

## Ombudsman's Determination

Applicant	Mrs G
Scheme	The Scout Association Defined Benefit Pension Scheme ( <b>the Scheme</b> )
Respondents	Barnett Waddingham LLP ( <b>BW</b> ), The Trustees of the Scout Association Defined Benefit Pension Scheme ( <b>the Trustees</b> )

## Outcome

1. Mrs G's complaint is upheld, and to put matters right the Trustees shall reconsider their decision regarding the distribution of death benefits in respect of the late Mr J and pay compensation to Mrs G for her distress and inconvenience.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mrs G's complaint against BW and the Trustees is about their refusal to pay to her all or any of the death benefit that arose in respect of the late Mr J.

## Background information, including submissions from the parties

4. Mr J was a pensioner under the Scheme, which was administered by BW. He was divorced, with two adult children, one of whom predeceased him. Mr J's family background is, as Mrs G has herself admitted, quite complicated: Mr J's parents were Mr C and Miss A. Miss A had another son, Mr D, whose father was Mr T. Mr T also had a daughter, Mrs E, whose mother was Mrs T. Mr C was a half-cousin of Mrs G's mother through their common great-grandfather Mr X. This means that Mrs G was a half-second cousin of Mr J, and Mr J was not a blood relative of Mrs E.
5. On 17 September 2009 Mr J completed an expression of wish form for the lump sum death benefits payable from the Scheme (**the 2009 EW Form**). This named Mrs G to receive all the benefit, and referred to her as being his cousin. The form stated: "I understand that the nomination is only an expression of my wishes and is not binding on the Trustees. I also understand that, although I may change my nomination at any time in the future, I cannot direct the Trustees to pay the benefit in any way other than at their complete discretion."

6. On 29 November 2013 Mr J signed a new expression of wish form for death benefits (**the 2013 EW Form**). The form stated “In the event of my death, I would like any lump sum benefits to be paid as follows;”. Mr J named Mrs E to receive all the benefit, and referred to her as being his younger sister.
7. On 8 December 2015 Mr J signed a letter to BW, saying that he was extremely ill in hospital, and “I hereby notify you that I have authorised [Mrs G] to deal with all my financial matters... Please send all future correspondence...to [Mrs G]”.
8. Sadly, Mr J died in hospital on 17 December 2015, without leaving a valid Will. A lump sum of £9,333.56 became payable from the Scheme under Rule 7.4 (see Appendix).
9. Mrs G promptly informed BW of Mr J’s death and completed and returned its Family Information Form, stating that she was Mr J’s legal personal representative and his cousin, and named Mr D as Mr J’s brother.
10. BW told the Trustees that Mrs G had asked if the death benefit could be paid as soon as possible as the money was needed for the funeral costs.
11. In a letter dated 29 December 2015 Mrs G told BW that Mr J had recently fallen out with Mrs E over whether he should spend his final days in a hospice or at home. Mrs G asked for the money to be paid in time for the funeral, arranged on 22 January 2016.
12. In an email dated 31 December 2015, one of the Trustees said to his co-trustees: “The expression of interest form is only two years old and my initial reaction is that we should honour that wish...What do others think?” One of his co-trustees replied on 4 January 2016: “I think we should go with the expression of interest. That’s all the hard fact we have to go on...and it’s recent.” Another co-trustee replied on 5 January 2016: “I agree, we need to honour the expression of wish.” Another trustee commented “reading your comments...and those of others...I would agree...that we should follow the expression of wishes.”
13. On 4 January 2016 the Trustees decided to follow the 2013 EW Form and to pay the death benefit to Mrs E. BW informed Mrs G of the Trustees’ decision.
14. On 5 January 2016 Mrs G wrote again to BW, explaining that Mrs E was not a blood relative of Mr J: Mr J and Mr D had the same mother, and Mr D and Mrs E had the same father. Mrs G said that Mrs E had denigrated Mr J, and had said that she did not want to be involved with his funeral arrangements later that month.
15. On 7 January 2016 the Trustees saw Mrs G’s recent correspondence with BW. The Trustees agreed with the comment of the first trustee that “however sad this all is, I don’t see how it can change his expression of wish.”
16. Mrs G paid for the expenses of Mr J’s funeral on 22 January 2016, expecting that she would be reimbursed accordingly by Mrs E after she had received the death benefit.

17. After Mrs E received the death benefit from the Scheme on 1 February 2016, Mrs G asked Mrs E to reimburse her. Mrs E refused to do so, and requested no further correspondence. Mrs G then asked Mrs E to use the death benefit only for Mr J's funeral costs and debts, but Mrs E returned the letter and said she had instructed her solicitors to issue court proceedings against Mrs G.
18. On 8 February 2016 BW told Mrs G that the death benefit had been paid and no further benefits were payable from the Scheme.
19. On 30 May 2016 Mrs G complained to the Secretary to the Trustees about how they had exercised their discretion. She alleged that Mr J had been harassed by Mrs E into nominating her for the death benefits. She said that Mr J was a vulnerable man with alcohol-related problems; he had rented a room in the house owned by Mrs E and her husband, and had been harassed by Mrs E because he had not paid some rent, and Mrs E had threatened to take legal action against Mr J. According to Mrs G, the rent had been paid by Mr J to the husband of Mrs E, who had not informed his wife.
20. The Secretary to the Trustees left the Scout Association in September 2016, and Mrs G's complaint was not referred to the Trustees until then. There was insufficient time to discuss it at the Trustees' September meeting.
21. On 13 December 2016 the Trustees discussed the matter. They noted that the decision to pay Mrs E was based on the evidence provided at that time and reflected the 2013 EW Form. However, they admitted that Mrs G's complaint letter of 30 May 2016 had not been dealt with correctly, and an out of date dispute resolution form had been sent to Mrs G. The 2009 EW Form had been held by the Scout Association, but the 2013 EW Form had been held by BW; it was decided that in future all such forms should be held by BW to avoid confusion.
22. On 21 December 2016 the new Secretary to the Trustees wrote to Mrs G, confirming that they had acted upon the 2013 EW Form; Mr J's letter of 8 December 2015 gave Mrs G authority to deal with his financial affairs but was not an expression of wish for who should receive the death benefit; the Trustees would not seek to recover the money from Mrs E as their decision was correct based on the evidence available at the time. They offered to pay Mrs G £250 for her distress and inconvenience arising from their unsatisfactory and untimely handling of her complaint.
23. Mrs G then contacted us. We asked her to obtain an internal dispute resolution procedure response from BW as well as the Trustees. BW refuted the complaint, saying that in respect of death benefits it did not have any decision-making power; although it acted as the Scheme administrator it was not a referee in family disputes.

24. BW provided a formal response to us on behalf of BW, the Trustees and the Scout Association. BW explained that the Trustees had discretion to pay one or more of the “Beneficiaries” under rule 7.4; the fact that Mr J had given Mrs G authority to deal with his financial affairs did not mean that he had formally nominated her to receive the death benefits.

### **The Pensions Ombudsman’s position on Death Benefit cases**

25. The Pensions Ombudsman’s role is to consider whether the decision was reached in a proper manner. There are some well-established principles which a decision-maker is expected to follow in exercising its discretion. Briefly, it must take into account all relevant matters and no irrelevant ones. It must not make a perverse decision, i.e. a decision which no reasonable decision-maker, properly directing itself, could arrive at in the circumstances. If the Pensions Ombudsman is not satisfied that the decision has been taken properly he can ask the decision-maker to look at the matter again. However, the Pensions Ombudsman will not usually replace the decision-maker’s decision with a decision of his own, nor can he tell it what its subsequent decision should be.
26. A decision-maker must consider and weigh all the relevant evidence, but the weight to attach to any piece of evidence is for the decision-maker to decide. A decision-maker could, if it wished, attach no weight at all to a piece of evidence. The only requirement is that the evidence is considered.

### **Adjudicator’s Opinion**

27. Mrs G’s complaint was considered by one of our Adjudicators who concluded that further action was required by the Trustees. The Adjudicator’s findings are summarised below:-
- There had been misunderstandings on both sides. Firstly, Rule 7.4 gave the Trustees a discretion as to whom they pay. The recipient had to be one or more of the Beneficiaries, as defined. Following some pressure from Mrs G, the Trustees paid the death benefit quite quickly, within two months after Mr J died on 17 December 2015. It was clear from the wording of the emails sent between the Trustees between 31 December 2015 and 4 January 2016 that they acted upon the 2013 EW Form as if it were legally binding, and they did not have regard for any other relevant factors. In particular, they made no attempt to look into Mr J’s family background, which was more complicated than the expression of wish forms had suggested, and did not consider any Beneficiaries who were not current nominees.
  - The 2009 EW Form had stated that Mrs G was a cousin of Mr J. According to Mrs G they were only half-second cousins, having a common great grandfather (Mr X), not a common grandfather. They did not have a common grandmother. This form was superseded by the 2013 EW Form, which the Trustees relied upon. This form was

also completed incorrectly, as it stated that Mrs E was the younger sister of Mr J. According to Mrs G they were not blood relatives, as they did not share any parents (or grandparents). It was not the Trustees' fault that these forms were completed inaccurately; they relied on the accuracy of the wording that they were given.

- However, the Trustees should have taken some time to consider who were the possible beneficiaries before reaching their decision. It was not sufficient for them to say that the 2013 EW Form was the only piece of evidence they would consider. In the Adjudicator's view the Trustees' decision was unduly rushed and flawed.
- Although under Rule 7.4 of the rules of the Scheme Mrs G had no entitlement to receive all or any part of the death benefit, she did have a right to be considered. She was not a descendant of Mr J's grandparents, or his Dependant, or his most recent nominee, but arguably she had an interest in Mr J's estate because a few days before he died she had been tasked with dealing with his financial affairs, and that could reasonably be interpreted to include meeting his funeral costs.
- In her letters dated 29 December 2015 and 5 January 2016, Mrs G gave a lot of additional information about Mr J's circumstances and in particular the differences he had with Mrs E. A Trustee's email dated 7 January 2016 said: "I don't see how it can change his expression of wish". This showed that the Trustees (wrongly) considered themselves to be bound by the 2013 EW Form.
- The Court of Appeal established in the case of Edge v Pensions Ombudsman (1999) that I cannot make a direction that would adversely affect a person who is not a party to the complaint. This meant that I would not be able to require Mrs E to repay the lump sum death benefit. However, I could ask for the decision to be revisited, and the Adjudicator thought that I would consider that to be appropriate in the circumstances. The Trustees should not let the fact that they have already paid the lump sum influence their review of the matter.
- This matter had generated a lot of correspondence since 2015, and Trustees had admitted that they did not deal properly with Mrs G's complaint of 30 May 2016; she did not receive a full response until 21 December 2016. In the Adjudicator's view this delay amounted to maladministration, for which Mrs G should be compensated. The amount already offered (£250) was less than the usual amount that I awarded nowadays in cases of distress and inconvenience, and in the Adjudicator's view should be increased to £500.
- It was therefore the Adjudicator's opinion that this complaint should be upheld against the Trustees, because they failed to investigate Mr J's family background, incorrectly treated the 2013 EW Form as if it were legally binding on them and took too long to answer Mrs G's complaints.
- The Adjudicator did not think the complaint against BW would be upheld, as it did not have the decision-making power; that was the responsibility of the Trustees.
- To put matters right, the Adjudicator considered that within 28 days of finalising this Opinion the Trustees should (a) reconsider their original decision about the distribution of the lump sum death benefit and make a new decision, informing Mrs G promptly of the outcome, and (b) pay Mrs G £500 for her distress and inconvenience.

28. Mrs G and the Trustees accepted most, but not all, of the Adjudicator's Opinion, and the complaint was passed to me to consider. Mrs G and the Trustees provided their further comments which do not change the outcome, except on the question of timing. I agree with the Adjudicator's Opinion, and I will therefore only respond to the key points made by Mrs G and the Trustees for completeness.
29. The Trustees said that if they were to reconsider their original decision properly, a period of 28 days to make fuller enquiries was likely to be inadequate, given the complex family history and overseas aspects. The Trustees therefore requested that the period should be increased to 90 days.
30. Mrs G objected, saying that a period of 28 days should be sufficient, as the matter had been ongoing since December 2015 and a lot of documentary evidence had already been provided; furthermore, the Trustees had already reviewed the matter in December 2016. She thought the extension requested was a delaying tactic.
31. Mrs G also asked whether the proposed award of £500 could be increased to take account of her out of pocket expenses and administrative work on this matter.

### **Ombudsman's decision**

32. The parties have accepted the Adjudicator's Opinion that the Trustees should reconsider their decision about the distribution of death benefits, but disagree on the maximum amount of time it should take. I consider that the period of 28 days proposed by the Adjudicator may be too tight in practice, bearing in mind the complicated family background, but I consider that the period of 90 days suggested by the Trustees would be too long, bearing in mind the information and documentation that has already been provided to assist the Trustees. In the circumstances I consider that a period of 56 days should be sufficient.
33. The proposed award of £500 is consistent with the amount that I award now where conduct amounting to maladministration has caused significant distress and inconvenience. In the circumstances I consider that amount to be appropriate.
34. Therefore, I uphold Mrs G's complaint against the Trustees. I do not uphold Mrs G's complaint against BW as the decision-making power was vested in the Trustees.

### **Directions**

35. Within 28 days of the date of this Determination, the Trustees shall pay Mrs G £500 for the significant distress and inconvenience they have caused her.

36. Within 56 days of the date of this Determination, the Trustees shall reconsider their original decision about the distribution of the lump sum death benefit arising in respect of the late Mr J and make a new decision, informing Mrs G promptly of the outcome.

**Anthony Arter**

Pensions Ombudsman  
15 November 2018