



Ombudsman's Determination

Applicant	Mr R
Scheme	Pension Protection Fund (PPF)
Respondent	The Board of the Pension Protection Fund (the Board)

Complaint summary and background

Complaint summary

1. Mr R has made a complaint of maladministration in respect of the Board's interpretation of the relevant legislation relating to the payment of survivors' benefits in the event of his death.

Background

2. Mr R was a member of the IBP Conex Pension Scheme which transferred to the PPF in April 2014. In 2015, Mr R enquired what benefits would be paid in the event of his death. He has explained that he is single and has no dependent children. The Board responded by explaining, once a pension scheme transferred to the PPF, member's scheme benefits are no longer paid from the scheme but are replaced with compensation administered by the PPF. The Board said the scheme rules ceased to apply and were replaced by the PPF rules. It said, where there were no eligible survivors, entitlement to compensation would cease.
3. Mr R submitted a complaint of maladministration which was considered by the Board's Review Committee. The Review Committee concluded:-
 - The PPF had been set up by an Act of Parliament and the Board could only pay compensation in accordance with the rules set out in the relevant legislation. These rules only allowed the Board to pay compensation to certain individuals.
 - On the basis of the information Mr R had supplied, none of his family members met the required criteria to receive survivors' compensation.
4. In response to Mr R's assertion that the PPF was gaining at his expense, the Review Committee said,

“... the PPF pays compensation at a statutory minimum level to members of defined benefit schemes when their employer goes bust. The PPF pays “compensation” as opposed to replicating your pension entitlement and the PPF compensation level has been set by Parliament. Schemes only transfer to the PPF if they are unable to afford to pay scheme members at (or above) the level of PPF compensation. Your scheme transferred to the PPF because it was insufficiently funded to pay you and other scheme members this minimum level of pension. The PPF does not gain or profit by not paying survivors’ benefits and is only acting in accordance with the law.”

5. Mr R asked for the decision to be reconsidered. The Board’s Reconsideration Committee issued a decision on 17 March 2016. It upheld the decision of the Review Committee on the basis that the law only allowed the Board to pay compensation to certain individuals. The Reconsideration Committee also responded to a series of questions posed by Mr R. The questions and the Committee’s answers are summarised below:-

- Are the PPF the only ones who are allowed to provide the annuity with imposed terms?

The PPF pays compensation to members of defined benefit pension schemes where the employer has become insolvent. It is not an annuity. The compensation payable is set out in the Pensions Act 2004 and the Board is only empowered to act in accordance with that Act.

- Is the member allowed to oppose the terms laid down in the annuity?

The individuals entitled to PPF compensation, the circumstances in which it is paid, and the way in which it is calculated are all set out in the legislation. Members may ask the Board to review their compensation if they think it has not been calculated in accordance with the legislation.

- Are spouses, partners and dependent children the only people who are eligible for survivors’ compensation?

The Reconsideration Committee provided a list of individuals to whom survivors’ compensation could be paid.

- Did the Board refuse claims in respect of children under the age of 16 who were not living with the member?

The Reconsideration Committee referred Mr R to their previous answer.

- In the case of a member dying before retirement age with no eligible claimants, does the PPF keep their entire fund?

If a member dies and there are no eligible claimants for survivors' compensation, no compensation is payable. There are no funds attributable to individual members. The PPF is a single fund out of which all compensation to and in respect of all members is payable.

- Do you refuse any family members claiming on behalf of the member's estate to cover funeral costs or debts?

The Board can only pay compensation in accordance with the rules set out in the legislation. It has no power to pay funeral costs or debt.

- Does the PPF claim that the 2004 Pensions Act gives it the right to impose annuity terms on a member?

The Board does not have discretion to determine the terms on which it provides compensation.

- Does the PPF feel it is more entitled to keep any unclaimed funds than the member's family?

There are no funds attributable to individual members. There is a single fund which supports all members' entitlements to PPF compensation. When calculating how much money the PPF needs in order to be able to meet all of its future liabilities, its actuaries make assumptions about the proportion of members in respect of whom survivors' compensation will be payable. It is not possible to know with certainty what that proportion will be, but it is recognised that survivors' compensation will not be payable in all cases. This forms part of the assessment of the PPF's funding requirements.

- Does the PPF claim, if they do not keep these unclaimed funds, it will affect the total fund and affect payments to other members?

The Reconsideration Committee referred Mr R to their previous answer.

- Does the PPF feel they have no obligation to release the member's unclaimed funds to pay for funeral costs or debt?

The Reconsideration Committee referred Mr R to their previous answer.

Mr R's submission

6. Mr R's submission to the PPF Ombudsman is summarised below:-

- In the event of his death, the PPF will claim the amount of money invested in the spouse's pension. If he dies before retirement age, the PPF will claim the total amount of his pension fund.
- Any claim made by his family will be rejected and they will have to find the cost of his funeral.
- All the money in his pension fund should legally belong to him or to his estate. He should have the right to choose a larger pension without spouse's cover.
- If the PPF continue with a spouse's pension, his family should have the right to claim it.
- The PPF have said there are no funds attributable to individual members. He would dispute this. The PPF compensation forecast document states that compensation is calculated based on your pension entitlement under the former scheme. Each member is issued with a separate statement of entitlement under the former scheme and not all members' entitlements are the same.
- He does not dispute all members' individual entitlements are put together as a single fund for investment purposes but they still remain each member's single entitlement.
- The PPF are fully aware of the value of each member's entitlement within the total fund and deal with each member's entitlement separately. When they retire, a portion of their entitlement is set aside to cover spouse's pension, etc. They make an assumption about members' survival and calculate the remainder of their entitlement to pay the member's weekly or monthly compensation. This does not affect any other member's entitlement.
- The PPF are aware there are some members with no eligible claimants. Their portion of the entitlement is a bonus for the PPF. He believes there are likely to be more members without survivors than with.
- All he is asking for is his entitlement to his own money invested in his pension. It should belong to him or his family and not to the PPF.

The Ombudsman's determination and reasons

7. My decision is that this complaint should not be upheld against the Board.
8. My reasons are essentially the same as in Mrs Leal's Opinion of 28 February 2017 (**the Opinion**); a copy of which is attached. My additional comments follow.
9. Mr R did not accept the views set out in the Opinion on the basis that:
 - His concern is with the legislation covering "confiscated unclaimed funds".
 - The rules set out in the legislation are guidelines and care should be taken in interpreting them.
 - The Board are imposing rules which are not written into the Pensions Act 2004. These rules deny members their full entitlement to their pensions' investment. There is no legislation covering the confiscation of pension entitlement.
 - The pension entitlement legally belongs to the pension investor.
 - The Board claims it has no power to pay funeral costs or debt, but it has no power to refuse members without eligible dependents the right to claim the funds for their estate. It has no right to confiscate these funds.
 - The Board is reading things into the Pensions Act 2004 which are not there. The Pensions Act 2004 makes no reference to unclaimed funds. The Board is concerned with administration only; it has no right to confiscate any of the members' entitlement or deny them their legal rights.
10. I understand Mr R's disappointment that his estate will not receive any payment from the PPF in the event of his death. However, his claim to such a payment is based on a misunderstanding of his entitlement under the IBP Conex Pension Scheme and, subsequently, the PPF.
11. The assets of the IBP Conex Pension Scheme did not belong to individual members; they were held in trust for the benefit of all members/beneficiaries of that scheme. Had Mr R retired under the IBP Conex Pension Scheme, his benefits would have been calculated by reference to the length of his membership and his pensionable salary. His benefits were not tied to a particular 'pot' of assets. This is because the IBP Conex Pension Scheme was a 'defined benefit' scheme, rather than a 'defined contribution' scheme.
12. When the IBP Conex Pension Scheme was wound up, it did not have sufficient funds to secure the benefits which had been promised to the members. It is for this reason that it was accepted into the PPF. The former members of the IBP Conex Pension Scheme will now receive compensation from the PPF. The compensation Mr R will

receive is governed by the Pensions Act 2004 and the Pension Protection Fund (Compensation) Regulations 2005 (SI2005/670) (the **Compensation Regulations**). The Board can only pay compensation which is provided for under the Act and the Compensation Regulations. This does not include payments to an estate to cover funeral costs and/or debts.

13. Mr R has suggested that the Board has confiscated funds which would otherwise have been paid to his estate. This is not the case. The assets of the IBP Conex Pension Scheme transferred to the PPF but, as I have said, none of the assets actually belonged to Mr R. The assets have not been confiscated by the Board; they are used to part-fund the compensation it pays to the former members of the IBP Conex Pension Scheme. It is perhaps worth bearing in mind the fact that these assets were not sufficient to pay the benefits which had been promised to the members under the IBP Conex Pension Scheme. The members, including Mr R, are therefore benefitting from funding drawn from other sources when they receive compensation from the PPF.
14. Mr R has made the point that the Pensions Act 2004 does not refer to unclaimed funds. As I have mentioned, this is because the funds do not belong directly to the members of a defined benefit scheme, such as the IBP Conex Pension Scheme. Mr R appears to believe that the Board has authority to pay compensation to an estate because the Act and the Compensation Regulations do not expressly prohibit it from doing so. The legislation does not operate in this way. The Board may only make payments for which it is given express authority.
15. I find that the Board has interpreted the relevant legislation correctly and is not required to take any further action.

Anthony Arter

Pension Protection Fund Ombudsman
24 April 2017