

Ombudsman's Determination

Applicant	Mrs L
Scheme	Fujitsu UK Pension Plan (the Plan)
Respondent	Trustees of the Fujitsu UK Pension Plan (the Trustees)

Outcome

1. I do not uphold Mrs L's complaint and no further action is required by the Trustees.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs L is unhappy with the Trustees' decision regarding who should receive Mr L's lump sum death benefit and active retirement account benefits.

Background information, including submissions from the parties

4. Mr L's death in service benefits are regulated by Rule 5 of the Rules of the Plan that states:

"5.2 Death of a Member before Account applied

If a Member dies when any part of his Member's Account has not been applied under the Rules, the amount of his Member's Account is applied to provide either or both of the following as the Trustees decide:

- (a) a lump sum payable in accordance with Rule 5.3;
- (b) a Policy to provide an income for any one or more of the Member's Dependents on such terms as the Trustees decide.

5.3 Payment of lump sums on death

(1) In this Rule:

References to a Member include a Life Cover Member.

Death Benefit Beneficiary means in relation to a Member:

- (a) his Spouse;
- (b) his child;
- (c) his grandparents, the descendants of those grandparents and the Spouses of any of them;
- (d) his Spouse's grandparents, the descendants of those grandparents and the Spouses of any of them;
- (e) any natural person who, immediately before the Member's death, in the Trustee's opinion:
 - (i) was financially dependent on the Member to any extent;
 - (ii) had a financial relationship with the Member which was one of mutual dependence to any extent;
 - (iii) was dependent on the Member because of physical or mental impairment to any extent;
- (f) any person (including any unincorporated association and trust) entitled to any interest in the Member's estate;
- (g) any person (including any unincorporated association and trust) notified in writing by him to the Trustees under paragraph (4).

A stepchild or adopted child of any person is treated as that person's child and a natural child of any person who has been adopted by another person is not excluded from this definition by reason of the application of any statutory provision.

(2) Subject to paragraph (5), the Trustees must distribute any lump sum payable in accordance with this Rule within two years of the Trustees receiving notification of the Member's death, or within two years of the time when the Trustees should reasonably have become aware of the Member's death if earlier, among the Member's Death Benefit Beneficiaries living at or born after his death, and his personal representatives, in such shares as the Trustees decide. In carrying out their duty under this paragraph, the Trustees need not take steps to identify every potential Death Benefit Beneficiary".

- 5. The Plan booklet describes on page 10 that if the member dies before they take the benefits, the Trustees must decide who receives any death benefits arising from the membership of the Plan. However, the Trustees will usually take the member's wishes into account provided the member has completed an Expression of Wish Form.
- 5. Mrs L says that the Trustees are being biased as they made their decision to award the lump sum death benefit equally to his four sons only, based on the letter they received from one of Mr L's sons. Mrs L says the Trustees ignored the other potential beneficiaries.

6. Mr L did not leave an updated last will and testament. His last will included his former wife and mentions the debts owed to his mother and Ms Y then, now Mrs L.
7. He completed a Bereavement Beneficiary Form on the HR system however the form was undated and it referred to his former wife who was not named as a beneficiary. Mr L's mother was named as "bereavement beneficiary" and his four sons were named as his "Dependants". Mr L had not completed an online Expression of Wish Form nor said how he would have wanted the Plan benefits to be paid on his death.
8. On 30 June 2016, Mr L's sister, Mrs D, who is acting as the executor of the estate and representing Mrs L, contacted the Plan to inform it of her brother's death.
9. On 18 July 2016, the Plan's customer service consultant, wrote a letter to Mrs D, offering sincere condolences to her and the family. It also informed her that the Trustees had been informed of Mr L's death and that they were now awaiting the Trustees' further instructions.
10. In July 2016, Mrs L completed a Benefit Questionnaire however she did not complete Section 5 with evidence of her financial dependency on Mr L.
11. On 25 August 2016, the Plan wrote to Mrs D informing her that the Trustees' decision was that the death in service lump sum and his retirement account should be paid equally between his four sons. It also asked Mrs D, being the executor, to contact the sons and ask them to each complete Payment Instruction forms.
12. On 27 September 2016, in an email, Mrs D provided further information to the Trustees regarding Mrs L's financial dependency on Mr L.
13. On 2 November 2016, the Plan sent a letter to Mrs D asking her to provide it with a Grant of Probate and any information she may feel is relevant to the distribution of the benefits.
14. On 10 November 2016, the estate solicitors sent a Grant of Probate to the Plan and informed it that Mrs L was Mr L's only dependant.
15. On 7 December 2016, the Plan sent Mrs D a letter that said:

"...following your request, The Trustees have been reviewing their decision...Having now reviewed further information from the estate solicitors, the information already provided and new information from our legal advisors, they have concluded that the original decision they made is correct. Therefore, the late member's children will be paid, in equal portions, part of the death benefit...As Mrs L has already been paid the following benefits, no further benefits will be paid to her.

 - 2 Bereavement Grants of £1,000.00 in respect of the ICL Group Pension¹ Plan and Fujitsu UK Pension Plan.

¹ This is in relation to Mr L's previous Plan

- Spouse's pension of £3,623.40 a year for life from the ICL Group Pension Plan.
 - The Dependant's lump sum from the Fujitsu UK Pension Plan of £108,763.36."
16. On 28 December 2016, Mrs D sent a letter of complaint to the Trustees. Her concerns were that the Trustees had shown no compassion towards Mrs L by excluding her from receiving a share of the death in service lump sum and active retirement account. She added that:
- "Mr L had no life assurance and no savings to pay off the mortgage, his wife had to use the lump sum towards reducing the debt leaving a shortfall of £31,000."
17. On 8 January 2017, Mrs D sent an email to the Plan asking if it had received her two letters addressed to the Trustees and she received a response confirming that it had.
18. On 11 January 2017, the Plan sent a letter to Mrs L informing her that the Trustees had asked that she raise her complaint formally by invoking the Plan's two-stage internal dispute resolution procedure (**IDRP**).
19. On 22 February 2017, the Trustees sent a response to Mrs L under stage one of the IDRP. The Trustees explained that they had considered all the information provided by Mrs L in the standard Benefits Questionnaire (**The Questionnaire**). The Questionnaire said, "No will available". The Trustees confirmed that they had asked Mrs L for further clarification in regard to the information provided in the Questionnaire and that Mrs L confirmed in conversations to the pensions department, that she had no expectation of any money to be paid to her. Mrs L also provided a copy of the old will which was invalidated by Mr L's subsequent marriage to her. The Trustees decided to pay the lump sum death benefit of £108,763.36 and retirement account of £44,556.82, to Mr L's four sons, split equally between them. The Trustees also explained that they "gave high weight to the close blood relationship of Mr L's sons and that no other benefits were payable to their mother, [sic] Mr L's wife".
20. In April 2017, Mrs L appealed against the Trustees' stage one decision. In her submission, she questioned the definition of the dependent child under the Plan Rule 1.2. She said that under this Rule only one of the sons, qualified as he is under age 23 and in full time education. The other sons were over age 23 therefore not eligible. Mrs L also requested that the Trustees obtain permission from the other beneficiaries to allow it to disclose to her, the information it had received from them.
21. On 26 July 2017, the Trustees sent Mrs L its response under stage two of the IDRP. It explained that:
- "There was no mistake over the age of the children and their eligibility for the benefit that they have been given. The definition of child in rule 1.2 that you note in your letter is relevant only to the Dependant's benefit which was

provided to Mrs L, as Mr L's spouse at the time of his death. The Death Benefit Lump Sum and the Investment Return can both be paid to a wider group of potential beneficiaries as set out in Rule 5.3 of the Scheme rules. This list includes any child of the member irrespective of their age or participation in education...With regards to your request for information received from other beneficiaries, our policy is that information obtained by one beneficiary is not disclosed to other beneficiaries. We do not agree, consider it necessary or appropriate to ask the individuals concerned to agree to their confidential correspondence being disclosed to you."

22. In September 2017, Mrs L brought her complaint to this Office.
23. On 10 November 2017, the Trustees sent this Office a formal response. In addition to the formal response, the Trustees provided a copy of the email and letter dated 24 November 2016 sent to them by Mr L's eldest son. The letter said that:

"My father explicitly expressed to me and my brothers, in the presence of Mrs L, that regarding any properties, resources or belonging he wished for it to be shared out as such. In the case of his late wife, Mrs L, she is to be repaid the money that she has invested into my father's house. All that is remaining is to be shared amongst his sons so that they can invest in a stable future".
16. In the formal response, the Trustees said that they considered the potential beneficiaries under the Plan Rules. They made contact with Mrs L, Mrs D and contacted Mr L's eldest son, since they only had his address. Mr L's son confirmed that he had permission to speak on behalf of his siblings and indicated that all of them were financially dependent on Mr L. They gave the weight to the fact that Mr L's sons would not receive any benefit from the Plan if all death benefits were paid to Mrs L. They also acted appropriately in the decision-making process they followed.
17. The Trustees provided a number of documents to this Office to support their decision concerning the distribution of the death benefits in question, in particular, a copy of the emails and the minutes of the Trustees' meeting where the issue was discussed.

Adjudicator's Opinion

24. Mrs L's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees. The Adjudicator's findings are summarised briefly below:-
 - The Ombudsman's role is to examine the Trustees' decision-making process and decide whether the Trustees have, as far as possible, identified all potential beneficiaries; properly reviewed the merit of each one; and that their decision was within a range of decisions which was reasonable for the Trustees to have made.
 - Under Rule 5, the lump sum death benefit arising in respect of Mr L's death is payable by the Trustees to one or more persons under their discretion. This

means that no individual has any automatic entitlement to receive all or any part of the lump sum death benefit over another beneficiary. It is for the Trustees to decide upon one or more beneficiaries from the classes of potential beneficiaries listed in that rule.

- The Ombudsman will uphold a complaint only if he considered that the Trustees' decision was "perverse", i.e. a decision that no reasonable set of Trustees could have reached, or that the Trustees have not followed due process. Mr L did not complete an Expression of Wish Form or leave an updated will, therefore the decision must have been made by the Trustees, taking into account all the other relevant factors and ignoring the irrelevant ones. She noted that the Trustees did not get all the information from Mrs L from the Questionnaire, however in an email dated 27 September 2016, Mrs D provided further information regarding Mrs L's financial dependency on Mr L. The Trustees said that they gave weight to the fact that Mr L's sons would not receive any benefit from the Plan if all death benefits were paid to Mrs L. The Trustees also balanced this against the fact that Mrs L did receive the Dependant's lump sum following Mr L's death.
- The Trustees also considered Mr L's son's letter that expressed Mr L's last wishes. Mrs L has not contested the fact that she was present at that discussion when Mr L expressed his wishes for any excess funds to be distributed equally to his children.
- Therefore, the Adjudicator believed it was reasonable for the Trustees to consider Mr L's sons as legitimate beneficiaries for the purpose of the lump sum death and retirement account benefits. The Adjudicator did not believe that the process followed by the Trustees was flawed, or that their decision on the distribution of the benefits to the four sons was so unreasonable it could be considered perverse.

25. Mrs L did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs L provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs L for completeness.

Ombudsman's decision

26. Mrs L has referred to the fact that the Trustees did not include her mother as a potential beneficiary. Mrs L did not raise this issue prior to the complaint being referred to me. Therefore, I have not considered it as part of my determination. However, the option is open to Mrs L to raise this issue with the Trustees as a separate complaint.
27. The Trustees have absolute discretion in the allocation of the lump sum to any of the beneficiaries within the Plan's definition. They are expected to ask themselves the right questions, take into account all the relevant evidence and no irrelevant evidence

and not reach a decision that no reasonable person making the same decision would reach.

28. I am satisfied that the Trustees made sufficient enquiries to identify the potential beneficiaries. The Trustees considered all relevant information and the fact that Mr L did not update his Expression of Wish form or left a Will.
29. I appreciate that Mrs L believes that as she was married to Mr L, the lump sum should be paid to her, however, whilst the Trustees must consider all beneficiaries as defined in the Plan rules, it has a discretion over whom to award the death benefits. It is clear that the Trustees, in reaching their decision, have considered the potential beneficiaries.
30. I do not find that the decision should be re-considered, therefore, I do not uphold Mrs L's complaint.

Anthony Arter

Pensions Ombudsman
21 June 2018