

Ombudsman's Determination

Applicant	Mr H
Scheme	Santander (UK) Group Pension Scheme (the Scheme)
Respondent	Santander (UK) Group Pension Scheme Trustees Limited (the Trustee)

Outcome

1. I do not uphold Mr H'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 H complains that the Trustee incorrectly exercised its discretion by not awarding any death benefits to him.

Background information, including submissions from the parties

4. Mr H is the widowed spouse of Ms A, who was a member of the Scheme. Ms A passed away on 8 March 2013.
5. Capita, the administrator of the Scheme at the time, wrote to Mr H on 19 April 2013, asking if he had any views regarding the distribution of the discretionary benefits.
6. On 13 June 2013, Mr H's solicitor replied on his behalf and said that Mr H was claiming the benefits for himself as Ms A's spouse and parent to the two children from the marriage. Mr H also expressed surprise that Capita had mentioned that Ms A's brother had claimed to be in possession of a will made by Ms A. He said that he intended to challenge the validity of this will.
7. On 24 October 2013, the Trustee met to consider the distribution of the death benefits to the eligible beneficiaries (identified as Mr H, Ms A's mother, Ms A's brother, Ms A's sister, and the two children from the marriage). The Trustee took into account several factors –
 - Ms A had not completed an expression of wish form;
 - the children were living with Ms A's mother and brother at the time of her death;

- there was a disputed will;
 - Mr H had supplied evidence of financial dependency between him and Ms A;
 - Ms A's brother had claimed that there was no financial relationship between Mr H and Ms A, and his family were providing financial support to the children.
8. Having considered the matter, the Trustee exercised its discretion in favour of Ms A's children. The lump sum would be paid to both children in equal shares, while deferring the decision on appointing trustees of the trust fund to be set up in their favour. The Trustee says that it asked Capita to inform all the potential beneficiaries of its decision. It later transpired that Mr H was not informed until December 2014.
9. In a meeting on 21 November 2014, the Trustee reaffirmed its decision to pay the benefits to the two children of Ms A. It noted that Mr H had made a Court application to challenge the will so it appointed independent trustees until the case had been heard. On being informed of the decision in December 2014, Mr H disputed it and said that he should have been given priority as Ms A's spouse.
10. On 22 January 2015, the Trustee wrote to Mr H. It said that Mr H was considered along with other potential beneficiaries; he did not have an automatic entitlement to receive the discretionary lump sum death benefit, it was a matter for the Trustee to decide when exercising its discretion. It said that it had taken appropriate factors into account after following an appropriate decision making process.
11. On 26 February 2015, to ensure that the benefits were paid within two years of Ms A's death, the Trustee appointed temporary trustees to administer the trust set up for the two children.
12. Mr H says that the Trustee has acted unfairly and unjustly, and the decision is irrational because it took into account information from Ms A's brother. He says that the Trustee may also have been influenced by the invalid will as it has not thought it appropriate for him to be a trustee of the children's trust.

Adjudicator's Opinion

13. Mr H'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 correctly identified the eligible beneficiaries and the award was within its discretion.
 - The Trustee considered the conflicting evidence of financial dependency between Ms A and Mr H, and also the will. The will was in dispute, so the Trustee did not consider it in its decision. In any event, the Trustee is not bound by a will in the exercise of its discretion.

- The Trustee took the decision to award the benefits to the children, and the Adjudicator was satisfied that the Trustee took all relevant factors into account and disregarded irrelevant ones.
 - The Trustee asked itself the right questions regarding the award of the benefit and did not make a perverse decision. The award was made to eligible beneficiaries and a trust was set up on their behalf.
 - Although Mr H falls within the scope of an eligible beneficiary, he has no higher claim or superior entitlement than other eligible beneficiaries. The rules governing the Scheme do not provide for a sliding scale of eligible beneficiaries.
 - Mr H has not succeeded in demonstrating why the Trustee's decision should be considered perverse and to be remitted for further consideration. The decision regarding awarding of the lump sum death benefits is within the discretion of the Trustee.
 - The choice of trustees for the children's trust was solely a matter for the Trustee.
14. Mr H did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr H provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and therefore, I will only respond to the key points made by Mr H for completeness.

Ombudsman's decision

15. Mr H did not accept the findings in the Opinion. His disagreement can be summarised as follows:
- The Trustee considered the factually untrue statement that the children were living with Ms A's mother at the time of her death. In fact, they were resident with Mr H as the arrangement with their grandmother was for temporary convenience.
 - The Trustee appears to have preferred the claim by Ms A's brother regarding the financial dependency of the children, against the documentary evidence provided by Mr H.
 - Mr H was not given the opportunity to address the claim by Ms A's brother and he was not informed of the October 2013 decision to award the benefits to the children. The Trustee has not provided copies of the letters from Ms A's brother.
 - The Opinion does not mention the issue of the appointment of trustees for the trust set up for the children.

16. My role is not to substitute my decision for that of the Trustee. I cannot set aside the Trustee's decision just because I may have reached a different one, or given more (or less) weight to any information provided. That is the responsibility of the Trustee in the exercise of its discretion.
17. In reaching its decision, the Trustee mentioned the conflicting information received from the parties, but did not state any preference for either side. In my view, it fairly considered all the information received and it is entitled to place as much (or little) weight to each piece as it deems fit. It is not me to decide for the Trustee how it should treat the information before it, as long as it has properly taken account of all relevant information, and discounted irrelevant ones. I find that it acted appropriately in this instance.
18. Contrary to Mr H's view, the Trustee is not bound to share confidential information it has received when considering how to exercise its discretion and not breach confidentiality by sending copies of it to other potential beneficiaries.
19. I believe the Trustee found itself in a difficult position between Mr H and Ms A's family. In making the award to the children, it made a decision that no reasonable body of decision makers would regard as perverse. Accordingly, I do not find that there are grounds to set aside the decision.
20. As was mentioned in the Opinion, the appointment of trustees for the children's trust is also a matter for the Trustee and I would not interfere with such an appointment.
21. Lastly, the Trustee has apologised for not informing Mr H of its decision in October 2013. It asked the then administrator to inform all potential beneficiaries of the decision, but that was not done. However, I consider that the Trustee's apology is sufficient for this oversight.
22. Therefore, I do not uphold Mr H's complaint.

Anthony Arter

Pensions Ombudsman
10 October 2016