

## Ombudsman's Determination

Applicant	Miss S
Scheme	British American Tobacco UK Pension Fund (the <b>Fund</b> )
Respondents	British American Tobacco UK Pension Fund (the <b>Trustee</b> )

## Outcome

1. I do not uphold Miss S' complaint and no further action is required by the Trustee.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Miss S disagrees with the decision of the Trustee not to award her a dependent's pension following the death of her father.

## Background information, including submissions from the parties

4. Miss S' father, Mr S, was a pensioner member of the BAT Section of the Fund and a deferred member of the Rothmans section of the Fund until he passed away in May 2012.
5. Following the death of Mr S, Miss S applied to the Trustee for a dependent's pension. In doing so, she provided evidence of her medical condition and copies of Mr S' bank statements to support her claim of financial dependence. The bank statements provided date from November 2007 to February 2012 and Miss S has highlighted a number of regular cash withdrawals which she says were paid from Mr S to her.
6. On 25 April 2013, Capita (on behalf of the Trustee) wrote to Miss S:

"I can confirm that after careful consideration, the Trustee decided that a Dependant's pension is not to be paid to you. The Trustee based its decision on all of the relevant information, including the terms of the Rules of the Fund and your own particular circumstances."

No further details of how or why the Trustee reached this decision was provided to Miss S at this time.

7. Sometime after receiving this decision, Miss S requested an appeal (her letters to the Trustee are undated). The Trustee considered her appeal under the first stage of the Fund's internal dispute resolution procedure (**IDRP**) on 4 November 2013.
8. The IDRP decision set out the Rules of the Fund it considered in relation to Miss S's appeal (please see the Appendix). The rules are clear that dependency is based on financial circumstances, although the Trustee also took into consideration the medical evidence Miss S provided:

"You have provided a letter dated 27 March 2012 from Dr ... as evidence of your medical condition. In your email dated 7 November 2012, you said that Mr [S] gave you cash varying from approximately £200 - £300 a month. You also said that on occasions when you had to pay huge bills or had unexpected misfortune, your father had given you amounts around £1,000 - £1,200. You provided Mr [S'] bank statements to support this.

I am satisfied that ... the UK Pensions Manager, acting on behalf of the Trustee, considered all of the evidence that you provided of your medical condition and financial dependence on Mr [S] before the discretion was exercised to award a dependant's pension in accordance with the Rules of the Fund. You have not provided any additional information since the decision was taken. I am satisfied that the Trustee exercised its discretion in accordance with all of the principles listed above.

As a result, I find that the Trustee has properly exercised its discretion with regard to the distribution of death benefits under the Fund in respect of Mr [S] and I uphold the original decision."

9. In January 2014, Miss S contacted the Trustee to say that she wished to appeal the decision, but was waiting for further bank statements from her late father's bank. For the next year, various correspondence goes back and forth between Miss S and the Trustee, and on a number of occasions the Trustee asked if Miss S wished to provide any further evidence to support her appeal. By February 2015, Miss S confirms with the Trustee that she wished to proceed to the second stage of the IDRP without submitting any further evidence.
10. The Policy and Compliance Committee (the second stage IDRP decision makers), met on 4 March 2015 to discuss Miss S' appeal. A final IDRP decision was sent to Miss S on 31 May 2015, confirming her appeal is not upheld. It gives no further reasons as to why, except to say that it is satisfied that the Trustee's discretion was properly exercised.
11. Following this decision, Miss S complained to this office in March 2016. The complaint was investigated and the Adjudicator's decision was that it would not be upheld. Miss S disagreed and has submitted the following:

"My main concern is that my dad and myself are getting rejected based on a lack of "online" evidence.

My dad died young and unexpectedly, he had no knowledge that he would go when he did. He always gave me cash, part of his [sic] reasoning being to offer myself the independence to pay the bills or buy food and clothes for myself. Plus he was never that keen on leaving a visible audit trail as to how he used his money, especially towards the end of his life. I myself use cash and tend not to use internet, people do. Then how many people do you know who keep payslips years later?

The medical evidence is there and it's a sensitive subject that needs to be managed carefully and part of the management was to try to give me independence, hence the case.

I appreciate the trust may have asked set questions on a flow sheet, but every case is unique and I just think they are overlooking the evidence that is in front of them."

### **Adjudicator's Opinion**

12. Miss S' complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised briefly below:
  - The Trustee considered Miss S' claim under both sections of the Fund rules and both rules require that there is financial dependence in order to pay a benefit.
  - The Adjudicator felt that the Trustee had followed the correct legal principles, namely that it had considered the relevant scheme rules, had asked the right questions (in fact, the Trustee had contacted her to ascertain if she had any further evidence before proceeding to a second stage IDR decision), it had not taken into account any irrelevant information, and had, in fact, also considered her medical condition. Therefore, the decision it made could not, therefore, be considered unreasonable.
  - The Adjudicator's view was that it was not unreasonable that the Trustee would want to see more than cash payments from Mr S's bank account, for example, evidence of bills being paid or money being electronically transferred, as it is difficult to prove that cash was given to Miss S.
  - The Adjudicator also commented that the Trustee had not made it clear in its first and last decision to Miss S as to how and why it reached the decision that it did. However, it was felt that this was not enough of a justification to refer the case back to the Trustee for a new decision.
13. Miss S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Miss S provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Miss S for completeness.

## **Ombudsman's decision**

14. I empathise with the position Miss S now finds herself in feeling that she has been treated unfairly by the Trustee. However, this does not mean that the Trustee has done anything wrong by deciding not to pay her a benefit from the Fund.
15. It has been explained to Miss S by the Adjudicator that there are certain principles that the Trustee must adhere to when exercising its discretion and, when considering such complaints, I have no reason to doubt that those principles were adhered to when the Trustee made its decision.
16. The relevant rules are very clear that dependency must be financial and defined as “anyone who shares living expenses with, or receives financial support from, the member or other person, and whose standard of living would be affected by the loss of that person’s contribution or support.”
17. I do not doubt Miss S’ claim that her standard of living has been affected following the death of her father. However, she has been unable to substantially support this – there is no evidence that she was sharing living expenses, such as bills, or that there is a “paper trail” of regular money that was provided to her. It is unfortunate that her late father decide to provide cash, but there is not enough supporting evidence to show that she was the recipient of the cash or what it was used on. It is therefore not unreasonable for the Trustee to have reached the conclusion that it did – that Miss S had not provided sufficient evidence to show financial dependency under the rules of the Fund.
18. Therefore, I do not uphold Miss S’ complaint.
19. Finally, I recognise that Miss S is suffering from a medical condition and this has made it difficult for her at times to express herself clearly to the Trustee. It would have been helpful to Miss S if the Trustee had taken this on board more, not in the decision making process, but in explaining more clearly to Miss S how and why it reached the decision that they did. However, this is not maladministration, but something for the Trustee to consider when contacting other beneficiaries in similar circumstances in the future.

**Anthony Arter**

Pensions Ombudsman  
5 January 2017

## **Appendix**

### **Rothmans Old Final Salary Section of the Fund**

#### **Rule 5.3 of Appendix 2**

If a Member dies and no pension is payable to a surviving spouse or civil partner, the Trustees may pay a pension to one of more of the Member's Dependants. This pension may be calculated as a pension for a spouse or civil partner but the Trustees may pay a pension of a smaller amount, reduce the pension in payment or terminate it as they see fit.

“Dependants” is defined as “anyone who is financially dependent on the Member or other person concerned, or was so dependent at the time of that person's death. This includes anyone who shares living expenses with, or receives financial support from, the member or other person, and whose standard of living would be affected by the loss of that person's contribution or support.”

### **BAT Section of the Fund**

#### **Rule 5.3 of Appendix 4**

If a Member dies and no Spouse's or civil partner's pension is payable, the Trustees may pay a pension to the Member's partner. The pension may be calculated as the pension which would have been payable to a Spouse or civil partner who is the same age as the Member's Partner but the Trustees may pay a pension of a smaller amount.

“Partner” is defined as “a person of either sex who the Trustees are satisfied was living with and maintained by the Member at the date of his death, or a Dependant of the Member.”

“Dependent” is defined as “anyone who is financially dependent on the Member or other person concerned, or who was so dependent at the time of that person's death. This includes anyone who shares living expenses with, or receives financial support from, the Member or other person, and whose standard of living would be affected by the loss of that person's contribution or support.”