

Ombudsman's Determination

Applicant	Miss Y
Scheme	Phoenix Wealth Personal Pension Policy (the Policy)
Respondent	Phoenix Wealth (Phoenix)

Outcome

1. I do not uphold Miss Y's complaint and no further action is required by Phoenix.

Complaint summary

2. Miss Y has complained that Phoenix did not inform her that tax would be payable if she took benefits from her late father's pension, the Policy, more than two years after his death.

Background information, including submissions from the parties

3. On 10 May 2005, Miss Y's father (**Mr Y**), signed a transfer from, transferring approximately £94,000 to the Policy. As part of the transfer, he applied to take the maximum tax free cash from the Policy and take income drawdown with the remainder of the fund.
4. On the death benefits nomination section of the application, he listed the names of two daughters, Miss Y and a second individual (**Ms R**). Mr Y indicated his preference to award an equal share of any death benefits to Miss Y and Ms R.
5. Mr Y died on 3 April 2011 and Miss Y notified Phoenix of this on 7 April 2011. Mr Y did not leave a Will and died intestate.
6. On 15 April 2011, Phoenix wrote to Miss Y enclosing information on how to claim death benefits. Phoenix informed Miss Y that it had switched the Policy funds to a 'Money Market' fund to protect it from adverse stock market movement.
7. Phoenix wrote to Miss Y again on 19 May 2011 and 22 June 2011 asking her to return the necessary documents to process the death benefits claim.

8. On 5 August 2011, P Weston Wills & Probate Service (**PW**) wrote to Phoenix, enclosing the death certificate for Mr Y and asking that Phoenix send it the claim forms once PW was able to obtain grant of probate.
9. On 18 August 2011, Phoenix wrote to PW enclosing the information on how to claim death benefits. Phoenix chased PW for a response on 28 September 2011, 4 November 2011 and 8 December 2011.
10. On 24 January 2012, PW informed Phoenix that there was an issue with settling Mr Y's estate.
11. On 2 October 2012, Miss Y told Phoenix that she had applied for grant of probate. Phoenix wrote to Miss Y on 20 October 2012, 21 December 2012 and 23 January 2013, asking that she forward the grant of probate.
12. On 25 February 2013, Miss Y called Phoenix to explain that she was not in receipt of the grant of probate, and that this might take some months to obtain.
13. On 1 October 2013, Phoenix called Miss Y, who informed Phoenix that an individual (who we now know was Ms R) claiming to be a daughter of Mr Y had obtained the first grant of probate, but that this had been overturned by the courts. Miss Y told Phoenix that she did not know about Ms R and did not believe her to be a daughter of Mr Y. Miss Y told Phoenix that she was challenging the legitimacy of Ms R, including requesting a DNA test.
14. Phoenix wrote to Miss Y on 30 October 2013, 3 December 2013, 19 February 2014, 1 April 2014 and 25 April 2014, asking that Miss Y provide it with the grant of probate. Phoenix did not receive a response to these letters.
15. On 14 May 2014, Phoenix wrote directly to the probate registry to try and obtain a copy of the grant of probate.
16. On 2 May 2014, Miss Y called Phoenix to explain that there had been further complications and delays with the grant of probate but that she had reapplied for this and anticipated receipt within three months.
17. On 3 July 2014, Phoenix received a letter from HM Courts and Tribunals Service informing it that PW had been removed as executor of Mr Y's estate, and Miss Y had been appointed in substitution.
18. Phoenix's death benefits panel met in July 2014 to discuss the case and came to a preliminary decision to award the death benefits to Mr Y's estate, subject to allowing Ms R sufficient time to respond with relevant evidence of a legitimate claim to benefits.
19. Phoenix contacted PW in August 2014, to obtain the contact details of the second beneficiary. Several chaser letters were sent without response.

20. Phoenix called PW on 5 February 2015, who advised Phoenix that it was no longer involved with the estate, and advised that the case had become contentious and was subject to court action.
21. On the same date, Phoenix called Miss Y who confirmed that she was still awaiting paperwork. Phoenix asked for further information and Miss Y agreed to call back with this. Phoenix attempted to contact Miss Y on 6 February 2015 and 13 February 2015 without response.
22. On 27 October 2015, Miss Y contacted Phoenix to confirm she was in possession of the new grant of probate, which she then sent to Phoenix. On 11 November 2015, Phoenix wrote to Miss Y to explain that the grant of probate she had sent was in fact a copy of one it had received in June 2014. Phoenix explained that it was anticipating a new probate based on the court involvement relating to Ms R's claim.
23. As Phoenix had been unable to contact Ms R, it proceeded with its decision to pay the death benefits to Mr Y's estate. Phoenix wrote to Miss Y on 3 December 2015, to confirm this, and informed her that 45% tax would be deducted as the claim was over two years old. The letter confirmed the lump sum was £66,036.05 gross.
24. On 17 December 2015, Miss Y called Phoenix as she was unhappy about the decision to pay the taxable lump sum to the estate. Miss Y requested more details about the total fund value and tax breakdown.
25. On 15 July 2016, Miss Y wrote to Phoenix to explain she was not made aware of the two year tax timescale. On 21 July 2016, Miss Y wrote to Phoenix enclosing a letter from her Doctor to explain why she could not deal with her father's affairs within two years.
26. Based on Miss Y's complaint, Phoenix's death benefits panel decided to make further attempts to contact the second beneficiary.
27. On 30 September 2016, Phoenix wrote to Miss Y to explain that it was prepared to award 50% of the death benefits to her as a drawdown policy, instead of as a lump sum to the estate.
28. After performing a trace of birth registry records, Phoenix was able to locate details for Ms R, Mr Y's daughter, whose actual name differed slightly to the one provided by Mr Y on his nomination form.
29. On 10 October 2016, Phoenix wrote to Ms R who responded on 19 October 2016 with evidence to show she was Mr Y's daughter.
30. Based on this evidence, Phoenix decided to award the other 50% of the death benefits to Ms R, also as a drawdown policy.
31. In response to Miss Y's complaint, Phoenix acknowledged that it would have been helpful to have informed her of the two year window for tax purposes, but its opinion was that the court and probate issues would not have been resolved within the two

year timescale. As an apology for not telling her about the deadline, it offered £500 to Miss Y.

32. Unhappy with the outcome, Miss Y referred her complaint to The Pensions Ombudsman. Miss Y said that, had Phoenix informed her about the two year deadline, her lump sum benefit would not have been subject to a 45% tax charge.

Adjudicator's Opinion

33. Miss Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by Phoenix. The Adjudicator's findings are summarised below:-

- There were many complications outside of Miss Y's control that delayed the issuance of the grant of probate.
- Miss Y disputed the legitimacy of Ms R, which required further investigation and seems to be the main cause of the delays obtaining probate.
- The complications caused by the dispute over the second named beneficiary required reasonable investigation by Phoenix.
- Even if Phoenix had told Miss Y of the two year window, it is unlikely that the issues linked to her dispute over Ms R's claim, and the subsequent probate challenges in court, would have been resolved within this timeframe.
- The £500 award offered by Phoenix was a reasonable recognition of the distress and inconvenience Phoenix's omission may have caused.

34. Miss Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Miss Y provided her 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 Miss Y for completeness.

Summary of Miss Y's response

35. Miss Y considers PW's request for death benefit details to have been fraudulent, and that Phoenix should have queried the legitimacy of PW.
36. As it was Miss Y who had informed Phoenix of Mr Y's death, Phoenix should only have dealt with her.
37. If Phoenix had told her about the two year window straight away, Miss Y could have highlighted PW's fraud earlier.
38. Phoenix breached data protection laws by sending information to PW relating to herself and the late Mr Y.
39. Miss Y could not have told Phoenix that the new grant of probate could take 'months to obtain' because, at the time, she did not know how long it would take.

40. In February 2013, Miss Y told Phoenix that an individual had fraudulently applied for grant of probate (I will interpret this to mean Ms R). Had Miss Y known then that she only had two months left of the two year window, she would have contested the grant of probate much earlier.
41. Miss Y has said that she challenged the grant of probate in the High Court in September 2013, and a court date was set two weeks after her application. Miss Y has said this shows she 'was fully capable of dealing with the situation in a timely professional manner'.
42. The £500 award is an 'insult' as Miss Y's calculates her actual loss to be £54,000, based on a 40% tax charge applied to the total value of the death benefits if it were to be paid as a lump sum.
43. Miss Y considers that the situation was in fact within her control, as she was the executor of the late Mr Y's estate and she could have applied to the Royal Court of Justice at any time to have the original grant of probate overturned.
44. Miss Y considers it extremely likely that she could have had the 'fraudulent' claim overturned within the two year window.

Ombudsman's decision

45. Miss Y claims that PW contacted Phoenix fraudulently and that Phoenix breached data protection rules by sharing information with it. However, PW forwarded a certified copy of the death certificate when it first contacted Phoenix and I cannot see any justifiable reason for Phoenix to doubt PW's authenticity at that stage. The letter from HM Courts and Tribunals Service in 2014, further supports that PW was the legitimate executor of Mr Y's estate until Miss Y overturned this through the courts.
46. Miss Y has also accused Ms R of fraudulently claiming a portion of the death benefits. Once Phoenix was able to locate Ms R, she provided Phoenix with a copy of her birth certificate, which listed Mr Y as her father. Whilst I accept that Mr Y had used the wrong first name on his nomination form, he clearly indicated that he wished for both of his daughters to receive benefits upon his death.
47. I find that there is no basis to Miss Y's claim that PW and Ms R committed fraud in relation to Y's estate and death benefits. Phoenix did not breach data protection legislation by liaising with either of these parties. Phoenix was not obligated to liaise exclusively with Miss Y simply because she notified it of Mr Y's death.
48. With regard to the payment of death benefits. The nomination form is not a binding document, but an indication given by the member of the beneficiary(ies) they would like any benefits to be paid upon their death. Ultimately, it is the trustees (administrators) of the Policy who hold the discretion on how benefits are paid.
49. Mr Y seemingly made a mistake with Ms R's name on the nomination form. Ms R was born in 1981 and it appears that she took her mother's (not the mother of Miss Y) new

surname after her mother remarried in 1989. On his nomination form, Mr Y wrote Ms R's original surname, and erroneously wrote Miss Y's middle name as the first name for Ms R.

50. I note that the first grant of probate was issued to Ms R, with her correct name, on 14 October 2011. Miss Y successfully overturned this, and it was reissued in her name on 25 September 2013.
51. The error on Mr Y's nomination form no doubt caused delay in locating the contact information for Ms R. It is understandable that Phoenix was initially unaware that Ms R and the second beneficiary were the same person. Through obtaining birth records and performing a trace, Phoenix was eventually able to identify Ms R as the second nominated beneficiary and confirm she was Mr Y's daughter.
52. Miss Y challenged the eligibility of Ms R and the involvement of the original professional executor, which added a complication and delay to the process. Miss Y has said that obtaining the grant of probate earlier was within her control, so had Phoenix notified her of the two year 'tax' window, she would have made sure she secured grant of probate within this timeframe. However, after consideration of the timeline, I cannot agree that Phoenix's omission has been of material detriment to Miss Y.
53. Whilst Miss Y was not informed by Phoenix of the two year window, she had many opportunities to provide Phoenix with the necessary documents. Phoenix has shown that it was proactive in chasing Miss Y for the required information and that Miss Y regularly failed to respond.
54. It was not simply a matter of Miss Y deciding to obtain probate. There were many layers to this case, that Miss Y herself added to, creating a more complex situation that required legal counsel and court action. I find it unlikely that the matters could have been resolved by April 2013, two years after Mr Y died.
55. Phoenix made the decision to award 50% of the lump sum amount to Miss Y and 50% to Ms R. Phoenix has offered to pay this in the form of a drawdown policy for each daughter. I find that Phoenix has made a reasonable decision based on relevant evidence.
56. I note that Phoenix generously offered an award of £500 to Miss Y in recognition of the distress and inconvenience it may have caused when it did not tell her about the two year deadline. I do not agree that this alone caused her material detriment, given all of the particular issues that had to be addressed, so I make no award. It is for Phoenix to decide if it wishes to honour its offer.

57. I do not uphold Miss Y's complaint.

Anthony Arter

Pensions Ombudsman
19 September 2019