

Ombudsman's Determination

Applicant	Mr G
Scheme	Cape PLC Staff Pension and Life Assurance Scheme (the Scheme)
Respondents	Legal & General Assurance Society (L&G)

Outcome

1. I do not uphold Mr G's complaint and no further action is required by L&G.

Complaint summary

2. Mr G complained that:-
 - He did not receive any notification in 2010 that his deferred retirement benefits under the Scheme needed to be claimed. To put this right, he required his pension to be put into payment and backdated to his normal retirement date (**NRD**) in 2010.
 - L&G's procedures for retirement correspondence were inadequate and should be reviewed.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. Mr G was a deferred member of the Scheme, a defined benefits scheme under which his NRD was 20 October 2010.
5. In 2006, Mr G received a letter from the administrator of the Scheme, Capita Hartshead (**the Administrator**) regarding the Scheme's funding position. He also received an undated letter informing him that responsibility for payment of his pension under the Scheme had been transferred to L&G. In a complaint letter of 7 February 2020 to the Financial Ombudsman, Mr G said he understood this transfer of responsibility to L&G took place in 2008.

6. In July 2010, L&G wrote to Mr G at his home address, providing details of the pension payable to him at his NRD. Mr G did not receive L&G's correspondence.
7. In January 2020, the Department of Work and Pensions (**DWP**) forwarded correspondence to Mr G from L&G asking him to provide his contact details in order to deal with his unclaimed pension benefits under the Scheme.
8. Mr G responded with his contact details and telephoned L&G regarding payment of his pension. During this telephone conversation, Mr G asked L&G to backdate his pension to his NRD. L&G refused Mr G's request. Mr G subsequently received an illustration dated 29 January 2020 for the pension payable from the late retirement date (**LRD**) of 20 February 2020.

Mr G's position

9. L&G was responsible for his failure to claim his retirement benefits from the Scheme at his NRD. In his view, the Scheme should have written to him again when it received no response to the retirement correspondence it issued to him in July 2010.
10. The late retirement pension offered by L&G would take some years to catch up with the pension he could have received if the pension had been paid from his NRD. There was a possibility he could lose out if he did not survive long enough for the payments from the LRD to catch up.
11. L&G should backdate his retirement pension to his NRD.
12. L&G's retirement process was inadequate and could cause financial hardship to other scheme members if they were treated similarly. The process should be reviewed.

L&G's position

13. L&G fulfilled its obligation to contact Mr G shortly before his NRD. The letter was issued to the correct address and was not returned as undeliverable. It was not reasonable to expect L&G to interpret the lack of response from Mr G as an indication the letter had not been delivered, or to expect L&G to write to Mr G again because it received no response from him. It was common for members who did not wish to draw their benefits to not respond to such letters.
14. The late retirement pension was not unfair and was calculated actuarially using cost-neutral late retirement factors.
15. Given the time elapsed since Mr G's NRD, L&G was not prepared to backdate his pension to his NRD.

Adjudicator's Opinion

16. Mr G's complaint was considered by one of our Adjudicators who concluded that no further action was required by L&G. The Adjudicator's findings are summarised below.

17. L&G sent details of Mr G's pension benefits to him in July 2010. The correspondence was issued to Mr G's correct address and was not returned as undeliverable. It was reasonable for L&G to believe that it had been delivered and the Adjudicator had no reason to believe that, on the balance of probabilities, it was not sent.
18. L&G could not be held responsible if the letter was undelivered for some reason or, if it was delivered, that it did not reach the named recipient.
19. There was no evidence of any requirement for L&G to follow up the July 2010 correspondence when it did not receive a reply from Mr G.
20. There was an onus on Mr G to claim the pension payable to him under the Scheme, but he did not do so. Mr G acknowledged that he had received previous correspondence from L&G. Had Mr G checked his records for this correspondence, his oversight might not have occurred. Under the circumstances, there was no requirement for L&G to backdate any pension payable and it was reasonable for it to decline to do so.
21. The LRD pension offered to Mr G was calculated using the Scheme's late retirement factors. The Scheme had not acted inappropriately in how the LRD pension was calculated.
22. L&G investigated and responded appropriately and punctually to Mr G's complaint.
23. The Adjudicator could only consider L&G's actions that were relevant to Mr G's specific complaint, with a view to putting right any injustice he might have suffered as a result of those actions. The Adjudicator was of the view that the Pensions Ombudsman could not punish the trustees or administrators of the Scheme or make them change their working practices generally.
24. The Adjudicator's Opinion was that Mr G's complaint should not be upheld.
25. Mr G did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr G provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr G.

Mr G's additional comments

26. It was wrong to accept, without proof, that L&G did in fact write to him in July 2010. He had been at the address to which L&G said it had written for 44 years and had received correspondence from all the other companies for whom he had worked.
27. L&G was under a duty of care to follow up with a reminder to its letter of July 2010.

Ombudsman's decision

28. Mr G complained that he did not receive any notification in 2010 that his deferred retirement benefits under the Scheme needed to be claimed. To put this right, he required his pension to be put into payment and backdated to his NRD in 2010.
29. Having considered Mr G's further comments, I agree with the conclusions reached by the Adjudicator.
30. Where there is insufficient evidence to make a finding of fact, I must make a finding on the balance of probabilities. In this case, Mr G doubts whether L&G wrote to him in July 2010. While L&G does not have proof of postage, it does hold a letter on its records, dated July 2010 and correctly addressed to Mr G. On the balance of probabilities, I find it more likely than not that this letter was sent. Unfortunately, errors in the postal system cannot be discounted and not all correctly addressed letters reach their intended destination, but I cannot hold L&G accountable for this.
31. I do not uphold Mr G's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
31 January 2023