

## Ombudsman's Determination

Applicant	Ms S
Scheme	Royal London Pension Plan ( <b>the Plan</b> )
Respondents	Royal London

## Outcome

1. I do not uphold Ms S' complaint and no further action is required by Royal London.

## Complaint summary

2. Ms S has complained that Royal London did not consider her to be a beneficiary following Mr H's death. She has said that the process Royal London undertook was unfair, and this caused her distress.

## Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. Mr H was a member of the Plan, under which Royal London had the power to decide to whom to pay benefits. The Plan booklet stated:

"The rules give us the power to decide which of the Beneficiaries will receive the Sum Assured on your death. This ensures that, under current legislation, the payment does not become liable to taxation. You can, at any time, inform us that you wish one or more named individuals to receive the Sum Assured. You may subsequently tell us to change or cancel your wishes. If you die, we will always take your wishes into account but we do not guarantee to follow them".

5. During his life, Mr H did not complete an expression of wish form.
6. In 2014, Mr H and Ms S began a relationship.
7. On 31 October 2019, Mr H died intestate. Prior to his death, Mr H and Ms S had become engaged and were living together.

8. At the time he died, Mr H was in employment and jointly liable for the mortgage on the property of his ex-partner, Ms Y, who was the mother of his two children.
9. After Mr H died, Royal London contacted all potential beneficiaries of the Plan which included Ms Y, and Mr H's two adult children.
10. On 11 November 2019, Royal London wrote to Ms S. It stated that it had been informed that she was Mr H's co-habiting partner at the date of his death. It advised her that, to consider her as a beneficiary of the Plan, she would need to provide evidence of her financial dependency on Mr H. Royal London provided examples which could show financial dependency such as, joint bank statements, joint council tax bill, joint mortgage/rent agreement, joint utility bills, and any similar forms of evidence.
11. On 25 November 2019, Royal London wrote to Ms S. It stated that, as Mr H and Ms S were not married and there was no Will, the benefits of the Plan would not be payable to her. It informed her that should she wish to pursue a claim for benefits, she could be considered as a beneficiary using the discretionary powers under the Plan Rules. Royal London advised that to enable it to use its discretion, she must demonstrate that her relationship with Mr H at the date of his death was one of mutual financial inter-dependence.
12. On 4 December 2019, Ms S wrote to Royal London in response to its letter dated 25 November 2019. She informed it that she wished to pursue a claim as a potential beneficiary of the Plan. She advised Royal London that she and Mr H were engaged to be married at the time of his death, they were living together and had a financial agreement with regard to the household bills which included council tax, utilities, internet, food shopping and car insurance.
13. On 5 December 2019, Royal London wrote to Ms S. It stated that it had received documentation from her and would take ten working days to assess her request.
14. On 6 December 2019, Royal London wrote to Ms S stating that the evidence provided did not fully demonstrate financial inter-dependency and it would require further evidence to support any potential claim on this basis. It asked her for further information, such as whether she had a joint bank account with Mr H, if there were further bills Mr H paid at her address, and if she was responsible for Mr H's estate. Royal London also informed her that it had been contacted by other potential beneficiaries and was awaiting information from them.
15. On 15 December 2019, Ms S responded. She stated that she required Royal London to look at the information she had provided and did not give "lawful consent" to be excluded as a beneficiary of the Plan. She also provided a copy of a letter from the electoral register dated 27 August 2019, in the names of Mr H and Ms S.
16. On 20 December 2019, Royal London wrote to Ms S and asked for a response to the questions it asked in its letter dated 6 December 2019. It advised her that, in the absence of a Will, it would usually pay the next of kin, but, to enable it to use its

discretionary powers it required more evidence that Ms S was in a relationship of mutual financial interdependence with Mr H. It asked Ms S to include any evidence of monies transferred between their accounts.

17. On 24 December 2020, Royal London wrote to Ms S and advised that it had received duplicate copies of documentation already received on 6 December 2020, leading it to conclude that these letters had crossed in the post. It asked Ms S to respond to its letter dated 20 December 2020, and enclosed a copy.
18. On 30 December 2019, Ms S responded to Royal London. She included a council tax bill in the joint names of Mr H and Ms S dated 2019/20 and a motor trade policy in their joint names. She informed Royal London that she and Mr H had no joint bank accounts. Ms S advised that due to the emotional distress she suffered as a result of the sudden loss of Mr H, his family had arranged the funeral, the expense of which was covered by two other policies held with Royal London.
19. On 10 January 2020, Royal London wrote to Ms S following a phone call between the parties on the same day. During the phone call Ms S complained about her experience of the process of being considered a beneficiary. She informed Royal London that she was distressed by its correspondence requesting proof of her dependency. In the letter it sent, Royal London informed Ms S that her complaint was being investigated.
20. On 14 January 2020, Royal London contacted Ms S. It asked her if she was able to provide information on how Mr H's funeral was paid, the value of his estate and if he had any life cover on his outstanding mortgage.
21. On 6 February 2020, Royal London wrote to Ms S and informed her that it did not consider her a beneficiary of the Plan and would not be making a payment to her. It stated that a decision was made to pay the benefits of the Plan to Mr H's two children.
22. On 6 February 2020, Royal London also wrote a further letter to Ms S in response to her complaint. It informed Ms S that it had considered the evidence and would not be paying benefits to her. It apologised for any undue upset caused to her and assured her that any letters sent to her requesting proof of her dependency were made with the best intention, to allow her a fair opportunity to be considered as a beneficiary.
23. On 10 February 2020, Mr Y, on Ms S' behalf, contacted Royal London by telephone and requested detailed information regarding how it had made its decision including a full Data Subject Access Request (**DSAR**). Mr Y was a relative of Ms S who acted as her representative.
24. On 12 February 2020, Royal London wrote to Ms S in response to the telephone call made by Mr Y. It informed her that the DSAR requirements only applied to persons who were alive, and it was unable to divulge any data regarding the other parties involved without their permission. It also stated it was not required to divulge names of individuals who represented Royal London in making the decision.

25. On 15 February 2020, Ms S wrote to Royal London to raise a further complaint regarding the service she received. She complained that the letter dated 6 February 2020, which informed her that she was not a beneficiary, was not signed. She reiterated her request for information under a DSAR, including detailed information regarding the basis of the decision made by Royal London, and the qualifications of the people who made the decision.
26. On 19 February 2020, the Chief Executive Officer (**CEO**) of Royal London responded. He informed Ms S that her complaint was being investigated and that he would also be updated on all developments regarding her complaint.
27. On 18 March 2020, Royal London wrote to Ms S in full response to her complaint. In summary:
  - It apologised that a letter issued to her was unsigned and acknowledged that this created a poor impression. It advised that feedback would be given to the appropriate manager.
  - It advised that it had a duty to consider all factors when assessing the payment of benefits, though the main factor was evidence of financial dependency.
  - It stated that while she provided some documentation to support her claim, it received insufficient evidence from her to support any financial dependency. As a result, it decided not to include her as a beneficiary of the Plan.
  - It advised that the DSAR requirements only applied to persons who were alive and she was not allowed access to the data it held for any other third parties.
  - It stated that it was not required to provide details of the qualifications of the people who made the decision to award benefits, but it confirmed that they were extremely experienced in their roles and knew the appropriate rules to enable them to make such decisions.
  - It confirmed that its position not to award her any benefits had not changed.
28. On 20 January 2021, Ms S complained to The Pensions Ombudsman (**TPO**).
29. On 29 October 2021, TPO requested a Formal Response from Royal London with regard to Ms S' complaint.
30. On 7 December 2021, Royal London provided its Formal Response. In summary, it stated that it had contacted all identified beneficiaries and used its discretion to determine the beneficiaries of the Plan, as it was entitled to under the Plan Rules. It informed TPO that it considered Ms S' financial dependency on Mr H, and accepted they shared household bills. However, it argued that it was reasonable to believe that such household bills he may have contributed to would reduce upon his death. Therefore, no actual dependence would remain for Ms S.

## **Caseworker's Opinion**

31. Ms S' complaint was considered by one of our Caseworkers who concluded that no further action was required by Royal London. The Caseworker's findings are summarised below:-

- Under the Plan Rules, Royal London had full discretion regarding the payment of benefits upon the death of a member.
- While Royal London was not obliged to include all potential beneficiaries in any payment, it was required to properly consider all potential beneficiaries. Royal London advised TPO that the main factor it considered when assessing potential beneficiaries was evidence of financial dependency.
- In the Caseworker's view, Royal London considered that Ms S may have been financially dependent on Mr H, and it also accepted the sincerity of Mr H and Ms S' relationship of mutual trust. Royal London contacted Ms S several times during November and December 2019, to request evidence of her financial dependency. It acknowledged that the evidence she provided did include shared bills, but it argued that any bills Mr H contributed to would reduce upon his death and no actual dependence would remain for Ms S.
- Royal London considered the evidence Ms S submitted and explained to her on several occasions why it did not consider it was sufficient to fully demonstrate financial dependency. It also gave Ms S the opportunity to submit further evidence and provided examples of the kind of evidence it would consider.
- Ms S did not provide any further evidence which demonstrated her financial dependency and Royal London concluded that in the absence of further specific evidence, her situation did not meet the test of financial dependency.
- In the Caseworker's opinion, Royal London followed a fair and proper process when making its decision. It explained to Ms S that, in the absence of a Will, it would usually make payment to the next of kin. It decided that Ms S did not provide sufficient evidence of financial dependency and did in fact award the benefits to Mr H's next of kin, which was in accordance with the Plan Rules.
- The Caseworker noted that Mr H's sudden death must have been particularly distressing for Ms S. However, the Caseworker was of the view that Royal London did follow a fair and equitable process in gathering information about potential beneficiaries. She could not find fault with Royal London's decision-making process and acknowledged it had to make its decision without any indication of Mr H's wishes.

32. Ms S did not accept the Caseworker's Opinion and the complaint was passed to me to consider. Ms S did not provide any further comments except to state that she objected to the Caseworker's Opinion.

## **Ombudsman's decision**

33. My role is not to substitute my decision for that of Royal London. I cannot set aside its decision just because I may have reached a different one or given more, or less, weight to any information provided. That is the responsibility of Royal London in the exercise of its discretion.
34. In my view, Royal London fairly considered all the information received and it is entitled to place as much weight to each piece of evidence as it deems fit. It is not for me to decide for Royal London how it should treat the information before it, as long as it has properly taken account of all relevant information, and discounted irrelevant information. In this case I find that it acted appropriately and considered all relevant but no irrelevant information.
35. Further, contrary to Ms S' view, Royal London is not bound to share confidential information it has received when considering how to exercise its discretion, nor should it breach confidentiality by sending copies of it to other potential beneficiaries.
36. I believe that by awarding benefits to Mr H's children, it made a decision that no reasonable body of decision makers would regard as perverse. Accordingly, I do not find that there are grounds to set aside the decision.
37. I do not uphold Ms S' complaint.

**Anthony Arter CBE**

Deputy Pensions Ombudsman

12 April 2024

## **Appendix**

### **7.8 Benefits on death before Retirement**

7.8.1 If you die before Retirement, we will use the Personal Pension Fund to pay a lump sum for the benefit of one or more of your Beneficiaries in accordance with the Rules. We will decide how to make this payment in the manner described in clause 10.3. If you die after phased retirement has commenced, this clause applies to the remaining part of the Personal Pension Fund.

### **10. Benefits**

10.3 The Rules give us the power to decide which of the Beneficiaries will receive the Sum Assured on your death. This ensures that, under current legislation, the payment does not become liable to taxation. You can, at any time, inform us that you wish one or more named individuals to receive the Sum Assured. You may subsequently tell us to change or cancel your wishes. If you die, we will always take your wishes into account but we do not guarantee to follow them