

Ombudsman's Determination

Applicant	Mr T
Scheme	Walrus Water Proofs Ltd Retirement and Death Benefit Scheme (the Scheme)
Respondents	Mr Bruce and Mrs Fiona Richmond (the Trustees)

Outcome

1. Mr T's complaint is upheld and to put matters right the Trustees should sign the necessary paperwork to allow Mr T to access his benefits, pay interest on any late payment of benefits and pay Mr T £500 to recognise his distress and inconvenience.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr T's complaint is that the Trustees are refusing to sign paperwork that will allow him access to his benefits from the Scheme.

Background information, including submissions from the parties

4. The Scheme commenced on 1 December 1988 and AEGON (the Scheme's administrator) has confirmed that scheme rules were never adopted, only a trust deed. However, the trust deed states that the Scheme be managed in accordance with the deed until such time as scheme rules are put into place. It also states that "no payment shall be made out of the assets of the Scheme otherwise than in accordance with this Deed or the Rules without the consent of the Associate Trustee." The deed confirms Mr and Mrs Richmond as the Trustees.
5. Mr T joined the Scheme on 1 August 1989 and left on 1 October 1996.
6. AEGON said it wrote to the Trustees in January and February 2012 and again in March 2014 about winding-up the Scheme (this was following the insolvency of the employer). The Trustees did not reply.
7. On 26 August 2015, Mr T's independent financial advisor (**IFA**) wrote to AEGON requesting details of the Scheme and the benefits payable to Mr T. AEGON replied on 7 September 2015 to confirm that the Scheme is an occupational arrangement

and therefore it would need authorisation from the Trustees to divulge any further information.

8. Mr T's IFA wrote to Mr Richmond on 14 March 2016. He asked Mr Richmond to sign a letter of authority allowing AEGON to release information in relation to Mr T's benefits. Mr Richmond replied on 18 March 2016, refusing to sign the document stating that he had been advised by his family not to.
9. Mr T turned 65 in 2017. His IFA wrote to Mr Richmond again on 6 January 2017, asking once more for the Trustees to sign a letter of authority allowing Mr T to obtain information regarding his benefits. He highlighted to Mr Richmond that he had a statutory obligation to do so. Mr Richmond replied (in a letter date stamped 17 January 2017) and refused to sign the document unless Mr T assigned half of the benefits to Mr Richmond's children. Mr Richmond claimed in the letter that Mr T was responsible for a bankruptcy petition against him.
10. Mr T raised his complaint with the Pensions Advisory Service (**TPAS**) who also contacted Mr Richmond in an effort to get him to sign the required documents. Mr Richmond continued to refuse and asked TPAS to pay any costs associated with the handling of the complaint. TPAS highlighted to Mr T his fiduciary duties as a trustee and that asking for money to be paid to any of his dependents is not in line with those duties. As a non-professional trustee, he was also unable to make any charges for the costs involved in handling the complaint.
11. As TPAS were unable to resolve the complaint, Mr T proceeded with an application to this office. As part of the investigation, the Adjudicator tried to contact Mr Richmond, first at the address provided by Mr T and then at an address obtained via Companies House. Post was returned, opened. Mr Richmond clearly received some correspondence, as he contacted the Adjudicator via her direct telephone number and email address.
12. Mr Richmond's response to the complaint, via an email on 14 June 2018 is:

"Got your wad of papers about mr c hunt I don't know of this name I know a mr d hunt he filed for bankruptcy against me

If it is him what do you want me to do im no pensions expert

Can i claim for payment for any work I have to do and expenses

The mr d hunt I know buys and sells car parts so he is in full time employ."
13. The Adjudicator replied on 15 June 2018, highlighting five possible options to Mr Richmond, these being:
 - The Trustees sign the necessary paperwork to allow Mr T to take his benefits, as this will resolve the complaint without the need for this office to take further action;

- To sign paperwork to allow AEGON to wind-up the Scheme, as this will also allow Mr T to take his benefits without further involvement from the Trustees;
 - To apply to TPR to have the Trustees removed as trustees;
 - To respond to the complaint and the Adjudicator would consider any additional points. However, the paperwork indicated to date that there had been maladministration and the Trustees would need to show that there was good cause for their conduct. Also, the Ombudsman may decide to award Mr T an amount to recognise his non-financial loss; and
 - If he chose not to respond, then the complaint would proceed to an Opinion and eventually a Determination. It would then become a public document and, should the directions not be followed, Mr T will then be able to have it enforced through the County Court.
14. The Adjudicator also noted that the Trustees have a duty to act in the best interests of the Scheme's members and that, as a non-professional trustee, Mr Richmond could not charge for any expenses related to his role as trustee.
15. Mr Richmond did not respond and the matter progressed to an Opinion.

Adjudicator's Opinion

16. Mr T's complaint was considered by one of our Adjudicators who concluded that further action was required by the Trustees. The Adjudicator's findings are summarised briefly below:-
- It was explained to the Trustees in correspondence with this office and TPAS that they have certain fiduciary duties that they must adhere to, including, but not limited to:
 - Acting in line with the trust deed and rules;
 - Acting prudently, responsibly and honestly;
 - Acting in the best interests of scheme beneficiaries; and
 - Acting impartially.
 - It was obvious from the paperwork that Mr Richmond's personal feelings towards Mr T are interfering with his ability to act as a trustee. Despite any past differences, the Trustees are legally obliged to ensure Mr T receives the correct benefits he is entitled to in accordance with the trust deed.
 - The Trustees cannot make any personal financial gains from the Scheme at the expense of members - they cannot ask that part of Mr T's benefits be reassigned to their family members as this goes against all pensions legislation, TPR and HMRC guidance and is gross maladministration.

- Mr Richmond claimed that he does not know what to do as he is not a pensions expert. Even if this is the case, he is still a trustee and guidance and assistance is available from TPR. Alternatively, he has always had the option of removing himself as trustee, if he felt he was not qualified to fulfil his legal obligations. He also could have considered winding-up the Scheme in 2012 or 2014 when asked by AEGON.
 - Overall, there is no valid reason why the Trustees should not sign the letter of authority, nor any reason they might give for refusing to sign any future paperwork allowing Mr T to take his benefits from the Scheme. Refusing to sign the paperwork is also maladministration.
 - The Adjudicator also felt that the Trustees' actions had caused Mr T significant distress and inconvenience, especially as he has been unable to obtain any information to allow him to plan for his retirement.
17. Mr Richmond responded to the Opinion to say that he had never refused to sign any paperwork, only that he had asked if he could get paid for signing (the copy letter he provided is undated and without an address). He said that he was still awaiting a response and "If you send me a form to sign I will sign it and send a invoice to Mr T."
18. As it seems that the Trustees do not accept the Adjudicator's Opinion, the complaint was passed to me to consider. The Trustees' comments do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by the Trustees for completeness.

Ombudsman's decision

19. I am satisfied that the Trustees have failed, despite repeated requests and reminders of their fiduciary duties, to administer the scheme in any meaningful way and that they continue to fail to respond to Mr T's requests for information about how he can access his benefits. I find that the Trustees' behaviour has been uncooperative for no relevant reason and this has caused Mr T significant distress and inconvenience.
20. Therefore, I uphold the complaint and make the directions below with the aim of remedying the injustice. As Mr T has passed his 65th birthday (and presumably the Scheme's normal retirement age), any benefits due to him are likely to be in arrears and should therefore attract interest to compensate him for late payment.
21. The directions that follow will, if necessary, be enforceable by Mr T in the County Court as if they were a County Court Order (section 151(5) of the Pensions Schemes Act 1993 and regulations thereunder).

Directions

22. To put the matter right, the Trustees will, within 21 days of the date of this Determination:

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- sign a letter of authority (plus any additional documents which may be required by AEGON) to allow Mr T to access his benefits;
- the Trustees shall calculate and pay interest on any overdue payments at the base rate for the time being as quoted by the reference banks; and
- pay Mr T £500 to recognise the significant distress and inconvenience caused.

Karen Johnston

Deputy Pensions Ombudsman
26 July 2018