

Ombudsman's Determination

Applicant	Ms N
Scheme	Hudson Global Resources Limited GPP (the Scheme)
Respondent	Aegon

Outcome

1. I do not uphold Ms N's complaint and no further action is required by Aegon.

Complaint summary

2. Ms N's complaint against Aegon concerns the manner in which the death benefit payable on the death of her partner, Mr N, was distributed. She does not agree with Aegon's decision to split the death benefit lump sum equally between herself and Mr N's daughter, Miss H N.

Background information, including submissions from the parties

1. Mr N died on 29 July 2018.
2. The Scheme is written under discretionary trust and is governed by the Scottish Equitable Personal Pension Deed and Scheme Rules 2011 (**the Scheme Rules**), Relevant sections of the Scheme Rules are set out in the Appendix.
3. On 31 July 2018, Mr N's independent financial IFA (**the IFA**), notified Aegon of Mr N's death in writing. The IFA was also an executor of Mr N's will.
4. On 8 August 2018, Aegon sent a letter to the IFA expressing its condolences and enclosed a Beneficiaries form (**the Form**) for Ms N to fill in and return together with supporting documents. The Form provided definitions of a dependant and beneficiary as stated in the Scheme Rules.
5. In September 2018, the IFA provided Aegon with a copy of the Death Certificate and Will, together with correspondence from a bank confirming that Mr N's mortgage had now been transferred into the sole name of Ms N.

6. The IFA said that Mr N's wish was for Ms N to "have all pension plans to allow her to pay off their mortgage (approx. £67,000)." He also said that the death in service lump sum of £164,000 had been paid to Ms H N as agreed by all parties.
7. On 1 October 2018, Aegon wrote to the IFA asking if Ms N was, in any way, financially dependent on Mr N at the time of his death. It enclosed a Confirmation of Dependency form for Ms N to fill in and return. It also explained that "being dependent doesn't mean she will be a beneficiary, any more than not being dependent means she won't."
8. On 16 October 2018, after considering all the information provided by the IFA, Aegon sent him a decision letter informing him of its decision about the payment of Mr N's death benefit. Aegon's decision was to split the sum of approximately £17,528.66 equally between Ms N and Miss H N.
9. Aegon also explained that Ms N, who was financially interdependent, was not automatically classed as a dependent under the Scheme Rules. However, it was satisfied that she was financially interdependent.
10. On 31 October 2018, the IFA raised a formal complaint on behalf of Ms N. Her main issue was that she believed the death benefit should have been solely awarded to her having been a partner of Mr N. She said that Miss H N had also been substantially provided for by the death in service lump sum and Mr N's wish was for her (Ms N) to solely benefit from his pension plan, so Aegon should pay her 100% of the death benefit.
11. The same day, the IFA emailed Aegon with further information saying that Miss H N was in receipt of a monthly maintenance payment of £400 from the late Mr N's Trust, and that she would continue to receive this payment until she reached age 18. He also enclosed a copy of Mr N's email to the IFA prior to his death, dated 23 July 2018, setting out his last wishes in which he said, "Pension will pay off mortgage."
12. On 2 November 2018, Aegon sent the IFA a response, under its complaints procedure, that did not uphold Ms N's complaint. Its main points were:-
 - It did not do anything wrong as its decision, in regard to who benefited from the death benefit, was discretionary.
 - Mr N's pension plan did not form part of his estate.
 - Miss H N was under the age of 23 at the time of Mr N's death, so she was automatically classed as a dependant under the Scheme Rules.
 - It then considered whether there was financial inter dependency between Ms N and Mr N. If no inter-dependency was established, Aegon would have paid 100% to Miss H N. However, as this was proven, a "fair decision was to divide the monies equally."

- It had considered the email of 23 July 2018, from Mr N to the IFA. However, it was not able to honour it because it was not sufficient to qualify as a clear Death Benefit Nomination.
- Mr N had never provided a Death Benefit Nomination under his pension plan.

13. On 14 November 2018, the IFA wrote to Aegon in response to its decision saying that it should “take the moral and fair decision to follow a dying man’s wishes and pay 100% to his life partner of many years, Ms N.”

14. Summary of Ms N’s position

- The Form does not ask for the details of the level of dependency or how the dependency criteria is met in order to be factored into Aegon’s decision making process.
- Miss H N was not dependent on Mr N to the same extent as she was, yet Miss H N has benefited 50% from the death benefit. As she (Ms N) was more dependent on Mr N, she should have been awarded 100% of the death benefit.
- As Miss H N has substantially benefited from a death in service benefit of £164,000, Aegon should not have awarded her any death benefit.
- The informal email from Mr N to the IFA of 23 July 2018, should have been sufficient for Aegon to accept.
- Mr N’s pension plan was not part of his estate, neither was the death in service benefit. So, it was unreasonable for Aegon to use its discretion on how the death benefit under it should be distributed.

15. Summary of Aegon’s position

- Upon Mr N’s death, his pension fund became payable as a lump sum for the benefit of a number of potential beneficiaries, and if more than one, in such proportions as Aegon may use its discretion to decide.
- Miss H N was a potential beneficiary under three of the listed categories, first as Mr N’s child, second as a dependant and third as a beneficiary under the Will.
- Ms N was a dependent if she could show financial interdependency and she was also a beneficiary under the Will.
- Having considered all of the evidence including Miss H N’s death in service benefit, Aegon took a view that although this was a factor, it did not take away from the fact that Miss H N qualified as a beneficiary in her own right.
- Aegon was provided with full details of the potential beneficiaries, including a copy of Mr N’s will and email with last wishes. Aegon took all of this into account including the fact Mr N’s share in his house was left to Ms N and the residue of the estate to Miss H N.

- Aegon decided not to put too much weight to the email of 23 July 2018, as this had not been provided to it prior to Mr N's death, it did not relate specifically to his plan and was not signed by him.
- Aegon asked itself right questions. The decision was based on the fact that there were two potential beneficiaries each of whom had equally valid claims on the payment and it therefore divided the payment between the two.
- Aegon reached a decision that is not perverse, for example a decision that no reasonable decision maker, properly directing itself, could arrive at in the circumstances.
- Aegon's decision was in line with the Scheme Rules and considered the potential beneficiaries as set out in the listed categories.

Adjudicator's Opinion

16. Ms N's complaint was considered by one of our Adjudicators who concluded that no further action was required by Aegon. The Adjudicator's findings are summarised below:-

- The relevant provisions are set out in Rule 10.12 and Section 11 of the Scheme Rules, including the definition of a dependant (see the Appendix).
- Section 11(a) and Rule 10.12 (3) of the Scheme Rules show that, on Mr N's death, his pension fund became payable as a lump sum. It is the Scheme Administrator that may, at its discretion, decide to pay lump death benefits to all or any one or more beneficiaries and in what proportions.
- It was the Adjudicator's opinion that Aegon, in its capacity as the Scheme Administrator, was the correct decision maker.
- Rule 10.12 refers to the list of potential beneficiaries as follows:
 - "a) any person or persons (including trustees) who has or have been named or identified to the scheme administrator by the member in writing prior to the member's death for the purposes of receiving a lump sum death benefit;
 - b) the surviving spouse or civil partner, children and remoter issue of the member;
 - c) the member's dependants;
 - d) the individuals entitled to any interest in the member's estate whether under the member's will or on the member's intestacy or who would be entitled to an interest in such estate if the member had died intestate and the estate had been of sufficient amount;
 - e) the member's legal personal representatives."

- The definition of a dependant under the Scheme Rules is as follows:

“(a) a person who was married to, or a civil partner of, the member at the date of the member’s death;

(b) a child of the member if such child has not reached 23, or has reached that age but, in the opinion of the scheme administrator, was at the date of the member’s death dependent on the member because of physical or mental impairment;

(c) a person who was not married to, or a civil partner of, the member at the date of the member’s death and is not a child of the member, but who, in the opinion of the scheme administrator, at the date of the member’s death was financially dependent on the member or had a financial relationship with the member which was one of mutual dependence or was dependent on the member because of physical or mental impairment.”
- Aegon established that Ms N and Miss H N were both potential beneficiaries. Miss H N was classed as being a dependant in her own right, as she was Mr N’s child and under age 23 at the time of his death. Aegon asked Ms N whether she was financially dependent on Mr N in order to establish if she would qualify as a dependant. As financial interdependency was proven by Ms N, Aegon agreed she would be classed as a dependant and therefore eligible to receive the death benefit.
- The Adjudicator was of the view that Aegon took account of all potential beneficiaries, namely Ms N and Miss H N. Aegon detailed fully, the circumstances relevant to its decision and acted within its discretion under the Scheme Rules, to make such a decision and explained its reasons/rationale.
- Ms N argued that Aegon should have honoured Mr N’s last wishes as expressed in his email to the IFA dated 23 July 2018. The Adjudicator appreciated Ms N’s position. However, Aegon had said that it could not accept the said email as a valid nomination form, because it was not sent to Aegon prior to Mr N’s death, it did not specifically refer to his pension plan and it was not signed by him. So, it was the Adjudicator’s view that Aegon’s decision in that matter was not an unreasonable approach for it to take.
- Ms N also argued that, as the pension plan did not form part of Mr N’s estate, Aegon should not have made a decision regarding the way in which the death benefit under it should be distributed. Nevertheless, the Adjudicator’s view was that Aegon had the discretionary power to make that decision under the Scheme Rules.
- Having considered all of the points raised by the complainant and the respondent, the Adjudicator’s opinion was that Aegon correctly interpreted the Scheme Rules and the decision was reached in a proper manner. Aegon took into account all relevant matters and no irrelevant ones, asked itself the correct questions and

arrived at a decision which was not perverse. Consequently, the Adjudicator's opinion was that this complaint should not be upheld.

17. Ms N did not accept the Adjudicator's Opinion and in response made the following points:-

- Mr N's email regarding his final wishes dated 23 July 2018, was very clear. Both the email and Will have been completely disregarded by Aegon in its decision.
- The current process is not "fit for purpose as it is totally dependent on these wishes being expressed only on a specific form, in a specific way."
- Aegon's decision has caused her even more distress and insecurity for her son, on top of the already difficult time they have experienced since Mr N's death.
- Aegon should have honoured Mr N's last wishes.

18. As Ms N did not accept the Adjudicator's Opinion, the complaint was passed to me to consider. Ms N's further comments do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

19. 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 Rules were correctly interpreted and the decision of Aegon was reached in a proper manner. I may only interfere with the exercise of Aegon'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.

20. I find that Aegon took account of all potential beneficiaries and considered how the lump sum should be distributed, in accordance with the Scheme Rules. Aegon has fully detailed the circumstances relevant to the decision, and I am satisfied that Aegon acted within its discretion to make such a decision.

21. Aegon acknowledged that Miss H N was a dependant in her own right, as she was Mr N's child and under age 23 at the time of his death. Aegon asked Ms N whether she was financially dependent on Mr N in order to establish if she would qualify as a dependant. As financial interdependency was proven by Ms N, Aegon agreed she

would be classed as a dependant and therefore eligible to receive a proportion of the death benefit.

22. I find that Aegon properly considered Ms N's dependency and weighed that relevant factor properly alongside the needs of another beneficiary, namely Miss H N. I have seen no evidence that Aegon considered irrelevant factors or that it failed to consider relevant ones.
23. Ms N argues that Mr N's email of 23 July 2018, setting out his last wishes, was disregarded by Aegon in its decision making. However, Aegon explained that it had not had sight of the email prior to Mr N's death, nor had Mr N provided a valid expression of wishes form. So, in the circumstances, I do not find that Aegon's decision not to use the information in this email, to decide whom the death benefits should be paid to, was unreasonable.
24. A perverse decision is taken to mean a decision that no reasonable decision maker, properly directing itself, could arrive at in the circumstances. I accept that Aegon could have made a different decision and paid all of the death benefits to Ms N. However, I am satisfied that the decision Aegon made, fell within the bounds of what was reasonable. Ms N's dissatisfaction with the way Aegon distributed the death benefits does not make Aegon's decision perverse.
25. I am satisfied that Aegon's decision to split the death benefits equally between Ms N and Miss H N was made reasonably and in accordance with the Scheme Rules. Aegon took into account all relevant matters and no irrelevant ones. It asked itself correct questions and arrived at a decision which was not perverse. I find no basis to direct Aegon to make a fresh decision under the Scheme Rules.
26. I do not uphold Ms N's complaint.

Anthony Arter

Pensions Ombudsman
5 October 2020

Appendix

Deed constituting the Scottish Equitable Personal Pension Scheme

“11(a) Where any lump sum benefit is to be paid following the death of a Member or a Dependant and it falls to the Scheme Administrator to decide to whom the benefit is payable, the Scheme Administrator may, but is not bound to, take into account any selection of Beneficiaries or recipients made by the Member or by any other party nominated by the Member for this purpose. In making any selection or payment hereunder the Scheme Administrator shall not be acting as a trustee and shall not be obliged to enquire or investigate (other than to take reasonable steps to ascertain that any proposed payee is a person entitled to payment in terms of the Rules) and shall not be liable to account in any way to any person for any selection made.”

Rules of the Scottish Equitable Personal Pension Scheme

2. Definitions

“**Dependant** (alternatively referred to as a ‘Survivor’) means in relation to the *scheme* any of the following:

- (a) a person who was married to, or a civil partner of, the member at the date of the member’s death;
- (b) a child of the member if such child has not reached 23, or has reached that age but, in the opinion of the scheme administrator, was at the date of the member’s death dependent on the member because of physical or mental impairment;
- (c) a person who was not married to, or a civil partner of, the member at the date of the member’s death and is not a child of the member, but who, in the opinion of the scheme administrator, at the date of the member’s death was financially dependent on the member or had a financial relationship with the member which was one of mutual dependence or was dependent on the member because of physical or mental impairment.”

Non-protected rights fund – lump sum

“10.12 Non-protected Rights Fund Lump Sum. If a member dies and no dependant’s pension has become payable under rule 10.1 or rule 10.2, then the scheme administrator shall, as soon as practicable and subject to rule 10.14, deal with the member’s non-protected rights fund as a lump sum (an ‘uncrystallised funds lump sum death benefit’):

- (1) by paying or applying it in accordance with any provisions regarding payment of such sums under the contract or contracts applying to the arrangement or arrangements in question; or
- (2) if (1) does not apply and the scheme administrator is satisfied that there have been declared valid trusts of the member's non-protected rights fund under which the member, the member's estate and the member's legal personal representatives are wholly excluded from benefit, by paying it to the trustees for the time being of such trusts; or
- (3) if (1) and (2) do not apply, by applying the lump sum to or for the benefit of all or anyone or more of the following and if more than one in such proportions as the scheme administrator may at its discretion decide:
 - (a) any person or persons (including trustees) who has or have been named or identified to the scheme administrator by the member in writing prior to the member's death for the purposes of receiving a lump sum death benefit;
 - (b) the surviving spouse or civil partner, children and remoter issue of the member;
 - (c) the member's dependants;
 - (d) the individuals entitled to any interest in the member's estate whether under the member's will or on the member's intestacy or who would be entitled to an interest in such estate if the member had died intestate and the estate had been of sufficient amount;
 - (e) the member's legal personal representatives."