PO-12883

Ombudsman's Determination

Applicant	Mrs E
Scheme	Ardenconnel Services Ltd Staff Pension Scheme (the **Scheme**)
Respondents	Roxburgh Group (**Roxburgh**), Standard Life

Outcome

1. Mrs E's complaint against Roxburgh and Standard Life is partly upheld, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld) she should be compensated for the significant distress and inconvenience their maladministration has caused her to suffer.

2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs E says Roxburgh and Standard Life failed to inform her late husband, Mr E, that life cover under the Scheme would cease at age 60. And after he passed away, she was wrongly advised that life cover was still in place. Mrs E says her husband was not given the opportunity to obtain alternative life cover.

Background information, including submissions from the parties

4. Mr E was a member of the Scheme, part of Standard Life's Stanplan A.

5. The Scheme is an occupational pension scheme with a normal retirement age (**NRA**) of 65, but members had the option to choose a different retirement age. Standard Life says, under the Scheme, life cover is only included to NRA.

6. The Standard Life 'Stanplan A declaration of trust and general rules' (the **Rules**) says:

   " **"Normal Retirement Date"** in relation to a Member means the date stated in the initial Application for Benefits in respect of him to be his Normal Retirement date [**NRD**] or normal retirement age or such new date as the Trustee may agree with the Employer and the Member and which would have been acceptable under section (2) of Rule 2B".

7. Mr E's NRA under the Scheme, as stated in his application form, was age 60 (23 September 2013).

8. Under the Scheme, a lump sum benefit is payable on death in qualifying service - but it is not payable on death in service after the member's NRD.

9. At the time Mr E joined the Scheme, John McPhail Financial Services (**John McPhail**), the financial advisers shown on his application form, were advisers to his employer (the **Company**). Around 2011, it was taken over by Roxburgh.

10. In 2011 the Scheme had five members.

11. In the period leading up to his 60th birthday, Mrs E says her husband contacted Standard Life and advised that he would not be retiring in the foreseeable future.

12. On 15 July 2013, shortly before his 60th birthday, Standard Life sent Mr E a retirement pack. It listed four options available to him, one of which was 'option 3 - delaying his retirement'. The notes on option 3 stated that he had cover for insured death in service benefits, such as life cover, which would stop at his 'selected retirement date' - 23 September 2013. And, that no insured death in service benefits would be paid if he died after his original normal retirement date. If he needed cover, he should take financial advice.

13. The next day Mr E contacted Standard Life and advised that he wanted to continue to work until age 65. Mrs E says she, her husband, his employer and Roxburgh, assumed his life cover would continue beyond age 60. Mrs E says that at no time during his telephone conversation with Standard Life was he told that the death in service benefits would stop at age 60.

14. Standard Life acknowledges that when Mr E asked Standard Life to postpone his retirement until age 65, Standard Life did not inform him that life cover would cease when he reached age 60. Standard Life accepts that it should have alerted him at the time.

15. On 17 July 2013, Standard Life notified Mr E that it had changed his retirement date to 23 September 2018. Standard Life accepts that it should have confirmed to Mr E that his life cover would not be extended. They say they omitted to include the following paragraph in the letter:

    > "Cover for insured death in service benefits, such as life cover or dependant's pension, will stop on 23 September 2013. No insured death in service benefits will be paid if you die after this date. If you need life cover please contact your financial adviser or Standard Life Client Management Services…"

16. Standard Life says at the time of contacting Mr E in July 2013, it would not have been possible under the Rules to extend his NRD to age 65 and continue to provide life cover. Standard Life says the only option was to treat him as a deferred member with life cover ceasing at age 60.

17. Mrs E says her husband assumed that as his retirement date had changed to 23 September 2018, this would become his new NRD and his life cover would therefore continue beyond age 60.

18. On 25 July 2013, an agent from Roxburgh contacted Standard Life and was advised that Mr E's life cover would cease at age 60. Standard Life says during the call, Roxburgh asked whether Standard Life had confirmed this to Mr E. Standard Life says as the call handler was unsure of the position, Roxburgh said it would write to him to advise that life cover would cease. Standard Life says as Roxburgh had agreed to inform Mr E, it considered there was no need for it also to write to him.

19. Roxburgh's Representative (the **Representative**) says he has been unable to locate evidence, from the details provided by his client, which confirms that Roxburgh wrote to Mr E following its telephone conversation with Standard Life. The Representative says Roxburgh accepts that it is jointly at fault with Standard Life for not writing to Mr E to alert him to the fact that his life cover would cease.

20. Mrs E says had she and her husband been made aware of the position, they would certainly have taken out alternative life cover. Mrs E says because they were not informed the cover had ceased, they had no reason to take out alternative life cover.

21. In January 2014, Mrs E says her husband was diagnosed with terminal cancer. Mrs E says her husband informed his employer of his health condition, who in turn informed Roxburgh. Mrs E says around the same time, all members in the Scheme were being moved to an alternative scheme – with the exception of her husband. Mrs E says he was told by his employer that he had been retained in the Scheme because of the death benefits attached to it. Mrs E says she believes that Roxburgh acted for the employer in relation to the introduction of the new scheme.

22. Mr E passed away on 20 August 2014. When Roxburgh submitted a claim to Standard Life, it was advised that Mr E only had life cover to age 60. Mr E had no alternative life cover in place.

23. On 21 August 2014, Roxburgh asked Standard Life to investigate why Mr E's life cover had ceased. Roxburgh explained that it had reviewed all members of the Scheme, and had understood that they were covered to age 65. Roxburgh said following a recent review of the Scheme, it had decided to transfer all the members to a more cost effective scheme, apart from Mr E because he was terminally ill, on the understanding that his life cover continued to age 65.

24. On 10 September 2014 Roxburgh compiled a file note in connection with its initial complaint to Standard Life. This referred to a meeting with the Company's new owner which took place on 11 October 2013, to discuss a new scheme for auto-enrolment. The note records that Roxburgh was informed that Mr E was off work and terminally ill, that Roxburgh advised the Company that the new scheme would not provide death in service benefits, and that it explained the Scheme could be left open as it had an NRA of 65. In the note Roxburgh said it considered, at the time, that it would be

beneficial to leave Mr E in the Scheme if he was ill. The note also recorded that before the meeting, Roxburgh had initially only dealt with the Scheme's annual renewal.

25. On 12 October 2014, Roxburgh advised Standard Life by email that it considered Mr E was in very poor health when life cover ceased under the Scheme in 2013, and would therefore have been uninsurable. Mrs E says her husband was fit and well and had no health problems, and that they were on holiday together at the time of his 60th birthday in September 2013.

26. Both Roxburgh and Standard Life admit maladministration. Neither Roxburgh nor Standard Life accept that their mistakes have caused financial loss to Mrs E or the estate of Mr E.

27. The Company has since gone into liquidation.

28. Mrs E says her husband's life cover under the Scheme would have been worth around £34,376. Mrs E says Standard Life and Roxburgh are equally to blame and should accept responsibility for the alleged financial loss.

Adjudicator's Opinion

29. Mrs E's complaint was considered by one of our Adjudicators who concluded further action was required by both Roxburgh and Standard Life because Mrs E had suffered significant non-financial injustice and she should be compensated for that. The Adjudicator's findings are summarised briefly below:-

    - In Mr E's application form, he selected a NRA of 60.There were no provisions under the Scheme Rules to extend his life cover beyond his original NRA.

    - The accompanying notes in the retirement pack issued to Mr E in July 2013, stated that no insured death in service benefits would be payable on his death after his original NRA. The information ought to have given Mr E sufficient reason to, at the very least, enquire about life cover.

    - The weight of the available evidence does not support that either Standard Life or Roxburgh are to blame for the alleged financial loss Mrs E is claiming. But Standard Life and Roxburgh should each pay £500 to Mrs E to put right the non-financial injustice.

30. Mrs E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs E has provided further comments but these do not materially change the outcome. I agree with the Adjudicator's Opinion for the most part and will therefore only respond to the key points made by Mrs E for completeness.

Ombudsman's decision

31. Mrs E accepts that she personally is only entitled to the death benefits under the rules governing the Scheme and that the rules do not provide for a lump sum death benefit to be paid to her in this case.

32. Mrs E originally brought the complaint in her capacity as representative of the estate of Mr E and I have considered her complaint in that light as well as considering her status as a disappointed potential beneficiary. Standard Life and Roxburgh both admit maladministration in not telling Mr E that despite extending his retirement age his life cover would cease when he turned 60. The question which I have to decide is what injustice flowed from that omission and how it can be remedied, if it can.

33. Mrs E says, Roxburgh's assertions that her husband was in poor health in July 2013, and therefore may have found it difficult to obtain alternative life cover, are inaccurate. Standard Life did not inform him that his NRD was fixed as age 60 and, had he been correctly advised, he would have taken out replacement life cover.

34. Mrs E says it is certainly not the case that, by the time his life cover had ceased, his health had deteriorated such that he would not have been able to secure life cover.

35. Contrary to statements made on behalf of Roxburgh to Standard Life, included in the evidence provided to this office, her husband was fit and healthy in September 2013. He did not consult his GP until late December 2013. He saw his GP again in early January 2014, when he was told that lung cancer was suspected. She questions how his employer could apparently have informed Roxburgh in September 2013 that he was terminally ill, when his health condition was not actually confirmed until 9 January 2014, and he did not submit any sickness notification prior to this.

36. Mrs E questions why Roxburgh complained to Standard Life immediately after his death, that it had failed to confirm the position, and is now providing inaccurate information.

37. Mrs E says all the paperwork relating to her husband's pension was held by Roxburgh and his employer. Consequently, her husband was totally reliant on them.

38. Mrs E says the Adjudicator's Opinion was totally unfair. The entire situation was outside their control and in the hand of professionals. She feels that she is being penalised for something that could have been resolved had Standard Life and Roxburgh confirmed the correct position at the time her husband postponed his retirement. Mrs E says she feels let down by the complaint process.

39. I have considered what Mrs E says about the timing of Mr E’s diagnosis and the question which she raises over the reliability of the evidence put forward by Roxburgh. In order to make a finding about that conflict of evidence Mr E’s medical records have had to be obtained. These confirm that on 9 January 2014, his Consultant raised the possibility that he had cancer, and that the Consultant confirmed the diagnosis on 3 February 2014.

40. With regards to Mr E’s state of health prior to his diagnosis, his medical records confirm that he was a life-long smoker and that he was overweight. On 11 September 2013, Mr E had a cyst to his left knee removed; this was reviewed by the Nurse on 14 September 2013. No new ‘active medical problems’ were recorded on his medical records in 2013. In the Consultant’s letter to the GP of 9 January 2014, he said that Mr E was normally fit and well, and that he had noticed a lump six weeks earlier and, more recently, had experienced other symptoms.

41. I find no evidence to support the assertion that Mr E had been signed off work by his GP at the time of Roxburgh’s meeting with the Company on 11 October 2013. His medical records show that he was signed off on 3 January 2014. I cannot explain the file note produced by Roxburgh and accept the evidence of Mrs E on this point.

42. I also accept that the omission is likely to have affected how Mr E acted. Standard Life have reviewed the call which Mr E made on 16 July 2013 and say he asked to change his retirement date ‘with everything continuing as before’. Plainly Mr E wanted to maintain cover as it stood and I accept that it was likely he would have investigated his options had he known that the Standard Life cover must lapse in September when he turned 60. There was no diagnosis at that point so it was likely that he could have obtained cover somewhere. However, how much cover he would have taken, how much it would have cost him to acquire, and whether he would have considered it worth taking are questions which I consider are now impossible to answer. I cannot therefore conclude that the estate can prove a direct financial loss flowing from the failure to provide Mr E with information about when his cover ceased.

43. I conclude that discovery of the original omission by Standard Life and Roxburgh’s failure to remedy it after volunteering to do so will have caused significant distress and inconvenience to Mrs E. I find that the manner in which her complaint about it has been handled, in particular the need for her to bring a complaint to the Ombudsman and then adduce medical evidence to rebut the defensive case put forward by the respondents, has served only to increase that distress and inconvenience.

44. In view of the sequence of events, I find that Mrs E’s complaint warrants a higher award than that recommended by the Adjudicator.

45. Therefore, I uphold Mrs E’s complaint in part and award £1,500 in compensation.

Directions

46. To put matters right, both Standard Life and Roxburgh shall, within 21 working days of the date of this Determination, pay £750 each to Mrs E.

Karen Johnston

Deputy Pensions Ombudsman
2 November 2017