

Ombudsman's Determination

Applicant	Mrs T
Scheme	Zurich Personal Pension Plan (the Plan)
Respondent	Zurich Assurance Limited (Zurich)

Outcome

1. Mrs T's complaint is upheld and to put matters right Zurich should reconsider her application to receive the Plan death benefits and notify her of its decision, with reasons.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs T has complained that Zurich rejected her application to receive the Plan death benefits, following the death of her late husband, Mr T.

Background information, including submissions from the parties

4. Mr T took out the Plan in October 2002 and nominated Mrs T to receive the benefits payable upon his death.
5. Mr T suffered a heart attack in December 2012, during a trip to Brazil.
6. On 16 November 2013, Mrs Y, a relative of Mr T, wrote to Zurich on his behalf to notify it that he had decided to change his nominated beneficiary to her. She also instructed Zurich to correspond only with her going forward.
7. Sadly, Mr T died on 4 September 2015.
8. Zurich requested a copy of Mr T's final Will from Mrs Y, in order to establish if its contents substantiated the change of nomination he had made on 16 November 2013.
9. At the end of September 2015, Mrs Y provided Zurich with a certified copy of Mr T's final Will, which was dated 7 July 2010. Whilst the Will made no reference to who should stand to receive death benefits derived from the Plan, Zurich noted a passage which read:-

“I declare that I have made no provision for my wife, having regard to the substantial provisions I have already made for her in my lifetime and to the fact that she has substantial resources of her own”.

10. Zurich paid the Plan death benefits to Mrs Y on 12 October 2015.
11. Mrs T wrote to Zurich on 3 November 2015 to make her case that she should receive the death benefits derived from the Plan. She enclosed a copy of a Court of Protection Order (**the Order**) dated 25 January 2013, which appointed an Interim Deputy for Mr T. Mrs T also made the following points:-
 - The Order demonstrated that Mr T did not have mental capacity to nominate another beneficiary in her place in November 2013 and so the change of nomination to Mrs Y should be disregarded.
 - It was not true to say that she had been provided for and had substantial financial resources of her own, as Mr T had suggested in his Will.
 - She had been alienated from Mr T by his family prior to his death.
 - Mr T had made sizeable gifts of money and property to the other beneficiaries named in his Will before he died.
 - Accordingly, she should be the sole beneficiary of the Plan death benefits.
12. Zurich wrote to Mrs T on 3 December 2015 to tell her that the Plan death benefits had been paid to Mrs Y. Zurich said that in doing so, it had taken account of the nomination form submitted in November 2013 and the late Mr T’s Will. Zurich acknowledged that Mrs T considered any documents submitted after the Order was implemented should be disregarded, but noted that it was unaware of the Order when it paid out the death benefits.

Adjudicator’s Opinion

13. Mrs T’s complaint was considered by one of our Adjudicators, who concluded that further action was required by Zurich. The Adjudicator’s findings are summarised briefly below:-
 - Since the Plan death benefits were held in Trust, Zurich should have disregarded the late Mr T’s Will when reaching its decision.
 - Zurich did not give reasons as to why it preferred the November 2013 nomination form over Mrs T’s argument that the implementation of the Order in January 2013 meant that any form completed after that date should be disregarded. As such, Zurich did not take all relevant evidence into account in reaching its decision that the Plan death benefits should be allocated to Mrs Y.

PO-15526

14. Zurich did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Zurich provided its further comments, which I do not consider should change the outcome. I will therefore only respond to the key points made by Zurich for completeness.
15. In summary, Zurich made the following arguments:-
 - There was no reason to suppose that any of the evidence submitted by Mrs Y was in any way invalid.
 - It accepts that the existence of the Order meant that the November 2013 nomination form should have been disregarded as far as reaching a decision regarding who should receive the Plan death benefits is concerned.
 - However, it maintains that the late Mr T's Will deals specifically with his wishes with respect to Mrs T and as such, it is directly relevant to the question of who should receive the Plan death benefits. In the absence of evidence to the contrary, it is reasonable to infer that he would have wanted the Plan death benefits to be treated in the same way.
16. Zurich's comments were shared with Mrs T. In response, she provided further points, as follows:-
 - She does not agree that Zurich had no reason to suppose that none of the evidence provided by Mrs Y was invalid. Such a position is misplaced in circumstances whereby Mrs Y wrote to Zurich to tell it that Mr T had decided to change the nominated beneficiary of the Plan death benefits *solely to her* and requested that all future correspondence should be sent *to her*.
 - She also noted that it would not have been in Mrs Y's interests to provide Zurich with a copy of the Order.
 - In these circumstances, Zurich should have made further enquiries – not least of her – given she was the sole nominated beneficiary of the Plan death benefits prior to receipt of the notification of the change of nomination from Mrs Y.
 - Bearing in mind Zurich accepts that the November 2013 nomination form should be disregarded, it is illogical for Zurich to stand by its decision to distribute the Plan death benefits to Mrs Y. To the extent that Zurich considers it was misled by Mrs Y, it would be able to recover the monies paid out and. As such, it is not sufficient to say it is too late to amend its decision on the basis that the Plan death benefits have already been paid to Mrs Y.

Ombudsman's decision

17. When considering complaints about the distribution of death benefits, I ask myself the following questions:-

- Has the decision been made in line with the rules governing the Plan and overriding legislation?
 - Am I satisfied that all the relevant available evidence has been considered, and that no weight has been given to irrelevant evidence?
 - Am I satisfied that the decision reached is not perverse, in that it would not reasonably be arrived at by any other decision-maker presented with the same evidence?
18. It is not my role to substitute a decision made by a respondent with my own. Accordingly, in instances where I find that a decision has not been arrived at in the correct manner, I direct the decision-maker to reconsider the case and reach a fresh decision.
19. The Trust Deed and Rules governing the Plan (see the Appendix) provide that the Plan death benefits are payable to any of the eligible beneficiaries at Zurich's absolute discretion. As a spouse, Mrs T was within the class of potentially eligible beneficiaries, regardless of whether or not she was the subject of a valid nomination.
20. I note that Zurich did not make any enquiries of Mrs T, even though she was a spouse and the nominated beneficiary prior to the change of nomination in November 2013. Bearing in mind Mrs Y had written to Zurich to instruct it to change the nomination to herself, I consider evidence should have been sought from Mrs T before paying the Plan death benefits in full to Mrs Y. In fact, the only correspondence Zurich has provided in support of its case is from Mrs Y. In the circumstances, I find that Zurich failed to seek appropriate relevant evidence before arriving at its decision to pay the Plan death benefits to Mrs Y.
21. I recognise that the Will states that the late Mr T had made no provision in that document for Mrs T, explaining that he had already made substantial provisions for her in his lifetime. I also accept Zurich's submission that the Will is relevant even though the death benefit does not form part of the estate, to the extent that it may define additional beneficiaries and will necessarily shed some light on the late Mr T's wishes. Zurich submits that it can be inferred from the Will that the late Mr T would not have wanted the Plan death benefits to go to Mrs T. I do not agree. It could just as reasonably be inferred that the Plan death benefits constituted one of the "substantial provisions" he had already made for Mrs T. Against that limited factual background, I conclude further enquiry should have been made of Mrs T to establish her circumstances before making a decision how to distribute the death benefit.
22. Overall, I find that Zurich did not seek appropriate relevant evidence from Mrs T before deciding how to distribute the plan benefits according to the relevant rule.

PO-15526

Directions

23. Within 21 days of the date of this Determination, Zurich will reconsider Mrs T's application to receive the Plan death benefits and notify her of its decision, with reasons.

Karen Johnston

Deputy Pensions Ombudsman
16 March 2018

Appendix

The Trust Deed and Rules of the Zurich Personal Pension Plan 2012

24. Rule 6.6 (“**Payment of lump sum death benefits**”) provides:-

“6.6.1 Where on the death of a Member or other beneficiary an amount is stated to be paid in accordance with this Rule 6.6, and subject to the provisions of Rules 4.4 and 4.6, the following provisions shall apply.

6.6.2 Where permitted by the Provider, or under the terms of this Arrangement, a Member may appoint trustees to hold on discretionary trust any lump sums payable on the death of the Member. Provided such appointment is valid and effective (and provided further that neither the Member, nor the Member’s estate or legal personal representatives can benefit from any such lump sums under that discretionary trust), any amount payable under this Rule 6.6 shall be paid to the trustees appointed by the Member. Any such appointment must be by deed in such form as the Scheme Administrator may require. Where such an appointment has been made prior to 6 April 2012 in respect of Former Protected rights only, that appointment will remain in force (for so long as it otherwise remains valid).

6.6.3 Where Rule 6.6.2 does not apply, the Scheme Administrator shall pay or apply all or part of that sum to or for the benefit of one or more of the people who come within Rule 6.6.4 in such shares as the Scheme Administrator shall decide.

6.6.4

(a) A benefit payable under this Rule may be paid to one or more of the Relatives, Dependants, personal representatives (or executors) or Nominated Beneficiaries of the deceased Member or any person who is entitled to an interest in the Member’s estate.

(b) The Scheme Administrator may make interim payments to any beneficiary in advance of its final decision as to the total benefits to be paid under this Rule.

(c) The Scheme Administrator may establish separate trusts for the benefit of any beneficiary mentioned in paragraph (a) of Rule 6.6.4 above.

(d) For the avoidance of doubt, the Scheme Administrator may use any amount held in accordance with this Rule to purchase an annuity for any Dependant of the Member.

(e) If the Scheme Administrator decides that it will be unable to exercise these powers within two years of the earlier of the day on which the Scheme Administrator could first reasonably have been expected to know of it, the

Scheme Administrator may decide prior to the end of that two year period to hold the sum as a separate fund, outside the Scheme on trust for the personal representatives (or executors) of the deceased Member or other beneficiary, or pay the sum to the personal representatives (or executors) of the deceased Member or other beneficiary, or if there are none, his statutory next of kin. Otherwise the Scheme Administrator shall retain the sum as part of the Scheme or make such payment or provide such benefits in respect of the Member or other beneficiary as the Scheme Administrator shall, in its discretion, decide.

(f) The Scheme Administrator may have regard to any document signed by the Member or other beneficiary expressing his wishes for the disposal of the sum (an “**Expression of Wishes**”), and any person, charity or unincorporated association named in the document will be a “**Nominated beneficiary**”.

(g) The Scheme Administrator may deduct from any sum payable under this Rule an amount equal to all or part of the costs and expenses relating to the funeral of the Member or other beneficiary and shall pay any such sum in settlement of those costs or expenses or to any person who has incurred these costs or expenses. For the avoidance of doubt, the Scheme Administrator may make a payment under this paragraph (g) of Rule 6.6.4 in advance of exercising its general discretion as to the payment of a lump sum under this Rule 6.6.

(h) The most recent direction (if any) made by a Member or other beneficiary in relation to the payment of lump sum death benefits relating to Former Protected Rights shall, unless the Member or other beneficiary has subsequently provided the Scheme Administrator with an Expression of Wishes on or after 6 April 2012 (or an earlier date if that Expression of Wishes is expressed as overriding the direction), be treated as an Expression of Wishes for the purposes of Rule 6.6.4(f) in relation to those Former Protected Rights”.