

Ombudsman's Determination

Applicant	Miss S
Scheme	CC Stark Ltd Retirement Benefits Scheme (the Scheme)
Respondents	The Trustees of the CC Stark Ltd Retirement Benefits Scheme (the Trustees) and Isure Ltd (Isure)

Outcome

1. Miss S's complaint is upheld, and to put matters right Isure shall pay Miss S the lump sum death benefit arising under the Scheme in respect of the late Miss N, and also pay Miss S £1,000 for her serious distress and inconvenience. Isure shall also reimburse Miss S for any tax charge she may incur because of late payment.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Miss S's complaint is that Isure and the Trustees have refused to pay her the death benefit from the Scheme arising on the death of Miss N, even though Miss N had nominated Miss S in writing as her sole beneficiary.

Background information, including submissions from the parties

4. According to Miss S, she and Miss N were close friends for about 25 years.
5. In January 2015 Miss N joined the Scheme, which had been established as a small self-administered scheme in January 2014. Miss N was appointed as a trustee of the Scheme alongside the existing trustees and members, Mr and Mrs K. In the application forms that Miss N completed, Isure was described as the "Scheme Practitioner". Miss N was not employed by CC Stark Ltd, the Scheme's sponsoring company.
6. Miss N authorised a transfer payment to be made to the Scheme from her previous pension arrangement (part of the Local Government Pension Scheme).
7. On 4 August 2016 a solicitor acting for Miss N's estate informed Isure that Miss N had died on 24 May 2016, and asked whether any money would be payable from the Scheme to Miss N's estate.

8. Isure explained to the solicitor, in a letter dated 26 August 2016, that in February 2015, following the transfer payment to the Scheme, Miss N had elected to invest £38,805 in 39 truffle trees, an investment managed by Viceroy Jones Overseas. Isure said there was a cash balance of £465.95 in respect of Miss N held in the Trustees' bank account. Isure enclosed a copy of a nomination form completed by Miss N in favour of Miss S on 26 January 2015, and said that it would be writing to the Trustees to seek directions from them on the distribution of the death benefits.
9. On 30 August 2016 Isure sent similar details to Mr and Mrs K, and asked them for directions on how the death benefit should be distributed. Isure said that the truffle investment could either be transferred in specie or sold for cash, depending on the liquidity of that investment. Isure added that the nomination form was not legally binding as benefits were paid at the Trustees' discretion, but said death benefits were normally paid in accordance with the member's wishes.
10. On 10 February 2017 the solicitor asked Isure to update Miss S.
11. On 21 February 2017 Isure wrote to Miss S to say that it did not hold any Scheme investments; if as the beneficiary she wanted to sell the Scheme assets she should write to Viceroy Jones New Tech. She did so.
12. On 8 March 2017 Viceroy Jones New Tech replied to Miss S's enquiry. It said that each of the 39 trees currently had a current resale value of £250 "due to the current development stage"; it was a long-term investment; the crops should appear after 5 or 6 years; finding a buyer might take some time.
13. Miss S then contacted The Pensions Advisory Service (**TPAS**) and our office, as she wanted to receive the death benefits, was alarmed at the current value of the investments, and was concerned that Miss N might have unwittingly been the victim of an investment scam. TPAS suggested that Miss S should contact Action Fraud.
14. On 25 May 2017 Miss S made a formal complaint to Isure.
15. On 1 June 2017 Isure replied that although it acted as the Scheme practitioner/administrator it was not its responsibility to sell the Scheme investments; it was not regulated to deal with investments so it was Miss S's responsibility as beneficiary to contact the investment company that it had mentioned previously; once it had sold the investment the money would be returned to the Scheme so Isure could then pay it out.
16. In August 2017 Miss S told us that her phone calls to CC Stark Ltd, Viceroy Jones New Tech and Isure had not been answered properly. We recommended that she should send a formal complaint to Viceroy Jones New Tech if she was unhappy with its service.
17. Following a request by Miss S, on 18 September 2017 Isure sent to Miss S all the Scheme documentation that had been signed by Miss N. Isure asked Miss S to provide her bank details so it could pay £465.95 to her. Because Miss S was

suspicious of Isure and did not know what the sum of £465.95 related to she did not provide her bank details at that time.

18. In a letter dated 17 January 2018, Isure told Miss S that Viceroy Jones New Tech was aware of her request for payment, and that she would be told when the investment had been sold and the money had been put into the Trustees' bank account.
19. On 22 January 2018 Viceroy Jones New Tech wrote to Miss S. It said that it was subject to a winding up order to be heard in the High Court in October 2018, so any requests for selling trees were on hold until further notice.
20. We then accepted Miss S's complaint against Isure. Miss S later agreed with the suggestion of one of our Adjudicators that Mr and Mrs K, the Trustees, should be added as additional respondents to her complaint as they were ultimately responsible for the distribution of the Scheme's lump sum death benefits.
21. In its formal response dated 12 April 2018, Isure pointed out that Miss S had not supplied her bank account details as requested.
22. Miss S then provided us with more family information. She said that Miss N had been divorced and had no children; she had a surviving father and half-sister, but she was not in close contact with them.
23. In its letter of 6 August 2018, Isure told us that there was one additional Trustee, Miss T. However, a deed of amendment dated 10 April 2015 that Isure disclosed named six individual trustees. Isure also said that:

"The Trustees' response regarding the pay out of death benefits was a verbal agreement for us to stick with the beneficiary form as it was [Miss N's] wishes."
24. In a letter dated 16 October 2018, Isure said that:

"We have not heard from [Miss S] with a request of payment of the remaining £465.95 since the letter of 17 January 2018 which we enclose for your information. As we have not heard from [Miss S] we assume she was waiting for the full benefit to be transferred as per our letter 17 January mentioned above. If she wishes for us to transfer the remaining balance in the meantime she will need to write to us with this request for bank details or where to send a cheque and we will process the payment as soon as possible for her."
25. Viceroy Jones New Tech, Viceroy Jones Overseas and related companies were wound up by the High Court on 12 October 2018. See www.gov.uk/government/news/court-shuts-down-companies-behind-9m-truffle-scam.
26. On 25 October 2018, with Miss S's agreement, one of our Adjudicators wrote to Isure, providing details of Miss S's home address, and asked Isure to send her a cheque.

27. After the Adjudicator had contacted Mr and Mrs K, asking them to provide a formal response, he received a letter from Mr K dated 29 October 2018 which said:

“Sadly, we have to inform you that the entire pension set up by Isure was a scam and it would appear that all money transferred into these schemes has been stolen and shipped overseas. We have lost thousands ourselves...We reported it to Essex Police...”

Mr K attached a copy of a letter he had received from Action Fraud in 2017 after he reported the matter.

28. The Adjudicator asked Miss T for her response, but she did not reply.
29. The Adjudicator sent a payment reminder letter to Isure on 13 December 2018, but did not receive any reply.

Adjudicator’s Opinion

30. Miss S’s complaint was considered by one of our Adjudicators who concluded that further action was required by Isure. The Adjudicator’s findings are summarised below:-

- It had become clear during our investigation that the truffle tree investment by the Scheme, using the Viceroy Jones companies, was a scam, so there was no dispute that a problem had occurred. It seemed that Miss N’s investment in truffle trees had no value, although she did not live long enough to find out, and that Miss S had been disadvantaged as a result. It seemed likely that the money disappeared in 2015, the year before Miss N died.
- Under Rule 21 of the rules governing the Scheme (see Appendix), the Trustees were responsible for paying death benefits arising on the death of Scheme members and had a discretion whom to pay. This meant that no potential beneficiary had an absolute entitlement to benefit. Miss S was a potential beneficiary as an Eligible Recipient under category (iii) as “any person nominated”.
- Isure’s letter dated 6 August 2018 indicated that a decision had been made by the Trustees that Miss S should receive the lump sum death benefit, in other words that Miss N’s nomination form should be followed. It was then Isure’s role, as Scheme administrator, to carry out the Trustees’ decision. Isure was informed of Miss S’s postal address in October 2018 but failed to pay her. It also ignored the reminder letter sent on 13 December 2018. In the Adjudicator’s view those failures amounted to maladministration, for which Miss S should be compensated.

- The delays that had arisen since Miss N died in May 2016 and Isure's poor level of communication had, in the Adjudicator's view, caused Miss S significant distress and inconvenience for which she should also be compensated.
- It was therefore the Adjudicator's opinion that Miss S's complaint should be upheld against Isure, because it failed to pay her the lump sum death benefit that it had promised her, so it had caused Miss S both financial and non-financial injustice.
- In the circumstances of this case, the Adjudicator did not think it would be appropriate for the Pensions Ombudsman to make an award to Miss S against the Trustees as well as against Isure.
- To put matters right, the Adjudicator considered that within 28 days of the finalisation of this case Isure should pay Miss S:
 - the lump sum death benefit of £465.95, plus any interest that was applicable to the Trustees' account, together with any other amount that formed part of the lump sum death benefit payable under the Scheme in respect of Miss N, and
 - £500 for her significant distress and inconvenience.
 - In addition, if after receiving payment Miss S provided evidence to Isure that she had incurred any tax charges because of Isure's late payment of the lump sum death benefit, Isure should promptly reimburse her.

31. Miss S accepted the Adjudicator's Opinion, but the Trustees and Isure did not respond. The Adjudicator tried to contact Isure by telephone, but the telephone line appeared to be disconnected. Unfortunately, Isure's most recent letterhead did not provide an email address or an alternative telephone number.

32. The complaint was then passed to me to consider.

Ombudsman's decision

33. I agree with the Adjudicator's Opinion except that I consider the maladministration to be serious. Neither the Trustees nor Isure have objected to the Adjudicator's Opinion. As Miss S has already waited long enough, she should be compensated within 21 days.

34. Therefore, I uphold Miss S's complaint.

Directions

35. Within 21 days of the date of this Determination, Isure shall pay Miss S:

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- the lump sum death benefit of £465.95, plus any interest that is applicable to the Trustees' account, together with any other amount that forms part of the lump sum death benefit payable under the Scheme in respect of Miss N, and
- £1,000 for the serious distress and inconvenience which Miss S has suffered.

In addition, if after receiving payment Miss S provides evidence to Isure that she has incurred any tax charges because of Isure's late payment of the lump sum death benefit, Isure shall promptly reimburse her in full.

Anthony Arter

Pensions Ombudsman
20 February 2019

Appendix

Rule 1 Interpretation

“Eligible Recipient” in relation to a Member or Survivor means: (i) his Relatives; (ii) his Dependants (meaning, in the case of a Survivor, any individual who would be a Dependant if the Survivor were a Member); (iii) any person nominated for this purpose by him; (iv) any person entitled under his will to any interest in his estate; (v) his personal representatives (but not if any payment to them would then pass as bona vacantia); and (vi) (in relation to a Survivor) any Eligible Recipient of the member to whom the relevant arrangement relates.

Rule 21 Death Benefits

21.1 On the death of a Member or a Survivor, the Trustees shall apply the Member’s or Survivor’s Individual Fund for the benefit of such one or more of his Eligible Recipients, and in such proportions and at such time or times and in such one or more of the ways set out in Rule 21.2 as the Trustees in their absolute discretion may determine...