

Ombudsman's Determination

Applicant	Mrs S
Scheme	Lucas Yuasa Pension Scheme (the Scheme)
Respondents	AON Hewitt and Rothesay Life (Rothesay)

Outcome

1. I do not uphold Mrs Y's complaint and no further action is required by AON Hewitt or Rothesay.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs S has said that her late husband's AVC fund should be paid to her as a lump sum of approximately £12,500.

Background information, including submissions from the parties

4. Mrs S' late husband's benefits were held in the Scheme which was wound up in 2007. The Financial Assistance Scheme (**FAS**) took over the responsibility for making up for some of the underfunding in the Scheme at this time. Mr S' AVCs were transferred to Rothesay as part of a bulk buy-out.
5. In October 2012 AON Hewitt wrote to Mr S advising that his AVC fund had been secured with Rothesay. AON Hewitt set out details of his AVC entitlement and provided him with details of the default option: a level pension with no attaching spouse's pension. The letter asked Mr S to make contact if he wanted to select a pension on an alternative basis.
6. Mr S passed away in March 2015, shortly after his Normal Retirement Date (**NRD**), 27 December 2014. After his death, Mrs S sought payment of a lump sum from Rothesay in respect of Mr S' AVC fund. Rothesay advised Mrs S that no payments were due from the AVC fund. Mrs S complained that she should receive a lump sum death benefit payment.
7. Mrs D, Mrs S' representative, says no effort was made to contact Mr S to ensure his pension was paid from his NRD. She says Mr S would have wanted Mrs S to receive

an income if he were to die, therefore, the AVCs should have been arranged on a joint life basis. Mrs S has suffered distress as a result of being “pulled from pillar to post” by Rothesay and AON Hewitt. Mrs D also says incorrect and misleading statements were made in response to the complaint.

8. Rothesay says it tried to contact Mr S so that it could make arrangements to pay his pension from NRD. But Mr and Mrs S had moved to Spain and neither Rothesay nor AON Hewitt held their overseas address.
9. Rothesay says the agreement in relation to Mr S’ AVCs, was to pay him a single life pension from his NRD, based on his date of leaving the Scheme in 2002, and increased in line with inflation to NRD. No spouse’s pension or lump sum death benefits were available under that agreement.

Adjudicator’s Opinion

10. Mrs S’ complaint was considered by one of our Adjudicators who concluded that no further action was required by AON Hewitt or Rothesay. The Adjudicator’s findings are summarised briefly below:-
 - After the Scheme was wound up, AVC funds were bought out and annuities secured with Rothesay. In taking over this responsibility the agreement was to purchase a single life pension that would increase in line with inflation until the member reached his/her NRD. Members were provided with the option to vary the form of benefits they would receive from their AVCs. Rothesay are not a pension or investment provider, they are an Insurance company appointed by the Trustees on wind up of the Scheme to provide the payment of benefits in relation to the AVC’s
 - Documents were sent to Mr S by AON Hewitt in October 2012, about his AVCs. He was informed that his AVCs would be kept in a separate arrangement from the Scheme’s other benefits. The cash value of his AVCs was £9,978 at the date of wind up and it secured a pension of £779 per annum. This pension would increase in line with inflation from the date of leaving service in 2002 until Mr S’ NRD, with no contingent spouse’s pension.
 - The documents sent by AON Hewitt set out that if Mr S wanted to select an option, other than the default option, he would need to contact Rothesay to arrange this. The default AVC option was a single life AVC pension only. While Mrs D has questioned this, the decision to offer a default option was made by the Trustees and it is not unreasonable. Consequently neither Rothesay nor AON Hewitt can be held responsible for that decision.
 - Rothesay have confirmed that they wrote to Mr S on 24 September, 22 October and 2 December 2014 regarding the impending payment of his retirement benefits without any response. They also wrote to HMRC to try and locate an up to date address. HMRC confirmed Mr and Mrs S’ old address from 2007, the same address

already held by Rothesay. Rothesay had done all it reasonably could to try and trace Mr S.

- There is no evidence that Mr S contacted either Rothesay or AON Hewitt with regard to his new address. If as a result correspondence was not received by Mr S that could have enabled him to choose a different option from the default option decided by the Trustees, then Rothesay or AON Hewitt cannot be held responsible for this.
 - Mr S would have been entitled to receive an income from his NRD if he had made contact with Rothesay. Rothesay confirmed that when contact has not been made in time to make payments from NRD then a “late retirement uplift” is applied from the date of contact or late payment date. The previously agreed fixed income monthly amount due from NRD would therefore have been increased for late payment only, it is not backdated to someone’s NRD. As no contact was made by Mr S, and because the benefits were purchased on a single life basis there are no benefits due in respect of the Mr S’ AVC fund.
 - It is understandable that Mrs S would be extremely distressed if she had thought that an investment fund had “gone missing”. Rothesay or AON Hewitt can only compensate Mrs S for distress if they had been responsible for Mrs S believing an investment fund had been in existence. There is no evidence of this.
11. Mrs S did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mrs S provided her further comments which do not change the outcome:-
- Mrs S did not understand that a decision had been made on her husband’s behalf. She has said that Mr S was not consulted regarding the type of annuity purchased.
 - Rothesay did not confirm to Mrs S that the AVCs were used to purchase single life benefits until 5 October 2015.
 - The Financial Assistance Authority wrote to Mr S at the Spanish address on 23 May 2014. If Rothesay did not have the Spanish address the fault lies with them and not with Mr S.
 - Rothesay failed to send the policy document in the letter responding to the complaint on 5 October 2015. It was sent on 15 January 2016.
12. I agree with the Adjudicator’s Opinion, summarised above, and I will therefore only respond to the key points made by Mrs Y for completeness.

Ombudsman’s decision

13. Mrs S’ complaint is in relation to the annuity purchased with her late husband’s AVC fund when the Scheme was wound up in 2007. Mrs S believes her husband should

have been consulted before a decision was made as to the type of pension Rothesay secured for Mr S. Mrs S says that her late husband would have chosen to provide her with a spouse's pension.

14. There was no requirement for members to be consulted before a decision was made as to the default option. There was however a responsibility to ensure that members were aware of the default option and what the alternatives might be. Rothesay wrote to Mr S last known address in October 2012, they provided Mr S with the information necessary to understand the policy and to make a decision if he wanted the default option of a single life payment or he wanted to amend this. Aon Hewitt and Rothesay cannot be held responsible that Mr S did not receive that letter because he had moved to Spain.
15. The fact that the Financial Assistance Scheme sent a letter to Mr S in May 2014 does not mean that Rothesay have made an error. It would have been Mr S's responsibility to ensure that Rothesay held an up to date address for him after the move to Spain. Rothesay contacted HMRC as they are required to do in an attempt to trace Mr S. There is no evidence that Rothesay had been informed of the new address by Mr S and failed to change their records. Aon Hewitt and Rothesay cannot be held responsible that they were unaware that Mr and Mrs S had moved or that Mr S had failed to keep them updated as to his whereabouts.
16. Mrs S complains that Rothesay did not confirm to her that the AVC fund was used to purchase single life benefits until 5 October 2015. In responding to the complaint in October 2015 Rothesay Life did not include a copy of the Individual Policy document for Mr S. This is unfortunate, however, Rothesay Life sent this in January 2016 and apologised for the error. This does not change the outcome of the complaint.
17. Therefore, I do not uphold Mrs Y's complaint.

Anthony Arter

Pensions Ombudsman
18 July 2017