

Ombudsman's Determination

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| Applicant | Dr G |
| Scheme | The [Mr T] Sippcentre SIPP (the Plan) |
| Respondent | AJ Bell Management Limited (AJ Bell) |

Outcome

1. Dr G's complaint is upheld and to put matters right, AJ Bell shall reconsider its decision as to the distribution of death benefits under the Plan.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Dr G has complained about AJ Bell's decision not to award her any benefits under their discretionary powers in the matter of distributing death benefits from her late partner's pension plan.

Background information, including submissions from the parties

4. Dr G's complaint has been considered by this Office on two previous occasions. The main points relevant to the background of this Determination are outlined below.
5. In August 2009, Dr G purchased a property with her partner, Mr T, whereby she owned a 90% share of the house and he the remaining 10%. Dr G says that they had an agreement in place whereby he paid the majority of the household bills.
6. On 5 March 2010, Mr T, a solicitor, made a will under which upon his death, allowed Dr G to continue living in the property with his share held by his executor's rent free for Dr G's lifetime. The will also left all domestic and associated assets, including vehicles, to Dr G, with the residual estate passing to Mr T's children in equal shares.
7. In July 2012, Mr T passed away.
8. In March 2014, this Office determined a complaint brought by Dr G concerning AJ Bell's refusal to award her a lump sum or consider her for a dependant's pension. The complaint was upheld on the grounds that AJ Bell had no basis for reaching the

conclusion it did. AJ Bell was directed to ask Dr G for evidence of her dependency on Mr T, and decide whether discretion should be exercised in her favour.

9. On 3 February 2015, AJ Bell notified Dr G of its decision to not award her any death benefits. It said that although Dr G was considered to be both a dependant of Mr T and an “Eligible Recipient”, there was insufficient evidence to say that he had decided to make a nomination in her favour at the date of his death.
10. Dr G subsequently brought the matter to this Office. In May 2016, the Ombudsman decided the following: -
 - Dr G was an “Eligible Recipient” and should be given equal consideration in the matter of death benefits to Mr T’s children, grandchildren and estate.
 - AJ Bell had said there was insufficient evidence to establish that Mr T wished to make a nomination in her favour at the date of his death. However, the fact that Dr G was a dependant should have been sufficient without the need to nominate her for the lump sum death benefit. Having identified this, AJ Bell should have then considered whether she should receive all or any part of the death benefits. Instead, the questions AJ Bell had asked itself were: what were Mr T’s wishes and could it comply with these?
 - AJ Bell’s decision on whether to exercise its discretion was flawed and it should therefore reconsider the distribution of the lump sum death benefit.
11. On 3 May 2017, the Committee of the Directors of AJ Bell made the decision not to secure a dependant’s pension for Dr G and said that Mr T’s lump sum should be paid to his estate. The minutes (**the minutes**) from the meeting outline that the following was discussed:-
 - Dr G was within the category of “Dependant” by virtue of being at the time of the deceased’s death in a financial relationship with him, which was one of mutual dependence.
 - Dr G was also within the category of “Eligible Recipient”, by virtue of being a person interested in Mr T’s estate, as were Mr T’s children and grandchild.
 - Dr G and Mr T had been partners for at least five years prior to his death in July 2012.
 - On 20 April 2009, Mr T had put in place an expression of wishes form in which he nominated himself only.
 - Around four months after the expression of wishes form had been completed, Mr T jointly purchased a property with Dr G.
 - Mr T had been a solicitor, which was consistent with him fully understanding the implications of the terms of his will and expression of wishes form.
 - In the months prior to Mr T’s death, he had discussed with his solicitors the possibility of changing the provisions of his will and received information from financial advisers. Thus, there was the intention to review his financial affairs and estate planning.

- The solicitors confirmed that Mr T had indicated an intention to make provision for his grandchild but otherwise he had not said what his revised intentions might have been.
- There was no indication that Mr T had resolved to make wholesale or any changes to his expression of wishes form.
- Dr G had produced evidence of joint home ownership and related expenditure, a joint bank account and made reference to joint pension planning around pension death benefits.
- Dr G had submitted evidence suggesting that she was in receipt of pension income and other investments. Dr G said that she and Mr T had decided to make mutual nominations in relation to death benefits payable under their pensions.
- After considering the above factors, the meeting determined that there would not be a dependant's pension for Dr G, and Mr T's pension fund would be paid as a lump sum to his estate.

12. Dr G subsequently referred the matter to this Office for an independent review.

13. On 2 March 2018, as part of the Adjudicator's investigation, she asked the following:

"In the minutes, under 4.6(a) it is confirmed that [Dr G] is a dependant under the rules of the scheme. Under 4.6(r) it is noted that [Dr G] had produced evidence of joint home ownership and other finances. Under 4.7(a) it is decided that there would not be a dependant's pension secured for [Dr G] under Rule 7, however, it is not clear how these conclusions flow from the main points above. Would you be able to elaborate/provide a further explanation please?"

14. On 9 March 2018, in response to the above question, AJ Bell said:

"As you will see from the attached copy of the Trust Deed and Rules, under the rules in question AJ Bell Management Limited (**AJBML**) had discretions under both rule 7 (regarding Dependant's Pension) and rule 8 (regarding Lump Sum Death Benefits). In each case the provisions are framed that the benefits for which they provide "may" be paid. This therefore effectively provides AJBML with three discretionary decisions under each rule: (i) is a benefit to be paid under that rule, and, if so, (ii) to whom and (iii) in what amount(s)? The fact of [Dr G] being a dependant does not therefore entitle her to a dependant's pension. The provision of a dependant's pension remains at the discretion of AJBML. In this instance, having taken into account all relevant considerations and ignored all irrelevant considerations AJBML decided that a benefit was not to be paid under rule 7."

15. On 14 May 2018, the Adjudicator asked AJ Bell to confirm whether an insurance policy was attached to Mr T's fund in respect of a dependant's pension. AJ Bell replied saying that there was no such insurance policy attached.

Adjudicator's Opinion

16. Dr G's complaint was considered by one of our Adjudicators who concluded that AJ Bell should reconsider its decision on the distribution of death benefits. The Adjudicator's findings are summarised briefly below:-

- The rules governing the Plan are contained in the Master Trust Deed and Rules dated 5 April 2006 (**the Rules**). Rules 7 and 8 refer to the payment of a dependant's pension and lump sum death benefit respectively.
- Rule 7 states: "Following the death of a Member, the Scheme Administrator may pay pensions to or for the benefit of one or more persons each of whom is a Dependant of the Member...The Scheme Administrator may provide benefits under this Rule 7 by means of one or more insurance policies, which will form part of the Member Fund and will be distributed along with the remainder of the Member Fund in accordance with these Rules."
- Rule 8.2 says: "The Scheme Administrator may pay or apply such lump sum...to or for the benefit of one or more Eligible Recipients in such proportions as they think fit. The Scheme Administrator may pay all or any of the lump sum...to benefit one or more Eligible Recipients or may direct all or any of the lump sum to be held by themselves...for the benefit of one or more Eligible Recipients as the Scheme Administrator thinks fit."
- It was already established that that Dr G was considered a dependant and an "Eligible Recipient" under the Rules. In the ombudsman's decision of May 2016, AJ Bell was directed to reconsider the distribution of the lump sum death benefit.
- AJ Bell had clearly reconsidered the matter, but its decision appeared to be incomplete.
- It had fully detailed the circumstances relevant to the decision at hand, for example Mr T's personal circumstances in the lead up to his death including his and Dr G's relationship, their financial affairs, his will, and Dr G's own financial situation. Yet the statement which followed immediately after these facts was "after considering the above factors the meeting determined that there would not be a dependant's pension...and the deceased's pension fund shall be paid as a lump sum to the deceased's estate as an eligible recipient under Rule 8."
- AJ Bell had acted within its discretion to make such a decision, but not explained its reasons or rationale; there was no causative link between the circumstances and conclusion. Hence, although AJ Bell has conducted a thorough information gathering exercise, it failed to substantiate the decision which flowed from this information.
- AJ Bell also appeared to be led by considerations of what Mr T would wish for it to do, when having identified that Dr G was a dependant and Eligible Recipient, it should have considered whether there was reason to distribute benefits to her. It was of course not clear however whether AJ Bell was led to its conclusion by this factor.
- AJ Bell had not addressed the question which had been put before it.

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17. Dr G accepted the Adjudicator's Opinion but wished to add that she disagreed with the statement that AJ Bell had fully detailed the circumstances relevant to the decision at hand. She said AJ Bell were not factually correct in all of the circumstances it outlined and had included some factors which she did not believe to be relevant.
18. AJ Bell did not accept the Adjudicator's Opinion and made the following comments:-
- The factors which were taken into consideration in reaching its decision were clearly set out in the minutes. A discussion was had regarding the factors listed and discretionary decisions were made in the round having considered these. Hence, it was not feasible and would not be accurate to point to any one or more factors as being the reasons for its decisions.
 - The factors considered as a whole formed the basis for the decisions. If particular factors were picked out as forming the reasons for the decision, this would be a false representation of the basis upon which the decision was made.
 - The decisions reached were within the range of reasonable decisions and should therefore stand.
 - The Scheme Administrator was not "led by considerations of what Mr T would wish for it to do" and there was no evidence that this was the case.
 - Even if it was the case that the Scheme Administrator had not given sufficient reasons for its decisions, which it disputed, such a failure should not give rise to the decision being remitted back. It was well-established that the Ombudsman may only interfere with the exercise of a discretion if the persons exercising it acted improperly in reaching their decision, this being if they failed to take into account all relevant factors or took into account irrelevant factors, asked themselves the wrong questions, misdirected themselves on a point of law; or, arrived at a perverse decision.
 - In respect of these principles, the factors taken into account were listed in the minutes, these constitute all relevant and factors and do not include irrelevant factors. The Scheme Administrator asked itself the right questions. There was no suggestion that it misdirected itself on a point of law and, the decisions reached were not perverse. The above principles therefore were all adhered to.
 - Failure to give reasons for a decision is not a basis for the Ombudsman to interfere with the exercise of a discretion. The exercise of the discretions should therefore stand.
 - The Adjudicator's Opinion separated facts around property ownership and Mr T's will from other factors considered by the Scheme Administrator. Further, the list of factors did not accurately reflect all of those considered.
19. The complaint was passed to me to consider. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by AJ Bell for completeness.

Ombudsman's decision

20. The payment of death benefits is a discretion of the Scheme Administrator and I am mindful of the remit of this Office and our basis for interfering in discretionary decisions.
21. The principles referenced by AJ Bell, which derive from the Edge judgement¹, concerns the improper exercise of discretion when reaching a decision. However, in this instance, it is not clear what the basis for AJ Bell's decision was and it is this omission which is problematic.
22. AJ Bell say that the factors which were taken into consideration in reaching its decision were clearly set out in the minutes. No reasons were given for its decision though. I consider the absence of any documented reasons to support a decision as indicating that there were in fact no supportable reasons for the decision. Documented reasons need not themselves be lengthy but should be sufficient to convey to the reader an understanding of the factors which have been given some weight. It may also be appropriate to record why some factors have been discounted. The reasons should be sufficient to enable an aggrieved party to know whether there are grounds to challenge the decision.
23. By not providing reasons to support its conclusions AJ Bell has failed to carry out a complete exercise, hence it is not possible to establish whether it exercised its discretion appropriately.
24. Therefore, I uphold Dr G's complaint.

Directions

25. Within 28 days of the date of this determination, AJ Bell shall reconsider the distribution of the lump sum death benefit.
26. AJ Bell will fully document the rationale for its decision and communicate this with Dr G within 21 days of it being made.

Anthony Arter

Pensions Ombudsman
29 June 2018

¹ Edge v Pensions Ombudsman