

Ombudsman's Determination

Applicant	Mrs Y
Scheme	The New Airways Pension Scheme (the Scheme)
Respondents	The Management Trustees of the New Airways Pension Scheme (the Trustees)

Outcome

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

Complaint summary

3. Mrs Y's complaint against the Trustees is about their distribution of the lump sum death benefits arising under the Scheme on the death of her husband, Mr Y.

Background information, including submissions from the parties

4. Mr Y had three sons by his first marriage. Following his divorce from his first wife, he paid his sons maintenance until the age of 18. Mr Y married Mrs Y in 2004. They had no children.
5. Mr Y completed an expression of wish form in favour of Mrs Y in 2006.
6. In January 2014 Mrs Y's employment as a manager with a large accountancy firm was terminated on ill health grounds.
7. Sadly, Mr Y (and a passenger) died in a light aircraft crash on 29 March 2014. Mr Y was piloting the aircraft. He did not leave a valid will, although there was a draft will in 2007 which would have left his net estate to Mrs Y. Following Mr Y's death, Mrs Y was appointed as the administrator of his estate.
8. The benefits payable from the Scheme on Mr Y's death included a widow's pension of about £18,500 a year for Mrs Y, child allowances for Mr Y's sons while they were under age 16 (or under age 23 if still in full-time education or vocational training) and a lump sum of £275,617.24, payable by the Trustees to one or more persons under discretionary trusts (see Appendix).

9. When the Trustees met on 4 June 2016 they decided to defer making a decision about payment of the lump sum death benefit until they had obtained more information from Mr Y's family and friends. In further correspondence, Mrs Y confirmed to the Trustees that Mr Y's sons would benefit from Mr Y's estate, and said that as Mr Y had many debts she would need the lump sum from the Scheme to ensure that his liabilities were settled before the lump sum was shared out.
10. After receiving representations from Mr Y's family and friends, the Trustees' operations committee decided that they would award £68,904.31 (25% of the lump sum death benefit) to Mrs Y and to each of Mr Y's three sons, all of whom were then over age 18. Mrs Y was informed of this decision in a letter dated 15 July 2014.
11. Mrs Y challenged the Trustees' decision. She said that Mr Y would have wanted her to receive 100% of the lump sum, as indicated in his expression of wish form. Mrs Y objected to an allegation that had been made by a member of Mr Y's family that Mr Y and Mrs Y "had been separated for a period of roughly a year". Mrs Y admitted that after Mr Y had a marital affair he spent some time living with his parents, and Mr Y and Mrs Y were having marriage guidance counselling, but Mrs Y was adamant that their marriage was not over and said there was no suggestion of them getting divorced; she said that Mr Y frequently lived at home with her in a marital relationship, they attended social events together and went skiing in the month before Mr Y died. Mrs Y also pointed out that Mr Y had not removed her name from his concessionary travel perks. Mrs Y also said that Mr Y's family had made malicious representations because they had never got on with her.
12. The Trustees considered the additional evidence received and reviewed their original decision. They concluded in September 2014 that their original decision to divide the lump sum equally between Mrs Y and Mr Y's three sons should still stand. Payments to the four beneficiaries were made on 15 and 17 September 2014.
13. Mrs Y was unhappy with the Trustees' actions and appealed under the two stages of the Scheme's internal dispute resolution procedure in 2015 and 2016, but her appeal was unsuccessful.
14. When Mrs Y contacted us, she said that she was in financial hardship because Mr Y had left few net assets, and having lost her job she was financially dependent on him when he died. She added that Mr Y's estate was being sued by the family of the deceased passenger.

Adjudicator's Opinion

15. Mrs Y's complaint was considered by one of our Adjudicators, who concluded that no further/further action was required by the Trustees. The Adjudicator's findings are summarised briefly below:

- In making its decision, the question that the Trustees needed to ask themselves was who were Mr Y's eligible beneficiaries, as defined in Rule 24 of the rules of the Scheme. Having identified the eligible beneficiaries, the Trustees then had to gather relevant information before reaching a decision.
 - The expression of wish form in favour of Mrs Y was eight years old and, in any event, was not binding on the Trustees.
 - Mrs Y and Mr Y's three children all qualified as eligible beneficiaries. The Trustees' decision was to divide the lump sum death benefit between Mrs Y and Mr Y's three children in equal shares, 25% each. In the Adjudicator's view that decision was not improper, or outside a reasonable range of outcomes. Indeed, under the rules of the Scheme the Trustees could have decided to pay all the lump sum death benefit to Mr Y's children.
 - The Trustees had reviewed their original decision in the light of additional evidence provided by Mrs Y in 2014, and then concluded that their original decision should still stand. In the circumstances, the Adjudicator did not think that I would order the Trustees to review their decision once again.
16. Mrs Y did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mrs Y provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mrs Y for completeness.

Ombudsman's decision

17. In recent correspondence Mrs Y conceded that the 25% award made to her by the Trustees was "marginally within the grounds of reasonableness" but also said that it would have been fairer to pay her 50% of the total lump sum death benefit, with the remaining 50% being split between Mr Y's parents.
18. This is different to Mrs Y's original contention that she should have received 100% of the lump sum death benefit (as in the expression of wish form).
19. Whether it was fairest to pay Mrs Y 25% or 50% or any other percentage of the total lump sum death benefit was a matter for the Trustees to decide.
20. As Mr Y left a wife, an ex-wife and three sons I agree with the Adjudicator that the decision that was made by the Trustees, to divide the lump sum death benefit equally between Mrs Y and each of Mr Y's three sons, was within the range of reasonable outcomes that could have been reached.
21. It is established case law that I cannot make an order that would financially prejudice a person who is not a party to a complaint. This means that I cannot order the Trustees to stop a payment to a third party that has already been made.

22. The Trustees reviewed their original decision in September 2014, after Mrs Y had provided more evidence, and concluded that their original decision was still valid. In those circumstances, I do not consider that there is any basis to require the Trustees to review their decision once more.
23. Therefore, I do not uphold Mrs Y's complaint.

Karen Johnston

Deputy Pensions Ombudsman
11 January 2017

Appendix

Rule 24 Application of lump sum death benefit

- (a) Any lump sum benefit becoming payable under Rule 21 [Lump sum benefit on death of Member or Pensioner] may within a period of 24 months after the Management Trustees knew (or, if earlier, could reasonably be expected to have known) of the death of the Member or Pensioner be paid or applied by the Management Trustees to or for the benefit of any one or more of a class consisting of:-
- (i) the Member's or Pensioner's children, grandchildren, parents and grandparents, the descendants of any such persons and the spouses, former spouses, Surviving Civil Partners or former Civil Partners of any such persons or descendants;
 - (ii) a widow or widower or former spouse of the Member or Pensioner, the children, grandchildren, parents and grandparents of that widow, widower or former spouse, the descendants of any such persons and the spouses, former spouses, Surviving Civil Partners or former Civil Partners of any such persons or descendants;
 - (iii) any individual who is or was, in the opinion of the Management Trustees, at the date of the Member's or Pensioner's death either financially dependent on the Member or Pensioner or financially interdependent with the Member or Pensioner;
 - (iv) any individual or individuals, charity, society or club nominated by the Member or Pensioner by notice in writing addressed to or received by the Management Trustees during the Member's or Pensioner's lifetime;
 - (v) the Member's or Pensioner's legal personal representatives; and
 - (vi) a Surviving Civil Partner or former Civil Partner of the Member or Pensioner, the children, grandchildren, parents and grandparents of that Surviving Civil Partner or former Civil Partner, the descendants of any such persons and the spouses, former spouses, Surviving Civil Partners or former Civil Partners of any such persons or descendants.