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Ombudsman's Determination

Applicant	Mr Chandrakumar Vithlani
Scheme	Scottish Widows personal pension, policy number 411986624 (the Policy)
Respondent	Scottish Widows plc (Scottish Widows)

Complaint summary

Mr Vithlani complains that Scottish Widows do not accept that he is the beneficial owner of the Policy.

Summary of the Ombudsman's determination and reasons

I find in Mr Vithlani's favour because the evidence is that he and the person to whom the policy relates are the same.

Detailed Determination

Material Facts

1. The central issue of this complaint is whether the Mr Vithlani who claims beneficial ownership of the Policy (and who has brought the matter to the Pensions Ombudsman Service) is the same Mr Vithlani to whom the relevant policy relates.
2. For the sake of clarity I refer to the Mr Vithlani who has brought this complaint as “the Complainant”.
3. The Complainant has been represented by solicitors. They say that the Complainant and his wife have little written English and that the Complainant has impaired vision.
4. The policy was originally with TSB. Scottish Widows have since taken over responsibility for it. It has a value of something over £4,000.
5. Scottish Widows have provided a copy of an application for membership of the TSB Personal Pension. It was completed on 17 January 1990. In the section headed “Personal details of member”, “Chandresh” is given as the first name and “Vithlani” as the surname. The first line of the given address is “3 Abington Avenue”. The date of birth is 25 June 1946 and the selected retirement date is 25 June 2011. The National Insurance number is given as “ZL128093E”. (“E” is not a valid suffix for a National Insurance number – only the letters A to D have ever been in use.)
6. The handwriting of the name and address on the application form is the same as the handwriting on an illustration form that the Complainant has produced (see paragraph 19). The National Insurance number is in a different hand.
7. The documents indicate that the application followed an introduction from TSB branch staff. The form appears to have been substantially completed by a TSB adviser.
8. Scottish Widows have also provided a copy of a statement dated 30 April 1990. It is addressed to “Mr C Vithlani” at the address given on the application form. The National Insurance number differs from that on the application form in that the last character is shown as “B”, not “E”.
9. Scottish Widows say that in 1990 they would not have required any proof of identity.
10. Contributions were paid to the Policy from April 1990 to 1 March 1995. The policy owner was not contracted-out of the State earnings related pension scheme, so the National Insurance number was not needed for that purpose (or any other).
11. Scottish Widows say that the address was changed on their records in 2008 to 29 Hartford Court. They say that such changes can be made over the phone, subject to security questions being answered.

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12. In late 2009, apparently in response to a request from the Complainant, Scottish Widows sent a retirement pack to Mr C Vithlani at the 29 Hartford Court address.
13. The Complainant returned the completed retirement forms. There is a signature which differs slightly from the signature on the application form, though it is similar. The form is dated 17 December 2009; the signature was slightly different from the one on the 1990 application form.
14. The Complainant enclosed a "Certificate of Birth" completed in the district of Mwanza in what is now Tanzania. It had been certified as a copy of the entry in the register on 27 February 1952. It recorded the birth of "Chandra Kumar" on 25 June 1946 to parents Jagjiwan Kanji and Jamnaben [née] Paptlal.
15. On 24 December 2009, Scottish Widows wrote to Mr C Vithlani at the 29 Hertford Court address. They asked for an original passport or driving licence and an original bank statement for the account to which the pension would be paid.
16. A further request for the same items was made by Scottish Widows on 21 January 2010. There was no reply and the application did not proceed.
17. On 10 May 2011, Scottish Widows sent a further retirement pack to the same address, again in response to a request.
18. Scottish Widows received the completed forms on 27 July 2011. They had been completed by the Complainant at, or with the support of, a local branch of Lloyds TSB (as it was then known). The handwriting is the same as the 2009 form. Also included in the papers was a second copy of the birth certificate referred to in paragraph 14.
19. Scottish Widows were not content that the Complainant and the policy holder were the same person. As a result of their requests for information, and during the course of the complaint, the following evidence has been provided by the Complainant:
 - A paper driving licence (dating from 1986) in the name of Chandresh Vithlani of 1 Abington Avenue, date of birth, 14 June 1946 with a signature similar to those on the application form and the retirement forms.
 - An NHS Medical Card issued on 12 September 1989 in the name of Chandrakumar Vithlani, of 3 Longueville Court, date of birth 25 June 1946.
 - A TSB personal pension plan illustration form for "Mr Vithani", age next birthday 44, completed in the same hand as the personal details section of the application form. (The figures are based on a contribution of £22.50 a month.)
 - A letter dated 28 February 1990 from TSB Pensions Ltd to Mr C Vithlani of 3 Abington Avenue, telling him of his right to change his mind about the policy.
 - A contribution certificate sent by TSB Pensions Ltd to Mr C Vithlani of 3 Abington Avenue showing a National Insurance number of ZL128093B and contributions of £22.50 a month.

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- A P60 for the year to 5 April 2001 for Chandresh Vithlani of 3 Longueville Court, National Insurance number WL042791A.
- A letter of 28 January 2003 from the Inland Revenue to Mr C Vithlani, National Insurance number WL041791A, sent to “The Candy Shop, 3 Abington Ave”. (The Complainant’s solicitors say there is an obvious transcription error in the National Insurance number, and I agree.)
- A P45 with a leaving date in 2005 in the name of Chandresh Vithlani of 29 Hertford Court, National Insurance number WL042791A.
- A letter from DWP dated 5 May 2010 to Chandresh Vithlani of 29 Hertford Court, National Insurance number WL042791A, about payment of Disability Living Allowance.
- A letter from Jobcentreplus of 19 March 2011 to Chandresh Vithlani of 29 Hertford Court, National Insurance number WL042791A about an increase in benefit.
- A letter from the Pension Service date 6 May 2011 to Chandresh Vithlani of 29 Hertford Court, National Insurance number WL042791A, about State pension entitlement to start on 25 June 2011.
- A letter from Jobcentreplus to Chandrakumar Vithlani of 29 Hertford Court, National Insurance number WL042791A, about the cessation of incapacity benefit on 24 June 2011.
- A letter from the Pension Service addressed to Chandresh Vithlani, National Insurance number WL042791A, at 29 Hertford Court about the commencement of State pension on 25 June 2011.
- A letter from DWP dated 7 July 2011 to Chandrakumar Vithlani of 29 Hertford Court, National Insurance number WL042791A, about payment of Disability Living Allowance.
- A letter from the Pension Service dated 17 March 2012 to Chandrakumar Vithlani of 29 Hertford Court, National Insurance number WL042791A, about increases in State pension.
- A letter from HM Revenue and Customs confirming his National Insurance number as WL042791A.
- A further letter from HM Revenue and Customs to Chandrakumar Vithlani at 29 Hertford Court saying that the full name they hold is Chandrakumar Vithlani and that they do not hold any previous National Insurance numbers.
- A passport in the name of Chandrakumar Jagjivan Vithlani, date of birth 25 June 1946, with a signature similar to those on the application form and retirement forms.

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- A letter from the Complainant's GP practice (but not on headed paper) stating that the Complainant is known as Chandra Kumar and ChandraKumar Vithlani.
- A later note from the Complainant's GP practice nurse (on headed paper) saying that "Mr Chandrakumar Jabjiva Vithlani and Mr Chandresh Vithlani is the same person using 2 different names."
- Statements from a TSB savings account in the name of Chandrakumar Vithlani of 29 Hertford Court covering part of 1990 and 1991, and then October 1994 to April 1996 showing direct debits of £25 a month to an unidentified destination.

Points made by the Complainant's solicitors

20. Chandresh is a shorter substitute for Chandrakumar, which can also be written "Chandra Kumar". (Chandresh means "god of the moon" whereas Chandrakumar means "son of the moon").
21. In the Complainant's culture ancestral names are passed on. The Complainant's full name is Chandrakumar Jagjivan Kanji Vithlani, where Jagjivan is his father's name, Kanji his grandfather's and Vithlani the surname.
22. Birth certificates were only prepared on request. The Complainant's father did not write, speak or understand English.
23. Variations in the Complainant's signature can be explained by his visual impairment.
24. The date of birth on the paper driving licence must be an error.
25. The National Insurance number on the Application Form and attributed to the owner of the policy is likely to be error by TSB. They are unable to find out about it from HMRC as it does not belong to the Complainant.

Points made by Scottish Widows

26. Scottish Widows' central concern (before they had seen some of the material listed above, in particular the letters from DWP, the Pension Service and Jobcentreplus) has been that there is nothing that links the Complainant to a Chandresh Vithlani with the National Insurance number and date of birth they have on record.
27. They point out that the birth certificate is dated some years after the birth and does not show the same name.
28. They do not have any other customer with the National Insurance number to which the policy relates.
29. The application form was signed after it was completed, so implying the National Insurance number was correct.

Conclusions

30. I find that the Complainant is the policyholder.
31. The various letters that the Complainant has provided make it clear that as far as DWP, the Pension Service and Jobcentreplus is concerned Chandresh and Chandrakumar Vithlani are the same person with the same date of birth and National Insurance number, living at the same address.
32. The bank statements are unhelpful, as the direct debits and the proposed contributions apparently do not tally. I have taken no account of them.
33. The fact that the birth certificate is dated later than the birth seems to me to be irrelevant, despite Scottish Widows' observations. In the UK, birth certificates are copies of register entries – and it seems the same was the case in Tanganyika (as it was at the time). More difficult perhaps would be the lack of any reference on the certificate to the surname "Vithlani". But it is not particularly surprising that there might be inconsistencies in the registration given the time and place, and differences in cultural approaches to naming.
34. The critical issue has been the National Insurance number. But there is no evidence that the number on the application form ever belonged to the policyholder. It is in a different hand to the other personal details and so is unlikely to have been on the form when it was signed. It was, as entered, not a National Insurance number at all. The final letter written on the form is clearly "E" and it seems simply to have been "corrected" to "B" perhaps because a computerised system rejected it, or because someone recognised that "E" was invalid.
35. The various addresses are consistent from time to time, with the apparent exception that some of the documentation gives an address of 3 Longueville Court, either side of the 1990 application form which gave 3 Abington Avenue. However, in 2003 the Inland Revenue also wrote to 3 Abington Avenue, which was (and still is) a shop. Internet searches show that Chandrakumar Vithlani and a Mrs Vithlani with the same first name as the Complainant's wife have applied for an alcohol sales licence for that shop held in Mrs Vithlani's name.
36. I do not find particular fault with Scottish Widows' initial rejection of the Complainant's application for benefits. The evidence was not clear – and indeed only became clear with the production of further documents to the Pensions Ombudsman Service. I have been a little surprised by the vehemence with which they defended their stance, however, particularly in their dealings with my staff.

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Direction

37. Scottish Widows are to treat Chandresh or Chandrakumar Vithlani of 29 Hereford Court, National Insurance number WL042791A, as the owner of the Policy.

Tony King

Pensions Ombudsman
11 March 2015