs.
 - Whilst Mr E intended to divorce Mrs E, he genuinely tried to ensure financial stability for Mrs E's future.
28. On 16 June 2020, Royal London emailed Mrs W to inform her that, having considered all the information provided to it by all potential beneficiaries, it did not consider her a beneficiary of the Scheme.
 29. In response, on 25 June 2020, Mrs W contacted Royal London by telephone and by letter to make a complaint. Mrs W acknowledged that while Royal London had discretion to decide who to award benefits to, she believed it did not consider Mr E's express wishes or his Will when it made its decision not to consider her a beneficiary of the Scheme.
 30. On 1 July 2020, Royal London responded to Mrs W's complaint and stated it had reviewed its decision not to award her any benefits. It reiterated that it did not consider her to be a beneficiary of the Scheme having assessed all the information provided and this was its final decision on the matter.
 31. On 6 July 2020, Mrs W emailed her complaint to the Royal London Chief Executive Officer (**CEO**) that she had not been considered a beneficiary of the Scheme. She said that this was unfair.
 32. Mrs W emailed Royal London on various dates between 20 August 2020 and 4 September 2020, reiterating her complaint. She restated that it had not considered Mr E's Will when it made its decision not to award her any benefits.
 33. On 21 September 2020, Royal London replied to Mrs W to explain that the July Nomination Form was in relation to Mr E's benefits under the Scheme. It stated the Scheme was not specifically referenced in Mr E's Will and it did not form part of his estate. As a result, Royal London stated that it was not required to take any account of the Will.
 34. Royal London explained that the decision not to consider Mrs W a beneficiary of the Scheme was based on all the information with which it had been provided. Royal London confirmed that its position remained that Mrs W would not be awarded any benefits.
 35. On 24 September 2020, Mrs W brought her complaint to The Pensions Ombudsman (**TPO**).

Mrs W's position

- Mr E was separated from Mrs E and in the process of seeking a divorce from her. As Mrs W was his partner and had a strong relationship with Mr E, she should have received 50% of the benefit of the Scheme as per the July Nomination Form. She provided handwritten and typed communication to Royal London to demonstrate Mr E's intention to divorce Mrs E, including a letter from a mediator instructed by Mrs E dated 5 July 2019.
- She was the executor and sole beneficiary of Mr E's estate, and as such, should have received 50% of the benefit of the Scheme.
- She was financially dependent upon Mr E and sent letters, emails, documents, and copies of completed forms to Royal London as evidence of her dependency upon him.

Royal London's position

- Following the rules of the Scheme (the **Rules**), Royal London used its discretion to make the payment based on the evidence gathered from all possible beneficiaries.
- In exercising its discretion, the July Nomination Form was the first thing it considered. Mrs E and Mrs W were both identified by Royal London as potential beneficiaries.
- It considered evidence demonstrating whether there may have been an ongoing financial dependence between Mr E and Mrs E, and Mr E and Mrs W. It was evidenced that Mrs E was dependent on income from Mr E, and that she did not benefit from the Will which was changed in the later stages of Mr E's life.
- After lengthy information gathering and review of the items provided by a number of parties in relation to Mrs E and Mrs W, it made the decision not to include Mrs W as a beneficiary.
- It did not consider the handwritten notes at the time it made its assessment as they were not provided by Mrs W in her response on 25 May 2020.
- It could not determine the validity of the typed letter Mrs W stated was typed by Mr E regarding his intention to divorce Mrs E.
- The information gathered from the parties was confidential, and it explained to Mrs W that it was not possible to disclose all the evidence that was used to reach the decision it did.

Adjudicator's Opinion

36. Mrs W's complaint was considered by one of our Adjudicators whose findings are set out below:-

- As Mrs W was named on the Nomination form, Royal London identified her as a potential beneficiary of the Scheme. Consequently, it wrote to her and asked her to provide evidence of her financial dependency on Mr E.
- Nominations are not binding and do not automatically lead to an entitlement of a benefit. In this case, the Rules stipulated that benefits would only be payable at the Scheme administrator's discretion.
- Royal London said that the evidence Mrs W provided did not demonstrate financial dependency. It stated that the payments Mr E made to Mrs W were primarily for expenses which would not apply after Mr E's death. These included costs incurred for rail travel and petrol to visit the care home where he resided, and the costs associated with his care. They were not payments towards a mortgage, rent, or bills and utilities, which commonly demonstrate financial dependency. Royal London also stated that Mrs W's financial dependency on Mr E was not established as she owned her own home and car prior to receiving financial assistance from him. In the Adjudicator's view, Royal London did consider relevant information when making its decision.
- The Adjudicator did not accept Mrs W's argument that, if Mr E had known she would not have received any benefits, he would never have chosen option one on the Nomination Form. Mr E completed both the June and July Nomination Form with the assistance of his IFA, at a time when he was still deemed to have capacity. He would have known that, after signing option one on the June Nomination Form, he could not change his mind and select option two at a later date. In the Adjudicator's opinion, Mr E was a chartered accountant who would have been aware of the implications of his decision in choosing this option, and in her view, Mr E was aware Royal London had full discretion to decide who to pay benefits to.
- In the Adjudicator's opinion, Royal London identified the potential beneficiaries and properly reviewed the merit of each one. She found that the decision was within a range of decisions which was reasonable for Royal London to have made.

37. As Mrs W did not accept the Adjudicator's opinion, the complaint was passed to me to consider. Mrs W has provided further comments, which are summarised below: -

- Royal London did not follow due process in this case as it chose not to pay her any benefits.
- The payments of £800 a month were to cover the cost of the upkeep on her house as well as car running costs, and that she and Mr E had planned several building projects necessary for maintenance on the house, including urgent repairs which would have aided his recovery.
- She has spent 39 years paying mortgages on various properties and has ended up owning a property without any mortgage, and she should not be judged on this basis.

- Royal London did not consider the fact that she used her own capital to assist Mr E with his finances before he died.
- She is struggling financially and currently using her diminishing capital to pay for any maintenance on her house.

38. Mrs W's comments do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

39. In cases like these, the decision-maker may sometimes decide to follow the nomination form, but this does not mean that it is bound by it. Similarly, if the decision-maker comes to a conclusion that differs from the nomination form, it does not automatically mean that it has done something wrong or that it has exceeded its powers. Under the Rules, Royal London had the discretionary power to decide how to distribute the benefits among the nominated beneficiaries (set out in paragraphs 9 and 10 above).
40. I find that Royal London took account of all potential beneficiaries, and considered how the benefits should be distributed in accordance with the Rules. Information was provided by both potential beneficiaries, Mrs E and Mrs W, which was considered by Royal London to establish financial dependency. I am satisfied that Royal London had full discretion when deciding which beneficiaries to pay and in what proportions.
41. Royal London reviewed the documentation provided by Mrs W and I agree with the Adjudicator's assessment that Royal London did consider all relevant facts before it made its decision.
42. Mrs W established that she had costs up to the time of Mr E's death, but she owned her own home, car, paid her bills, and Mr E's payments to her were to cover his part in increased costs. Royal London found that this did not demonstrate financial dependency, as the same bills and costs would reduce upon his death, as would the costs incurred by Mrs W to visit Mr E. Furthermore, the evidence Mrs W provided to show Mr E assisted in funding renovation costs to her home did not demonstrate she was financially dependent upon him, as these improvements could be required regardless of whether he lived there or not. I accept Royal London's explanation of why it did not consider Mrs W to be financially dependent upon Mr E.
43. I am sympathetic to the fact that Mrs W may have provided financial assistance to Mr E in the belief she would be compensated for it later, but this is not evidence of her financial dependency on him.
44. It is my role to ensure that the appropriate decision maker followed the correct process when exercising its discretion to pay benefits in this case. Royal London acted properly within its discretion to make such a decision in respect of the Rules.

I do not uphold Mrs W's complaint.

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Anthony Arter CBE

Deputy Pensions Ombudsman

16 January 2024

Appendix

The Scheme Rules

19 Benefits following death of Member

19.1 On the death of a Member the Scheme Administrator shall apply his Individual Fund in such one or more of the following ways as the Scheme Administrator in its absolute discretion may determine;

19.1.1 designation as available for the provision of unsecured pension or alternatively secured pension for one or more surviving Dependants in accordance with Rule 22;

19.1.2 purchase of a dependant's annuity in accordance with the provisions of the Act.

19.1.3 if the Member died before age 75, provision of one or more lump sum death benefits in accordance with Rule 23:

19.1.4 if the Member died at or after age 75 and there are no Dependants, provision of one or more lump sum death benefits in accordance with Rule 24;

19.2 On the death of a Dependant for whom income withdrawal was being provided in accordance with Rule 22 following the death of a Member, the Scheme Administrator shall apply the Dependant's Individual Fund in such one or more of the following ways as the Scheme Administrator in its absolute discretion may determine:

19.2.1 designation as available for the provision of unsecured pension or alternatively secured pension for one or more other Dependants of the Member in accordance with Rule 22;

19.2.2 if the Dependant died before age 75, provision of one or more lump sum death benefits in accordance with Rule 23;

19.2.3 if the Dependant died at or after age 75 and there are no other Dependants of the Member, provision of one or more lump sum death benefits in accordance with Rule 24;

19.3 If a Dependant, for whom income withdrawal was being provided in accordance with Rule 22 following the death of a Member, ceases to be a Dependant, the Scheme Administrator shall apply the Dependant's Individual Fund in such one or more of the following ways as the Scheme Administrator in its absolute discretion may determine:

19.3.1 designation as available for the provision of unsecured pension or alternatively secured pension for one or more other Dependants of the Member in accordance with Rule 22; or

19.3.2 in accordance with the provisions of Rule 23 or 24, whichever is applicable.

19.4 If some of the contributions in respect of a Member have been used to pay premiums under a life insurance contract as described in Rule 16.2, the Scheme Administrator will,

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as soon as practicable, pay the lump sum benefit from the contract in accordance with the provisions of Rule 23 or 24, whichever is applicable.