

Ombudsman's Determination

Applicant	Mr Y
Scheme	Cable & Wireless Superannuation Fund (CWSF)
Respondent	Trustee of the Cable and Wireless Superannuation Fund (the Trustee)

Outcome

1. Mr Y's complaint against the Trustee is partly upheld. To put matters right, for the part that is upheld, the Trustee shall pay Mr Y £500 for the significant distress and inconvenience caused.

Complaint summary

2. Mr Y says that the Trustee miscalculated the survivor's pension offered to him in 2016.

Background information, including submissions from the parties

3. Mr Y and his late partner, Ms L, were both employees of Cable & Wireless Communications and were members of the CWSF. Ms L was a deferred member.
4. Mr Y was the sole named beneficiary to survivor's benefits from Ms L's deferred pension.
5. Following Ms L's sad death on 16 November 2009, in his capacity as Executor of her estate, Mr Y notified the Trustee, which acknowledged the death notification on 3 February 2010.
6. On 23 February 2010, the Trustee sent a letter addressed to Ms L stating that her deferred pension would be transferred to the Cable and Wireless Worldwide (**CWW**) Scheme after a planned demerger.
7. After assessment of his entitlement to survivor's benefits, Mr Y was offered a discretionary lump sum of £12,130.20 and a pension of 50% of the Guaranteed Minimum Pension (**GMP**) to which Ms L would have been entitled, £441.60 a year, from 17 November 2009. This increased to £541.20 a year from 25 April 2016.

8. The Rules made no provision for payment of survivor's benefits to non-married partners. However, the Trustee increased Mr Y's survivor's pension at its discretion to include 40% of the pension in respect of Ms L's service completed after April 1997. This increase was implemented in order to bring the pension in payment up to the same level as that applicable to a legal spouse.
9. Only limited evidence now exists due to the passage of time, but Mr Y said he did not accept the lump sum or initial survivor's pension, believing that it had been wrongly calculated. However, the Trustee provided evidence that the lump sum death benefit of £12,130.20 was paid to Mr Y's bank account in April 2010, although Mr Y denies receiving it.
10. Because Mr Y refused to accept it, the survivor's pension did not come into payment. The Trustee wrote to Mr Y in August 2010, to confirm that, in accordance with the CWSF Rules, survivors' pensions for the dependants of deferred members were lower than those for dependants of pensioner members.
11. On the matter of the level of pension payable, Mr Y provided us with a copy of the letter dated 23 February 2010, and addressed to Ms L which said:-

"If your Fund pension is not yet in payment – After the Demerger, your deferred pension and applicable increases, together with any death and dependants' benefits, will be the same in the new Plan as they were in the Fund...

To summarise – your Fund pension benefits at 25 March 2010, will all be in the new Plan...

Will the amount of my pension benefits change?

No. Your Fund pension benefits at 25 March 2010...and any pension benefits payable to your dependants, will be transferred to the new Plan. They will be the same in the new plan after the Demerger date as they were in the Fund before the Demerger date."

12. Mr Y had ill health between 2010 and 2016, and he says, due to three changes of Administrator in the interval, no progress was made until 2016. He was then offered a recalculated pension, which he also refused on the aforementioned basis.
13. In May 2016, the CWSF Administrator wrote to Mr Y stating that:-
 - He could request payment of his survivor's pension of £441.60 a year, plus a lump sum of pension arrears, back-dated to November 2009.
 - Mr Y could exchange his pension (plus arrears) for a one-off lump sum of £7,907.00.
14. Mr Y disputed these calculations, contending that Ms L's deferred CWSF pension should have been transferred to the CWW Scheme, following the demerger. Mr Y

said that he was entitled to a 66% share of her entitlement, in accordance with the CWW Scheme Rules, rather than the 24% he was offered by the Trustee.

15. On 8 March 2017, the Scheme Administrator wrote to Mr Y saying that:-

- Active CWSF members were transferred to the CWW Scheme in March 2010. As Ms L had died in November 2009, her entitlement was not transferred to the CWW Scheme.
- In accordance with the CWSF Rules, a survivor's pension for the partner of a deferred member is much lower than a survivor's pension for the partner of a pensioner member.
- Mr Y's entitlement was correctly calculated in accordance with the CWSF Rules.

16. Mr Y complained under the CWSF's Internal Dispute Resolution Procedure (**IDRP**) stating that:-

- His CWSF entitlement was transferred to the CWW Scheme. The letter of 23 February 2010 constituted evidence supporting his contention that Ms L's CWSF entitlement was also transferred to the CWW Scheme.
- He should receive a survivor's pension from the CWW Scheme, which would pay two thirds of the member's pension rather than from the CWSF, which was only paying a spouse's pension of approximately one quarter of Ms L's deferred pension.

17. In its first stage IDRPs response dated 27 June 2017, the Trustee did not uphold the complaint and stated that:-

- Ms L's pension entitlement had not been transferred to the CWW but had instead remained within the CWSF.
- As Ms L had died whilst a deferred member, the Rules provided that her legal spouse would receive a pension of 50% of the GMP plus 40% of Ms L's pension accrued after 6 April 1997.
- Although Mr Y and Ms L had never married, the Trustee had uprated Mr Y's pension to ensure that he received the same entitlement as a legal spouse.

18. Mr Y did not accept this outcome and maintained all of his previous arguments.

19. The Trustee provided its Stage two IDRPs response on 15 April 2019, which is summarised below:-

- Mr Y received a lump sum of £12,130.20 in April 2010, and his survivor's pension was calculated in accordance with the CWSF Rules.
- In May 2016, the entitlement payable to him was a pension of £541.20 a year as at April 2016, with further increases due to date.

- At that time, the pension (including arrears) could have been exchanged for a one-off lump sum of £7,907.00 with no further pension amounts payable after that date. This sum would have increased in the interval between then and now.

Adjudicator's Opinion

20. Mr Y's complaint was considered by one of our Adjudicators who concluded that the complaint should be partly upheld. The Adjudicator's findings are summarised below:-
- The issue of whether Ms L's pension entitlement should have been transferred to the CWW Scheme in March 2010, was outside of our jurisdiction, having been brought to the Pensions Ombudsman outside of the time limits of when a complaint can be considered. However, since it was intrinsic to the overall complaint, the Adjudicator would refer to it in considering the other issues about which Mr Y had complained.
 - The Trustee had exercised its discretion to increase Mr Y's survivor's pension to the equivalent of that which a legal spouse would have received from the CWSF. Mr Y was not entitled to the benefits that the CWW would have paid him, because Ms L's entitlement was never transferred due to the fact that she had died several months before the demerger.
 - In respect of Mr Y's contention that the pension had been miscalculated, the Adjudicator concluded that no further action was required by Trustee.
 - However, the Adjudicator considered that the letter of 23 February 2010, which had been addressed to Ms L stating that her pension would be transferred to the CWW Scheme, should not have been generated. Sight of this letter had a significant impact upon Mr Y, both at the time of receipt and over the intervening years between receiving it and bringing his complaint to us. It likely formed the basis for Mr Y's continued insistence that he was entitled to a greater pension than was being offered. The Adjudicator was of the view that the Trustee should apologise to Mr Y and pay him the sum of £500 in recognition of the significant distress and inconvenience he had experienced.
21. The Trustee accepted the Adjudicator's Opinion and indicated it would update the calculation of Mr Y's survivor's pension as well as paying the redress recommended by the Adjudicator. However, Mr Y maintains that he is entitled to a survivor's pension from the CWW. Mr Y also disputes receipt of the £12,130.20 and did not respond to the Adjudicator's requests that he check with his bank, using the evidence she had obtained for him, so that he could satisfy himself that he had received the money.
22. The complaint was passed to me to consider. Mr Y provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the main points made by Mr Y for completeness.

Ombudsman's decision

23. On the matter of whether Ms L's pension should have been transferred to the CWW following the demerger, I agree with the Adjudicator that this element of the complaint is out of time and cannot be considered.
24. Having reviewed the papers, I am satisfied that Ms L's deferred entitlement was not eligible to transfer to the CWW Scheme. Consequently, Ms L's pension benefits were preserved within the CWSF and, as her beneficiary, Mr Y is only entitled to a survivor's pension calculated in accordance with the CWSF Rules. However, I note that the Trustee exercised discretion to increase those benefits to the level that a legal spouse would receive from that Scheme. Mr Y is not entitled to a survivor's pension from the CWW Scheme.
25. In respect of the £12,130.20 lump sum death grant, I have seen a copy of both the signed payment information slip authorising the payment from the CWSF pension fund to Mr Y's bank account and the bank transfer instruction from the Trustee's bank account. In my opinion there is no ambiguity in the content of these documents. Further, I have seen nothing to suggest that the payment failed or that this money was returned to the Trustee's bank account, so, I consider it reasonable to infer from the evidence supplied by the Trustee that this money was paid into Mr Y's bank account.
26. I note the Trustee has agreed to recalculate the survivor's pension, including arrears. It is open to Mr Y to accept this pension or to accept commutation in lieu.
27. I agree with the Adjudicator's view that the Trustee's letter addressed to Ms L and sent following her death likely caused Mr Y significant distress and inconvenience. An award of £500 is appropriate in the circumstances and in line with my published guidance on "non-financial injustice".
28. I uphold this complaint in part.

Directions

29. Within 21 days of the date of this Determination, the Trustee of the Cable and Wireless Superannuation Fund shall pay Mr Y £500 in respect of the distress and inconvenience caused.

Anthony Arter
Pensions Ombudsman
14 May 2020