

Ombudsman's Determination

Applicant	Mr S
Scheme	Royal London Group Pension Plan (the GPP)
Respondent	Royal London Group (Royal London)

Complaint Summary

1. Mr S' complaint concerns Royal London's decision not to exercise discretion in relation to the lump sum death benefit arising on his son's death.
2. Mr S says Royal London ought to have explained to his son, Mr K, at the time he joined the GPP, that it was not a requirement for him to nominate a beneficiary for the death benefits, especially as he had no marriage plans in place. Mr S maintains that Royal London failed to fully explain to his son the implications of making his nomination, and the importance of keeping it up to date.

Summary of the Ombudsman's Determination and reasons

3. The complaint should be upheld because Royal London failed to consider all potential beneficiaries within the classes defined in the applicable scheme rules. In doing so, it fettered its absolute discretion.

Detailed Determination

Material facts

4. Rule 23: lump sum death benefits (on death before 75) of the Scottish Life Personal Pension Scheme Rules dated November 2006 (the **Rules**), says:

"On the death of an individual who is a Member...any part of his Uncrystallised Fund...to be applied in accordance with this Rule shall be paid to or for the benefit of...such one or more of the following and in such proportions as the Scheme Administrator in its absolute discretion may determine:

23.1.1 the individual's Relatives;

...

23.1.3 (on the death of a Member) any person...nominated for this purpose by the Member;

...

23.1.6 the individual's *personal representatives*..."

5. Rule 3.1 of the Rules says that the Scheme Administrator may, without the agreement of any Beneficiary, amend all or any of the Rules by deed.
6. Section 4: Benefits, of the Scottish Life retirement solutions GPP terms and conditions (**T&C**), states:

"(b) On Death

In the event of the Member's death prior to Selected Retirement Date in respect of [the Insured Death Benefit] ... and prior to vesting in respect of ... [the value of the unit-linked and with profits accounts] ... there will be payable to the [trustees of the Scheme (the **Trustees**)] for payment in accordance with the Rules and where applicable the application form completed by the Member..."

7. In late March 2011, Mr K applied to join the GPP with Scottish Life, a division of Royal London.
8. He indicated in his application for the policy (the **Policy**) that he had a financial adviser, and provided the contact details for the financial advisers associated with the GPP. The same day, he completed a payment of benefits on death form (the **Benefit Form**).
9. The Benefit Form said that Mr K should complete it, if he had one of the pension plan types listed on the form, which he did. In the payment of benefits section of the form, he was given the choice of three options: option one- for death benefits to be distributed at the discretion of the Scheme administrator; option two- for death benefits to be distributed at the discretion of his own trust; or option three- at his direction. He selected option three, and directed that Scottish Life pay the entire value of his Policy on his death as a lump sum to Ms D, "a family friend."
10. The notes directly below option three said in [bold text]:

"You can change who you have chosen at a later date by writing to us and your new nomination will cancel and replace your previous choice. If you choose this option, we will pay your plan value on your death as directed above. Any payments we make may be subject to inheritance tax and you may want to discuss this with a financial adviser."

11. Mr K passed away on 12 February 2017, aged below age 75, while in pensionable service. On 26 June 2017, Mr K's employer notified Royal London that it had now received a copy of his death certificate, and attached a copy.
12. Mr S is the legal personal representative of Mr K's estate (the **Estate**). In a letter dated 3 October 2017 (the **October Letter**), Royal London notified Mr S and his wife that the proceeds of the Policy would be paid to Ms D, as instructed by Mr K.
13. Royal London said that Mr K had made the direction in favour of Ms D (the **Direction**) in writing and that it was legally binding. Consequently, it was unable to pay the proceeds of the Policy, then valued at £24,338, to a third party.
14. On 9 October 2017 Mr S complained to Royal London. He said that the Direction had been made several years earlier when his son and Ms D "were briefly an item", but their relationship had ended more than six years earlier. He said that his son had obviously forgotten to cancel or change it. He pointed out that his son had a couple of girlfriends since then, and that Ms D had not attended his funeral. He said she was not a family friend, he did not even know her surname until he had received the October Letter; he could only assume that his son had nominated her because he was required to make a nomination and he expected to outlive his parents.
15. In its formal response to Mr S' complaint of 19 October 2017, Royal London said, while it appreciated that the way the Policy proceeds had been distributed raised moral issues, it had a duty to follow the Direction. Royal London explained that, at the time of taking out the Policy, it was not a requirement to add a beneficiary. Consequently, the distribution of any death benefits would have been determined by the trustees. It did not uphold the complaint.
16. On 11 December 2017, Royal London wrote to Mr S' representative at the Pension Advisory Service (**TPAS**), enclosing a copy of Mr K's original application for the Policy, and the Benefit Form he submitted to his employer's financial advisers.

Summary of Mr S' position

17. Further comments from Mr S are set out below.
 - At the time of receiving the October Letter, neither he nor his wife knew anything about Ms D or her whereabouts. They have not seen photographs indicating that his son and Ms D were ever a couple.
 - He finds "the current position wholly unacceptable and morally wrong." He believes that his son was either not advised at the time of taking out the Policy or was poorly advised about how his pension would be distributed in the event of his untimely death.

- He accepts that his son appeared to have had the support of a financial adviser when completing his application for the Policy; to date he has not seen Royal London's letter to TPAS.
- Due to "an administrative oversight," his son forgot to update his nomination. He queries whether Royal London did contact his son every two years as it has indicated, because this would hopefully have prompted him to update his nomination.
- His son had no life insurance in place, and very little savings; he and his wife have had to bear the funeral costs of approximately £6,000.
- While he accepts that they would have had to cover the costs in any event, they do not think it is right that someone who has had nothing to do with their son for several years, "nor has contributed to his life", is now benefiting from his pension. Their son lived with them throughout his lifetime.
- He has spoken recently with some of his son's friends [about Ms D]. They were surprised that he had nominated her as the sole beneficiary for his lump sum death benefits. She was just a member of a group of their friends, and was not dating his son at the time. In early 2012, she started withdrawing from them, including his son, "to the point of deleting and blocking them from her social media accounts." [Apparently], she is now engaged and expecting a child, and wants nothing to do with his son at all.
- Royal London paid the death benefit to Ms D in full knowledge that his complaint was ongoing.
- He questions how Royal London has managed to locate Ms D, especially as his son did not provide her address on the Benefit Form, or any other details that could be used to identify her. Furthermore, his son's friends, that he has spoken to, do not seem to know her current whereabouts.

Summary of Royal London's position

18. Further comments from Royal London are set out below.

- Royal London does not accept that a mistake has been made. It followed the correct legal process in this case.
- All the plans under the GPP, operate under the 'umbrella' Scottish Life personal pension scheme. While the applicable rules allow the Scheme administrator to exercise discretion, a signed direction would overrule this.
- The position was made sufficiently clear in the Benefit Form Mr K completed. The T&C state that death benefits will be payable to the Trustees in line with the Rules and any application completed by the member.

- As the Direction is legally binding, Royal London can only pay the proceeds to the named beneficiary. Royal London cannot exercise discretion in this case.
19. Royal London says it is satisfied that it has successfully traced Ms D. After verifying her identity, Royal London paid out the lump sum benefit to her on 19 June 2018.
 20. Mr S considers payment of the death benefit to the Estate would be reasonable compensation.

Conclusions

21. Mr S has questioned whether his son was reminded by Royal London at any time to review his nomination. While I would consider it good practice, for pension administrators to encourage members to review their nominations, I am not aware of any legal obligation that would have required Royal London to do so. I do not therefore consider that Royal London's alleged failure to send out such reminders to Mr K, materially changes the outcome.
22. On a member's death, the Rules provide that any part of the "Uncrystallised Fund" should be paid to or for the benefit of one or more of the classes of beneficiaries listed therein. The Rules requires the Scheme Administrator to distribute the fund in such proportions as the Scheme Administrator, in its absolute discretion, may decide. On the understanding that it was obliged to follow Mr K's wishes as stated on the nomination form, Royal London paid the death benefit to Ms D. In doing so, it treated the Benefit Form as if it was a legally binding nomination.
23. I find that Royal London misdirected itself, on a point of law, by adopting an incorrect interpretation of the Rules. I can see no evidence to support the assertion that the Rules specifically allow the above discretion to be completely fettered in this way.
24. While Rule 3.1 gives the Trustees the power to alter the Rules, this does not, in my view, allow Royal London to amend, circumvent or otherwise ignore the provisions of the Rules in the way it has. In the absence of any clear power in the Rules to restrict payments of lump sum death benefits to a nominee, or nominees, the Trustees unduly fettered their discretionary power. They should therefore make the decision again, after first identifying and considering all potential beneficiaries under the Rules.
25. Royal London will need to consider the extent to which the payment already made to Ms D is recoverable. This should not prejudice the outcome of the Trustee's review of this case, and they should still reconsider the matter properly. Mr S will then have the satisfaction of knowing that, whatever the outcome, his claim as a potential beneficiary for his son's lump sum death benefit has been properly considered.
26. This matter has likely caused Mr S significant distress and inconvenience, which has probably been compounded by Royal London's insistence that it is under a legal obligation to pay the benefits to Ms D, his son's nominated beneficiary. Royal London

should make an award to him to put right the non-financial injustice caused to him. I consider that an award of £500 would be appropriate in the circumstances.

Directions

27. Within 21 days Royal London shall:

- i. identify potential beneficiaries for Mr K's Uncrystallised Fund, make the decision wholly afresh ignoring the fact that payment has been made to Ms D, and notify Mr S of that decision, explaining its reason(s);
- ii. if Royal London decide to pay any part of the Uncrystallised Fund to Mr S, simple interest, as calculated by the reference banks, should be added to the payment, from 3 October 2017, to the date of actual payment; and
- iii. pay £500 to Mr S.

Karen Johnston

Deputy Pensions Ombudsman
21 August 2018