

Ombudsman's Determination

Applicant	Mr Y
Scheme	BBC Pension Scheme (the Scheme)
Respondent	BBC Pension Trust Limited (the Trustee)

Outcome

1. Mr Y's complaint against the Trustee is not upheld and no further action is required.
2. My reasons for reaching this decision are explained in more detail in paragraphs 34 to 42 below.

Complaint summary

3. Mr Y complained that the Trustee required him to complete a Certificate of Existence (COE) Form.
4. He said that email correspondence was sufficient evidence that he was still alive, and he did not consider it lawful for the Trustee to enforce the completion of a COE.

Background information, including submissions from the parties

5. In August 2020, the Trustee contacted Mr Y and requested that he complete the annual COE to provide evidence that his pension should continue to be paid.
6. On 8 August 2020, Mr Y responded to the Trustee. He said he was unable to comply with its request as he was still convalescing from a major operation and was unable to obtain the required witness signature.
7. On 23 December 2020, the Trustee contacted Mr Y to request that he complete and return the COE by 15 February 2021. It warned that failure to complete the COE could result in suspension of further payments of his pension.
8. On 24 December 2020, Mr Y responded to the Trustee. He queried whether the Trustee had understood his email dated 8 August 2020.
9. On the same day, the Trustee acknowledged that Mr Y was recovering from a major operation but insisted that completion of the COE was an obligation dictated by the Scheme's Trust Deed and Rules (**TDR**)

10. On 25 December 2020, Mr Y requested that his situation be reviewed by the Trustee. He said:-
 - The fact that he had been corresponding was sufficient evidence that he was alive.
 - The Scheme's TDR should have been changed to eliminate the requirement to complete the COE.
 - There was a significant and unpredictable delay in postal services between New Zealand and the United Kingdom.
11. On 4 January 2021, the Trustee informed Mr Y that the COE was the agreed method that it used to ensure certain members were eligible to continue to receive their pension. The need for him to complete the COE remained.
12. On 2 February 2021, Mr Y contacted the Trustee because his complaint had not yet been referred to the Chairman of the Trustees.
13. On 3 February 2021, the Scheme Administrator wrote to Mr Y and reiterated the Trustee's position regarding the COE. It said:-
 - It was under a legal obligation to ensure that benefits were only paid in strict accordance with the Scheme's TDR. Completion of a COE was part of this obligation.
 - In several cases the Trustee had not been notified of a death. If it continued to pay a pension after death, then there would be a technical breach of tax legislation.
 - In order to prevent breaching the legislation and to avoid the difficult position of recovering overpayments, it sought COE forms from pensioner members.
 - It still required Mr Y to complete and return the COE but agreed to extend the deadline for completion to 15 March 2021.
 - If Mr Y failed to comply with the requirement to complete a COE, then it would be forced to consider whether to continue payment of his pension.
14. On 10 February 2021, the Trustee confirmed that Mr Y's complaint would be considered under stage one of the Scheme's Internal Dispute Resolution Procedure (IDRP).
15. On 5 March 2021, the Trustee responded, via delegated authority, to Mr Y's complaint under stage one of the Scheme's IDRP. It said:-
 - The Trustee was required to administer the Scheme in accordance with the Scheme's TDR. To comply with this requirement, it had adopted procedures which included the requirement for overseas pensioners to complete and return COE's annually.

- Mr Y had duly completed and returned the COE for the previous seven years.
 - The Scheme's TDR set out the Trustee's powers when administering the Scheme.
 - The Scheme's TDR stated, "the payment of any pension or other benefit under the scheme is subject to the production to the Trustees of such relevant information and evidence as they may require." The Scheme's TDR also expressly provides that the Trustee may require confirmation of existence of Scheme members and "in the absence of a response within the period of time specified in the request, [the Trustee] may assume that person is no longer alive."
 - It was for the Trustee to determine how to administer the Scheme in accordance with the Scheme's TDR.
 - The Scheme had overseas pensioners in a variety of countries, all of which had different procedures for recording deaths and providing access to such records. For the Trustee to review the register of death across all of its overseas jurisdictions, it would incur significant and unnecessary cost.
 - Since Covid-19 restrictions in New Zealand had relaxed and Mr Y had recently travelled to Auckland to see a specialist, it was not unreasonable to have expected him to ask the doctor to complete the COE during his visit.
 - It had extended the deadline for completion and return of the COE to 30 April 2021.
16. On 12 March 2021, Mr Y requested that his complaint be reconsidered under stage two of the Scheme's IDRP. He said:-
- He deemed the Trustee's decision to delegate the task of responding to his complaint unsuitable.
 - He wished to escalate his complaint to the Chair of the Trustees.
17. On 30 April 2021, the Trustee responded to Mr Y's complaint under stage two of the Scheme's IDRP. It said:-
- It reiterated the decision from its stage one IDRP response.
 - It had reviewed its processes to determine whether alternative electronic or digital options would be suitable for consideration.
 - However, it had determined that requiring members to complete the COE remained reasonable.
 - COE forms had been commonly utilised amongst occupational pension schemes.
 - It was convenient for Scheme members because it allowed them to complete and return the COE without the need to sign-up or log in to any third-party platforms.

Its 98% compliance rate had proven it to be an effective method of complying with the requirement.

- It was the most cost-effective and efficient method for the Trustee to comply with its obligations to verify the existence of pensioner members.
- In light of Mr Y's ill-health, it had agreed to make a one-off exception by conducting a video call at a mutually convenient time for the purpose of verifying his existence.

18. In his submissions to The Pensions Ombudsman (**TPO**), Mr Y said in summary:-

- The responses he had received had been legally compromised since there had not been a signature from the Chair of the Trustees.
- His other two pensions' arrangements did not require COE's.
- He had been advised that if he had provided alternative evidence to the COE proving his existence, then it would be illegal to withhold his pension.
- Neither the Trustee nor the Scheme had disclosed a single example of ever having been defrauded by a beneficiary's estate after their demise.
- There had been a total lack of transparency by the Trustee towards its members in that there had not been any publicising in any format. He felt that his complaint should be made public knowledge and not shrouded in secrecy.
- The Trustee had proposed a change in procedure for COE's which involved the use of an App. It was extraordinarily ignorant to assume that pensioners of ages exceeding 80 would possess the IT skills required to use them.

19. In its submissions to TPO, the Trustee said in summary:-

- It maintained its position as provided under stage one and stage two of the IDRPs.
- It added that Mr Y's allegation that the stage two IDRPs was "legally compromised" since it was not signed by the Trustee, was false. The complaint had been considered by a committee of the Trustee board which had been chaired by the Chair of the Trustees. The Scheme Secretary had been authorised to notify Mr Y of its decision.

Adjudicator's Opinion

20. Mr Y's complaint was considered by one of our Adjudicators who concluded that the Trustee had acted in accordance with the Scheme's TDR. The Adjudicator's findings are summarised in paragraphs 21 to 29 below.

21. The Trustee was obligated to discharge its responsibilities regarding the administration of the Scheme in accordance with the Scheme's TDR. Section 10.11

of the Scheme's TDR stated, "Payment of any pension or other benefit under the Scheme is subject to the production to the Trustees of such relevant information and evidence as they may require."

22. The Scheme's TDR had not specifically stipulated which methods of obtaining the evidence of existence would have been appropriate. So, the Trustee had considerable latitude on how it chose to discharge its responsibility. The Trustee's decision to require Mr Y to complete a COE was not prohibited by the Scheme's TDR. The method chosen was relatively straightforward and accessible to all members, although there were situations where compliance may have been problematic.
23. The Trustee also had a responsibility to ensure that ongoing pension payments were made correctly. The Adjudicator considered whether the Trustee's chosen method by which it discharged its responsibility was reasonable. Since the proposed implementation of an App had not yet taken place, it was premature to include this option in any discussions with Mr Y at this stage.
24. The operation of an annual COE exercise did not require the use of any third-party systems or technology, so it ensured a fair and equal opportunity for all age ranges of member who accessed their pension from overseas. Since the approach taken by the Trustee was a blanket process for all members, age discrimination had been prevented. The method was straightforward and accessible to all members.
25. In relation to Mr Y's suggestion that the Trustee should access the death records of its overseas pensioners to determine whether they were still alive, the Adjudicator took the view that incorporating such a procedure in all overseas jurisdictions would have been unreasonably time consuming and costly to the Scheme. The Trustee's decision to require Mr Y, and others, to periodically complete a COE was reasonable, cost effective and a justified method of obtaining evidence of existence.
26. The Adjudicator understood why Mr Y expected his email communication with the Trustee to be sufficient, but as Mr Y had himself highlighted, email accounts could be hacked, and emails could be sent by fictitious users. The Trustee's requirement for Mr Y to complete and return a witnessed COE was reasonable and, on the balance of probabilities, would have had less potential to be fraudulent.
27. As the Trustee had not breached any regulatory guidance or acted contrary to the Scheme's TDR, there had been no maladministration.
28. The complaints process may have exacerbated existing stresses relating to Mr Y's ill-health, but he had not suffered any further distress or inconvenience as a direct result of the Trustee's actions. This was because:-
 - The Trustee had provided Mr Y with several extensions to the original deadline for completion and return of the COE following his major surgery.

- It provided a one-off alternative method to prove his existence by accepting to conduct a video call.
 - It responded promptly and in full to Mr Y throughout each stage of his complaint.
 - Mr Y had a number of opportunities whereby his COE could have been completed by a witness, such as his doctor during his specialist visit in Auckland.
29. The actions taken, and the responses provided by, the Trustee had not caused Mr Y any significant distress or inconvenience so an award for non-financial injustice would not be appropriate.
30. Mr Y did not accept the Adjudicator's Opinion, and, in response he reiterated his previous position and provided the following further comments. In summary he said:-
- Irrespective of the Scheme's TDR the legality of only accepting one type of COE when several other options were offered by him, was not addressed.
 - The legality of the "bullying threat" to cease paying his pension and the severe stress it had caused him, was not addressed.
 - It would have been totally unacceptable to ask the doctor he saw in Auckland to take the role of Justice of the Peace when he was there for a serious medical assessment.
 - The fact that the biggest pension providers in the UK, the State Pension, did not require COE's, and would almost certainly do so if it were a legal requirement, was not addressed.
 - The details of his complaint should be readily available to others affected by it.
 - He requested compensation of £10,000.
31. The Trustee also provided a comment on the Adjudicator's Opinion. It said that a new system for checking existence had been implemented. The new method gave members the option to either confirm evidence of their existence using the same paper-based COE procedure as before or to use a new web-based App.
32. I note the additional points raised by Mr Y, but they do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

33. Mr Y complained that the Trustee has required him to complete and return a COE form.
34. Mr Y's complaint centres around whether it is legal for the Trustee to only accept a single method for evidence of existence. Since the submission of his complaint, the Trustee has implemented a second option through which its members can evidence their existence by using a web-based App. It is clear that the Trustee has noted Mr

Y's concerns and introduced some variety to its approach. Since Mr Y had requested an alternative means through which to provide proof of his existence, I find this compromise is a reasonable alternative for him and other members of the Scheme. If the member does not wish or is unable to use the app they can continue with the paper based approach.

35. Mr Y would also like the legality of the "bullying threat" to halt payment of his benefits to be addressed. Section 10.11(2) of the Scheme TDR provides that "a Member's pension may be withheld and not put into payment until he or she has provided the Trustees with evidence to their satisfaction" (see the Appendix below). The Trustee has informed Mr Y of the procedure they are obligated to follow in the event that satisfactory evidence of his existence is not provided. While I accept being told his pension payments may be stopped will have been of concern to Mr Y I do not consider this to be a "bullying threat." Rather, it was notification to Mr Y of the potential impact if he failed to complete the COE.
36. I note that Mr Y has said it would have been unacceptable to have asked his doctor to witness his COE during his appointment in Auckland. I acknowledge that to have made a request of this nature may have seemed inappropriate to Mr Y but given he was able to travel he could have taken the opportunity to find a more appropriate person to witness his signature. I appreciate the effect Mr Y's serious medical condition and the Covid 19 pandemic would have had on his ability to complete the COE but it is clear that the Trustee acknowledged Mr Y's condition by extending the deadline for evidence of existence several times and eventually agreeing to a one off, video call alternative, which it considered costly and time consuming. I find the Trustee made reasonable effort to accommodate Mr Y during what was a difficult period.
37. Mr Y has said that the State Pension does not require the completion of a COE. The rules relating to evidence of existence are not dictated by binding common law. Each pension provider is governed by its own rules and there is no requirement for these rules to mirror those set by other providers. The Trustee is only obligated to act in accordance with its own TDR, so the provisions of the State Pension are of no relevance to Mr Y's complaint.
38. I acknowledge Mr Y's desire to make his complaint public knowledge. All material related to Mr Y's complaint is bound by strict confidentiality during the complaints process. However, Determinations issued by an Ombudsman are in the public domain and our general policy is to publish an anonymised version on our website in almost all circumstances.
39. As the Trustee has not breached any regulatory guidance or acted contrary to the Scheme's TDR, there has been no maladministration.
40. I am satisfied that the Trustee's treatment of Mr Y has been reasonable and that appropriate actions were taken to accommodate Mr Y during his period of ill-health. Responses to his complaint were prompt and of a sufficient level of detail to

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appropriately inform Mr Y at all stages. I have no doubt that the complaints process will have exacerbated existing stresses relating to Mr Y's ill-health, but I do not consider the Trustee's actions to have directly contributed to any additional distress or inconvenience.

41. I do not uphold Mr Y's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman

28 May 2023

Appendix One

10.11 *PRODUCTION OF INFORMATION*

- (1) Payment of any pension or other benefit under the Scheme is subject to the production to the Trustees of such relevant information and evidence as they may require. The Trustees may send to a person's last known address a request for confirmation of continued existence and, in the absence of a reply within the period specified in the request, may assume that the person is no longer alive.

- (2) In particular, subject to the Preservation Requirements, a Member's pension may be withheld and not put into payment until he or she has provided the Trustees with evidence to their satisfaction of the amount of Lifetime Allowance that is available to him or her (if any).