

Ombudsman's Determination

Applicant	Dr G
Scheme	The [Mr T] Sippcentre SIPP (the Plan)
Respondent	AJ Bell Management Limited (AJ Bell)

Outcome

1. I do not uphold Dr G's complaint and no further action is required by AJ Bell.

Complaint summary

2. Dr G has complained about AJ Bell's decision not to award her any benefits under its discretionary power to distribute death benefits from her late partner's pension plan.

Background information, including submissions from the parties

3. Dr G's complaint has been considered by the Pensions Ombudsman on two previous occasions. Therefore, there is no requirement to detail all of the background to this complaint and instead, I will outline the key points relevant to the current complaint.
4. In August 2009, Dr G purchased a property with her partner, Mr T, whereby she owned a 90% share of the house and he the remaining 10%. Dr G says that they had an agreement in place whereby he paid the majority of the household bills.
5. On 5 March 2010, Mr T, a solicitor, made a will which, upon his death, allowed Dr G to continue living in the property with his share held by his executors in liferent for Dr G. The will also left all domestic and associated assets, including vehicles, to Dr G, with the residual estate passing to Mr T's children in equal shares.
6. In July 2012, Mr T died.
7. In March 2014, the previous Pensions Ombudsman determined a complaint brought by Dr G concerning AJ Bell's refusal to award her a lump sum or consider her for a dependant's pension (PO-7864). The complaint was upheld on the grounds that AJ Bell had no basis for reaching the conclusion it did. AJ Bell was directed to ask Dr G for evidence of her dependency on Mr T, and decide whether discretion should be exercised in her favour.

8. On 29 June 2018, the Pensions Ombudsman determined Dr G's complaint (PO-18953) about AJ Bell's reconsideration of the allocation of death benefits following the Ombudsman's first Determination. The complaint was upheld on the grounds that AJ Bell did not provide its reasons or explain its rationale.
9. On 24 July 2018, the Committee of the Directors of AJ Bell made the decision not to secure a dependant's pension for Dr G and said that Mr T's lump sum should be paid to his estate. The minutes from the meeting outline that the following was discussed: -
 - After seeking legal advice and the fact that no new substantial evidence was provided, it would not be necessary for the matter to be referred to other members of the board.
 - Dr G was within the category of "Dependant" by virtue of being at the time of the deceased's death in a financial relationship with him, which was one of mutual dependence.
 - Dr G was also within the category of "Eligible Recipient", by virtue of being a person interested in Mr T's estate, as were Mr T's children and grandchild.
 - Dr G and Mr T had been partners for at least five years prior to his death in July 2012.
 - On 20 April 2009, Mr T had put in place an expression of wishes form in which he nominated himself only.
 - Around four months after the expression of wishes form had been completed, Mr T jointly purchased a property with Dr G.
 - Mr T had been a solicitor, which was consistent with him fully understanding the implications of the terms of his will and expression of wishes form.
 - In the months prior to Mr T's death, he had discussed with his solicitors the possibility of changing the provisions of his will and received information from financial advisers. Thus, there was the intention to review his financial affairs and estate planning.
 - The solicitors confirmed that Mr T had indicated an intention to make provision for his grandchild but otherwise he had not said what his revised intentions might have been.
 - Dr G's assertion that Mr T's intention was to change the nomination shortly before his death had not been corroborated by the deceased' solicitors. It would not be appropriate to second guess what changes Mr T might have been intended to make. Thus, it has been decided to not place substantial significance on Dr G's assertions in that regard.

- Mr T had ample time following completing his expression of wishes form in 2009, to revise his wishes taking into account the changes in his personal circumstances but had not done so.
- The expression of wishes form was not a binding nomination. AJ Bell should not just consider what had been the wishes of Mr T, it should also consider whether there was reason to distribute the death benefits to any one or more of the potential beneficiaries.
- Whilst it appeared that Mr T had been considering making some provision for his grandson, it was felt that his children should be treated equally. It would then be for the grandchild's parent to determine whether any monies received should be used in the maintenance of the grandchild.
- Neither Dr G nor Mr T's children were financially reliant on the money from Mr T's Plan following his death. Thus, there was not a compelling reason to prefer one recipient over the others due to financial need or hardship.
- Mr T had clearly considered the distribution of his estate after his death. Apart from his interest in the property and all domestic and associated assets, including vehicles, his remaining estate was to be distributed amongst his children.
- Although Dr G was the only dependant under the scheme rules, she was substantially provided for by Mr T. This was through the provision of the interest in the property and all domestic and associated assets, including vehicles, under his will.
- In nominating himself under his expression of wishes form, Mr T had made a decision for his benefits under his SIPP to be distributed as part of his estate. Being a solicitor, Mr T was highly likely to have understood this and have made a conscious decision in that regard.
- Mr T's estate would remain an appropriate recipient of the benefits as he had been able to make appropriate provision for his beneficiaries under his will.

10. Summary of Dr G's key points made to us: -

- The same Committee of directors held a meeting regarding the new decision.
- By failing to exercise the discretion in her favour, AJ Bell's decision was perverse.
- The death benefits payable under the rules are intended to provide for the dependants of a deceased member.
- AJ Bell did not take into account all relevant information and failed to ignore irrelevant information and, had it not done this, AJ Bell would have reached a different outcome.

- AJ Bell erroneously preferred financially independent beneficiaries to Dr G who was a sole dependant of Mr T who was paying 89% of the household bills.
- There is no requirement under the Rules for a beneficiary to have suffered hardship or be “financially reliant” before they may be in receipt of benefits.
- The key criteria which AJ Bell should have considered was one of dependency. She was the only person who met the criteria.
- She was not “substantially provided for” under Mr T’s will, as stated by AJ Bell.
- Too much weight was put on trying to guess what Mr T’s wishes were, even though there was evidence to show that he was considering making changes to his death benefit nomination before his death.
- Shortly before his death, Mr T had received the paperwork from his independent financial adviser (**IFA**) to change the nomination in respect of his pension benefits.

11. On 3 September 2019, AJ Bell responded to Dr G’s complaint to us, and made the following points:

- It sought legal advice from specialist lawyers which confirmed that the same Committee can reconsider Dr G’s claim.
- It is for AJ Bell to decide what weight to attribute to information when making a decision.
- AJ Bell clearly considered all the potential beneficiaries in its deliberations.
- It made further enquiries with Mr T’s IFA who confirmed that there was no evidence to suggest that Mr T had intended to make changes to his expression of wishes form in Dr G’s favour.
- AJ Bell investigated and considered at length, the impact of changes in Mr T’s circumstances. Namely, reviewing his estate planning, when considering the weight, if any, to attach to the expression of wishes form.
- On one hand, Dr G argues that AJ Bell was being too focused on trying to identify what Mr T’s wishes were, on the other hand that it failed to give proper weight to alleged evidence of a change in Mr T’s wishes.
- Mr T’s IFA had no record of sending the paperwork regarding changing his wishes, to Mr T shortly before he died.
- In Mr T’s will, executed on 5 March 2010, provision was made for Dr G to continue living in the property with all the domestic and associated assets, including vehicles. The residual estate of Mr T was passed to his children in equal shares.

- Dr G has provided an affidavit in which she confirmed that her own will had been drawn up and signed on 23 June 2010, in similar reciprocal terms. A copy of the will had been requested but Dr G has not provided it.
- Dr G had, since Mr T's death, purchased the deceased's share of the jointly owned property (10%) from the deceased's estate.
- Dr G has provided evidence of joint home ownership, related joint expenditure on property renovations, a joint bank account, and has made reference to joint pension planning around pension death benefits and mutual property and financial and health and welfare lasting powers of attorney.
- AJ Bell thoroughly considered the matter afresh, in line with the Ombudsman's determination of 29 June 2018. Whilst AJ Bell appreciated Dr G did not support its decision, it was ultimately AJ Bell's decision.

Adjudicator's Opinion

12. Dr G's complaint was considered by one of our Adjudicators who concluded that no further action was required by AJ Bell. The Adjudicator's findings are summarised below: -

- The relevant rules of the Plan are contained in the Master Deed and Rules dated 5 April 2006 (the **2006 Rules**).
- Rule 7 of the 2006 Rules, refers to the payment of a dependant's pension and states:

"Following the death of a Member, the Scheme Administrator may pay pensions to or for the benefit of one or more persons each of whom is a Dependant of the Member...The Scheme Administrator may provide benefits under this Rule 7 by means of one or more insurance policies, which will form part of the Member Fund and will be distributed along with the remainder of the Member Fund in accordance with these Rules."

- Rule 8 of the 2006 Rules, refers to the payment of the lump sum death benefit on the death of a member. Rule 8.2 states:

"The Scheme Administrator may pay or apply such lump sum...to or for the benefit of one or more Eligible Recipients in such proportions as they think fit. The Scheme Administrator may pay all or any of the lump sum...to benefit one or more Eligible Recipient or may direct all or any of the lump sum to be held by themselves...for the benefit of one or more Eligible Recipients as the Scheme Administrator thinks fit."

- It was already established that Dr G was considered a dependant and an "Eligible Recipient" under the Rules. In the Ombudsman's decision dated 29 June 2018, AJ

Bell was directed to reconsider the distribution of the benefits and fully document the rationale for its decision.

- AJ Bell took account of all potential beneficiaries which were Dr G, Mr T's son, daughter, grandson and Mr T's estate. It considered whether the dependant's pension should be paid to Dr G as required in Rule 7. It then determined whether any residual amounts should be used to pay death benefit lump sum to eligible recipients as per Rule 8. AJ Bell has fully detailed the circumstances relevant to the decision. AJ Bell has acted within its discretion to make such a decision, and explained its reasons/rationale.
 - AJ Bell then considered the way in which the death benefits should be distributed amongst these potential beneficiaries. It accepted that Dr G was the only dependant. It said that although Dr G was the only dependant under the 2006 Rules, she substantially benefited through the provision of the interest in the property and all domestic assets, under Mr T's will.
 - AJ Bell considered that under Mr T's will, the remaining estate was to be distributed amongst his children. Neither Dr G nor Mr T's children were financially reliant on the receipt of money from the Plan following Mr T's death. Therefore, there was not a compelling reason to prefer one recipient over the others due to financial need or hardship.
 - AJ Bell considered that it would not be appropriate to second guess what Mr T's intended changes would have been shortly before his death. It was also not able to corroborate the fact that he had received the required paperwork to make changes.
 - Having considered all of the above, the Adjudicator's view was that AJ Bell correctly interpreted the 2006 Rules and the decision was reached in a proper manner. AJ Bell took into account all relevant matters and no irrelevant ones. It asked itself the correct questions and arrived at a decision which was not perverse.
 - The Adjudicator did not think that the process followed by AJ Bell was flawed, or that its decision on the distribution of the benefits to Mr T's estate was unreasonable such that it could be considered perverse. It was the Adjudicator's opinion that an Ombudsman would not instruct AJ Bell to reconsider the decision again, therefore the complaint should not be upheld.
13. Dr G did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Dr G provided her 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 Dr G for completeness.
14. Dr G's key points: -

- The factual background omits reference to a previous Pensions Ombudsman's Determination on this matter (PO-7864) in which the previous Ombudsman found in her favour based on substantially the same background facts as are considered in the Opinion.
- The Ombudsman said that the fact that she was a dependant of the late Mr T should have been sufficient for AJ Bell to exercise its discretion in her favour without the need to consider whether or not Mr T would have nominated her for lump sum death benefits.
- She referred to the deceased's solicitors' letter to AJ Bell of 24 May 2012 in which the solicitors state Mr T was thinking about updating his will at the time, and he would be in touch but had not been specific as to his intentions. Sometime previously Mr T raised the question with his IFA whether he could nominate Dr G to receive benefits.
- As Mr T's death was sudden and unexpected, he clearly had not been able to make intended changes. The fact that AJ Bell requested the solicitors to corroborate whether Mr T was planning to make changes, was flawed.
- It is not necessary under established trust law principles for AJ Bell to have compelling reasons to prefer one recipient over the other due to financial hardship or financial need and there is no such requirement under the Plan Rules.
- AJ Bell has ignored her dependency on Mr T and its decision to prefer independent beneficiaries, was flawed. Mr T paid 89% of the household bills and this situation has had a significant effect on her living expenses as this meant that she alone had, and continues to have, full responsibility for those bills following Mr T's death.
- She reiterated that the gifts received from Mr T's estate were not sufficient.
- The Adjudicator omitted the fact that she provided a copy of affidavit to AJ Bell to consider. The minutes of AJ Bell's meeting dated 24 July 2018 do not show the contents of the affidavit.
- AJ Bell has always reached the same decision on the destination of the lump sum death benefit. It does come across as if AJ Bell's decision was "pre-determined", with having a fixed idea on what that decision would be without truly exercising that discretion afresh through following a proper purpose.

Ombudsman's decision

15. In cases such as this, where the decision whether to exercise a discretion to pay benefits or provide benefits payable under the rules is an absolute discretion to be exercised by the decision-maker, my role is to consider whether the 2006 Rules were correctly interpreted and the decision of AJ Bell was reached in a proper manner. I

may only interfere with the exercise of AJ Bell's discretion if it has acted improperly in reaching its decision in the sense that it had failed to:

- direct itself correctly in law (in particular it must adopt a correct construction of the Rules);
- take into account all relevant matters and no irrelevant ones;
- ask itself correct questions; and
- arrive at a decision that is not perverse.

16. AJ Bell was directed to reconsider the distribution of the benefits and fully document the rationale for its decision. As explained by the Adjudicator, I find that AJ Bell took account of all potential beneficiaries and considered whether the dependant's pension should be paid to Dr G as required in Rule 7. It then considered whether any residual amounts should be used to pay death benefit lump sum to eligible recipients as per Rule 8. AJ Bell has fully detailed the circumstances relevant to the decision. I am satisfied that it has acted within its discretion to make such a decision.
17. AJ Bell then considered the way in which the death benefits should be distributed amongst these potential beneficiaries. It accepted that Dr G was the only dependant. It said that although Dr G was the only dependant under the 2006 Rules, she substantially benefited through the provision of the interest in the property and all domestic assets, under Mr T's will.
18. I find that AJ Bell properly considered Dr G's dependency and weighed that relevant factor properly alongside the needs of the other beneficiaries. I have seen no evidence that it has considered irrelevant factors or that it failed to consider relevant ones.
19. Dr G says that in previous Ombudsman's Determination (PO-7864), he found that the fact that she was a dependant of the late Mr T should have been sufficient for AJ Bell to exercise its discretion in her favour without the need to consider whether or not Mr T would have nominated her for lump sum death benefits.
20. This is not what the previous Ombudsman said in his Determination. Instead he said that the fact that she was a dependant should have been sufficient for AJ Bell to exercise its discretion without the need to consider whether or not Mr T would have nominated her for the lump sum death benefit. As long as AJ Bell has considered all the relevant factors, it can decline to exercise its discretion in Dr G's favour. I consider that I have seen sufficient evidence to conclude that AJ Bell had considered the relevant factors before arriving at its decision.
21. A perverse decision is taken to mean a decision that no reasonable decision maker, properly directing itself, could arrive at in the circumstances. On the facts, AJ Bell could have made a different decision, but I am satisfied that the one which it made fell within the bounds of what was reasonable. I do not consider that the decision was perverse in that sense.

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22. For these reasons I am satisfied that AJ Bell's decision not to grant Dr G's benefits was made reasonably and in line with the 2006 Rules. AJ Bell took into account all relevant matters and no irrelevant ones. It asked itself the correct questions and arrived at a decision which was not perverse. I find no basis to direct AJ Bell to make a fresh decision under the 2006 Rules.
23. I do not uphold Dr G's complaint.

Karen Johnston

Deputy Pensions Ombudsman
17 April 2020