

Ombudsman's Determination

Applicant	Miss R
Scheme	Livermore (Tufnell Park) Retirement Benefits Plan (the Plan)
Respondents	Lyons Davidson Trustee Company Limited (the Trustee) Legal & General Assurance Society Limited (Legal & General)

Outcome

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

Complaint summary

2. Miss R complained that the Plan lapsed with no value and that she did not find out about the status of the Plan until 2019. This will leave her without a pension at her retirement age of 60.

Background information, including submissions from the parties

3. Miss R held two policies within the Plan. This complaint relates to the policy which was set up through Livermore (Tufnell Park) Limited (**the Employer**), in July 1991 (**the Policy**).
4. A "Statement of Units" from Legal & General, which administered the Plan, showed that Miss R's Policy had an estimated value of £404.34 in April 1992.
5. In May 1994, Legal & General wrote to Miss R stating that her current fund value was £754.05. However, this was not guaranteed as the investment was unit-linked. Consequently, the fund value changed on a daily basis.
6. In April 1996, Legal & General sent Miss R a further statement. It stated that her contributions to the Plan had ceased. It also stated that, in accordance with the terms of the Plan, it would continue to deduct a monthly charge for maintaining the Policy. The current fund value was quoted as £732; if Miss R transferred the fund to another pension arrangement, the transfer value would be £289.

7. According to Legal & General, the value of the Plan on the following dates were:
 - March 2007 – £218
 - March 2008 – £226
 - March 2009 – £196
8. In 2011, the Employer went into liquidation and the Plan had to be wound up. Legal & General was responsible for the investment of the Plan until February 2011. The same month, The Pensions Regulator (**TPR**) appointed the Trustee as the trustee of the Plan. The Trustee was responsible for arranging for benefits to be secured outside of the Plan.
9. Legal & General was not responsible for the investment of the Plan after the Trustee's appointment. The value of the Policy at the time was £232.90. The Plan was subsequently wound up.
10. At age 55, in July 2019, Miss R telephoned Legal & General regarding her two policies. This was the first time she had enquired about the status of the Policy.
11. On 25 July 2019, Legal & General wrote to Miss R providing details about the other policy.
12. Miss R then contacted the Trustee in August 2019 regarding the Policy. On 5 August 2019, the Trustee wrote to Miss R explaining the position. In summary it said:-
 - In 2011, it obtained records from Legal & General in order to wind up the Plan.
 - Winding up of a pension scheme is a process which is carried out very strictly in accordance with the law and the Plan rules.
 - The assets of the Plan were entirely separate from the Employer and continued to be subject to the terms of the contract.
 - It no longer held a paper file in respect of the Policy as it only held files in archive for six years. So, it was unable to contact Miss R to let her know about the wind up.
 - It was its standard practice at the time to attempt to trace members using the Department for Work and Pensions (**DWP**) Letter Forwarding Service, but this process was not always successful.
 - The cost of winding up the Plan were met from the proceeds of the insurance policy that was held with Legal & General in respect of the Plan assets.
 - TPR agreed that the charge would be £229.16 per member, inclusive of VAT, plus any third party costs. DWP's tracing fee was £4.26 per member.

- Miss R's fund value was £232.90 at the time. As its professional fee plus the DWP fee exceeded this, this reduced her fund to nil.
 - As it was only dealing with the winding up of the Plan, it could not comment on what took place prior to January 2011, or the previous trustee's management of the Plan.
13. There were further communications between Miss R and Legal & General regarding the Plan in September 2019. On 10 September 2019, Legal & General wrote to Miss R providing an explanation on why the fund value decreased. In summary it said:-
- It was unsure how the value of the Policy could have fallen from £754.05 to £236.94. It could be that the higher value was incorrect, as the fund value would not normally fluctuate so much.
 - The other possibility was that there were regular investments at the beginning of the Policy, which would account for the higher value of £754.05. Once these ceased, the fund charges slowly decreased the value of the Policy.
 - It could also be that the fund charges were higher before the charge cap was put in place in the early 2000s due to the changes in pension legislation. The fact that Miss R's unit statement indicated £29.55 was deducted during the period July 1991 to April 1992, meant there was probably a monthly charge that was over £3.00.
 - It apologised it was unable to provide a more definitive response.
14. Miss R raised a complaint with Legal & General around October 2019. She wanted Legal & General to pay her the previous fund value as compensation for the loss she had allegedly incurred. On 8 October 2019, Legal & General responded to Miss R's complaint. In summary it said:-
- It was unable to provide Miss R with all the information she required. Under General Data Protection Regulations (**GDPR**), it was only required to keep information if necessary. Although it was able to trace some information regarding the Plan, due to the passage of time since it was cancelled, this was limited.
 - Once the Plan was transferred to the Trustee, Legal & General was no longer responsible for it as it had explained previously.
 - This transfer was lawful so it was unable to compensate Miss R for any losses she felt she had incurred.
15. **Summary of Miss R's position:-**
- A government pension adviser told her that it is highly unusual that she would have lost everything and a further explanation was required.

- Legal & General and the Trustee should have guaranteed the growth of her pension pot until age 60.
- She has worked for 37 years, and everything was taken in charges. Consequently, she believes the Plan was “mismanaged” by Legal & General and the Trustee.
- She has been treated unjustly because she was encouraged to contribute to the Plan but the parties involved only gained from it.
- She wants to be compensated for her loss of pension and the distress and anxiety she has suffered.
- The Trustee did not trace her using the DWP tracing service.

16. Summary of Legal & General’s position:-

- The “Mature Savings” business of Legal & General transferred to ReAssure on 7 September 2020. Although Miss R’s Policy was transferred to ReAssure, it had already been terminated at the time of the transfer.
- As it had been terminated for some time, minimal records were held for Miss R.
- Once the Policy was transferred to the Trustee, no further contributions were made and charges would have eroded any remaining value and the Policy would have lapsed.

17. Summary of the Trustee’s position:-

- In circumstances where the member did not update their address with the pension provider, its standard process is to make contact with them through the DWP Letter Forwarding Service.
- This service uses the last address held by DWP. DWP then confirms whether the trace has been successful, unsuccessful or the individual is deceased. DWP does not advise it of the address and therefore it is reliant upon individuals responding.
- The practice of using this service is standard across the pension industry and at a limited cost. However, the costs are deducted from the pension scheme assets.
- As the paper file no longer exists, it cannot be certain that DWP sent Miss R any communication. The information it received from Legal & General in 2011 did not include Miss R’s address.
- It is most likely that the DWP service would have been used to trace Miss R. The Trustee cannot be held responsible if the DWP did not write to Miss R, as it has no control over the DWP.
- The Trustee noted it is the member’s responsibility to inform their pension provider of any changes to their address.

Adjudicator's Opinion

18. Miss R's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or Legal & General. The Adjudicator's findings are summarised below:-

- It was unfortunate that in 2011, the Employer went into liquidation. The Trustee was then appointed by TPR to wind up the Plan.
- The limited information regarding the historical fund values of the Policy, indicated the fund value decreased from £754.05 as at May 1994, to £232.90 in February 2011. The Adjudicator noted that Legal & General could not be certain of the exact reason for this decrease in value and there was a lack of information on fund value between 1996 to 2007. The Adjudicator also noted that it had speculated that the initial fund value was either incorrect, or the charges were higher before a charge cap was put in place in early 2000s. Unfortunately, the Adjudicator was not able to say with any certainty which scenario was most likely. However, the Adjudicator noted that a fund value, in excess of £700, was quoted to Miss R on more than one occasion. Fundamentally, the value of the Policy depended on the performance of the unit-linked investments held in Miss R's Policy, which would have fluctuated over time.
- In 1996, Legal & General told Miss R that her contributions had ceased and that the charges would continue to be taken from her account. It was not unusual that, with no new contributions going in, the ongoing charges might have eventually exceeded any investment returns. In addition, Miss R had not provided any information which indicated that the Policy had been mismanaged.
- Overall, the Adjudicator's view was that the ongoing charges, against a lack of further investment by way of contributions, caused the value of Miss R's Policy to fall over the years. Although this would be disappointing for Miss R, it did not amount to maladministration and the Adjudicator could not agree that Legal & General or the Trustee should be held responsible for any purported poor investment returns. The Adjudicator noted that it was not disputed that the remaining £232.90 was used towards fees for winding up the Plan. In the Adjudicator's view, the application of these fees was not unreasonable.
- The Adjudicator appreciated that Miss R only discovered the status of the Policy in 2019, when she contacted Legal & General regarding her two policies. However, the Adjudicator said that it was the member's responsibility to inform the administrator of any change of address. Furthermore, Legal & General previously sent Miss R statements, so the Adjudicator would expect Miss R to have made enquiries when she noticed she was not receiving any further information from Legal & General.
- The Trustee said it was most likely that DWP's tracing service was used to trace Miss R. In the Adjudicator's view, it was more likely than not that this was the

case. This was because the Trustee said that it did not receive Miss R's current address when the transfer took place in 2011. The Trustee could not be held responsible if it was unable to trace Miss R, as it did not have her address. However, it was entitled to charge the fee for using DWP's tracing service. The winding up cost and the fee brought the fund value to nil.

- In the Adjudicator's view, the actions taken by Legal & General and the Trustee were reasonable and she did not identify any maladministration. As the charges eroded the value of Miss R's fund, the Policy lapsed, and no pension was now payable.
- It was the Adjudicator's opinion that this complaint should not be upheld.

19. Miss R did not accept the Adjudicator's Opinion and in response provided further arguments. In summary she said:

- Although the Employer went into liquidation to clear its debts, it started with a "clean slate". Liquidation is the best and cheapest option to clear debts which would allow the business to continue to trade.
- The Trustee has a duty of care to provide a pension to members when they retire by ensuring the Plan is run properly and that members' benefits are secure. This has not happened in her case as £232.90 was surrendered to fees, which reduced the value of the Policy to nil.
- She requested TPR to give her evidence of the fees paid but so far TPR has not provided her with any evidence.
- She has another deferred pension; even after deduction for charges, the value has grown considerably.
- They should not have destroyed her paperwork until contact had been made with her. Had the respondents kept the paperwork, the value of the Policy could have been a lot higher. She believes it is a case of her word against theirs.
- She would like to know whether she can claim her pension through the Pension Protection Fund.

20. Miss R's complaint was passed to me to determine. I agree with the Adjudicator's Opinion and note the additional points raised by Miss R.

Ombudsman's decision

21. I note Miss R's comment concerning the performance of her other policy. This Determination only deals with the original complaint concerning the Policy that was accepted for investigation. I am not considering any matters that fall outside the scope of that complaint.

22. Having considered all the submissions provided by Miss R and the respondents, I find there is limited evidence to prove why the value of the Policy reduced to nil.
23. I understand Miss R's disappointment that the Policy lapsed without value and that she was not made aware of this until 2019. However, I do not find that the value lapsed because of any maladministration by the Trustee or Legal & General. It is not unusual for a plan of this nature to have no value where contributions have ceased but charges continue to be deducted. This is what is most likely to have happened in Miss R's case.
24. I agree that the Trustee has a duty of care to provide pensions to members when they retire. However, in this case, the Policy value was reduced to nil, so Miss R was no longer entitled to any benefits from the Plan.
25. Members have a responsibility to inform trustees or administrators of their up to date contact details. I have not seen any evidence that Miss R contacted Legal & General prior to 2011, or the Trustee in 2011, to notify any change of address. Nor have I seen any evidence that she made any enquiries regarding the Plan. The Trustee has confirmed that it did not have Miss R's current address when the transfer took place in 2011.
26. I find that the Trustee cannot be held responsible if it was unable to trace Miss R as it did not have her address. I find it was reasonable of the Trustee to try and trace Miss R through the DWP tracing service and that it was entitled to charge the fee for doing so. It is unfortunate that the winding up fees and the DWP tracing service fee reduced the value of the Policy to nil.
27. I do not uphold Miss R's complaint.

Anthony Arter

Pensions Ombudsman
19 October 2021