

Ombudsman's Determination

Applicants	Mrs E and Mr R
Scheme	ThyssenKrupp UK Plc 2006 Retirement and Death Benefits Plan – Hammond & Champness Section (the 2006 Plan)
Respondent	Pitmans Trustees Limited (the Trustees)

Complaint summary

Mrs E and Mr R are represented by Mr N (the son of Mrs E and brother of Mr R). Mrs E and Mr R complained that the Trustees have not made a proper decision in the distribution of a lump sum benefit following the death of Mr F.

Summary of the Ombudsman's decision and reasons

Mrs E's and Mr R's complaint should be upheld because the Trustees failed to properly consider all the potential beneficiaries in reaching their decision regarding the distribution of the lump sum benefit following the death of Mr F. Therefore, the decision should be reconsidered. The Trustees should also pay Mrs E and Mr R £500 each in recognition of the significant distress and inconvenience caused.

Detailed Determination

Material facts

1. 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.
2. In 1974, Mr F and Mrs E married. They had three children: Mr L (born in 1974), Mr N (born in 1976) and Mr R (born in 1981). Mr F and Mrs E later separated but did not divorce.
3. Mr F was employed by ThyssenKrupp Elevator UK.
4. On 14 February 2004, Mr F signed and completed a Nomination of Beneficiaries form (**the 2004 Nomination Form**) in respect of his membership of a separate pension arrangement, the Thyssen Lifts & Escalators 1992 Pension Plan (**the 1992 Plan**). Beneath the statement: "While I understand that the application of certain lump sum benefits on my death is at the complete discretion of the Trustees, I would like the

person or persons named below to be considered as possible recipients.” Mr F gave the name and address of Ms D. In the “relationship” box he wrote “Partner”, and in the “% of benefit” column he wrote “100%”.

5. Later, Mr F became a member of the 2006 Plan. He did not complete a nomination form in respect of his membership of the 2006 Plan.
6. Mr F died on 19 November 2016, aged 62. He was at that point a deferred member of both the 1992 Plan and the 2006 Plan.
7. On 23 November 2016, Mr F’s death certificate was signed by the registrar. On the death certificate, Ms D was recorded as the “Widow of deceased”, and Mr F the “Husband of Ms D”. Mr F’s occupation was recorded as ‘Senior Site Manager’ and Ms D’s occupation as ‘Customer Assistant’.
8. On 25 January 2017, the Trustees received the 2006 Plan’s Beneficiaries Data Form (**BDF**) completed by Ms D. She enclosed a copy of the death certificate.
9. In section 2 of the BDF, in answer to the question ‘Is there a Legal personal representative?’, Ms D did not select ‘Yes’ or ‘No’, but instead under ‘If Yes, complete fields below...’ entered her name and address and next to ‘Relationship to deceased’, entered “Common-law wife”.
10. In section 4, in answer to the question ‘Is there a Spouse/Civil Partner/partner’, Ms D entered “Yes”. Under ‘If Yes, complete fields below...’ Ms D entered her name, address, date of birth and national insurance number. In answer to the question ‘If a partner, please specify the duration of the relationship’, she wrote “31 years” and next to ‘Original marriage/civil partnership certificate attached’ she put “Not applicable”.
11. In ‘Section 6 - Are there any other dependants or relatives?’, Ms D listed Mr F and Mrs E’s three sons and their respective dates of birth (each was over the age of 18 at the time). She also listed Mr F’s brother and sister, both adults. She entered “Not known” in the address section for each of these five relatives, and in answer to the question ‘Was financially supported by deceased?’ she wrote “No” for all five.
12. In the Declaration section of the BDF, Ms D stated her relationship to the deceased as “Common-law wife”.
13. The Trustees recorded the documents on their ‘Sight and scanning of Original Certificates’ form as ‘Spouse’s birth certificate’.
14. In early 2017, a refund of contributions totalling £1,557.94, in respect of the 2006 Plan’s death benefits, was paid to Ms D.
15. Separately, on 27 January 2017, solicitors acting for Mrs E, Mr N, Mr R and Mr L wrote to Ms D regarding the death certificate which described her as Mr F’s widow. The letter said, “As you know, this is not true, you are not Mr F’s widow.” It said Mr F was still married to Mrs E at the time of his death. The letter also referred to a letter purportedly from Ms D which contained “various false allegations... and threats to

slander” Mr N and Mrs E and concluded “...we would be willing to grant you some allowance on the basis that you will still be grieving the death of your long term partner.”

16. On 29 January 2018, HM Passport Office, General Register Office (**GRO**) responded to a complaint from Mr N regarding the incorrect information on the death certificate and why Ms D was recorded as the widow of the deceased. GRO said there was no law to say the death informant was required to evidence with documentation the information they gave, so the registrar would not query it. It said it was regrettable if false information was deliberately given.
17. In February 2020, Mrs E and Mr N became aware of the existence of the 2006 Plan.
18. In April 2020, Mercer, the scheme administrators, wrote to Mr N regarding the 2006 Plan. It asked if Mrs E was still married to Mr F at his date of death and if they were separated. Mercer also requested a copy of Mr F's death certificate which Mr N provided.
19. On 11 May 2020, Mercer wrote to Mr N and said there were no further benefits payable from the 2006 Plan following Mr F's death.
20. On 6 June 2020, Mr N wrote to Mercer. He asked if any death benefits had been paid in respect of the 2006 Plan. Mr N confirmed Mrs E was Mr F's widow and expressed concerns about Ms D stating that she was married to Mr F at the time of his death, which led to her being recorded as Mr F's widow on the death certificate.
21. On 7 August 2020, the Trustees of the 2006 Plan responded to Mr N's email to Mercer. The Trustees said:

“The Trustees paid a discretionary benefit in accordance with the death benefit provisions of the Section (relevant extracts attached) based on the information provided in the [BDF] and [Mr F]'s original death certificate, the amount of contributions having been paid to the Section by [Mr F] being £1,557.94. No spouses pension was payable.

The relevant sections of the Plan's legal documentation that relate to this are outlined below:

Rules 17.1 & 17.2 of the Hammond & Champness Section Rules dated 30 June 2009.

17. BENEFITS ON DEATH OF DEFERRED MEMBER WITH PRESERVED BENEFITS

Lump sum on death of Deferred Member

17.1 If a Deferred Member dies before his preserved pension commences to be paid, there shall be payable from the Section in accordance with Rule 9 of the General Rules (Discretionary Trusts) or sub-Rule 11.2 of these Rules if the exception mentioned there applies a lump sum equal to the total of his basic

contributions to the Section together, if the Trustees so decide, with interest at such rate as they may from time to time determine.

Spouse's pension on death of Deferred Category A or B Member

17.2 If a Deferred Category A or B Member dies before his preserved pension commences to be paid and is survived by a spouse to whom the Member was married at the date of his death, the Member's spouse shall be entitled to a pension from the Section.

Rule 9.3 of the General Rules adopted under the Definitive Trust Deed dated 17 August 2006 (this is referred to in Rule 17.1).

In the case of a Member who at the date of his death left no nominated individual or left no nominated individual who survives him or who left no nominated individual who has been accepted by the Trustees, or if the Trustees take account of but decide not to follow the nomination form then Trustees may decide to pay or apply the whole or any part of any lump sum death benefit payable in accordance with this rule from the relevant Section to or for the benefit of all or anyone or more of the Spouse, Civil Partner, Dependants and Relatives of a Member living or born after his death, and/or to his personal representatives, in such proportions as the Trustees decide. The Trustees may in exercise of the power contained in rule 9.1 pay or transfer the lump sum (or any part of it) to trustees (including themselves), to be held on such trust (including discretionary trusts) for any one or or of the Spouse, Civil Partner, Relatives and Dependants of the Member in such shares as the Trustees decide. The Trustees may confer on those trustees any powers and discretions (including the power to charge remuneration) as they think fit.

The definition of "Dependant" which is set out in Appendix C of the Definitive Trust Deed dated 17 August 2006 (this is referred to in Rule 9.3)

"Dependant" means for the purposes of clause 20 of the Trust Deed and rule 9 of the General Rules in relation to a Member any person who immediately before the Member's death was in the Trustees' opinion financially dependent on him or in a financial relationship of mutual dependence with the Member. It includes any person who in the opinion of the Trustees was at the date of the Member's death dependant on the Member because of disability. It excludes a Spouse or a Civil Partner but includes a child (as defined in the 2004 FA)."¹

22. On 27 September 2020, Mr N complained to the Trustees, under the 2006 Plan's Internal Dispute Resolution Procedure (**IDRP**), on behalf of Mrs E and Mr R. He said the decision who to pay death benefits to was taken based on incorrect and incomplete information. He asked why Mrs E, as Mr F's legal spouse, and Mr R, who

¹ Note that this does not, entirely, match the definition of "Dependant" that this office was provided with as a part of the response to Mr N's complaint, and which is set out in the Appendix. The Adjudicator subsequently confirmed that the version set out in the Appendix is the correct definition to be used for the purposes of this complaint.

is disabled and unable to work, were not considered as dependants by the Trustees, whereas Ms D was. The complaint letter also said:

“My father was registered as Mr R’s primary transport provider with the DVLA for many years. This was in place up to around 2012. Post this my father worked away so could not supply the level of non-financial support (transport giver etc) but would supplement this with additional financial support (e.g. money for taxis etc).

...

...it is my submission that the current relationship that [Ms D] had with [Mr F] did not start until approximately 2002 (albeit they were involved prior to 1992)...

...Although [Mr F]’s last relationship with [Ms D] was one of approximately 14 years, and at times it was cohabitation relationship, I dispute that they had a relationship of that type in November 2016 or in the preceding months.

...[Mr F] was not financially dependent on [Ms D]. This is because he earned approximately three times her salary, worked away most of the time and his employer paid for his accommodation, expenses and company car.

...Has the Trustee verified evidence of how household costs were shared between [Mr F] and [Ms D]...?”

23. In October 2020, the Trustees wrote to Mr N and agreed to carry out a full review of the decision made. They confirmed Mr F was a Category E “Works” member of the 2006 Plan. Mr N supplied contact details for Mr R, Mr L and Mrs E and the Trustees sent them BDFs to complete and return.

24. On 6 November 2020, the Trustees wrote to Mr N responding to queries about the BDFs which had recently been sent out to Mrs E, Mr R and Mr L and the terms ‘Spouse’, ‘Partner’ and ‘Dependants’ in the 2006 Plan Rules (**the Rules**). They said spouse was defined as “a member’s widow or widower”, that there was no definition of partner, and for dependant:

“This includes anyone *“in the Trustees opinion, financially dependent on him or in a financial relationship of mutual dependence with the member.”* There are no specific criteria set that define the extent of a financial relationship.”

25. The BDF’s were completed and returned by Mr N (on behalf of himself and Mr R), Mrs E and Mr L.

26. In Mrs E’s BDF, in Section 4, in answer to the question ‘Is there a Spouse/Civil Partner/partner?’, Mrs E circled ‘Yes’ and ‘Spouse’. Under ‘If yes, complete fields below...’ Mrs E entered her name, address and date of birth. Next to ‘If a partner, please specify the duration of the relationship’ she wrote “n/a” and in answer to the question ‘Were they separated or living apart from the deceased at date of death?’ she wrote “n/a”. In answer to the question ‘Was financially supported by deceased?’ Mrs E answered “Yes” for Mr R. Elsewhere she wrote: “Mr R’s dad always looked

after him financially where possible, took him to hospital appointments, X-rays, eye tests...”

27. In Mr N's BDF, in answer to the question 'Was financially supported by deceased?' he answered "Yes" for Mr R. Elsewhere in the BDF he said:

"It is not denied that my father had a relationship with [Ms D] for several years. However, it was not '30 years', it was never a marriage and it was not 'cohabitation' in the end. In the end they habited in separate bedrooms and my father working away as much as he did was partially because of it.

To secure death benefits from my father's employer, [Ms D] deliberately used what my family considers to be an old, out of date Will from 1988/89...

It was created as part of a shared flat purchase in 1988/89.

Mr R is in receipt of higher rate disability benefits...and now lives in supported accommodation, although this is only since February 2016. Before 2016 Mr R Lived with my mother with support from my father. The reason Mr R needed to secure supported living in 2016 was because my mother was in her mid-60s and not able to fully support Mr R's needs as she used to. My mother and father decided in 2014 that for the good of Mr R's long-term future, he should move into supported accommodation."

28. With his BDF, Mr N enclosed an 'Assessment for Priority in Rehousing' from December 2014 for Edinburgh Council. This said:

"[Mr R] was in a Road Traffic Accident...when he was a child. [Mr R] has Spastic Dystonia of the upper limbs, secondary to a brain injury sustained in a childhood accident.

... [Mr R] has reduced mobility and uses crutches to mobilise. [Mr R] cannot walk too far and when going out either used handicabs, taxis or bus.

[Mr R] has had several falls outside [and] is now only going out when he has support.

[Mr R] will require assistance with activities of daily living."

29. On 3 March 2021, the Trustees responded under stage one of the IDRP. The Trustees said they had carried out a full review of their original decision. Having considered all the original evidence as well as the subsequent evidence provided, the Chair of the Trustees agreed with the decision to pay the refund of contributions to Ms D. The complaint was not upheld.

30. In January 2022, the Trustees issued their formal response to The Pensions Ombudsman (**TPO**). The following are extracts from their formal response:

"[Mr F] did complete a Nomination of Beneficiary Form dated 14th February 2004 in respect of another arrangement historically supported by the sponsor that stated

100% payable to [Ms D]. The Trustees were able to obtain a copy of this as part of carrying out a full investigation, and it was one element of the evidence considered within their deliberations.

Although the erroneous death certificate was provided (stating [Ms D] as spouse rather than partner), this was only relied on to establish the fact of death.

The Trustees made the decision to honour the Deceased Member's request to pay the benefit in full to [Ms D] as:

- a. the discretionary death benefit due was £1,557.94 so proportionality was appropriate;
- b. [Ms D] had confirmed cohabitation with the deceased; and
- c. The other potential beneficiaries provided by [Ms D] were all grown up children.

The review sought additional information from [Mr N], his mother and his brothers to establish whether they met the criteria of dependency. Other than additional personal details about each of these potential beneficiaries, including evidence of [Mr R]'s disability, no evidence of dependency was provided. After several months of correspondence, the information received was re-considered and the original conclusion was upheld. There was no compelling justification for settling to anyone other than [Ms D]...

We note that [Mr N] has confirmed in his paperwork that [Ms D] did cohabit with the deceased and did not pay rent.

In addition, [Mr N] stated that his father provided transport to [Mr R] prior to 2012, after which time he was not living nearby. This was not considered relevant evidence of dependency at the time of death."

31. In February 2022, commenting on the Trustees' formal response to TPO, Mr N said that he did not confirm that Mr F and Ms D were cohabiting:

"This is wholly incorrect and misleading. I specifically stated that [Ms D] did not cohabit with my father and defined what cohabitation means."

32. As part of TPO's investigation the Trustees were asked to confirm if the decision to pay the death benefits to Ms D was based on her being a dependant. The Trustees were asked to provide any proof they had obtained from Ms D that she was a dependant of Mr F at the time of his death or any other information they had considered when re-assessing the original decision aside from the BDFs. No further evidence was submitted. The Trustees maintained the position set out in their formal response.

33. Extracts from the Rules of the 2006 Plan are provided in the Appendix.

Summary of Mrs E's and Mr R's position as represented by Mr N

34. The Trustees distributed 100% of the death benefits to Ms D without considering all the information. They did not know all the information about all potential beneficiaries, specifically Mr F's spouse (Mrs E), or that Mr R was disabled. They only used information supplied by Ms D.
35. Although Ms D was named as executor on Mr F's Will in 1988/89, the Will is out of date and should not have been used to consider Mr F's wishes.
36. The 2004 nomination form related to another Plan which is not relevant to the death benefits of the 2006 Plan.
37. Mr F and Ms D were not "co-habiting" but "living together" when Mr F died as they had separate bedrooms. Mr F worked away a lot because the relationship had broken-down. Mr F probably would not have charged Ms D rent as the mortgage was paid off, but the financial relationship was unknown.
38. Mr R had lived in supported accommodation from February 2016. He was dependent on both his parents and needs support that is not all covered by social care benefits.

Summary of the Trustees' position

39. They made no errors in their decision-making process when deciding to pay Ms D 100% of the death benefits due from the 2006 Plan.
40. They made a proportionally appropriate decision to pay the death benefits to Ms D.
41. Both Ms D and Mr N confirmed that Mr F and Ms D were cohabiting at the time of Mr F's death.
42. They did not consider the death certificate when making their decision who to pay death benefits, it was only used to confirm death.
43. The 2004 nomination stated 100% of the death benefits should be payable to Ms D and this was one element of their decision making.
44. They revisited the decision with new evidence from Mr N, Mr R and Mrs E. They found that the decision was correct as all the dependants were grown up children and they found no evidence of dependency.

Adjudicator's Opinion

45. Mrs E and Mr R's complaint was considered by one of my Adjudicators who concluded that further action was required by the Trustees. The Adjudicator's findings are summarised below:-

46. Based on the Rules of the 2006 Plan, Ms D, Mrs E and Mr R all qualified as potential beneficiaries:
- Ms D as a 'Relative' (partner) of the deceased.
 - Mrs E as the 'Spouse' and a 'Relative' of the deceased. She did not qualify as a 'Dependant' as 'Spouse' was excluded in the definition of 'Dependant' for Rule 9.
 - Mr R as a 'Relative' (a descendant of the deceased's grandparents) and as a 'Dependant' because of disability.
47. Mr N contended that Mr F and Ms D were not co-habiting as a couple at the end of Mr F's life but were merely "living together" in the same house. Mr N acknowledged they had been in a long-term relationship since at least 2002. In the solicitor's letter of 27 January 2017, Ms D was referred to as Mr F's long-term partner. The Adjudicator did not consider it appropriate to look further into the nature of their relationship in the final months of Mr F's life. In the Adjudicator's view, it would not have been appropriate for the Trustees to investigate this either. Mr F and Ms D had lived together as a couple for a significant period which was not a temporary arrangement and there was no evidence or contention that either was in a relationship with any other person when Mr F died.
48. The Trustees said in their letter to Mr N on 7 August 2020 that they based their decision on the documents that Ms D provided at the time of Mr F's death. These documents were the death certificate and the BDF which Ms D completed. However, contrary to this, the Trustees said in their formal response to TPO, that the death certificate was only used as proof of Mr F's death.
49. In the BDF completed by Ms D, she indicated that Mr F had a 'Spouse/Civil partner/partner' when he died and listed herself in this section. She did not claim to be Mr F's spouse on the BDF but called herself Mr F's "common-law wife", a term generally taken to mean living together as a couple but not married. She listed Mr F and Mrs E's three children on the BDF and indicated that all three were adults and not financially supported by Mr F when he died. She did not reference that Mrs E was still Mr F's spouse. At this stage, in the Adjudicator's view, the Trustees should have attempted to trace Mr F's children and contact Mrs E.
50. The Trustees contended that they made a proportionally appropriate decision to pay the return of contributions to Ms D. The Adjudicator did not agree that the size of the sum was relevant. The Trustees should have made a properly informed decision regardless of the size of the benefits payable.
51. In the Adjudicator's view, the Trustees should have attempted to clarify the discrepancy between the death certificate, which said Ms D was married to Mr F when he died, and the information Ms D provided on the BDF, that she was his common-law wife. If they had done that it was likely they would have established that Mr F's legal spouse was not Ms D, but Mrs E, and obtained the addresses of Mr F's

children through Mrs E. The Trustees were unaware that Mr F was married when he died, as evidenced by Mercer asking Mr N to confirm this in its letter of April 2020.

52. The Adjudicator agreed with Mr N's contention that the 2004 Nomination Form was not completed by Mr F in respect of any lump sum death benefits payable under the 2006 Plan. So, it should not have been considered by the Trustees, who attached some weight to it when making their decision to pay the return of contributions to Ms D.
53. The Trustees appeared to have paid the death benefits to Ms D on the basis that she was a dependant of Mr F when he died. The Rules required that she must have been "financially dependent on [Mr F] or in a financial relationship of mutual dependence with [Mr F]" at that time. However, the Trustees did not request or obtain from Ms D documentary evidence to show the nature of any financial relationship she had with Mr F when he died.
54. When the Trustees reviewed their initial decision, they appeared to have declined Mr R as a beneficiary on the grounds of no financial dependency. However, as a potential dependant because of disability, the dependency was not required to be financial. For instance, it could be emotional. This did not appear to have been considered by the Trustees. The Trustees also appeared to have declined Mrs E on the grounds that she had no financial dependency on Mr F rather than the fact that she was Mr F's spouse.
55. In the Adjudicator's view, the Trustees consideration regarding the distribution of the lump sum benefit payable from the 2006 Plan following the death of Mr F was flawed as they did not take into account all relevant matters and took note of at least one irrelevant matter. By determining that Ms D was dependent on Mr F without asking relevant questions and by not adequately considering Mrs E and Mr R as potential beneficiaries, the Trustees failed to make a properly informed decision. So, in the Adjudicator's view, the complaint should be upheld and the Trustees should make their decision again. Additionally, the Trustees should pay Mrs E and Mr R £500 each in recognition of the significant distress and inconvenience caused.
56. Subsequent to the Adjudicator's Opinion, an ex-gratia offer of £1,500 each to Mrs E and Mr R in respect of the distress and inconvenience caused to them was made by the Trustees in full and final settlement of the complaint. This offer was not accepted, and Mr N provided further submissions supporting his view that the Trustees' decision was incorrect. Mr N's responses have been shared with the Trustees.
57. The Trustees provided their further comments as to why they did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. The Trustees further comments are summarised below in paragraphs 58 to 63.
58. The Trustees agree that the initial decision was flawed because they failed to contact all potential beneficiaries and request evidence from them. The Trustees accept that Mrs E and Mr R should each receive £500 compensation for the distress and inconvenience caused by their original decision-making.

59. However, the original decision was reconsidered by separate Trustee Directors in 2020 and 2021. Having obtained further evidence by and on behalf of Mrs E and Mr R, the same conclusion was reached. As such, the Trustees do not consider the decision should be reviewed again.
60. The 2004 Nomination form was completed in respect of the 1992 Plan, which is a sister scheme to the 2006 Plan, and in the same employer group. The assets and liabilities from the 1992 Plan were subsequently transferred into the 2006 Plan. It is therefore relevant to the exercise of the Trustees' discretionary powers.
61. When considering the matter of Mr R's potential dependency on Mr F, it is only appropriate to consider whether he was financially dependent on the deceased member. Emotional dependency is not referenced in the Rules, or the Finance Act 2004, and should not be considered by the Trustees when exercising their discretion.
62. It was not necessary for the Trustees to request information to establish the financial relationship between Ms D and Mr F since it was not contested that they had been long-term partners who had lived as a couple for a significant period of time. Since they were still living together, it could be assumed that they were "in a financial relationship of mutual dependence". Regardless, since Ms D was living with the member as his partner before his death, she qualified as a "relative" under the Rules, so financial dependence was not relevant to establishing whether she was a potential beneficiary.
63. Even if any of the above did amount to a flaw in the Trustees' decision-making process, the flaw would not be sufficiently serious to justify a further review of the decision to whom to pay the death benefits.
64. I considered the Trustees' comments and issued my Preliminary Decision on the complaint in October 2024. While I agreed with the conclusion that the process for considering the distribution of the lump sum payment was flawed, I did so for different reasons, which are set out in the 'Conclusions' section below.
65. Following that, in response to my Preliminary Decision, the Trustees submitted that:
- Mrs E, Mr, R, Mr N and Mr L were all fully considered as "potential beneficiaries" in the Reviewed Decision.
 - BDFs were obtained from Mrs E, Mr N (on behalf of himself and Mr R) and Mr L.
 - The Trustees quoted their Formal response to TPO, which said "The Reviewed Decision sought additional information from [Mr N], his mother and his brothers to establish whether they met the criteria of dependency. Other than additional personal details about each of these potential beneficiaries, including evidence of [Mr R]'s disability, no evidence of dependency was provided. After several months of correspondence, the information received was re-considered and the original conclusion was upheld. There was no compelling justification for settling to anyone other than [Ms D]." The Trustees say that this demonstrates that Mrs E,

Mr R, Mr N and Mr L were all considered as “potential beneficiaries”. None were excluded as potential beneficiaries on the basis of not meeting the test for being a dependant.

- After seeking, receiving and considering the further information from each of the known potential beneficiaries, the Trustees decided to place significant weight on whether potential beneficiaries were dependent on Mr F at the time of his death in order to decide how to distribute the death benefit lump sum payable between the potential beneficiaries. Having considered all the relevant factors and having decided to place weight on the issue of dependency on Mr F at the time of his death, the Trustees found no one else aside from Ms D would qualify to receive the benefit.
- The Trustees provided a copy of a briefing email dated 15 February 2021 from a manager at PTL Pitmans Trustees Limited, which they say set out all the relevant beneficiaries. This email was considered when the Trustees exercised their discretion. Twelve other documents, including the BDFs from Ms D, Mrs E, Mr R, Mr N and Mr L, all of which TPO has already had sight of, were also considered by the Trustees.

66. Separately, further to my Preliminary Decision, Mr N, on behalf of Mrs E and Mr R, also provided further comments on the Preliminary Decision:

- Ms D was not financially dependent on Mr F immediately before his death, nor was she still in a relationship with him at this time.
- The letter from solicitors representing Mrs E, Mr N, Mr R and Mr L and stating Ms D was Mr F’s “long term partner” should not be used against Mr N and his family. This letter was a rushed reaction to Mr N’s request to immediately and forcefully respond to threats from Ms D. It was Mr N who supplied the letter to the Trustees so that it is being used against his family is truly unbelievable.
- The 2004 Nomination form should not be considered when the Trustees exercise their discretion to distribute the death benefits lump sum because it was not part of the original 2017 decision, does not relate to the 2006 Plan, and was received in an inappropriate way (via the trustee’s solicitors).

Conclusions

67. Following the death of Mr F, a deferred member of the 2006 Plan, the Trustees were required to consider what death benefits might be payable under its governing documentation (generally the **Rules**). One such benefit was a lump sum of £1,557.94 – which represented a refund of member contributions, with interest (the **Lump Sum**).
68. This was paid to Ms D in 2017 and, following a review in 2021 with the benefit of additional information, the Trustees confirmed that decision remained appropriate. Mr N challenges that position.

Payment of the Lump Sum – identifying potential beneficiaries

69. As Mr F did not nominate an individual to receive the Lump Sum from the 2006 Plan, Rule 9.3 applied (set out in the Appendix), and the Lump Sum was payable at the discretion of the Trustees to the Spouse, Civil Partner, Dependants and/or Relatives of a member (or to his personal representatives), in such proportions as the Trustees might decide. The first step in the process to be followed was to identify which individuals fell in each of those categories, and who might therefore be considered by the Trustees when the discretion was exercised. Each of those categories has a different definition and so, clearly, the criteria to be considered in that initial step will also differ depending on what category is analysed. For example, an individual may not qualify as a “Dependant”, but may still be considered as a “Relative” or “Spouse”.

Is Ms D a potential beneficiary?

70. Mr N questions how Ms D fits within these definitions, and therefore whether it was proper for Ms D to be considered a potential beneficiary of the Lump Sum. Accordingly, the first question I have to answer is whether Ms D was a potential beneficiary of the Lump Sum?
71. It would appear from the letter referred to in paragraph 21 above, that the payment was originally made to Ms D on the basis that she was a Dependant. This definition would include anyone who “...*immediately before the Member’s death was, in the Trustees’ opinion, financially dependent on him or in a financial relationship of mutual dependence with the Member...*”.
72. To the extent that the Trustees had evidence (which they certainly did by the time that they reviewed their original decision in 2021) that Ms D and Mr F had been living with each other as partners for some considerable time, and that Ms D was not paying rent, this would in my view be sufficient for the Trustees to form a reasonable opinion that Ms D was a Dependant for the purposes of the Rules, and thus a potential beneficiary of the Lump Sum. I do not agree with Mr N’s argument that having separate bedrooms (if indeed that was the case), or Mr F spending some time away for work, is sufficient to negate that position.
73. For completeness, the Trustees, in their later response to my Adjudicator’s opinion, also point out that, as Ms D was living with Mr F as his partner before his death, she also qualified as a Relative, and could have been paid the Lump Sum on that basis (although, as I say, that does not appear to be the basis on which the award was actually made). Mr N again challenges that.
74. The definition of “Relatives” (set out in more detail in the Appendix) includes “*a member’s Spouse, Civil Partner (including a person who in the Trustees’ opinion was living with the Member as his Spouse, Civil Partner or partner before his death), ...*”.

Ms D was, as is conceded by Mr N, “*residing in the same residence*” as Mr F at the time of death² and had been in “...*a relationship with [Ms D] for several years...*”.

75. However, Mr N goes on to argue that Ms D was in fact an “*ex-partner*”, and only living together at the time of death “*due to circumstances*”. He suggests that the Trustees should have investigated further the nature of the relationship at the time of death. I do not agree – the level of investigation carried out was in my view sufficient, particularly when the size of the Lump Sum was taken into account. In my view, there was sufficient evidence that Ms D was living with Mr F as a ‘partner’ before his death, including for the reasons given above in relation to her qualification as a “Dependant”.
76. As a result, I agree that the Trustees would also have been entitled to form the opinion (as the Rule in question allows) that she qualified as a “Relative” under the Rules³. In any event, it would appear that the decision to pay her the Lump Sum was made on the basis that she was a Dependant which, for the reasons I give above, had been satisfactorily established.
77. Accordingly, I am satisfied that Ms D is a potential beneficiary under Rule 9.3, and it was correct that she was considered when the Trustees distributed the Lump Sum.

Other potential beneficiaries?

78. Although Ms D’s status as a potential beneficiary is the key issue being challenged by Mr N, the task that confronted the Trustees after Mr F’s death was to identify other potential beneficiaries as well, and then properly consider them as a part of the discretionary distribution process.
79. In this case it is clear that Mrs E and all of Mr F’s children should be considered as potential beneficiaries under the Rules:
- 79.1. Mrs E, was a Spouse (which in and of itself was sufficient to be considered a potential beneficiary under Rule 9.3, without resorting to the definitions of Dependant or Relative); and
- 79.2. all of the children, whether grown up or not, amounted to potential beneficiaries of the Lump Sum under the definition of Relatives. Again, there was

² Furthermore, as identified by my adjudicator, she was also referred to as Mr F’s “*long term partner*” in a letter written by Mr N’s own solicitor to Ms D.

³ I should also note that Mr N argues that it is not possible to have both a “Civil Partner” and a “Spouse” (as Mrs E remained) when deciding potential “Relatives” for the purposes of distributing the Lump Sum. By having a Spouse, he says, there could not also be a legally recognised Civil Partner. While in general terms this is correct (as it would not be possible to form a Civil Partnership under the Civil Partnership Act 2004 if one of the parties remained married), for the purposes of the Rules that are at play here, I do not agree. There is a separate definition of ‘Civil Partner’ in the Rules (which defines the term by reference to section 1 of the Civil Partnership Act 2004). Ms D would not satisfy this definition. However, in the definition of “Relatives”, and for the purposes of Rule 9 generally, the definition is widened to include, in this case, an individual living with the member as a ‘partner’ before his death: (“*“Relatives” means for the purposes of Rule 9 ... a Member’s Spouse, Civil Partner (including a person who in the Trustees’ opinion was living with the Member as his Spouse, Civil Partner or partner before his death)...*”). The drafting is not expressed to be exclusive, and in any event, in general law there is no prohibition on living with another ‘partner’ while remaining married.

no need to consider the definition of Dependant, to the extent it applied, in order to identify them as potential beneficiaries. I also note that Mr F appears to have had a brother and sister (see paragraph 11), who would also have come within the definition of 'Relatives' and so should also have been considered in this process.

The exercise of the discretion

80. In very general terms, the Pensions Ombudsman will not interfere with a discretionary decision, such as the payment of the Lump Sum, unless the Trustees have:

- 80.1. asked themselves the wrong question or misdirected themselves on a point of law (for example, if they adopt an incorrect interpretation of the relevant scheme rule/regulation);
- 80.2. failed to take into account all relevant factors or took into account irrelevant factors (for example, not identified all relevant beneficiaries or other factors relevant to the decision); and/or
- 80.3. arrived at an irrational or perverse decision (i.e. a decision that no reasonable body of trustees or other decision maker could have reached having properly advised themselves of all relevant circumstances).

The original decision – 2017

81. In this case, the original decision to pay the Lump Sum to Ms D was made by the Trustee in 2017, having obtained the 2004 Nomination Form from the 1992 Plan. The Trustees then "*made the decision to honour [Mr F's] request to pay the benefit in full to [Ms D]*" – having ascertained that she was living with Mr F at the time of death and that his children were grown up.
82. This decision was, by the Trustee's own admission, flawed. It did not take into account all relevant factors. Notably, it did not consider all the potential beneficiaries – specifically Mrs E, who was the Spouse (for the purposes of the Rules) or the circumstances of the adult children who had been identified in BDF (for example, to identify and then ascertain the extent of any disability suffered by Mr R, which may be a relevant factor when distributing a death benefit).

Reconsideration

83. However, when the issues were raised in 2020 by Mr N, the Trustees quite properly did consider the decision afresh⁴ (the **Reviewed Decision**). As a part of this, Mrs E, Mr L, Mr N and Mr R were invited to provide further representations and, so far as I can see, these representations were considered. It included consideration of Mrs E

⁴ The Trustees refer to the issue being reconsidered twice – once in 2020 and again in 2021. From what I have seen, although nothing turns on it, the reconsideration in 2020 was as a part of the Trustees' IDR process (essentially a decision to review, rather than the review itself) with the more detailed reconsideration taking place in 2021.

and the circumstances of Mr R. However, the Trustees decided that it remained happy with its decision to pay the whole of the lump sum to Ms D.

84. The Trustees' formal response to my office (the **Formal Response**) explained that:

"The review sought additional information from [Mr N], his mother and brothers to establish whether they met the criteria of dependency. Other than additional personal details about each of these potential beneficiaries, including evidence of [Mr R's] disability, no evidence of dependency was provided. ... There was no compelling justification for settling to anyone other than [Ms D]."

85. The Trustees consider that the reviewed decision was properly conducted. However, my Adjudicator was of the opinion that there remained flaws in the process that should result in the decision being reconsidered. Notably (in respect of the Reviewed Decision):

85.1. That the 2004 Nomination Form was an irrelevant factor in the Trustees decision – as it related to Mr F's wishes in relation to a different scheme;

85.2. The decision to pay the lump sum to Ms D as a Dependant was flawed, as there was insufficient information obtained to determine the financial relationship;

85.3. That consideration of Mr R's dependency was flawed as it only looked at financial dependency; and

85.4. That the decision not to pay the Lump Sum, or part of it, to Mrs E was flawed as it only looked at the financial relationship between her and Mr F, and not at her position as a Spouse.

86. I deal with each of those points in turn.

The 2004 Nomination Form – a relevant factor?

87. My Adjudicator was of the view that the 2004 Nomination Form was an irrelevant factor, as it related to a different pension arrangement, and so should not have been considered by the Trustees.

88. In response, the Trustees set out that the 1992 Plan (to which the 2004 Nomination Form related), *"was a sister scheme to the [2006] Plan in the same employer group"* and that *"its assets and liabilities were transferred to the [2006] Plan"*. On that basis they argued that it remained a relevant factor, albeit that it would carry less weight than a form completed in respect of the 2006 Plan.

89. However, following further questions raised by this office, the Trustees conceded that in fact there had been no merger of the two pension schemes, that they remained separate and had different trustees.

90. In those circumstances, I initially had some sympathy with the argument that the 2004 Nomination Form was an irrelevant factor. For example, a nomination form for one

pension scheme does not necessarily demonstrate a global intention to distribute all of a deceased member's assets to that nominated individual. Rather, it is only entered into in respect of the scheme in question, and the member may well have desired other assets to be distributed elsewhere.

91. However, it is well understood that an individual's will is a relevant factor that can be considered when deciding on the payment of a discretionary lump sum, even though it will usually only deal with the member's estate and not relate to benefits payable under a discretionary trust from an occupational pension arrangement. Nonetheless, for trustees, it provides amongst other information a general indication of what the deceased's intentions were, which can be of assistance in trustees' deliberations. In those circumstances, less weight might be given to a will than, say, a recently completed nomination form that applies specifically to the scheme in question. However, it can still amount to a 'relevant factor'. In my mind the same is true here – it is a factor that can be considered, but it is appropriate to apply less weight to its contents than other relevant factors. That is what the Trustees in this case have done.
92. Accordingly, I disagree with my Adjudicator on this point. The 2004 Nomination Form was not, in my view, an irrelevant factor. Rather, it could amount to a relevant factor to be considered on the distribution of the Lump Sum. To the extent it was considered, it was appropriate, as was the case here, to give relatively less weight to its contents. The Trustee's consideration of this document was therefore not flawed.⁵

Was the decision that Ms D was a Dependant under the Rules flawed?

93. No. For the reasons given in paragraphs 70-77 above, I do not agree that it was unreasonable for the Trustees to reach the opinion that Ms D was a Dependant.
94. It was therefore correct for the Trustees to consider Ms D as a potential beneficiary.

Was consideration of Mr R's dependency (for the purposes of the Rules) flawed?

95. As my Adjudicator sets out in paragraph 54, the Trustees appear to have declined Mr R as a potential beneficiary "*on the grounds of no financial dependency*". This was not challenged in the Trustees' response to the Adjudicator's opinion (rather it was the nature of dependency was challenged – a challenge with which I agree: 'emotional' dependency is not a part of that criteria). However, later in the day, and in response to my Preliminary Decision, the Trustees have since sought to argue that Mr R was properly considered as a potential beneficiary, and that the role of financial

⁵ In passing, I do not think it is usual or desirable for a nomination form relating to one scheme to end up in the possession of another scheme (in the absence of, say, a merger of the schemes or common trustees) – and so I cannot imagine it would be normal for trustees of a scheme to ask for sight of the nomination forms entered into in respect of other arrangements. In this case, the issue around how the 2004 Nomination Form was passed to the Trustees is a point for the trustees of the 1992 Plan, which is not a party to these proceedings. However, it does not affect my view that, to the extent that the Trustees were in possession of the 2004 Nomination Form, it still could amount to a relevant factor.

dependency was only an issue that was tested at the second stage of their deliberations when deciding who to then make the payment to.

96. However, the evidence I have seen suggests that Mr R was discounted as a potential beneficiary on the basis that he did not fulfil the definition of being a Dependant, and that dependency was the “be all and end all” of the process followed by the Trustees. For example:

96.1. the original letter sent to Mr N by the Trustees to explain the basis on which the original decision was made, and which is referred to in paragraph 21 above, set out what the Trustees considered to be the “relevant sections” of the Rules. However, it only included the definition of Dependant, and not Relatives.

96.2. the description of the Reviewed Decision contained in the Formal Response explained that the Trustees sought to “*establish whether they [i.e. Mrs E and the adult children of Mr F] met the criteria of dependency*”.

96.3. The Formal Response also explained that, as a part of the Reviewed Decision, “[Mr N] *stated that his father provided transport to [Mr R] prior to 2012, after which time he was not living nearby. This was not considered relevant evidence of dependency at the time of death.*”

97. On the face of it, and on the evidence I have been provided with, Mr R was not properly considered as a potential beneficiary, on the basis that he did not meet the definition of Dependant.

98. However, for the reasons given in paragraph 79 above, it was not necessary for Mr R to be considered a potential beneficiary on the basis of being a Dependant. Rather, he was a potential beneficiary because he fulfilled the definition of a Relative – for which it was not necessary to analyse financial dependency (although it would, to my mind, be reasonable to consider dependency as one of the relevant factors (but not the only relevant factor) when, later, making a decision on how to distribute the Lump Sum among the potential classes of beneficiary set out in Rule 9.3).

99. Accordingly, in my view, Mr R did fall in the class of potential beneficiaries as a Relative, and so should have been properly considered when the decision to pay the Lump Sum was made. From the evidence I have reviewed, it appears that he was not properly considered.

100. This was a flaw in the Trustees decision making. However, for the avoidance of doubt, that is not to say that a payment should be made to Mr R, just that he should have been properly considered.

Was consideration of Mrs E’s dependency (for the purposes of the Rules) flawed?

101. For similar reasons to those given for Mr R, it would appear that Mrs E was excluded from proper consideration on the grounds that she did not meet the definition of Dependant. For example, the Formal Response again sets out that: “*The review*

sought additional information from [Mr N], his mother ... to establish whether they met the criteria of dependency. ...no evidence of dependency was provided."

102. For the reasons given in paragraph 79 above, Mrs E was a potential beneficiary on the grounds that she was a "Spouse" for the purposes of Rule 9.3. Therefore, she should have been considered for the distribution of the Lump Sum, and did not need to meet the "*criteria of dependency*" in order to be considered.
103. Again, in response to my Preliminary Decision, the Trustees have also argued that Mrs E was considered as a potential beneficiary, but the eventual decision to pay the benefit to Ms D over Mr R or Mrs E was due to her financial dependency on Mr F. However, for the same reasons as I have stated for Mr R, in my view the evidence I have seen does not support the Trustees assertion here. The Trustees have not shown that because Mrs E was the 'Spouse' of the deceased, she was properly considered a potential beneficiary regardless of dependency.
104. In my view this was a flaw in the Trustees decision making – although again, that is not to say that a payment should be made to Mrs E, just that she should have been properly considered.
105. As a result, on the basis of the evidence I have been provided with, I find that:
 - 105.1. The Trustees were entitled to form the opinion that Ms D was a "Dependant" for the purposes of the Rules, and therefore a potential beneficiary (and could also have formed the opinion that she was "Relative").
 - 105.2. The Trustees were entitled to consider the 2004 Nomination Form when deciding who to pay the Lump Sum to; but were correct in only applying relatively little weight to it.
 - 105.3. It was incorrect for the Trustee to, as appears to be the case, only consider Mrs F and Mr R as potential "Dependants" (and the same is true for the other adult children). They should also have been considered as a "Spouse" and "Relatives" respectively. Having fallen in those classes of potential beneficiaries, the Trustees should then have considered, in the usual way, considering all relevant factors and ignoring irrelevant factors, whether or not to exercise the discretion under Rule 9.3 in their favour.
 - 105.4. On that basis all the potential beneficiaries were not properly considered and in my view the decision should be taken again by the Trustees.
106. I note Mr N argues that the decision taken by the Trustees to make the payment to Ms D reaches a threshold of perversity where I should intervene and impose my own decision. I strongly disagree. For the reason given above, it is my view that Ms D was a potential beneficiary and, on the basis of the information I have been provided with, had Mrs E and the children been properly considered at the time, it would not have been a perverse decision if the Trustees had paid the entire Lump Sum to Ms D.

However, as I have explained, that is a decision for the Trustees, taking into account all relevant information and ignoring all irrelevant information.

107. I note that following receipt of the Adjudicator's Opinion the Trustees offered Mrs E and Mr R £1,500 each in full and final settlement of the complaint. That offer was surprisingly rejected. My awards for non-financial injustice are modest and not intended to be punitive and I find an award of £500 each to Mrs E and Mr R to be appropriate in the circumstances.

108. I uphold Mrs E and Mr R's complaint.

Directions

Within 28 days of the date of this Determination the Trustees:

108.1. shall reconsider their decision regarding the distribution of the lump sum benefit payable from the 2006 Plan following the death of Mr F and inform Mrs E and Mr R of their new decision.

108.2. pay Mrs E and Mr R £500 each in recognition of the significant distress and inconvenience caused.

Dominic Harris

Pensions Ombudsman
25 April 2025

Appendix

Extracts from the Trust Deed, the General Rules and the Section Rules of the ThyssenKrupp UK Plc 2006 Retirement and Death Benefits Plan

1. Rule 9.3 provides:

“In the case of a Member who at the date of his death left no nominated individual or left no nominated individual who survives him or who left no nominated individual who has been accepted by the Trustees, or if the Trustees take account of but decide not to follow the nomination form then the Trustees may decide to pay or apply the whole or any part of any lump sum benefit payable in accordance with this rule from the relevant Section to or for the benefit of all or anyone or more of the Spouse, Civil Partner, Dependants and Relatives of a Member living or born after his death, and/or to his personal representatives, in such proportions as the Trustees decide. The Trustees may in exercise of the power contained in rule 9.1 pay or transfer the lump sum benefit (or any part of it) to trustees (including themselves), to be held on such trusts (including discretionary trusts) for any one or more of the Spouse, Civil Partner, Relatives and Dependants of the Member in such shares as the Trustees decide. The Trustees may confer on those trustees any powers and discretions (including the power to charge remuneration) as they think fit.”

2. As relevant rule 9.5 provides:

“The Trustees need not take steps to identify every person who is a Spouse, Civil Partner, Dependant or Relative of the Member.”

3. Dependant is defined as:

““Dependant” means, subject to Rule 24.3 of the General Rules and unless the Section Rules specify that a different meaning should apply, in relation to a Member any person who immediately before the Member’s death was, in the Trustees’ opinion, financially dependent on him or in a financial relationship of mutual dependence with the Member. It includes any person who in the opinion of the Trustees was at the date of the Member’s death dependant on the Member because of disability. It also includes a Spouse or a Civil Partner and a child (as defined in the 2004 FA), except for the purposes of Clause 20 of the Trust Deed (Discretionary benefits) and Rule 9 of the General Rules (Discretionary trusts).”

4. Relatives are defined as:

““Relatives” means for the purposes of rule 9 of the General Rules a member’s Spouse, Civil Partner (including a person who in the Trustees’ opinion was living with the Member as his Spouse, Civil Partner or partner before his death), a

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Member's grandparents, the descendants of those grandparents and the spouse of any of them. A stepchild or adopted child is treated as that person's child."