

## Ombudsman's Determination

Applicant	Mrs D
Scheme	Safeway Pension Scheme ( <b>the Scheme</b> )
Respondents	The Trustee of the Safeway Pension Scheme ( <b>the Trustee</b> ) Wm Morrison Supermarkets Limited ( <b>Wm Morrison</b> ) Mercer

## Outcome

1. I do not uphold Mrs D's complaint, and no further action is required by the Respondents.

## Complaint summary

2. Mrs D has complained that it took five months for the Trustee and Mercer to begin paying her spouse's pension, and her family received poor service and delayed responses to her complaint. During this period, Mrs D had limited income and struggled to meet her day to day living expenses. Consequently, she suffered anxiety, lack of sleep and severe distress.

## Background information, including submissions from the parties

3. Mr D was a member of the Scheme, a defined benefit pension arrangement. Mr D was married to Mrs D.
4. On 26 January 2021, Mr D died.
5. On 10 February 2021, Mr D's daughter, Mrs N, informed Capita, the Scheme's administrator at the time, of Mr D's death. She was told that Mrs D should receive details of her spouse's pension entitlement within 10 days.
6. On 1 March 2021, the Scheme's administration role was transferred to Mercer.
7. On 2 March 2021, Mrs N telephoned Mercer and was on hold for 15 minutes. She then sent Mercer an email. Mrs N did not receive a response.

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8. On 10 March 2021, Mrs N received a letter from Capita requesting completion of a death notification form and a spouse's details form.
9. On 11 March 2021, Mrs N sent the completed forms to Capita.
10. On 17 March 2021, Mrs N received an acknowledgement from Mercer. It said that it would contact her within seven working days.
11. On 1 April 2021, Mrs N telephoned Mercer as she had not received a response. Mercer said that it would raise the issue as an internal complaint.
12. On 14 April 2021, Mrs N telephoned Mercer again, as it had not contacted her. Mercer said that the file had been passed to its administration team on 31 March 2021. Mrs N said that she wanted to invoke the Scheme's Internal Dispute Resolution Procedure (**IDRP**). She was told that Mercer would contact her within five days, but Mercer did not contact her.
13. On 21 April 2021, Mr N, Mrs N's husband and Mrs D's representative, telephoned Mercer and was promised a call back within 24 hours, but Mercer did not call him back.
14. On 23 April 2021, Mr N complained to Wm Morrison, the Scheme's sponsoring employer. He has said that his email was acknowledged, but his numerous telephone calls were not returned.
15. On 26 April 2021, Mrs N submitted a complaint on behalf of Mrs D through the IDRP.
16. On 28 May 2021, Mr N complained to Wm Morrison's Chief Executive Officer by email. Mr N said that Mrs D had been waiting four months without receiving her spouse's pension. He also said that Mercer was incompetent and did not provide any kind of service. On the same date, Mercer wrote to Mrs D confirming that her spouse's pension had been set up for £2,732.40 per annum and that it would be back dated.
17. On 1 June 2021, Wm Morrison emailed Mr N. It confirmed that Mrs D's first pension payment, plus arrears, would be made to her on 2 June 2021. Wm Morrison said that it had spent time discussing the case with Mercer, and it had understood that the matter had been resolved.
18. However, it accepted that there had been a serious failure in process and the issue would be discussed at the July 2021 Trustee Board meeting. Wm Morrison acknowledged that there was a formal complaint in process, that it was currently reviewing it, and that it would provide a full response and remedy the following week. Mr N did not receive a response the following week.
19. On 1 June 2021, Mr N replied to Wm Morrison's email and requested for interest to be paid on the overdue payments, and a payment made for distress and inconvenience caused to Mrs D.

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20. On 27 June 2021, Mr N emailed Wm Morrison and said that it had not replied to the IDRPs complaint within the two-month deadline and there had not yet been any mention of interest or a distress and inconvenience payment.
21. On 23 November 2021, Wm Morrison responded to the IDRPs complaint. The letter acknowledged that there had been a significant delay in setting up Mrs D's pension. It apologised and said that the required forms had been received at the time of the handover of the administration role to Mercer. The urgency of the case had not been made clear, which resulted in the Scheme falling short of its service standards. Interest had been calculated at £1.65. Wm Morrison accepted that it took too long to respond to Mrs D's complaint, and taking this and all the issues into account, offered her a payment of £1,000.
22. Mr N rejected the payment on behalf of Mrs D, and he complained through Stage Two of the IDRPs.
23. On 11 August 2022, the Trustee responded and increased the offer to £1,500 for severe distress and inconvenience caused to Mrs D, but Mr N did not accept it.

## **Adjudicator's Opinion**

24. Mrs D's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Respondents. The Adjudicator's findings are summarised briefly below:-
  - Wm Morrison's IDRPs response on 23 November 2021 acknowledged that there had been significant delays in setting up Mrs D's pension, and in providing Mrs D and her family with responses to her complaint. Mrs D was initially offered £1,000 for distress and inconvenience, which was subsequently increased to £1,500. So, there was no dispute that there had been maladministration.
  - On 10 February 2021, Mrs N informed Capita of Mr D's death, but it was not until 10 March 2021 that Mrs N received the required forms from Capita, and she sent them back the following day. Mrs D received her first pension payment on 2 June 2021, so the process for paying her spouse's pension took almost four months from the date Mr D's death was reported.
  - While Capita was initially involved in the process, given that Mercer took over the administration role before Mrs N sent back the forms, Mercer should have taken responsibility for prioritising a death claim and processing Mrs D's pension accordingly.
  - On 17 March 2021, Mercer said that it would contact Mrs N within seven working days, and on 14 April 2021, it said that it would contact her within five days. As Mercer did not contact Mrs N, during April 2021, she, and Mr N, telephoned Mercer three times. The delay in processing Mrs D's pension, and the lack of response to her family's requests amounted to maladministration by Mercer.

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- Mr N also said that he telephoned Wm Morrison several times but did not receive any calls back. On 26 April 2021, Mrs N submitted a complaint on behalf of Mrs D through the IDR. Wm Morrison responded to this complaint on 23 November 2021. So, it took Wm Morrison nearly seven months to reply, while the Scheme's IDR response deadline was two months.
- Although Wm Morrison responded to the initial stage of the IDR, it was replying on behalf of the Trustee in line with the Scheme's IDR. Therefore, the Trustee should be held accountable for Mrs N not receiving an IDR reply within two months. This amounted to maladministration by the Trustee.
- Mr N has said that Mrs D struggled to meet her day to day living expenses while waiting for her pension, and as a consequence, she suffered anxiety and lack of sleep. Mrs D had suffered serious non-financial injustice because of the delays. However, a non-financial injustice payment higher than £1,500 was unlikely to be awarded if the complaint was referred to an Ombudsman for a final decision.
- As payment of the spouse's pension was backdated to the date it was due, Mrs D did not suffer any financial loss from the maladministration, so she should not receive any further award.

25. Mrs D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided further comments on Mrs D's behalf, which are summarised below:-

- Mrs D was an elderly and vulnerable person, and he did not believe that the extent of her distress and inconvenience had been taken into account. Mrs D thought that the outcome was heartless and thoughtless, and it had caused her further anxiety and distress.
- Mr N submitted that each of the two findings of maladministration amounted to at least severe distress and inconvenience according to The Pensions Ombudsman's factsheet. He thought that an overall award of £3,000 would be appropriate.

26. Mr N's comments do not change the outcome. I agree with the Adjudicator's Opinion.

## Ombudsman's decision

27. Mrs D has complained that it took five months for the Trustee and Mercer to begin paying her spouse's pension, and her family received poor service and delayed responses to her complaint. During this period, Mrs D had limited income and struggled to meet her day to day living expenses. Consequently, she suffered anxiety, lack of sleep and severe distress.

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28. Mrs D was 85 years old when her husband died, and I appreciate that this must have been an extremely difficult time for her and her family. Both Mercer and Wm Morrison, on behalf of the Trustee, were slow to respond to a number of update requests from Mrs D's family, and it took almost four months before she started to receive her pension. I find that these unacceptable and appalling delays by both Mercer and the Trustee amounted to maladministration.
29. I also find that the long delay in replying to Mrs N's IDRPs complaint on behalf of Mrs D amounted to maladministration by the Trustee.
30. Mr N has submitted that each aspect of maladministration resulted in Mrs D to suffer at least severe distress and inconvenience, and I understand that she has subsequently suffered further anxiety and distress. Mr N believes that an overall distress and inconvenience award of £3,000 would be appropriate.
31. In order for me to award more than the £1,500 already offered by the Trustee, I would need to find that Mrs D suffered at least severe distress and inconvenience. A severe level of distress and inconvenience is applicable for multiple or repeated complaints that have a lasting effect over a prolonged period, resulting in a serious detriment to health. I appreciate that Mrs D did suffer anxiety during the four months she was waiting for her pension to start, but I do not consider that her complaint has met these criteria.
32. On this basis, I do not consider that Mrs D's complaint reached the necessary threshold to warrant that I direct a distress and inconvenience award greater than the £1,500 already offered by the Trustee. Therefore, I find the offer made by the Trustee is appropriate in the circumstances.
33. I do not uphold Mrs D's complaint.

**Anthony Arter CBE**

Deputy Pensions Ombudsman

31 August 2023