

Ombudsman's Determination

Applicant	Ms R
Scheme	Westminster Press Pension Scheme (the Scheme)
Respondent	Legal & General Assurance Society (Legal & General)

Outcome

1. I do not uphold Ms R's complaint and no further action is required by Legal & General.

Complaint summary

2. Ms R has complained that Legal & General failed to provide her with concrete evidence to demonstrate that its decision not to pay a spouse's pension to her mother following the death of her father, Mr R, in February 2019, was correct.

Background information, including submissions from the parties

3. Mr R received a letter in October 2001 from Westminster Press Pension Trust Limited, the Scheme Trustee, which said that:-
 - It was winding up the Scheme which had been closed for around 26 years.
 - It would secure the deferred benefits available to the members in the Scheme by purchasing insurance policies in their names with Legal & General.
 - His pension entitlement, and guaranteed pension increases in line with inflation both before and after retirement, would therefore be secure.
 - It would use the surplus Scheme assets to improve the benefits available to the members.
 - From 1 January 2002, he would receive an immediate increase to his deferred pension and further details on this would be sent to him soon.
 - At the time of his retirement, he would still have the option* to exchange some of his pension for a spouse's pension payable on his death after retirement.

*This option was available in accordance with the Trust Deed & Rules of the Scheme (**the Scheme Rules**).

4. The Scheme Trustee sent Mr R a letter in December 2001 to inform him that:
 - It had made good progress with the wind up of the Scheme.
 - It had undertaken a lot of work to ensure that the information it provided Legal & General was accurate and its calculations of the augmented benefits were correct, though this task was taking longer than expected to complete.
 - It now expected to supply him with details of his enhanced benefits in early 2002.
5. In February 2002, the Scheme Trustee provided Mr R with a further update on the Scheme buy out with Legal & General. In April 2002, it notified Mr R that his deferred pension would be augmented by 42.2%.
6. Legal & General sent, with its letter dated 30 April 2002 to Mr R, a statement setting out his pension entitlement based on the information received from the Scheme Trustee and some notes explaining each item shown on the statement. Neither Ms R nor Legal & General have been able to submit a copy of this statement for inspection.
7. However, according to “the schedule of deferred annuitants” which the Scheme Trustee supplied to Legal & General, Mr R’s enhanced deferred pension, calculated on 1 October 2001, comprised of:
 - a basic pension of £3,284.22 per annum; and
 - an augmentation of £1,385.84 per annum which would be available from 1 January 2002.

The total pension was therefore £4,670.06 per annum.

8. Mr R’s Normal Retirement Date in the Scheme was 4 January 2002. He retired in May 2002 and received his augmented pension from Legal & General until his death in February 2019.
9. Legal & General did not pay a spouse’s pension to Mrs R on her husband’s death.
10. When Ms R complained on behalf of her mother, Legal & General replied, in its letter dated 13 May 2019, as follows:

“The benefit payable to your late father was secured for him with Legal & General by the Scheme Trustee. The terms of the benefits payment were defined by the Trustee as part of the legal agreement to secure the benefit. These terms stipulated that a spouse’s pension benefit would only become payable following the member’s death if the member has elected to surrender a portion of their pension at retirement.

Quotations issued to members on this Scheme contain information that a spouse's or dependant's benefit would only be available should the member elect to surrender a portion of their pension entitlement. Our letters advise any member interested in this option to contact our administration team to discuss the matter in more detail. I have enclosed a copy of the notes page of our standard quotation confirming this option.

Due to the time passed since Mr R's retirement from the Scheme I regret that we do not hold archived copies of the documents issued, or received, upon his retirement. Our records show that Mr R retired from deferment in May 2002, and we have no notes indicating that he chose to surrender any pension entitlement to provide a spouse's pension. Indeed, the pension was settled and paid without any reduction to allow for the provision of a spouse's pension entitlement."

11. Ms R was dissatisfied with this response because Legal & General had not provided any tangible evidence to show that:
 - it had sent a quotation to her father shortly before his retirement informing him of the spouse's pension option; and
 - her father had decided not to exchange part of his pension for a spouse's pension payable on his death after retirement.
12. During the Adjudicator's investigation of Ms R's complaint, he contacted the former Scheme Trustee and received the following response, dated 23 April 2021, from Pearson Pensions which had assisted with the winding up of the Scheme:

"As we are working from home during the pandemic, we don't have access to hard copy files.

However, from our limited soft copy files, the position is as follows:

Mr R was a deferred pensioner at the time that Legal & General bought out the liabilities of the Scheme.

The Rules of the Scheme, attached, show that employees could choose at retirement whether they wanted to provide a spouse's pension (Rule 14 on page numbered 7 in the document).

Mr R would have been sent the attached letter in October 2001... This October letter went to all deferred pensioners and references that providing a spouse's pension will still be an option at retirement...

Mr R's Normal Retirement Date (**NRD**) was 4 January 2002 so Legal & General would have the responsibility of offering the option of a spouse's pension when he took the benefits. Legal & General state in their letter of 13 May 2019 that this was May 2002... Legal & General have included in their

letter, their standard Notes which bring this to the attention of the retiring member (see paragraph 6 of the Notes)

We cannot trace any correspondence from Legal & General to Mr R offering the spouse's option but as the liabilities had passed over to Legal & General, we would not expect to have one.

We note that if Mr R was not offered the option of a spouse's pension or did not take it up, then his full benefit was paid out to him over his lifetime rather than a smaller pension with the prospective spouse's pension."

Legal & General's position

13. It had destroyed copies of any documents sent to, and received from, Mr R at the time of his retirement, after retaining them for around seven years. It did this to comply with data protection principles, one of which was not to keep personal data for longer than necessary.
14. It would have sent a retirement quotation to Mr R around January 2002 which mentioned the possibility of exchanging part of his pension for a spouse's pension.
15. It had consequently offered Mr R an opportunity to choose the option of a spouse's pension in line with the terms of its agreement with the Scheme Trustee.

Adjudicator's Opinion

16. Ms R's complaint was considered by one of our Adjudicators who concluded that no further action was required by Legal & General. The Adjudicator's findings are summarised below:-
 - In accordance with the Scheme Rules, a spouse's pension would only be payable to Mrs R, on Mr R's death, if he had elected to surrender part of his pension at the time of his retirement in May 2002.
 - Legal & General said that the benefit quotation, which it would have sent Mr R around January 2002, contained a reference to this spouse's pension option. It could not prove this though because it had not kept a copy of this quotation in its records.
 - Ms R said that she could not find a copy of the quotation in her father's correspondence, and without sight of concrete evidence showing that Legal & General had indeed sent it to Mr R, she was not prepared to accept its position on this matter.
 - In the Adjudicator's view, it was highly unlikely that Legal & General would have paid the enhanced pension available to Mr R on his retirement without first having provided him with details of his benefit options and a payment instruction form so that he could make an informed choice.

- Furthermore, it was clear from the available evidence that the Scheme Trustee had drawn Mr R's attention to the availability of this spouse's pension option in the letter which it sent him in October 2001.
 - Regardless of whether Legal & General had sent a quotation to Mr R which explicitly mentioned this option, the Adjudicator was satisfied that it had therefore been open to Mr R to investigate this possibility further if he had wished to do so before taking his benefits.
 - The amount of pension which Legal & General paid Mr R on his retirement in May 2002 was based on a figure calculated by the Scheme Trustee and shown on "the schedule of deferred annuitants" that it received. The Adjudicator had no reason to doubt that the Scheme Trustee calculated Mr R's enhanced pension correctly, and without any conclusive evidence that Mr R had exchanged part of his pension for a spouse's pension, it represented his full entitlement to him on retirement.
 - In the Adjudicator's opinion, there had not been any maladministration on the part of Legal & General.
17. Ms R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms R provided her further comments which do not change the outcome.
18. Ms R said that the information provided by Pearson Pensions was not new and did not include "any documentation or figures" which were personal to her father. She felt that in order for my Office to conduct a full investigation, we should ask Pearson Pensions to look into the matter further once it had access to its paper files.
19. I note the additional points raised by Ms R, but I agree with the Adjudicator's Opinion.

Ombudsman's decision

20. Ms R considers that Pearson Pensions should be asked to continue its search for relevant information relating to her complaint once it has regained access to the files held in its office.
21. At the time Mr R attained his NRD in the Scheme on 4 January 2002, it was Legal & General, and not the Scheme Trustee, which was responsible for offering him the option of a spouse's pension when he took the benefits in the Scheme.
22. I would consequently not expect the Scheme Trustee to have held copies of the letter and retirement quotation which Legal & General say it would have sent Mr R around January 2002, mentioning the possibility of exchanging part of his pension for a spouse's pension.
23. In my view, it is highly unlikely that Pearson Pensions will therefore be able to provide any additional evidence which will assist me reach my decision in Ms R's complaint.

24. Legal & General has not been able prove that it sent Mr R the benefit quotation containing a reference to this spouse's pension option because it had destroyed copies of any documents between it and Mr R at the time of his retirement to comply with data protection principles.
25. However, I concur with the Adjudicator's view that it is most unlikely for Legal & General to have paid Mr R the enhanced pension available to him on retirement without having first provided him with details of his benefit options and a payment instruction form so that he could make an informed choice.
26. Moreover, having had his attention drawn to the availability of the spouse's pension option in the letter which the Scheme Trustee sent him in October 2001, in my view, it is reasonable to expect Mr R to have investigated this possibility further with Legal & General if he had been interested in it before taking his benefits.
27. I have no reason to doubt that the Scheme Trustee had calculated Mr R's enhanced pension correctly and without any concrete evidence that Mr R had exchanged part of his pension for a spouse's pension, I am satisfied that it represented his full entitlement on retirement.
28. I find that there has not been any maladministration on the part of Legal & General and do not uphold Ms R's complaint.

Anthony Arter

Pensions Ombudsman
20 May 2021