

## Ombudsman's Determination

Applicant	Mrs S
Scheme	John Dossor & Partners Executive Pension Plan ( <b>the Plan</b> )
Respondents	John Dossor and Partners Ltd ( <b>Dossor</b> ) Phoenix Life Limited ( <b>Phoenix Life</b> )

## Outcome

1. Mrs S's complaint against Dossor and Phoenix Life is partly upheld, but there is a part of the complaint I do not agree with. To put matters right for the part that is upheld:
  - a) Dossor, in their capacity as Trustees of the Plan (**the Trustees**), should within 14 days of receipt of completed payment instructions form from Mrs S, countersign it and return it to Phoenix Life so that they may arrange for the current retirement benefits available to Mrs S to be paid to her; and
  - b) the amount of debt which Mrs S owes Dossor may be deducted from her benefits before payment to Mrs S.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mrs S complains that:
  - a) Dossor wrongly refused to pay the retirement benefits available to her from the Plan when she applied in November 2012; and
  - b) Phoenix Life, the Administrators of the Plan, failed to send a retirement pack to the Trustees on a timely basis in 2013 for onward transmission to her.

## Background information, including submissions from the parties

4. Mrs S applied to Phoenix Life in November 2012 for payment of the retirement benefits available to her from the Plan. Phoenix Life replied in December 2012 that they would send details of her retirement options to the Trustees for onward transmission to her. They also supplied her with the current address for the Trustees so that she could contact them if she wished.

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5. Phoenix Life sent Mrs S updates in February and May 2013 to inform her that they were still dealing with her request.
6. Phoenix Life sent details of Mrs S's retirement options to the Trustees in June 2013 and notified her accordingly. They have attributed the delay in sending out this information to "a technical problem". The Trustees apparently did not forward this information to Mrs S.
7. Mrs S contacted Phoenix Life for an update and they informed her in August 2013 that they were still awaiting the return of a completed retirement options form from the Trustees in order to pay her benefits.
8. In May 2014, Phoenix Life send a new retirement pack to the Trustees and asked them to forward it to Mrs S. The covering letter enclosed with the pack said that:

"This letter contains important information to help the member turn their pension savings into a retirement income. It is important that you and the member read this letter and consider all the options...

The member should keep this letter and forms until they have reached a decision on their retirement options.

You should also complete and return the appropriate forms and any requested documents...

Once you have told us what the member wants to do, we will usually action the request within 10 working days from the date that we receive the fully completed appropriate forms..."

9. In September 2014, Phoenix Life provided the Trustees with another retirement pack for Mrs S. The Trustees said that they were not prepared to send it to Mrs S because she had not yet settled a longstanding financial debt to Dossor of £2,710 relating to a Scottish Provident demutualisation compensation payment which Dossor had paid directly to her in 2002 (further details may be found in paragraph 10) by mistake rather than into the Plan. Dossor subsequently also paid £2,710 into the Plan in order that it did not lose its insured scheme status which would have left Mrs S with a significant tax liability.
10. In their letter dated 6 June 2002, Dossor had notified Mrs S that she now owed them £2,710 and they would seek recovery of this amount either directly from her or from the proceeds of the Plan.
11. The proposal to offset the debt against benefits due from the Scheme was permitted in accordance with section 12.2 of the Plan's Trust Deed and Rules (**the Trust Deed**) which stated that:

"Relevant Debt" means some monetary obligation due to the Employer and arising out of a criminal, negligent or fraudulent act or omission"

The Entitlement or Right of the Person in Question to Pension under the Plan.. shall stand charged with the payment or series of payments in relation to the Relevant Debt....Where a Relevant Debt is owed, the Entitlement or Right of the Person in Question to Pension...shall if the Employer so decides, be forfeited but only to the extent of the [Relevant Debt]...

Where such forfeiture occurs, the Employer shall have the discretion...if it so decides pay an amount not exceeding the amount forfeited to the Employer. Such forfeiture shall be in satisfaction or, as the case may be, part satisfaction of the Relevant Debt. Where such forfeiture is effected, the Person in Question must be given a certificate showing the amount forfeited and the effect of the forfeiture on his benefits.”

12. By 2004 this debt issue had still not yet been resolved. Phoenix Life encountered problems assigning the benefits available to Mrs S from the Plan to her during 2004 because the Trustees would not countersign a Deed of Amendment for her as a consequence of the ongoing dispute.
13. Dossor sent letters to Mrs S in May 2005 and November 2006 to remind her of the outstanding debt and to explore ways that she could repay it. Mrs S says that she did not receive these letters and was consequently unable respond to them.

#### **The Trustees' position**

14. There is no justification whatsoever for Mrs S to benefit from a double payment of £2,710 and enrich herself improperly at Dossor's expense.
15. They will sign the forms only after Mrs S has given her “cast iron assurance” that she will repay her debt to Dossor.
16. They are prepared to forgo the interest and costs accrued over the years which would have doubled the amount of her debt.
17. They are not willing to offer Mrs S a modest goodwill compensation payment for the distress and inconvenience which she says she has suffered in dealing with this matter.

#### **Phoenix Life's position**

18. They are not in a position to pay the retirement benefits to Mrs S because the Trustees have not yet signed and returned a completed retirement options form to them.
19. They accept that they had unreasonably delayed sending out a retirement pack for Mrs S to the Trustees in June 2013 and have offered her as a gesture of goodwill £100 compensation in recognition of this which she has accepted.
20. According to the Trust Deed, it is possible to reclaim the debt from Mrs S's retirement benefits without obtaining her consent but it was up to the Trustees to choose the

basis upon which they wish to seek repayment of the demutualisation compensation amount.

**Mrs S's position**

21. She had never refused the Trustees permission to recover the £2,710 from the retirement benefits available to her from the Plan and is willing to pay this amount to Dossor as soon as she is in receipt of her benefits.

**Adjudicator's Opinion**

22. Mrs S's complaint was considered by one of our Adjudicators who concluded that further action was required by Dossor and Phoenix Life but Mrs S had some responsibility for the delay in accessing her benefits and should repay the money which had been paid into the scheme on her behalf.
23. Mrs S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

**Ombudsman's decision**

24. Regulations made by Parliament impose time limits on complaints which may be investigated by the Pensions Ombudsman. Regulation 5 of *The Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996* (SI 1996 No.2475) states:

“5.—(1) Subject to paragraphs (2) and (3) below, the Pensions Ombudsman shall not investigate a complaint or dispute if the act or omission which is the subject thereof occurred more than 3 years before the date on which the complaint or dispute was received by him in writing.

(2) Where, at the date of its occurrence, the person by or in respect of whom the complaint is made or the dispute is referred was, in the opinion of the Pensions Ombudsman, unaware of the act or omission referred to in paragraph (1) above, the period of 3 years shall begin on the earliest date on which that person knew or ought reasonably to have known of its occurrence.

(3) Where, in the opinion of the Pensions Ombudsman, it was reasonable for a complaint not to be made or a dispute not to be referred before the end of the period allowed under paragraphs (1) and (2) above, the Pensions Ombudsman may investigate and determine that complaint or dispute if it is received by him in writing within such further period as he considers reasonable.”

25. This dispute stretches back to 2002. In 2013 Mrs S raised a complaint that she should have been paid her pension as early as 2001. She was aware of her right to ask for assignment of the policy and Dossor's refusal in 2004, but she made no

complaint then. Similarly, Dossor knew Mrs S's position in response to their claim for repayment back in 2002 and did nothing to resolve their claim at that point.

26. In accordance with the above Regulations, it is clear that these events fall outside of my jurisdiction on time grounds and cannot therefore be investigated by me. It had been open to Mrs S to complain about these matters nearer the time they occurred but she did not take the opportunity and they are now time barred. Although references to the events which took place in 2002 have been made in my determination, I shall therefore not be making any findings about these events that took place a long time ago.
27. My investigation of Mrs S's complaint is restricted to why the Trustees failed to facilitate the release of her retirement benefits when Phoenix Life sent out a benefit pack in 2013.
28. There was in my view no justifiable reason for the Trustees to refuse to send on the retirement benefit packs issued by Phoenix. The Trustees had taken on the responsibility for administering the Plan in accordance with the Trust Deed. One of their main duties is to pay out the right benefits at the right time to Mrs S. The Trustees' refusal to deal with Mrs S's retirement benefit properly in 2013 is clearly maladministration on their part.
29. Even if Dossor had the right to offset the debt owed to them against Mrs S's scheme benefits (and I make no finding on that point), they had the right to forfeit her benefits only to the extent of the relevant debt and subject to compliance with the relevant formalities. They did not have a right to withhold her benefits entirely and certainly did not have any reason to refuse to administer the scheme at all. Mrs S certainly should not have had to make a complaint before the Trustees would allow her to claim her benefit.
30. Dossor have indicated that they are not seeking interest on the amount owed to them. Mrs S has indicated that she is in principle prepared to repay it out of the proceeds of her pension. The sticking point has proved to be the need for formality because neither party has trust in the other to do the right thing. Mrs S would also like compensation for the distress and inconvenience incurred in gaining access to her money. I consider that she has suffered significant distress and inconvenience as a result of the Trustee's refusal to administer her benefit application since 2013. Ordinarily I would make an award of compensation. However in this case I am satisfied that Mrs S has for many years had the benefit of money paid to her by mistake in 2002 and is not being asked to pay any interest on it. Therefore she has effectively had the compensation I would otherwise award.
31. Therefore I uphold Mrs S's complaint against the Trustees and make an appropriate direction below.
32. Phoenix Life has accepted that the delay on their part in issuing the retirement pack in June 2013 was maladministration and sent Mrs S a compensation cheque for £100

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as a gesture of goodwill which she has accepted. In my view, the amount offered was fair so no further action on my part is required against Phoenix Life.

**Directions**

33. Within 14 days of receipt of completed payment instructions form from Mrs S, the Trustees should countersign it and return it to Phoenix Life so that they may arrange for the current retirement benefits available to Mrs S to be paid to her.
34. Dossor may deduct £2,710 from her benefits before payment to Mrs S.

**Karen Johnston**

Deputy Pensions Ombudsman  
31 January 2017