

## Ombudsman's Determination

Applicant	Mr N on behalf of the Estate of Mrs N ( <b>the Estate</b> )
Scheme	The Barclays Bank UK Retirement Fund 1964 Pension Scheme ( <b>the Scheme</b> )
Respondents	Barclays Pension Fund Trustees ( <b>the Trustees</b> )

## Outcome

1. I do not uphold the Estate's complaint and no further action is required by the Trustees.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. The Estate has complained that the Trustees delayed in administering Mrs N's request for early access to her pension benefits on the grounds of ill health and providing her with the paperwork needed to apply for a Serious Ill Health Lump Sum pension (**SILS**).

## Background information, including submissions from the parties

### Background

4. On 21 September 2015, Mrs N wrote to the Scheme's administrators, Willis Towers Watson (**WTW**), to find out about her pension entitlement.
5. On 29 September 2015, WTW sent Mrs N a booklet relating to benefits payable on death and an expression of wish form.
6. On 18 November 2015, Mrs N called WTW to enquire further about ill health retirement and to tell WTW she had retired early on ill-health grounds.
7. On 25 November 2015, WTW sent Mrs N an ill health retirement pack which outlined the options available under the Scheme for claiming early payment of her retirement benefits - ill health retirement and commuted payment of benefits on grounds of serious ill health.

8. On 7 December 2015, Mrs N completed and signed her ill health retirement assessment form and her AXA ICAS Wellbeing form showing the status of her health at the time.
9. Mr N says that at the time of the application, although Mrs N had been unwell, he and Mrs N were of the opinion that Mrs N's treatment was stable. The forms were completed selecting the option for ill health early retirement.
10. WTW received Mrs N's completed ill health forms on 10 December 2015.
11. On 18 December 2015, WTW sent Mrs N's completed forms to the health and medical assessment provider; AXA PPP Healthcare (**AXA**).
12. On 22 December 2015, AXA confirmed that it had received the forms from WTW, and had passed the matter on to its internal AXA Clinician for review.
13. On 18 January 2016, AXA wrote to Mrs N's neurosurgeon to request a report on her condition in relation to her application for ill health early retirement. AXA also wrote to Mrs N explaining that this had been requested.
14. AXA says that between 25 January 2016 and 2 March 2016, it continuously chased Mrs N's specialist for his report on Mrs N, and the prognosis of her condition. AXA has said that some of its chasers were sent out on; 25 January 2016, 1 February 2016, 8 February 2016, 15 February 2016, 22 February 2016, 1 March 2016, and 2 March 2016.
15. Mrs N's neurosurgeon responded to AXA on 24 February 2016. The report was received by AXA on 7 March 2016.
16. On 10 March 2016, AXA's clinician called Mrs N's neurosurgeon for clarification as to whether Mrs N had already been informed of her prognosis, and if not, whether she wished to be informed, and if it would be harmful for her to find out about this.
17. On 22 and 23 March 2016, AXA wrote to WTW and Mrs N to provide them with a copy of the outcome of the medical assessment to avoid further delay. This letter referred to both Mrs N's diagnosis and prognosis.
18. On 29 March 2016, AXA received the letter of clarification from Mrs N's clinician that it had been chasing. This letter was dated 22 March 2016, and in it the clinician confirmed that Mrs N should not be informed of her prognosis.
19. The Trustees awarded an ill health early retirement pension to Mrs N on 8 April 2016.
20. The letter of approval for early access to Mrs N's pension was sent out on 13 April 2016. The letter included an option for SILS as well as an ill health early retirement pension which Mrs N initially applied for.
21. Mr N says that by mid-April 2016, Mrs N required round the clock care which was provided by him, the family and district nurses. Mr N has said that Mrs N's condition had deteriorated so much that she was unable to complete and return the forms sent

to her. Mr N also said, that by this point, he did not have the time to contact Barclays to discuss the situation.

22. Mrs N died on 25 April 2016.

### **The Estate's position**

23. Mrs N initially applied for an ill health early retirement pension as she felt she did not meet the requirements for SILS. The Scheme did not have processes in place to accommodate for a rapid decline in Mrs N's health when she later met the criteria for SILS.
24. The Trustees were responsible for delays with Mrs N's initial ill health early retirement pension application. These delays left Mrs N with little time to complete the SILS paperwork before her death once the SILS was offered by the Trustees.
25. The Trustees were at fault for the length of time taken to approve early access to Mrs N's pension.
26. When the quotation was received, it was not possible for Mrs N to return the paperwork nor did Mr N have time to contact Barclays to discuss the situation.
27. Mrs N made her initial decision based on her condition at that time.
28. There was no attempt by AXA or WTW to contact Mr or Mrs N. The Estate believes that this would have prompted them to take action. More communication from the Trustees would have resulted in the process being completed before Mrs N's death.

### **The Trustee's position**

29. In its IDRPs Stage one letter, dated 3 November 2016, the Trustees agreed that there were some general administrative failings that occurred on their part in reference to not responding to the questions asked by Mr N. Mr N was offered £100 from the Scheme as a gesture of goodwill.
30. Under point two of their IDRPs Stage two letter, dated 8 June 2017, the Trustees have said that it took longer to process Mrs N's application than they had initially outlined to Mrs N.
31. The Trustee also recognises that letters were incorrectly addressed to Mrs N instead of her family/The Estate. Mr N was offered an increased amount of £250 from the Scheme as a gesture of goodwill, which was declined.
32. The delays were due to Mrs N's neurosurgeon.
33. Because there was no acceptance of the offer made to Mrs N for SILS, the Trustees are unable to provide this.

34. There were no further communications received from Mrs N after she returned her initial application. No enquiries, and no updates to let them know about the worsening of her condition.
35. Despite Mrs N not actually applying for a SILS, the Trustee says that they took action after finding out that she was terminally ill to ensure that a SILS would be available to her as an alternative to IHER if she chose to take it. The Trustee says that they chose to do this and authorise both options without waiting for a decision to ensure that any option Mrs N chose was readily available. The Trustee says that this was done by 8 April 2016, ten working days after finding out about Mrs N's reduced life expectancy.
36. There was no failure to administer SILS, as Mrs N had not requested this option before she died.
37. Because the original medical review was not for serious ill health, they decided to ask permission from the treating specialist to share the information given to them.

### **Adjudicator's Opinion**

38. The Estate's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees. The Adjudicator's findings are summarised below:-
  - Mrs N was disadvantaged as a result of the number of delays. However, it is clear that the delays were caused by a number of factors including; the choices made by Mrs N and the responsiveness of Mrs N's clinician.
  - Documents confirmed that Mrs N did not want to know her prognosis. This affected WTW and AXA's handling of the matter.
  - The Trustees do not have any obligation to make a serious ill health pension payment to the Estate as Mrs N had never indicated that was an option she wanted. The Scheme chose to include the serious ill health retirement option in April 2016 once they learned of Mrs N's prognosis, despite her applying for a different option.
  - The paperwork required to process a serious ill health pension payment was never completed. Although Mr N feels that the non-payment of this lump sum has caused financial detriment there was no actual entitlement for this benefit to be paid without the paperwork required to action it.
  - The Trustees' decision not to make the SILS payment was correct, and in accordance with the rules of the Scheme.
  - Awards in recognition of distress and inconvenience can only be made directly to the person who suffered the injustice which in this case would have been Mrs N.

- The Ombudsman would not direct that a payment for distress and inconvenience be made to either; Mrs N's personal representatives or the beneficiaries of the Estate. The delays in question would have caused distress solely to Mrs N. It is no longer possible for the Trustee's to make a payment to Mrs N and so no other payments can be awarded in this regard.
- The Trustees have chosen, however, to offer the Estate £250 for the distress and inconvenience caused to it directly. It is open to the Estate to contact the Trustees if it wishes to accept this award.

39. The Estate did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. The Estate provided its further comments which 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 Estate for completeness.

### **Ombudsman's decision**

40. The Estate's complaint was that delays in providing Mrs N with the relevant paperwork prevented her receiving a serious ill health lump sum before her death.
41. It is the responsibility of the member to decide and apply for the retirement option that is applicable to its individual circumstance. It is not the role of the Trustees, or the Scheme administrator, to advise or guide an applicant about what option to take, or whether an option should be changed. They, should, however, ensure that the applicant has the necessary information and that it is clear what action they need to take. I am satisfied that it was done in this case and that the Trustees have taken the correct approach not to award a benefit that Mrs N did not apply for.
43. It was the Trustees', and on its behalf the Scheme administrator's, responsibility to ensure that Mrs N's application for ill health early retirement benefits followed the necessary process in accordance with the Scheme Rules
44. In its consideration of Mrs N's ill health early retirement application, the Trustees chose to rely solely on information from Mrs N's treating neurosurgeon in order to establish her eligibility. AXA requested the neurosurgeon's report on 18 January 2016, and the report was received on 7 March 2016, 36 working days from the time it was requested. In my opinion the Trustees, or WTW, cannot be held responsible for this delay.
45. Once the report was received AXA contacted the neurosurgeon twice to query Mrs N's knowledge of her prognosis. Whilst choosing to initially wait for the neurosurgeon's confirmation caused a delay in AXA passing this information to WTW, it was clearly an attempt to handle matters sensitively. As a consequence, the report was not sent to WTW until 22 March 2016. Following which the Trustee's progressed Mrs N's application and, on 13 April 2016, sent her a quotation for both an ill health early retirement pension and for SILS.

46. The Estate contends that there was insufficient communication or prompting from the Trustees to allow matters to be progressed in good time. It is clear that AXA were proactive in trying to obtain the necessary information and I do not see that either WTW or the Trustees could have done more to have obtained an earlier response from Mrs N's neurosurgeon.
47. The Trustees were in receipt of the necessary information to make a decision on or around 23 March 2016, and reached that decision on 8 April 2016. Until this point they remained unaware that Mrs N's condition was terminal and that her life expectancy was considered to be less than 12 months. In my view, the length of time between knowing the position and making the decision was not unreasonable.
48. In summary, the Trustees cannot be held responsible that the SILS paperwork was not provided at an earlier point. That happened, as a result of the options initially chosen. If the Trustees had continued with their obligation to process the application for an ill health early retirement pension the SILS paperwork may have never been provided to Mrs N as it was not the option she had applied for.
49. Despite the initial options chosen, when the Trustees became aware that Mrs N was terminally ill they decided to allow Mrs N access to either option. Sadly, by the time the quotations were received Mrs N's health had deteriorated to a point where she was unable to make a decision and return the paperwork and, as stated by Mr N, he did not have time to contact the Trustees to discuss the situation on his late wife's behalf. Again, the Trustees cannot be held responsible that a choice was never made or action taken.
50. I understand that this complaint is very sensitive and frustrating for the Estate, and I acknowledge its wanting to fulfil the choices it felt might have been taken by Mrs N if her true condition had been known earlier. However, the Trustees cannot be held accountable for the delays, or that there was no signed documentation from Mrs N, applying for or accepting the choice of SILS.
51. I do not uphold the Estate's complaint.

**Anthony Arter**

Pensions Ombudsman  
2 October 2018