

Ombudsman's Determination

Applicant	Miss S
Scheme	Equitable Life With-Profits Annuity
Respondents	Equitable Life Equitable Life Payment Scheme

Outcome

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

Complaint summary

3. Miss S has complained that the provision of incorrect information by Equitable Life amounts to maladministration, which has caused her significant distress and inconvenience.

Background information, including submissions from the parties

4. In 1986, Sloane Hospital Travel Services Ltd (**SHTS**) set up an Individual Pension Plan (**IPP**) for its then owner and Director, Miss S. The principle employer (SHTS) was classed as being the Trustee and legal owner of the IPP, whilst Miss S was the life assured or beneficiary.
5. Miss S' IPP was subsequently used to set up a With-Profits Annuity (**WPA**) with Equitable Life, and payment of the annuity commenced on 11 June 1999. As SHTS set up the annuity it was classed as the grantee, Trustee and legal owner of the annuity, with Miss S being the annuitant and payee.
6. When SHTS went into liquidation, Deeds of Appointment and Variation were completed on 31 December 2003, appointing Mr B Prebble and Mr S Downer as new Trustees of the annuity in place of SHTS. At this point, according to Equitable Life, the Trustees became the legal owner of the annuity, thereby taking on the role of de facto "employer", as the original employer had gone into liquidation.
7. On 26 May 2004, Equitable Life wrote to Miss S to confirm that its records had been updated with the new Trustee information and that, as an employee of SHTS, she remained both the "annuitant" and the "payee" of the policy.

8. In October 2010, the Government passed the Equitable Life (Payments) Act 2010 (the **Act**), and created the Equitable Life Payment Scheme (**ELPS**).
9. The ELPS was set up for the purpose of assessing and paying policyholders adversely affected by maladministration in the regulation of Equitable Life. The ELPS was a completely separate entity from Equitable Life, with the only organised coordination between the two being the provision of scheme membership information by Equitable Life to the ELPS in 2010.
10. As Miss S' annuity was a WPA, and purchased between 1 September 1992 and 31 December 2000, she was eligible for compensatory payments under the Act.
11. In May 2011, HM Treasury released "The Equitable Life Payment Scheme design" booklet which detailed how individual claims were to be assessed and how the scheme was to be administered.
12. Miss S has complained that, at some point between the appointment of the new SHTS Trustees in 2003 and 2010, when Equitable Life provided her membership details to the ELPS, her WPA was incorrectly "assigned" to Mr Prebble.
13. Equitable Life have explained that it had a legal requirement to record the new Trustees against Miss S' annuity policy, but that it was an unusual case and its "systems were not designed to deal" with a scenario where the annuity was "placed under trust following liquidation" of an employer. Therefore, to ensure all regulatory conditions were met, Equitable Life took the step of recording Mr Prebble who was classed as being the first Trustee, as the assignee of the annuity policy in 2003.

Adjudicator's Opinion

14. Miss S' complaint was considered by one of our Adjudicators who concluded that no further action was required by Equitable Life. The Adjudicator's findings are summarised briefly below:
 - the ELPS was a separate organisation with separate operating systems and ways of recording information, which required scheme membership information from Equitable Life and Prudential.
 - the assignment issue did not adversely affect the time taken to pay Miss S any compensation as there were no absolute payment deadlines set by the ELPS.
 - any entitlement to compensation from the ELPS was always subject to a pre-approved framework.
 - if the ELPS had made a payment to Mr Prebble, he would be duty bound as the Trustee to forward this payment to Miss S as the annuitant and payee.
 - when Equitable Life wrote to Miss S confirming appointment of the new Trustees, a copy of the Deeds of Appointment and Variation was provided. This clearly

stated in clause (iv) that the Employer had assigned the policy to the Trustees to be paid in trust.

- although the method used by Equitable Life to record data internally was not suitable for external transfer this was not maladministration.
- Miss S received the correct level of compensation payment(s) she was entitled to from the ELPS. At no point was Miss S' eligibility ever in question.

15. Miss S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Miss S has provided 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 Miss S for completeness.

Ombudsman's decision

16. Miss S did not accept the findings in the Opinion. Her disagreement can be summarised as follows:

- the policy should not have been assigned to Mr Prebble.
- use of a "Code 4" by Equitable Life was the root cause of the outstanding issues.
- the complaint could have been resolved in July 2013 had Equitable Life correctly answered her request for information.

17. The starting point for my decision is to explain briefly what Equitable Life describe as "the unusual" circumstances surrounding Miss S' policy.

18. SHTS was the original Trustee and legal owner of the IPP taken out for the benefit of its Director and employee, Miss S. From its inception, Miss S was not the legal owner of the policy, but it had been taken out for her express benefit. The IPP was later used to secure a WPA with Equitable Life in June 1999. SHTS was still classed as the Trustee and legal owner of this annuity, with Miss S as the annuitant and payee. New Trustees were later appointed on 31 December 2003, following the liquidation of SHTS.

19. The new Trustees took on the role and responsibility of managing the policy and were now the legal owners. This agreement was formalised in the Deeds of Appointment and Variation of 31 December 2003. Miss S signed this document and therefore she agreed to be bound by it. For the avoidance of doubt I have detailed the relevant clauses of this appointment below:

"THIS DEED WITNESSETH and IT IS HEREBY AGREED and DECLARED that

- (i) the Rules are hereby amended in accordance with the Appendix attached hereto

- (ii) in exercise of the power in this behalf given to him by the Trustees Act 1925 and of every other power him enabling the Employer hereby appoints the Trustees to be trustees of the Scheme in place of the Employer who is hereby discharged as trustees
- (iii) the Employer hereby appoints the Trustees to be responsible for the discharge of all duties imposed on the Administrator of the Scheme for the purposes of Chapter 1
- (iv) the Employer hereby assigns unto the Trustees the said Policy and all benefits to become payable thereunder to hold the same on the trusts declared in the Letter
- (v) in consideration of the assignment the trustees hereby covenant with the Employer that they will hold the said Policy subject to the provisions of the Scheme”.

Clause (iv) clearly states the policy had been assigned to the new Trustees. There is no question then that the new Trustees had to be recorded as having an interest in the policy by Equitable Life. Conversely, there is also no doubt that the policy and any other benefits accruing thereof remained for the sole benefit of Miss S. Equitable Life therefore had a duty to record the transference of trustee responsibility from SHTS to Messrs Prebble and Downer; this took the form of an assignment which is clear and does not amount to maladministration. What is also clear is the fact that Miss S signed and witnessed the document; therefore she should have been aware of the assignment.

- 20. Following SHTS going into liquidation, the change in Trustee ownership had to be recorded on Equitable Life systems; however, it has acknowledged that its data management system was not able to adequately record the information in detail. A business decision was therefore taken to record Mr Prebble, the first named Trustee, as the assignee of the Policy. An internal designation (“Code 4”) was recorded against the policy showing Mr Prebble as assignee.
- 21. Code 4 is one of a number of internal designations specific to Equitable Life. These internal designations denote a specific relationship connection to a particular policy. In this case Code 4 refers to a policy being assigned. Equitable Life did not initially volunteer this information as it was not immediately apparent it was pertinent. This has led Miss S to believe information had been actively withheld from her in relation to Equitable Life’s handling of her policy information. However, it was not maladministration to withhold this information from Miss S as it was an internal marker for the sole purpose of Equitable Life to identify the new Trustees.
- 22. Had the Act not come into being it is highly unlikely that Miss S would ever have become aware of any issue regarding an assignee, as it had no material impact on the payment of her annuity. However, while Equitable Life’s decision was sufficient for

internal use it had future ramifications which it could not have foreseen. This does not amount to maladministration.

23. Once the ELPS came into being, in May 2011, HMRC issued “The Equitable Life Payment Scheme design booklet” (the **booklet**). The booklet was designed to set out the scheme rules and how the scheme would work in practice. Among other information the booklet defined a policy holder as referring to a:

“named individual(s) or trustee(s) associated with each policy. For simplicity’s sake, in using this terminology in much of the main body of the document, the assumption is made that the policyholder is the recipient of any payments due under the Scheme. This is the case for most policies. However, it should be noted that there are some exceptions to this rule, and that in some cases the Scheme will make payments to persons (payees) who are not policyholders.”

24. This definition of “policyholder” and who was classed as a payee was more complicated in Miss S’ case because she had an assignee, correctly, detailed on her record which was passed to ELPS but became apparent and ELPS viewed assignees differently. The booklet made the following distinction regarding payees:

“For WPA policies, the payee is:

- for policies that have been assigned, the assignee;
- for single life WPA policies, the annuitant”

It is clear from this distinction that a difference of understanding has arisen regarding the definition of an assignee and how this designation interacted with payment rights. However, this difference is not unexpected as the ELPS is a separate scheme, governed by its own set of rules and regulations which uses its own definitions. Equitable Life could not have foreseen in 2004 that an internal designation marker would give rise to any concerns in 2011.

25. The above notwithstanding, the Deeds of Appointment and Variation clearly shows an assignment taking place. Therefore, Equitable Life cannot be accused of maladministration in ensuring this assignment was recorded, nor can it be held accountable for separate schemes rules and definitions differing from its own.
26. I have no doubt that Miss S has experienced a degree of anxiety regarding payment from the ELPS; a situation that has been exacerbated by her ongoing hamstring issues. However, the fact remains that she has received all payments to which she was entitled and it cannot be said that she has suffered any financial injustice. Also, I believe that she would have received the ELPS compensation even if she had not intervened.
27. I acknowledge that her policy was assigned to Mr Prebble in his capacity as first named Trustee, however even in the event that payment was made to Mr Prebble, he was obliged as a Trustee of the scheme to ensure any benefit arising as a result of the policy was paid to Miss S. In addition, there is no evidence of the Trustee

behaving in such a way that would indicate payments to her, by the ELFS via the Trustee would be withheld

28. Equitable Life's system was not sufficient to record the necessary information and whilst that was regrettable, it broke no rules. Equitable Life cannot be held accountable because it does not use a data management system designed to allow the accurate transference of data from one provider to another. If the original assignment of her policy in December 2003, had caused payment issues then her case would have been immeasurably strengthened, however this was not the case.
29. Miss S' eligibility to compensation was never in doubt and any delay that arose from the assignment issue had no material impact on the date on which she received her payments from the ELPS. No incorrect payment was made and Miss S received the compensation payment she was entitled to from the ELPS. At no point was Miss S' eligibility in question other than during the normal scheme assessment period.
30. Equitable Life offered Miss S £100 as a gesture of goodwill. This was in acknowledgement that its internal systems were unable to adequately record the unique arrangement of Miss S' WPA. In my opinion that level of redress is entirely reasonable given the circumstances.
31. Therefore, I do not uphold Miss S' complaint.

Anthony Arter

Pensions Ombudsman
31 October 2016