

Ombudsman's Determination

Applicant	Mrs T
Scheme	Merton Jones Lewsey & Jefferies Pension and Life Assurance Scheme (the Scheme)
Respondents	Phoenix Life

Outcome

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

Complaint summary

3. Mrs T's complaint is that Phoenix Life says that it does not have any pension benefits payable to her in respect of her membership of the Scheme.

Background information, including submissions from the parties

4. On 1 November 1981, Mrs T joined the Scheme as a non-contributory member.
5. On 23 December 1987, Mrs T left employment.
6. Mrs T's date of leaving the Scheme is in dispute. Mrs T argues that her date of leaving the Scheme was the same date she left employment. Phoenix Life does not agree and says it has evidence that Mrs T left the Scheme on 1 May 1986.
7. In 1991 the Scheme was wound up and buy-out policies were purchased via London Life (later Phoenix Life).
8. On 8 August 1999, Mrs T's sister wrote to the firm of lawyers representing the Trustee of the Scheme on her behalf, as she was also a member and had received correspondence regarding the wind-up.
9. On 25 August 1999, Edge Ellison (the law firm acting for the Trustees) wrote to London Life querying whether Mrs T was a beneficiary prior to the Scheme distributing its remaining surplus. Phoenix Life stated that Mrs T was not entitled to a benefit from the Scheme although it has not been able to provide a copy of that letter.

10. On 15 March 2017, Mrs T wrote to Phoenix Life with queries about her Scheme pension. Phoenix Life said she had left the Scheme with less than 5 years' service and was not entitled to a deferred pension. Mrs T refuted this and provided a copy of her P45 that she argued supported her entitlement to a Scheme pension.
11. On 20 November 2017, Mrs T also made a complaint to Phoenix Life contending that she was unhappy that it could not find further details of her membership of the Scheme.
12. On 16 January 2018, Phoenix replied and did not uphold her complaint. It maintained the view that Mrs T was not entitled to a pension from the Scheme based on the information it held.

Adjudicator's Opinion

13. Mrs T's complaint was considered by one of our Adjudicators who concluded that no further action was required by Phoenix Life. The Adjudicator's findings are summarised below:-
 - There is no dispute that Mrs T was a member of the Scheme. However, the Adjudicator acknowledged that the date Mrs T left the Scheme was contested. Mrs T argues that her P45 is clear proof that she should be entitled to a Scheme pension. However, in the Adjudicator's opinion, this document only proves that Mrs T was employed until 23 December 1987. The Adjudicator considered that as a P45 makes no reference to pensions, it cannot reasonably be relied upon as evidence of an entitlement. In the Adjudicator's opinion, Mrs T has not supplied proof that she is entitled to a pension from the Scheme.
 - Phoenix Life has submitted a handwritten note that relates to Mrs T's membership from the files it has for the Scheme. It indicates that Mrs T left the Scheme on 1 May 1986, with less than 5 years' service. Under the legislation in force at that time, namely the Social Security Act (1973), a member leaving with less than 5 years' service would not be entitled to a deferred benefit within the Scheme. In the absence of evidence to the contrary, the Adjudicator considered this to be the most likely outcome.
 - It is over 30 years since Mrs T left this employment and the Scheme's sponsoring employer is no longer trading. In the Adjudicator's view it is not unreasonable that Phoenix Life does not have more extensive records for Mrs T. The Scheme was not contracted-out of the State Earnings Related Pension Scheme (**SERPS**) and, in the Adjudicator's opinion, no other reliable method of discerning the correct position exists. On the balance of probabilities, and in view of the available evidence, the Adjudicator could not reasonably conclude that Mrs T has an entitlement to benefits under the Scheme.

14. Mrs T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs T 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 Mrs T for completeness.

Ombudsman's decision

15. Mrs T argues that joining the Scheme was made compulsory by her employer and that non-contributory members had no option to leave the Scheme. As she left employment on 23 December 1987, Mrs T argues that she had over 5 years' service and must be entitled to a pension. She has supplied a letter from her employer, dated 24 September 1981, to the effect that membership of the Scheme would be made compulsory by her employer from 1 November 1981. Mrs T further argues that the records Phoenix Life holds for her must relate to another employee.
16. Mrs T left employment many years ago, and I do not find that she has presented any definitive evidence of her entitlement to a pension from the Scheme. The correct position cannot be ascertained from another source, such as Her Majesty's Revenue and Customs (**HMRC**), as the Scheme was not contracted-out of SERPS. In the absence of other evidence, Phoenix Life could only conduct its investigation on Mrs T's membership using the information contained in the Scheme files.
17. Phoenix Life acknowledges that the records it holds are limited but says that it has enough information to be sure of its position. It has provided a copy of the handwritten note that it says is clear evidence that Mrs T left the Scheme with less than 5 years' service. The note quotes Mrs T's maiden name (correct at that time), her date of joining the Scheme, her member number, and that she is not entitled to a deferred benefit. Consequently, I find that the note may reasonably be relied upon to relate to Mrs T. I further find that, on the balance of probabilities, the note supports the conclusion that Mrs T is not entitled to a pension from the Scheme.
18. Phoenix Life says that the origin of the complaint transpired over 20 years ago and it was ultimately the duty of the Trustee to determine whether members were entitled to a benefit when the Scheme was wound up in 1991. Mrs T maintains that she does not consider that a thorough enough investigation was conducted by London Life in 1999, and it deprived her of the opportunity to prove she was entitled to a pension. Mrs T left employment in 1987 and the Scheme was wound up in 1991. However, she only began to query her entitlement in August 1999, just prior to the Scheme's surplus being distributed. A period of nearly 12 years elapsed between Mrs T leaving employment and the Scheme's surplus being distributed when she made no enquiries about her pension whatsoever. Whilst I appreciate that she would not have received regular communications from Phoenix Life, I find that it would have been reasonable for Mrs T to have investigated the correct position much earlier than she did.

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19. I do not uphold Mrs T's complaint.

Anthony Arter

Pensions Ombudsman

24 January 2019