

## Ombudsman's Determination

Applicant	Mr E on Behalf of the Estate of Ms P
Scheme	Sutton Consumer Products Ltd. Staff Pension Plan ( <b>the Plan</b> )
Respondent	Barnett Waddingham ( <b>BW</b> )

### Outcome

1. I agree that part, but not all, of this complaint should be upheld. To put matters right for the part that should be upheld, BW shall pay £500 to Mr E in recognition of the significant distress and inconvenience caused to him.

### Complaint Summary

2. Mr E complains that his late partner, Ms P, was not told prior to her death that if she died before drawing her Plan entitlement then it would be forfeited.

### Background information, including submissions from the parties

3. On 28 June 2017, Ms P telephoned the Plan Administrator, BW. BW's telephone notes of that call state that Ms P said she had cancer and her life expectancy was less than a year.
4. On 18 July 2017, BW sent Ms P an Expression of Wish form, a trivial commutation estimate of her entitlement and a retirement quote as at 11 July 2017 (**the Quote**). The Quote stated that:-

"I note that you have previously advised you may be eligible to take your pension on the grounds of serious ill health. Under the Rules of the Plan there is the option to take your benefits as a lump sum payment which would be unreduced. This would be subject to Trustee approval and would require medical evidence which would indicate a life expectancy of less than 12 months. Retiring on serious ill health will retain a spouse's pension payable in the Plan payable on death. There is also the option to transfer your benefits in the Plan to another recognised pension arrangement".

5. On 20 July 2017, Ms P telephoned BW. BW's telephone notes of that call state that:-
  - Ms P said that she was looking to take a lump sum from her Plan entitlement.

- BW said that there would be a five-year guarantee lump sum and spouse's pension, both payable at Trustee discretion, upon Ms P's death.
6. On 28 July 2017, Ms P telephoned BW about her entitlement. BW's telephone call notes state that Ms P queried if a trivial commutation lump sum would be payable to her family.
  7. Ms P died on 10 August 2017.
  8. On 23 August 2017, BW wrote to Mr E, Ms P's unmarried partner, acknowledging notification of her death and requesting a copy of the death certificate. The Trustee of the Plan (**the Trustee**) also requested that Mr E complete its family evidence form to establish if there was financial dependence between them.
  9. On 30 November 2017, after further correspondence, BW apologised to Mr E and said that, after reviewing the Plan Trust Deed and Rules, it determined that no further pension was payable after Ms P's death. BW said that in accordance with the Rules, no further entitlement was payable to the beneficiaries of deferred members of the Plan.
  10. On 13 December 2017, Mr E complained under the Plan's internal dispute resolution procedure (**IDRP**) and said that:-
    - BW had not told Ms P that no further entitlement would be payable if she died whilst a deferred member.
    - The Trustee was negligent in not informing Ms P of this.
    - Ms P called BW a week before her death and been misled to believe that there would be provision for her relatives.
    - Mr E also enclosed a copy of Ms P's completed expression of wish form. Which Mr E said Ms P had completed and signed but not returned it.
  11. On 14 February 2018, the Trustee met to discuss Mr E's complaint and its discussion is summarised below:-
    - Ms P never contributed to the Plan. No further entitlement was payable to her Estate or beneficiaries.
    - There was some confusion over entitlement for deferred members.
    - Further clarification was needed about any potential beneficiaries of Ms P. The Trustee considered extending the definition of spouse and dependent under the Rules.
  12. On 28 February 2018, BW wrote to Ms P's three children separately to establish if they cohabited or were financially dependent on her.
  13. The Trustee met again on 15 May 2018 and noted there were no entitlement claims from Ms P's children, and it decided not to exercise its discretion and alter the entitlement for beneficiaries of deferred members. The Trustee subsequently wrote to Mr E maintaining that no entitlement was payable upon Ms P's death and,

irrespective of this, common law partners also did not qualify as beneficiaries under the Plan Rules either.

## **Adjudicator's Opinion**

14. Mr E's complaint was considered by one of our Adjudicators who concluded that further action was required by BW. The Adjudicator's findings are summarised below:-

- Ms P informed BW that she was terminally ill and her health may have impacted on her ability to submit her retirement forms promptly. However, despite receiving the Quote 30 days before her death, Ms P did not complete or return retirement forms to BW. Consequently, Ms P's pension was not put into payment. The Adjudicator sympathised with the position in which Mr E finds himself. However, the Plan Trustee and BW must pay pensions in accordance with the Trust Deed and Rules. In these circumstances, the Rules state that no further entitlement is payable to the beneficiaries of deferred members who have not contributed to the Plan.
- In the Adjudicator's view, BW responded to Ms P's queries promptly and provided her with accurate information about her entitlement before her death. Having reviewed the notes of BW's telephone conversations with Ms P, and the other available evidence, the Adjudicator did not agree that BW misinformed Ms P about her Plan entitlement.
- BW could not reasonably have foreseen that Ms P would die before returning her retirement forms in the circumstances. It was not clear which retirement option Ms P intended to pursue before her death. Administrators are obliged to provide members with relevant information about their entitlement. However, the Adjudicator did not consider that BW had a duty of care to provide Ms P with financial advice about the options open to her. Having reviewed the papers, BW informed Ms P that she could apply for serious ill health retirement, request payment of her deferred pension or request payment of a trivial commutation lump sum.
- The Adjudicator had seen no evidence to suggest that Ms P enquired what would happen to her entitlement if she died whilst still a deferred member. In the circumstances, BW cannot be held responsible for Ms P not fully understanding the consequences of not returning her retirement forms before her death.
- BW caused Mr E significant distress and inconvenience by sending him a family evidence form to complete. No further entitlement would be payable from the Plan irrespective of Ms P's family circumstances or any information supplied by Mr E. Mr E should have been informed of the correct position much earlier. Learning that no further entitlement was payable at a much later date would only have exacerbated Mr E's existing distress after Ms P's death. BW should award Mr E

£500 in acknowledgement of the significant distress and inconvenience he has experienced.

15. BW accepted the Adjudicator's Opinion. However, Mr E did not, and the complaint was passed to me to consider. Mr E provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the main points made by Mr E for completeness.

### **Ombudsman's Decision**

16. In his comments, Mr E submitted a further piece of correspondence between BW and Ms P that he says is further evidence of BW's maladministration. The letter pre-dates the facts of this complaint and BW has not had the opportunity to respond to the allegations made. Consequently, I will not comment upon this letter further in this Determination.
17. Mr E maintains that BW misled Ms P about her entitlement in telephone calls with her in the weeks before her death. He argues that completing an expression of wish form was "meaningless" and irrelevant to the payment of her Plan entitlement. However, BW had also previously sent Ms P a retirement quote and a trivial commutation estimate, with the requisite forms, to request payment of her Plan entitlement. I completely understand Mr E's upset and frustration, however, unfortunately, Ms P did not complete and return her retirement forms and no further entitlement is payable from the Plan.
18. I agree with the Adjudicator's view that BW could not reasonably have foreseen that Ms P would not return completed retirement forms before her sudden death. In its capacity as the Plan Administrator, BW has a duty to provide members with relevant information about their entitlements. However, it cannot provide financial advice to members or guidance on every possible outcome. I appreciate that Mr E considers that Ms P was acting under the misapprehension that her Plan entitlement would be passed on to her relatives after her death. However, I have seen no evidence that Ms P queried the value of any entitlement payable in the event that she died as a deferred member.
19. I have considered BW's conduct and whether it was timely. I agree with the Adjudicator's view that Ms P's queries were answered in a timely and adequate fashion. I note that BW did not contest the award of £500 for non-financial injustice recommended by the Adjudicator. I agree that BW caused Mr E significant distress and inconvenience by sending him a family evidence when no further entitlement was payable and an award of £500 is appropriate in the circumstances.
20. I partly uphold Mr E's complaint.

PO-25656

## **Directions**

21. Within 14 days of the date of this Determination BW shall pay Mr E £500 in recognition of the significant distress and inconvenience that he has experienced.

**Anthony Arter**

Pensions Ombudsman  
28 January 2020