

Ombudsman's Determination

Applicant	Miss N, Mr N and Mr O (the Applicants)
Scheme	RAC (2003) Pension Scheme (the Scheme)
Respondent	Aviva Staff Pension Trustee Limited (the Trustees)

Outcome

1. I do not uphold the Applicants' complaint and no further action is required by the Trustees.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. The Applicants' complaint is that the Trustees' maladministration prevented their mother, Mrs N, from taking her benefits on a serious ill health basis.

Background information, including submissions from the parties

4. Mrs N was a deferred member of the Scheme and held final salary benefits and additional voluntary contribution (**AVC**) benefits within the Scheme.
5. When Mrs N left the Scheme in 1997, she received a statement of entitlement and transfer value quotation for the final salary portion of the Scheme.
6. Mrs N had received annual statements for the AVC plan, the last of which showed the plan had a value of around £1,000.
7. On 5 December 2014, Mrs N called the Trustees from hospital. Mrs N told the representative that she had final salary benefits and she also said, "I'm terminally ill and I need to change the main beneficiary on my pension". The Applicants have said that it was their mother's intention to make the Applicants the beneficiary of any benefits payable from the Scheme. The representative said he would transfer Mrs N to the final salary team who would be able to help her. The representative then changed the topic to sending Mrs N a nomination form for the AVC portion of her pension. The representative promised to email the AVC nomination form then ended the call, forgetting to transfer Mrs N to the final salary team. This meant that Mrs N was not given an opportunity to discuss the defined benefit portion of her pension.

8. The nomination form that was sent to Mrs N was only applicable to the AVC benefits. It was not in fact the correct nomination form and the Applicants have said that, as the form did not apply to Mrs N's circumstances, she did not complete it.
9. Mrs N passed away on 20 December 2014.
10. At the time of her death Mrs N was separated from her husband, the Applicants' father. As they were still married, the Trustees awarded a spouse's pension to him after Mrs N's death. Aviva informed the Applicants' father that he was able to take a trivial commutation lump sum of around £22,000, which he accepted. The Applicants' father also received a payment of £1,048, the value of the AVC fund. He has said that his intention was to share these payments with the Applicants but, because he is in receipt of state benefits, he is not able to pass any money on as it would be seen as a deliberate act of 'deprivation' by the Department for Work and Pensions (**DWP**).
11. The Applicants have said their mother incorrectly believed the total value of all of her final salary benefits to be the value shown on her AVC statements. They argue that, had the call been transferred to the correct team, Mrs N would have learned that she was entitled to more. Given Mrs N's terminal prognosis, the Applicants believe the final salary team would have told Mrs N about the serious ill health commutation option. They also say that, had Mrs N known that her benefits were of a higher value, Mrs N would have made a Will, in which she would have assigned her lump sum evenly between the Applicants.

Summary of the Trustees' comments

- Mrs N should have been transferred to the final salary team during the phone call on 5 December 2014.
- For the distress caused by this mistake the Trustees paid the Applicants £1,000 as compensation.
- The Trustees awarded the value of the AVC plan to Mrs N's husband without knowing of their separation. The Trustees were made aware of this fact during the complaint process, and as a result, paid the equivalent amount, £1,048, to the Applicants to share amongst themselves.
- They did not have a duty to inform Mrs N of the serious ill health commutation option.
- Even if Mrs N had spoken to the correct team, there was not enough time for the serious ill health commutation to have been processed and paid.
- Members of the Scheme do not have an automatic right to a serious ill health claim; applications are considered at the Trustees' discretion after consideration of the medical evidence and a decision made as to whether to release the pension on serious ill health grounds.

- Mrs N did not have a Will in place at the time of her death, so, even if the serious ill health lump sum had been processed and paid to Mrs N before her death, this money would have passed to Mrs N's husband rather than to an estate. So the Applicants have suffered no financial loss.

Adjudicator's Opinion

12. The Applicants' complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees. The Adjudicator said that it would have been necessary for the following steps to take place in order for the serious ill health commutation to have been granted:
 - the Trustees to send an application form to Mrs N to complete and return;
 - Mrs N's medical team to send the required certificate confirming her life expectancy was less than 12 months;
 - the Trustees to review the medical information in order to make a decision on whether the application could be approved;
 - the Trustees to pay the serious ill health lump sum to Mrs N's bank account, if the application was approved; and
 - Mrs N to have drafted a Will setting out her intention to give the Applicants any pension benefits she had received.
13. The Adjudicator felt that it was unlikely this could have been achieved in the 10 working days between the phone call on 5 December 2014 and Mrs N's death.
14. The Adjudicator acknowledged that there was maladministration as the call handler should have transferred the phone call on 5 December 2014 to the final salary team, however the Adjudicator believed the total amount paid to the Applicants, £2,048, to be reasonable compensation.
15. The Applicants did not accept the Adjudicator's Opinion. Their comments are summarised below:
 - the Ombudsman upheld a similar case in 2015;
 - the Applicants feel it is reasonable to say that the necessary steps could have been completed in the 10 working days;
 - Mrs N's medical team suggested she had three months to live so the Applicants believe that all parties involved would have acted urgently;
 - a Will could have been written in the time between the phone call on 5 December 2014 and Mrs N's death;

- as Mrs N's non-pension affairs were all in order, the Will would only needed to have expressed Mrs N's wishes for her pension benefits;
 - the Applicants did not cash the cheques from the Trustees as they do not accept the offer;
 - around the time of the phone call on 5 December 2014, Mrs N put in place a nomination from with a pension she held with another provider, which is evidence she was putting her affairs in order;
 - the seriousness of the Trustees' actions has not been acknowledged nor has adequate compensation been offered; and
 - the Applicants are upset by the injustice of the situation and that their mother passed away not knowing the true value of her final salary pension.
16. As the Applicants did not agree with the Adjudicator's Opinion, the complaint was passed to me to consider. The Applicants' further comments do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by the Applicants for completeness.

Ombudsman's decision

17. The Applicants refer to a case determined in 2015, highlighting the fact that the Ombudsman said the scheme's medical adviser would have issued the certification within 10 working days of receiving the referral, and that certification by the scheme's medical adviser is the point at which the ill health commutation application has succeeded.
18. The Applicants have argued that the 2015 determination supports their claim that their late mother's ill health commutation would have been accepted and certified within 10 working days. However, in the 2015 case the serious ill health commutation had been discussed, and the application form completed and returned with medical evidence. The Ombudsman in the 2015 case decided that the application could have been certified by the scheme medical adviser within 10 working days from the day on which it received the supporting documents. In Mrs N's case, it would have been necessary for all the steps, beginning with the Trustees issuing the application form and ending with the scheme medical adviser's certification, to have been completed within 10 working days. This is very different to the referenced 2015 case, so the two outcomes cannot be compared.
19. I agree with the Adjudicator's Opinion that it is unlikely that the entire process could have been completed within 10 working days.
20. The Applicants have said that Mrs N passed away without realising the true value of her final salary benefits. When Mrs N left the Scheme in 1997, she received a statement of entitlement which confirmed the benefits she held within the Scheme.

The Trustees were not required to send annual updates on deferred benefits. Whilst I appreciate that Mrs N may have forgotten the details, this does not mean that the Trustees did something wrong.

21. The Applicants have also expressed their concern that the Trustees have not acknowledged the distress their actions caused or offered adequate compensation. I disagree with this as the Trustees have acknowledged their mistake and offered a total of £2,048 in payment to the Applicants. This figure represents the AVC value of £1,048, as the Trustees decided that, had they been in receipt of all the information, they would have paid the AVC benefits to the Applicants, rather than Mrs N's husband. The remaining £1,000 is an offer to recognise the significant distress and inconvenience caused by the Trustees' maladministration, which I find to be a sufficient amount. The Applicants did not cash the original cheques sent by the Trustees, but the offer is still available to them so, should the Applicants decide to accept, they should confirm this with the Trustees, who will then reissue the payments.
22. Therefore, I do not uphold this complaint.

Anthony Arter

Pensions Ombudsman
9 June 2017