

Ombudsman's Determination

Applicant	Miss CS
Scheme	DB Cargo (UK) Limited Shared Cost Section of the Railways Pension Scheme (the Scheme)
Respondents	The Railways Pension Trustee Company Limited (the Trustee) RPMI

Complaint Summary

Miss CS is represented by Mrs P. Mrs P, on behalf of Miss CS, complains that the Trustee and RPMI failed to properly consider if Miss CS was entitled to any benefit following the death of Mr R.

Summary of the Ombudsman's Determination and reasons

The complaint is partly upheld against RPMI because:

- it failed to identify Miss CS as a potential beneficiary before the lump sum death benefit was paid, which it should have done on the facts if it had followed its internal guidance in relation to death benefit cases and contacted Mr R's immediate work colleagues; and
- as a consequence of this failure RPMI acted outside its delegated authority and no valid decision was made.

I find, however, that this failure to consider Miss CS as a potential beneficiary was remedied at Stage Two of the Internal Dispute Resolution Procedure (**IDRP**) when the Trustee, on the facts (and notwithstanding the legal advice received), considered the matter afresh having identified the relevant beneficiaries and collected sufficient information to make a decision and confirmed the original decision to pay the lump sum to Mr R's sister.

Detailed Determination

Material facts

1. Relevant extracts from the Scheme Rules are provided in Appendix 1.
2. In June 2000, Mr R and Miss CS' mother (**Ms KS**) began a relationship. They cohabited from September 2000.
3. Miss CS was born on 16 February 2002 and understands that Mr R is her father.
4. On 14 April 2008, Mr R made a will that named Ms KS as his sole executor. Mr R also appointed his sister, Mrs L, as an executor if Ms KS could not fulfil the appointment. In the will, Mr R gave his "personal chattels" to Ms KS and on the sale of his estate the residue after paying his debts, funeral costs, executorship expenses and inheritance tax was to be divided in 10 equal shares. One share to be paid to Mr R's mother and the remaining nine shares to be paid to Ms KS "or if she has died before me to such of her children as shall survive me and if more than one in equal shares."
5. Ms KS and Mr R's relationship ended in December 2013 and Mr R moved in with his sister, Mrs L.
6. Mr R died on 1 December 2014, while an active member of the Scheme. Mr R did not submit a nomination form or any other declaration of his wishes to the Trustee prior to his death.
7. Under Rules 7A and 18C of the Scheme Rules, a lump sum was payable in respect of Mr R's death. Broadly, the Trustee could pay the lump sum to one or more "Beneficiaries" at its discretion. For the purposes of this complaint, the relevant categories of people who fall within the definition in the Scheme Rules include the member's siblings, the members children and any person with an interest in the member's estate.
8. RPMI, the Scheme Administrator, has delegated authority from the Trustee to make decisions about the payment of death benefit lump sums in certain circumstances.
9. The Trustee's 'DISCRETIONARY LUMP SUM DEATH BENEFITS GUIDE FOR PENSIONS COMMITTEE THE MEMBERS' (the **Guide**) states:

"4.3 Where a Nomination form has not been received or is not current at the time of the Member's death, RPMI will need to make proportionate wider enquiries. At a minimum, RPMI needs to contact the deceased Member's immediate work colleagues (for death in service cases) and any spouse or dependents and cross-check the will (if any). RPMI should exercise common sense and judgement about whether further enquiries are required depending on the particular circumstances of the case. It should not carry out a detailed, investigative style review as a matter of course to eliminate all avenues using a significant amount of section assets which is disproportionate to the benefit."

10. RPMI obtained details of Mr R's cousin, a Mr T. On 15 December 2014, RPMI wrote to Mr T enclosing a 'Lump Sum Death Benefit Declaration Form' (the **Declaration Form**) which stated that it needed to be completed by Mr R's personal representative.
11. On 22 December 2014, the solicitor dealing with Mr R's estate submitted the Declaration Form to RPMI after Mrs L had completed it. Mrs L stated that Mr R was single, intestate and did not have any children at the time of his death. Mrs L also said that Mr R lived with her family and she knew of "no other person entitled to receive any benefits".
12. On 24 December 2014, RPMI approved payment of the lump sum death benefit to Mrs L (the **Decision**), purportedly under delegated authority from the Trustee¹. Mrs L was paid £213,948.93.
13. On 24 March 2015, after exchanges of correspondence, Ms KS wrote to RPMI on behalf of Miss CS, challenging the Decision and querying if Miss CS was entitled to further benefits from the Scheme. Ms KS enclosed copies of Miss CS' birth certificate and Mr R's will demonstrating that Ms KS was a potential beneficiary. Ms KS said that Mr R was not named as Miss CS' father on the birth certificate because they had had "a few problems at the beginning of our relationship as many couples do". Ms KS also acknowledged that Mr R had been living with Mrs L "for a few months" prior to his death.
14. On 14 May 2015, the Trustee wrote to Ms KS stating that it had enquired about possible beneficiaries with Mr R's employer following his death, in accordance with its "normal due diligence procedures". The Trustee said that if Miss CS wanted to challenge the Decision, or be considered for a dependant's pension, then she would have to provide evidence of her relationship with, and financial dependence upon, Mr R.
15. On 29 May 2015, Ms KS submitted a challenge on behalf of Miss CS, with a further copy of her birth certificate and an undated utility bill in the name of Ms KS and Mr R.
16. On 18 June 2015, the Trustee wrote to Mrs L querying how much of the lump sum death benefit she had spent and notified her not to spend any more until the challenge to the Decision was resolved.
17. On 1 July 2015, Mrs L wrote to the Trustee disputing Miss CS' challenge. Mrs L said that Mr R had no children with Ms KS, no financial dependency existed between them and Mr R had had no contact with Ms KS since their relationship broke down. Mrs L further said that £30,000 of the lump sum death benefit remained.
18. On 21 September 2015, Miss CS' representative made a complaint under the Scheme's two-stage IDRP to challenge the Decision. The representative said that Mr R lived at the same address as Miss CS between 2002 and 2013 and she was 'entirely dependent' upon him.

¹ See Appendix 2.

19. On 23 September 2015, the Trustee provided its Stage One IDRP response. The Trustee did not uphold the complaint. The Trustee said:-
- Reasonable enquiries had been made following Mr R's death.
 - Information was supplied by Mr R's employer "in accordance with its normal practice".
 - A response was received from the solicitor administering Mr R's estate indicating that he had died intestate.
 - The Declaration Form stated that there were no other eligible beneficiaries. The Trustee had no reason to believe that the information supplied by Mrs L was unreliable. Consequently, it had had no reason to delay payment of the death grant lump sum.
 - It requested further information from Miss CS to evidence her biological relationship with, and financial dependence on, Mr R.
20. In effect, my understanding is that it was concluded at Stage One IDRP that the original decision was correctly made by RPMI on the basis that (a) RPMI took reasonable steps to identify all relevant beneficiaries, and (b) the fact that not all relevant beneficiaries were identified did not invalidate the decision.
21. On 15 August 2016, after a prolonged exchange of correspondence, Miss CS' representative submitted signed witness statements from Miss CS and Ms KS in support of her challenge. The representative also said that Mrs L had refused to consent to a genetic family reconstruction test and that her refusal to participate supported Miss CS' claim.
22. The Trustee deferred its decision in September 2016 in anticipation of receiving further evidence from Miss CS.
23. Before making its Stage Two IDRP decision, the Trustee took legal advice from Herbert Smith Freehills (**HSF**) and Counsel (which the Trustee has helpfully shared with me). HSF advised broadly that:-
- There were two possible legal bases on which the decision could be set aside:
 1. If there was a breach of the equitable duty of care owed by the Trustee in failing to identify Miss CS and Mrs K as potential beneficiaries; and
 2. On grounds of causative mistake.
 - Therefore the two key questions for the Trustee in its Stage Two IDRP review of the Decision were:-
 1. Did RPMI's process between learning of Mr R's death and making the distribution meet the legal standard of care required of a trustee in relation to the identification of potential recipients of the death benefits?

2. Was the Decision reached as a result of a serious causative mistake so it could be treated as invalid and set aside on this basis?

On the first question

- On balance, the Trustee could conclude that the steps RPMI had taken, acting for the Trustee, to seek to identify potential beneficiaries met the requisite trustee standard of care because:-
 - RPMI satisfied the duty to consider whether to exercise the power under Rule 18C.
 - RPMI gave proper consideration to the facts. That is, it asked itself whether there were any persons qualifying as a potential Rule 18C beneficiary.
 - RPMI satisfied the duty of acting in good faith and reaching a decision that could not be described as perverse or irrational. Mrs L was a “Beneficiary” and the Trustee considered facts relevant to her.
- Regarding RPMI’s (the Trustee’s) duty to make proper enquiries to inform itself of all relevant factors and no irrelevant factors, the issue arose whether the failure to appreciate the existence of Mr R’s will, which mentioned Ms KS, and then follow up with evidence about her constituted a breach of the trustee duty to be properly informed.
- A trustee was not under an obligation to go on endlessly seeking information. But whether RPMI had undertaken proper enquiries by exercising proper care and diligence to ascertain the potential beneficiaries was a judgment call.
- The factors pointing to a conclusion that RPMI on balance did exercise all proper care and diligence were:-
 - RPMI contacted Mr T in accordance with employment records.
 - RPMI conducted a survey seeking information about potential beneficiaries.
 - RPMI received a formal response from the solicitor’s administering Mr R’s estate.
 - RPMI received a comprehensive response about potential beneficiaries in a form completed by Mrs L, with whom Mr R was living at death, AND Mrs L signed a declaration of truth.
 - RPMI received a death certificate naming Mrs L as the person present at death.
 - There was no nomination form appointing anyone else.
- The two factors against this conclusion were:-

- RPMI did not make enquiries with Mr R's employer and his work colleagues to ascertain whether any potential beneficiaries were known to them. When enquiries were eventually made, Ms KS and Miss CS were identified.
- RPMI failed to follow the Trustee's own guidance note which directed enquiry of the employer and work colleagues.
- While there was some vulnerability here, a finding of breach of trust or maladministration was unlikely given the formal and comprehensive response RPMI received to its enquiries from Mrs L and the solicitors administering Mr R's estate.²

On the second question

- The Decision could not be set aside on the grounds of a "serious" or "causative" mistake by failing to recognise Miss CS as a potential beneficiary:-
 - Miss CS did not qualify by being a person with an "interest in the estate" as her interest under the will was conditional on Ms KS predeceasing Mr R, which had not happened.
 - The evidence³, on the balance of probabilities, did not support that Miss CS was the biological child of Mr R.
 - Referring to 'Lewin on Trusts 26-004'⁴, the burden was on the beneficiary and the reference to "beyond doubt" sounded like the test of beyond reasonable doubt.
- However, given that Ms KS was a potential beneficiary at the time of the Decision, the Trustee should now ask itself the question would it have reached the same decision that RPMI had if it had been aware of Ms KS and the evidence compiled in relation to her? The Trustee should consider all the evidence carefully whether

² HSF and Counsel cited a passage from *Pitt v Holt* at paragraph [41] that if in exercising a fiduciary power trustees have been given, and acted on, information or advice from an apparently trustworthy source, and what the trustees purport to do is within the scope of their power, the only direct remedy available (either to the trustees themselves, or to a disadvantaged beneficiary) must be based on mistake...

³ HSF identified the evidence supporting this conclusion as: Mr R was not named on Miss CS' birth certificate, Mr R's will described Miss CS as Ms KS' child not his child, Ms KS had been unable to provide supporting evidence of a father/daughter relationship, Mrs L's evidence was that Mr R had no children and no DNA evidence had been provided. HSF identified the evidence against this conclusion as: Ms KS' witness statement and Miss CS referring to Mr R as her dad, a possible adverse inference from the fact that Mrs L reused to give a DNA sample, the naming of Miss CS on the employer's Christmas voucher scheme and reference by a colleague that Mr R had a child.

⁴ "A trustee must satisfy himself beyond doubt, before he parts with the possession of the property, who are the parties legally and equitably entitled to it. He must have regard to all claims of which he has notice but he may compel all persons who claim to be beneficiaries to set forth their title: if the trust is terminating, he has the right to clear and satisfactory proof of the facts establishing the termination."

a serious causative mistake had been made by RPMI on the balance of probabilities.

24. On 9 November 2016, the Trustee reviewed the Stage Two IDRPs appeal. The relevant extract from the Trustee Committee's minutes is provided in Appendix 3.
25. On 28 November 2016, the Trustee issued its Stage Two IDRPs decision turning down the final appeal. The Trustee said:-
 - It had reviewed all of the evidence that had been collected since Mr R's death and the Decision and taken appropriate advice.
 - It was satisfied that the Decision was not flawed, consistent with its legal duties and "within the spectrum of a Trustee's discretion acting in good faith".
 - The further submissions did not persuade it that there was sufficient evidence to support the finding that Miss CS was Mr R's biological daughter. Consequently, the Trustee could not consider Miss CS for a child's pension or as a potential beneficiary in accordance with Rule 18C.
26. On 27 April 2018, Ms KS died.

Conclusions

27. Entitlement to death benefits is determined by the Scheme's Rules. The Scheme's Rules determine the circumstances in which death benefits may be paid, to whom they may be paid, the conditions they must satisfy, the amount of the benefits, and the way in which decisions about benefits must be taken.
28. Rule 7A sets out that, on the death of an active member, a discretionary lump sum is payable under Rule 18C and that a pension is payable to each of the two youngest Eligible Children (if any) and the Eligible Spouse or Eligible Dependants.
29. Rule 18C provides that the Trustee may in its absolute discretion pay the lump sum death benefit to one or more "Beneficiaries", in such shares as it may in its absolute discretion decide. The "Beneficiaries" are:

"the Member's (or Ex Spouse Participant's) widow, widower or surviving Registered Civil Partner or the Member's (or Ex Spouse Participant's) grandparents and their descendants, his spouse's or Registered Civil Partner's and their descendants and the spouses, Registered Civil Partners, widows or widowers and surviving Registered Civil Partners of those descendants, the Member's (or Ex Spouse Participant's) Dependants, any person (except the Crown or the Duchy of Lancaster or Cornwall) with an interest in the Member's (or Ex Spouse Participant's) estate and any person (whether or not a natural person), charitable trust or corporation nominated by the Member (or Ex Spouse Participant) in writing to the Trustee."
30. The decision as to which of the potential beneficiaries shall receive a share of the lump sum death benefit is for the Trustee to make. This involves the exercise of the

Trustee's discretion. The fact that payment of the lump sum death benefit is at the discretion of the Trustee limits the extent to which I can interfere with the decision. If the Trustee has followed certain well-established principles in reaching its decision, neither the Courts nor I may interfere with the decision⁵. Those principles are that the Trustee must:-

- take all relevant matters into account and ignore any irrelevant matters;
- ask themselves the right questions;
- direct themselves correctly in law; in particular, they must interpret the Scheme rules correctly; and
- not come to a perverse decision.

31. In this context, 'perverse' means a decision which no reasonable decision-maker could have come to on the basis of the facts of the case.

32. Broadly, in a death benefit case the trustee, or other decision-maker with delegated authority, should act within the scope of its powers. It should seek to identify all potential beneficiaries and then collect sufficient information about their personal and financial circumstances to put itself in a position to make a decision about who to pay the benefit to. The level of enquiry needed which is appropriate may vary depending on the facts and circumstances of the case. In more complicated cases, a higher level of enquiry may be appropriate. It is for the trustee, or other decision-maker with delegated authority, to weigh up the evidence.

33. In this case if the decision-making process had proceeded as might have been expected:-

- RPMI should have collected relevant information which would have identified Mrs L and Ms KS as persons falling within the class of potential beneficiaries and Miss CS as a person possibly falling within the class and gathered information relevant to whether Miss CS was a biological child of Mr R.
- Having identified that there was more than one potential beneficiary, RPMI should have referred the matter to the Trustee for determination, because RPMI only had a limited delegated authority to consider simple cases where there is only one potential beneficiary.
- The Trustee should then have considered, having made any additional enquiries it considered appropriate:
 - whether Miss CS was a potential beneficiary; and
 - having reached a view on this, then decided who to pay the lump sum to amongst the potential beneficiaries.

⁵ *Edge v The Pensions Ombudsman* [1999] 4 All ER 546 and many other cases including *Sampson v Hodgson* [2009] 025 PBLR.

Was the decision by RPMI validly made?

34. The first question which needs to be considered is whether RPMI had delegated authority to make the decision on the distribution of the lump sum. If RPMI did not, then the decision it made is void and of no effect. It would therefore follow that the decision should be taken again unless effectively the decision was taken afresh at either stage of the IDRPs by the Trustee.
35. The delegated authorities agreement between the Trustee and RPMI provides in cases where there is no nomination form that RPMI will make the decision on distribution and, in the absence of any countervailing evidence, RPMI is likely to make the payment in order of priority to:-
- The Eligible Spouse/Civil Partner.
 - If there is none, to the partner receiving an Eligible Dependant's pension.
 - If there is none, to the children of the deceased including stepchildren and children adopted into the family.
 - Mother or Father of the deceased.
36. The delegation then states:
- “All other cases (including a beneficiary different to the above, named in a will, or payment to the estate) and any cases of doubt arising e.g. if there are more claimants than those in bullet point above, shall be referred to the [Trustee] Committee.”
37. The delegation does not cater explicitly for the possibility that the information available to RPMI is incomplete at the date of the decision.
38. On the strict wording of the delegation, arguably RPMI had no power to make a decision where there was no person within the order of priority set out in paragraph 35 above.
39. In my view, the better interpretation of the delegation is that the decision made by RPMI was not within the scope of its delegated powers. So, the Decision is void and of no effect unless effectively the decision was taken afresh by the Trustee at Stage One or Two of the IDRPs.

Did the Trustee take the Decision afresh during the IDRPs?

40. At Stage One IDRPs the Trustee found no flaw with RPMI's decision-making process. So, the Trustee did not then take the Decision afresh.
41. At Stage Two IDRPs, the Trustee obtained advice from HSF and Counsel. HSF did not consider in its advice (which incorporated Counsel's advice) whether RPMI had acted

outside the scope of its delegated powers. HSF also do not appear to have advised the Trustee that it should consider the Decision afresh.

42. HSF's advice addressed the circumstances under which a decision of this type would generally be capable of being set aside (as described in paragraph 233 above), broadly: a defect in the decision-making process, or a serious mistake in identifying the potential beneficiaries.
43. I agree with HSF that the duty to identify all potential beneficiaries is not absolute, although due care and skill should be taken in attempts to do so. If the authorised decision-maker exercises due skill and care in the steps it takes to obtain the relevant information, but does not identify all relevant beneficiaries, it does not follow that the decision can be set aside in the absence of a breach of the equitable duty of care.
44. I also agree with HSF that it is still possible for the Court or me to set aside the decision by RPMI on grounds of mistake, if the mistake is of sufficient gravity without any need for a breach of a duty of care. Again, the Court or I must be satisfied it is appropriate to exercise discretion to do so on the grounds it is equitable to set aside the decision.
45. HSF advised that:-
 - There was no breach of the duty of care in relation to establishing whether Ms KS and Miss CS were potential beneficiaries, so the Trustee effectively did not need to decide afresh whether Miss CS was a potential beneficiary or exercise its power again; and
 - In relation to the issue of mistake, the Trustee should:
 - proceed on the basis that Miss CS was not a potential beneficiary as the evidential burden had not been satisfied; and
 - then consider whether, if Ms KS and Mrs L were the only potential beneficiaries, the Trustee Committee would still have decided to pay the death grant lump sum to Mrs L. If the Trustee would have made the same decision, there was no serious causative mistake and the decision could not be set aside.
46. HSF was not, in my view, correct in their conclusion that on balance there was no breach of the equitable duty of care by RPMI. As noted by HSF and Counsel, if RPMI

had carried out the checks under the Guide⁶, there is evidence that it would have identified Miss CS as a potential beneficiary⁷.

47. Although HSF's advice did not suggest it, the next question I must ask is whether the Trustee did consider afresh the distribution of the death grant lump sum at Stage Two IDR?
48. If the Trustee acted solely in accordance with HSF's advice, it cannot have done this, as the advice addressed whether the existing Decision could be set aside, rather than the reconsideration of the Decision by the Trustee (other than in relation to the issue of serious causative mistake). But if the Trustee did consider the matter afresh, it will potentially have validated the original decision by RPMI or essentially taken the Decision again.
49. The minutes of the Trustee Committee state:

"The Committee carefully considered all the available evidence, including the advice of the Scheme Lawyer.

Having carefully considered this evidence and advice, the Committee determined that it was content with the lump sum having been distributed to a particular beneficiary [Mrs L] and one who was not either [Ms KS] or [Miss CS].

The further evidence did not persuade the Committee that the distribution that was made was inconsistent with the Trustee's legal duties either as to the proportion or to the identity of the disposition, and was within the spectrum of a trustee's discretion acting in good faith.

The Committee was not persuaded that, despite all the efforts that had been made, there was sufficient strength of evidence to meet the standard of proof required where a trustee could have treated [Miss CS] as [Mr R's] biological daughter and therefore as a potential beneficiary under Rule 18C.

The Committee was of the opinion that based on all the evidence it had received to date, it would have reached the same decision to award the lump sum death benefit to [Mrs L]."

⁶ Namely, "RPMI did not make enquiries of the deceased's employer and his work colleagues to ascertain whether any potential beneficiaries were known to them. And indeed when enquiries were eventually made the existence of [Ms KS and Miss CS] was identified..." It is therefore reasonable to assume that if RPMI had acted in accordance with the internal guidance Ms KS and Miss CS would have been identified as potential beneficiaries.

⁷ For completeness HSF did recognise that I might take a different view on this point in its advice and that this would provide a basis for setting aside the decision. In effect I agree with all of HSF's and Counsel's analysis apart from the conclusion other than on the facts there was no breach of the equitable duty of care. In my view the Trustee should have been advised that the original decision could be set aside on this basis even if they had reached a different decision on the issue of whether RPMI had delegated authority to make the decision which the lack of would have made the decision void.

50. These minutes must be read in the context of and interpreted by reference to HSF's advice, as they state that the Trustee had considered HSF's advice. If the first three paragraphs of the advice are read in isolation, in the context of HSF's advice it is possible to conclude the Trustee only considered the issue of whether there had been serious causative mistake.
51. The final two paragraphs of the minutes do, however, indicate that the Trustee went on to consider afresh who fell within the class of potential beneficiaries and whether there was sufficient evidence to demonstrate that Miss CS was the biological daughter of Mr R. The minutes indicate that the Trustee concluded that on the available evidence it would have reached the same decision as RPMI had. Namely, to pay the lump sum benefit to Mrs L.
52. So, it would appear, notwithstanding HSF's advice, the Trustee did go on to consider the matter afresh in the round by reference to the additional evidence collected in advance of the meeting. Consequently, it is my view that the Trustee's decision at Stage Two IDRPs is the final decision made in relation to the lump sum benefit and which determined how it should be paid.

Should the Trustee's decision at IDRPs Stage Two be set aside?

53. Having established that a new decision was made by the Trustee at Stage Two of the IDRPs, I must consider whether there are any reasons why that decision should be set aside in accordance with the principles set out in paragraph 30 above. The two relevant issues are:
1. Did the Trustee apply the correct test when deciding whether Miss CS was Mr R's biological child?
 2. If the correct test had been applied, was the Trustee's decision perverse?
54. On the first question, HSF's advice noted:
- Counsel and HSF's view was that the evidence did not cross the line that, on the balance of probabilities, Miss CS was Mr R's biological child; and
 - in relation to the issue of whether there had been a serious causative mistake, the test to apply is a beyond reasonable doubt test.
55. I consider that the correct test to apply is a balance of probabilities test. On the evidence, notwithstanding HSF's advice, it does appear that this test was applied and the Trustee concluded that, on the balance of probabilities, Miss CS was not Mr R's biological child.
56. On the second question, the evidence reviewed by the Trustee was not unanimously in support of either conclusion. Having regard to the available evidence, I consider that the Trustee's decision that Miss CS is not Mr R's biological child is within the range of decision that a reasonable trustee could have made and is not perverse.

57. I am also satisfied that the Trustee took appropriate legal advice on their duties (even though I do not agree with all aspects of the advice), did give due consideration to the exercise of the power to pay the lump sum, and did only take into account relevant factors and did not take into account irrelevant factors in reaching the same decision as RPMI. There is therefore no basis in law for me to set this decision aside and direct the Trustee take the decision again.
58. In saying this, I wish to stress that I am not making a finding that Mr R is not Miss CS' biological father. I understand she has always regarded him as such.
59. I greatly sympathise with Miss CS' position and send my sincere condolences to her for the loss of Ms KS and Mr R.
60. While the Trustee's decision remedies the defect in RPMI's original decision, I find RPMI's failure to follow the Guide merits an award for non-financial injustice of £500.

Directions

61. Within 21 days of the date of this Determination, RPMI shall pay Miss CS £500 for the significant distress and inconvenience which she has suffered.

Anthony Arter

Pensions Ombudsman
27 July 2021

Appendix 1

DB Cargo (UK) Limited Shared Cost Section Scheme Rules

62. 'Eligible Child' means:

“(a) any person who has not reached 18 years of age and who is the Member’s child by marriage or has been legally adopted by the member; or

(b) if the Trustee at its sole discretion so agrees in a specified case any other person who has not reached 18 years of age and who does not fall within (a) above who is the child of the Member or the Member’s spouse or Registered Civil Partner, or of a living or deceased relative of the Member and at the time of the Member’s death was dependent wholly or in large part on the Member for support and the maintenance of his or her accustomed standard of living, or, if the child was born after the Member’s death, would be likely to have become so dependent; or

(c) if the Trustee at its sole discretion in any individual case so agrees a person over the age of 18 years but who otherwise fall within (a) or (b) above and who:

(i) was in full-time education on his or her 18th birthday, so long as he or she so remains; or

(ii) is so handicapped physically or mentally as to be unable to earn a living.

63. 'Eligible Dependant or Dependents' means:

“any person (up to a maximum of 3) other than an Eligible Child (or person who was or is eligible to be considered as an Eligible Child) or Eligible Spouse who in the opinion of the Trustee was wholly or in large part dependent on the Member for 2 years immediately prior to the Member’s death.”

64. Rule 7A, 'Lump Sum and Pension', provides:

“If a Member dies in Pensionable Service on or before age 75 a lump sum shall be payable under Rule 18C (Discretionary Death Benefit Trusts) and pensions shall be paid to the two youngest Eligible Children (if any) and to the Eligible Spouse or Eligible Dependents provided that the Trustee may at its discretion require an Auto-Enrolment Member or an Opted In Auto-Enrolment Member on joining to pass a medical examination to its satisfaction before becoming eligible to receive a lump sum under this Rule 7A.”

65. As relevant, Rule 18C, 'Discretionary Death Benefit Trusts', provides:

“(1) Subject to the remainder of this Rule 18C, the Trustee may in its absolute discretion pay the lump sum death benefit to, or use the lump sum death benefit for the benefit of, one or more of the Beneficiaries (as defined below), in such shares as the Trustee may in its absolute discretion decide.

...

(4) The "Beneficiaries" are the Member's (or Ex Spouse Participant's) widow, widower or surviving Registered Civil Partner or the Member's (or Ex Spouse Participant's) grandparents and their descendants, his spouse's or Registered Civil Partner's and their descendants and the spouses, Registered Civil Partners, widows or widowers and surviving Registered Civil Partners of those descendants, the Member's (or Ex Spouse Participant's) Dependants, any person (except the Crown or the Duchy of Lancaster or Cornwall) with an interest in the Member's (or Ex Spouse Participant's) estate and any person (whether or not a natural person), charitable trust or corporation nominated by the Member (or Ex Spouse Participant) in writing to the Trustee."

Appendix 2

Trustee's delegation to RPMI

66. The terms of the delegation which provides in the cases where there is no nomination provides as follows:

“For cases where the Member has not completed a Nomination Form and the value is more than the Small Estates Act specifies (currently £5,000):-

In the following cases, RPMI will make the decision on distribution – and absent any counter-veiling evidence RPMI is likely to make payment as follows:

- If there is an Eligible Spouse, (**NOTE:** definition of Eligible spouses included Civil Partner) payment would be made to the Eligible Spouse;
- No Eligible Spouse, payment would be made to partner receiving an Eligible Dependant's pension:
- No Eligible Spouse or partner receiving an Eligible Dependant's pension, pay equal shares to children of deceased including stepchildren and children adopted into the family but excluding children adopted out of the family.
- No Eligible Spouse or partner receiving an Eligible Dependant's pension, pay to Mother OR Father of deceased.

All other cases (including a beneficiary different to the above, named in a will, or payment to the estate) and any cases of doubt arising e.g. if there are more claimants than those in bullet point above, shall be referred to the Committee.”

Appendix 3

67. Extract from the Trustee Committee's Stage Two IDRPs Minutes:

"In reviewing the Stage 2 Internal Dispute Resolution Appeal, the Committee examined and considered the following documents

- Original documentation and minute from a meeting on 8 July 2015 (Appendix A)
- A letter from the meeting on 8 July 2015 (Appendix A)
- [Extensive other documentation]
- Legal Advice from the Scheme Lawyer

The Committee carefully considered all the available evidence, including the advice of the Scheme Lawyer.

Having carefully considered this evidence and advice, the Committee determined that it was content with the lump sum having been distributed to a particular beneficiary [Mrs L] and one who was not either [Ms KS] or [Miss CS].

The further evidence did not persuade the Committee that the distribution that was made was inconsistent with the Trustee's legal duties either as to the proportion or to the identity of the disposition, and was within the spectrum of a trustee's discretion acting in good faith.

The Committee was not persuaded that, despite all the efforts that had been made, there was sufficient strength of evidence to meet the standard of proof required where a trustee could have treated [Miss CS] as [Mr R's] biological daughter and therefore as a potential beneficiary under Rule 18C.

The Committee was of the opinion that based on all the evidence it had received to date, it would have reached the same decision to award the lump sum death benefit to [Mrs L]."