

Ombudsman's Determination

Applicant	Mr R
Scheme	Centrica Pension Plan (the Plan)
Respondents	Centrica Pension Plan Trustees Limited (the Trustee)

Outcome

1. I do not uphold Mr R's complaint and no further action is required by Centrica Pension Plan Trustees Limited.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr R disagrees with the Trustee's distribution of the lump sum benefit payable on the death of his mother.

Background information, including submissions from the parties

Background

4. Mr R's mother, Mrs R, died on 6 November 2016. At the time of her death, Mrs R was an active member of the Plan. A lump sum benefit of £187,983.04 became payable on her death. The Trustee decided to distribute the lump sum between Mrs R's partner (Mr E), her son (Mr R), and her daughter (Mrs L). It awarded Mr E 50% of the lump sum and 25% each to Mr R and Mrs L.
5. Mr R and Mrs L challenged the Trustee's decision. They also informed the Trustee that Mr E was under investigation for causing Mrs R's death by dangerous driving. Following Mr E's conviction for causing death by dangerous driving, the Trustee decided to review its decision.
6. The relevant rules are set out in a consolidated trust deed and rules dated 27 March 2013 (as amended). Rule C4 provides:

“(1) A lump sum death benefit is payable if a Member dies in any of the circumstances described in sub-rules (2) to (5). The amount of the lump

sum is calculated in accordance with the relevant sub-rule. The lump sum is paid in accordance with Rule D2.

Death in Employment

- (2) If an Active Member dies while in Pensionable Employment ... the lump sum is equal to the total of four times his basic salary ... at the date of his death ...”

7. Rule D2 provides:

- “(1) The Trustee may distribute any lump sum payable in accordance with this Rule among the Dependents and Relatives of the Member concerned living at or born after his death, and his personal representatives, in shares the Trustee decides. In exercising this power, the Trustee need not take steps to identify every person who is a Dependent or Relative. Any part of the benefits which has not been distributed two years after the date on which the Trustee becomes aware of the Member’s death must be paid to his personal representatives.
- (2) In distributing a lump sum, the Trustee may pay it directly to a Dependent or Relative or may apply it for the benefit of such a person or persons ...
- (3) A Member may notify the Trustee of the persons in whose favour he wishes the Trustee’s powers under this Rule to be exercised. A notice may be withdrawn at any time. A notice neither binds the Trustee nor fetters it in any way in the exercise of its powers under this Rule but may be taken into account by it.
- (4) In this Rule:
- (a) “Dependents” means natural persons who, immediately before a Member’s death, were in the Trustee’s opinion completely or partly maintained or financially assisted by him or were financially interdependent with him; any persons entitled to any interest in the Member’s estate; and any persons notified in writing by him to the Trustee under sub-rule (3).
- (b) “Relatives” means a Member’s spouse (including a person who in the Trustee’s opinion was living with the Member as his spouse or partner immediately before his death), a Member’s grandparents, the descendants of those grandparents and the spouses of any of them. A stepchild or adopted child of any person is treated as that person’s child and a natural child of any person who has been adopted by another person is not excluded

from this definition by reason of the application of the Children Act 1975.

- (5) The Trustee may instead of distributing a lump sum in accordance with this Rule (or any part of it) provide a pension or pensions to the Dependants of the Member on such terms, consistent with the requirements of the Finance Act 2004, as the Trustee thinks fit."
8. Mr R and Mrs L wrote to the Plan's administrators on 27 November 2016. They asked whether Mrs R had completed a death benefits nomination form. They explained that Mrs R had been divorced and had never remarried but had been living with her partner since 2001. They explained that Mrs R had not made a will. Mr R and Mrs L expressed the view that their mother would have wanted them to receive any death benefit to ensure that they and their families were looked after. In support of this, they said she owned her home as tenants in common with her partner and had separate bank and savings accounts. Mr R completed a nine-page form, issued by the Plan's administrators, setting out the information required following the death of a Plan member.
9. In May 2017, the Trustee obtained information concerning a personal accident payment made by Centrica. The car which Mr E had been driving at the time of the accident was Mrs R's company car. Centrica confirmed that it had paid £102,500 each to Mr R and Mrs L, together with £6,420 to Mr R for funeral costs. It said Mr E could not benefit under the terms of the insurance policy because he had not been insured to drive the car and had caused the accident.
10. In November 2017, the Trustee obtained a copy of a police report relating to the accident from Centrica.
11. On 21 December 2017, the Trustee wrote to Mr R and Mrs L saying that it believed Mr E's conviction for causing death by dangerous driving was relevant to its decision about the distribution of the lump sum death benefit. It said it proposed to look at all evidence afresh and reach a new decision. It said it wished to give Mr R and Mrs L a further opportunity to provide any information and/or evidence relating to how they thought their mother would have wished the lump sum to be distributed. The Trustee said this might include documents relating to their financial circumstances and any evidence of financial support from their mother. The Trustee also said that it wished to hear from Mrs R's siblings and asked to be provided with contact details.
12. The Trustee also wrote to Mr E. He subsequently provided a personal statement, together with character references.
13. Mr R and Mrs L also provided personal statements. Mrs R's brothers and sister also wrote to the Trustee; as did her estranged husband.
14. The Trustee directors held a telephone meeting on 7 March 2018. A copy of the minutes of the meeting has been provided. The directors had copies of the transcript of Mr E's court case, a grant of probate, the personal statements referred to above

and a paper prepared by the Trustee's legal advisers. They also had statements from Centrica personnel relating to the relationship between Mrs R and Mr E, the nature and consequences of the accident, and the employment benefits payable on Mrs R's death.

15. With regard to the circumstances of Mrs R's death, the directors noted:-

- Mr E had been convicted of causing death by dangerous driving and sentenced to 12 months in prison. The judge had noted that Mr E was returning from his father's funeral at the time. He had not reached a conclusion as to the exact cause of what had happened, instead calling it an inexplicable event. He had applied the most lenient sentence he considered appropriate. Mr E had demonstrated remorse.
- On the basis of the judgment, Mrs R's death was an accident and there was no suggestion that Mr E had intended to cause the accident.
- It was not for them to punish Mr E. That was the responsibility of the court and had been dealt with by way of a custodial sentence.
- There was a legal principle that a person who has unlawfully killed another should not benefit as a result of the death. The scope of this rule and its interaction with pensions legislation was unclear. They had been advised to proceed on the basis that Mr E remained a potential recipient of the lump sum death benefit.
- The directors then considered Mr E's relationship with Mrs R and his financial position. They noted:-

Mr E had been Mrs R's partner for over 18 years.

They had bought a house together in 2001, which was owned as tenants in common. As Mrs R had died intestate, her share of the property passed to her children. The property was valued at £350-375,000. Mr E had said that he could not afford to purchase the children's half and he expected the property to be sold.

Mr E had said that there was an outstanding mortgage on the property and he was paying £641 per month. Mrs R's children had suggested that the mortgage had been paid off via an insurance policy. Mr E's testimony was accepted.

Mr E received two pensions totalling £2,250 per month. His future earning potential might be limited because of his custodial sentence.

- With regard to Mrs R's children's financial positions, the directors noted:-

Mr R had described himself and his sister as financially independent.

The grant of probate stated that the value of Mrs R's estate was less than £325,000, which would include the share of the property.

Mr R and Mrs L were understood to own their own homes, but the value of the properties and the level of any mortgage was not known. Mr R and Mrs L were understood to be employed but their incomes had not been disclosed.

A personal accident policy had paid £205,000 to Mrs R's children.

Mrs L's statement had indicated that her mother had helped with payments for holidays, shopping and other gifts.

- With regard to Mrs R's wishes, the directors noted:-

All statements, including Mr E's, were consistent in suggesting that Mrs R wished to cater for her children financially.

Without a will or an expression of wishes form, it was difficult to ascertain the scope of Mrs R's intentions and their interaction with Mr E's position; given his apparent financial dependency on Mrs R as main breadwinner.

Mr E had suggested that Mrs R's intention was that he would receive the lump sum death benefit while the whole of her estate would pass to her children.

Given the absence of an expression of wishes form, they were sceptical that the subject had been discussed in any serious manner.

16. The minutes concluded:

"The Directors agreed that this was an extremely difficult decision and that there were arguments for and against distributing the lump sum to [Mr E] and [Mrs R's] children.

[Mr E] was in a long-term relationship with [Mrs R] (in effect, a common law spouse) and there is evidence that he relied on her as the main breadwinner. While he is financially independent as a result of his two pensions, his standard of living is expected to fall as a result of [Mrs R's] death and he will need to be careful with his money. It was thought unlikely that [Mrs R] would have wished [Mr E] to be less than financially comfortable in his retirement.

The Directors also took account of [Mr E's] involvement in [Mrs R's] death, the impact on her children and the evidence of her wish to provide for them financially.

On this basis the Directors agreed that both [Mr E] and the children should receive a share of the lump sum.

The Directors debated the relative financial positions of [Mr E] and the children and concluded that, on balance, [Mr E] had greater need.

Taking the above into account the Directors reached the new decision that the lump sum should be split 50% to [Mr E] and 25% to each of [Mr R] and [Mrs L].”

17. The Trustee wrote to Mr R and Mrs L setting out its decision and the reasoning behind it.

Mr R’s position

18. Mr R submits:-

- The Trustee believed Mr E to be in financial hardship despite the fact that he received a large payment under a life assurance policy and was the sole beneficiary of his father’s estate. It did not take into account the fact that Mr E is already in receipt of a sizeable pension.
- The Trustee failed to take into account the fact that his sister is the sole breadwinner in her family. It did not ask him or his sister for information about their financial circumstances.
- In making its initial decision, the Trustee did not consider statements from Mrs R’s family. These were only provided at the beginning of 2018.
- The Trustee was in a rush to pay out and made its initial payment only three months after his mother’s death, whilst the police investigation was ongoing. It did not obtain a copy of the accident report but relied on the court transcript. Had it not done so, it would have been aware that the police were initially considering charges other than death by dangerous driving.
- The Trustee did not ask him or his sister about credible sources of statements. He is of the view that it obtained statements from friends of Mr E and they will have skewed its opinion. Information about the personal accident policy payment he received was provided by a close friend of Mr E. This is indicative of the Trustee having reached a perverse decision.
- Under UK law, an individual responsible for the death of another person should not profit from it. The Trustee failed to consider forfeiture. Forfeiture was considered a relevant factor in the personal injury payment and should have applied to the lump sum death benefit for consistency. This is now being denied because payment has already been made.
- The Trustee failed to obtain a copy of the police report, which includes a number of witness statements. These describe Mr E’s driving as erratic. The Trustee is aware that Mr E suffers from manic depression. On this basis, it may be that Mr E caused the accident intentionally. This was a line of enquiry by the police which was only discarded due to lack of evidence.

- He disagrees that Mr E has shown remorse. Mr E has not apologised to the family for the accident or explained the circumstances.
- He disagrees that the custodial sentence has limited Mr E's earning potential. Mr E has chosen not to work since his redundancy.
- The Trustee failed to take into account the fact that Mr E will receive a state pension of around £900 per month in addition to the Scheme pensions of £2,250 per month.
- The Trustee failed to obtain a copy of grant of probate for Mr E's father. This shows him to be the sole beneficiary of an estate valued at £213,000. A simple internet search would have provided information for the Trustee to source the grant of probate for Mr E's father.
- Mr E was also pursuing a claim against the hospital in which his father died. He is likely to have received a substantial payment.
- The Trustee failed to obtain information about the payment of £87,021 which Mr E received under a life assurance policy. He obtained this information by telephoning Scottish Widows.
- The Trustee should not have taken the payment he and his sister received from the personal accident policy into account.
- He had made the Trustee aware that his mother had transferred £28,000 to Mr E shortly before her death. He has provided a copy of the cheque and Mrs R's bank statement. Mr E has failed to explain what this payment was for.
- Had the Trustee carried out appropriate checks, it would have ascertained that Mr E had more than enough funds to pay off the remaining mortgage of £25,000 and live comfortably from his pension and savings.
- The Trustee has shown bias towards a former employee.
- Both he and his sister have their own homes but these are not mortgage free and have sizeable debts against them.
- He and his sister have chosen to work in order to be financially independent. This was an option Mr E chose not to take. The Trustee would have been aware that his sister works part-time; this information is stated in her email signature. Her monthly salary is approximately the same as the pension Mr E receives.
- Mr E falsely claimed that Mr R owned property in London. He owns a heavily mortgaged apartment in addition to his family home. Mr E also claimed that Mr R's father is wealthy which is not the case.

- He is of the view that his mother would not have discussed the lump sum death benefit with Mr E. She was more likely to have discussed these matters with her siblings.
- The fact that his mother never had a joint account with Mr E and owned the property as tenants in common indicate that she did not want her pension to go to Mr E and wanted to safeguard her assets for her children.
- Mr E has stated that he does not have the funds to buy their share of the property. This is clearly not the case and they estimate that his net worth is around £618,000; of which £418,000 is in liquid assets.

The Trustee's position

19. The Trustee submits:-

- Its duty, in exercising its discretionary power to distribute the lump sum death benefit, was to take account of all relevant considerations, disregard any irrelevant considerations and come to a rational decision.
- It considers that the process it followed was fair and rigorous. It considers that the decision reached was within the range open to a rational decision-maker.
- It took the following factors into account:-

The circumstances of Mrs R's death

Mr E had been convicted of causing Mrs R's death by dangerous driving. The Court report referred to mitigating circumstances. The Court had found no intention on Mr E's part to cause the accident and had imposed a sentence at the lower end of the scale. Mr E had expressed remorse. In her victim impact statement to the Court, Mrs L had said her mother would have wanted the most lenient disposal the Court felt able to give and she wished to align herself with this. Mr R had indicated that he wished no ill toward Mr E.

There is a general legal principle that a person who has unlawfully killed another should not acquire a benefit as a result. The Trustee had been advised¹ that the interaction between the general law on forfeiture and pensions legislation was unclear. It took the view that the safest approach was to proceed on the basis that Mr E should be considered a potential beneficiary.

¹ The Trustee agreed to provide a summary of the advice it received. Its solicitor said its advice had been that, while there are ambiguities in the forfeiture legislation that would call its application into question in this case, the key point in relation to the death benefit lump sum was that the forfeiture rule would not apply to a discretionary benefit under a pension scheme (such as a death benefit lump sum). This is because Mr E had no entitlement to the lump sum arising on Mrs R's death; instead receipt of the lump remained contingent on the exercise of the Trustee's discretion following Mrs R's death.

Mr E's relationship with Mrs R and his financial position

Mr E and Mrs R were in a relationship for approximately 17 years and had purchased a house together. Statements from family, friends and colleagues indicated that this was a long-standing and committed relationship.

Mr E believed the value of the property he owned with Mrs R to be worth between £350,000 to £375,000. As she had died intestate, Mrs R's children had inherited her share. Mr E and Mrs R's children were of the view that, had she made a will, Mrs R would have left her share of the property to her children.

Mr R and Mrs L were of the view that Mr E had received a payment from Scottish Widows, which had paid off the mortgage on the property. Mr E had said he had not received any funds and continued to pay the full mortgage (£641.76 per month). The Trustee concluded that Mr E was best placed to know whether he had received any money. It also noted that Mrs R's personal accident insurance could not pay anything to Mr E because of his involvement in her death. Mr E had said he expected the property to be sold when he was released from prison because he could not afford to purchase Mr R's and Mrs L's share.

Mr E had said that his only income came from his own Centrica pension and the pension he would receive as Mrs R's partner. These pensions had been verified with the Plan's administrators. Mr R and Mrs L had referred to Mr E inheriting from his father. The Trustee concluded that, since Mr E was unable to purchase their share of the property, the inheritance was unlikely to be substantial. Statements from Mrs R's relatives indicated that she subsidised Mr E's living standards since his retirement. The lump sum was Mr E's only potential source of additional support because he had been excluded from Mrs R's estate. His future earning potential might be limited by his custodial sentence.

Mr R and Mrs L's financial positions

Mr R and Mrs L had inherited Mrs R's estate in equal shares. The grant of probate indicated that the value of the estate did not exceed £325,000 gross. A further £205,000 had been paid in equal shares from a personal accident policy.

Mr R and Mrs L had declined to provide information about their financial positions but Mr R had described them as financially independent and in full-time employment. Mr R had described his dependency on his mother as one of emotional support. Mrs L had provided details of financial assistance from her mother; for example, paying for holidays, shopping, gifts of £200-£300 in cash each month, meals out and lavish gifts for birthdays and Christmas. The Trustee concluded that this did not go as far as to establish financial

dependency or that Mrs L was unable to support her own lifestyle. Mrs R's children and other relatives had mentioned that she wished to fund her grandchildren's private education.

The Trustee noted statements from Mr E regarding the children's financial positions. It concluded that these were of very limited value because they had not been verified by Mr R or Mrs L.

It was able to establish, from publicly available information, the nature of Mrs L's employment and concluded that her salary was unlikely to be excessive. It understood that Mr R and Mrs L owned their own homes but it did not have details of the value of the properties or the level of any mortgages. It was understood that Mr R and Mrs L were employed full-time.

Mrs R's wishes

All the statements received, including that from Mr E, were consistent in saying that Mrs R wished for the bulk of her estate to pass to her children. It was surprising that she did not make a will or complete a nomination form. There was agreement that Mrs R and Mr E purchased their house as tenants in common to preserve her children's inheritance. Mrs R and Mr E had never held a joint account. It had been suggested that Mrs R had concerns about Mr E's spending habits. Mr R had misunderstood the Plan's provisions with regard to the dependant's pension. This indicated that Mrs R had not discussed pension matters with him in any detail. Mrs L had said she had not discussed pension matters with her mother. Mr E believed Mrs R wanted the pension fund to provide for him.

- It had been informed after its decision that Mrs L was working part-time. It considered that Mrs L had been given ample opportunity to put forward relevant information and it would be inappropriate to re-open its decision-making process for a second time.
- It did all it could to put aside the acrimonious statements made on both sides and to find a way through the inconsistent information provided.
- It acknowledges that Mr E is financially independent because of his two pensions but says his standard of living is expected to fall materially and he will have to be careful with money. It considers it unlikely that Mrs R would have wished Mr E to be less than financially comfortable in his retirement.
- It took account of Mr E's involvement in Mrs R's death.
- It debated the relative financial positions of Mr E, Mr R and Mrs L. It concluded that, on balance, Mr E had greater need. It noted that Mr R and Mrs L had already received in excess of £250,000, including the value of Mrs R's estate and payments from the personal accident policy. It considers Mrs R's wish to provide for her children had been substantially satisfied.

- It noted that there were arguments in favour of a higher distribution to Mrs L rather than Mr R but concluded that Mrs R would most likely have wanted her children to be treated equally in the absence of particular need.

Adjudicator's Opinion

20. Mr R's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised below:-

- The Adjudicator began by acknowledging the extremely difficult circumstances surrounding the case. She noted that any dispute relating to the distribution of death benefits was likely to be difficult for the parties involved but acknowledged that the circumstances of Mrs R's death would have amplified this. She explained that her role, and that of the Ombudsman, was to consider whether the Trustee's decision had been reached in a proper manner.
- Rule D2 provided for the Trustee to decide in what shares the lump sum death benefit was to be distributed and to whom. In making this decision, the Trustee was exercising a discretionary power.
- There was now an established body of caselaw² which set out the principles which the Trustee could be expected to follow in exercising its discretion under rule D2. Briefly, these were that the Trustee must:
 - ask itself the correct questions;
 - direct itself correctly in law; in particular it must adopt a correct construction of the relevant rules;
 - not arrive at a perverse decision; that is, a decision to which no reasonable decision-maker, properly directing itself, could arrive at; and
 - take into account all relevant but no irrelevant factors.

If the Trustee had arrived at its decision acting within these limits, its decision could not be overturned by either the courts or the Ombudsman.

- In the Adjudicator's view, the first step was for the Trustee to identify potential beneficiaries. Although rule D2 said that the Trustee need not take steps to identify every person who is a Dependent or Relative, it could be expected to take reasonable steps to identify potential beneficiaries. Having reviewed the form issued to Mr R, she considered that reasonable steps had been taken to identify potential beneficiaries.

² *Harris v Lord Shuttleworth* [1995] OPLR 79, *Edge v Pensions Ombudsman* [1999] 4 All ER 546

- The Trustee recognised Mr R as a potential beneficiary, together with Mrs L and Mr E. Mr R and Mrs L qualified as beneficiaries because they were Relatives of Mrs R. They might also have qualified as Dependants if they had been “completely or partly maintained or financially assisted by” Mrs R. They certainly had an interest in Mrs R’s estate. Mr E also potentially qualified both as a Dependant and as a Relative; that was as “a person who in the Trustee’s opinion was living with the Member as [her] spouse or partner immediately before [her] death”. Arguably, Mrs R’s siblings also qualified as potential beneficiaries because they were Relatives. The Adjudicator said she had not considered this in any detail because Mr R’s case related solely to his claim to the lump sum death benefit.
- There was, however, a question mark over Mr E’s right to be considered as a potential beneficiary because of his involvement in Mrs R’s death. The Trustee had acknowledged the general legal principle that an individual may not benefit from the unlawful killing of another person; the forfeiture rule. For example, a person responsible for the death of another cannot inherit under the deceased’s will. If real or immoveable property was involved, the effect of forfeiture was to sever a joint tenancy so that the deceased was treated as entitled to an equal half share of the property as a tenant in common.
- This was a public policy rule of common law, which was now set out in Section 1, The Forfeiture Act 1982. This stated:
 - “(1) In this Act, the “forfeiture rule” means the rule of public policy which in certain circumstances precludes a person who has unlawfully killed another from acquiring a benefit in consequence of the killing.
 - (2) References in this Act to a person who has unlawfully killed another include a reference to a person who has unlawfully aided, abetted, counselled or procured the death of that other and references in this Act to unlawful killing shall be interpreted accordingly.”
- The Forfeiture Act did not state that forfeiture would occur in all circumstances in which a person stands to benefit from the unlawful killing of another; nor did it set out the circumstances in which it would occur. Instead, it gave the courts the power to modify the forfeiture rule where it had been determined that it would otherwise preclude an individual from acquiring an interest in property. The power to make an order modifying the forfeiture rule was contained in Section 2 of the Forfeiture Act.
- There was also caselaw relating to the application of the forfeiture rule. Summaries of the cases considered are provided in an appendix.

- The Trustee had explained that it had taken legal advice on the application of the forfeiture rule and had decided to proceed on the basis that Mr E could be considered a potential beneficiary. It said it had been advised that the interaction between the general law on forfeiture and pensions legislation was unclear. In the Adjudicator's view, it was appropriate for the Trustee to seek legal advice in the circumstances. It was unlikely to be criticised for doing so or for following the advice it received; unless the advice it received was so obviously incorrect that it should have been disregarded. She did not believe that to be the case.
- As a general rule, entitlement to a pension could not be forfeited. This was set out in Section 92, The Pensions Act 1995 (see appendix). However, there were exceptions to this general principle. Section 92 provided that forfeiture was not prevented where an individual had been convicted of prescribed offences or in prescribed circumstances. The prescribed circumstances were set out in regulation 6, the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy, etc.) Regulations 1997 (SI1997/785) (as amended) (see appendix). Regulation 6 referred to circumstances where a pension was payable to (amongst others) a dependant and that person was convicted of any offence of which unlawful killing of the member was an element. "Pension" was defined in the Pensions Act 1995 as "any benefit under the scheme and any part of a pension and any payment by way of pension". This definition was wide enough to include a lump sum.
- The Trustee's solicitor had referred to ambiguities in the forfeiture legislation which the solicitor believed would call its application into question in this case. They had expressed the view that the forfeiture rule would not apply to a discretionary benefit under a pension scheme (such as a death benefit lump sum). This was because Mr E had no entitlement to the lump sum arising on Mrs R's death; instead receipt of the lump sum remained contingent upon the exercise of the Trustee's discretion following Mrs R's death. This would also mean that Section 92 was not applicable because it too applies only where there is an entitlement to a pension.
- The Ombudsman could not interfere in the exercise of a discretionary power unless the decision-maker had failed to follow proper procedure or had arrived at a perverse decision. In the Adjudicator's view, the Trustee had followed proper procedure in coming to its decision. It had correctly identified the potential beneficiaries and provided them with appropriate opportunity to submit evidence of their claims. Although, arguably, neither the forfeiture rule nor Section 92 applied in this case because there was no entitlement to the lump sum, it was appropriate for the Trustee to have considered them. She did not consider that the Trustee could be deemed to have taken irrelevant matters into account in doing so.

- Mr R had argued that the Trustee should have taken further steps to obtain details of Mr E's financial circumstances or to verify those details which it had been given. In particular, he had suggested that it should have obtained details of probate for Mr E's father's estate and a life assurance policy. He had also suggested that Mr E would have received a substantial amount from pursuing a claim against the hospital treating his father; although he offered no evidence of this. The Trustee had stated that it had accepted Mr E's submission, that he continued to pay a mortgage and had not received any payment, because he was best placed to know this. It also noted that a personal accident policy had not paid anything to Mr E because of his involvement in Mrs R's death.
- In gathering the evidence it required to make a decision, the Trustee could be expected to take reasonable steps to check its veracity. However, unless it had a compelling reason to think that any of the parties were not acting in good faith, it could reasonably rely on statements from the parties insofar as these could be deemed to be within that party's knowledge. The Trustee had applied this approach with respect to all the parties; not just Mr E. The Trustee had given little weight to submissions where it considered that the party was commenting on matters which were outside their knowledge; for example, statements from Mr E regarding the children's financial positions. In addition, the Trustee had given all the relevant parties equal opportunity to make submissions. The Adjudicator considered the Trustee to have taken reasonable steps in obtaining the evidence upon which to base its decision. The weight which it attached to any of the evidence was for it to decide³.
- It remained to consider whether the Trustee could be said to have reached a perverse decision. A perverse decision was one which could not be reached on the basis of the primary facts⁴. It was not a case of the Ombudsman deciding whether he or she would have come to the same decision in the circumstances. In the Adjudicator's view, the decision reached by the Trustee was within the range of possible outcomes based on the evidence before it; it could not be said to be perverse. There were no grounds on which the Ombudsman could interfere with the Trustee's decision.

21. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr R provided his 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 Mr R for completeness.

³ *Sampson v Hodgson* [2008] All ER (D) 395 (Apr)

⁴ *Saffil Pension Scheme v Curzon* [2005] EWHC 293 (Ch)

Ombudsman's decision

22. I will begin, as my Adjudicator did, by acknowledging the difficult circumstances of this case. It does, however, involve the exercise of a discretionary power on the part of the Trustee. The extent to which I may interfere is limited and I am required to undertake the same approach to the case as would the Courts.
23. I will deal firstly with the question of forfeiture. Mr R has argued that, because Mr E was denied a payment under the personal accident policy, he should not receive any payment under the Plan. He expresses this in terms of forfeiture having applied to the personal accident policy and, for consistency, should have applied to the Plan. However, these are two separate arrangements with separate and specific terms and conditions. A decision made in respect of one cannot bind the other. The Trustee had to come to an independent decision in respect of the lump sum death benefit within the rules of the Plan and the wider legal background.
24. It is clear that the Trustee did consider forfeiture; it took legal advice on this particular matter. My Adjudicator also considered forfeiture in coming to her opinion. I do not believe it is a fair reflection of the position to say that the application of forfeiture is being denied. The Forfeiture Act and subsequent caselaw indicate that forfeiture does not preclude the award of a discretionary benefit, such as the lump sum death benefit. I find that, in proceeding on the basis that Mr E could properly be considered a potential beneficiary, the Trustee did not misdirect itself as to the law. Nor did it misinterpret the Plan rules.
25. Mr R disagrees that the Trustee took all relevant matters into account in coming to its decision. In particular, he does not agree that the Trustee took reasonable steps to gather information about the financial position of the beneficiaries. He argues that the Trustee should have obtained information about Mr E's father's estate and the life assurance policy. I note he says he was able to obtain information about a payment to Mr E by telephoning Scottish Widows. The Trustee, on the other hand, sought information about the beneficiaries' financial positions from the beneficiaries themselves.
26. Requesting information from the beneficiaries is an appropriate approach to take. They are best placed to know what their respective financial and other circumstances are. There is also less likelihood of data protection issues arising where the parties have provided the information themselves. However, I find that the Trustee was right to exercise caution when any of the beneficiaries commented on the others' circumstances. This applies equally to Mr R. Some of the evidence he has submitted, both to the Trustee and my office, can best be described as speculative.
27. I note Mr R considers that my office should have obtained details of the life assurance policy which he says made a payment to Mr E. In the context of the complaint before me, this is not necessary or appropriate. I am not reviewing the Trustee's decision with a view to coming to a decision of my own and, therefore, the details of this policy are not required for my purposes. The question is whether not requesting details of

the policy amounts to maladministration on the part of the Trustee. I find that it does not. The Trustee requested financial information from Mr E and, in the absence of a compelling reason to do otherwise, it could rely on the information provided.

28. Mr R does not feel that he was given a fair opportunity to provide the Trustee with details of his own financial position. In my view, this is not an accurate reflection of the process. The evidence indicates that the Trustee gave Mr R the option to submit any evidence he wanted it to consider before it reached its current decision. The same opportunity was afforded to all the beneficiaries under consideration.
29. The fact that the Trustee obtained information about a payment under the employer's personal accident policy is not evidence that it took irrelevant matters into account. Mr R has pointed out that the individual who provided the information is, by his account, a friend of Mr E. However, the information was provided in her capacity as an employee and at the request of the Trustee. Mr R does not suggest that the information was incorrect in any way. Nor can it be said to be irrelevant to the decision the Trustee was making.
30. It remains for me to consider if the Trustee's decision could be deemed to be perverse. In this context, a perverse decision is one which cannot be reached on the basis of the primary facts. It must be a decision which no other decision-maker, properly directing itself, could come to in the same circumstances. It is not simply a case of deciding whether or not I would have come to the same decision in the circumstances.
31. Whilst I can understand why, in the circumstances, Mr R disagrees with the decision reached by the Trustee, I do not find that it can be said to be perverse.
32. Therefore, I do not uphold Mr R's complaint.

Anthony Arter

Pensions Ombudsman
18 December 2018

Appendix

The Pensions Act 1995

33. Section 92 covers forfeiture and provides:

- “(1) Subject to the provisions of this section and section 93, an entitlement to a pension under an occupational pension scheme or a right to a future pension under such a scheme cannot be forfeited.
- ...
- (4) Subsection (1) does not prevent forfeiture by reference to the pensioner, or prospective pensioner, having been convicted of one or more offences -
 - (a) which are committed before the pension becomes payable, and
 - (b) which are -
 - (i) offences of treason,
 - (ii) offences under the Official Secrets Acts 1911 to 1989 for which the person has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least 10 years, or
 - (iii) prescribed offences.
- ...
- (6) Subsection (1) does not prevent forfeiture in prescribed circumstances.
- (7) In this section and section 93, references to forfeiture include any manner of deprivation or suspension.”

34. “Pension” means “any benefit under the scheme and any part of a pension and any payment by way of pension.”

The Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy, etc.) Regulations 1997 (SI1997/785) (as amended)

35. Regulation 6 provides:

- “(1) For the purposes of section 92(6) of the 1995 Act (a pension under an occupational pension scheme cannot be forfeited except in prescribed circumstances) the prescribed circumstances are where
 - (a) a pension is payable to a member's widow, widower or surviving civil partner, dependant or any other person who is nominated

under the scheme rules by the member and that person is convicted of the offence of murder or manslaughter of that member or any other offence of which unlawful killing of that member is an element;

...

- (2) For the purposes of paragraph (1)(a) unlawful killing shall include the case of a person who has unlawfully aided, abetted, counselled or procured the death of a person.”

Caselaw relating to the forfeiture rule

36. The High Court was asked to consider modifying the forfeiture rule in *Chadwick v Collinson & Ors* [2014] EWHC 3055 (Ch). In this case, the claimant had been convicted of manslaughter on the grounds of diminished responsibility. The deceased’s property consisted of her interest in the family home, the proceeds of an employer’s death benefit insurance policy and a lump sum payable under a pension scheme.
37. The judge was asked to consider whether the forfeiture rule applied in a case concerning manslaughter on the grounds of diminished responsibility. He referred to previous caselaw⁵ in which it had been said that the forfeiture rule applied to all cases of unlawful killing. The judge noted the view expressed by Philips LJ that there was no reason for the court to attempt to modify the forfeiture rule itself; the appropriate course of action, when its application appeared to conflict with justice, was to exercise the courts’ powers under Section 2. The judge decided that the submission that the forfeiture rule ought not to apply was unarguable and proceeded to consider whether he should modify its effects in the particular case. He decided that justice did not require him to modify the effects of the forfeiture rule. Having considered the conduct of the claimant and the deceased, the judge went on to say:

“35. The other factor which in my judgment weighs substantially in the balance against disapplying the Forfeiture Rule concerns the source of the Deceased’s estate. ... most if not all her interest (and that of the Claimant) in the Property has been funded by what the Deceased had been given by her late mother which in turn had been inherited by her, principally from her late husband. It was the absence of a factor such as this which was considered significant by the majority in *Dunbar v Plant* (ante) ... In addition, most of the rest of the Deceased’s estate is derived either from funds given to the Deceased by her mother or which are funds that come from her employment (arrears of salary, death benefits and pension plan payments).

36. I take into account the financial position of the Claimant. ... I have proceeded on the basis that there will come a time when he will be released

⁵ *Dunbar v Plant* [1997] EWCA Civ 2167

and will require funds to help him re-establish his life in the community. Whilst it is clear that the Claimant has earned his living in the past from semi-skilled self-employed gardening work, I accept that it may be difficult for him to earn his living in that way in the future. Whilst these factors weigh in the balance in favour of modifying the effect of the Forfeiture Rule, in my judgment they do not outweigh the other factors to which I have referred.

37. I also take into account the fact that those who will benefit in the event that the Forfeiture Rule is applied are largely aunts and cousins of the Deceased who she did not intend to benefit in the event of her death ... in my judgment this factor is not one that either of itself or in combination with the position of the Claimant outweighs the other factors that I have referred to above and which in my judgment lead clearly to the conclusion that the application of the Forfeiture Rule should not be modified in the circumstances of this case."

38. The forfeiture rule was also considered by the High Court in *Henderson v Wilcox* [2015] EWHC 3469 (Ch). In this case, the claimant had been convicted of the manslaughter of his mother. The court was asked whether the forfeiture rule should apply to "Family Protection Trusts" set up by the claimant and his mother into which a jointly owned property had been transferred. The claimant was named as a beneficiary under the trust set up by his mother.

39. The judge expressed the view that there were two aspects of the forfeiture rule to consider: firstly, what crimes or acts are sufficient to engage the rule; and, secondly, what rights or interests are affected by it. It was the second aspect which he was required to decide.

40. Having considered the previous caselaw, the judge concluded:

"16. These cases do not discuss in any great detail the nature of the rights and benefits that may be affected by the rule. It seems to me however that the common thread is that they are all ones where the offender's right is caused to come into existence, or to be enforceable, or the benefit to the offender is caused to accrue, directly by the death or the criminal act connected with that death. ...

17. In contrast, the interests that Ian has or may acquire under the Family Protection Trusts do not arise from (or "result from") the death of Mrs Henderson. Insofar as he is a discretionary beneficiary of Mrs Henderson's trust, he acquired that status on the execution of the trust and his interest is neither created nor enlarged by her death. If the trustees exercise their powers to pay any income or capital to him, he will receive it as a result of the decision of the trustees (albeit one they may make in light of the death) and not by virtue of the death itself. ...

18. In my judgment then the forfeiture rule has no application to any interest now existing or in future created under either of the trusts. The trustees are

not prevented from exercising their discretion under those trusts in favour of Ian by the forfeiture rule if they think fit, and if they do so he will not be prevented by that rule from taking any benefit conferred by the trustees. Accordingly, no question of relief under the Forfeiture Act arises in relation to any such interest or benefit.”