

## Ombudsman's Determination

Applicant	Miss T
Scheme	Railways Pension Scheme ( <b>the Scheme</b> )
Respondent	RPMI Limited ( <b>RPMI</b> )

## Outcome

1. Miss T's complaint is upheld and to put matters right RPMI should refer the decision back to the Committee, which should make the decision afresh taking into account all relevant evidence within 28 days of the date of this determination.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Miss T's complaint against RPMI is in regard to the lump sum death benefit, which arose as a result of Mr Y's death, and its allocation at the absolute discretion of the Committee, by delegation from the Trustee.
4. Miss T feels that she should have received 100% of the lump sum death benefit as she witnessed Mr Y complete a nomination form to this effect. She also feels that all the relevant evidence was not taken into account by the Trustee.

## Background information, including submissions from the parties

5. On 12 November 2013, Mr Y passed away leaving a wife of four years - Miss T, and a 12 year old daughter from a previous relationship. Mr Y and Miss T had been living apart since November 2011 and on 17 June 2013 Miss T changed her name by deed poll but the couple did not divorce.
6. The Committee reviewed applications for lump sum death benefits from Miss T and the mother of Mr Y's daughter, Ms E. Mr Y's mother and father supplied submissions in the form of personal statements, and evidence of debts. They said that they did not wish to be considered as beneficiaries. The Committee also reviewed the first page of a nomination form completed in 2009, however the page with the nominee's details was missing due to an error scanning it on to Mr Y's record. The nomination made was not known. It was noted that Mr Y did not leave a Will.

7. The Committee decided to use the death benefit lump sum to pay the funeral expenses and awarded the remainder to Mr Y's daughter. In addition, Miss T was awarded a legal spouse's pension, which was taken as a trivial commutation lump sum, and Mr Y's daughter was awarded a child's pension.
8. Miss T complained that she had not been awarded the death benefit lump sum as she was expecting. Her complaint was progressed through the Internal Dispute Resolution Procedure (**IDRP**). She said that she had helped Mr Y to complete the nomination form, which nominated her to receive 100% of the lump sum death benefit and had posted it herself in 2009.
9. The complaint was not upheld. At stage 1 of the IDRP RPMI explained that 'the pensions committee considered at length, all of the evidence available, including the death certificate and the completed lump sum death benefit declaration forms for all applicants, together with copies of their birth certificates and the supporting documentary evidence provided... The Pensions Committee noted that Mr Y did not leave a Will and that only the first page of the nomination form was available so regrettably it was impossible for the Pensions Committee to conclude who had been named...the Pensions Committee considered at length all of the evidence of your claim made available to them together with supporting documentary evidence. The Committee has a duty to consider all relevant available evidence, including any claimant's relationship to the member, in accordance with the Scheme Rules when making their decision about the most appropriate person/s to receive the lump sum death benefit.'
10. At stage 2 of the IDRP RPMI substantially repeated this explanation and said it did not consider that Miss T had provided any additional information or evidence since the application was first considered which would make a material difference to the original decision.
11. In its formal submissions RPMI said that the Committee were aware that Miss T was estranged from Mr Y, was not living with him and was not financially dependent on him. The original decision had been made subject to a check to confirm that the second page of the Nomination form was not available, which was established to be the case. RPMI concluded that all relevant matters, and no irrelevant ones, were taken into account and that the Committee may have reached the same decision even if the second page of the nomination form had been available, and had shown Miss T to be nominated.
12. RPMI provided a copy of the submissions from the beneficiaries to this office with its formal response. At this point Miss T became aware that the lump sum death benefit had been used to pay the funeral expenses, with the remainder awarded to Mr Y's daughter. Miss T also had sight of the submissions from Mr Y's parents and Ms E on behalf of Mr Y's daughter.
13. Ms E's submission shows the daughters' financial dependency on Mr Y by means of child support. Mr Y's parents supported his daughter to receive the lump sum death

benefit, and said that this is what Mr Y would have wanted. Both parents went on to provide evidence about the circumstances in which they believed Mr E and Ms Y had separated, including evidence about what they considered the couple's financial situation had been at and since their separation.

14. Miss T says that, as she had not previously seen this evidence she had been unable to provide the Trustee with the evidence required to discount the claims made by Mr Y's parents. She put forward a different explanation of the circumstances surrounding their separation and painted a different picture of their financial affairs. She said that Mr Y had no contact with his daughter and he was only paying child support due to a Deduction from Earnings Order, as he had refused to pay it voluntarily. She also included evidence that she feels supports her comments.
15. RPMI reviewed this information and stated that it is not sufficiently different from the original evidence submitted and is unlikely to result in a different decision, therefore it declined to refer the evidence back to the Committee for consideration.

### **Adjudicator's Opinion**

16. Miss T's complaint was considered by one of our Adjudicators who concluded that further action was required by RPMI. The Adjudicator's findings are summarised briefly below:-
  - The Scheme Rules are clear that the decision regarding lump sum death benefits is at the absolute discretion of the Trustee. In the case of the Scheme, the Trustee has delegated this power to the Committee. In exercising discretion, the Ombudsman would expect the decision maker to ask the correct questions, direct itself properly in law, in particular it must adopt a correct construction of the rules/regulations governing the scheme, take into account all relevant, but no irrelevant factors and arrive at a decision that is not perverse - a decision which any reasonable person could have made. In the event that the Ombudsman finds that the decision maker has not considered the matter properly, it will be remitted back to the decision maker for reconsideration. The Ombudsman will not generally interfere with a decision unless he considers the decision process to be flawed in some way, or finds that the decision is perverse. The Ombudsman cannot overturn a decision simply because he/she would have acted differently.
  - The adjudicator agreed that the RPMI was not required to disclose details of who the lump sum death benefit had been awarded to prior to involvement from this office.
  - It is unfortunate that Mr Y's nomination form was not correctly scanned to his record, however without it, its contents cannot be confirmed, and Miss T's claim that he had nominated her to receive 100% cannot be verified. While Miss T may disagree, for this reason the nomination form cannot be considered by the Committee.

- In any case the Committee is not bound by the nomination form. The Committee has absolute discretion for the allocation of the lump sum death benefits amongst the beneficiaries. Even where the member makes a nomination, the Committee can come to a different decision.
  - Nonetheless, the Adjudicator did not consider that the Committee gathered enough information to allow it to ask itself the right questions in order to make the decision. Mr Y's parents submitted information regarding his relationship with his daughter and his wife, Miss T. The information that Miss T has now submitted, conflicts with the parents submissions. RPMI did ask Miss T why she was not living with Mr Y at the time of his death. Yet, the Adjudicator believes that further questions surrounding their relationship should have been asked so that Miss T had the opportunity to present any relevant evidence that she had which contradicted the other submissions made. This could have been done in such a way that there was no need to share the parent's submissions with Miss T.
  - Not all of the relevant evidence was taken into account by the Committee, as the Committee did not gather enough relevant information.
  - The Committee, as the decision maker, should make the decision afresh, as though no lump sum death benefit had been paid from the Scheme, taking into account the information that Miss T supplied to this office in her letter dated 13 February 2017.
17. RPMI did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. RPMI provided no further comments but referred back to their comments made on 18 May 2017. I have considered these and the earlier submissions and I agree with the Adjudicator's Opinion, summarised above. I set out below further detail about why I think the decision making procedure lacked fairness.

### **Ombudsman's decision**

18. RPMI has said that when the Committee met on 24 September 2014 to consider Miss T's appeal it reviewed all of the information submitted at that time, which I accept.. However, at this date Miss T had not seen the other submissions provided to the Committee, nor had RPMI given her the opportunity to submit further evidence in light of the information provided to them by Mr Y's parents. This evidence contained direct comment on Miss T's conduct which the Committee considered when coming to its decision. I agree that The Committee has a duty to consider all relevant available evidence, including any claimant's relationship to the member, in accordance with the Scheme Rules when making their decision. In this case it was apparent that the evidence which the Committee had about the relationships between the potential beneficiaries and the member was submitted specifically in support of one of those potential beneficiaries and that additional and potentially contradictory evidence about the same issues was likely to be available from the other. The trustees were in

my view under a duty to ask that other beneficiary for their account of those relationships before making a decision which took them into account.

19. As the Adjudicator has said, to gather further information from Miss T, so that the Committee had sight of all relevant evidence from all parties, it would not have been necessary to provide Miss T with a copy of the submissions at this stage. RPMI could have asked Miss T further questions, to enable her to provide further evidence, without revealing the identity of any potential beneficiaries.
20. RPMI has said that it will not refer Miss T's case back to the Committee at this time as it does not consider that the evidence Miss T has supplied in her letter of 13 February 2017 is sufficiently different, and is unlikely to result in a different outcome. However, it is not up to RPMI to decide if a different outcome would be reached as a result of the further evidence, it is up to the Committee.
21. At present I do not believe that all available information relevant to the decision has been considered by the Committee. Issues of relevance and weight are for the Committee. However, on the facts of this dispute, if the Committee considers the parents' original submissions to be relevant then it follows that Miss T's evidence submitted in her letter of 13 February 2017 should also be considered as relevant. In making this finding I do not seek to prejudge the outcome of the Committee's decision, which is for them, having considered all of the available evidence.
22. Therefore, I uphold Miss T's complaint and make the following direction to remedy the injustice.

## **Directions**

23. RPMI should refer the case back to the Committee, as the decision maker, which should make the decision afresh, as though no lump sum death benefit had been paid from the Scheme, taking into account the information that Miss T supplied to this office, within 28 days from the date of this determination.
24. It is up to the decision maker to decide who to pay the benefits to. There is no guarantee that a different decision will be reached. However, if a different decision is reached and the decision maker has paid the benefit to the wrong beneficiary, then the decision maker will need to decide whether or not to try to recoup the first payment, but this should not prevent the decision maker from paying the benefits to the correct party.

**Karen Johnston**  
Deputy Pensions Ombudsman  
17 July 2017