

Ombudsman's Determination

Applicant	Miss D
Scheme	GKN Group Pension Scheme 2012
Respondents	GKN Aerospace Services Limited (GKN) GKN Group Pension Trustee (No.2) Limited (the Trustee)

Outcome

1. Miss D's complaint against GKN and the Trustee is upheld. GKN shall make its distribution decision afresh and pay Miss D £1,000 for serious non-financial injustice.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Miss D has complained that GKN and/or the Trustee have failed to make a decision concerning the distribution of a lump sum death benefit in a proper manner.

Background information, including submissions from the parties

Background

4. The disputed decision relates to the lump sum payable on the death of a member of the GKN Scheme, Mr PN. The distribution of the lump sum death benefit was the subject of a previous complaint determined by the Deputy Ombudsman in July 2016 (PO-6823). The Deputy Ombudsman directed GKN to reconsider the distribution of the lump sum death benefit and decide afresh how it should be distributed. This investigation relates only to the subsequent review and fresh decision.
5. The relevant rules are those dated 14 September 2012.
6. Rule 11(E)(1) headed 'DEATH IN SERVICE BEFORE NORMAL RETIRING DATE' provides:

"On the death of a Member while in the Service of the Employers on or before the Normal Retiring Date ... the Member's legal personal representatives shall be entitled to the return of all the Member's contributions to the Scheme ... together with Interest.

On the death of a Member ... while in the service of the Employers on or before the Normal Retiring Date subject to such limitations in amount or special conditions as may from time to time be imposed by the Trustees having regard to the terms of any policy held in the Fund by which the benefit under this sub-clause is provided there shall be held by the Trustees upon the trusts set out in (J) of this Rule a sum equal to an amount which when aggregated with any lump sums arising on the death of the Member under a Former Scheme ... is equal to three times Death Benefit Pensionable Earnings or, if greater, three times the Member's Annual Earnings applicable on the day of the Member's death."

7. Rule 11(J) headed "TRUSTS UPON WHICH DEATH BENEFITS TO BE HELD" provides:

"A benefit which is to be held upon the trusts set out in this sub-rule shall be held by the Trustees upon the following trusts, namely:-

- (a) (i) with power to pay or apply the said sum or any part thereof in such shares and in such manner to or for the benefit of any one or more of the Member's Relatives and Dependants living at the date of his death as the Employers shall within twelve months of his death determine (which power shall be inapplicable in respect of the whole or any specified part of the said sum in any case where the Employers notify the Trustees in writing that they have no intention of making a determination in respect thereof)

and

- (ii) with power exercisable at the request of the Employers within twelve months of the date of the Member's death to apply at the absolute discretion of the Trustees the said sum or any part thereof in or towards payment of funeral expenses incurred in respect of the Member or in or towards reimbursing any person who produces evidence to the satisfaction of the Employers that he has paid such funeral expenses (which said power shall be inapplicable in any case where the Employers make a determination under (i) above in respect of the whole of the said sum or where the Employers notify the Trustees in writing that they have no intention of requesting the Trustees to exercise their power under this sub-paragraph (a)(ii))

and subject thereto

- (b) upon trust for the Member's personal representatives (within the terms of proviso (iii) below) but if no notice of any grant of representation to the estate of the Member shall have been given to the Employers within two years of the Member's death ... upon trust to retain the said sum for better securing the solvency of the Fund.

Provided that:-

- (i) In exercising the power contained in paragraph (a) hereof the Trustees may settle ... any sum in favour of any Relative or Dependant in such manner and with such gifts over upon the termination or failure of any interest ... as the Employers may approve ...
- (iii) for the purpose of paragraph (b) hereof the personal representatives of a Member shall include any person or corporation who by virtue of any grant of Probate, Letters of Administration or other power or authority ... shall be entitled in the opinion of the Employers to administer collect or inherit the estate or effects of the Member or any part thereof ...”

8. “Dependants” as defined in rule 11(J) are:

“... all persons to whose advancement or support the Member shall have contributed in his lifetime or with whom the Member shall have resided and any other person ... whom the Member shall by notice in writing have requested the Principal Company or any of the Employers or the trustees of this Scheme or another scheme of any of the Employers to consider as a recipient of any sum payable under the trusts hereof.”

9. “Relatives” are defined as:

“... means his Spouse, Civil Partner, any of his ancestors or descendants, the spouses or Civil Partners of any such person and any other persons falling within the categories referred to in Section 46(1) of the Administrations of Estates Act 1925¹ other than in paragraph (vi) thereof.”

10. Mr PN was an active member of the Scheme when he died on 1 January 2014. Before his death, Mr PN had completed a nomination form, dated 1 April 2009, nominating Miss D as a recipient of any lump sum death benefit payable under the Scheme. The nomination form stated:

“In the event of my death I would like the person(s) named above to be considered by my Employing Company as recipient(s) of any lump sum death benefit payable from the [Scheme]. This form supersedes any previous nomination form.”

11. On an employee emergency contact details form, Mr PN had also provided Miss D’s details as the person to contact in the event of an emergency. He had named his brother, Mr KN, as “next of kin”.

12. The Deputy Ombudsman issued her determination on 20 July 2016. GKN made a fresh decision as to the distribution of the lump sum death benefit on 31 August 2016. Its decision was recorded as follows:

¹ See Appendix

“The Company was notified of [Mr PN’s] death by [Mr KN], his brother, and registered next of kin.

The death in service benefit expression of wish form held on file was completed 5 years prior to [Mr PN’s] death in 2009 and named [Miss D] to be considered as a beneficiary.

The site therefore made enquiries to establish the relationship status of [Miss D] to [Mr PN].

Neither [Mr PN’s] family, nor the solicitor handling his estate was able to corroborate the nature of [Miss D’s] relationship to [Mr PN]. The solicitor produced council tax and utility bills confirming that [Mr PN] had lived alone. The family confirmed that they were not aware of the identity of [Miss D].

The site established that [Mr PN’s] closest family consisted of a father, brother and step sister.

[Miss D] was considered as a potential beneficiary however, as the site was unable to objectively establish a current relationship with [Mr PN] based on their enquiries, it was decided to release the death in service benefit to the solicitor dealing with [Mr PN’s] estate for appropriate distribution to [Mr PN’s] identified family members.

Following the evaluation of further information that has become available, it has been decided to review the relationship of [Miss D] to [Mr PN] independently and reconsider the position of [Miss D] being classed as a dependent of [Mr PN].

Following this review it has been concluded that after further consideration [Miss D] should be awarded one quarter of the death in service benefit as [Mr PN] had listed [Miss D] to be considered as a beneficiary.”

13. On a form which accompanied the decision, GKN said the lump sum should be distributed as follows: 25% to Miss D and 75% to Mr PN’s estate.
14. On 7 September 2016, the Scheme administrators wrote to Miss D explaining that it had been informed that GKN had revisited its decision as to the distribution of the lump sum death benefit. The administrator said GKN had confirmed that 25% of the lump sum should be paid to Miss D. It enclosed a cheque for £27,778.
15. Miss D contacted the Pensions Advisory Service (**TPAS**) because she wished to appeal this decision. TPAS contacted GKN and asked for more information about the rationale for the decision. GKN wrote to Miss D on 25 May 2017. It said it had taken steps to ensure that its reconsideration of the distribution of the lump sum was carried out independently by having someone unconnected with the original decision consider it. It said the individual had been briefed on the requirements under the

Scheme rules and had been provided with copies of the original information obtained and information subsequently provided by Miss D.

16. GKN said it acknowledged that Miss D was eligible to be considered as a potential recipient of the lump sum death benefit by virtue of Mr PN's nomination. It said it was required to consider all relatives and dependants and it had identified three further potential beneficiaries. GKN acknowledged that financial dependency was not a prerequisite for Miss D to be considered as a potential recipient. However, it said it considered it a relevant factor to take into account. It went on to say it considered that Mr PN's family would have incurred costs as a result of having to administer his estate and arrange his funeral. GKN said it considered that the other three beneficiaries should receive a fair proportion of the lump sum and it had determined that 25% was a fair proportion.
17. Miss D appealed this decision and submitted statements from friends of Mr PN and herself. The Trustee issued a decision under the internal dispute resolution (**IDR**) procedure on 12 September 2017. It did not uphold Miss D's appeal. It said, under the Scheme rules, GKN had the power to decide who should receive the lump sum. It said it had considered whether GKN had followed due process in coming to its decision. The Trustee said it had found that GKN had undertaken appropriate investigations to establish who the potential beneficiaries were and the relationships between those beneficiaries and Mr PN. It said GKN had identified the following beneficiaries: Mr CN (father); Mr KN (brother); Miss D (listed on the nomination form); and Mr PN's estate. The Trustee said it was clear that the decision-maker had been provided with all of the relevant facts and there was no evidence that these had not been taken into account. It said the decision-maker had been provided with a copy of the Scheme rules and there was no evidence that GKN had misdirected itself on a point of law. The Trustee said it was satisfied that GKN had followed due process in reaching a decision.

Miss D's position

18. Miss D's submission is summarised as follows:-
 - She considers the award of 25% to be unfair because it was Mr PN's wish that she should receive the whole amount.
 - She questions why the Trustee has the power to award the benefit to someone other than the nominated person.
 - She is struggling financially since Mr PN's death.
 - Mr PN only spoke to her of two colleagues; one of whom retired several years ago. He seldom met with colleagues outside work. She spoke to one of his colleagues at the funeral and he knew who she was. Mr PN would have referred to her by her middle name.

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- Mr PN was estranged from his family at the time of his death, which is why they had no knowledge of her.

GKN's position

19. GKN's submission is summarised as follows:-

- It has the power to determine who should receive the lump sum. It can be paid in whole or part to one or more of the deceased's Relatives or Dependants, living at the date of his death, or to meet funeral expenses and to the member's estate.
- All of the relevant information was provided for its decision-maker.
- Prior to making a revised decision, it had undertaken further enquiries and had established the following:-
 - Mr PN was in his home alone when he telephoned for an ambulance. He passed away before it arrived. The police were called and they contacted his brother.
 - It was notified of Mr PN's death by his brother, who also registered his death.
 - Mr PN died intestate.
 - Mr PN had no wife or children. His family included his father, his brother and a step-sister.
 - Mr PN's family arranged and paid for the funeral.
 - There was no evidence to show that Mr PN was co-habiting. The family's solicitor provided a copy of a council tax bill, issued in March 2012, which showed a single person discount.
 - Mr PN had completed a nomination form, in 2009, nominating Miss D as the sole recipient of any lump sum death benefit.
 - Miss D was named as Mr PN's emergency contact. His brother was listed as next of kin.
 - Mr KN and Mr PN's step-sister informed GKN that they had no knowledge of Miss D.
 - Its HR spoke to an employee who was close to Mr PN and had known him and his family since they were teenagers. He had no knowledge of Miss D or of Mr PN referring to her in conversation. The colleague did remember Mr PN having a previous long-term relationship which ended in 2005, when his partner died. The colleague stated that Mr PN kept very much to himself.

- Miss D had stated that she was in a personal relationship with Mr PN. However, there was no independent evidence of any financial relationship between Mr PN and Miss D. Details of the relationship were contained in letters from Miss D and a mutual friend of Mr PN.
- Based on the information collected, it identified Mr PN's father and brother, and Miss D as potential beneficiaries. Technically, Mr PN's estate can be classified as a potential beneficiary. Mr PN's step-sister did not come within the definition in rule 11(J).
- The lump sum is a discretionary benefit payable through the Scheme. In exercising its discretion, it takes the nomination form into account, but it is not bound by it. Employees are made aware of this.
- Its decision-maker was provided with a copy of the relevant rules and a note setting out the decision process. He did not, therefore, misdirect himself on a point of law.
- It carried out investigations to establish who Mr PN's Relatives and Dependants were at the date of his death. It made factual enquiries of his family and next of kin, and also spoke to a close colleague. It was in correspondence with Miss D.
- The decision-maker took all relevant matters into account and disregarded any irrelevant ones. He adopted a correct interpretation of the relevant rule and did not misdirect himself on a point of law. The decision is one which a reasonable decision-maker, properly advising himself, could reach in the circumstances.

The Trustee's position

20. The Trustee's submission is summarised as follows:-

- Under the Trust Deed and Rules, it is GKN which has the power to decide who should be paid the lump sum. It has correctly carried out its duties by implementing the decision made by GKN.
- The nomination form is used as a guide to assist GKN in exercising its discretion. It is made clear to employees that the form is not binding and the form, itself, states that the request is for the nominated person to be considered. A newsletter issued in 2013 also informed members that the nomination form was a guide for the disposal of death benefits.
- Its IDR Committee found that GKN had undertaken appropriate investigations to establish who the potential beneficiaries were and the relationship between those individuals and Mr PN. The decision-maker had been provided with all of the relevant facts and it found no evidence that these had not been taken into account. Nor did it find any evidence that GKN had misdirected itself on a point of law.

Adjudicator's Opinion

21. Miss D's complaint was considered by one of our Adjudicators who concluded that further action was required by GKN. The Adjudicator's findings are summarised briefly below:-

- Under rule 11(E)(1), the lump sum benefits payable on the death of member in service before normal retirement age were:-
 - the return of the member's contributions, with interest.
 - a sum equal to three times the greater of the member's 'Death Benefit Pensionable Earnings' or his/her 'Annual Earnings'.
- The member's legal personal representatives were entitled to the return of the contributions. The remaining lump sum was held on trust by the Trustee. Distribution of the lump sum held on trust was covered by rule 11(J).
- Under rule 11(J)(a), the Trustee may apply the said sum, or any part thereof, in such shares and in such manner to or for the benefit of the member's Relatives and Dependants as GKN shall determine. The Trustee may also, at GKN's request and at the Trustee's absolute discretion, apply the said sum, or any part thereof, towards reimbursement of funeral expenses; subject to the provision of satisfactory evidence that such expenses have been paid by the person to whom any payment is to be made. Subject to the provisions of rule 11(J)(a), the Trustee may hold the benefit upon trust for the Member's personal representatives.
- The member's "Dependants" and "Relatives" were defined in the Scheme rules. As previously determined, Miss D was a Dependant by virtue of Mr PN having given written notice of his request that she be considered as a recipient of any lump sum. GKN had said it had identified Mr PN's father and brother as potential beneficiaries. They fell under the definition of "Relatives". GKN also said that Mr PN's estate could be classed as a potential beneficiary. However, the estate did not come within either the definition of Dependant or that of Relative.
- There was provision, under rule 11(J)(b), for the Trustee to hold the lump sum on trust for the member's personal representatives. However, rule 11(J)(b) was subject to rule 11(J)(a). If GKN had exercised its discretion to distribute the lump sum under rule 11(J)(a), rule 11(J)(b) did not come into play. It was a backstop provision to allow for the possibility that GKN might not be able or willing to distribute the lump sum under the provisions of rule 11(J)(a).
- GKN had determined that the lump sum should be distributed in equal parts between Miss D, Mr PN's father, Mr PN's brother and Mr PN's estate. It had exercised its discretion under rule 11(J)(a). The circumstances in which either the Courts or the Ombudsman may interfere in the exercise of a discretionary

power were very limited². Briefly, in exercising a discretion, a decision-maker must:-

- ask the correct questions;
 - direct itself correctly in law; in particular, it must adopt a correct construction of the relevant rules;
 - not come to a perverse decision; and
 - take into account all relevant matters but no irrelevant ones.
- In this context, a perverse decision was one which no other decision-maker, properly directing itself, would reach in the same circumstances. It was only if GKN and/or the Trustee, as appropriate, had failed to follow these principles that the Ombudsman may interfere in the decision. If it was the case that the decision had not been made properly, the Ombudsman would not substitute his own decision for one made by GKN or the Trustee. The proper cause of action was for the decision to be remitted; as before.
 - GKN had given comprehensive details of the reasoning behind its decision (see above). The key points were:-
 - Mr PN's brother had been contacted by the police on his death and he had registered the death.
 - Mr PN died intestate and had no wife or children. His closest family (by which the Adjudicator took it to mean by blood relationship) consisted of his father, brother and a step-sister. The family had paid for the funeral and incurred costs in administering Mr PN's estate.
 - There was no evidence that Miss D and Mr PN were cohabiting.
 - Miss D had been named by Mr PN as the sole recipient of the lump sum death benefit on his nomination form. She was also named as his emergency contact, whilst his brother was named as next of kin.
 - Mr PN's family and a colleague had stated that they had no knowledge of Miss D. Mutual friends of Miss D and Mr PN had confirmed their relationship.
 - On the question of relevant matters, the Adjudicator acknowledged that GKN was faced with a difficult situation; inasmuch as there was conflicting evidence relating to Miss D's relationship with Mr PN. It might have been expected that, if they were in a relationship, Mr PN's family would have been aware of this. On the other hand, if Mr PN was estranged from his family, as had been suggested, it would not have been so surprising that they did not know about

² *Edge v Pensions Ombudsman* [1999] 4 All ER 546

this aspect of his life. Mr PN's colleague had said he kept very much to himself and this might have been why the colleague was not aware of Miss D. On the other hand, there were friends who were willing to confirm that Mr PN and Miss D were in a relationship and he had clearly named her as a potential recipient of the lump sum. GKN had taken reasonable steps to gather appropriate evidence as to the nature of Miss D's relationship with Mr PN, including statements provided by her. The Adjudicator recognised that this process will have been distressing for her but, in her view, GKN had struck a reasonable balance in the evidence it considered concerning Miss D's relationship with Mr PN.

- However, it was not clear whether either GKN or the Trustee had asked the correct questions or directed themselves correctly in law. The Adjudicator noted that, although the discretion provided in rule 11(J)(a) was for GKN to exercise, there were also actions for the Trustee to take. For example, the first step should have been for the Trustee to pay the return of contributions to Mr PN's personal representatives. It was not clear that it had done so. The failure to do so could, potentially, have an effect on the logic behind GKN's decision that the estate should receive an equal share of the remaining lump sum. It was also for the Trustee to decide whether to pay funeral costs under rule 11(J)(a). The power to do so was exercisable at GKN's request but it was, nevertheless, at the absolute discretion of the Trustee.
- If, as GKN had said, the funeral costs were one of the reasons why it considered that Mr PN's estate should receive an equal share of the lump sum, the proper course of action would have been for it to ask the Trustee to consider this. The Trustee would have needed details of the costs incurred and by whom before coming to a decision.
- Of more concern, however, was GKN's position that the estate was a potential beneficiary under rule 11(J)(a). The estate did not come under either the definition of "Dependant" or "Relative". It could not, therefore, be a beneficiary under GKN's discretionary power in rule 11(J)(a). If, for whatever reason, GKN had not exercised its discretionary power under rule 11(J)(a), the Trustee could pay the lump sum to the personal representatives; subject to provision of the necessary documentation. Put simply, GKN did not have the discretion to decide that Mr PN's estate should receive any part of the lump sum.
- In the Adjudicator's opinion, the decision to distribute the lump sum in equal parts to Miss D, Mr PN's father, Mr PN's brother and Mr PN's estate was not reached in a proper manner. GKN had applied an incorrect interpretation to the terms of its discretionary power under rule 11(J)(a). Miss D's complaint could be upheld on that basis.
- In order to put matters right, the Adjudicator suggested that GKN reconsider its decision as to the distribution of the lump sum death benefit. If it considered

that funeral costs should be provided for, it should request the Trustee to consider this.

- In view of the fact that this was the second time GKN had been called upon to make a decision under rule 11(J)(a), the Adjudicator considered that a payment for non-financial injustice was appropriate. Its failure to make a decision in a proper manner would have unnecessarily added to Miss D's distress at an already difficult time for her. In addition, she now faced a period of further uncertainty while the decision was revisited. The Adjudicator suggested that GKN should pay Miss D £1,000.

22. GKN and the Trustee did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

23. GKN made the following further submissions which were also adopted by the Trustee:-

- Rule 11(J)(a)(i) gives the Trustee the power to pay or apply a lump sum or any part thereof in such shares and in such manner to or for the benefit of the member's Relatives and Dependants as GKN shall determine. The rule clearly envisages that a partial payment of the lump sum may be made. It expressly stipulates that GKN may determine that only part of the lump sum may be paid to the member's Relatives or Dependants.
- Rule 11 (J)(a)(i) goes on to state that the power under that rule shall be inapplicable in respect of the whole or specified part of the lump sum in any case where GKN notifies the Trustee it has no intention of making a determination in respect thereof; that is, it has no intention to distribute to any Relative or Dependant. This part of the Rule expressly envisages that there may be circumstances where part of the lump sum is not distributed to Relatives or Dependants in the manner prescribed for in rule 11(J)(a)(i). In such circumstances, rule 11(J)(b) would apply.
- Rule 11(J)(b) provides for the Trustee to hold the lump sum on trust for the member's personal representatives. It is expressed to be subject to rule 11(J)(a). It takes the view that payment under rule 11(J)(a) and 11(J)(b) is not mutually exclusive. Rule 11(J)(a) allows for partial payment of the lump sum. It follows that any amount held on trust for the estate under rule 11(J)(b) would be subject to partial payments made under 11(J)(a).
- There is nothing in rule 11(J)(b) which prohibits part of the lump sum being held in accordance with that provision where the remainder has been distributed in accordance with rule 11(J)(a). If the intention of the draftsman had been that rule 11(J)(b) should not apply where any determination is made under rule 11(J)(a), it would have been open to her/him to have included such wording.

- On 31 August 2016, it decided Miss D should receive 25% of the lump sum and that the remaining 75% should be paid to the member's estate. This decision is entirely consistent with the provisions of rule 11(J).
- A decision was made, under rule 11(J)(a), to pay 25% of the lump sum to Miss D. No determination to pay any of the remainder of the lump sum to a Relative or Dependant has been made. It, therefore, falls to be paid under rule 11(J)(b) to the member's estate.
- It does not dispute that the estate does not fall within the definitions of Relative or Dependant. However, because of the way in which rule 11(J) functions, the estate can be seen as a technical beneficiary because it is the ultimate recipient under rule 11(J)(b).
- It has not misdirected itself as to how rule 11(J)(b) operates. It has not acted under any misapprehension that the estate can qualify as a Relative or Dependant for the purposes of distribution under rule 11(J)(a).
- Taking rule 11(J) as a whole, it has the discretion to pay all or part of the lump sum to the member's estate. This is because it has the ability to not make a determination in respect of all or part of the lump sum under rule 11(J)(a).
- It disagrees that, if the funeral costs were a reason it considered that the estate should receive part of the lump sum, the proper course of action would have been to ask the Trustee to consider this under rule 11(J)(a)(ii). It was entirely legitimate for it to exercise its discretion to pay 25% of the lump sum under rule 11(J)(a)(i) and leave the remainder to be distributed under rule 11(j)(b).
- Any failure to pay a return of contributions would not be a relevant factor to take into account in relation to the distribution of the lump sum. This is because the personal representatives would be entitled to receive the return of contributions as of right. It is its understanding that no return of contributions was payable because Mr PN was a Westland Staff member.

Ombudsman's decision

24. Under rule 11(J)(a), the Trustee has the power to pay or apply the lump sum death benefit, or any part thereof, to any of Mr PN's Relatives or Dependents as determined by GKN. Rule 11(J)(a) also provides that the Trustee's power is inapplicable where GKN notifies it that it has no intention of making a determination in respect of all or part of the lump sum. This is what GKN now argues that it has done.
25. I agree that any sum not distributed under rule 11(J)(a), falls to be distributed under rule 11(J)(b) and is held on trust for the member's personal representatives.

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26. Following the 31 August decision, Miss D was informed that it had been decided that she should receive 25% of the lump sum. No explanation was offered as to the reasoning behind this decision.
27. In subsequent correspondence with TPAS, GKN said it had identified three further beneficiaries. It said it considered that the other three beneficiaries should receive a fair proportion of the lump sum and it had determined that 25% was a fair proportion. After the Adjudicator issued her opinion, GKN made a different submission, i.e. that in fact the only distribution to a beneficiary was the 25% to Miss D and 75% went to the personal representatives under rule 11(J)(b). That position was also adopted by the Trustee. I have difficulty reconciling those two positions, which present substantively different rationales for the distribution decision which was made. GKN was aware that Mr PN had died intestate. It also knew that his father was still alive. Under the intestacy rules, Mr PN's father inherits his estate. Therefore, in determining that the estate should receive 75% of the lump sum, GKN was, in effect, determining that Mr PN's father should receive 75%. Under the distribution decision as it has now been explained, the other potential beneficiaries which GKN said it was considering do not receive equal 25% shares. The outcome of the decision made is simply not consistent with the decision reasoning which was put forward at IDRPs or to this office.
28. A determination by GKN under rule 11(J)(a) is the exercise of a discretionary power. As the Adjudicator explained, the circumstances in which either the Courts or the Ombudsman may interfere in the exercise of a discretionary power are very limited. Briefly, in exercising a discretion, a decision-maker must: ask the correct questions; direct itself correctly in law; in particular, it must adopt a correct construction of the relevant rules; not come to a perverse decision; and take into account all relevant matters but no irrelevant ones.
29. I have invited the parties to provide any contemporaneous record of reasoning which they may hold in order better to understand how the rules were understood by the decision maker, and have been told none can be produced. Representations have been made that a briefing was provided to the decision maker by GKN. I would expect this at least to have been available, but it has not been provided. I find the reasons for the decision opaque and given the inconsistency between the distribution effect that GKN initially said it was intending to produce and that which has been achieved, I am satisfied that the decision must have involved a mistake about how rule 11 (J)(a) worked and/or a mistake about the consequences of the estate taking a 75% share in circumstances where Mr PN was intestate. I am therefore not satisfied that the decision maker asked itself the correct questions or directed itself correctly in law when reaching the decision that 25% was an appropriate share to award Miss D.
30. I am also not satisfied that Miss D was given a sustainable reason for the decision that was reached, nor that the IDRPs took an adequate approach to considering GKN's reasoning. Failure to give reasons for a decision is maladministration.
31. Because I consider that there has been a mistake which may have caused an injustice to Miss D, I am directing GKN to make the decision afresh. I agree with the

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most recent representations about how the rule should be interpreted. I am simply not persuaded that this logic was in fact applied to the actual decision which was made. Turning to the effect this has had on Miss D, the focus on Miss D's relationship with Mr PN must have quite distressing for someone already having to cope with a loss.

32. Therefore, I uphold Miss D's complaint and make the following direction with the aim of remedying the injustice.

Directions

33. Within 28 days of the date of my determination, GKN shall
34. (a) make a fresh distribution decision and explain the rationale for it to Miss D by reference to the rules.
35. (b) pay Miss D £1,000 for serious distress and inconvenience arising out of its poor treatment of her.

Karen Johnston
Deputy Pensions Ombudsman

8 March 2019

Appendix

The Administrations of Estates Act 1925

36. Section 46(1) of the Administrations of Estates Act 1925 states:

- “(i) ...
- (ii) If the intestate leaves issue but no spouse or civil partner, the residuary estate of the intestate shall be held on the statutory trusts for the issue of the intestate;
- (iii) If the intestate leaves no spouse or civil partner and no issue but both parents, then, the residuary estate of the intestate shall be held in trust for the father and mother in equal shares absolutely;
- (iv) If the intestate leaves no spouse or civil partner and no issue but one parent, then, the residuary estate of the intestate shall be held in trust for the surviving father or mother absolutely;
- (v) If the intestate leaves no spouse or civil partner and no issue and no parent, then, the residuary estate of the intestate shall be held in trust for the following persons living at the death of the intestate, and in the following order and manner, namely:-
- First, on the statutory trusts for the brothers and sisters of the whole blood of the intestate; but if no person takes an absolutely vested interest under such trusts, then
- Secondly, on the statutory trusts for the brothers and sisters of the half blood of the intestate; but if no person takes an absolutely vested interest under such trusts; then
- Thirdly, for the grandparents of the intestate and, if more than one survives the intestate, in equal shares; but if there is no member of this class; then
- Fourthly, on the statutory trusts for the uncles and aunts of the intestate (being brothers or sisters of the whole blood of a parent of the intestate); but if no person takes an absolutely vested interest under such trusts; then
- Fifthly, on the statutory trusts for the uncles and aunts of the intestate (being brothers or sisters of the half blood of a parent of the intestate);
- (vi) ...”