

## Ombudsman's Determination

Applicant	Mr S
Scheme	Industry-Wide Coal Staff Superannuation Scheme ( <b>the Scheme</b> )
Respondent	The Trustee of the Industry-Wide Coal Staff Superannuation Scheme ( <b>the Trustee</b> )

## Outcome

1. I do not uphold Mr S' complaint and no further action is required by the Trustee.

## Complaint summary

2. Mr S has complained about a dispute over who owns the annuity policy (**the Policy**) purchased with assets held within the Scheme's Additional Voluntary Contribution (**AVC**) Arrangement.

## Background information, including submissions from the parties

3. Mr S was employed by Origin C&P Limited (**the Employer**) when he left the Scheme on 30 November 1995.
4. In 2000, the Employer announced a group re-organisation and, as a result, on 26 September 2000, the Employer was placed into voluntary liquidation. As a result of the liquidation, all the assets and liabilities, including AVCs, were transferred to a new Origin Section, Origin UK Ltd. The Trustee has said that, as this was an intra-scheme transfer, there was no need to notify members. The Trustee also said there was no impact on the benefits payable following the move to the new section.
5. In August 2007, Mr S retired from the Scheme. He used his AVCs to secure the Policy with the Prudential.
6. On 16 February 2010, Prudential wrote to the Trustee and explained that it had made changes to the Group AVC Policy that governs members' AVCs. It enclosed a copy of the replacement policy (**the Policy Rules**).
7. On 22 August 2016, in response to a separate complaint, the Trustee said that Mr S retired from the Scheme in August 2007 and, subsequently, used his AVCs to secure the Policy with Prudential. It said that the Policy was in his name and all benefits

became the responsibility of Prudential. As a result, the Trustee said that it did not consider that Mr S had a claim against it.

8. Sometime after that response was given, Mr S was told that the Policy was actually in the Trustee's name. Mr S raised a complaint about the conflicting information he had received.
9. On 12 July 2017, my office wrote to Mr S in relation to a complaint concerning how the Policy was calculated. My office did not accept the complaint for investigation because it had not been submitted within three years of when Mr S ought to have known of the reason to complain. This was a final decision and there were no rights of appeal with my office.
10. On 25 May 2018, the Trustee responded to a separate complaint regarding the name for whom the Policy was set up. The Trustee confirmed that it had spoken to Prudential who said:

“...that the annuity Prudential is paying you under the Scheme's AVC arrangement, is being paid under an annuity contract in the name of the IWCSSS Trustees [the Trustee].”
11. This letter also went on to respond to Mr S' comments that the annuity had been miscalculated and a request to surrender the Policy so he could be paid a cash value instead. The Trustee did not agree to surrender the Policy and confirmed that it would remain in payment until the end of the term. If the Trustee was to surrender the Policy and pay Mr S the cash value of the residual annuity, it would be classed as an unauthorised payment under the Finance Act 2004. The Trustee was not willing to do this as it could not justify meeting a tax charge in respect of one member from the assets of the Scheme which were intended to benefit all members.
12. On 2 June 2018, Mr S responded and said that the Trustee had breached its fiduciary duty when it misled him as to who owned the Policy. Mr S also said that he did not agree with how the Policy was set up and complained about data discrepancies.
13. On 16 August 2018, the Trustee issued its stage one response under its Internal Disputes Resolution Procedure (**IDRP**). The Trustee accepted that it had incorrectly said that the Policy was in Mr S' name when it was actually held in the name of the Trustee. The Trustee acknowledged that it had provided incorrect information but said this was not deliberate. Regardless, it said that the ownership of the Policy did not change his circumstances, so there was no financial loss. It also said that it attempted to explore the possibility of cashing in the annuity, as Mr S had requested, but this was not possible. It concluded that the ownership of the Policy did not have any relevance to whether or not he could cash in the annuity.
14. The response went on to cover several other complaints that had been raised by Mr S. None of these relate to the ownership of the Policy, so are not relevant to this complaint.

15. On 1 October 2018, the Trustee issued its stage two response under its IDR. It said that it had nothing further to add to its stage one response.
16. On 15 February 2019, my office wrote to Mr S to confirm that his complaint relating to the “ownership of the annuity [Policy]” had been accepted for investigation.
17. On 13 May 2019, the Scheme Secretary wrote to Mr S and explained how the annuity was managed by Prudential. This suggested that the annuity was in Mr S’ name, it said:

“For members who took out AVC arrangements with the Prudential the policy was in the Trustees name as the AVCs were made under Rule 11A of the Scheme. However, when the policies are used to purchase annuities the annuity is in the individual Scheme member’s name, as it is a personal choice for the member to make about the type of annuity they wish to purchase. The annuity payment is then made direct to the member from Prudential and not through the Scheme.”

18. On 4 July 2019, the Trustee wrote to my office and said that the Policy that Mr S was referring to was held with the Prudential in the name of the Trustee. It also said that there was one AVC policy held between Prudential and the Trustee. It said that Mr S’ Policy was being paid on behalf of the Trustee by Prudential. It attached a copy of the Policy Rules, which said:

“This Policy is issued in replacement of and substitution for Group AVC Policy No. CA AA44 dated 11 June 2003 (“the First Policy”) issued by us to the then trustees of the scheme to the intent that

- (A) The First Policy shall be cancelled, and
- (B) all premiums and benefits payable under the First Policy shall be treated as being or having been payable under this Policy.

This means that this Policy will be treated as having been in force since the start date shown on page 2 rather than the First Policy.”

19. The start date shown on page two was 30 December 1994.
20. Pages four and five of the Policy Rules provided some points that members should be aware of before reading further. On page five, it said:

“...liability under the Policy is to you as trustees of the scheme. Members have no right to make a claim against us [Prudential] directly, unless you and we agree otherwise in accordance with section 15.18. In the normal course of events, members will claim their benefits from you under the terms of the scheme, and you in turn will make a claim on us for payment of the benefits due under the Policy.”

21. Section 15.5 of the Policy (see Appendix) dealt with pensions bought under the Policy. It said:

“Any pensions bought from us [Prudential] in your name [the Trustee] are payable under the Policy: a separate pension policy will not be issued either to you [the Trustee] or to the person who is to receive the pension.”

22. On 5 July 2019, Mr S responded and said that the Policy Rules concerned AVCs and not annuities purchased with the AVC proceeds. He also commented that the Policy Rules were dated 10 February 2010, whereas his annuity was purchased in August 2007.
23. He went on to complain that his benefits were moved without notice or consent at some point in 2000. He said that “this breached Disclosure Regulations which pertained at the time.”
24. On 6 July 2019, Mr S added to his response. He said that he reviewed the Policy Rules and had issues with Rules 9.1 and 9.2 (see Appendix). He said that these required the Trustee to notify Prudential when his employer liquidated in 2000.
25. On 8 July 2019, Mr S added further comments, he said that Rule 15.17 (see Appendix) required Prudential to correct annuity errors. Mr S asked whether this could be added to his complaint.
26. On 18 July 2019, Mr S emailed my office and argued that the Policy Rules showed that, once an employer was liquidated, the Trustee had a duty to notify Prudential so that any AVCs became protected under winding-up priorities. His former employer was liquidated on 26 September 2000. He argues that because this was not done, his benefits would not have been protected.
27. Later that day, he sent a further email which showed details of when his former employer liquidated and when the AVC monies moved into the alternative employer fund. He said that he had suffered a financial loss due to his funds remaining in a particular fund between 2000 and 2004.
28. On 24 July 2019, Mr S emailed my office and further complained about how his AVCs were handled following the liquidation of his previous employer. He emailed my office again on 11 August 2019 and expanded on this complaint.
29. On 20 September 2019, Mr S emailed my office and complained that he should have been paid an early pension from age 50.
30. On 7 October 2019, Mr S complained that his benefits were incorrectly calculated as his GMP had not been equalised.
31. On 15 October 2019, Mr S wrote to my office and reiterated his complaint that the Policy Rules did not cover the start of the Scheme’s AVC arrangement. He said that the Policy Rules were dated 16 February 2010 as a replacement for the first policy that was issued on 11 June 2003. He said that this shows that there was no policy when his employer liquidated, so AVC terms were unclear.

32. On 20 October 2019, Mr S commented that his AVC value fell between 2001 and 2004. He asked for this to also be considered.
33. On 5 November 2019, the Trustee provided a response to Mr S' query about AVCs being transferred without notice or consultation. It said that there was no requirement to notify members because it was an intra-scheme transfer. It also said that Mr S has raised the issue of the liquidation of his employer in various complaints with the scheme and the Ombudsman. However, the liquidation had no impact on his benefits.
34. On 26 November 2019, Mr S made additional submissions. He said:-
  - The letter of 16 February 2010 was not communicated to members, nor were the original Policy Rules.
  - The Trustee cannot say that the liquidation did not have an impact on his benefits. All of his employer's discretionary powers were voided from the date of its liquidation. He said that a rule modification was required in order to ensure benefits remained broadly similar.
35. On 18 May 2020, the Trustee provided a response. It said:-
  - Mr S was initially given the incorrect information regarding whose name the annuity was in.
  - This information was corrected on 25 May 2018.
  - It is satisfied that Mr S is receiving the correct benefits and the fact that the Policy is held in the Trustee's name does not affect the matters he has raised, nor has he suffered any adverse impact as a result.

## **Adjudicator's Opinion**

36. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by The Trustee. The Adjudicator's findings are summarised below:-
  - Mr S has previously received a Determination regarding how his AVCs were invested, this can be viewed under reference N00497. This Determination addressed the fall in fund value between 2001 and 2004, so, although Mr S has raised this matter in his submissions, my office will not revisit this issue.
  - His complaint about the liquidation of his employer and the effect it had on early retirement was also addressed in the N00497 Determination.
  - The Adjudicator confirmed that Mr S' previous complaint concerning the calculation of his annuity benefits fell outside the statutory time limits.

- The complaint that was accepted for investigation relates solely to the ownership of the annuity and, despite requests from Mr S, the Adjudicator said that the parameters of the complaint would not be widened.
  - Mr S suggested that if the Policy was in his name, he would be able to surrender the Policy for a cash sum.
  - The Trustee has been able to supply a copy of the Policy Rules that govern member' AVCs. The Policy Rules came into force on 30 December 1994, so I am satisfied they are applicable to Mr S. On page five of the Policy Rules, paragraph 20, states that the liability under the Policy is to the Trustee and not individual members.
  - In addition, Section 15.5 clearly shows that any pension bought from Prudential is paid under the Policy and no separate pension policy will be issued to the person who is to receive the benefits.
  - The Adjudicator was of the view that the Policy Rules were clear in highlighting Prudential's liability was to the Trustee and not to members directly. As a result, he was satisfied that the Policy was held in the Trustee's name for the benefit of the Scheme members.
  - The Trustee has accepted that it incorrectly told Mr S that his annuity was in his own name. However, it said that it took steps to correct the misinformation. In addition, it said that the fact the annuity is held in the Trustee's name does not affect Mr S' circumstances, so it does not believe Mr S has suffered a financial loss.
  - In order to prove financial loss, Mr S needs to evidence that he would have acted differently had he been provided with the correct information from the outset. The Adjudicator said that from the available evidence, Mr S was first told that the Policy was in his name on 22 August 2016. By this point, the annuity was in payment; so, the Adjudicator said it was hard to see what Mr S would have done differently had he been provided with the correct information. The Adjudicator did not agree that Mr S had suffered a financial loss.
  - When Mr S was provided with the incorrect information, there was not any material impact on his circumstances. His annuity continued to be paid and it is not clear how his situation would have altered due to receiving the incorrect information. The Adjudicator said that it would have caused confusion but, he was not persuaded that it was so significant that there should be an award for non-financial loss.
37. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
38. Mr S provided several further comments which do not change the outcome. He said:-

- The calculations that were completed when he took out the Policy, in 2007, were incorrect, which meant that the benefits he had been paid were wrong.
- The Policy was impacted by a High Court ruling from 2012, which the Trustee has failed to correctly apply.
- He has requested evidence of his retirement calculation as performed by the Scheme Actuary (Aon), he said that this has not been provided. He said that I should consider this.
- That in a separate case I had Determined (PO-6951), the Applicant was successful in claiming financial loss that included loss of investment. He said that this showed the Adjudicator was incorrect to say that he had not suffered financial loss.
- He was told that his GMP would increase in accordance with the Retail Price Index (**RPI**), however this is no longer the case as increases are made in accordance with the Consumer Price Index (**CPI**).
- “Family benefit” contributions were taken from his salary automatically during his employment. He said that he should be entitled to a refund.

39. The Trustee responded to Mr S’ comments and said:-

- The Policy is held in the Trustee’s name rather than the Member’s. It acknowledged that Mr S was told otherwise in certain items of correspondence. However, it said that the issue has not restricted the Member’s options, and it did not affect whether he could surrender the Policy for a cash sum. So, there had been no financial loss.
- Since the Opinion was issued, Mr S has made no new points regarding the ownership of the Policy. His comments concerning, the 2007 calculation, the 2012 High Court ruling, the liquidation of his employer and the fact his GMP has been increased in accordance with CPI, do not relate to the ownership of the Policy. So, are not relevant to this complaint. In addition, some of these matters have been the subject of previous Determinations (N00497 and PO-13686).
- Mr S reached his state pension age of 65 in April 2020 and as such, payments from the Policy, which provided a “State Spreading Option”, have now ceased. The Member has received his full entitlement from the Policy and it hopes that the Ombudsman’s Determination will help draw a line under this issue.
- It has received a significant volume of correspondence from Mr S that covers and reiterates the same points in great detail. It said that it has a “duty to act in the best interests of Scheme members generally, and does not believe that it is a positive use of its time and resources to have to engage in repetitive correspondence with the Member”. It said that it would be helpful if I were able to confirm that I would be supportive of the Trustee if it were to refrain from further

correspondence with Mr S on matters that have already been comprehensively investigated and addressed.

40. I agree with the Adjudicator's Opinion and note the additional points raised by Mr S.

### **Ombudsman's decision**

41. The complaint that was accepted for investigation relates solely to the ownership of the Policy. Mr S has said that if the Policy was in his name, he would have been able to surrender the Policy for a cash sum.

42. I find that the Policy Rules clearly show that Prudential's liability for benefits, accumulated through AVCs, was to the Trustee and not to members directly. Section 15.5 of the Policy said:

"Any pensions bought from us [Prudential] in your name [the Trustee] are payable under the Policy: a separate pension policy will not be issued either to you [the Trustee] or to the person who is to receive the pension."

43. Furthermore, in the introduction to the Policy Rules, there is an additional explanation of the relationship between the member, Trustee and Prudential. On page five, it said:

"...liability under the Policy is to you as trustees of the scheme. Members have no right to make a claim against us [Prudential] directly, unless you and we agree otherwise in accordance with section 15.18. In the normal course of events, members will claim their benefits from you [the Trustee] under the terms of the scheme, and you in turn will make a claim on us for payment of the benefits due under the Policy."

44. The Trustee has accepted that it incorrectly told Mr S that his annuity was in his own name. However, I will only uphold a complaint if there has been maladministration that has caused a financial loss or significant distress and inconvenience.

45. In order to prove financial loss, Mr S would have to show that he would have acted differently had he been provided with the correct information from the outset. By the time he was incorrectly told that the Policy was in his name, his Policy (an annuity) had already been put into payment. So, he could not take a different financial approach consequently, I do not find any financial loss.

46. I only make an award for non-financial loss where I am satisfied that the maladministration has caused significant distress and inconvenience. In this case, while Mr S had been provided with incorrect information, there has not been any material impact on his circumstances as his annuity continued to be paid. I do not find that any inconvenience caused by the provision of misinformation was significant enough to justify an award.

47. Mr S has also argued that when he retired, his benefits were calculated incorrectly from the Policy. He said that a 2012 High Court ruling confirmed that the Trustee had



misinterpreted Rule 33 of the Scheme, so his benefits should have been recalculated. On 12 July 2017, my office wrote to Mr S and explained that we would not investigate these concerns as they were brought to us more than three years after he ought to have been aware of this.

48. Mr S has also said that I should consider whether the Trustee has failed to provide Aon's calculations from 2007. Again, this relates to the calculation of his benefits from 2007 and my office has already said that this falls outside of our time limits.
49. Another complaint Mr S made, after the Adjudicator had issued his opinion, was that his GMP had increased in accordance with the CPI, when he had been told that it would increase in accordance with the RPI. This complaint was not included during Mr S' application to this office and does not relate to the complaint that was accepted. Therefore, I have not investigated this matter.
50. The same applies to the complaint Mr S has made about "family benefit" contributions that were automatically taken from his salary during his employment. As this was not included in the original submission to this office, I have not investigated this complaint.
51. The Trustee has said that it has received a high volume of complaints and queries from Mr S. It has said that much of the correspondence is repetitive and it does not believe that it is a positive use of its resources to engage with Mr S on matters that have already been comprehensively investigated and addressed. This is the second Determination that has been issued to Mr S on complaints relating to the Scheme. Furthermore, on 12 July 2017, my office wrote to Mr S to confirm that another of his complaints fell outside of our time limits. Both of these responses, alongside the one I have issued today, are final responses and end my office's involvement in the relevant complaints. Should the Trustee receive any further complaints that duplicate issues already concluded, I would not expect the Trustee to revisit such complaints.
52. I do not uphold Mr S' complaint.

**Anthony Arter**

Pensions Ombudsman  
17 February 2021

## **Appendix**

### **9. WINDING UP OF SCHEME**

#### **9.1 Notification of winding-up**

You must notify us as soon as something happens which triggers a winding-up of the scheme, or as soon as a decision has been made to wind it up.

#### **9.2 Securing benefits (general)**

(a) Until the winding up has been completed, the scheme provisions remain in force and the Policy terms, as modified by section 8, continue to apply.

(b) The winding-up cannot be completed until the benefits (including rights to future benefits represented by members' accounts) of all members and other persons who are or may become entitled to benefits under the Policy have been paid or secured in accordance with the scheme provisions. You must notify us how any remaining members' accounts are to be dealt with and provide us with all the information we tell you we need to carry out your instructions.

(c) There are two alternative methods of dealing with members' accounts, as referred to in section 9.3 below. Different methods can apply in respect of different members. Alternatively, section 9.4 will apply.

## **15. GENERAL**

### **15.5 Pensions bought under the Policy**

Any pensions bought from us in your name are payable under the Policy: a separate pension policy will not be issued either to you or to the person who is to receive the pension. These pensions will remain payable under the Policy even if premiums have been terminated and all amounts and units credited to members' accounts have been debited or cancelled. This applies even if the scheme winds-up.

#### **15.17 Failure to comply with the Policy terms**

If you fail to comply with any of the Policy terms we can send you a notice telling you what must be done to remedy the breach or, if the breach cannot be put right in any reasonable manner, stating that fact. If the breach is not or cannot be put right as required within a reasonable timescale (usually 6 months), we can:

- (a) Refuse to accept any further premiums affected by the breach; and
- (b) Make appropriate and reasonable changes to the Policy terms as they apply to matters affected by the breach.

If the breach is sufficiently serious, we can refuse to accept any further premium from you, in which event sections 2.9 and 8 will apply.

You must note that the fact that we may accept premiums after a breach does not mean that we are giving up our rights under the Policy.