

Ombudsman's Determination

Applicant	Mrs R
Scheme	Rothesay Life Limited Pension Annuity (the Policy)
Respondent	Rothesay Life Limited (Rothesay)

Outcome

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

Complaint summary

2. Mrs R complained that a young spouse reduction should not be applied to her spouse's pension. She was also unhappy with the service she received from Rothesay. In particular, she was given incorrect information during a telephone call, a letter was sent to Mr R after Rothesay had been notified of his death, and Mr R was asked for the return of an overpayment when it had already been paid.
3. Mrs R asked for the young spouse reduction to be removed from her pension payments.

Background information, including submissions from the parties

4. Mr K is Mrs R's brother.
5. Mrs R was married to Mr R.
6. Mr R was a member of the InterContinental Hotels UK Pension Plan (**the Plan**), a defined benefit occupational pension arrangement.
7. In 2013, the Plan's liabilities were transferred to Rothesay through a buy-out policy, and members' benefits started to be paid directly by Rothesay.
8. Mr R was a pensioner member of the Policy.

9. On 22 July 2015, Rothesay wrote to Mr R (**the 2015 Rothesay Letter**) with the following points:-
- Although a Guaranteed Minimum Pension exercise was ongoing, it had decided to issue individual policies to members.
 - It enclosed the following documents about the Policy:
 - 'Statement of Policy Benefits' (**the Statement**);
 - a document titled 'Further information about your pension benefits' (**the Information Document**);
 - 'Pension Annuity Policy' and 'Key Features and Key Facts' documents; and
 - a 'Data Protection Notice'.
 - It said that it was important to read the enclosed information and ensure that the details on the Statement were correct. It said that Mr R should keep the documents in a safe place.
 - The Statement stated that Mr R's annual pension was £25,340.40, and his dependant's annual pension was £16,247.33. The Statement did not include Mrs R's date of birth.
 - In a section of the Statement entitled 'Further information about your pension benefits', it said:

"Any dependant pension shall be reduced by 2.5% simple for each year (and proportionately for each complete month) by which you are more than 10 years older than your dependent."
10. On 14 October 2019, Mr R died.
11. On 24 October 2019, Mrs R telephoned Rothesay to inform it of Mr R's death.
12. On 1 November 2019, Rothesay paid Mr R's normal monthly pension of £1,678.68 to Mr and Mrs R's joint bank account (**the November Pension Payment**). Mrs R says that she used the November Pension Payment to pay for Mr R's funeral expenses.
13. Subsequently, Mrs R thought that the November Pension Payment may have been a mistake. So, she telephoned Rothesay to check (**the Telephone Call**). Rothesay informed her that there had been a small overpayment, but that it would be claimed back monthly over a long period of time.
14. On 16 November 2019, Rothesay wrote to Mrs R and requested the whole of the November Pension Payment to be paid back in one amount.

15. After telephoning Rothesay to query the request, on 18 November 2019, Mrs R emailed Rothesay with the following points:
 - she asked for a breakdown of the November Pension Payment;
 - she asked if Mr R's pension was paid in arrears;
 - she and Mr R's accountant had been led to believe that on Mr R's death, she would receive two-thirds of Mr R's pension; and
 - the amount of pension she had been quoted was less than two-thirds.
16. On 21 November 2019, Rothesay emailed Mrs R with the following points:-
 - It apologised for misinforming her during the Telephone Call.
 - Mr R's pension was paid in advance.
 - As it ran its payroll 10 working days prior to the first of each month, when it had been notified of Mr R's death, the November Pension Payment had already been processed.
 - It attached a copy of the Statement.
 - Mrs R's pension was not two-thirds, as there was a young spouse reduction applied if she was more than 10 years younger than Mr R. As their age difference was 16 years, a reduction of $6 \times 2.5\% = 15\%$ had been applied.
17. Later the same day, Mrs R emailed Rothesay with the following points:-
 - She asked if the November Pension Payment could be paid back in monthly instalments, as indicated during the Telephone Call.
 - She asked for evidence of the young spouse reduction.
 - She suggested it was discriminating against her age.
18. On 28 November 2019, Rothesay emailed Mrs R with the following points:-
 - It did not normally offer an option for monthly instalments but accepted that she could repay the amount over six months.
 - The young spouse reduction was set out in the last page of the Statement.
 - It applied this reduction because it was in the Plan's rules, and it was contractually obliged to pay out the same benefits as the Plan.
 - It apologised for any distress it had caused Mrs R.
19. On 2 December 2019, Mrs R borrowed the full amount of the November Pension Payment from Mr K and paid it to Rothesay.

20. On 12 December 2019, Rothesay wrote to Mr R and referred to its overpayment of the November Pension Payment and asked for it back (**the 2019 Rothesay Letter**). Mrs R says that it was very upsetting to receive the letter.
21. On 13 December 2019, Rothesay sent Mrs R a copy of the Statement that Mr R had been sent in July 2015.
22. Mrs R said that Mr R did not know about the young spouse reduction.
23. Mrs R sent all the information Mr R had about the Policy to Rothesay.
24. Rothesay sent Mrs R a copy of the Information Document, which included details of the young spouse reduction, that had been sent to Mr R.
25. Mr K telephoned Rothesay and complained about the 2019 Rothesay Letter. He said that the amount had already been repaid.
26. On 18 December 2019, Rothesay wrote to Mrs R and apologised for sending the 2019 Rothesay Letter.
27. Mr K telephoned Rothesay and said that the young spouse reduction was age discrimination. He said he was told that the clause was not included in new policies but was transferred from old policies. He said he thought this was not legal in today's age of equality.
28. Following the complaint being referred to The Pensions Ombudsman, Mrs R and Rothesay made further submissions that have been summarised below.
29. Mrs R's further submissions:-
 - She was with Mr R for 34 years and they had been married for 28 years.
 - The situation had left her feeling traumatised.
30. Rothesay's further submissions:-
 - The Policy's rules would have been agreed by the Plan's Trustees prior to transferring the liabilities to Rothesay.
 - The sending of the 2019 Rothesay Letter could have been avoided if Rothesay had checked its bank account beforehand. However, Mrs R did not inform Rothesay that she had made the payment, so there was nothing to suggest that the payment had been made.

Adjudicator's Opinion

31. Mrs R's complaint was considered by one of our Adjudicators who concluded that no further action was required by Rothesay. The Adjudicator's findings are summarised below:-

- Mr R may have been under the impression that Mrs R would receive a pension of two-thirds of his pension after his death. Nevertheless, the Information Document which Rothesay sent to Mr R with the Statement in July 2015, stated that a 2.5% reduction would apply for each year that a spouse was more than 10 years younger than the member. While Mr R may not have been aware of this, Rothesay must pay benefits that are consistent with the conditions that were agreed with the Plan's Trustees in 2013 and referred to in the Information Document.
- The Statement in July 2015 showed Mr R's annual pension as £25,340.40, and his dependant's annual pension as £16,247.33. So, Mrs R's spouse's pension was stated as being approximately 64% of Mr R's pension and appeared not to include a 15% young spouse reduction. However, at that stage, Rothesay may not have been aware of Mrs R's date of birth, so would not have known that she was more than 10 years younger than Mr R and that a young spouse reduction would need to be applied.
- Mrs R was also unhappy with the service she received from Rothesay. Specifically, she was given incorrect information during a telephone call, a letter was sent to Mr R after Rothesay had been notified of his death, and Mrs R was asked for the return of an overpayment when it had already been paid back. These actions amounted to maladministration.
- The circumstances of Mrs R's case did not quite meet the threshold for a distress and inconvenience payment in line with the Pension Ombudsman's current guidance. So, it was unlikely that an award would be made if the complaint was referred to an Ombudsman for final decision.

32. Mrs R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs R's comments are summarised below:-

- She did not understand why the young spouse reduction was applied when Rothesay had told Mr K on the telephone that it was not acceptable nowadays.
- Mr R had not been aware of the young spouse reduction.
- She had found Rothesay's administrative incompetence very distressing.

33. I have considered Mrs R's comments, but they do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

34. I appreciate that Mr R may not have been aware of the young spouse reduction. However, he was informed about it when he was sent the 2015 Rothesay Letter. It appears that the reduction was a rule of the Plan, which was then replicated in the terms of the buy-out policy. So, there is no question that the reduction should apply to Mrs R's benefits, and she is receiving her correct pension.
35. I empathise with Mrs R's position in that she found dealing with Rothesay to be very distressing, particularly as it was soon after the death of her husband. She was given incorrect information during a telephone call, and Rothesay sent a letter addressed to Mr R after he had died. While I appreciate that this may have been upsetting to Mrs R, I consider Rothesay's apology for its actions to be sufficient in the circumstances.
36. I do not uphold Mrs R's complaint.

Dominic Harris

Pensions Ombudsman
18 December 2024