

## Ombudsman's Determination

Applicant	Mrs S
Scheme	Canon (UK) Ltd Pension Scheme ( <b>the Scheme</b> )
Respondent	The Trustees of the Canon (UK) Retirement Benefit Scheme ( <b>the Trustees</b> )

## Outcome

1. I do not uphold Mrs S complaint and no further action is required by the Trustees.

## Complaint summary

2. Mrs S' complaint concerns the Trustees' decision not to pay her a proportion of the death benefits following her husband's death. She believes the Trustees' decision is flawed because they did not adhere to the directions contained within a previous determination from the Ombudsman's office.

## Background information, including submissions from the parties

3. Mr S was an active member of the Scheme when he died on 26 May 2016. Following his death, the Trustees, under their discretion, decided to pay the death benefits and a dependant's pension to Mr and Mrs S' two sons (**the children**).
4. Mrs S appealed the Trustees' decision to award all of the death benefits to the children. As her complaint was not upheld by the Trustees, she referred her complaint to us (**the original complaint**).
5. On 31 July 2018, the Deputy Pensions Ombudsman (**DPO**) issued her final determination (**FD**), upholding the original complaint, and she directed the Trustees to reconsider their decision about the distribution of the death benefits.
6. In addition, the DPO found that the Trustees' failure to recognise the interdependency of Mr and Mrs S had caused Mrs S significant distress and inconvenience, so she directed the Trustees to pay Mrs S £500 in recognition of this. The DPO's reasons for upholding the complaint and her directions to the Trustees are in the Appendix.
7. On 28 August 2018, the Trustees sent Mrs S its new decision concerning the distribution of the death benefits (**the decision letter**). Although they had

reconsidered their decision, they still decided not to pay Mrs S a proportion of the death benefits and maintained their original decision to pay the death benefits to the children.

8. In the decision letter, the Trustees explained the Rules that were used in making the decision and said:

“The two children of Mr and Mrs [S] were clearly financially dependent on Mr [S], and both Mr and Mrs [S] desired security and stability for their two children, and for them to be provided for.

At the time of Mr [S]’ death, Mr and Mrs [S] were living independently and indeed Mrs [S] herself recorded on the Scheme Beneficiaries Data form that she was separated from Mr [S] and living at a separate address. The Trustee has nonetheless concluded that Mrs [S] was interdependent with Mr [S] for a number of reasons: the mortgage in joint names, the shared care arrangements for their two children, and their undissolved marriage, at the time of Mr [S]’ death. These former points do not affect the interdependency of Mr and Mrs [S], but were considered by the Trustee in the allocation of weight of such interdependency.

The Trustee considers that, despite the interdependency of Mrs [S], this does not outweigh or otherwise detract from neither the dependency nor the needs of the children. Accordingly, the Trustee has decided that the entire death benefits allocation will remain as paid to Mr and Mrs [S]’ children in equal shares.”

9. On 19 April 2019, Mrs S made a formal complaint to the Trustees concerning their new decision. It was her view that the Trustees did not make their new decision in accordance with the DPO’s FD.
10. On 10 May 2019, the Trustees responded to Mrs S and explained how they had adhered to the DPO’s FD, in reaching their new decision.
11. In her submissions, Mrs S made a number of comments which relate to the Trustees’ original decision, made in 2016, not to award her a proportion of the death benefits.
12. In response to Mrs S’ complaint, the Trustees provided copies of the decision letter and also a copy of the letter it had sent to her, in response to her complaint, dated 10 May 2019.

### **Adjudicator’s Opinion**

13. Mrs S’ complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees. The Adjudicator’s findings are summarised below:-

- In her submissions, Mrs S made a number of points that she considered indicated the decision the Trustees made, in 2016, to pay the death benefits to the children was flawed. The Adjudicator understood and appreciated Mrs S' frustration with the Trustees' original and subsequent decisions. However, she explained that she was unable to investigate how the Trustees made their original decision because the Trustees' original decision had already been determined by the DPO and the FD was sent to all parties on 31 July 2018. The FD is the final stage in our process and can only be appealed in the High Court.
- Consequently, the Adjudicator's investigations into this complaint focused on if the Trustees adhered to the directions in the DPO's FD, and, if when they reconsidered their decision concerning the distribution of the death benefits, they did so properly.
- In *Edge v The Pensions Ombudsman* [2000] CH 602 of the Court of Appeal, the court decided that an Ombudsman could only interfere with a Trustee's decision, concerning the exercise of its discretionary power, if that power was not exercised properly or, the Trustee failed to give proper consideration, to relevant matters. The court also decided that the Trustee could prefer some beneficiaries over others, provided their decision was done so properly.
- In the FD, the DPO said:

"I therefore remit the death benefits distribution decision to the Trustee for reconsideration with the intention that they take the fact of Mr and Mrs S' continued interdependency into account. By doing so I do not intend to bind the Trustee's future decision. It may be that having given due consideration to the interdependency of Mr and Mrs S, in the context of the other evidence, the Trustees could reasonably reach the decision that they did. I express no view on that point."

- The DPO did not direct the Trustees to pay Mrs S a proportion of the death benefits or make any finding on who should be awarded the death benefits. That remained the responsibility of the Trustees, taking into account the decision in the FD.
- The Adjudicator noted that, in the decision letter, the Trustees explained that, in making their subsequent decision, they considered the interdependency of Mr and Mrs S. However, they found that Mr and Mrs S' interdependency did not outweigh the dependency or the needs of the children.
- The Trustees are entitled to give whatever weight it chooses, to the interdependency of Mr and Mrs S, and it may also prefer some beneficiaries over others. So, in the Adjudicator's view, the Trustees had adhered to the FD in this regard and, they did nothing wrong in deciding to pay the full death benefits to the children, in their subsequent decision.

- In the FD, the DPO directed that, in communicating their decision, the Trustees must "...state the reasons for the decision, the Scheme Rules that were used in making the decision, and what information was taken into account to reach it...". She also said the Trustees should award Mrs S £500 for the significant distress and inconvenience Mrs S has experienced.
  - Having reviewed the decision letter, it was the Adjudicator's view that the Trustees adhered to the directions stated in the FD. This was because the decision letter included all of the information that the DPO had instructed the Trustees to include, and the Trustees also paid Mrs S the £500 awarded to her.
  - The Adjudicator understood Mrs S' disappointment that the Trustees had not agreed to pay her a proportion of the death benefits, after they reconsidered their original decision. However, because it was her opinion that the Trustees had adhered to the FD, it was her view that I would not uphold Mrs S' complaint.
14. Mrs S did not accept the Adjudicator's Opinion and in response made additional submissions, as summary of which is below:
- It appears that the Adjudicator's perception of the case has been based on assumptions, that during the previous detailed investigations had been exposed and positively proven, to be the foundation of both unsound and questionable decision making by the Trustees.
  - A number of key points that appear to have been overlooked or ignored in the Adjudicator's investigations as irrelevant issues involve The Pensions Ombudsman (**TPO**) directly.
  - The initial Adjudicator who dealt with her first complaint requested all material to include meeting notes of all meetings and discussions that pertained to her case from inception to conclusion of the decision making process.
  - This was denied to all TPO Adjudicators initially, but the Trustees eventually released a professionally compiled set of minutes which after scrutiny, transpired to be for a solitary meeting which was held to discuss the Structure of the Scheme going forward.
  - Upon receipt of that documentation, the Adjudicator at the time deemed it to be fully compliant with the request and closed that avenue of investigation down.
  - The initial Adjudicator who dealt with her first complaint had requested all and any correspondence to include email and transcripts of any telephone calls. This was never provided and the Trustees informed TPO that they had decided not to comply with this request on the grounds that the material was of a private and personal nature, and irrelevant to the investigation.
  - This blatant untruth has been extensively exposed in the case file and hard copy material she has provided to TPO.

- The Adjudicators who dealt with her initial complaint had requested all correspondence to substantiate the Trustees' claim that they had sought legal and Counsel's advice throughout their decision making process, to ensure compliance with the legal aspects of the case.
  - The legal advice the Trustees received was eventually provided to TPO, but no other correspondence was provided. This was in direct contravention of the directive issued by TPO.
  - The subsequent requests for disclosure were ignored and no positive action to obtain this correspondence was ever taken by TPO and this line of investigation was closed down.
  - On the point of the lump sum, during her initial complaint, on 4 May 2018, the Adjudicator gave the Trustees an ultimatum to sort the payment of the lump sum (the two year deadline was approaching).
  - On the same date, the lump sum was paid to the children and the Trustees emailed the Adjudicator to inform her of this.
  - This appeared to be a bizarre situation where TPO supported a plan of action that favoured the decision making process of the Trustees, to the detriment of her present case.
  - Her appeal from instigation to present has sought justice and for the Trustees to demonstrate beyond all reasonable doubt accountability for the actions taken and the evidence in its entirety to be made available for independent review and assessment. However, this has been denied through out not only to herself but also to TPO.
  - The Trustees have a duty and responsibility to be open, honest, transparent and accountable for any collective decision making process and comply positively with any directives issued by TPO.
  - It is her contention and opinion, which has been substantiated by the examples already mentioned, that this process has not been followed, as per the laid down procedure and policy as expected within the DPO's FD.
  - As a direct consequence of this breach by the Trustees in regard to the DPO's FD, it is her contention that her second appeal must be re-visited afresh, and the evidence presented, evaluated from this new and fresh perspective.
  - She believes she has been subject to a "travesty of justice" in this matter and her second appeal is presented to TPO to investigate and use the tools at his disposal to provide a full appraisal of all the relevant verified facts and evidence, provided to illustrate the Trustees' non-compliance with the DPO's FD.
15. As Mrs S did not accept the Adjudicator's Opinion, the complaint was passed to me to consider. Mrs S' further submissions do not change the outcome. I agree with the

Adjudicator's Opinion and will therefore only respond to the key points made by Mrs S for completeness.

### **Ombudsman's decision**

16. Mrs S has appealed the Trustees' decision not to award her a proportion of the death benefits as she believes the Trustees failed to adhere to the directions of the DPO's FD.
17. In her submissions, Mrs S made a number of points concerning the information the Trustees used when they originally decided who the death benefits should be paid to. She also detailed how the Trustees had failed to provide requested information to TPO while her initial complaint was being investigated. However, as the Adjudicator has previously explained in the first bullet point of paragraph 13 above, the Trustees' original decision has already been considered by the DPO and an FD completed and sent to all parties. Therefore, I am unable to consider any points Mrs S has raised in relation to the Trustees' original decision or her initial complaint.
18. I am satisfied that the Trustees have properly considered Mrs S's interdependency with Mr S, and weighed that relevant factor properly alongside the needs of the dependent children. I have seen no evidence that they have considered irrelevant factors. I consider that the decision which the Trustees reached was reasonable, in the sense that it was within the range which a reasonable decision maker having due regard to the relevant considerations could properly reach. Consequently, I have no grounds to remit back to the Trustees, their second decision concerning who should receive the death benefits.

Therefore, I do not uphold Mrs S' complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
4 February 2020

## **Appendix**

### **Relevant extracts from the Deputy Pensions Ombudsman's Final Determination dated 31 July 2018.**

#### **"Conclusions**

...it is... clear from the decision letter that when they made their decision about how to distribute the death benefits as between the eligible beneficiaries, the Trustees considered there was no interdependency between Mr and Mrs S. Indeed the independence of Mr and Mrs S's living arrangements appears to have been a significant factor in the Trustees decision making. I consider that the conclusion that there was no interdependency was one which no reasonable decision maker could arrive at faced with evidence of an undissolved marriage, shared mortgage liability and joint responsibility for minor children. Albeit there may have been no evidence that one marriage partner was dependent on the other, there was clear evidence of interdependency and I make a finding of fact to that effect.

I consider that the Trustees were under an obligation to acknowledge the interdependency of Mrs S, as surviving Spouse, with equity in the former family home but also responsibility for joint and any inherited debts, and responsibility to maintain the children (whether or not they lived with her) before going on to decide what weight to give to her interdependency with the deceased. I therefore remit the death benefits distribution decision to the Trustee for reconsideration with the intention that they take the fact of Mr and Mrs S' continued interdependency into account. By doing so I do not intend to bind the Trustees future decision. It may be that having given due consideration to the interdependency of Mr and Mrs S, in the context of the other evidence, the Trustees could reasonably reach the decision that they did. I express no view on that point. Mrs S is however entitled to understand how her interdependency has been considered and to be told why the Trustees reach any decision which they do.

I have considered the submission that the Trustees' position on interdependency was clarified at IDRP, but do not consider that it should change the outcome of the determination. I consider that the initial reasoning was too plain to require or be open to clarification. Moreover allowing Mrs S to make an application to a Trust established for the benefit of someone else is not the same thing as considering her as a potential beneficiary in her own right...

#### **Directions**

...reconsider its decision to distribute death benefits due under the Rules. In communicating its decision to the beneficiaries, it must state the reasons for the decision, the Scheme Rules that were used in making the decision, and what information was taken into account to reach it..."