

The complaint

Mrs B complains that The Royal London Mutual Insurance Society Limited (RL) acted unfairly when it did not accept she should be the beneficiary of her ex-husband's personal pension upon his death.

What happened

Mrs B married Mr B in 2009. They were also partners in their own business.

In January 2011, when he was aged 64, Mr B opened a personal pension plan (PPP) with RL. In the application form he nominated his then wife, Mrs B, to be the beneficiary of the plan value lump sum upon his death.

In August 2016 Mr and Mrs B divorced, but they remained business partners and continued to share the marital home.

Very sadly, on 5 February 2022 Mr B died. Once informed, RL began the process of determining the beneficiary(s) of his PPP. Mrs B initially told RL that she didn't wish to be considered as a beneficiary and wasn't financially dependent on Mr B, but she quickly changed her mind on these points and told RL that she should be considered.

But as a result of its enquiries, RL, in its role as trustee of the PPP, decided that Mr B's five children from a previous marriage should be declared the beneficiaries of his pension.

Mrs B complained to RL about this decision. She thought that as she was the nominated beneficiary recorded on the plan RL should respect Mr B's wishes. But RL didn't uphold her complaint. It said, in its complaint final response dated 18 August 2022, that as trustees of the PPP it was able to use its discretion when deciding to whom the benefits of the PPP were paid. And that having considered all the information it had about the circumstances of all the potential beneficiaries, and having considered the additional information it had been given by Mrs B, it confirmed it still considered Mr B's children to be the rightful beneficiaries of Mr B's PPP.

But Mrs B didn't accept this so complained to our Service. She couldn't understand how her status as named beneficiary on the policy could be rejected by the trustees.

One of our Investigators considered all the available evidence but didn't think Mrs B's complaint should be upheld. He thought that RL, in its position as trustees, had discretion to decide who should receive the benefits from Mr B's pension. And he thought RL had used its discretion fairly.

Mrs B didn't agree with this assessment. She pointed to the repeated wording on RL pension statements and its website which showed the value of a PPP would normally be paid to the family or the person nominated when the plan was set up. And she thought RL's assertion, that because they had divorced in 2016 she was no longer to be considered as beneficiary, was false. She thought this because Mr B had clearly updated the beneficiary section after their divorce, maintaining that he wished her to be beneficiary, as she was described in it as

'Ex-wife'. She said that she and Mr B had complex financial arrangements, and following his terminal diagnosis they had put various financial arrangements in place to simplify the drafting of his will. And she found RL's interpretation of the fact that she was omitted from the will offensive and hurtful.

Mrs B's submissions were reviewed, along with all of the evidence, by a second investigator, who also thought her complaint shouldn't be upheld. They thought that the evidence showed RL's decision about who it thought should be the beneficiaries of the PPP had not been made arbitrarily nor had it treated Mrs B unfairly.

Mrs B responded with a considerable amount of information about the personal, business and financial links that she and Mr B had following their divorce. She said, in summary:

- Mr B had had no awareness that trustees had any discretion to override his nominated beneficiary;
- Mr B had clearly wanted her to continue as beneficiary after their divorce as she had been designated as such and described as his 'Ex-wife'.
- While she had initially told RL that she didn't wish to be considered as a beneficiary and that she was not financially dependent on Mr B, she had sent this whilst in a state of overwhelming emotional upheaval and chaos, and thought that this would be one less thing she would have to deal with;
- She had misunderstood the term 'financial dependence'. She had thought this related to a court order following their divorce, but in fact her and Mr B's finances were inextricably linked and very much dependent on the continuation of their business;
- RL had disregarded both Mr B's beneficiary nomination and also his wishes as laid out in his Will;
- The percentage of shares they both held in their business was adjusted to reflect that she would receive the benefit of his PPP once their business was sold.

As no agreement could be reached the matter has come to me for a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I have a great deal of sympathy for Mrs B and the position she's found herself in. I understand that she feels RL have acted arbitrarily and unfairly as she believes her ex-husband intended her to be the beneficiary of his personal pension. But I'm afraid there is nothing that I can do to help her in the particular circumstances of this complaint.

The remit of this service is to consider if RL was able to use its discretion in deciding who the beneficiaries of the late Mr B's pension should be, and whether, in its use of this discretion, it has acted unfairly.

And having considered all the evidence, I agree with the outcome reached by our investigators, for broadly the same reasons.

Having reviewed all the documentation for the pension I am satisfied that RL did, in its position as trustees of the plan, have discretion to decide who the value of his pension would be paid to. Within the pension application form, completed by Mr B, in section 6 "Distribution of benefits in the event of death" is a part titled "*1. Lump sum death benefit. Subject to your*

discretion, I would like you to consider paying my Plan Value as a lump sum to:..."

So it's likely that Mr B was aware, when filling out this form, that RL would have the ultimate decision as to whom his pension fund would be paid in the event of his death. And this discretion is the normal practice of trustees of pension plans and is set out in RL's rules. It is also, as Mrs B has pointed out, on RL's website:

"The value of your plan will be paid as a tax-free lump sum, normally to your family or to the person you nominated when your plan was set up."

So, having satisfied myself that RL, as trustees of the pension, was able to use its discretion in deciding who the beneficiaries should be, I need to decide if it used this discretion fairly.

It is not disputed that when Mr B took out his pension with RL he was married to Mrs B. And from looking at the application form he completed, I can see he nominated his then wife, Mrs B, as the desired recipient of 100% of his lump sum death benefit.

And I can also see from a copy of Mr B's pension statement dated 12 January 2022 that he wished his retirement savings to be passed to Mrs B, who was described as his 'Ex-wife'. I cannot know for certain, but this leads me to believe, on the balance of probability that Mr B, at some point after 2016, had updated RL of his divorce and that Mrs B was still his nominated beneficiary.

When Mr B died, on 5 February 2022, RL was informed of his passing. The executor, who I'm told was a longstanding friend of Mr B, completed the bereavement information form, which he sent to RL along with a copy of Mr B's Will, on 23 March 2022. In a note at the conclusion of the form he wrote the following:

"I think if [Mr B] was here to ask, I think his wish would be for the proceeds of the policy to form part of his estate and to be distributed in accordance with his will."

The executor was aware, when making this statement, that Mrs B was not named as a beneficiary in Mr B's Will.

As Mrs B was currently shown on the pension plan as Mr B's nominated beneficiary, RL contacted her by email on 26 May 2022 to ask if she wished to be considered as a beneficiary of Mr B's pension plan and whether she was financially dependent on him. RL also asked if Mrs B was the mother of his five children and whether they lived with her. Mrs B replied to this email on the same day informing RL that she did not wish to be considered as a beneficiary for the plan and that she was not financially dependent upon Mr B. She also confirmed she was not the mother of his children.

The executor contacted RL on 10 June 2022 to say that Mrs B had waived her entitlement to be considered as a beneficiary. Due to this the executor asked RL if it would be possible for the pension to be paid to the estate.

But tax rules mean that personal pensions are treated as being outside of the deceased person's estate. So, RL spoke to the executor on 20 June 2022 and explained that it would look to contact the five children as they were next in line to be beneficiaries.

On 21 June 2022 Mrs B wrote to RL. She said the executor had told her RL were unable to pay the value of the pension to the estate so were considering his children to be the beneficiaries. She said she had reconsidered her position and now wished to exercise her right as a beneficiary under his policy and receive the funds due. This was because she didn't think Mr B would've been happy with the funds going to his children with whom he'd

had no contact in nearly 40 years.

In coming to a fair decision, I would expect RL to have taken into account all the available information. Although I understand Mrs B's assertion that she was described as 'Ex-wife' in the nomination part of the pension statement, and this shows Mr B's wish that she should be his pension beneficiary, this could've been updated at any point from 2016 onwards. So, I have no way of telling if this remained a fair representation of what Mr B wished at the time of his death as relationships can change over time. So, although this is significant evidence which I'd expect RL to consider, RL needed to take into account everything, and I find the 'bereavement information form' completed by the executor in the month following Mr B's death particularly persuasive. This was completed by someone independent and who seemingly knew Mr B very well, so I think it gives a useful insight into what he thought Mr B would've wanted. And this was to distribute the funds from his pension in line with the Will which he completed just before his death. And Mrs B was not named as a beneficiary in this Will, but his five children were.

Mrs B has told our service that she and Mr B had discussed their linked finances prior to his death, and had arranged the percentage share of their jointly, and previously equally owned business, to take into account that she would receive the pension benefits. And she's provided evidence to show the share distribution, which was amended on 26 January 2022, gave Mr B an increased 67/33 majority share. But RL were not aware of this information when it came to its decision, our Service sent it to RL to consider.

Having done so, RL has said it did not affect its decision. It said that Mrs B had made it clear from the outset that she was not financially dependent on Mr B and also did not wish to be considered as a beneficiary of the pension plan. And it thought the subsequent reasons given by Mrs B conflicted with her initial statements.

I've closely considered the additional information sent in by Mrs B, and although it does suggest that Mr B and Mrs B were discussing their business links just prior to his death, I don't think it makes RL's continued stance unfair. I'll explain why.

Although the evidence does show that the percentage of the business owned by Mr B was increased just prior to his death, I'm not persuaded that this shows it was done so to reflect Mrs B's status as his pension beneficiary. I accept there was a change in the proportions of the business owned by Mr and Mrs B, but I've not seen sufficient evidence to support Mrs B's testimony that shows it was changed to reflect Mr B's expectation she would be the beneficiary of his pension. And even if this was the case, I remain of the view that RL had discretion to determine the beneficiaries of this policy and it did so fairly for the reasons explained above.

I understand that Mrs B will be very disappointed by this outcome, but I'm afraid that as a result of all of the evidence I've seen, I do not uphold her complaint.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 20 April 2023.

Chris Riggs
Ombudsman