

Ombudsman's Determination

Applicant	Estate of the late Mr E (the Estate)
Scheme	Peel Ports Final Salary Pension Scheme (the Scheme)
Respondent	Peel Ports Trustees Limited (the Trustee)

Outcome

1. I do not uphold this complaint and no further action is required by the Trustee.

Complaint summary

2. The Estate's complaint against the Trustee is brought by the late Mr E's wife, Mrs E. The complaint is that the Trustee unreasonably delayed Mr E's application for an ill health retirement pension (**IHRP**). This resulted in Mrs E receiving a lower death benefit lump sum, following Mr E's death.

Background information, including submissions from the parties

3. Mr E was a deferred member of the Clydeport section of the Scheme from August 1998 until January 2004. On 9 November 2015, Mr E telephoned the Trustee to inform it that he had an extremely short life expectancy with potentially only four months left to live. So, he wanted to understand his pension options.
4. On 12 November 2015, Aon Hewitt, the Scheme administrator (**the Administrator**) sent Mr E a letter saying it had been advised of his circumstances regarding ill health and shortened life expectancy. It said:

"I hereby enclose the Trustee's standard application for retirement on the grounds of incapacity as defined in the Scheme rules. In practice this means being incapable of discharging your usual employment duties by reason of permanent ill health or incapacity necessitating your retirement from the Scheme.

Can I please ask you to complete and return the enclosed form to me as this will provide the Trustee, via myself, with the authority to write to your doctor or consultant and seek formal confirmation of your health status.

...

In the meantime, we will pull together pension figures to estimate the financial outcome if (i) you retired from the Scheme as a result of standard ill health incapacity or (ii) if the standard position were commuted to generate a single one off payment from the Scheme as a result of serious ill health. The latter option would be supported by a medical practitioner in terms of life expectancy being confirmed to be less than 12 months. A further option would be transferring your benefits held in the Scheme to an alternative personal plan. We will aim to collate the relevant information as soon as possible and issue a follow up letter for you.”

5. On 2 December 2015, the Administrator emailed the Trustee and said:

“Rather than wait for the Trustee meeting on 10 December, I would like to try and progress one matter concerning [Mr E]...The member would possibly qualify for a serious ill health pension under the Clydeport rules subject to his applying for it and also sufficient medical evidence being obtained.”
6. The Administrator also informed the Trustee in the same email that it had sent Mr E an application form (**the Form**) to complete and return, and it had attached actuarial advice obtained on 30 November 2015, on the pension figures Mr E could receive. This included details of the serious ill health commutation factor and the benefits payable as a one-off lump sum.
7. On 3 December 2015, the Administrator sent Mr E a follow up letter informing him of his pension figures based on him applying for an IHRP and the application being approved by the Trustee. It said it would be necessary for it to write to Mr E’s GP or consultant to obtain an opinion that “survival beyond a period of 12 months is extremely unlikely.” It also enclosed another copy of the Form and asked Mr E to complete and return it.
8. On 10 December 2015, the Trustee held a meeting during which Mr E’s case was considered. It noted Mr E’s serious ill health but agreed that the pension would only be payable when the Form was received and accepted by the Trustee.
9. On 8 January 2016, the Administrator emailed the Trustee regarding Mr E’s case. It enquired about how to support Mr E with the process of applying for an IHRP and what his spouse’s pension entitlement would be. The Trustee replied on the same day notifying the Administrator that it had just received a call from Mr E’s brother-in-law informing it that Mr E had died on 12 December 2015. It said his health had rapidly deteriorated, and he was not well enough to complete and submit the Form.
10. On 19 May 2016, the Trustee paid Mrs E a spouse’s pension of £1,917.24 per annum and a lump sum of £2,460.02, which was discretionary.
11. In December 2018, Mrs E raised a formal complaint under the Scheme’s two-stage Internal Dispute Resolution Procedure (**IDRP**). She said, in summary:-

- She had suffered a financial loss by missing out on the pension lump sum of £21,489 that Mr E had chosen for her to receive. Mr E had been unable to submit the Form prior to his death as his health deteriorated rapidly and he had died three months earlier than expected.
- She had received a lump sum of £2,460.02 as Mr E's pension was calculated as a deferred member of the Scheme and not on the grounds of serious ill health.
- She provided a copy of the Form to show that Option 2 had been ticked and requested the Trustee to honour it as this had been Mr E's intention.

12. In February 2019, the Trustee sent Mrs E a response under stage one of the IDRP and, in summary, said:-

- It was aware that this was a sensitive issue. The Trustee unfortunately did not receive the Form to action Mr E's intended retirement option under the Scheme.
- The Administrator's letter of 12 November 2015 advised that the Trustee required a completed application signed by Mr E to pursue an IHRP.
- Without the submission of the Form, the Trustee was unable to action anything or carry out further investigations such as contact Mr E's doctors to verify the severity of his ill health prognosis.
- The Administrator's letter of 3 December 2015 was issued in the hope of expediting the matter by communicating various options available to Mr E so that the request could be actioned immediately upon the return of the necessary Form.
- While it was tragic that Mr E died prior to making any decision regarding his serious ill health, without receipt of the Form, it was unable to pay the requested lump sum to Mrs E.
- It had a duty to pay Mrs E the benefits in accordance with the Scheme rules (**the Rules**). The relevant extract of the Rules is set out in the Appendix.

13. In February 2019, Mrs E further appealed under stage two of the IDRP. In her submissions, she said:-

- The Trustee should have expedited the matter knowing Mr E was seriously ill with a life expectancy of four months.
- She felt she was being penalised and this was causing her financial hardship, which was against Mr E's wishes.
- Mr E died before he submitted the Form, however his intention was clear that he wanted to choose the option to receive a lump sum of £21,489. So, she wanted to know why Mr E had to wait until 3 December 2015 to know what his options were.
- Had the options letter been sent out sooner, Mr E would have submitted the Form prior to his death.

- Given the severity of Mr E's illness, the Trustee should have followed up with further telephone calls or letters.
 - The only sensible option Mr E could have opted for, was to take an IHRP lump sum. The standard IHRP should have never been offered to him.
14. On 28 March 2019, the Trustee sent Mrs E a response under stage two of the IDRP, in which it maintained its previous stance and added:-
- It could not "act without information in support of the circumstances", and it was not able to always consider hindsight after an event.
 - The Administrator prioritised the process and issued the pension options earlier than usual.
 - The usual process was to receive the Form and obtain medical evidence from Mr E's doctors. It was then at its discretion that the application was approved and the lump sum paid.
 - The letter of 3 December 2015 served as a reminder that the Form still had to be returned before anything could progress.
 - While Mrs E was aware of the severity of Mr E's ill health, the Trustee was not, and at that time had only received one telephone call from Mr E explaining he was ill and asking for options.
 - There was a difference between the standard IHRP and IHRP on the grounds of serious ill health. The latter would only be payable to someone who had less than 12 months to live, and the Trustee needed confirmation from a doctor or there would be a failure to meet HMRC expectations.
 - It believed the Administrator did everything within its power to expedite matters but, without the submitted Form, there was nothing else that could have been done.
15. In her submissions to the Pensions Ombudsman's Office (**TPO's Office**), Mrs E said that the Trustee could have told Mr E that the Form could have been submitted by a relative or a friend on behalf of Mr E. This is because Mr E was not well enough to submit the Form as he was in a hospice at the time and his condition deteriorated very rapidly. She also said it was not Mr E's brother-in-law but a friend who had informed the Trustee of Mr E's death as she was not in the right state of mind to do so.

Adjudicator's Opinion

16. The complaint was considered by one of our Adjudicators who concluded that no further action was required by Trustee. The Adjudicator's findings are summarised below:-

- The Trustee became aware of the severity of Mr E's condition on 9 November 2015, when he telephoned the Trustee to inform it that he had an extremely short life expectancy with potentially only four months left to live. From this point, the Adjudicator would have expected the Trustee to have acted with urgency to make Mr E aware of the pension he could be entitled to, and to act swiftly in processing an application for his pension.
- On 12 November 2015, the Administrator sent Mr E a letter with his pension options enclosing the Form to complete and submit. The letter informed Mr E of the requirement of submitting the Form. The Administrator explained that the Form would give the Trustee authority to obtain a medical opinion from Mr E's doctor to confirm that his life expectancy was less than 12 months, which was the criteria for an IHRP on the grounds of serious ill health. In the Adjudicator's view, the Trustee acted reasonably promptly as it informed the Administrator of Mr E's situation and the Administrator sent the initial letter to Mr E, which explained the process to claim an IHRP, three days after Mr E had contacted the Trustee.
- On 3 December 2015, the Administrator sent a follow up letter to Mr E setting out his pension options and enclosed another Form. It explained it would be necessary for the Trustee to write to Mr E's GP or consultant to obtain an opinion that his "survival beyond a period of 12 months is extremely unlikely." In the Adjudicator's view, this letter served as a gentle reminder to Mr E, that the Form was required in order for the process to start. In the Adjudicator's view, sending a follow up letter just over two weeks after Mr E's initial telephone call, was prompt and a reasonable approach.
- The Adjudicator reviewed the minutes from the Trustee's meeting on 10 December 2015. This evidenced that the Trustee considered Mr E's serious ill health but that it was unable to process anything further without the Form being submitted.
- Mr E's condition deteriorated, and he died on 12 December 2015, without submitting the Form. The Trustee was informed of Mr E's death on 8 January 2016 by Mr E's friend. It is clear from all the correspondence and actions by the Trustee, that it was concerned about Mr E's IHRP being approved as soon as possible. In the Adjudicator's view, the Trustee did everything it could have to support Mr E's application.
- The Trustee has to administer the Scheme in accordance with the Rules and pension legislation. The Rules clearly state:

"The Trustees may pay a Member a lump sum... if they think he is in serious ill-health which materially affects his life expectancy...the Trustees shall obtain medical evidence if they require."
- This is further reinforced by Section 166 and Schedule 29 of the Finance Act 2004 (**the Finance Act**), (see Appendix). Section 166 lists the lump sum payments

which a registered pension scheme may pay to a member without incurring a tax charge; this includes a serious ill health lump sum. Paragraph 4 of Schedule 29 of the Finance Act explains that a lump sum is a serious ill-health lump sum if:

“Before it is paid the scheme administrator has received evidence from a registered medical practitioner that the member is expected to live for less than one year.” (emphasis added)

- So, the Rules and the Finance Act required the Trustee to go through certain steps before it could make a discretionary decision to pay Mr E a lump sum. In particular, it required evidence from a registered medical practitioner that Mr E's life expectancy was less than one year. Without this evidence, the Trustee could not pay a serious ill health lump sum without risking a tax charge.
- On the basis of the evidence available at the time, the Trustee's knowledge was that Mr E had four months to live. Had this proved to be the case, it would have had sufficient time to complete the necessary steps to pay a serious ill health lump sum. In the Adjudicator's view, the Trustee acted with appropriate urgency, but the events were overtaken by Mr E dying before it was able to obtain the necessary medical opinion and exercise its discretion. The Adjudicator was satisfied that the Trustee acted in accordance with the Rules and the Finance Act by asking Mr E to submit the Form that would have given it permission to obtain medical evidence from his doctors.
- Mrs E argued that the Trustee should have told Mr E that the Form could have been submitted by a relative or friend. The Trustee could only act on the information provided by Mr E. It was only made aware by Mr E on 9 November 2015, that his life expectancy was four months, and it did not know any more details of his health condition after that initial telephone call. Even if Mr E had submitted the Form before he died, the Trustee was still required to obtain medical evidence to confirm his life expectancy was less than 12 months. Only then would the Trustee have had a discretion to pay Mr E the IHRP lump sum. Therefore, in the Adjudicator's view, the Trustee did not unreasonably delay the process for Mr E, so the Estate was not eligible to receive the death benefit lump sum on the grounds of serious ill health.

17. Mrs E, on behalf of the Estate, did not accept the Adjudicator's Opinion and provided further comments in response. In summary, she said:-

- There was no dispute in respect to the sequence of events; the Trustee sent out the incapacity form speedily to her husband. However, there, was a dispute in regard to the time it was expected they would reply within.
- One of her complaints was that her case was not being treated under the exceptional circumstances rule. Mr E received the letter of 12 November 2015 on 14 November 2015. He was taken to the hospice for pain control on the same

day. He came back home on 24 November 2015 and tried his best to complete the Form, however it was not an easy task for him as he was unwell.

- The Trustee should have informed Mr E that the Form could have been completed by someone else on his behalf given the fact he was too unwell to do so.
- She works in General Practice and the usual timescale for requested medical evidence can take up to 30 days to be dispatched. So, even if the Form had been completed, it would have been almost impossible for the Trustee to have received them back before Mr E's death. The timeframe was only a matter of weeks and surely death in itself was proof enough.
- The Trustee was in violation of its role and "should not ever be justified or legally or ethically defensible either." The Trustee withheld the information that the Form could be completed by someone else, and it was motivated to benefit its own cause.
- This case is not just about her inheriting Mr E's pension but is also about asking what the Trustee had to gain by not informing her of her rights to complete the Form on Mr E's behalf.

18. As Mrs E on behalf of the Estate did not accept the Adjudicator's Opinion, the complaint was passed to me to consider. I agree with the Adjudicator's Opinion and note the additional points raised by Mrs E.

Ombudsman's decision

19. The Form was sent to Mr E, three days after his initial telephone call to the Trustee, informing it of his life expectancy. I do not find this was an unreasonable length of time. At the time that the Form was sent, the Trustee was aware that Mr E had four months to live. It could not have been foreseen by the Trustee that Mr E would have died so soon after his initial telephone call.
20. I have also considered Mrs E's argument that the Trustee should have informed her that someone else could have completed the Form on Mr E's behalf as he was too unwell to do so. The Trustee could only act on the information provided by Mr E. It was only made aware by Mr E on 9 November 2015 that his life expectancy was four months, and it did not know any more details of his health condition after that initial telephone call. Unless there was a specific enquiry from Mr E regarding this issue, the Trustee or the Administrator was not required to provide further information as they were only expected to act on the fact that Mr E said he had four months to live.
21. In any case, even if Mr E had submitted the Form before his death, I conclude it is more likely than not that a complete application would not have been received by the Trustee in time for it to be considered before Mr E's death. There was simply insufficient time to allow: (i) the relevant medical advice to be obtained, (ii) the Trustee to obtain its own medical opinion from a medical expert appointed by it, and

(iii) a reasonable period of time for the application to be considered by a Trustee decision maker.

22. I sympathise with Mrs E's frustration that the Trustee did not award the Estate a higher IHRP lump sum. However, I do not find that there were any undue delay on the Trustee's part that prevented Mr E from submitting the Form or starting the application process sooner. In addition, I do not consider that the Trustee had a duty to inform or advise anything further, given what it knew and understood at the material time.

23. I do not uphold this complaint.

Anthony Arter

Pensions Ombudsman
22 September 2021

Appendix

Clydeport Pension and Life Assurance Scheme

Member in serious ill-health

“4.5 The Trustees may pay a Member a lump sum equal to the Actuarially calculated value of his pension which exceeds his GMP if they think he is in serious ill-health which materially affects his life expectancy. The Trustees shall obtain any medical evidence they require...”

Finance Act 2004

Schedule 29

Part 1 Serious ill-health lump sum

4 (1) For the purpose of this Part a lump sum is a serious ill-health lump sum if-

- (a) Before it is paid the scheme administrator has received evidence from a registered medical practitioner that the member is expected to live for less than one year,”