

## Ombudsman's Determination

Applicant	Mr D
Scheme	Schlumberger UK Pension Scheme ( <b>the Scheme</b> )
Respondent	Schlumberger Trust Company Limited ( <b>the Trustee</b> )

## Outcome

1. I do not uphold Mr E'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. Mr E's complaint is about the way in which the Trustee of the Scheme has distributed the lump sum death benefits arising on the death of Mr P, his uncle.

## Background information, including submissions from the parties

4. Mr P was an active member of the Scheme. He never married or had any children.
5. Sadly, Mr P died on 29 October 2013 after a long illness. His closest surviving relatives at that time were:
  - his mother Mrs J,
  - his two sisters Mrs E and Mrs B,
  - the two children (Mr C and Mr D) of Mrs E by her former husband,
  - the two children (Mr F and Miss G) of Mrs B by her former and current husbands respectively.
6. For many years before he died, Mr P lived with his sister Mrs E, and her sons Mr C and Mr D in an annex to the family home that he co-owned with his mother Mrs J.
7. Mr P had made a will in 1996, appointing Mrs E as his executor and leaving his estate to his surviving parent(s); if neither parent survived him his estate would be held on trust for Mr C and Mr D.
8. Mr P had completed a nomination form in 1999 which provided for Mr P's father (who later died) and a female friend of Mr P to share equally the lump sum that would be payable from the Scheme on his death. When she was contacted by the Trustee in

2013, the female friend renounced any claim to the money and said that Mrs J and Mrs E should be the beneficiaries.

9. Following Mr P's death, the Trustee asked Mrs E about the family background. Mrs E copied to the Scheme pensions manager a series of emails from Mr P to Mrs E dated August 2013, showing Mr P's attitude to Mrs B. The emails were headed in disparaging terms and said: "[Mrs J] said that idiot will be in our house in the evening whether I like it or not. It seems I have two options, see idiot and be nice to her or leave!! So it looks like I am being forced to move out and will pick up a bag of clothes and leave this evening)...Mum has no concept (or doesn't believe me) of how much I hate [Mrs B] and the trouble she has caused everyone...I had a further conversation with Mum when I got to work and reiterated that I did not want to see [Mrs B] and if she was gone by the time I got home then there wouldn't be a problem... I will text you for a status update when I have found somewhere to wait until they finished their visit."
10. Mrs E told the Trustee that "[Mr P] and my sister [Mrs B] were not on good terms. My sister is a very infuriating person who seems to cause trouble wherever she goes. My brother disowned her a long time ago and it is no exaggeration to say that he detested her, which is why she is not mentioned in his will."
11. Mrs E explained that Mr P had fallen out with Mrs B because Mr F had to be put into care when Mrs B's first marriage broke up, and in September 2007, ahead of a court hearing, Mrs B and her second husband abducted Mr F from his foster home in the middle of the night and took him to France; Mrs B's husband was arrested and later jailed for his part in the abduction when he returned to the UK; meanwhile Mrs B and her two children stayed in France with a European Arrest Warrant on her head for several years. Mr P's home was searched by the police when they were looking for Mrs B and Mr F.
12. On 15 January 2014, the Trustee made a decision to award over £290,000 (50% of the lump sum death benefit arising) to Mrs J, although it acknowledged that in the longer term it might not be efficient for inheritance tax purposes for Mrs J to retain the money as she was already quite well off. The Trustee then discussed with Mr P's family how the balance of the lump sum death benefit should be distributed.
13. The Trustee's initial proposal in April 2014 was to pay the balance of the lump sum to Mrs J, or to divide it equally between the four grandchildren, namely Mr C, Mr D, Mr F and Miss G. Mrs E and Mr D disagreed with this and said that in their view Mrs B and her two children should not receive any of the lump sum because of the severe rift between Mr P and Mrs B, and also bearing in mind Mrs B's significant wealth compared to Mrs E's. When the Trustee asked Mrs B to submit representations, she asked to be treated in the same way as Mrs E "just as [Mr P] would have done", and for Mr F and Miss G to be treated in the same way as Mr C and Mr D.
14. When asked to comment, Mrs J said she was upset that the Trustee effectively seemed to be asking her to choose between her two daughters. Mrs J then

suggested to the Trustee that the balance of the lump sum should be split equally between Mrs E, Mrs B, Mr C, Mr D, Mr F and Miss G. The Trustee reached a decision on 2 December 2014 which followed that proposal: each of the six beneficiaries (Mrs E, Mrs B, Mr C, Mr D, Mr F and Miss G) would receive over £48,400. Payment was made to them in the following month.

15. Mrs E, and her sons, Mr C and Mr D objected to the Trustee's decision, saying that it ignored the correspondence that had been disclosed, it was inconsistent with what Mr P would have wanted, and the family's financial circumstances were ignored – the richest person (Mrs J) was given the largest amount, and Miss G received the same sum as the children who had been living with Mr P, even though (because of the family rift with Mrs B) Mr P had never met Miss G.
16. Mrs E, Mr C and Mr D then invoked the Scheme's internal dispute resolution procedure. In July 2015 this concluded that it was a difficult case but the Trustee's decision was within the bounds of reasonableness, so the complaint was rejected.
17. In his comments to The Pensions Advisory Service, Mr D said that in his view the payment of 50% to Mrs J was acceptable, but the balance should have been divided equally between himself and Mr C, as that was consistent with Mr P's will.
18. Mrs E then contacted us on behalf of herself, Mr C and Mr D. Mrs E said that the Trustee's formal responses contained several errors: Mr P did not have any relationship with Mr F and Mr F's father; Mr P had not been planning to visit Mrs B in France; Mr P did not send a card and present that Mrs B said had been sent by Mr P; Mr P's emails showed that he treated Mrs E and Mrs B very differently; Mr P deliberately did not update his will after Mr F and Miss G were born; Mr P's works manager and a close friend knew about Mrs E but did not know of Mrs B's existence; Mrs B had given incorrect information about Mr C's job; Mrs B and her second husband owned several properties and she was supported financially by her second husband while Mrs E owned no property (apart from a one week time share that she was trying to sell); it was wrong for the Trustee to effectively defer to Mrs J on the distribution of the lump sum as she could hardly be expected to discriminate against one of her two daughters.

## **Adjudicator's Opinion**

19. Mr D'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:
  - Under Rule H.4.4 of the Scheme (see Appendix), the Trustee had a wide discretion over who should receive the lump sum death benefit. The "Named Class" defined in Rule H.4.5 was wide enough to include Mrs J, Mrs E, Mrs B, Mr C, Mr D, Mr F and Miss G.

- Genealogically, these were Mr P's closest surviving relatives when he died. Therefore the Trustee's initial decision to pay 50% of the lump sum death benefit to Mrs J and, after much further deliberation, to divide the balance of 50% between the other six relatives of Mr P could not be said to be a perverse or improper decision.
- Mr P's emails of August 2013 about Mrs B showed that at that time, two months before he died, he was not on speaking terms with her. However, that email correspondence was only one piece of evidence, just like Mr P's nomination form and his will. It was up to the Trustee to decide how much weight to give to each piece of evidence supplied.
- Mr D had placed much emphasis on Mr P's will. However, the will applied only to Mr P's freely disposable estate, and did not dictate how the Trustee should exercise its discretion to pay lump sum death benefits that might arise under the rules of the Scheme. Furthermore, the will provided for Mr C and Mr D to benefit only if neither of Mr P's parents survived Mr P, and in practice Mrs J survived him.
- Given the information and representations that were made to the Trustee, the decisions made by the Trustee, to pay 50% of the lump sum to Mrs J and (after further correspondence and deliberations) to divide the residual lump sum between the other relatives of Mr P was within the range of reasonable outcomes that could have been reached. It was clear that the Trustee considered carefully the options available to it before it reached its decision.
- Mrs J, Mrs B and her two children were not parties to Mr D's complaint to us. The Court of Appeal established in the case of Edge v Pensions Ombudsman (1999) that the Pensions Ombudsman cannot make a direction that would adversely affect a person who is not a party to the complaint. Therefore the Pensions Ombudsman would not be able to make an order that Mrs J or Mrs B and/or her two children should repay the lump sums that they had been awarded.
- Therefore this complaint should not be upheld.

20. Mr D did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mr D and the Trustee provided their 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 Mr D and the Trustee for completeness.

### **Ombudsman's decision**

21. In his recent correspondence, Mr D pointed out that a note made by the Scheme pensions manager following his telephone conversation with Mrs J in August 2014 had included a comment that if she received all the money she would redistribute it, and would use some of the funds to pay for Mr F's education; Mr D said this was a typing error as it should have referred to Mr X, the son of a friend of Mr P; this error might have influenced the Trustee's decision to pay some of the money to Mr F. However, the Trustee has said that it was aware of the error in the telephone note, and this was demonstrated by the fact that the Trustee had taken legal advice on

whether Mr X would be an eligible beneficiary. In the circumstances, I do not think that the clerical error is significant.

22. Secondly, Mr D queried whether my statutory powers could provide an effective remedy. My role is to consider whether the Trustee's decision was reached in a proper manner. The decision-maker must take into account all relevant matters and no irrelevant ones. It must not make a perverse or improper decision, namely a decision that no reasonable decision-maker, properly directing itself, could arrive at. If I am not satisfied that the decision has been taken properly I can direct the decision-maker to look at the matter again. However, as explained in paragraph 27 below, I will not usually replace the decision-maker's decision with a decision of my own, or tell it what its subsequent decision should be.
23. Mr D also questioned whether the Trustee's decision had been based purely on genealogical grounds. The family background to this case is quite complicated. When he died, Mr P's family members were Mrs J, Mrs E, Mrs B, Mr C, Mr D, Mr F and Miss G. Each of them was a potential beneficiary, but did not have an entitlement to receive all or any part of the lump sum death benefit. The Trustee received conflicting evidence from family members and conflicting expressions of what those family members thought should be the outcome of the distribution. The Trustee considered those conflicts and positions and made the decision it was required to make. Ultimately a decision was made that each of the potential beneficiaries should receive a share, with Mrs J receiving 50% and, after much further consideration, the others sharing the balance equally. That result is clearly within the range of possible outcomes. The question is whether it was a reasonable outcome.
24. I do not consider it significant that Mr P's will did not mention Mrs B and her children, as a will only relates to the deceased's freely disposable estate, and not to death benefits arising under a discretionary trust. Recent correspondence raises concerns that in reaching its decision the Trustee may have underestimated the extent of the division between Mr P and Mrs B, and placed too much emphasis on Mr B's submissions.
25. I am satisfied that the Trustee was aware of the depth of differences and that the rift was longstanding. The question it faced was what precisely it should do as a consequence. It took legal advice. It considered different options for splitting the lump sum. The representations made since it took its decision underscore the extent of disagreements of which the Trustee was already aware but do not in my view shed such a different light on things that no reasonable decision-maker could properly have made the decision which the Trustee did.
26. In these circumstances, there is no basis on which it is proper for me to remit the case to the Trustee for further reconsideration.
27. A question has also been raised about whether I should overrule the Trustee's decision and substitute my own view of the proper distribution. Because I have found the original decision to be reasonable, strictly speaking, the point does not arise;

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there are no grounds for me to consider doing that. But for completeness I should explain that if I find a decision to be outside the range of reasonable I would generally only consider substituting my own decision where there is reason to believe that the Trustee will not exercise its discretion properly if the decision were remitted to it. For example in Wilson (Q00140) there were serious doubts about the impartiality of the trustees in relation to a family-run pension scheme. In the present case the Trustee is a company which has no links with Mr P's family and I have seen no evidence that the Trustee's impartiality was compromised.

28. Therefore, I do not uphold Mr D's complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
17 May 2017

## Appendix

### “Rule H.4.4 Discretionary provisions

Subject as otherwise provided in this Rule the Trustees may pay or apply any lump sum payable in accordance with this Rule on the death of a Member to or for the benefit of such one or more of the Named Class (as defined below) or to the estate of the deceased Member in such amounts, at such times and generally in such manner as the Trustees may from time to time decide...”

### “Rule H.4.5 Meaning of “Named Class”

In this Rule, “Named Class” means, in relation to a Member:

- (A) any partner of the Member;
- (B) any child, brother or sister of the Member or of his partner;
- (C) any parent, ancestor, descendant or collateral relative of the Member or of his partner;
- (D) any person who is shown, to the satisfaction of the Trustees, to have been when the Member died wholly or in part dependent financially on the Member or his partner;
- (E) any person who is shown, to the satisfaction of the Trustees, to be entitled to any interest in the Member’s estate...”