

Ombudsman's Determination

Applicant	Mrs D
Scheme	PLB Ross Electrical Contracting Company Ltd Pension Scheme (the Scheme) Policy Nos: 002229201& 002225971
Respondent	Mr P L B Ross (the Trustee)

Outcome

1. Mrs D's complaint is upheld and to put matters right, the Trustee should complete and return the relevant payment instructions form to Abbey Life (the administrators of the Scheme), pay Mrs D a lump sum amounting to the backdated payments that should have been paid from her Normal Retirement Date (**NRD**) and a further £500 for the distress and inconvenience caused to her.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs D complains that the Trustee, Mrs D's ex-husband, wrongly refused to sign a transfer form (**the Form**) in respect of Scheme policy numbers 002229201 and 002225971, so that she could transfer the benefits available to her from the Scheme at her NRD in December 2014, to another pension provider.

Background information, including submissions from the parties

4. Mrs D was employed by PLB Ross Electrical Contracting Company Ltd (**the Company**), a firm owned by Mr Ross. Mrs D was a former director of the Company and a member of the Scheme. She has an executive pension plan with Abbey Life through the Scheme.
5. Mrs D wished to take the benefits available to her in the Scheme on her NRD, 10 December 2014, i.e. her 60th birthday.
6. Abbey Life sent the Form to Mr Ross in December 2014, for completion and return. Mr Ross refused to sign the Form because he contends that:
 - a) the Company had paid £600,000 in pension contributions of which only £398,572.14 reached the Scheme because Mrs D had fraudulently diverted

£201,427.86 away for her own personal use by forging the signatures on cheques;

- b) Mrs D is therefore liable to repay the Scheme the amount which she “siphoned off” from it plus any investment growth assuming that the contributions had been invested properly; and
- c) Mrs D has refused to pay back the money which she stole from the Scheme.

7. Mrs D says that:

- a) she deferred making her transfer request to Abbey Life until NRD in order to avoid hefty charges payable to Abbey Life for a transfer made prior to this date;
- b) she was entitled to a higher “certificated tax free cash” and only had until 5 April 2015, to transfer her pension rights in the Scheme to another pension provider in order “safeguard the tax free cash” and consider income drawdown of her benefits;
- c) since the deadline has now passed, she will now have to purchase an annuity with Abbey Life and believes that she will be financially worse off having lost the opportunity to transfer at NRD;
- d) as at 26 February 2015, the combined fund value for her two policies in the Scheme was £206,380;
- e) as at 26 February 2016, this figure had decreased to £205,397, i.e. £983 less;
- f) the current annuity available to her from Abbey Life from the two policies is £9,584.63 pa;
- g) she has missed out on this income for a year which might have been even higher if purchased on the open market;
- h) she had a third policy associated with the Scheme, policy number 002224502 which effectively lapsed when its value was eroded to zero by charges;
- i) Abbey Life informed her that the contributions paid into each policy by the Company for her were as follows:
 - Policy No. 002229201 - £28,000
 - Policy No. 002224502 - £2,000
 - Policy No. 002225971 - £162,400;
- j) she cannot confirm these figures due to the length of time which has elapsed but accepts their accuracy;

- k) according to Abbey Life's records, a fourth policy number 002223641 was set up for her on 11 August 1986, and cancelled on the same day;
- l) these records also show that:
- Policy No. 002224502 also commenced on 11 August 1986;
 - Policy No. 002229201 commenced on 24 August 1987, and was made paid up on 24 August 1988;
 - Policy 002225971 commenced on 19 February 1987, and lapsed on 19 February 1990.
8. Mrs D says that the complaint made by Mr Ross against her was dealt with previously during their divorce proceedings, and also an earlier complaint to the Pensions Ombudsman against Mr Ross, concerning his refusal to provide her IFA with a letter of authority so that she could obtain details of her Scheme benefits from Abbey Life. Her previous complaint (reference number 75669/2) was upheld by the Pensions Ombudsman on 21 December 2009.
9. Mrs D refutes all the allegations made by Mr Ross against her which she considers have no bearing on her complaint against him. She is convinced that Mr Ross is employing stalling tactics in order to prevent her from accessing the benefits available to her from the Scheme.
10. In order to put matters right, Mrs D says that she would like to be given an opportunity to transfer her pension rights in the Scheme into an income drawdown plan (with another pension provider) instead of purchasing an "inflexible" annuity on retirement.
11. Mr Ross has commenced court proceedings against Mrs D in order to recover the amount he contends she owes to the Scheme and also to claim damages from her.
12. Mr Ross says that he disagrees with the contribution history provided by Abbey Life in relation to Mrs D's Scheme. Mr Ross has not provided any reasons why he disagrees with the contribution history.

Adjudicator's Opinion

13. Mrs D's complaint was considered by one of our Adjudicators who concluded that further action was required by the Trustee. The Adjudicator's findings are summarised briefly below:
- as a trustee of the Scheme, the Trustee took on the responsibility for administering the Scheme in accordance with the Scheme Rules and also owed a duty of care to each and every beneficiary of the Scheme including Mrs D;
 - one of the Trustee's main duties is to pay out the correct benefits at the right time to Mrs D; and

- the Trustee's refusal to sign the Form so that Mrs D could transfer her pension rights in the Scheme shortly after her NRD clearly represented a breach of trust and an act of maladministration

14. The Trustee did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. The Trustee provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by the Trustee for completeness.

Ombudsman's decision

15. The Trustee is refusing to sign the Form because he alleges that Mrs D had fraudulently diverted £201,427.86 in pension contributions away from the Scheme for her own personal use over many years and is now refusing to pay it back.
16. Mrs D accepts that the contribution history provided by Abbey Life for her policies associated with the Scheme is correct. Mr Ross disagrees with Abbey Life's records, but he has not provided any evidence or explanation why the amount available from the two policies might be incorrect, aside from saying that Mrs D has fraudulently diverted £201,427.86 in pension contributions away from the Scheme. In my opinion, it is unlikely that Mrs D would try to divert monies from her own pension policies so presumably the Trustee is alleging she has diverted monies to which he is entitled. But that argument is not relevant to Mrs D's complaint which is that she has been denied access to her own retirement benefits.
17. Given that Mrs D is satisfied that the contributions made on her behalf are correct and there is no evidence to suggest that she may be wrong it is my opinion that her complaint should be upheld. The Trustee is obliged to pay the correct benefits in accordance with the Scheme rules. There is no valid reason why the Trustee should not have signed the Form in a timely manner. In addition, it is my view that the Trustee's actions have caused Mrs D significant distress and inconvenience for which she should also be compensated.
18. Therefore, I uphold Mrs D's complaint.

Directions

19. The Trustee will, within 28 days of the date of this Determination;
- complete and return the relevant payment instructions form to Abbey Life and instruct Abbey Life (or a different pension provider, if appropriate and agreed by Mrs D) to pay the benefits at the level that would have applied if they had come into payment as at the date of Mrs D's NRD;
 - pay any additional monies required by Abbey Life (or a different pension provider, if appropriate) in order to provide these benefits to Mrs D;

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- pay Mrs D a lump sum in respect of the backdated pension instalments; the lump sum due on retirement with interest. Interest, is to be calculated from Mrs D's NRD to the date payment is made, at the base rate for the time being quoted by the reference banks;
- pay Mrs D £500 for the significant non-financial injustice she has suffered.

Anthony Arter

Pensions Ombudsman
22 July 2016