

Ombudsman's Determination

Applicant	The Estate of Mr D
Scheme	LF Stakeholder Pension Scheme (the Scheme)
Respondent	Link Fund Solutions Limited (Link)

Outcome

1. The complaint is upheld and to put matters right, Link shall reconsider its decision on the distribution of the lump sum death benefit.

Complaint summary

2. Mrs S, in her capacity as a co-executrix of the Estate of Mr D (**the Estate**), has complained that Link has failed to exercise its discretion correctly in distributing the lump sum death benefit from the Scheme. Mrs S says that Mr D's Will stipulated that any benefits due to his children should be held on trust for them until they reach age 21. She says the lump sum death benefit from the Scheme should have been paid to the Estate for the benefit of Mr D's children.

Background information, including submissions from the parties

3. Mr D became a member of the Scheme on 27 April 2005. On the same date, Mr D added his spouse, Mrs D, as his nominated beneficiary to receive 100% of his benefits following his death.
4. On 10 August 2015, Mr D made a petition in court for a divorce from Mrs D.
5. On 28 August 2015, Mrs D acknowledged receipt of the petition and consented to the decree being granted.
6. On 17 September 2015, Mr D made an application to the court for a decree nisi.
7. On 26 September 2015, Mr D changed his Will. He appointed two trustees, his partner Mrs S and one other, to hold his estate in trust to provide ongoing financial support as they saw fit, for his two children, until they attained the age of 21. He also stated that each child should receive 50% of his residual estate when they reached age 21. The children were 16 and 13 at the time.

8. Mr D died on 9 October 2015.
9. Following Mr D's death, Mrs S became an executor of the Estate and on 2 November 2015, she informed Capita Asset Services (**Capita**) that Mr D had died. Capita responded and informed Mrs S of the necessary requirements to process a death benefits claim. It also told her that Mr D had given clear instructions about whom he wanted the proceeds of the Scheme to be paid to after his death, informing her that the nominated beneficiary was Mrs D.
10. On 16 November 2015, Capita received a letter from Mrs S in which she explained that Mr D had been separated from Mrs D since 2013 and, that both had consented to a divorce although the divorce was not finalised prior to his death. Mrs S also submitted documents in support of her claim for death benefits to be paid to the Estate.
11. On 23 February 2016, Capita wrote to Mrs S and informed her that it would settle the claim in the Estate's favour. However, following this, Capita received a claim from Mrs D.
12. On 10 March 2016, Capita wrote to Mrs S and informed her that the full death benefit lump sum of £12,185.18, would be paid to Mrs D. It paid this to Mrs D on 22 April 2016. Capita later apologised to Mrs S that it had neglected to explain to her that it would only pay the lump sum death benefit to the Estate provided it did not receive any other valid claim(s) for consideration.
13. In 2017, Capita Asset Services was acquired by Link (and from hereon is referred to as Link).
14. In 2018, Mrs S' complaint was considered by The Pensions Ombudsman. The Adjudicator considering the matter decided that Link should revisit its decision on the payment of the lump sum benefit. A summary of the Adjudicator's reasoning is given below:-
 - Link did not consider whether the death benefit lump sum should be paid as per the instructions in Mr D's Will. It confirmed that it based its decision on the fact that Mrs D was the last nominated beneficiary on Mr D's nomination form.
 - Link did not take all the relevant matters into consideration. It was clear that it was Mr and Mrs D's intention to finalise their divorce. Link said it had not been notified of their impending divorce, but, on 16 November 2015, it had received a letter from Mrs S informing it of this.
 - Rule 8 of the Scheme's Trust Deed and Rules gave details of how benefits can be paid after the member's death and Rule 8.1 allowed Link to use its discretion to not pay benefits in accordance with the nomination form.
 - Link had not taken into consideration all relevant matters to enable it to reach a properly informed decision.

15. Link agreed to revisit its decision and did so on 11 October 2018. It said:-

- Mrs S had said Mr D would have wished for the proceeds of his pension to go to the Estate to be held in trust for his children. It considered this statement to be based on unverifiable assumptions.
- This being the case, it believed there to be assumptions which supported the actions already taken by it. In the absence of directions to the contrary, it was plausible that the deceased wished for the directions on the nomination form to stand.
- Further, Mr D might have wished for Mrs D to have the death benefit as she had custody of their children and given that Mr D changed his Will in September 2015, it was not unreasonable to assume that he would have considered changing the nominated beneficiary for his pension at this time also (had he wished to).
- The fact that Mrs D would receive the death benefit may have been taken into account by Mr D in reaching his divorce settlement.
- Its original decision remained unchanged.

16. Mrs S responded to the above decision on 22 October 2018. She said:-

- Although Link had said her claim was based on unverifiable assumptions, it had equally made a series of unverifiable assumptions in its assessment of her claim.
- Mr and Mrs D had already agreed a financial settlement prior to the divorce. Mrs D received 50% of the proceeds from the sale of the marital home. Mrs D completed a 'Statement in support of divorce' filed in court on 2 September 2015, saying she did not intend to apply for the court to consider her financial position as it was after the divorce.
- Mr D made it clear when he changed his Will that he did not want Mrs D to have any of his assets or estate; he did not believe his children would benefit should any funds go to her.
- Link had said that as Mr D changed his Will in September 2015, it was not unreasonable to assume he would have considered changing his nominated beneficiary at that time too. Mr D was very ill and being prepared for end of life care. It was extremely unreasonable to assume that Mr D would have thought to change a nominated beneficiary form he had completed 15 years previously. He was focused on the fact that he was going to die and what would happen to his children, hence him changing his Will.
- Link's decision was perverse.

17. On 13 November 2018, Link replied saying:-

- To clarify, its position was that as there was no evidence to the contrary, it was left with no choice, as per the Scheme Rules, to observe the direction in the original nomination.
- Although it was sorry to learn of Mr D's suffering, it could not act on statements and assumptions for which there was no evidence. This did not mean that it doubted the assertions made, however, there was nothing to support the statements made in Mrs S' recent letter to allow it to take a different view. It therefore had to rely on the documentary evidence it had i.e. the nomination form.
- Further, the points raised by Mrs S in her letter were not matters which it could reasonably be expected to know. Moreover, in the absence of any signed, written direction, comments alone were not sufficient to change or overrule the direction set out in the original nomination form. Accordingly, it stood by its original decision.

18. Mrs S' position is that Link has failed to take into account comments made in the Adjudicator's Opinion of 2018. Link maintains that its decision is correct.

Adjudicator's Opinion

19. The complaint was considered by one of our Adjudicators who concluded that Link should reconsider its decision on the lump sum death benefit. The Adjudicator's findings are summarised below:-

- Her role was to consider whether Link had exercised its discretionary powers properly. The principles which Link was required to follow when exercising its discretion were as per the Edge judgment¹: it must ask itself the correct questions; it must direct itself correctly in law and in particular, it must adopt a correct construction of the Rules/Regulations; it must take into consideration all relevant matters and no irrelevant ones; and the decision arrived at must not be one which no reasonable body would make.
- Not all of these principles had been adhered to.
- The distribution of benefits on death is dealt with in Rule 8 of the Scheme's Rules (**the Rules**). Rule 8.1 set out that: "On the death of a Member, the Scheme Administrator shall provide absolute discretion to designate the proportion(s) of the Member's Fund to provide benefits to or on behalf of Dependants or Nominees as may be permitted..."
- Rule 8.2.1 stated: Where the Scheme Administrator has exercised its discretion to pay a lump sum death benefit as described in Rule 8.1.2, it shall have absolute discretion to pay or apply the Member's Fund (in whole or in part), to or for the benefit of one or more Beneficiaries in such proportions as it thinks fit.

¹ Edge v Pensions Ombudsman [1999]

- Rule 8.2.3 stated: "The Scheme Administrator may pay all or any of the lump sum to the trustees of a trust to benefit one or more Beneficiaries or may direct all or any of the lump sum to be held by itself or other trustees on such trusts, including discretionary trusts, for the benefit of one or more Beneficiaries as the Scheme Administrator thinks fit. Any costs for establishing this trust may be deducted from the lump sum death benefit."
- The Rules provided the Scheme Administrator with the discretion to pay a lump sum death benefit to one or more beneficiaries as it deemed fit. Accordingly, the first step was for the Scheme Administrator to identify the potential beneficiaries of this benefit. As Mr D made provision for his children in his Will by saying that the residual of the Estate should be held on trust for them, the Estate counted as a named potential beneficiary. Link ought to have considered the Estate in its discretionary exercise.
- Link alternatively could have considered Mr D's children in their own right as dependents. Mr D's Will set out for the Estate to provide ongoing financial support to them. Also, in line with Mr D's Will, Link could have considered paying the monies to be held in trust for Mr D's children (which would have been outside of the Estate).
- In Link's decision of 11 October 2018, in response to Mrs S' claim that Mr D wished for the proceeds of his pension to go to the Estate and held in trust for his children, it said it considered this statement to be based on unverifiable assumptions. However, it was difficult to see how this was an unverified assumption when Mr D had left his other assets and the residual of the Estate, as per his Will, to his children. This would have been a valid starting point when identifying other potential beneficiaries.
- Link ought to have then assessed this alongside other evidence, explaining what weight (if any) it chose to give to the evidence of this statement in Mr D's Will, and why.
- One of the points made by Link was that Mr D might have wished for Mrs D to have the death benefit as she had custody of their children. However, as Mr D left nothing else in the Estate to Mrs D, its basis for reaching such a conclusion was unclear.
- Link had added that given that Mr D changed his Will in September 2015, it was not unreasonable to assume that he would have considered changing the nominated beneficiary for his pension at that time too. However, it was also arguable that Mr D was seriously unwell and might not have remembered the nomination form.
- There was also the consideration that the ordinary person, with little knowledge of how pension death benefits work, would not be expected to know that pension

death benefits are generally paid outside of the estate. It was unclear why Link had favoured its assumption over alternative assumptions/analysis.

- Link had said the fact that Mrs D would receive the death benefit may have been taken into account by Mr D in reaching his divorce settlement. However, it did not appear that Link had carried out any investigation into Mr and Mrs D's divorce settlement. If it had, it had not substantiated this statement with the evidence relied upon.
- Link had concluded that in the absence of directions to the contrary, it was plausible that the deceased wished for the directions on the nomination form to stand. This statement lacked the necessary independent investigation required of Link to support it.
- Link later further clarified that in the absence of any signed, written direction, comments alone were not sufficient to change or overrule the direction set out in the original nomination form. Such a view was not entirely correct. Link could pay the lump sum death benefit to a person other than that named in the nomination form, should its investigation give rise to a more appropriate beneficiary. As it stood, Link had not carried out this investigation, or if it had, its rationale remained unclear.
- Whilst on the face of it, there was nothing problematic in Link's conclusions, its decision lacked the evidence to support it and/or there was a lack of analysis on why Link has favoured one assumption over another.

20. Mrs S accepted the Adjudicator's Opinion. Link did not accept the Adjudicator's Opinion and has made the following further comments:-

- Mrs S first raised concerns about Link's decision to pay the proceeds from the Scheme to Mr D's nominated beneficiary in March 2016. During the initial investigation, Mr D's pension file was reviewed and the conclusion reached was to partially uphold the complaint.
- Link was notified of Mr D's death in 2015 by Mrs S. Link sent Mrs S details of the requirements to consider a claim and confirmed that Mr D had given his clear instructions on whom the proceeds from the Scheme should be paid to in the event of his death. The nominated beneficiary was Mrs D. Mrs S was aware from the outset that there was another potential claimant.
- Mrs S forwarded completed claim documentation with a covering letter explaining that Mr D had separated from his wife in 2013 and that both had consented to a divorce, but this did not happen prior to his death in 2015. Mrs S said it would be difficult to trace Mrs D to obtain her signature to release Link from all liabilities in respect of the pension.
- Mrs S completed the following declarations: "I hereby declare that all particulars given are true and complete in every respect. I further declare that I am the

person legally entitled to receive the proceeds and I am over 18” and “I accept that if I am not the only person entitled to the proceeds, payment will be made by L & G Unit Trust Managers Ltd on the condition that I will account to such person(s) with the proceeds to which such person(s) may be entitled.”

- Mrs S was aware that there was another interested party who could come forward to make a claim.
- It wrote to Mrs D on 16 November 2015, seeking authority to proceed with the payment in accordance with Mr D’s Will. Mrs S was advised accordingly.
- Mrs S forwarded a copy of the Certificate of Entitlement to a decree to support her view that it should pay out in accordance with the Will. Having not heard back from Mrs D, following a review of the documents already received by its Specialist Claims Team, it wrote to Mrs S on 11 December 2015, to inform her it would need sight of the Grant of Probate in order to consider her claim further. It received this on 18 February 2016.
- Due to not having heard from Mrs D, it advised Mrs S that it had been agreed to settle the claim, as per the Grant of Probate, Will and the signed declaration, and pay the proceeds of the plan to the Executors. Mrs D subsequently forwarded a claim.
- The Rules meant that the benefits were not payable to the Estate and therefore Link was not bound by the instructions contained in the Will. The normal practice is to pay in accordance with the last instructions of the member, so it was important for Link to consider Mrs D’s claim.
- It was confirmed to Mrs S that the letter, dated 23 February 2016, should have included the condition that the proceeds would be paid “assuming we don’t receive any other valid claim(s) for consideration.” Due to the letter not including this, the complaint was partially upheld and compensation of £350 was paid to Mrs S in consideration of any inconvenience she may have been caused.
- Mr D’s Will discussed financial affairs but was pension policy silent. No one therefore knew what ‘off-Will’ arrangements might have been agreed. Aside from “the one thing that has validity i.e. the nomination form that was never withdrawn or updated, there are arguments based on supposition on both sides.”
- The Adjudicator had said there was nothing problematic in its decision to pay Mrs D but that its decision lacked evidence and further investigation should have been carried out. However, the one person who would have been able to provide the required information, Mr D, was no longer able to do this. It is not possible to know whether the fact that the beneficiary was never amended once the parties separated in 2013 was due to this being considered in reaching the divorce settlement.

- It would not be correct to act on statements and assumptions for which there is no evidence. In the absence of any signed, written direction, comments alone were not sufficient to change or over-rule the direction as set out in the original nomination form. Its decision was made on documentary evidence. Accordingly, its original decision was one which it stood by.

21. The complaint has now been passed to me to consider. I agree with the Adjudicator's Opinion and I will therefore only respond to the points made by Link for completeness.

Ombudsman's decision

22. I am mindful of the remit of The Pensions Ombudsman and our basis for interfering in discretionary decisions. I make the following conclusions with this in mind.

23. Link's further submissions mostly detail the background to this matter. Having considered the dispute at hand, I am not persuaded by the few arguments which Link has put forward.

24. One of Link's arguments is that Mr D's Will did not provide any guidance on what he intended in regard to his pension policy, and that other than the nomination form, there were arguments "based on supposition on both sides." I agree it would be difficult to know with absolute certainty what Mr D's wishes would be, however, Link's role is to assess the available evidence and arrive at a reasoned decision. It is clear that Link opted to place greater evidential weight on the nomination form, yet, its rationale for doing so was mostly based on a series of unsubstantiated statements.

25. Link has also sought to argue that Mr D is no longer here to provide the additional information that any further investigation would require. Nonetheless, enquiries can be made on the existing evidence. Should Link have believed it was limited in the enquiries which could be made, this could have been explained when assessing the evidence or been apparent in its reasoning as to why it had decided to favour one assumption over another.

26. Link has said it is not possible to know whether the reason the nomination form was not amended is due to Mr D's pension being taken into account as part of his divorce settlement. Yet in the supporting assumptions for its decision, it included this point: "the fact that Mrs D would receive the death benefit may have been taken into account by Mr D in reaching the divorce settlement." Hence, Link has already given preference to such an assumption, but its specific reasons for doing so remain unclear.

27. Link has said it would not be correct "to act on statements and assumptions for which there is no evidence." This is not what Link is being asked to do. Link must exercise its discretionary powers correctly and this must be demonstrated in the reasoning provided for its decision.

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28. Finally, I cannot see that Link has considered whether to apportion the lump sum death benefit as opposed to awarding this in its entirety to one beneficiary. Again, should Link have considered this, it has not been demonstrated in the rationale provided for its decision.

29. I uphold the complaint.

Directions

30. Within 28 days of the date of this Determination, Link will reconsider its decision on the distribution of the lump sum death benefit.

31. Link will fully document the rationale for its decision and communicate this with Mrs S within 21 days of it being made.

Anthony Arter

Pensions Ombudsman
31 March 2020

Appendix

2015 Rules of the Jessop Stakeholder Pension Scheme Trust Deed and Rules

8.1 Discretion to pay a pension death benefit or a lump sum death benefit

On the death of a Member, the Scheme Administrator shall provide absolute discretion to designate the proportion (s) of the Member's Fund to provide benefits to or on behalf of Dependants or Nominees as may be permitted under:

8.1.1 the Pension Death Benefit Rules; and/or

8.1.2 the Lump Sum Death Benefit Rules,

and the types and proportion (s) of the benefits payable within those rules.

In exercising its powers under this **Rule 8.1**, the Scheme Administrator may, but shall not be obliged, to take into account any preferences that the Member may have provided to it in writing. If the Scheme Administrator has received no nomination from the Member then it may make such nomination as it determines in accordance with the requirements as to Nominees under Schedule 28 of the Act.

Following the death of the member, Dependant or Nominee, the Scheme Administrator may pay pensions to or for the benefit of any persons each of whom is a Successor of the Member as may be permitted by the Pension Death Benefit Rules or the Lump Sum Death Benefit Rules.

8.2 Payment and distribution of lump sum death benefits

8.2.1 Where the Scheme Administrator has exercised its discretion to pay a lump sum death benefit as described in **Rule 8.1.2**, it shall have absolute discretion to pay or apply the Member's Fund (in whole or in part), to or for the benefit of one or more Beneficiaries in such proportions as it thinks fit.

8.2.2 In exercising its powers under this **Rule 8.2**, the Scheme Administrator may, but shall not be obliged, to take into account any preferences that the Member may have provided to it in writing.

8.2.3 The Scheme Administrator may pay all or any of the lump sum to the trustees of a trust to benefit one or more Beneficiaries or may direct all or any of the lump sum to be held by itself or other trustees on such trusts, including discretionary trusts, for the benefit of one or more Beneficiaries as the Scheme Administrator thinks fit. Any costs for establishing this trust may be deducted from the lump sum death benefit.

8.2.4 If the only possible beneficiary is the deceased Member's personal representative(s) and the deceased member's estate passes as bona vacantia, any lump sum death benefit will be paid for the benefit of a charity as the Scheme Administrator determines.

- 8.2.5 If any part of the lump sum has not been paid or applied within two years of the earlier of either the day the Scheme Administrator first knew of the Member's death or the day on which the Scheme Administrator could have known of the Member's death, the Scheme Administrator will keep that part in a separate account outside the Scheme and pay it to or for the benefit of one or more Beneficiaries in accordance with this **Rule 8.2** as soon as possible afterwards.

8.3 General

- 8.3.1 The Scheme Administrator shall not be obliged to make any payment (or may delay payment) under this **Rule 8** if it determines in its absolute discretion, that it has insufficient information to enable it to make such payment.
- 8.3.2 Any death benefits payable under this **Rule 8** may be subject to deduction of Tax as required by the Act.
- 8.3.3 As an alternative to any pension death benefit or lump sum death benefit, and at the sole discretion of the Scheme Administrator, an Unauthorised Payment may be made.