

Ombudsman's Determination

Applicant	Mrs N
Scheme	First Great Western Section of the Railway Pension Scheme (the Scheme)
Respondent	Trustee of the Scheme (the Trustee)

Outcome

1. I do not uphold Mrs N's complaint and no further action is required by the Trustee.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs N's complaint is about the way the Trustee decided to distribute the lump sum death benefit.

Background information, including submissions from the parties

4. Mrs N is the widow of Mr N, who was an active member the Scheme. Mr N died on 15 September 2014 and a lump sum death benefit was payable under the Scheme.
5. Under the rules of the Scheme (the **Rules**), the Trustee has absolute discretion to pay the lump sum death benefit to one or more "Beneficiaries" in such shares as it decides. "Beneficiaries" under the Rules include the member's spouse, grandparents and their descendants (e.g. the member's parents, siblings and the siblings' children) and any person and/or charitable organisation as the member may nominate in writing to the Trustee.
6. Mr N had completed two nomination forms – in November 2011 and in February 2014, both nominating only one person, Mrs D, as a possible beneficiary.
7. Both Mrs N and Mrs D had indicated that they did not wish to claim the lump sum benefit. However, Mr N's mother, his sister and his nephew said that they wished to be considered for the distribution of the lump sum death benefit.
8. In September and October 2014, Mrs N wrote to the Trustee saying that Mr N had not left a will but had asked for the lump sum death benefit to be divided as follows: 25%

to Mrs R, a close friend; 25% to Mr N's sister; and 25% each to two of Mr N's charities.

9. Mrs N sent the Trustee a copy of an email, dated 14 September 2014, purporting to be sent to her by Mr N of his last will and testament. The email stated that the remaining assets, after paying off any debts and funeral costs, were to be divided as follows: 25% to Mrs R, a close friend; 25% to Mr N's sister; and 25% each to two of Mr N's charities.
10. Mrs N wrote to the Trustee again on 31 October 2014 saying that if there were any difficulties in paying the beneficiaries, as named in her letter of 1 October 2014, directly, then 100% of the lump sum could be paid to her and she would forward the money in accordance with Mr N's wishes.
11. The Trustee obtained the necessary evidence from Mr N's mother, his sister and his nephew. It then paid his mother 50% and 25% each to his sister and his nephew of lump sum death benefit.
12. Mrs N complained to the Trustee about the way they distributed the lump sum death benefit. Her complaint was dealt with under the Scheme's internal dispute resolution procedures (**IDRP**). The decision under IDRP was:
 - The lump sum benefit is payable at the discretion of the Trustee. All the relevant evidence had to be considered in accordance with the Rules.
 - All the evidence in respect of the claims for the lump sum was considered, at length, including the nomination forms Mr N had completed in November 2011 and February 2014. Account was taken of the fact that Mr N had not left a will and the only person who he had nominated to receive any part of the lump sum benefit, Mrs D, had confirmed no wish to make such an application.
 - There was no direct request from Mrs N to have the benefit paid to her as the legal spouse. However, she had requested that the lump sum death benefit be paid to her so that she could forward it on to those beneficiaries she had indicated as Mr N's chosen beneficiaries. The only way that those chosen beneficiaries could be considered as beneficiaries, is if Mr N had nominated them himself.
 - Mr N would have been aware that the nomination would have to be made in writing to the Trustee, due to the information contained on the Scheme's website when he completed his last nomination in February 2014.
13. Mrs N says
 - she is bitterly disappointed that her husband's wishes were not met;
 - the recipients of the lump sum death benefit knew his final wishes, which makes the Trustee's decision even more mystifying; and

- the difference the money would have made to the intended recipients is immeasurable.

Adjudicator's Opinion

14. Mrs N'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 briefly below:
 - In making its decision the question that the Trustee needed to ask itself is who are Mr N's "Beneficiaries", as defined under the Rules. Having identified the "Beneficiaries" the Trustee must then gather relevant information before reaching a decision. Its decision was to distribute the lump sum death benefit between Mr N's mother, sister and nephew who all fell within the definition of "Beneficiaries". In addition, before making its decision, the Trustee gathered relevant information with regard to these "Beneficiaries".
 - The only nomination the Trustee had received in writing from Mr N was in respect of Mrs D, but she had indicated that she did not wish to be considered.
 - It may be argued that Mr N had also nominated Mrs R, his sister and two of his charities, in his email of 14 September 2014. However, this email was sent to Mrs N and not directly to the Trustee. Even if this email could be accepted as a nomination, the Trustee is not bound by it.
 - As a flaw could not be identified in the Trustee's decision making process, the complaint should not be upheld.

Ombudsman's decision

15. My role is to consider whether the decision was reached in a proper manner. There are some well-established principles which a decision-maker is expected to follow in exercising its discretion. Briefly, it must take into account all relevant matters and no irrelevant ones. It must not make a perverse decision i.e. a decision which no reasonable decision maker, properly directing itself, could arrive at in the circumstances.
16. Mr N's mother, sister and nephew all fell within the definition of "Beneficiaries". The Trustee concluded that under the Rules, in the absence of a signed and witnessed will, in order for those individuals and charitable organisations indicated by Mrs N to be considered as "Beneficiaries" Mr N would have had to nominate them. The fact that he did not nominate them meant that the Trustee did not have to consider them as potential recipients of the lump sum death benefit.

17. I am satisfied that the Trustee adopted a correct interpretation of the Rules. In addition, I am unable to find that the Trustee took irrelevant matters into account or reached a perverse decision.
18. Therefore, I do not uphold Mrs N's complaint.

Karen Johnston

Deputy Pensions Ombudsman
22 July 2016