

## Ombudsman's Determination

<b>Applicant</b>	Mrs Jacqueline Barnicoat
<b>Scheme</b>	Hargreaves Lansdown Vantage SIPP <b>(the SIPP)</b>
<b>Respondent</b>	Hargreaves Lansdown Asset Management Limited <b>(HLAM)</b>

### Complaint Summary

Mrs Barnicoat complains that HLAM, the trustees of the SIPP, failed to exercise their discretionary power to award the death benefits available from the SIPP to her on a timely basis. She says that she has suffered significant financial loss and also considerable distress as a consequence of their delayed decision.

### Summary of the Ombudsman's Determination and reasons

The complaint should not be upheld because based on the information received by HLAM I consider that HLAM was justified in reaching their decision. In my view, the time taken by HLAM to decide that Mrs Barnicoat should receive the death benefits available from the SIPP, was consequently, not unreasonable.

## Detailed Determination

### Material facts

1. Mr Alan Bunn died on 14 September 2012, shortly after suffering a stroke.
2. Mrs Barnicoat was his partner at the time. They were not married.
3. Mr Bunn had two adult children and several grandchildren from a previous marriage.
4. Mr Bunn completed an “expression of wish” form in March 2012 nominating Mrs Barnicoat to receive the benefits payable from the SIPP on his death at the discretion of HLAM.
5. The executors of Mr Bunn’s estate were his two children. According to Mr Bunn’s will, Mrs Barnicoat was not a beneficiary of his estate.
6. In order to assist HLAM decide who the recipient(s) of the SIPP death benefits should be, Mrs Barnicoat provided them with details of her financial position and relationship to Mr Bunn.
7. HLAM also received information from Mr Bunn’s children about the family circumstances. It was their view that Mrs Barnicoat’s relationship with Mr Bunn had been in difficulty and broken down prior to his death. They consequently asked HLAM:
  - for more time to investigate their father’s financial affairs and the circumstances surrounding his death; and
  - to defer making their decision on who should receive the SIPP death benefits until after they had the opportunity to submit more evidence which would only become available after the conclusion of their investigation.
8. HLAM made it clear to Mr Bunn’s children that the information which they hoped to present might not be relevant to their decision but given the serious nature of the allegations made (including fraud) they granted them the additional time.
9. HLAM informed Mrs Barnicoat on 1 March 2013, that they had decided she should be the sole beneficiary of the death benefits available from the SIPP. They apologised to her for the delay in reaching their decision and for not keeping her updated on what had been happening.
10. HLAM also told her that:
  - they were giving Mr Bunn’s children 14 more days to submit any relevant information for consideration; and
  - if they did not hear from them by the deadline, they would pay her a tax free lump sum and also supply her with details of the benefit options available from the residual SIPP fund.

11. In their letter dated 15 March 2013, to HLAM, Mr Bunn's children said that:

- the circumstances surrounding the final days of Mr Bunn's life were serious requiring contact with the police, the fraud departments of various financial institutions and a private investigation agency;
- as not all of the facts concerning Mr Bunn's death were known, no reasonable conclusions could be drawn;
- probate was not yet complete and more investigative work was needed before the estate could be closed;
- it would not be appropriate or prudent for HLAM to make a payment to Mrs Barnicoat in light of the above;
- they have provided a summary of some of the issues which they have concerns about (with supporting documentation) for consideration;
- they have found Mrs Barnicoat difficult to deal with both during Mr Bunn's illness and following his death;
- if HLAM made a payment to her now which is later deemed inappropriate, it would be very difficult to recover the payment;
- two legal firms have advised them that there are still questions which must be asked surrounding the last days of Mr Bunn's life;
- they would like to engage the services of one of these firms but HLAM has not allowed them adequate time to do so;
- in their view, their father would not have wanted them to leave such serious questions unanswered;
- Mrs Barnicoat was not in any financial hardship having already taken possession of a number of their father's assets and liquidated one property;
- there was consequently no urgency for HLAM to pay her the SIPP death benefits; and
- they look forward to agreeing a reasonable timescale to secure probate and thereby access further documents pertinent to their enquiries.

12. HLAM informed Mrs Barnicoat in their letter dated 5 April 2013 that:

- they have to exercise discretion when deciding how the SIPP death benefits should be paid and would take into account any expression of wish provided by Mr Bunn;
- Mr Bunn's children have supplied them with information about their father's personal circumstances for consideration but the evidence received so far did not lead them to conclude that they should not follow this expression of wish;

- they have made this position clear to Mr Bunn's children ;
- they have also informed them that they wished to settle this case in a timely fashion and did not feel that there were any outstanding issues regarding their father's circumstances which would be relevant to their decision;
- they were mindful that they had to give full consideration to all parties involved and consequently had to allow the solicitors acting on behalf of Mr Bunn's children, who recently contacted them, an opportunity to respond to their letter;
- consequently, they were not yet in a position to pay the SIPP death benefits to her but have stressed to the solicitors that they would like a prompt response; and
- they would keep her updated .

13. On 16 April 2013, the solicitors acting for Mrs Barnicoat wrote to HLAM as follows:

"You will be aware that our client is very concerned indeed about time passing. She is being severely prejudiced, financially, by the lack of pension income which the apparent challenge to Mr Bunn's nomination in her favour has brought about. It was with particular concern that she read, in your letter of 5<sup>th</sup> April 2013, that Mr Bunn's children have now instructed a solicitor.

Very little information has been provided to our client other than by your letters, but her understanding is...that Mr Bunn's children were challenging their father's mental capacity to make a nomination at the time he died. Our client knows as an absolute fact that he was of perfectly sound mind and that, is of course, entirely consistent with his nominating in favour his partner of many years...

...our client's concern is to see that the children's concerns have escalated to the point of their solicitor writing to you. In the circumstances we would ask that you consent to the release to us, on Mrs Barnicoat's behalf of a copy of the letter. Failing that, we would ask that at least you summarise the salient issues raised by them, and if they are asking for you to respond by providing information, would you please share that with us."

14. HLAM responded on 18 April 2013, that they did not have the authority to send them a copy of the letter but provided an extract of their response to the children's solicitors which said:

"In this case...the nomination was recent, the person nominated was the deceased's partner and they lived together at the time of his death, in a relationship of at least mutual financial dependency. As far as we are aware Mr Bunn had no other financial dependents.

Should we act against the nomination, we feel that we would be open to a claim that we did so without good reason which would be very hard to defend.

We have delayed our decision on a number of occasions to afford Mr Bunn's children an opportunity to provide further information about their father's

situation. However, nothing provided so far gives us reason not to follow the member's request to pay the benefits to his partner.

We also have a duty to those nominated by the member not to cause undue delays and to treat them fairly. We would therefore prefer to settle this case in a timely fashion.

...I would be grateful if you could confirm whether you expect to provide any further information which is relevant to our decision..."

15. HLAM sent another letter on 23 May 2013, to Mrs Barnicoat's solicitors to inform them that they had not yet received a response from the children's solicitors. HLAM also said that if they did not hear from the children's solicitors within two weeks, they would pay the death benefits available from the SIPP to Mrs Barnicoat.
16. HLAM informed Mrs Barnicoat's solicitors on 2 July 2013, it was their understanding that the executors were awaiting information from their client relating to Mr Bunn's affairs which should have been privy to the estate once probate was granted. HLAM asked them for assistance to obtain this information from Mrs Barnicoat which Mr Bunn's children were seeking which might help speed up their response to them.
17. They also notified Mrs Barnicoat on 8 July 2013, that:
  - they would prefer Mr Bunn's children to liaise directly with her or her solicitor in order to establish the outstanding information regarding Mr Bunn's affairs (although they understood that this might not be possible);
  - by doing so, Mr Bunn's children might then respond more quickly to them;
  - she had previously indicated that she might suffer financial hardship if the SIPP benefits were not paid to her; and
  - if this was still the case, she should let them know as they might be able to arrange for part of the SIPP fund to be paid out to assist with her day to day expenses until they were in a position to determine the final beneficiary(s) of this SIPP.
18. In their letter dated 28 August 2013, HLAM informed Mr Bunn's children that:
  - they now felt it very unlikely that they would be made aware of anything else which was directly relevant to the distribution of Mr Bunn's SIPP;
  - they therefore saw no reason to delay the settlement of this case any longer;
  - when determining the beneficiaries of the SIPP, they must take into account relevant facts only;
  - it was their understanding that they have raised concerns surrounding Mrs Barnicoat's behaviour following Mr Bunn's death and financial irregularities concerning some joint investments;

- they have made it clear in the past that this was not relevant to Mr Bunn's pension but awaited the provision of new information to determine its relevance;
- no new information has been supplied for a number of months;
- they could not speculate with the benefit of hindsight how Mr Bunn might have wanted the SIPP benefits to be paid if he were aware of the situation which followed his death and could only consider the wishes he expressed at the time he made them; and
- they must conclude that there was no relevant reason not to pay benefits to Mrs Barnicoat shortly.

19. Mr Bunn's children replied as follows:

"In our defence we only received a substantial response from Mrs Barnicoat's solicitor on the 18 August and therefore have been in no position to provide the information that we were seeking. Unfortunately Mrs Barnicoat is still proving to be obstructive and "demands her privacy" in all matters...

We understand that HLAM is in a difficult position and we also appreciate the strength of tone of the correspondence coming from Mrs Barnicoat's solicitor. We do value the time we have been given to uncover information relating to our father's affairs and unfortunately we have not been successful in concluding all matters as we have a reluctant participant in Mrs Barnicoat...

It is fairly clear to see that there have been some very alarming and unusual actions by Mrs Barnicoat in the period surrounding our father's death...It may be that only the police can really decide at what level the actions sit and that will undoubtedly be our next course of action.

We...were trying to avoid this route by hoping that Mrs Barnicoat would make a claim under the Inheritance Act as it would have forced all facts into the open. Despite being threatened with this on numerous occasions by her solicitor this has now strangely disappeared as a potential course of action... since we indicated that we would welcome a claim being made...

...Mrs Barnicoat was aware at the time, that I held an Enduring Power of Attorney for my father's affairs. Irrespective of any other wishes he had expressed he did not change this. Mrs Barnicoat deliberately denied me access to my father when he was in the exact position that he had been so concerned with when he made out his Power of Attorney. And how very real those concerns proved to be...Mrs Barnicoat did not just fail to inform his children of his tragic illness but also deliberately lied to the hospital by stating that he had been estranged from both children for a number of years. We have supplied copies of cards and telephone records demonstrating contact within the weeks and months preceding his death. This was...not the action of someone who remains in an ongoing relationship with the afflicted...The sole reason for denying access and fabricating a story was for financial gain and a

fear that some interference would occur that might affect her financial position...”

20. In their letter dated 25 October 2013, HLAM informed Mrs Barnicoat that:

“The SIPP is a discretionary trust which means the managers of the scheme must decide how benefits are to be paid. Any nomination made by the member assists us however it is not legally binding. We must also consider whether there are other potential beneficiaries or any reason to pay benefits other than in line with a nomination.

Unfortunately there are occasions when the distribution of pension death benefits can be complex and time consuming. We must ensure we take into account everything we should.”

21. They added in their letter dated 19 November 2013, to her that:

- HMRC allowed them a maximum of two years to determine the most appropriate SIPP beneficiary(s) following the death of Mr Bunn and they were satisfied this timescale has been met;
- during this process they have liaised with the various parties involved only as often as was necessary to obtain all the required information and receive the relevant submissions;
- as Mr Bunn nominated her as his preferred beneficiary, the onus rested with the other parties to demonstrate why such an allocation would be unsuitable which they were ultimately unable to do;
- they were obliged to allow a reasonable period of time to allow claimants to compile evidence and make their submissions but have endeavoured to expedite the process wherever possible;
- whilst it was her prerogative to engage a solicitor as she saw fit, they did not feel it was necessary in this instance and did not affect the outcome of the process;
- they decided to name her as the sole beneficiary of Mr Bunn’s pension on 28 August 2013, and informed her solicitors of their intentions on the same day;
- they had written to her on the following day to outline her benefit payment options;
- they received a further submission from Mr Bunn’s children on 5 September 2013, which they reviewed on the next day; and
- since this submission did not alter their decision, they paid the SIPP benefits to her on 9 September 2013, which they felt was a reasonable timeframe.

22. In their letter dated 28 November 2013, to Mrs Barnicoat, HLAM wrote:

“Our main responsibility is to be thorough and ensure we have taken all available evidence into account before making our final decision. We initially

intended to complete our deliberations on 1 March 2013 but this was delayed due to additional evidence received.

...all correspondence from both parties was considered and we were in regular contact with your solicitor throughout this process. Indeed, the fact that we have ruled in your favour demonstrates your position has been given full consideration.

... I cannot ...discuss specific accusations made by the other complainants although we did feel at times that some of the delays could have been mitigated by the solicitors for the two parties liaising directly with each other. The range of information provided by the other claimants was sufficiently serious to warrant their consideration. I understand that you believe some of the information to be untruthful but we have no control over the submissions made by third parties or the distress these may cause...

We tried to ensure you would not suffer financially during this period by offering you a partial payment on two occasions. We would never have sought reclaim of any of this money regardless of our final decision. Such details were not discussed at the time since you declined the payments and expressed no interest in pursuing this course of action.” .

23. Mrs Barnicoat transferred the SIPP fund to Just Retirement in February 2014. She used part of her capped drawdown pension plan fund to initially provide a fixed gross income of £3,727.80 pa (that is, £310.65 per month) commencing on 1 February 2014, and ending on 1 February 2029. The delays attributable to HLAM in awarding her the death benefits from the SIPP have resulted in the amount of income available to her to be lower than what it would have been had the delays not occurred (due to falling annuity rates).

### **Summary of Mrs Barnicoat's position**

24. It was unfair and unreasonable of HLAM to “side” with Mr Bunn’s children. She should have been given the opportunity to defend herself against their allegations on the grounds of natural justice. The premise in UK law is that “you are innocent until proven guilty”.

25. HLAM should have refused the request made by Mr Bunn’s children for confidentiality. HLAM have no legal right or justification to enter such terms with them. HLAM should have explained to Mr Bunn’s children that full disclosure of any allegations which they wished to make against her would be required.

26. The main reasons for the delay in paying the benefits to her were HLAM’s failure to competently determine what information was relevant and to engage in discussions with her on the false allegations made by Mr Bunn’s children.



27. HLAM made no attempt to check the veracity of the allegations made against her despite being aware that both sides were accusing the other of lying. This was made worse by the confidentiality agreement which prevented her (and her solicitor) from clarifying matters. Once agreeing to confidentiality, HLAM had a duty of care to check the information given to her was accurate in order to limit the disadvantage which they had put her in.
28. She engaged a solicitor because HLAM did not listen to her or keep her informed of developments in this matter. She had to telephone HLAM on several occasions just to receive updates. Her decision to involve her solicitor was not taken lightly. It was a necessary decision brought about by her financial circumstances, the attitude of her stepchildren and the lack of consideration shown by HLAM. She needed sound advice and support. Also, HLAM did not inform her that she could have sought the assistance of TPAS for free. Her claim for the reimbursement of legal fees totalling £2,000 is, therefore, fully justifiable.
29. HLAM allowed Mr Bunn's children too much time to provide further evidence. The "long periods of silence" were the result of their inefficiency as much as the children's tactics.
30. She rejected the offers of an interim payment from the SIPP because HLAM did not make her aware that it would not be reclaimed if the final decision went against her. She was concerned that she might have to repay an amount to HLAM which she could not afford. The closest HLAM got to explaining to her that she would not have to reimburse the partial payment was during a telephone conversation when HLAM told her that she would probably not have to pay it back. Having voiced her fears and provided her reasons for refusing the interim payment (via her solicitors), HLAM should have made clear the terms of any interim payment without having her to ask for them first. HLAM failed to provide this information when her solicitor contacted them about this. In her view, this information was deliberately withheld by HL from her.
31. The drawdown income commenced in early 2014. She had to rely upon her own assets to live on from September 2012, until that time.
32. Mr Bunn's children purposely fabricated stories and made exaggerated and unfounded claims to HLAM about her in an attempt to secure the funds in the SIPP for themselves and to make it as difficult as possible for the SIPP funds paid to her.
33. HLAM's improper practices have caused her to suffer considerable emotional stress and financial loss. Her loss was about £300 per month during the time she was under investigation. It took HLAM about one year to decide that she was entitled to the death benefits and then a further six months before she actually received any payments. As her pension was not backdated, she has suffered an actual loss of approximately £5,400.
34. If HLAM had given her the opportunity at the time, she would have given them information which would have greatly assisted them to arrive at their decision much quicker. She could have provided them with evidence:

- to show that she and Mr Bunn had been planning to go on holiday shortly prior to him suffering the stroke;
- to explain why she was unable to attend Mr Bunn's funeral; and
- to demonstrate that she did not fraudulently withdraw money from their joint bank accounts and that the joint property was under offer and not sold at the time of Mr Bunn's death.

35. Mr Bunn's children have misunderstood the nature of joint ownership when making the serious allegations against her. Their concerns centred upon a sale of a property owned by her and Mr Bunn and the movement of funds between joint bank accounts. These assets became hers when Mr Bunn died and as such had no bearing whatsoever on the allocation of the death benefits by HLAM. Despite this HLAM allowed Mr Bunn's children additional time to carry out their own investigation. They should have recognised that whatever action she chose in respect of her assets was entirely her decision.

36. HLAM should have sufficient professional and legal knowledge to determine what was not relevant, and to have dismissed much of this information at any early stage. HLAM failed to distinguish between information generated solely "at the whim" of Mr Bunn's children and relevant facts.

37. In July 2013, she sent HLAM a copy of an e-mail dated 17 September 2012, to her from Mr Bunn's children which said that :

- their solicitor had asked for all bank accounts including joint ones to be frozen by the executor; and
- the joint accounts would possibly be suspended only on a temporary basis but they could not be used until a copy of the will was obtained and instructions received from the acting solicitor.

On receipt of this e-mail, HLAM should have reviewed all claims made by Mr Bunn's children that they were acting on legal opinion because, at the very least, they had misinterpreted what their solicitor advised them in September 2012.

38. By spending so many months listening to Mr Bunn's children only whilst ignoring her, HLAM could not avoid being prejudiced.

39. During the course of our investigation, she has obtained witness statements from her parents, Mr Bunn's sister, and several friends in support of her application which corroborate her allegations that Mr Bunn's children have been lying and disparaging her character to HLAM. She would have made all this information available to HLAM much earlier if they had asked her for it.

40. Her IFA found dealing with HLAM in arranging her drawdown pension to be "extremely slow and drawn out". In their view, HLAM have not acted appropriately on her behalf and should compensate her for failing to treat her fairly.

41. Mr Bunn had other investments with HLAM. If they had carried out some basic due diligence, HLAM would have found out that she made no attempt to get hold of them. All she wanted was what Mr Bunn had specifically left for her, i.e. the SIPP benefits and the properties which had been under joint ownership and bought using joint funds.
42. Despite informing Mr Bunn's children that the outcome of any investigation into alleged financial irregularities was irrelevant to their decision and the need to avoid undue delays, HLAM corresponded with the children's solicitors about those very matters and time was allowed for this.
43. She was not obstructive in her dealings with Mr Bunn's children.
44. Mrs Barnicoat says:

"The basis of my complaint hinges upon the clear lack of customer care shown to me throughout by HLAM. It should not have been unusual for HLAM to encounter similar situations, whereby children from a previous marriage do not accept the wishes of their late parent to leave his/her pension to his/her bereaved partner. Such matters may always be contentious. But from the outset HLAM have been obstructive, and have given undue weight to the objections, opinions and subsequently unfounded accusations of my late partner's children. These accusations frequently referred to my own assets and should have no bearing whatsoever on the allocation of the pension. HLAM should have identified that much of what was presented to them was irrelevant, but they did not do so.

Throughout, I have tried to deal only with material facts which can be substantiated. What is more difficult to quantify is the emotional strain which all this has caused.

It is now almost three years since my partner died suddenly and unexpectedly. I had expected matters following his death to have been handled with sensitivity and in a timely fashion, but they were not. HLAM failed in their duty of care by a refusal to allow me to challenge unfounded allegations against me; by failing to carry out basic checks to ascertain the validity of those allegations; by an admitted failure to communicate effectively.

They admit "with hindsight" they could have handled matters differently. Bearing in mind the emotional, reputational and financial effect this case has on me, hindsight is not something upon HLAM can rely."

### **Summary of HLAM's position**

45. The delay in paying benefits to Mrs Barnicoat arose because they were provided with a large amount of information from Mr Bunn's children which they had to take into account before making their decision. Much of this was highly sensitive, and included medical reports, reports of financial transactions around the time of Mr Bunn's death and details of a potential police investigation. They were asked to maintain

confidentiality by Mr Bunn's children and not provide Mrs Barnicoat with copies of the evidence provided. Given the nature of their concerns they felt it prudent to allow them time to provide all the information they wanted HLAM to consider (some of which was being obtained from third parties). They also felt it was appropriate to respect the wishes of the children because at the time, there were suggestions of fraud and unauthorised bank account access by Mrs Barnicoat.

46. They accept that there was an initial period during which they failed to keep Mrs Barnicoat adequately informed of what was happening and have offered her a compensation payment of £500 for the distress and inconvenience caused to her. There was regular contact with Mrs Barnicoat (and her solicitor) thereafter.
47. They do not accept that Mrs Barnicoat needed to appoint a solicitor in order to progress settlement of the case or obtain information from them. They made it clear to both Mrs Barnicoat and her solicitor that the reason for liaising with Mr Bunn's children was to respond to the additional information they were hoping to provide for consideration.
48. They did not consider that there was any more they needed to ask Mrs Barnicoat about her relationship with Mr Bunn or their financial arrangements.
49. They stressed to all parties that their only motivation for delaying their decision was to ensure that they made a fully informed decision, particularly as at various times both Mrs Barnicoat and Mr Bunn's children had told them that the other party was lying.
50. Once they were satisfied no further information relevant to the payment of benefits from the pension was likely to be forthcoming, a decision was made and the (uncrystallised) benefits paid to Mrs Barnicoat within a few days.
51. The SIPP Rules allow them to pay benefits to a wide range of potential beneficiaries including anyone who the member has nominated or a beneficiary of the deceased's estate or the deceased's relatives.
52. Generally if there is a dependent, he/she would be the most appropriate beneficiary. They would, however, still examine the full range of potential beneficiaries before deciding who should receive the benefits. Although Mrs Barnicoat was the only person who could have been paid a dependent's pension, they could have, under the SIPP Rules, paid lump sum benefits to Mr Bunn's children or his grandchildren instead if they had felt this to be appropriate.
53. They have to make judgments based on the information available at the time and decide whether there are any further questions which they need to ask before reaching their decision. They could not pay out the SIPP death benefits until they felt comfortable that they were in possession of all the relevant information.
54. This did not prevent them from making a part payment of the SIPP fund in advance of reaching their decision whilst they waited for the information which Mr Bunn's children had asked them to consider. They would have been happy to make such an interim payment to help Mrs Barnicoat financially but she refused their offers at the time. If

such payments had been made, they would obviously not have been included should the the SIPP fund not have been subsequently paid to her.

55. They made it clear on a number of occasions that they would only take into account information which was relevant. As soon as it became clear that Mr Bunn's children were unlikely to provide anything further, they judged it the right time to reach their decision and told them so. Mr Bunn's children did not accept this but at that point, they were comfortable on balance they had all that they needed. There was no further delay in paying the benefits despite protestations from Mr Bunn's children that they still had information to provide.
56. Whilst they were eventually able to determine the information being provided to them by Mr Bunn's children was not relevant to the SIPP, they were not in a position to do this until they were able to review everything the children wanted to provide.
57. With the benefit of hindsight, it was possible that Mr Bunn's children sought to exaggerate their claims in order to make things difficult for Mrs Barnicoat. But at the time they were considering the information Mr Bunn's children had supplied and the confidentiality request made, they felt it prudent to at least afford them the benefit of the doubt and not to assume immediately that they might be lying.
58. Mrs Barnicoat also provided them with irrelevant information designed to discredit Mr Bunn's daughter and shape their attitude to her. (Mrs Barnicoat, however, says that she only supplied this information to put the other party's accusations in perspective).
59. They were placed in a very difficult position by Mr Bunn's children who had asked them not to share any of their concerns with Mrs Barnicoat. Therefore, they could not provide her with a full explanation for delaying their decision. Had they been able to do so, it is possible that they might have reached a decision much earlier.
60. They did not know, or have any expectation of what would be disclosed if Mrs Barnicoat had made a claim under the Inheritance Act. Mr Bunn's children had however suggested that there were a number of unresolved issues which they wanted to get to the bottom of before presenting their findings to them. A claim against the Estate might have resulted information related to any one or more of these issues. Had they disregarded this possibility and it later transpired that information relevant to them had not been considered, their decision regarding the payment of death benefits could have been called into question.

## **Conclusions**

61. Most pension schemes provide for death benefits to be distributed at the discretion of the trustees of the particular scheme to one or more of a range of beneficiaries. This long standing practice is designed to avoid benefits becoming part of the deceased's estate and so being taken into account for inheritance tax purposes. But it can present trustees with difficult decisions in very sad circumstances which often involve family conflict.

62. The definition of who might be a beneficiary may be cast very widely, making it difficult for the trustees to ascertain all the potential beneficiaries or to be aware of the needs and financial status of all of them.
63. The SIPP Rules define a range of people who could benefit but HLAM are not bound to consider them equally and can use their discretion to determine the beneficiaries. In doing so they must consider all relevant facts but ignore anything which is irrelevant. HLAM decided that Mr Bunn's children and grandchildren fell within the wider group of people to whom the SIPP death benefits could be paid.
64. Most schemes also allow members to nominate the person or persons to whom they would wish any death benefits to be paid but such nominations are not binding on the trustees. However any nomination form would be one of the factors to be considered in reaching a decision.
65. Therefore, HLAM had to check when the nomination form was completed by Mr Bunn and whether, there had been any change in his domestic or financial circumstances which might cast doubt on the validity of the wishes expressed. Furthermore, they could not assume that a failure to complete a new nomination form following a change in circumstances was an accidental oversight. Mr Bunn might have intended to leave the nomination form as originally completed.
66. HLAM had to ask themselves if there were any reasons why they should not award the death benefits to Mrs Barnicoat and determine whether there were any other parties financially dependent on Mr Bunn who had not been nominated and might have been deserving of a pension or lump sum.
67. Therefore, HLAM had to investigate Mr Bunn's family background carefully before deciding, fairly and reasonably, who should receive the SIPP death benefits. It was important that all the relevant facts were established. This might involve an investigation (sometimes against an acrimonious background) of the deceased's domestic personal and financial situation, as well as that of any potential beneficiaries. It might also be necessary to check what other financial provision, e.g. by the deceased's will, had been made and in whose favour. HLAM must in exercising any discretion ensure that it acted reasonably and that moral or other prejudices were set aside. HLAM had up to two years in which to decide how to exercise their discretion after making proper enquiries.
68. Consideration of death benefits arises at a stressful period and future financial security may be affected. Significant sums are often involved and the decision making process may involve seeking personal and financial information which might otherwise be regarded as private. HLAM had to ensure that such matters were handled with appropriate sensitivity. The difficulty faced by HLAM was the need to balance an understandable concern with the need to take their decision on the basis of accurate information. They needed to take care when relying on reported information about relationships particularly where such reports came from those who stood to be financially affected by the decision.

69. There is a difficult line to be drawn between a legitimate desire to protect people's confidentiality, and ensuring the accuracy of information. Other potential beneficiaries have a legitimate interest in being assured that decisions which have the effect of denying benefit to them, have been properly and fairly made.
70. In addition to the above difficulties, HLAM had to deal with some very emotive issues and it is clear from the evidence that the potential beneficiaries found it very difficult to understand that there was a range of possible ways in which HLAM could have exercised their discretion to award the death benefits. Given the range of discretion, there was unlikely to be only one answer that was to be regarded as "right" with all others being wrong.
71. The decision and the exercise of discretion by HLAM was, therefore, not clear cut in Mr Bunn's case. HLAM had to weigh the interests of different parties including those of Mrs Barnicoat who Mr Bunn's children did not approve.
72. In light of this I do not consider it unreasonable for HLAM to have allowed Mr Bunn's children additional time to conclude their private investigation into their father's financial affairs and the circumstances surrounding his death, and also to comply with their request not to disclose the reasons behind the investigation to Mrs Barnicoat.
73. It would have been preferable for HLAM to have perhaps been more proactive in the matter by, for example, discreetly checking the veracity of the information presented by Mr Bunn's children to them (if this was possible). Moreover, they could perhaps have given reasons to Mrs Barnicoat on why they were deferring their decision without revealing the source of their evidence or unduly infringing Mr Bunn's children's right to privacy..
74. I believe that HLAM were clear in their letter of 18 April 2013, that the outcome of any investigation into alleged financial irregularities, which occurred around the time of Mr Bunn's death, was irrelevant and would not be sufficient reason to ignore the wishes expressed by Mr Bunn.
75. Therefore, I am satisfied that HLAM only delayed their decision in order to give Mr Bunn's children the opportunity to provide information about their father which might prove pertinent to their decision. They were ultimately unable to provide HLAM with any good reason not to follow Mr Bunn's request to pay benefits to Mrs Barnicoat.
76. Mrs Barnicoat says that she has suffered a financial loss because she had to use her savings for day to day expenses whilst awaiting HLAM's decision. But if someone suspects that he/she may have suffered a loss, he/she has a responsibility to take reasonable steps to mitigate his/her loss. HLAM had offered twice to assist her financially by making an interim payment from the SIPP fund to her which she declined. HLAM say that they would have informed her on request that repayment of this amount was unnecessary in the unlikely event that their final decision went against her. In my view, it is most regrettable that Mrs Barnicoat chose not to take up their offer.

77. Furthermore, given that Mrs Barnicoat was eventually awarded the death benefits from the SIPP, with the interim payment she would have been able to reinstate her savings which she had used to cover her day to day expenses. This would have put her, more or less, back in the position she would have been in if settlement of the SIPP benefits by HLAM had been made earlier.
78. Mrs Barnicoat also says that she had to engage a solicitor in order to expedite matters and HLAM should reimburse the legal fees incurred. It was a matter of personal choice for Mrs Barnicoat to employ a solicitor to help her deal with HLAM. I do not consider that it was necessary, particularly when their involvement did not affect HLAM's decision to award the SIPP death benefits to her, therefore, she must bear these costs.
79. Although, I can fully understand the frustration which Mrs Barnicoat experienced on the time it took for HLAM to make their decision, I do not consider that she has suffered any actual financial loss for which HLAM should compensate her. It is evident, however, that she has suffered significant distress and inconvenience in dealing with this matter. In recognition of this, I note that HLAM have already offered her £500 in compensation which I believe to be a reasonable amount in the circumstances.
80. I do not uphold Mrs Barnicoat's complaint.

**Anthony Arter**

Pensions Ombudsman  
31 July 2015