

Ombudsman's Determination

Applicant	Mrs A
Scheme	ICA Pension Scheme (the Scheme)
Respondent	Royal London Mutual Insurance Society Ltd (RLMISL)

Outcome

1. I do not uphold Mrs A's complaint and no further action is required by RLMISL.

Complaint summary

2. Mrs A disagrees with RLMISL's position that she has no entitlement left within the Scheme. RLMISL said that Mrs A received a refund of contributions when she left the Scheme. Mrs A said that she never received this.
3. As a result, Mrs A would like to be compensated for the losses and/or for the non-payment of the pension that was due to her.

Background information, including submissions from the parties

4. Mrs A was an active member of the Scheme until she left employment on 30 November 1978. The administrators at the time were the Co-operative Insurance Society (**CIS**), now known as RLMISL.
5. When Mrs A left the Scheme, she said that she informed her employer (**the employer**) that she wanted her pension contributions frozen until she reached age 60, in 1991.
6. Mrs A received no further correspondence from CIS.
7. In 2018, Mrs A used the Pension Tracing Service and subsequently contacted RLMISL requesting a valuation of her pension benefits.
8. On 29 January 2019, RLMISL wrote to Mrs A and said that she had received a refund of contributions and held no deferred benefits within the Scheme. RLMISL held four historical documents on record for Mrs A, which were enclosed with the letter. These were:-

- A letter dated 19 December 1978, from the employer, to CIS, confirming her date of leaving. The employer requested the options available to Mrs A upon leaving the Scheme.
 - A letter dated 27 April 1979, from CIS to the employer requesting confirmation that Mrs A did not leave the Scheme as a result of permanent incapacity. It said the options were:-
 - A refund of contributions plus interest which amounted to £454.71.
 - An annual pension of £110.88 was payable from age 60.
 - A transfer to a suitable pension scheme.
 - Correspondence dated 30 April 1979, where the employer confirmed to CIS, that Mrs A did not leave employment as a result of permanent incapacity.
 - A letter dated 25 October 1979, from the employer to CIS saying Mrs A had left employment (**document four**). The employer said that Mrs A requested a refund of contributions and for CIS to send a cheque directly to the employer.
9. Mrs A wrote to RSMISL requesting all other correspondence held on file. She said she had no contact with the member of staff that wrote document four, so did not understand why it stated she wanted a refund of contributions. She also said that she had received a payment from the employer in relation to an outstanding insurance claim, and that "as far as [she could] recollect, [this was] the only payment I received from the [the employer]".
10. RSMISL treated Mrs A's response as a complaint and responded to this on 29 March 2019. It said:-
- The member of staff that wrote document four, worked for the Scheme.
 - The cheque would have been made payable to the Scheme so tax could be deducted as required. No further monies were held by RSMISL.
 - Due to the time that had lapsed, there was no further information available.

Mrs A's position

11. RLMISL had a duty of care to ensure that the instruction it received was by Mrs A and had a duty of care to ensure Mrs A received the payment.
12. There was no evidence that the employer issued the refund of contributions to Mrs A.
13. If she received the refund of contributions, she would have raised the error with the employer immediately.
14. She only found out about the Pension Tracing Service in 2018.

Adjudicator's Opinion

15. Mrs A's complaint was considered by one of our Adjudicators who concluded that no further action was required by RSMISL. The Adjudicator's findings are summarised below:-
- There was little evidence available, so the Adjudicator considered the matter on the balance of probabilities, to form an opinion on the complaint. Mrs A complains that she never requested a refund of contributions. However, in document four, the employer clearly said Mrs A requested a refund of contributions. As CIS responded to the employer's previous letter, the Adjudicator saw no reason why CIS would not have actioned the request for a refund of contributions.
 - Mrs A said CIS had a duty of care to ensure the instructions it received were initiated by Mrs A, and that she received the monies. CIS acting on the instructions of the employer is common practice, and, it is unreasonable to expect CIS to question every instruction given.
 - The employer had a responsibility to pay Mrs A the refund of contributions, and CIS would not have received confirmation if this was sent or not. There was no requirement for CIS to ensure the refund of contributions was sent to Mrs A.
 - Mrs A said that, as far as she could recollect, she only received one payment from her employer after she left employment. While this may be the case, in the Adjudicator's view, it was more likely than not that CIS issued the refund to the employer. So, CIS could not be held responsible for the acts or omissions of the employer.
16. Mrs A did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. I agree with the Adjudicator's Opinion and I will therefore only respond to the points made by Mrs A for completeness.

Ombudsman's decision

17. The complaint is about whether Mrs A has any entitlement in the Scheme. Mrs A disputes that a refund was issued to her, while the historical letters held by RLMISL appear to indicate a refund was issued. There is no legal requirement for RLMISL to keep detailed records of former Scheme members from 1979, so it is not unusual that the information available is limited. I also note that no evidence has been submitted by Mrs A to support her complaint that a refund was not issued. This makes it difficult to establish what happened, particularly when it occurred approximately 40 years ago.
18. Mrs A has argued that the burden of proof, with regard to evidencing payment, should lie with RSMISL. I can only form a decision based on the evidence available, and the historical letters held by RLMISL suggest that a refund had been requested. Further,

since Mrs A left the Scheme, she has not received any correspondence from RSMISL regarding her entitlement and there is no deferred record held for her on RSMISL's system. So, I find it more likely than not, that a refund was issued to the employer.

19. Mrs A argues that RSMISL had a duty of care to ensure that it was Mrs A requesting the refund and that the employer made the refund to Mrs A. There is nothing in the agreement with the employer to say that RSMISL should have done more than it did. Further, this is standard practice amongst scheme administrators, so I see no reason why RSMISL should have taken any further steps to prove payment.
20. I do not uphold the complaint.

Anthony Arter

Pensions Ombudsman
9 January 2020