

Ombudsman's Determination

Applicant	The Estate of the late Monica Sais (the Estate)
Scheme	HSBC Bank (UK) Pension Scheme (the Scheme)
Respondents	HSBC Bank Pension Trust (UK) Limited (the Trustee) Willis Towers Watson (WTW)

Outcome

1. I do not uphold the Estate's complaint and no further action is required by the Trustee or WTW.

Complaint summary

2. Ms R, in her capacity as an executor of the Estate, complains that:-
 - WTW, the Scheme administrator, provided poor service in relation to the payment of death benefits from the Scheme, and
 - the Trustee made decisions about the payment of death benefits from the Scheme without reference to the late member's expression of wishes (**EOW**) form.

Background information, including submissions from the parties

3. Ms S was a member of the Scheme. She sadly died on 13 December 2017.
4. In January 2018, Ms R contacted WTW, the Scheme administrator, to enquire about death benefits but it said that none were payable. Ms R was unhappy about the response and complained to WTW about it.
5. WTW later informed Ms R that death benefits were in fact due to be paid from the Scheme. It requested copies of various documents, including the late member's EOW form.
5. Consequently, Ms R searched for the EOW form over several months, without success. In the absence of the EOW form, WTW informed her that the death benefits would be paid to the Estate for distribution in accordance with Ms S' will.
6. Ms R was unhappy with this, because it meant that she had to reapply for Grant of Probate, and tax forms which her solicitor had already previously drafted, now

needed to be rewritten. This resulted in additional solicitor's fees of £896 plus VAT. Consequently, Ms R asked her solicitor to raise an enquiry with the Trustee as to why the death benefits were to be paid to the Estate.

7. Following this enquiry, WTW was able to locate a valid EOW form signed by Ms S naming the beneficiaries. However, a cheque for £73,310.10 in respect of the death benefits had already been issued to Ms R for distribution in accordance with the will. This meant that one of the beneficiaries named in the EOW form did not receive the death benefits that would have been paid, had WTW complied with the form as they were not named as beneficiary in Ms S' will.
8. On 10 May 2018, Ms R wrote to the Trustee complaining about the service she had received from WTW and requested copies of the correspondence between the Trustee and WTW relating to her death benefits claim, including a copy of the EOW form. Ms R also asked the Trustee for an explanation of the decision-making process that it followed in concluding that the death benefits should be paid into the Estate.
9. In response to Ms R's complaint the Trustee said:-
 - It acknowledged that WTW initially provided Ms R with incorrect information that no death benefits were payable under the Scheme, causing her considerable extra work.
 - An award of £500 would be made to Ms R in recognition of this distress and inconvenience.
 - Copies of the documents requested by Ms R could not be sent as the executor of an estate was not entitled to receive that information.
 - The Trustee exercised its discretion to pay the death benefits to the Estate. Even if the EOW form had been available at the time that decision was made, the Trustee would not have been obliged to make payment in accordance with it.
 - The Trustee could not unilaterally overturn its decision to make payment of the death benefits to the Estate.
10. Ms R remained unhappy and asked the Trustee to consider her complaint under the Scheme's Internal Dispute Resolution Procedure (**IDRP**), she said:-
 - WTW initially stated that no death benefits were payable from the Scheme, until she challenged that decision.
 - It was not clear why the Trustee paid the death benefits directly to the Estate instead of first contacting her as the executor.
 - WTW initially failed in its duty to provide the Trustee with all the required documents, including the EOW form, to allow it to make an informed decision on the distribution of the death benefits.

- WTW continued to request copies of both the will and the death certificate, even after the death benefits had been distributed. She found this upsetting and frustrating.
 - She has asked the Trustee to provide copies of its correspondence with WTW and for disclosure of information regarding how a decision was made on the distribution of the death benefits. The Trustee has declined this request.
 - Why was she not told about the IDR process following her complaint in May 2018?
 - She had accepted the £500 awarded by WTW but it was insufficient recognition of the distress and inconvenience she had experienced.
11. In October 2018, the Trustee wrote to Ms R stating that it had decided to pay additional death benefits of £36,655.05 plus interest to the beneficiary named in the EOW form who had not previously been paid from the Estate.
12. In response to Ms R's complaint under the IDR, the Trustee said that the service WTW provided fell below its expected standards and that WTW had offered £500 to Ms R in recognition of the distress and inconvenience caused to her. The Trustee also confirmed that Ms R's complaint was not upheld.

Ms R's position

13. Ms R says:-
- After payment of the death benefits, WTW continued to request copies of both the death certificate and the will. She found this upsetting and frustrating.
 - The Trustee and WTW have caused her additional work and stress in dealing with their failings.
 - She has incurred costs in contacting beneficiaries who live overseas, and travelling costs to provide evidence to the Trustee.
 - The Trustee said that the EOW form was dated prior to the will, which invalidates the EOW form. This was not the case, because death benefits were later paid to the beneficiary in accordance with the EOW form.
 - The Trustee's decision to pay the death benefits directly to the Estate meant that the solicitor had to rewrite tax forms, which up to that point had been drafted and were ready to send to the tax office. This has resulted in additional solicitor's fees of £896 plus VAT.
 - The payment of the death benefit to the Estate did not incur any additional inheritance tax liability.

The Trustee's position

14. The Trustee says:-

- In the initial absence of the EOW form, it used its discretion to pay the death benefits to the Estate.
- When WTW located the EOW form, further death benefits were paid to a beneficiary named in it who was not catered for in the will. This was in addition to the payment already made to the Estate.
- As a result of this, the death benefits had eventually been paid in accordance with the EOW form.
- The Estate benefited from an extra lump sum, because of the EOW form being discovered late.

Adjudicator's Opinion

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

- WTW's initial failure to confirm that death benefits were due, find the EOW form and then continuing to request unnecessary information amounted to maladministration. Although the death benefits were paid to the other named beneficiary when WTW eventually located the EOW form WTW's initial failures and the resulting delays, had created extra problems at a difficult time for Ms R.
- The Trustee could have done more initially and contacted Ms R, as the executor of the Estate, to enquire about potential beneficiaries. But in any event a further payment was made to the beneficiary named in the EOW form when that was found which negated any reason for the Trustee to provide a further explanation as to its initial decision to pay the death benefit from the Estate.
- Although, Ms R says she has incurred costs in contacting beneficiaries who live overseas, and for travelling to provide evidence to the Trustee, she could have considered communicating with the Trustee and the beneficiaries by email or post. It would not then have been necessary for Ms R to incur travel costs by presenting the documents to the Trustee in person.
- While the Estate incurred additional fees of £896, plus VAT, as a result of the Trustee's initial decision to pay the death benefits to the Estate, it remains that the Estate received an additional payment of £36,655.05 it would not otherwise have received, had the EOW form been located at the outset. This windfall payment more than offsets the additional legal fees incurred. Further, the Estate did not incur any additional Inheritance Tax liability as a result of the additional payment. The Estate has not therefore suffered any financial injustice as a result of the Trustee's actions.

- The matter will have caused Ms R, in her capacity as an executor of the Estate, considerable distress and inconvenience. However, the position is that she is not an actual or potential beneficiary of the Scheme. Consequently, in accordance with the legislation that sets out the Ombudsman's jurisdiction, she is not eligible to bring a complaint to the Pensions Ombudsman on her own behalf, so her claim for personal distress and inconvenience cannot be considered.

16. Ms R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms R provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Ms R.

Summary of Ms R's additional comments

17. The Trustee was at fault for making the decision to pay the death benefits into the Estate rather than direct to the beneficiaries named in the will, even though both the Trustee and WTW were aware that there was a valid will and held copies. The reasons for that decision have not been explained.
18. There may have been a windfall to the estate, but it has only benefited one of the beneficiaries. The other beneficiary through no fault of their own, will incur costs of half the additional legal fees of £896 plus VAT caused by the Trustee's administrative error, reducing the death benefits that would have been paid, had the Trustee followed the correct procedure.
19. She had to drive from the West Country to Ms S' property in London in an attempt to find written documentation that was required in order to challenge WTW's initial response that no death benefits were payable. This caused great inconvenience because it was winter and there was heavy snow at the time. The Trustee also failed to mention the IDR process when she initially complained about the service provided by WTW.
20. She is not seeking an increase to WTW's award of £500 for distress and inconvenience.

Ombudsman's decision

21. Ms R argues that the Trustee was at fault in deciding to pay the death benefits due from the Scheme to the Estate rather than direct to the beneficiaries named in the will. She says that the Trustee has not explained its reasons for this. The Trustee has explained that it exercised its discretion to pay the death benefits into the Estate, in the absence of the EOW form. While I agree that it would have been preferable for the benefits to have been paid outside of Ms S' Estate, even had the Trustee paid the death benefits directly to the beneficiaries named in the will, the third beneficiary named in the EOW form, would not then have received a share of the death benefits. Consequently, I find that no further explanation of the Trustee's actions in initially distributing the death benefits is required.

22. The Trustee initially paid the death benefits using the information it held at the time. When the EOW form came to light and additional information became available, it properly remedied any shortcomings in its first decision by making an additional payment without repayment of any of the moneys paid to the Estate.
23. Ms R contends that she suffered inconvenience and additional costs as she had to drive from the West Country to Ms S' property in London in attempting to find written documentation that was required to challenge WTW's initial response that no death benefits were payable. She also complains that the Trustee failed to mention the IDRP process when she initially complained about the service provided by WTW. I understand that the resulting demands on Ms R, at an already difficult time, would have been onerous. However, the Trustee and WTW have acknowledged that Ms R received poor service in relation to the distribution of the death benefits from the Scheme and have offered her a payment of £500 in recognition of this. I find this is adequate to cover any resulting costs Ms R, in her role as executor, might have suffered as a result of travel to obtain further information.
24. Ms R submits that while there may have been a windfall to the Estate, it has only benefited one of the beneficiaries, as the other beneficiary, through no fault of their own, will incur costs amounting to half the additional legal fees of £896 plus VAT. The Trustee made an additional payment of £36,655.05 to the beneficiary named in the EOW form, who had not benefitted from the initial payment to the Estate. Consequently, the Estate received an additional amount of £36,655.05 less the additional legal fees of £896 plus VAT. Presumably, the net additional amount will have then been distributed, in accordance with the terms of the will, resulting in both beneficiaries benefiting from additional payments they would not otherwise have received. It follows that the additional legal fees of £896 plus VAT would not have caused financial detriment to either beneficiary named in Ms S' will.
25. I do not uphold Ms R's complaint.

Anthony Arter

Pensions Ombudsman
4 September 2020