

Ombudsman's Determination

Applicant	Mrs E
Scheme	Cadbury Mondelez Pension Fund (the Fund)
Respondent	Cadbury Mondelez Pension Trust Limited (the Trustee)

Outcome

1. I do not uphold Mrs 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. Mrs E is unhappy with the Trustee's decision as to who should receive Mr E's death benefit lump sum.

Background information, including submissions from the parties

4. On 4 April 2013, Mr E completed an Expression of Wish form, in which he requested that any lump sum payable should be split between his two sons Mr D (90%) and Mr A (10%).
5. On 30 October 2013, the Trustee wrote to Mr E and explained that on death, a lump sum will be paid to either his spouse, dependants or estate at the discretion of the Trustee.
6. On 15 January 2016, Mr E sadly passed away. Mrs E was married to Mr E at the time but had separated and divorce proceedings had commenced.
7. On 15 March 2016, Mrs E completed the Trustee Information Form that provided information regarding surviving relatives, dependants and beneficiaries of Mr E. The Trustee recognised that Mrs E had separated from Mr E at the time his death but a spouse's pension was payable to Mrs E as divorce proceedings had not been finalised.
8. On 5 September 2016, Mr D completed the Trustee Information Form for the Trustee and confirmed in the Trustee Information Form that Mr E and Mrs E were not living

together at time of Mr E's death and had been separated for a number of years. Mr D also provided a copy of Mr E's last Will and Testament to the Trustee.

9. On 23 January 2017, the Trustees completed a death benefits information form. The form confirmed that the Trustees took into account that Mr E was legally married to Mrs E at the time of death, Mr E's Last Will and testament and Mr E's nomination form. The Pension Team following the above information decided that the lump sum death benefit pension should be paid to Mr D and Mr A.
10. On 17 February 2017, following the information the Trustee had received from Mrs E and Mr D it wrote to Mr D and confirmed that the lump sum of £169,235.40 will be paid into his bank account on 21 February 2017.
11. Rule 14.3 of the Fund rules states:-

“The expression ‘Discretionary Powers’ means that in respect of any sum directed to be held thereon in respect of a deceased Member:-

 - (a) The Trustee shall have power in their absolute discretion to pay or apply the whole or any part of that sum to, or for the benefit of all or any of the Beneficiaries of the deceased Member in such shares and proportions as the Trustees shall in their absolute discretion decide...”
12. The beneficiaries are defined under section 17 of the Fund as:-
 - (a) The Member's spouse or former spouse, Civil Partner;
 - (b) An ancestor, parent or descendant (including any child but unborn at the date of the Member's death) of the Member or of his spouse;
 - (c) A brother or sister;
 - (d) An uncle or aunt either of the Member or of his spouse;
 - (e) The person of the opposite sex to that of the Member with whom, in the opinion of the Trustees, the Member was living as husband and wife before the date of the Members death;
 - (f) A person, body, association or charity with nominated as a Beneficiary for these purposes by the Member by notice in writing to the Trustees;
 - (g) An individual who the Trustees consider is a person for whom the Member was under a moral obligation;
 - (h) A person who is related to the Member or his spouse, in any of the degrees mentions above; and
 - (i) A person nominated by the Member concerned in writing sent to the Trustees and being a person who the Member would wish the Trustees to consider when exercising their discretion.

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13. The 2006 member booklet for the Fund of which Mr E was a member at the time of his retirement on the grounds of ill health on 7 September 2013, describes on page 9 the benefits payable on ill health retirement. Page 10 states the Trustee must decide who receives the lump sum, but usually they will follow the members' wishes, provided they have been notified of them beforehand either by letter or Expression of Wish Form.
14. Mrs E says that the Trustee has not exercised its discretion fairly. She says that Mr E left the entire estate including a net estate of some £430,000 to his eldest son, Mr D ignoring her and his four other children and as such the Trustee has not objectively exercised its discretion in paying the lump sum due on his death.
15. In responding to Mrs E's complaint, the Trustee stated it had exercised its discretion in accordance with the rules of the Fund. It said that it believed that all necessary information was collected to enable the pool of potential beneficiaries to be identified and that all relevant matters were considered.
16. The Trustee provided a number of documents to this Office to support its decision concerning the distribution of the death benefits in question. In particular, the Trustee considered the Expression of Wish form completed by Mr E which supported the Trustee's decision. The Trustee also considered Mr E's Will and Testament and the Trustee Information forms completed by Mrs E and Mr D.

Adjudicator's Opinion

17. Mrs E'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 Ombudsman's role is to examine the Trustee's decision-making process and decide whether the Trustee has, as far as possible, identified all potential beneficiaries; properly reviewed the merit of each one; and its decision was within a range of decisions which it was reasonable for the Trustee to have made.
 - Under the Trust Deed & Rules dated 26 May 2015, the lump sum death benefit arising in respect of Mr E's death is payable by the Trustee to one or more persons under its discretion. This means that no individual has any automatic entitlement to receive all or any part of the lump sum death benefit. It is for the Trustee to choose one or more beneficiaries from the classes of potential beneficiaries listed in that rule.
 - The Ombudsman will uphold a complaint only if he considers that the Trustees' decision was "perverse", i.e. a decision that no reasonable set of Trustee could have reached. As Mr E, on 4 April 2013, completed the Expression of Wish form requesting that any lump sum payable be split between two of his sons it is hard to see how the Trustee could be viewed to have made a perverse decision.

- In some cases the Ombudsman will direct the Trustee to review its decision, e.g. if it failed to consider relevant factors or considered irrelevant factors. However, the Adjudicator was of the view that the Trustee had acted reasonably in deciding to pay the death benefit lump sum in question to Mr E's sons.

18. Mrs E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs E 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 E for completeness.

Ombudsman's decision

19. Mrs E has said that the Trustee has not taken into account that she had to undergo expensive and difficult legal proceeding in order to receive any benefit from Mr E's estate or her ill health which means she will not be able to work again.
20. However, the Trustee has absolute discretion in the allocation of the lump sum to any of the beneficiaries within the Fund definition. It is expected to ask itself 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.
21. I am satisfied that the Trustees in the Death benefits Information Form made sufficient enquiry to identify all the potential beneficiaries. The Trustees considered all relevant information, including the most recent Expression of Wish form completed by Mr E, a copy of Mr E's Last Will and Testament and Trustee Information Forms containing details of Mr E's circumstances at the date of death completed by Mrs E and Mr D. I appreciate that Mrs E believes that as she was still married to Mr E, the lump sum should be paid to her, however, whilst the Trustee must consider all beneficiaries as defined in the Scheme rules, it has a discretion over whom to award the death benefits. It is clear that the Trustee, in reaching its decision, has considered Mrs E, Mr A and Mr D as potential beneficiaries and has taken into account all relevant factors, ignoring irrelevant ones.
22. Mr E completed an Expression of Wish Form on 4 April 2013 which nominated Mr D and Mr A to receive 90% and 10% of his lump sum death benefit. Mrs E has said that the Expression of Wish Form was completed in the course of divorce proceedings and therefore should not be relied upon. However, Mr E gave clear instruction on the Expression of Wish form as to how he wanted the lump sum death benefit distributed on his death. In any event, the decision taken by the Trustee to pay the pay the death benefit lump sum due under the Fund was not based entirely on the Expression of Wish Form. Mr E's Will also shows his intention to provide for his children. It is clear that his sons qualify as beneficiaries under the Fund Rules and the Trustees have the discretionary power to allocate the benefits as they see fit.

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23. I do not find any reason that the decision should be re-considered, therefore, I do not uphold Mrs E's complaint.

Karen Johnston

Deputy Pensions Ombudsman
9 April 2018