

Ombudsman's Determination

Applicant	Ms S
Scheme	The Scottish Life Personal Pension Scheme (the Scheme)
Respondent	Royal London

Outcome

1. I do not uphold Ms S' complaint and no further action is required by Royal London.

Complaint summary

2. Ms S has complained about the discretionary decision made in relation to Mr Y's death benefits under the Scheme. As Ms S was named as the beneficiary, she believes she is entitled to the full amount, as this was to cover any debts left by Mr Y.

Background information, including submissions from the parties

3. In 2011, Mr Y set up a personal pension and became a member of the Scheme, which was administered by Royal London. Ms S was nominated as the sole beneficiary in the event of Mr Y's death, but the payment of the benefits was "at the discretion of the scheme administrator." The nomination form included the following statements, which Mr Y accepted:

"I would like you to use your discretion when distributing the benefits under my Plan and consider paying the value of my Plan to the person or persons named here. I understand that although you will take account of my wishes, you are not bound to follow them."

"If you do not want us to use our discretion and decide who should receive the value of your Plan on your death, you can choose one of the other options in the full Payment of Benefits on Death Form (14P27)."

4. Mr Y died on 21 March 2015. Royal London received notification of this on 18 May 2015. The letter explained that Mr Y did not leave a will, nor was he married at the date of death, so a Grant of Administration was being obtained.
5. On 2 July 2015, Royal London wrote to Ms S in relation to a claim for Mr Y's personal pension. The letter stated that Royal London did not believe that Ms S and Mr Y were

in a relationship when Mr Y died, and so it was contacting her to establish whether she wished to be considered as a beneficiary of the death benefit.

6. On 24 July 2015, Ms S responded with an explanation of the relationship she had with Mr Y and how she was the nominated beneficiary of Mr Y's death benefits. She did not understand why Mr Y's family had said that she was no longer in a relationship with Mr Y but speculated that this was in relation to her being the beneficiary. She said that Mr Y was capable of changing the beneficiary if he had wanted to as he had an annual meeting with an independent financial adviser (IFA).
7. In addition to this, testimonials were provided from Mr Y's friends, colleagues, the IFA, and Ms S' relatives to confirm that Mr Y and Ms S had been in a relationship when Mr Y died.
8. On 14 August 2015, Royal London wrote to Ms S to say that the claim was payable at its discretion and that it did not form part of the late Mr Y's estate. "When exercising our discretion, we must give proper consideration to all potential beneficiaries and their circumstances. We can only do this once we believe that we are in possession of all the relevant details. We are only able to base our decision on the evidenced facts that are presented to us." Based on the information it had received, Royal London had decided to pay 50% of the death benefit to Ms S, and 50% to Mr Y's youngest son.
9. Ms S responded to this by providing further documents, such as mobile phone bills showing text messages and phone calls to Mr Y. Ms S' submission also included a covering letter from her solicitors that asked Royal London to reconsider the decision based on Ms S being Mr Y's partner and common law wife.
10. On 25 September 2015, Mr Y's family provided additional information to argue that Mr Y would have wished for the death benefit to be allocated to his three sons. This information included:-
 - Written testimonials regarding the relationship between Ms S and Mr Y and how this had seemingly ended.
 - At a later date, Mr Y's family also provided bank statements demonstrating the financial reliance of Mr Y's second eldest son. Mr Y had been sending him £300 a month as financial support for the duration of his son's University course. Mr Y's youngest son had also claimed that Mr Y had been giving him £150 a month in cash when he started studying at University.
11. On 26 March 2016, Royal London received additional information from Ms S. Included in this was a 32-page letter where Ms S detailed her relationship with Mr Y and questioned the other parties' comments. Further testimonials were also provided from people who had been in contact with either Mr Y or Ms S, confirming their relationship.

12. On 12 July 2016, Royal London wrote to Ms S to say that she would receive one third of the death benefit.
13. On 7 February 2018, Ms S complained to Royal London as she was unhappy with its decision to divide Mr Y's death benefit between herself and Mr Y's youngest and second eldest son. Ms S provided details that she wanted to be considered in more detail, as follows:-
 - Mr Y left her as a beneficiary, yet it was the sons who had made the claim for the death benefit.
 - Mr Y's sons had made false allegations, stating that she and Mr Y had not been in a relationship for two years.
 - Mr Y had left her as a beneficiary to prevent her from being in debt.
 - She did not understand why Mr Y's sons were labelled as dependants as Mr Y did not contribute anything to them.
14. Royal London acknowledged the complaint and sent updates on 8 March 2018 and 6 April 2018 confirming "I will write to you every 4 weeks"
15. On 26 August 2018, Ms S contacted Royal London as she had not yet had a response. She stated how she believed the situation was unfair, as she had been left with Mr Y's debts and had been the person spending the most time with Mr Y, yet his sons appeared to be benefiting when they did little.
16. On 14 September 2018, Royal London issued its response. It apologised for the length of time it had taken to complete the review as it understood that this was a concern for Ms S. It stated that the original claim took time to ensure that all known beneficiaries were considered. Whilst the application named Ms S as Mr Y's named beneficiary, the distribution of benefits would be at Royal London's discretion in accordance with the Scheme Rules. Therefore, Royal London was not bound by Mr Y's wishes. It felt that after reviewing the collated evidence, the decision was appropriate and so no adjustment was to be made. However, due to the time taken, Royal London offered £500 to Ms S.
17. In November 2018, Ms S brought her complaint to us. She believed she was entitled to the full death benefit as she was the nominated beneficiary, and stated that Mr Y "only ever heard or saw his children when they wanted anything."

Adjudicator's Opinion

18. Ms S' complaint was considered by one of our Adjudicators who concluded that no further action was required by Royal London. The Adjudicator's findings are summarised below:-

- The Scheme Rules said that the 'scheme administrator' would use its discretion to determine how it would apply a member's fund once the member died. If the member died before the age of 75, a number of lump sum death benefits could be provided in accordance with Rule 23, to:
 - The member's relatives;
 - Any person for whom income withdrawal may be provided on that death (whether actually provided or not);
 - (on the death of a Member) any person or body nominated for this purpose by the Member;
 - (on the death of a Dependant) any person or body nominated for this purpose by the member (or if the member made no nomination, the Dependant);
 - Any person entitled under the member's will to any interest in the member's estate; and
 - The member's personal representatives (but not if the payment would then pass as bona vacantia).
- Royal London, as the 'scheme administrator', could decide how much weight to attach to any piece of evidence. It was not for the Ombudsman to say what should be decided unless the decision was so irrational that no reasonable decision-maker could have reached the same decision. However, the Pensions Ombudsman could ask a decision-maker to review the matter again if the decision had been reached without proper consideration of all the available information concerning potential beneficiaries.
- Royal London reviewed the dependency of all potential beneficiaries when reaching its initial decision. After doing so, Mr Y's youngest son came within the Finance Act 2004's definition of a dependant, so it included him as a beneficiary. Although Ms S was listed as the sole nominated beneficiary, Royal London was not bound by Mr Y's wishes.
- The final decision had incorporated Mr Y's youngest and second eldest son's claims of financial dependency. As they were both relatives of Mr Y, their claims were eligible for consideration. Further, Royal London had given consideration to Mr Y's nominated beneficiary, Ms S.
- In the Adjudicator's view, the decision was reasonable, as dividing the death benefit between Ms S and two of Mr Y's sons was not perverse or outside the range of reasonable outcomes that could have been reached. She was also satisfied that Royal London had carefully considered all of the available information concerning potential beneficiaries. The Adjudicator was satisfied that Royal London had exercised its discretion in accordance with the Rules.

19. Ms S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms S 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 Ms S for completeness. Ms S' comments are as follows:-
- She claimed that the money placed in Mr Y's sons' account would have been money the son was borrowing for something, and he was not receiving cash in hand on a monthly basis.

Ombudsman's decision

20. Ms S believes that Mr Y's death benefit should be paid to her as she was the only nominated beneficiary.
21. In cases like these, the decision-maker may sometimes decide to follow the nomination form, but this does not mean that they are bound by it. Similarly, if the decision-maker comes to a conclusion that differs from the nomination form, it does not automatically mean that it has done something wrong or that it has exceeded its powers. Under the Scheme Rules Royal London has the discretionary power to decide on the distribution of the death benefit among the class of beneficiaries listed in Rule 23 (set out in paragraph 18 above).
22. As the Scheme's administrator, Royal London must take into account all relevant facts and circumstances. As the Scheme Rules list the potential recipients of the death benefits, Royal London would first need to establish if there were any. It would also need to establish the circumstances of these relationships.
23. As one of the listed potential recipients, Royal London was obliged to consider Mr Y's relatives when determining how to apply Mr Y's death benefits. It was relevant for Royal London to take into account any submission from Mr Y's sons, as it was pertinent to obtain Ms S' comments, as the nominated beneficiary.
24. I understand Ms S has questioned some of the claims being made by Mr Y's sons. However, from what I have seen, Royal London gave Ms S the opportunity to comment on her relationship with Mr Y. It is apparent that there has been an investigation into the claims, rather than a simple acceptance of the claims made.
25. With regard to Mr Y's sons being dependants, this formed part of Royal London's assessment of the circumstances. As Mr Y's youngest son met the definition of a dependant from Schedule 28 of the Finance Act 2008 at the time Mr Y died, I consider this to be a relevant factor. Further, while Ms S has argued that Mr Y's sons would have been borrowing money rather than being given money, it is for Royal London to decide how much weight to attach to the submitted evidence.
26. I do not find that Royal London has taken into account anything irrelevant, but rather it has fulfilled its obligations. It reviewed the initial information and reached an initial decision. When it received further submissions, it reviewed these, and subsequently amended its decision. This demonstrates that Royal London tried to ensure that its

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decision was as a result of a careful examination of the circumstances and the possible beneficiaries. Having reviewed the information submitted to Royal London, I find its final decision to be reasonable. It is not one that no reasonable decision-maker could have reached.

27. I do not uphold Ms S' complaint.

Anthony Arter

Pensions Ombudsman
28 August 2019