

# Payment of vested pension benefits to the deceased's life partner

Topic: **Pension products** Case number: **2018/27**

The two children and sole heirs of a customer did not agree with the fact that the bank's vested benefits foundation had paid the customer's vested pension benefits to his life partner following his death. The bank's vested benefits foundation argued that the payment had been made in accordance with its pension plan regulations. It went on to clarify in detail that the beneficiary was actually the customer's life partner, with whom he had cohabited continuously for over five years. Since the parties were unable to reach an agreement, the customer's descendants referred the matter to the Ombudsman. The latter found no misconduct on the part of the bank and its pension foundation in making the payment to the customer's life partner.

The bank's pension foundation had paid the deceased customer's full vested pension benefits of several hundred thousand Swiss francs to his life partner. According to the customer's descendants, the beneficiary was not their father's life partner, but a friend and companion who received a wage in this capacity, and hence the pension assets should not have been paid to her. In their opinion, the foundation had not clarified the facts in this case with sufficient care. With these assets, the beneficiary received twice as much as they did as sole heirs since she had already been generously provided for under the estate. They further claimed that their father's intention was not for the beneficiary to also receive all of the Pillar 2 assets.

From the pension plan regulations cited by the foundation, the Ombudsman learned that, in the absence of any spouse or children in education, the pension assets are paid out to a person having lived together continuously with the pension fund member for at least 5 years prior to his or her death.

As the Ombudsman understands it, these beneficiary rules are to be applied independently from inheritance law, which is consistent with the statutory regulation, meaning that any arguments put forward by the descendants concerning their position as heirs, their father's wishes regarding the estate, and the gifts received by the beneficiary by way of inheritance, are probably not significant in this case. Although the Ombudsman could understand the descendants' disappointment, in his opinion the payment was made to the beneficiary correctly if the latter was indeed cohabiting with the deceased father as defined in the regulations. The fact that pension assets that are not paid out in accordance with inheritance law rules are much greater in terms of amount than the actual estate is probably not unusual and does not change the legislator's desired ability to support the individual with whom the insured person was cohabiting.

Whether or not the beneficiary was actually cohabiting with the complainants' father and had done so for a continuous period of 5 years prior to his death was not for the Ombudsman to decide. According to the documentation submitted, the parties, both represented by lawyers, had exchanged detailed communication on this issue, the decisive criteria and the available evidence. As a neutral mediator, the Ombudsman is unable to gather evidence and conduct investigations as part of formal proceedings, for example as a court would be able to. He did state however that it was his

understanding that a common household was not necessary for the assumption of a cohabitation. At the very least where the pension plan regulations in question do not expressly stipulate this, which, as far as he could tell, was not the case here. There were several documents and indications which, in the Ombudsman's view, suggested that the beneficiary was in fact the deceased customer's life partner. He considered that the fact that the deceased gave her 1,000 CHF a month could not be raised as an argument against a cohabitation. Therefore, based on the documentation available, the Ombudsman could not see any compelling indications that the vested pension benefits had been paid to the beneficiary wrongfully.

With this scenario, the arguments that might have convinced the bank's vested benefits foundation to arrange payment of the assets to the descendants failed. In light of the fact that the bank's vested benefits foundation and its legal representative had refused their claim absolutely and in great detail in multiple letters, the Ombudsman could also not see the bank changing its position. Attempts at mediation therefore seemed unpromising and left him with no choice but to close the case with a reply.

The descendants are of course at liberty to try taking legal action to pursue their asserted claim. The Ombudsman did recommend that they seek legal advice however if they wished to consider this course of action and, in particular, that they enquire about the potential costs involved in this process.

He regretted that he was unable to provide the descendants with a different response but hoped that his explanations had been helpful to them nonetheless.