

Ombudsman's Determination

Applicant	Mrs H
Scheme	Geistlich Sons Limited Pension Scheme (the Scheme)
Respondents	The Trustees of the Geistlich Sons Limited Pension Scheme (the Trustees)

Outcome

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

Complaint summary

3. Mrs H has complained that the Trustees have stopped a widow's pension she was receiving in respect of her late husband's membership of the Scheme. On the basis that the pension would continue for the rest of her life she made a life changing decision to return to the Philippines. The loss of the pension has put her in financial difficulties and there are no support systems in the Philippines. Mrs H wishes the pension to be reinstated or compensation paid.

Background information, including submissions from the parties

4. Mr H was a member of the Scheme and retired in January 1982 with a pension paid by Axa. Mr H wrote to the Trustees on 1 January 2005 to say that the wife to whom he was married at the time that he retired had died. He had remarried and asked if a widow's pension would be payable to his new wife in the event of his death. The letter was passed to the Scheme's advisers who corresponded with Axa and Mr H directly.
5. On 5 April 2005 Axa told the advisers that Mr H had two policies and that in the event of his death there would be a widow's pension of £627.60 payable under policy 213674/2 and a further pension of £282.36 payable under policy 2182758.
6. The advisers queried the information provided by Axa and asked if the widow's pensions quoted were payable to a specific beneficiary or any widow. Axa replied on 4 May 2005 and said that contrary to their previous letter, policy 2182758 did not contain a widow's pension. Axa did however say that "under policy 213674/2 there is a widow's pension of £627.80 which will be paid upon Mr [H's] death."

7. On 6 May 2005 the advisers wrote to Mr H and said:

“... I have now identified that one of your annuity contracts does contain a widow’s pension, however in the event of your death, this widow’s pension which was established has to be payable to a named wife and not the person to whom you were married at the date of death.

...

Accordingly I have to advise you that in the event of your death, there would not be a widow’s pension payable in respect of your current wife.”

8. Mr H died on 24 December 2010 and Mrs H’s representative contacted Axa to inform them of his death. Axa wrote to Mrs H on 3 March 2011 and said:

“Policy number 2132674/2 provides for a pension of £627.60 per annum payable monthly to the widow with the first payment falling due on 1 January 2011.”

9. Mr Webb was appointed as Mrs H’s attorney on 8 March 2011.
10. On 11 December 2014 the Trustees wrote to Mr Webb to inform him that the widow’s pension that had been paid to Mrs H for the last three years had been paid in error. The rules of the Scheme only allowed for a widow’s pension to be paid to the wife he was married to at the time of his retirement. As Mr H had remarried after his retirement the Trustees would stop paying the widow’s pension from April 2015. The Trustees had also decided not to reclaim any of the pension payments that Mrs H had received.
11. Mr Webb, acting on Mrs H’s behalf, contacted the Trustees and explained that Mrs H had moved to the Philippines and the loss of the pension would cause her financial difficulty. The Trustees considered Mr Webb’s submissions and said that they believed they had acted reasonably. Also the Trustees were of the opinion that Mrs H should reasonably have known that a widow’s pension was not payable as this had been communicated to her late husband in 2005.
12. Mr Webb disagreed with the Trustees’ conclusion and brought a complaint to this office. Mr Webb says that Axa’s letter of 4 May 2005 confirmed that policy 213674/2 contained a widow’s pension of £627.80 payable on Mr H’s death. The advisers seemingly sought to misread or add to the information and, in his view, incorrectly wrote to Mr H accordingly. Further confirmation of the widow’s pension was sent to Mrs H by Axa following her husband’s death and it was on this information that she made her decision to retire to the Philippines knowing that she would be financially secure for the rest of her life.

Adjudicator's Opinion

13. Mrs H's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees. The Adjudicator's findings are summarised briefly below:

- The Trustees have agreed that Axa, acting on its behalf, issued incorrect information to Mrs H and paid a widow's pension to her for three years.
- Mr Webb has disputed whether the widow's pension paid to Mrs H was incorrect and refers to the letter issued by Axa on 4 May 2005. This letter was issued to the Trustees' advisers and Mr Webb received this as a result of his correspondence with the Trustees. It would seem, on the balance of probabilities, that the advisers were, on receipt of that letter, concerned that the information was incorrect. The advisers therefore contacted Axa by phone and confirmed that the widow's pension was only payable to the wife to whom Mr H was married at the time of his retirement. The letter is annotated with the name of Mr H's first wife. Having received confirmation from Axa, the advisers wrote to Mr H on 6 May 2005 and clearly stated that "there would not be a widow's pension payable in respect of your current wife."
- Therefore, the information provided by Axa in its letter of 4 May 2005 was incorrect and Mrs H is not entitled to receive a widow's pension. The Trustees are entitled to claim an overpayment of pension but in this instance they have agreed not to seek any such recovery. Furthermore they agreed to continue the pension for a further three months.
- As Mr H had raised the question of a widow's pension in the first place, it is expected that he would have passed this information on to Mrs H and she would have been aware that no widow's pension was payable. The Adjudicator asked if Mrs H knew of this position but no answer was forthcoming.
- The provision of incorrect information and payment of a pension does not, by itself, entitle a scheme member to the incorrect amount. The person making the complaint must be able to provide evidence that they relied on the incorrect information when making financial decisions or commitments.
- Mr Webb has argued that based on the incorrect information Mrs H made a life changing decision to return to her homeland in the Philippines and that the loss of the widow's pension will cause her financial hardship. The Adjudicator asked Mr Webb to provide details of Mrs H's income and savings to try and establish what impact the cessation of the widow's pension would have. Mr Webb has not provided any such information.
- In the absence of any financial information, the Adjudicator was unable to draw any conclusions as to the impact of the cessation of the widow's pension.

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

Ombudsman's decision

15. Mr Webb says that the Adjudicator has relied solely on what the Trustees have told him and has not obtained the historical letter setting out the terms of Mr H's pension on his retirement.
16. When Mr H retired in 1982 his pension was paid by Axa on behalf of the Trustees. It has not been possible to find the original letter issued to Mr H on his retirement but even if this were available it is not definitive of the benefits payable. The Scheme is governed by its trust deed and rules and a copy of these have been obtained. The rule governing the pension benefits payable on death are contained in Rule S8.2 and says:

The pension payable in accordance Rule 7.2 on the death of a male member shall be fifty per cent of the pension payable to the Member

...

Such pension shall be payable to the spouse to whom the deceased Member was married at the Normal Retirement Date or the date of retirement on pension if earlier.

17. The rules are quite clear that the widow's pension is payable only to the spouse that the Member [Mr H] was married to at the time of his retirement. I find therefore that the Trustees and their advisers correctly interpreted the rules and advised Mr H of the position in 2005.
18. I also conclude that Mr H must have had a suspicion that no widow's pension would be paid to his new wife otherwise he would not have asked the question. As the Adjudicator has said it would have been expected that this information would have been passed on to Mrs H. The Adjudicator asked if Mrs H was aware of the position but Mr Webb has not provided any answer. I find, therefore, on the balance of probabilities, it is more likely than not that Mrs H was aware of the position that she was not entitled to a widow's pension on her husband's death.
19. Mrs H was however, informed by Axa that she was entitled to a widow's pension when her husband died in December 2010. This was incorrect and it was not until three years later that the error was discovered. The Trustees explained the position and agreed not to seek repayment of the pension paid in error and gave notice that the pension would cease from April 2015.

20. Mr Webb has argued that Mrs H made life changing decisions based on the belief that she would continue to receive the pension for life. The Adjudicator asked for details of Mrs H's assets and income to try and assess what the effect of the cessation of the widow's pension would have. Mr Webb says that this information is not relevant, but I disagree it is entirely relevant. Without this information it is impossible to assess whether the future receipt of the widow's pension was as significant as Mr Webb says it was in Mrs H's decision to return the Philippines. As Mr Webb is unwilling to provide any information I cannot draw any conclusions in this respect.
21. Therefore, I do not uphold Mrs H's complaint.

Anthony Arter

Pensions Ombudsman
25 October 2016