

## Ombudsman's Determination

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|------------|---|
| Applicant  | Mrs S   |
| Scheme     | Standard Life Self Invested Personal Pension Scheme ( <b>the Scheme</b> ) |
| Respondent | Standard Life Assurance Limited ( <b>SL</b> )                             |

## Outcome

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

## Complaint summary

2. Mrs S' complaint concerns the distribution of the Scheme death benefits following the death of her husband, Mr S. More specifically, the way in which the decision regarding the distribution was reached.

## Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the key points. I acknowledge there were other exchanges of information between all the parties.
4. The Scheme is administered by SL, in accordance with the Standard Life Self Invested Personal Pension Scheme Trust Deed and Rules, effective from 27 February 2017, (**the Rules**). Of particular relevance is rule 8 which covers the payment of a death benefit lump sum if the member died before they claimed their benefits.
5. Rule 8 states:

### "Uncrystallised Funds Lump Sum Death Benefits

8.1 If a Member died with a Pre-Pension Date Member's Fund, the Scheme Administrator will, as soon as practicable and subject to Rules 8.2 and 8.3, pay out the Pre-Pension Date Member's Fund as an Uncrystallised Funds Lump Sum Death Benefit:

(1) in accordance with any specific provision regarding payment of such sums under the contract(s) applying to the Arrangements in questions; or

(2) if (1) is not applicable and at the time of the Member's death the Scheme Administrator is satisfied that the Member directed the Scheme Administrator to pay any death benefit to a valid trust under which no beneficial interest in that benefit can be payable to the Member, the Member's estate or the Member's legal representatives, to the trustees of that trust; or

(3) if (1) or (2) are not applicable at the discretion of the Scheme Administrator, to or for the benefit of any one or more of the following in such proportions as the Scheme Administrator decides:

(a) any person, charity, association, club, society or other body (including trustees or any trust whether discretionary or otherwise) whose names the Member has notified to the Scheme Administrator prior to the date of the Member's death;

(b) the Member's Dependents;

(c) the parents and grandparents of the Member or the Member's surviving spouse or Civil Partner and any children and remoter issue of any of them ;

(d) any person, charity, association, club, society or other body (including trustees of any trust whether discretionary or otherwise) entitled under the Member's will to any interest in the Member's estate;

(e) the Member's legal personal representative."

6. The Rules define "beneficiary" as: "...a Dependent or a Nominee or any other person chosen by the Scheme Administrator from the list of beneficiaries described in Rules 7.7 and 8.1..." The Rules provide that "dependent" is given the same meanings as under paragraph 15, schedule 28 of the Finance Act 2004 (**the 2004 Act**). See appendix for relevant extracts of the 2004 Act.
7. The Scheme Terms and Conditions provide, under section 12:

**"12. Death benefits from the savings pot**

12.1 This section describes the death benefits that are payable from your savings pot.

After we are notified of your death we will normally:

- a) sell all of the assets held for you under the scheme; and
- b) pay the cash proceeds into the SIPP cash account;

before distributing them to your beneficiaries or using them to provide a pension for your beneficiaries.

...

**Lump sum death benefit**

12.2 We may pay a lump sum death benefit from your savings pot. We will decide who would receive a lump sum death benefit, and how much, from the list of beneficiaries described in the rule. You can help us make this decision by giving us the name of the nominees to whom you would like us to pay the lump sum death benefit. These can include the trustees of any trust that you have set up. We will take your views into consideration, but we are not obliged to follow them unless you have given us a binding instruction to pay the lump sum death benefit to the Standard Life bypass trust.”

8. On 20 October 2017, Mr S completed an expression of wish form (**EOW**) and nominated Mrs S to receive 100% of Scheme’s value upon his death. The EOW contained the following statement:

**“Are your instructions binding**

Normally, any instruction you give us in Part 3 about who to pay the death benefit to is only an “expression of wish” and is not binding. This means that Standard Life Assurance Limited, as administrator of the Scheme, will decide who should receive the death benefit, taking into account all relevant matters, including your expression of wish.”

9. On 3 March 2020, Mr S emailed SL and asked it to confirm if he had nominated a beneficiary/beneficiaries for the payment of any death benefits.
10. On 13 March 2020, SL sent Mr S a new EOW and confirmed that he had previously nominated his wife, Mrs S, as the beneficiary for the Scheme benefits.
11. On 13 May 2020, Mr S completed his last will and testament (**the Will**) under which he named ten individuals as recipients of his estate. These were, his wife, Mrs S, his two children from a previous marriage, his sister and two parents, his former father and brother in laws, and Mrs S’ two nieces. He appointed Mrs S and Max Engel Solicitors (**the Solicitors**) as the joint executors of his estate. Under the provisions of the Will, Mr S left his two children £150,000 each, £10,000 to each of his parents and £5,000 to his sister.
12. On 21 September 2021, Mr S died.
13. On 23 October 2020, Mrs S informed SL that Mr S had died.
14. On 26 October 2020, a SL representative, from its bereavement team, telephoned Mrs S to go over the potential Scheme death benefits, and to identify any potential beneficiaries. During the telephone call, Mrs S explained that Mr S completed an EOW, in 2017, and that he had a son and a daughter from a previous marriage.
15. On 27 October 2020, SL emailed Mrs S and said:

“Standard Life Assurance Limited, as the Scheme Administrator, will decide who to pay the death benefit to. The Scheme Rules allow us to pay to any person or persons who fall within the classes of beneficiary set out in the

Scheme Rules, in such proportions as we decide. This is called exercising our discretion.

When exercising our discretion, we will consider the deceased's personal circumstances and family situation. We will also take into account any 'expression of wishes' submitted to us by the deceased, however, please note that any such wishes are not legally binding on us. We will then distribute the death benefit by paying an amount to, or for the benefit of, any beneficiary or beneficiaries chosen by us."

16. On 4 November 2020, the Solicitors emailed SL and provided a copy of Mr S' death certificate and the Will, and confirmed that:
  - Mr S and Mrs S met each other in February 2010 and were married by February 2012. There were still together at his date of death with Mrs S caring for Mr S up until his death.
  - Mr S was paying £500, each month, to his ex-wife to help support their two children who were ages 21 and 17. He also contributed an additional £150 a month to his daughters' university cost of living.
  - Mr S was only required to pay child maintenance until each child finished secondary school. Both of the children had now left secondary school, however, Mr S voluntarily continued to pay £500 a month.
  - Mr S made arrangements for his children, parents and his sister, through the Will, which should have been taken into consideration when deciding on how to distribute the Scheme death benefits.
  - Mr S suffered from a debilitating illness, and he was unable to leave his home in 2020. This meant that towards the end of his life he was cared for solely by Mrs S.
  - It was understood that Mr S completed an EOW nominating Mrs S to receive all of the Scheme benefits.
17. On 11 November 2020, SL wrote to each of Mr S' children and asked if they were financially dependent upon Mr S at his date of death, and if they wished to be considered as potential beneficiaries.
18. On 17 November 2020, Mr S' children responded to SL and confirmed that they wished to be considered as beneficiaries for the payment of any potential benefits. They explained that they were financially dependent upon Mr S at his date of death and reiterated the figures provided by the Solicitors.
19. On 19 November 2020, SL exercised the discretion available to it under the Rules and decided to split the Scheme death benefits between Mrs S and the two children. SL record of the decision explained that:-

- Mrs S was awarded 60% of the value of the death benefits as she was the sole nominee on the EOW and the recipient of the residual funds from Mr S' estate.
  - The two children were awarded 20% each of the death benefits as they were under the age of 23 and financially reliant on Mr S. This was in addition to each of the children being legacy beneficiaries under the Will.
  - It took note of the provisions made under the Will for payments to be made to the children, Mr S' parents and his sister.
  - Mr S' parents and sister were not considered for a share of the death benefits as they were not dependents, nor were they named on the EOW.
20. On 26 November 2020, the Solicitors responded to SL and asked for an explanation of why Mrs S was awarded 60% of the Scheme benefits. They also asked who the remaining 40% was awarded to.
21. On 3 December 2020, SL explained to the Solicitors that:
- it was unable to provide the names of the other beneficiaries;
  - the Scheme death benefits were payable under the discretion afforded to it by the Rules;
  - it was required to take into account any, and all, potential beneficiaries, when making a decision on how to split any benefits;
  - the EOW was not legally binding, though it was considered during the decision-making process; and
  - it said:

“In some instances, the nomination form may have been completed many years prior to the death and the circumstances of the plan holder's life may have changed. In accordance with HMRC rules we also have to consider any dependents that the plan holder may have.”
22. On 7 December 2020, Mrs S submitted a formal complaint in regard to the decision made by SL to split the Scheme benefits. She said, in summary, that:-
- She was now aware that the two other beneficiaries were Mr S' children, one of whom had offered to pay her share of the benefits to Mrs S, in line with the EOW. However, she told each of the two beneficiaries to keep the funds paid to them by SL.
  - Mr S only transferred funds into the Scheme on 27 October 2017, thereafter, completing the EOW, nominating her to receive the benefits in full.

- In March 2020, he did not change, or amend, his EOW after he was reminded of his original nomination. So, it was incorrect for SL to infer the EOW was old, or might have been out of date.
- Mr S made a generous provision in the Will to be awarded to his children upon his death, that being £150,000 each. SL should provide an overview of why it did not follow Mr S' wishes, as set out in the EOW.
- It was unclear if her own financial position was taken into consideration; whether she could afford to pay her mortgage; that his ex-wife, and subsequently his children, benefited from a generous divorce settlement; and that he overpaid on child maintenance for more than four years.

23. On 8 January 2021, SL provided its response to Mrs S' complaint and said:-

- It reviewed the decision to split the Scheme benefits between three beneficiaries and its view remained that the decision was reasonable in light of the evidence collected.
- The Rules allow for SL to pay Scheme death benefits to any individual(s) who met the definition of dependent(s), in such proportions as it decides.
- When the details of all potential beneficiaries had been collected, it reviewed the personal circumstances of the policy holder at the time of their death. This takes into account anyone who is financially reliant on the policy holder.
- While the EOW was considered during the decision-making process, SL was not bound, or legally required to adhere to the nominations made under it. This also included the provisions made under the Will, as the Scheme benefits were discretionary and did not form part of Mr S' estate.
- The process of exercising discretion was not made on the basis of claim/counter claim of the interested parties. It was a decision made on the basis of relevant factors and evidence.
- During the exercise of discretion, SL did not attempt to review the relationship between potential beneficiaries and the policy holder, nor were any moral judgments made.
- None of the information provided by Mrs S was sufficient enough to mean that a different decision should have been reached, or that the decision needed to be re-considered.
- It recognised that a mistake was made in stating that the Scheme could have been old, or that the EOW might have been out of date. It apologised for any distress this may have caused and offered her £200.

24. On 8 January 2021, Mrs S wrote to SL and said that it had only written to Mr S' two children. It did not appear that all of the potential beneficiaries had been contacted. It

seemed unlikely that SL took into consideration, or asked for evidence, in regard to the beneficiaries financial situations. If it had, it would have discovered that Mr S had overpaid on child maintenance by some £12,000.

25. On 15 January 2021, SL informed Mrs S that the ways in which death benefits were handled, under the Scheme, were outlined in the “Guide to death benefits” booklet. It explained that:-

- A “bypass trust” was available to Mr S, and if this option was selected, SL would pay the Scheme benefits into the bypass trust, after Mr S’ death. Thereafter a trustee is appointed who can decide on how benefits are distributed, and to who.
- As Mr S did not setup a bypass trust, it was for SL to decide how to distribute the benefits. The death benefits payable were discretionary, so they did not form part of the Estate, and were not subject to inheritance tax.
- SL was not legally required to follow the instructions of an EOW, or a Will. After conducting a thorough investigation into Mr S’ circumstances, taking into account any and all potential beneficiaries, the decision was made to split the death benefits between three beneficiaries.

26. On the same day, Mrs S said:-

- She was unsure how Mr S would have known about a bypass trust, when his health was quickly deteriorating and no one at SL had informed him of it.
- By paying benefits to Mr S’ two children, SL had reduced the amount that could be payable outside of the estate.
- It took SL two weeks to arrive at a decision on how to distribute the death benefits between herself and the two children. So, she was unsure how thorough the investigation could have been in such a short timeframe.
- It appeared that the additional information that SL was in receipt of, was given more weight in its decision-making process, than Mr S’ own EOW.
- She was not contesting the decision to pay benefits to Mr S’ two children, nor the split of the benefits each of the children was awarded. She was however, contesting the way in which the decision was reached.
- Before a decision was made about the death benefits, she should have been asked if she wanted to provide any additional information/evidence.

27. On 2 February 2021, SL provided its final response to Mrs S complaint and explained that:-

- The Scheme was an advised pension product, which meant that it would only be purchased after the member obtained financial advice. Mr S was advised to transfer into the Scheme.

- Information on the bypass trust was readily available to members and their financial advisers. SL expected all regulated financial advisers to be aware of the bypass trust provision when advising their clients on the best options for them and their family.
- Identifying any dependents was a key component in deciding how the death benefits would be distributed. This included spouse/civil partners, any children under the age of 23, or anyone who was financial dependent/interdependent on Mr S at his death.
- Each of the three beneficiaries all wished to be considered as potential beneficiaries, and each had a strong claim to the death benefits. As she was named as the sole nominee under the EOW, SL agreed that Mrs S held the strongest claim to the Scheme benefits, this is how the decision to award her 60% was reached.
- Mr S' two children, who met the definition of dependent(s), qualified for a share of the Scheme death benefits, so the remainder was split equally between them both. In SL's view, the outcome reached was reasonable, and that the evidence collected was sufficient for it to make an informed decision.
- It understood that she had said Mr S made sufficient provisions for the two children through his Will, meaning that there was no requirement for any provisions from the Scheme. However, SL was at risk of fettering its decision if it did not consider the two children on this basis.
- If she disagreed with SL's decision, she should provide clear evidence demonstrating why.

28. In February 2021, SL made the decision to increase the £200 offered to her in January 2021, to £500. This decision was made after it reviewed the telephone call between Mrs S and SL's bereavement team in October 2020 and noted an insufficient level of customer service.

### **SL's position**

29. The discretion available to SL under the Rules was not determined by the instructions outlined in an EOW. If SL was compelled to implicitly follow an EOW, or if it failed to consider any other potential beneficiaries due to the provision of an EOW, HMRC could take the view that the death benefits formed part of the Estate and could be subject to inheritance tax.
30. SL still required sight of the EOW, and the Will, as both could give SL an idea of the members circumstances and family set-up. It was not for SL to decide whether an amount of £150,000, provided under the Will, was sufficient enough to exclude an individual/s from receiving a portion of the death benefits.
31. The children, and the youngest child's, guardian were informed that they were not named on the EOW, but that they could be considered as potential beneficiaries.



Both of the children wished to be considered as they were dependent on Mr S, as confirmed by the Solicitor.

32. The rationale behind the decision to pay Mrs S 60% of the value of the death benefits, with the remained split equally between the children, was to ensure they did not go against the EOW, without good reason. The maximum that SL would normally pay to an individual/s who proves dependency was 20%. So, 20% was given to each of the children.

### **The Pensions Ombudsman's Position on Death Benefits**

33. The role of the Pensions Ombudsman is to consider whether the process that the Trustee or appropriate decision-maker followed in exercising its discretion was reasonable. There are some well-established principles which a decision-maker is expected to follow in exercising its discretion. Briefly, it must take into account all relevant matters and no irrelevant ones.
34. The decision-maker must not make a perverse decision, that is a decision which no reasonable decision maker, properly directing itself, could arrive at in the circumstances. If the Pensions Ombudsman is not satisfied that the decision has been taken properly, he can ask the decision-maker to look at the matter again. However, the Pensions Ombudsman will not usually replace the decision with a decision of his own or say what the subsequent decision should be.
35. A decision-maker must consider and weigh all the relevant evidence, but the weight to attach to any piece of evidence is for the decision-maker to decide. In fact, a decision-maker could, if it wished, attach no weight at all to a piece of evidence. The only requirement is that the evidence is considered.

### **Adjudicator's Opinion**

36. Mrs S' complaint was considered by one of our Adjudicators who concluded that no further action was required by SL. The Adjudicator's findings are summarised between paragraphs 37 and 48.
37. Rule 8(3) of the Rules provided that, in the event of a policy holders death, SL was required to exercise discretion in the payment of the Scheme death benefits. Before this could occur, SL needed to identify any potential beneficiaries of Mr S. As explained in paragraph 6 above, a beneficiary is chosen from the list of individuals laid out under rule 8(3), between (a) and (e).
38. Any identified beneficiaries under rule 8(3)(b) were classed as dependents. Dependent(s), under the Rules are given the same meaning as under paragraph 15, schedule 28 of the 2004 Act. This included a spouse/civil partner, any children under the age of 23, or anyone that was financially reliant/interdependent on the policy holder.

39. The Adjudicator was satisfied that under the Rules, SL was the appropriate decision maker, and that the payment of any death benefits were made in accordance with the discretion available to SL under the Rules. The recipients of the death benefits all met the description of a “dependent”. Consequently, this element of the decision-making process could not be challenged, nor would it be successful if it was.
40. Broadly, in a death benefit case the decision-maker was required to act within the scope of its powers. It should seek to identify all potential beneficiaries and then collect sufficient information about their personal and financial circumstances to put itself in a position to make a decision about who to pay the benefits to. The level of enquiry which was appropriate could vary depending on the facts and circumstances of the case. In more complicated cases, a higher level of enquiry may be appropriate. It is for the decision-maker to weigh up the evidence provided and available.
41. After Mr S’ death, SL made the decision to split the Scheme death benefits between Mrs S and Mr S’ two children. Mrs S was awarded 60% of the fund value and the two children were each awarded 20% of the remaining value. In reaching its decision, SL took into account the following information:
- the list of beneficiaries detailed in the Will, and the subsequent provisions for each beneficiary;
  - the EOW that listed Mrs S as the sole nominee for the Scheme death benefits;
  - the two children were under the age of 23 and met the definition of dependent under the Rules;
  - the two children were financially dependent on Mr S up until his death as he continued to pay £500 to his ex-wife for the children, despite not being required to.
42. It was appreciated that after Mr S’ children finished secondary school, he was no longer required to pay £500 to their mother, but he continued to do so anyway. And that he paid his ex-wife a generous divorce settlement. The Adjudicator noted these points but explained that they were irrelevant factors that did not need to be considered when SL made its decision to split the death benefits.
43. SL was not required to contact each and every potential beneficiary, all that was required was that the potential beneficiaries were identified. SL was well aware of all potential beneficiaries due to the provision of the Will and the information it contained. However, it was felt that SL could have taken the extra step to contact Mrs S to query her own financial circumstances, and to ask how much she might receive from the Estate, but it did not.
44. Overall, regardless of Mrs S circumstances, and the provisions under the Will, the children were eligible beneficiaries and met the definition of dependents under the Rules. SL was required to consider the two children as potential beneficiaries for any death benefits. While SL could have requested more information regarding Mrs S’

financial situation, it is unlikely that receipt of this information would have changed the outcome.

45. It was understandable that Mrs S believed she would be entitled to the entirety of any death benefits as she was listed as the only beneficiary on the EOW. However, the EOW did state that it was “not binding” and that SL ultimately “will decide who should receive the death benefit, taking into account all relevant matters, including your expression of wish”.
46. There was no legal requirement for SL to adhere to, or completely with, an EOW. That being said, to completely disregard an EOW could have been seen as perverse depending upon the circumstances. However, SL did consider the EOW, it is just that an equal amount of weight was placed on the EOW, as well as the fact the two children being dependents, that were financially reliant on Mr S.
47. The Adjudicator listened to the recording of a telephone call between Mrs S and a SL representative from 26 October 2020 and agreed that the service fell woefully short of what any individual, experiencing a difficult time such as the death of a spouse, would expect. SL’s offer of £500 was, in the Adjudicator’s view, fair and reflected any payment the Ombudsman would recommend.
48. Based on the evidence provided and available, the decision to split the benefits between Mrs S and the two children was reasonable. Mrs S was provided a greater share of the benefits as the EOW did originally nominate her as the sole beneficiary. However, benefits were also paid to the children due to their age and financial dependency on Mrs S. Even if SL had done more, by making further enquiries about Mrs S’ financial circumstances, it was unlikely that this would have been enough to change the outcome. The outcome arrived at by SL was not outside the scope of what any other reasonable decision maker, appropriately directing itself, would arrive at.
49. Mrs S did not accept the Adjudicator’s Opinion, and the complaint was passed to me to consider. Mrs S provided her further comments, which are summarised below:-
  - Prior to Mr S’ death, he made specific provisions for each named beneficiary under the Will, taking into account each recipients financial welfare. He did not amend his EOW, even after he was told by SL, on 13 March 2020, who was named on his October 2017 EOW. This demonstrated that his wish was for her to receive the entirety of the Scheme death benefits.
  - It was unclear how SL considered Mr S’ and her own personal circumstances, in deciding how to split the death benefits. This was because SL did not contact her, or the Solicitors, for additional information. If SL had, she could have fully explained the financial circumstances of the children and that she was due to give £200,000 to Mr S’ mother, father and sister. It appeared that the extent of SL investigation was obtaining confirmation from the children that they wished to be considered a beneficiaries for the Scheme death benefits.

- It was her view that SL did make a moral judgment during its decision making as it believed that she would be sufficiently provided for by Mr S' Estate. It was unclear why consideration was given to when she met Mr S, and when they got married.
- She did not agree that the percentage split of the death benefit was logical, nor had SL provided a sufficient answer explaining how it arrived at the split that it did. It was unclear why each of the children were each paid 20% of the death benefits when one of them was 21 and the other was 17.
- The poor service that she received from SL was attributable to more than just the telephone call that took place on 26 October 2020. She received poor service throughout her time corresponding with SL. At no point was she treated as a vulnerable individual following Mr S' death.

### **Ombudsman's decision**

50. Mrs S' complaint relates to the way in which SL reached the decision to split the death benefits between her and Mr S' two children.
51. Rule 8(3) provides SL with the necessary discretion to decide how a death benefit should be paid in the event of a policy holders death. Rule 8(3)(a) to (e) provides a list of potential beneficiaries that SL should consider in the exercise of this discretion. Beneficiaries are defined by the Rules as "...a Dependent or a Nominee or any other person chosen by the Scheme Administrator from the list of beneficiaries described in Rules 7.7 and 8.1...". Dependent is given the same meanings as under paragraph 15, schedule 28 of the 2004 Act (see Appendix below).
52. In accordance with the Rules, SL identified 10 potential beneficiaries, via the Will; Mrs S, the two children; Mr S' mother and father; Mr S' sister; Mr S' former father and brother-in-law; and Mrs S' two nieces. Out of the 10 beneficiaries, only three were considered to be financially dependent upon Mr S at his death, Mrs S and the two children. Mrs S by marriage, and the children as they were below the age of 23 and still financially reliant on Mr S.
53. Overall, I find that SL was the appropriate decision maker, in line with the Rules, and that each of the individuals identified as beneficiaries and dependents, were correctly identified in line the Rules and applicable definitions. As the Adjudicator has said, the decision cannot therefore be challenged on this basis. There are basic principles that must be taken into account when an exercise of discretion made. These are referred to as "the Edge Principles". Generally, a decision maker properly directing itself must: consider all the relevant evidence, and be satisfied that it holds enough evidence to form a decision that is not perverse; decide how much weight to apply to each piece of evidence, this can include, at times, applying no weight at all; and ask itself the correct questions.
54. I appreciate that Mrs S does not believe that SL conducted a sufficient investigation before it decided to split the death benefits between Mrs S and the children.

55. It might help if I explain that SL is not required to contact any and all potential beneficiaries, it is only required to identify any potential beneficiaries, which I have found it did. It was then open to SL to request as much information, or as little, as it felt it needed to reach a reasonable outcome. Based on the evidence available, I am satisfied that SL was in receipt of sufficient information, in order for it to proceed with making a decision.
56. I agree with the Adjudicator that it might have been beneficial for SL to have enquired as to how much Mrs S might receive from the Estate, or how much other individuals might receive. However, it was for SL to decide whether it had sufficient information and how much weight to attach to any relevant consideration and it was not irrational or perverse for it to decide not to make inquiry as to what Mrs S might receive from the Estate and not so unreasonable that its decision should be set aside. However, it would be relevant to consider the dispersal of an Estate when deciding any possible percentage splits of death benefits for beneficiaries/dependents.
57. I note Mrs S' comment about whether it was logical to pay the two children an equal amount of the death benefit, that being 20% each, when they were different ages. I find that it was open for SL to take such a factor into consideration, if it did, any resultant decision would have been in the range of reasonable conclusions. However, it was also open for SL to consider this factor, but not apply any weight to it. Mrs S was awarded 60% in recognition of the weight applied to the EOW the remainder of which was split between the children, an outcome which I view as within the range of reasonable decisions SL could make.
58. I appreciate that Mrs S is unhappy that in spite of Mr S' wishes the EOW was not fully adhered to. However, the EOW does make clear that it is not binding, and that SL held the ultimate discretion in how any benefit would be paid. I find that to pay the death benefits in line with the EOW, discounting any other information provided/available, could result in SL not taking into account all potential beneficiaries/dependents. To follow the EOW so rigidly, without question, would also be seen as SL fettering its discretion, which could lead to a perverse outcome.

59. Overall, I agree that based on the evidence available and considered by SL, the decision to apply some weight, but not all, to the EOW was reasonable and did not amount to a perverse decision. SL's decision was supported by the Rules with sufficient information available, so there is no need to remit the matter back to SL for re-consideration. Mrs S should contact SL to accept the £500 offer made in recognition of the service Mrs S had received.
60. I do not uphold Mrs S' complaint.

**Camilla Barry**

Deputy Pensions Ombudsman

7 May 2025

## Appendix

### Extracts of, Schedule 28, the Finance Act 2004, as amended.

“15 (1) A person who was married to (, or a civil partner of,) the member at the date of the member’s death is a dependant of the member.

(1A) If the rules of the pension scheme so provide, a person who was married to ( or a civil partner of) the member when the member first became entitled to a pension under the pension scheme is a dependant of the member.]

(2) A child of the member is a dependant of the member if the child—

(a) has not reached the age of 23, or

(b) has reached that age and, in the opinion of the scheme administrator, was at the date of the member’s death dependant on the member because of physical or mental impairment.

(2A) A child of the member is a dependant of the member if the child—

(a) has reached the age of 23, and

(b) is not within sub-paragraph (2)(b).

(2B) But this paragraph, so far as it has effect for the purpose of determining the meaning of “dependant”—

(a) in paragraphs 16 to 17 and 27A, and

(b) in paragraph 18 of Schedule 29,

has effect with the omission of sub-paragraph (2A).

(3) A person who was not married to (or a civil partner of) the member at the date of the member’s death and is not a child of the member is a dependant of the member if, in the opinion of the scheme administrator, at the date of the member’s death—

(a) the person was financially dependent on the member,

(b) the person’s financial relationship with the member was one of mutual dependence, or

(c) the person was dependant on the member because of physical or mental impairment.”