

## Article Information

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## Superannuation - interdependency and spouses

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### Reviews and Determinations of the Superannuation Complaints Tribunal (SCT)

It is interesting to review several recent determinations by the SCT to clearly understand the process adopted in disputes arising from decisions of a Superannuation Fund Trustee (Trustee). At the outset it is important to understand the process that the Tribunal considers when reviewing a decision. The basis of that review is as follows:

1. The Tribunal must determine whether the decision of the Trustee to pay a death benefit in a particular way was fair and reasonable in its operation in relation to the recipient of super funds.
2. The issue is not what decision the Tribunal would have made on the evidence before the Trustee but whether the decision was fair and reasonable.
3. In reaching its determination, the Tribunal must take into account all the material provided by the parties, the provisions of the Trust Deed and the relevant law.
4. The purpose of superannuation is to provide income in retirement to a member or his or her dependants. In the event of a death before retirement, the Tribunal's approach is to consider what might have occurred had the member not died, and whether there is anyone who had an expectation of ongoing financial support or a right to look to the deceased member for ongoing financial support had the deceased member not died.

It is worth noting that the Trustee does not always get it right and hence the Superannuation Complaints Tribunal plays an important role in reviewing any Trustee's determination.

### D17-18\165 [2018] SCTA 68

The Trustee made a decision to pay the entire death benefit to a person who claimed to be a cousin of the deceased as none of the other potential beneficiaries, being adult children, could demonstrate any financial dependence on the deceased member. The "cousin" had formed a genuine mateship with the deceased after the deceased member had split from his partner. They had lived together for approximately three months and claimed to be in an interdependency relationship. The Trustee was satisfied that the cousin would have continued to have been supported or expected to be supported financially by the deceased member had he not died. There were certainly some dispute amongst the children about the basis of that relationship and its intended longevity.

It is important to consider the nature of an interdependency relationship and Regulation 1.04AAAA of the Superannuation Industry (Supervision) Regulations 1994 in assessing what is taken into account in determining whether two persons have entered into an interdependency relationship. It precludes relationships that might be more expressed as a mere friend or flatmate.

The deceased did not make a Will and a lapsed nomination was made by the deceased 10 years earlier.

Competing claims were made by the wife even though they had been separated for a number of years and the adult children. The Tribunal reinforced that it must take into account all of the material provided by the parties, the provisions of the Trust Deed and the relevant law.

***From a practical aspect it is extremely important in these matters to ensure that relevant parties objecting to a Trustee's decision are properly advised and provide relevant details for the Tribunal's consideration.***

In making a determination the Tribunal considered, the deceased's member's wishes, who were the dependants of the deceased and the relationship that the children had with the deceased member. There was a contention that the cousin was in fact not a cousin of the deceased member, however the Tribunal confirmed the correct legal position, that is, it is immaterial whether the person was a cousin or not. The issue is whether the cousin was wholly or partially dependent on the deceased member according to the definition of "dependant" in the Trust Deed. That interdependency relationship was more than just "flat mates" and was considered to be interdependent because they had been living together for at least three months prior to the death of the member, had taken out a joint lease on a house for six months, were both in receipt of the pension and had been sharing living expenses including rent, utilities, food and outgoings. A determination was made that the cousin was partially dependent on the deceased member prior to his death and therefore qualified as a dependant.

Based on all of the evidence, some of which was conflicting, the Tribunal concluded that the relationship with the cousin could not be classified by the cousin as an indefinite one and they were not satisfied that the entire benefits should be paid to the cousin, to the exclusion of the children, all of who were dependants by definition. Based on the above, the Tribunal set aside the decision of the Trustee and shared the benefit equally between three children and the cousin.

### **Case D17-18\160 [2018] SCTA 62**

This was another case of interdependency with a mother claiming that she and her 24 year old son, who had never married, was not partnered and had no children were living in an interdependency relationship. Letters of administration were granted to the deceased's father and of course the superannuation benefit, if paid to the estate, would be shared equally between the mother and father. The parents were divorced.

The Tribunal reinforced their role as ensuring that the Trustee's decision was fair and reasonable and it was only on those grounds could they alter the Trustee's findings.

Evidence was accepted that there was a financial relationship between the deceased and his mother, that they were living together at the time of his death and that the mother had provided the deceased member with financial support. However, the Trustee concluded that they were not in an interdependency relationship because of the following:

- The deceased had a girlfriend at the date of his death and had prior relationships with girlfriends.
- The deceased had lived independently from his mother in the past.
- The mother's claim of interdependency were primarily connected to loan arrangements that she had with the deceased which were of a commercial nature and did not prove financial dependency.
- The connection of loans between the deceased and his mother were not relevant. The Trustee's view was that the payment of a debt, that is, repayment of one's own money does not prove financial dependency but is rather a commercial agreement between the parties.

### **Tribunal's Findings**

The Tribunal examined in detail the various considerations that were required under the SIS Regulations and concluded that the mother was not in an interdependent relationship with the deceased member immediately before he died, nor was she financially dependent on the deceased member. They formed the view that the deceased was not survived by any dependants and given that a legal personal representative existed the super proceeds should be paid to the benefit of the estate.

***As is often seen in these sorts of matters the dispute arose due to the separation of the mother and father of the deceased and the different financial outcome that resulted, that is, if the mother was successful she would have received 100% of the super proceeds but otherwise only 50% under intestacy laws.***

### **Case D17-18\163 [2018] SCTA 66**

This is an interesting matter in that it related to the nature and extent of a relationship with a "claimed spouse" and the deceased for a period of five years prior to the death of the deceased. The Trustee of the super fund decided to pay the benefit to the estate of the deceased as opposed to the claimed spouse. Interestingly the executors of the estate joined with the claimed spouse in seeking that the benefit be paid to the claimed spouse.

The actual decision of the Tribunal is worth reading to understand in detail the evidence submitted and the determination made. The main points made by the claimed spouse were as follows:

- They had been a couple for five years until the time of death.
- Whilst they had maintained two separate households they spent 90% of their time together and were in effect a family as evidenced by various social and family commitment arrangements.
- Other people signed declarations confirming that they were in a committed loving relationship and appeared to spend the majority of nights each week together and attended respective children's events and were part of their joint lives.
- Statements were tendered from a local parish priest and other friends which highlight the necessity and desirability of providing as much evidence as possible to confirm the nature of a relationship. The Tribunal can only rely upon the evidence that is put before it.

The Trustee, in its initial findings, believed that the exact nature of the relationship was not clearly established during either the death benefit or claims staking process.

The executors, when also making submissions, provided evidence that in court proceedings it was accepted that the claimed spouse was a partner and dependant for the purposes of making a valid claim against the Will of the deceased member and that the deceased member altered his nomination for superannuation purposes to the deceased three years prior to his death.

The Tribunal took the following into account in making its determination:

- The deceased updated his beneficiary nomination by naming the claimed spouse as his 100% beneficiary.
- It noted that no one was claiming to have been financially dependent on the deceased member.
- The submissions established that the claimed spouse and deceased were in a significant personal relationship.
- It did not agree with the Trustee's contention that there was insufficient evidence provided in the claim staking process to establish the extent of the relationship. This position of the Trustee was disputed by the claimed spouse and executors.

On the basis of this evidence, the Tribunal found that the deceased member and the claimed spouse were in a significant personal and intimate relationship, which persisted over a long period of time and which was acknowledged by friends and family. Although they were not living together in one residence at all times the Tribunal found that this is not a necessary criteria for the establishment of a spousal relationship under the SIS Act. On this basis they found that the claimed spouse met the SIS definition of 'spouse'.

In light of this they found that it was not fair and reasonable for the Trustee to determine to pay the benefit to the estate of the deceased member. The Tribunal confirmed that the position of the Tribunal is to review the Trustee's decision and to determine whether it was 'fair and reasonable' in the circumstances.

## **Summary**

Points to be taken from these decisions and generally are as follows:

- It is important in the claim staking process to provide as much information as is necessary to the Trustee to enable them to make a decision based on all of the evidence, not just some of it.
- Clearly a review and update of one's superannuation nomination, binding or non-binding, is relevant and necessary.
- The Trustee does not always get it right, hence appropriate advice is necessary for any disgruntled person effected by a decision. At that time full and complete submissions with a clear understanding of what needs to be brought to the Tribunal's attention is extremely important.
- Support of friends in providing evidence of a relationship is important.
- Proper estate planning would likely overcome these scenarios from occurring in the first place.