

Ombudsman's Determination

Applicant	Ms N
Scheme	ReAssure Personal Pension Plan (the Plan)
Respondent	ReAssure Limited (ReAssure)

Complaint Summary

1. Ms N's complaint concerns the distribution of lump sum death benefits arising on the death of her father, Mr K, under a policy under the Plan (**the Policy**). In particular:-
 - 1.1. Legal & General (**L&G**) did not make sufficient enquiries in 2019, to identify all the potential beneficiaries of the lump sum death benefits payable from the Policy.
 - 1.2. L&G failed to obtain letters of administration from her brother, Mr C, before awarding him the entire lump sum death benefit of £61,514.26.

Summary of the Ombudsman's Determination and reasons

2. The complaint should be upheld because L&G:-
 - 2.1. failed to identify and properly consider all potential beneficiaries eligible for death benefits under the Policy as defined in the Plan Rules; and
 - 2.2. reached its decision without establishing all relevant facts by making further enquiries, where necessary, when considering the distribution of death benefits from the Plan following Mr K's death.
3. ReAssure shall carry out appropriate enquiries to ascertain the existence of other potential beneficiaries, including their circumstances and relationship to Mr K, and other matters relevant to its exercise of discretion before retaking the decision.

Detailed Determination

Material facts

4. The Plan was formerly a Legal & General Personal Pension Scheme No 1 (**the Scheme**), which was established by a declaration of trust. L&G was the original Trustee and the Scheme Administrator for tax purposes.
5. The governing provisions (**the Plan Rules**) (previously the Scheme Rules) were adopted by an amending deed dated 1 October 2012. The deed is supplemental to a Declaration of Trust dated 26 April 1988 (**the Trust Deed**) (as amended). The Plan Rules replaced the Schedule of Rules that were adopted by an amending deed dated 6 April 2011.
6. Mr K had four surviving children: Ms N, Mr C, Ms S, and Mr O. Mr K was the biological father of Ms N, Mr C and Ms S. He adopted Mr O in December 1981.
7. Ms N and Mr C share the same biological mother. Mr K divorced their mother in 1989 and subsequently married "J K".
8. J K's maiden name was "J C" and she died on 23 June 2019. At the time of her death, her name had changed to "J F"¹.
9. In October 1992, Mr K applied to become a member of the Plan. He completed a transfer application form (**the Transfer Form**) so that L&G could arrange a transfer of his pension rights from the Armed Forces Pension Scheme into the Plan.
10. In the section of the Transfer Form titled "Benefits Should You Die Before Pension Date", Mr K took the following action:-
 - 10.1. He answered "Yes" to indicate that he would prefer any death benefits available from the Plan to be paid in the form of a lump sum.
 - 10.2. He nominated J K, who was then living at the same address, to receive any lump sum death benefits payable on his death.
11. The Transfer Form included the following proviso:

"You must remember to write to L&G if changed circumstances cause you to want to change your nomination, but you cannot change a nomination in such a way as to benefit your estate."
12. By signing the declaration on the Transfer Form, Mr K declared that:-
 - 12.1. He agreed to be bound by the rules of the Plan.

¹ This was according to a notice published in the London Gazette.

- 12.2. He understood that copies of the Transfer Form, the rules, and terms and conditions of the Plan were available on request.
13. The death benefits held under the Plan in respect of Mr K are payable by the trustees of the Plan and are secured under the Policy.
14. In July 2018, Mr K died. Mr C is named as the informant on the death certificate.
15. In September 2020, the Policy was transferred to ReAssure. So, ReAssure has taken over liability for the Policy. All the information L&G held on the Policy has been transferred to ReAssure.
16. Rule 8 of the Plan Rules, provides that:

“BENEFITS FOLLOWING DEATH OF MEMBER

8.1 Payment of pension benefit on death of Member

Following the death of a Member...the Scheme Administrator shall apply a Member's Fund to pay pension benefits (or lump sum benefits in accordance with Rule 8.2) to or for the benefit of one or more persons each of whom is a Dependent² of the Member as are permitted by the Pension Death Benefit Rules³ or by Regulations made under section 164 of the Act⁴ in one or more of (but not limited to) the following ways as the Scheme Administrator in its absolute discretion determines...

In exercising its powers under Rules 8.1 and 8.2, the Scheme Administrator may act in accordance with any written instructions received from the Member...

8.2 Payment of Lump Sum Death Benefits

On the death of the Member in Rule 8.1 above, the Scheme Administrator may in addition to, or in the alternative to the benefits in Rule 8.1, pay a Dependant, a lump sum death benefit equal to a Member's Fund or such lesser amount determined by the Scheme Administrator which is either permitted by the Lump Sum Death Benefit Rules⁵ or by Regulations made under section 164 of the Act or otherwise permitted by HMRC...

² Dependant has the same meaning as in paragraph 17 of Schedule 28 of the Finance Act 2004.

³ Pension Death Benefit Rules has the same meaning as in section 167 of the Finance Act 2004.

⁴The Finance Act 2004.

⁵ Lump Sum Death Benefit Rules has the same meaning as in section 168 of the Finance Act 2004.

The definition of Dependant, and relevant paragraphs from sections 164,167 and 168 of the Finance Act 2004, are set out in the Appendix below.

8.3 Distribution of Lump Sum to Beneficiaries

The Scheme Administrator may pay or apply a lump sum payable under Rule 8.2 from that Member's (or Dependant's) Fund (in whole or in part) to or for the benefit of one or more Beneficiaries in such proportions as it thinks fit...

The Scheme Administrator shall not be obliged to make any payment under this Rule 8.3 if it determines in its absolute discretion, that it has insufficient information to enable it to make any such payment.

If and to the extent that (in the case of any Member) the lump sum is not so paid or applied, the lump sum will (unless the deceased's estate passes as bona vacantia, in which case the lump sum monies will instead be used for the general purposes of the Scheme) be paid to his personal representatives..."

17. The expression Scheme Administrator in the Plan Rules means:

"the person or company appointed as the Scheme administrator in accordance with the Deed and/or Scheme Documents...and where the context requires, includes any person to whom powers or duties of the Scheme Administrator have been delegated".

18. The expression Trustee broadly means the provider of the Scheme or its successor. It includes any person to whom powers or duties of the Trustee have been delegated.

19. Under the Plan Rules, the expression Beneficiaries, in relation to a Member or a Dependant for whom a lump sum death benefit is payable under Rules 8.2 and 8.3, includes:

19.1. any person(s) whose name(s) the Member has notified by way of nomination to the Scheme Administrator in writing prior to the date of the Member's death;

19.2. the Member's Spouse;

19.3. the parents and grandparents of the Member or the Member's surviving Spouse and any children and remoter issue of any of them; and

19.4. the Member's Dependents.

20. Mr K died without making a Will. Consequently, the intestacy rules that apply in England and Wales stipulate who will inherit his estate.

21. If an individual dies without leaving a Will, the closest living relative can apply to become the administrator of the estate.

22. Mr C did not apply for letters of administration before taking on the responsibility for dealing with Mr K's estate. If Mr C had successfully applied for probate, he would have been legally appointed as the administrator of the estate; the role is similar to that of an executor chosen under a Will. He would have had to pay all the debts of the estate.

23. Mr K's financial assets included savings held with two separate banks. Shortly after his father's death, Mr C notified the banks and provided a copy of the death certificate. The banks released the funds, without requiring him to obtain probate, because the funds held in Mr K's bank accounts were below a specified threshold.
24. In April 2019, L&G obtained⁶ a copy of Mr K's death certificate from the General Register Office (**the GRO**) and subsequently contacted Mr C.
25. L&G asked Mr C to complete its claim questionnaire (**the Questionnaire**) so that it could decide how to distribute the death benefits available under the Policy.
26. Mr C filled in the Questionnaire on 3 May 2019, and indicated that:-
 - 26.1. Mr K was divorced and did not have a surviving spouse.
 - 26.2. He was Mr K's only child.
 - 26.3. Mr K's parents had predeceased Mr K.
 - 26.4. Mr K did not have any surviving siblings. There were no other potential beneficiaries.
 - 26.5. Mr K did not leave a Will; he had not applied for probate.
27. By signing the Questionnaire, Mr C declared to L&G that:-
 - 27.1. The information was true and accurate to the best of his knowledge.
 - 27.2. He had not omitted any material facts that might influence the Scheme Trustee/Administrator in reaching its final decision concerning the distribution of the death benefits.
 - 27.3. He would notify L&G if he subsequently discovered that he had made false or incomplete statements.
28. The Questionnaire included the following warning:

"Please remember that it is a serious offence to make false statements; the penalties for false statements are severe and could lead to prosecution."
29. Mr C sent the completed Questionnaire to L&G with a copy of his birth certificate and the death certificate.
30. On 7 May 2019, L&G returned the certificates and informed Mr C that copies had been passed to the relevant team to process his claim.
31. On 10 May 2019, L&G's Pension Bereavement Team notified Mr C that it had received all the relevant information and had identified him as the sole beneficiary of

⁶ It is unclear from ReAssure's records what prompted L&G to obtain a copy of the death certificate from the GRO in April 2019.

the death benefits payable under the Policy. Mr K's pension pot had a value of £61,514.26 as at 8 May 2019.

32. Mr C was provided with details of the options available to him under the Policy and this included the option of taking the value of Mr K's pension pot as a tax-free lump sum. Mr C decided to take this option.
33. On 20 May 2019, L&G sent Mr C a payment instruction form for completion.
34. On 22 May 2019, Mr C completed the payment instruction form and returned it with evidence of his identity, including a copy of his driving licence and a witness signature form. In early June 2019, L&G paid £61,514.26 into his nominated bank account in respect of the lump sum death benefits.
35. In early 2021, Ms N informed ReAssure that a fraudulent claim had been made on the Policy by Mr C.
36. On 9 March 2021, ReAssure confirmed that the value of the Policy was paid out by L&G as a discretionary payment. Consequently, it fell outside of Mr K's estate. ReAssure suggested that Ms N take legal advice on how to proceed.
37. In a subsequent letter dated 22 April 2021, ReAssure clarified that:-
 - 37.1. The Questionnaire was signed by Mr C, the informant on the death certificate.
 - 37.2. Mr C only included his details on the Questionnaire. As Mr C's name appeared on the death certificate, and he had provided satisfactory evidence to prove that he was Mr K's son, L&G decided in good faith to pay him the lump sum death benefits available from the Policy.
38. In her letter dated 14 January 2022 to L&G, Ms N explained that:-
 - 38.1. Mr C informed her, Mr O and Ms S that, after paying for the funeral expenses, there were no residual funds left in the estate.
 - 38.2. In January 2020, Mr C's ex-girlfriend informed her that Mr C had made a fraudulent claim on the Policy.
 - 38.3. She spent a lot of time and energy finding out what Mr C had done and reported him to the Police⁷.
39. She also said that:

"My father did not leave a will so [letters] of administration would have been appropriate for this situation [and] as this was not a small amount of money, I would have expected [letters] of administration to have been a pre-requisite to

⁷ The Police notified Ms N that, on 10 October 2023, Mr C pleaded guilty to three charges of fraud by false representation at a Crown Court. He was sentenced on 9 November 2023 to 22 months' imprisonment, suspended for 24 months.

obtaining it. Had my brother been required to provide [letters] of administration I feel L&G could be satisfied that a suitable level of checks had been made...

I cannot quantify the amount of distress this has caused myself [and] my whole family (excluding Mr C) as with a simple signature on a page he has managed to deny my siblings [and] me a substantial amount of money, that would have significantly improved all our lives [and] deceived us all in the process, whilst going against what I know my late father's wishes would have been..."

40. On 10 February 2022, ReAssure explained that:-

- 40.1. The Questionnaire asked if there were any other potential claimants or dependents. The documentation also asked if there were any supporting documents available. For example, a Will, a grant of probate or letters of administration.
- 40.2. The Questionnaire stipulated that the person signing it must only do so if the information provided was true and correct. It warned that providing false information was a serious offence and could lead to prosecution.
- 40.3. L&G followed its standard process at the time and processed the claim in good faith. This approach was followed by several pension administration companies, including ReAssure, for claims below a certain value. The rationale behind this was that a bereaved family would be going through considerable distress; L&G would not want to delay a claim at a time when they might need the funds the most.
- 40.4. ReAssure appreciated that this did not help in Ms N's circumstances, where false information had been provided in connection with a claim. However, based on the evidence available at the time, L&G had made the right decision.
- 40.5. As this was now a civil matter, ReAssure would assist the police investigation⁸.

41. **Ms N's position**

- 41.1. Mr C has not been instructed to repay the funds, which he fraudulently claimed from the Policy. Mr K's other children have individually suffered a financial loss of £15,378.56. To put matters right, L&G or ReAssure should pay them each an equivalent amount in redress, with interest, and reclaim the money from Mr C.
- 41.2. ReAssure maintains that L&G processed Mr C's claim in good faith using an approach it adopted for claims below a certain value. However, it has not specified the threshold L&G applied at the time. In her view, L&G did not have a clear policy for dealing with claims of this nature.

⁸ The Police requested information from ReAssure in June 2021. ReAssure has provided the relevant information.

- 41.3. She questions the explanation given by ReAssure to justify the approach taken in cases where a death benefit claim falls below a certain value.
- 41.4. ReAssure should have taken legal action against Mr C rather than recommend that she take legal advice.
- 41.5. On receipt of the completed Questionnaire, which required minimal effort from Mr C, L&G should have carried out further investigations to identify potential beneficiaries before deciding to award him the death benefits available from the Policy.
- 41.6. It is unclear why L&G asked Mr C whether he had obtained letters of administration but did not request to see evidence that he had obtained probate.
- 41.7. L&G did not consider the fact that Mr K had completed a nomination form when making its decision. This should have at least raised questions when Mr C returned the Questionnaire indicating that there were no other potential beneficiaries.

42. **ReAssure's position**

- 42.1. ReAssure has a process in place to deal with claims in cases where the Plan Rules allows it absolute discretion to decide how death benefits should be distributed. ReAssure issues a claim pack to the party that notified ReAssure of the policyholder's death. It is their responsibility to complete the Beneficiaries Information Form (**the BIF**) to the best of their ability and sign the declaration. The BIF should include information on the deceased's family and any other potential beneficiaries. ReAssure has to trust that the individual who has completed the BIF has done so to the best of their ability.
- 42.2. Each claim is considered on a case-by-case basis. ReAssure considers the value of the policy. However, it is not the determining factor when deciding how the funds are paid out and to whom they are payable.
- 42.3. In cases involving discretionary death benefits, ReAssure does not need to see a grant of probate or letters of administration. This is because any funds payable under the deceased's policy would not form part of the deceased's estate. However, ReAssure requires sight of the Will, as it provides information on family members and how the estate will be divided. However, there was no will in Mr K's case.
- 42.4. In situations where ReAssure considers that there is not enough information on the BIF, it would contact the individual that completed the relevant forms for further information. ReAssure would also conduct an online search to see if other family members are mentioned in the obituary. Ultimately, ReAssure must go on the information provided by the individual who completed the forms and make a discretionary decision based on that information.

- 42.5. While ReAssure understands Ms N's frustration, there was no reason at the time to disbelieve the information provided by Mr C. He had every opportunity to tell L&G about his siblings but chose not to. The Questionnaire warned about the repercussions of giving false information.
- 42.6. From the evidence ReAssure has seen, it does not consider that L&G is at fault for paying out the claim as it followed the same procedure that ReAssure would follow in similar cases.
- 42.7. Mr C was found guilty of fraud by false representation. Ms N, Mr O and Ms S should reclaim the money from Mr C through legal means. It was unreasonable in the circumstances to expect ReAssure to make a further payment in respect of the lump sum death benefits.
- 42.8. L&G did not receive an updated nomination form from Mr K in respect of the Policy.

Conclusions

- 43. Under the Plan Rules, L&G, in its capacity as the Scheme Administrator, had absolute discretion to allocate the lump sum death benefits between the qualifying beneficiaries in accordance with rule 8.3.
- 44. However, it was necessary for L&G to first understand who the potential beneficiaries were. Determining the potential beneficiaries is a factual question and not a matter of discretion. L&G needed to gather sufficient information about the potential beneficiaries to make fair and rational decisions when exercising its discretion to distribute the lump sum death benefits.
- 45. It is not necessary, when exercising such a discretion, to exhaustively identify every possible beneficiary, particularly where the class is wide. However, the discretion cannot be properly exercised if the range of beneficiaries has not been properly considered.
- 46. If L&G failed to identify the range of beneficiaries so as to be able to give proper consideration to its discretion, then it may be possible for me to intervene – although that does not entitle me to impose my own decision, rather it allows me to remit the matter back to ReAssure to consider afresh.
- 47. The law has been considered recently by the Pensions Ombudsman (**the PO**) in the case of The Wellcome Trust Pension Plan (CAS-130671-J8K3). In that case, the PO referred to the decision in *Kerr v British Leyland* (CA) [2005] 17 PBLR (**Kerr**) as it relates to a finding of fact rather than the exercise of pure discretion. The PO summarised the law as follows:

“In this case, the trustees of the pension scheme decided not to award an incapacity pension on the basis that the member's health condition was not permanent. However, when making that decision they were, in the Court's opinion, “... *not properly informed as to the matter before them*”. This

conflicted with the “... *duty of the trustee ... to give properly informed consideration to the application*” and, accordingly, the Court of Appeal overturned the first instance decision and put the matter back to the trustee to reconsider.

The Supreme Court reviewed, commented on and distinguished the facts of *Kerr in Futter v HMRC* [2013] 064 PBLR (04) (**Futter**), when looking at the nature of the ‘error’, and whether that allowed a trustee’s decision to be set aside, noting that:

“The Kerr case is of interest since (though not reported for 15 years) it is an early example, antedating Mettoy, of the application of something like the Hastings-Bass rule. But I think it is important to note that under the British Leyland scheme the corporate trustee did not have any real discretion about disability benefit. It had to exercise a judgment on an issue of fact (permanent disability from any employment). That is an issue on which the court would be much more ready to intervene if the trustee had failed to grasp the real facts. It is an intermediate situation which is arguably closer to a mistaken judgment on an issue of fact than to the defective exercise of a discretion.””

48. The PO also considered an Australian authority, *ALCOA of Australia Retirement Plan v Frost* [2012] 119 PBLR (019) (Australia VSCA 238) (**ALCOA**), from which he quoted the following:

“Superannuation fund trustees are bound to give properly informed consideration to applications for entitlements and, if that necessitates further inquiries, then they must make them”. However, that is again tempered by an acknowledgement that “...does not mean that a trustee is required to do the impossible. Nor is it to suggest that a trustee is expected to go on endlessly in pursuit of perfect information in order to make a perfect decision. The reality of finite resources and the trustee's responsibility to preserve the fund for the benefit of all beneficiaries according to the terms of the deed means that there must be a limit.”

49. So, following these cases, if it can be shown that L&G has not properly considered who qualifies as a potential beneficiary, and it is sufficiently material, then I can intervene and ask ReAssure to consider the issue again.
50. It is not in dispute that L&G was misled by Mr C who provided false information in the Questionnaire. Having been given false information, L&G was not able to consider its discretion properly because it did not become aware of the other potential beneficiaries and effectively failed to exercise its discretion in the belief that Mr C was the sole potential beneficiary.
51. As the misinformation resulted in a complete failure to identify and consider other potential beneficiaries who were as closely related to the deceased as Mr C, I consider that the error, or failure to properly consider the other beneficiaries, is

sufficiently material for me to intervene and direct ReAssure to exercise its discretion before retaking the decision.

52. It is not unreasonable for a pension scheme to adopt a proportionate approach when distributing lump sum death benefits and to carry out a more limited investigation where the lump sum death benefit is of a low value. It is also not unreasonable to make use of documents such as the Questionnaire. However, the responsibility for identifying the potential beneficiaries and gathering sufficient information about them remains the responsibility of the trustee or manager exercising the discretion, which in this case was L&G.
53. It may be that Mr C committed a fraud on L&G, in obtaining payment of the death benefit lump sum from L&G by deception, but that did not discharge L&G from its obligation to consider the other potential beneficiaries and consider its discretion properly. It was for L&G to seek recovery of the sums paid to Mr C and it is difficult to see what rights the other potential beneficiaries would have against Mr C other than seeking to enforce L&G's rights of recovery.
54. I would also note that while a proportionate approach is reasonable, where unverified information is provided by a person who claims to be the sole beneficiary, it may be prudent to consider the possibility of fraud and the need to take extra steps to ensure that proper information is obtained.
55. It is one thing for a trustee or manager exercising a discretion of this kind to take a proportionate approach in gathering information about potential beneficiaries once it has identified the main potential beneficiaries, and gathered sufficient information to allow the decision maker to properly consider its discretion. It is another for it to decide, on a risk basis, to limit its investigation where the death benefit is of low value.
56. If a decision is taken on that basis, it seems to me that the decision maker would be taking an improper risk that the decision would be based on incorrect or insufficient information and that would not preclude intervention by the PO.
57. I find that the decision to award the lump sum death benefits payable on Mr K's death to Mr C was made in ignorance of the existence of the other potential beneficiaries and without proper consideration of the other potential beneficiaries and was therefore not a valid exercise of discretion.
58. I uphold Ms N's complaint.

Directions

59. Within 28 days of the date of this Determination, ReAssure shall carry out appropriate enquiries to identify potential beneficiaries of the death benefits in respect of the Policy and sufficient information about them relevant to ReAssure's discretion.
60. Within 28 days of receiving the additional information under paragraph 59 above, ReAssure shall:

- 60.1. consider afresh the decision that was made by L&G to pay the lump sum death benefits to Mr C, ignoring the fact that payment of those benefits has already been made to Mr C; and
 - 60.2. notify Ms N of the new decision in writing and explain how it was reached, including the factors ReAssure considered in reaching that decision.
61. If ReAssure decides to award any part of the lump sum death benefits to Ms N on review, it shall apply simple interest from June 2019 to the date of actual payment.
62. The interest referred to above shall be calculated at the base rate for the time being quoted by the Bank of England.

Camilla Barry

Deputy Pensions Ombudsman

25 September 2025

APPENDIX

Relevant paragraphs from sections 164,167 and 168 of the Finance Act 2004

164 Authorised member payments

(1) The only payments a registered pension scheme is authorised to make to or in respect of a person who is or has been a member of the pension scheme are—

(a) pensions permitted by the pension rules or the pension death benefit rules to be paid to or in respect of a member (see sections 165 and 167),

(b) lump sums permitted by the lump sum rule or the lump sum death benefit rule to be paid to or in respect of a member (see sections 166 and 168)...

167 Pension death benefit rules

(1) These are the rules relating to the payment of pension death benefits by a registered pension scheme in respect of a member of the pension scheme (the pension death benefit rules).

Pension death benefit rule 1

No payment of pension death benefit may be made otherwise than to a dependant, or nominee or successor, of the member...

168 Lump sum death benefit rule

(1) This is the rule relating to the payment of lump sum death benefits by a registered pension scheme in respect of a member of the pension scheme (**the lump sum death benefit rule**)...

No lump sum death benefit may be paid other than-

...

(2) In this Part “lump sum death benefit” means a lump sum payable on the death of the member, or a lump sum payable in respect of the member on the subsequent death of a dependant, nominee or successor of the member...

Part 2 of Schedule 28 of the Finance Act 2004 gives the meaning of “dependant”, “nominee” and “successor” as follows:

Meaning of dependant”

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...

(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...

(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.

Meaning of “nominee”

27A (1) “Nominee of the member” means an individual—

- a) nominated by the member, or
- b) nominated by the scheme administrator,
- c) who is not a dependant of the member...

Meaning of “successor”

27F (1) “Successor of the member” means an individual—

- a) nominated by a dependant of the member,
- b) nominated by a nominee of the member,
- c) nominated by a successor of the member, or
- d) nominated by the scheme administrator...