

## Ombudsman's Determination

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| Applicant  | Miss K (acting on behalf of Mr K's estate)                    |
| Scheme     | Pension Protection Fund ( <b>PPF</b> )                        |
| Respondent | The Board of the Pension Protection Fund ( <b>the Board</b> ) |

## Outcome

1. I do not uphold Miss K's referral and no further action is required by the Board.

## Referral summary

2. The PPFO has received a reference of a reviewable matter following a decision by the Board's Reconsideration Committee dated 23 February 2022. The referral, brought by Miss K, representing her late father's estate, is that the PPF failed to inform Mr K that he was able to take early retirement from age 55, and as a result he did not receive PPF compensation before he died.
3. Miss K has also complained that she suffered injustice. Miss K says she had to bear the costs of looking after Mr K and this had an adverse impact on her. This has not been accepted for investigation as it is not a relevant complaint of maladministration by the PPF. As applicable, a relevant complaint is defined in section 208(2)(a) of the Pensions Act 2004, as a complaint made "by a person who is or might become entitled to compensation under the pension compensation provisions.....alleging that he has sustained injustice in consequence of maladministration in connection with any act or omission by the Board or any person exercising functions on its behalf." As Miss K is not a person who is or might become entitled to compensation under the legislation governing the PPF, the PPFO is unable to accept Miss K's complaint for losses she states she incurred personally.

## Background information, including submissions from the parties

4. 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.
5. Mr K was a deferred member of The Cobble Group Pension and Life Assurance Scheme (**the Scheme**). His Normal Pension Age (**NPA**) was 65. His Normal Retirement Date (**NRD**) was 13 March 2025.

6. The Scheme entered the PPF assessment period in May 2013.
7. On 21 October 2013, Spence & Partners Limited (**Spence**), acting on behalf of the Scheme Trustees (**the Trustees**), wrote Mr K at 31 R...R... The letter enclosed a schedule showing Mr K's personal data and benefit information, which Mr K was asked to check, sign and return. Also enclosed was a list of frequently asked questions, which included advice that during the assessment period members could take early retirement from age 55 at PPF levels using PPF early retirement factors and PPF rates of exchanging pension for a cash sum. Similarly, if the PPF assumed responsibility for the Scheme, PPF members could take early retirement from age 55 with compensation reduced using PPF factors.
8. On 6 May 2014, Spence wrote to Mr K at 31 R...R... setting out the current position and next steps regarding the Scheme's transfer to the PPF. The letter enclosed a PPF factsheet summarising how PPF compensation was calculated for members of pension schemes that transfer to the PPF.
9. In June 2014, the Scheme transferred to the PPF. On 16 June 2014, a welcome letter was issued to Mr K at 31 R...R... With the letter was enclosed a statement of Mr K's deferred compensation, £1,456.93 per annum, payable from 13 March 2025, and a booklet about the PPF. The booklet included information about early retirement and directed members to the PPF website for more information about early retirement illustrations.
10. On 18 March 2021, Mr K died.
11. The terms and conditions under which PPF compensation is paid are set out in the Pensions Act 2004 and The Pensions Protection Fund (Compensation) Regulations 2005. As relevant to Mr K:-
  - Paragraph 15, 'Deferred members who have not attained NPA at assessment date', of Schedule 7 to the Pensions Act 2004 provides:

“(1) Compensation is payable in accordance with this paragraph where, under the admissible rules of the scheme, a person who is a deferred member immediately before the assessment date has not attained normal pension age, in respect of his rights to a pension under the scheme, before that date.

(2) If that person ( “the deferred member” ) survives to attain normal pension age in respect of that pension ( “the pension” ), he is entitled to periodic compensation in respect of the pension commencing at that age and continuing for life.

...”
  - A member can take their PPF compensation early, by giving written notice to the PPF under Regulation 2 of the Pension Protection Fund (Compensation) Regulations 2005. Namely, as relevant to Mr K:

**“Circumstances where a person shall be entitled to early payment of compensation**

(1) The conditions subject to which a person may become entitled to—

(a) periodic compensation under paragraphs 11 or 15; or

(b) lump sum compensation under paragraphs 14 or 19,

of Schedule 7 to the Act before he attains normal pension age are those prescribed in the following paragraphs of this regulation.

(2) Those conditions are—

(a) that the person has given notice to the Board..., that he wishes to receive that compensation before he attains normal pension age;

(b) that on the date on which the compensation is to become payable early the person has attained—

(i) ..., normal minimum pension age [**NMPA**] as defined in section 279(1) of the 2004 Act<sup>1</sup>;..”

- NMPA is defined under section 279(1) of the Finance Act 2004 as:

“(a) in relation to, and to a member of, a pension scheme that is not a uniformed services pension scheme—

- (i) before 6 April 2010, 50,
- (ii) on and after that date but before 6 April 2028, 55, and
- (iii) on and after 6 April 2028, 57...”

12. In August 2021, Miss K complained to the PPF that it would not backdate any money owed to Mr K as he had died before his NPA. Miss K asked why Mr K was not informed that he could claim compensation from age 55. She said he lacked mental capacity at that time.

13. The PPF turned down Miss K’s review. In its initial decision it explained:-

- A PPF member’s NRD depended on their (the member’s) previous scheme’s rules.
- In accordance with the PPF’s governing legislation, members may take early retirement from age 55. However, it appreciated that some members may not want to do so as early retirement factors applied, reducing the compensation payable.

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<sup>1</sup> Finance Act 2004.

- Unless a member had a protected retirement age of 55, it did not automatically send retirement illustrations to members until three months prior to their NRD.
- Mr K's NRD was his 65<sup>th</sup> birthday. So, a retirement illustration was not issued prior to his death.
- A welcome pack was sent to Mr K on 16 June 2014. This included a booklet, which included details on early retirement, and a benefit statement.
- It received no communication from Mr K or a member of his family to advise it about the circumstances relating to his health, and if an early retirement illustration was required.

14. Miss K appealed, she said:-

- She wanted to see the documentation sent to Mr K informing him that he was a member of the PPF.
- She had dealt with Mr K's finances for a long time and had not seen any documentation from the PPF.
- Her uncle owned and lived at 31 R...R... and had told her the only letter he had received from the PPF was after Mr K's death.
- It was very distressing to find out that Mr K, or she, acting on his behalf, could have claimed his compensation from age 55.
- Mr K did not have the mental capacity to claim his benefits, therefore the situation was beyond his control and was unfair.
- Mr K had no money. They had to rely on government funded care homes. If Mr K had claimed his compensation, they could have used the money to contribute to his residing in a private care home near to the family.

15. The Board turned down Miss K's appeal. It said:-

- A welcome letter was sent to Mr K by the former Scheme's administrators when he was transferred to the PPF in June 2014. It had checked and had no indication of any reason that it was not sent to Mr K. There were over 550 other members of the Scheme who transferred at the same time, and all were sent welcome letters. It had received no indication from other members that there were any issues with these letters being received.
- In addition to the welcome letters, it also worked with Capita in the summer of 2015, to ensure that all members were advised that the administration of the PPF was moving in-house from Capita to its own offices. An initial letter explaining the changes was sent out around June 2015. A second letter was sent around August

2015. Both letters were sent to all members. While a number were returned by the Royal Mail, the letters sent to Mr K were not returned and it had no reason to believe that the letters had not been received.

- It also issued an annual newsletter to every member. These had been sent to Mr K at 31 R...R... every year since 2016.
- No correspondence it sent via Royal Mail to Mr K was returned undelivered. It always recorded when correspondence was returned and then attempted to trace the member through its tracing partner, Target. It had no need to trace Mr K.
- It automatically issued a retirement illustration prior to a member's NPA. This was in line with Schedule 1 of the PPF (Provision of Information) Regulations 2005. While members had the option to retire before their NPA and from the age of 55, there was no requirement for it to automatically issue a retirement illustration any earlier than six months prior to a member's NPA, but it would provide an illustration on request.
- The PPF was also under no obligation to issue annual benefit statements to deferred members, albeit it would provide a benefit statement on request. A deferred member could also view a benefit statement on its website.
- Under its governing legislation the PPF was not able to backdate a member's compensation prior to their date of death. Paragraph 15(2) of Schedule 7 of the Pensions Act 2004, provides that a member is only entitled to PPF compensation on reaching their NPA. In Mr K's case this was age 65. Regulation 2 of the PPF (Compensation) Regulations 2005 allows for early retirement from age 55, but only if the member chose to retire early and accepted that their payments would be lower than at NRD, because they would be in payment for a longer period. Many members choose not to retire early for that reason.
- The provision for survivors' benefits was in place to support those who might have been financially dependent upon the member. From the information Miss K had provided, regrettably it was clear that there were no qualifying beneficiaries to whom it would be permitted to pay a survivor's benefit.
- While it was very sorry to hear of Mr K's position before he died, it did not have the authority, or the discretion, to pay compensation outside its governing legislation.
- The legislation governing the PPF could only be changed by Parliament.

16. Miss K appealed.

17. The Reconsideration Committee (the **Committee**) turned down the appeal. The Chair of the Committee said:-

- The PPF's records confirmed that the correspondence sent to Mr K was printed and issued in line with standard processes. Most notably, the welcome pack

included a statement of Mr K's benefits and a booklet about the PPF. Its records showed that it was issued to the address on record, 31 R...R... The booklet included reference to early retirement and directed members to the members' website for more information about early retirement quotations.

- All correspondence issued since 2014 was also sent to a number of other members. It was not aware of any queries or complaints of a similar nature.
- It had contacted the former Trustees and Administrators of the Scheme. The Trustees confirmed that correspondence about the Scheme's transfer to the PPF was issued to Mr K's home address<sup>2</sup>. Additionally, the Administrators had provided two letters issued to Mr K in 2013 and 2014<sup>3</sup>, whilst the Scheme was in the assessment period.
- It was satisfied that all correspondence was correctly issued to Mr K and had no record of any correspondence returned undelivered. Additionally, it was confident that the letters issued by the former Trustees and the Administrators of the Scheme sufficiently notified members about the PPF and where and how to contact the PPF. Members were also signposted to the PPF's website.
- It was satisfied that Mr K's pension had been administered properly by the PPF since the Scheme transferred in 2014.

### **Miss K's position**

#### 18. Miss K submits:-

- Mr K lacked capacity due to Alzheimer's from 2013. He would not have been able to understand the PPF's welcome pack or the October 2013 and May 2014 correspondence from Spence and it was not brought to her attention. He spent the majority of 2014 in hospital.
- The PPF is not being fair with regard to allowing their members to claim their pension. Mr K was not written to for over eight years, making it impossible for her to have claimed on his behalf his PPF compensation as his carer.

#### 19. Commenting on the Board's position (see paragraph 22 below), Miss K submits:-

- Mr K's pension could have been accessed from age 55 but the Board says his compensation was set to a retirement (payment) age of 65. It is not clear who set this age. She has not seen any documentation from the PPF asking Mr K to choose which age he wanted to access his compensation. Mr K was very organised with his paperwork and finances. When she took over his records/finances there was not a single document in his files from the PPF for her to have contacted them.

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<sup>2</sup> The cover letter addressed to Mr K was not retained.

<sup>3</sup> See paragraphs 8 and 9 above.

- She understands that if Mr K had asked for the early payment of his PPF compensation it would have been reduced, but at that time he had no home, no income and no mental capacity. So, while the amount may have been much less it was needed and would have had a huge positive impact.
- Her main point is that there was only one (supposed) contact by the PPF when Mr K had no mental capacity. Neither Mr K nor she received it, and they were not aware of the PPF's existence prior to his death.
- If she had received the welcome pack, or the PPF had written to Mr K more than once, they could have claimed the early payment of his PPF compensation.

### **The Board's position**

20. The Board submits:-

- Mr K had no automatic entitlement to PPF compensation from age 55.
- It is required to pay PPF compensation in line with its governing legislation. This provides that compensation is payable from NPA.
- Mr K's NPA was 65. As he died before reaching that age, his PPF compensation did not automatically come into payment.
- There is flexibility for a member to take their PPF compensation early, by giving written notice under Regulation 2 of the Pension Protection Fund (Compensation) Regulations 2005. The member must accept that their PPF compensation will be reduced by an early retirement factor, to reflect that it will be in payment for a longer period. This notice must be given by the member, except, for example, in cases where the member lacks mental capacity, it could be by an attorney under a Power of Attorney. However, the PPF received no such notice from Mr K or from an attorney on his behalf.
- The PPF's governing legislation does not allow it to backdate or pay arrears in these circumstances, because the required conditions for putting the PPF compensation into payment were not met at the relevant time. It has no discretion in this matter. So, Mr K's estate is not entitled to any backdating of PPF compensation or arrears.
- Regulation 3 and schedule 1 to the Pension Protection Fund (Provision of Information) Regulations 2005, require that PPF retirement communications (for example, including a PPF compensation forecast and retirement options) are issued to members 6-12 months before the member reaches NPA. As Mr K had not reached NPA, no PPF retirement communications were issued.
- There is no corresponding requirement for the PPF to write out to members at or shortly before they reach age 55. So, it has not failed to meet a statutory

requirement and there was no maladministration regarding PPF early retirement communications.

## **Adjudicator's Opinion**

21. Miss K's referral was considered by one of our Adjudicators who concluded that no further action was required by the Board. The Adjudicator's findings are set out below:-

- The referral, brought by Miss K, representing Mr K's estate, was that the PPF failed to inform Mr K that he was able to take early retirement from age 55, and as a result he did not receive PPF compensation before he died.
- The PPF is a statutory compensation scheme and the amount, the terms and the conditions under which compensation is paid to members are set out in the Pensions Act 2004 and the Pensions Protection Fund (Compensation) Regulations 2005.
- The PPF has no discretion in the payment of compensation.
- The Adjudicator noted Miss K's comment that it was not clear who set Mr K's NPA of 65. The Adjudicator explained that this was Mr K's NPA under the Scheme; and so, it was his NPA for compensation under the PPF.
- Miss K said that due to Mr K's health condition he would not have been able to understand the welcome pack from the PPF or the 2013 and 2014 correspondence from Spence/the Trustees. She also said that the communications were not brought to her attention. But the PPF did not appear to have been made aware of Mr K's condition prior to his death. When the welcome pack was issued, it had no reason to believe that it was not received by Mr K. It held Mr K's correct home address, and the correspondence was not returned undelivered. Similarly, the correspondence sent by Spence in 2013 and 2014 was correctly addressed to Mr K.
- Miss K said the PPF only wrote to Mr K once. The Board disputed this. Nonetheless, there was no requirement for the PPF to contact Mr K more than it did as when Mr K died, he was several years away from his NPA and automatic entitlement to compensation.
- As specified under Regulation 2 of the Pension Protection Fund (Compensation) Regulations 2005, the member is required to give notice to the Board that they wish to receive their compensation before they attain NPA. Neither Mr K, nor an attorney acting on Mr K's behalf, did that. The PPF was not obligated to contact Mr K shortly before he reached his NMPA of 55.

22. Miss K did not accept the Adjudicator's Opinion and the referral was passed to me to consider. Miss K has provided her further comments, which I have considered, but they do not change the outcome, I agree with the Adjudicator's Opinion.



### **Miss K's further comments**

23. Miss K submits:-

- Mr K was moved from care home to care home as he was difficult to look after and protect due to his illness. His last care home was a secure facility more than an hour away from where she lived. But they had no choice as they had no more money or funding for one-to-one extra care that he had received in other homes.
- She felt absolute shock and despair when she was notified, after Mr K's death, that she could have claimed, on his behalf, his PPF compensation from age 55. This could have funded his staying in a better home with better care and nearer to where she lived.
- If the PPF had had a different procedure and contacted members more than once, she would have had the chance to fund Mr K's care with his compensation. While she understands the compensation would not have been much, she would have ensured her father had the best final years of his life.
- The PPF's protocol is not fair. The legislation and its procedure require changing. In circumstances like Mr K's, members should have more than one opportunity to claim their compensation. While it was not the PPF's fault that Mr K fell ill and was not able to read, acknowledge and reply to the welcome letter (if it was sent), she was not aware that he was a member of the PPF prior his death. So, she had no opportunity to claim for him his compensation.
- In short, her father was entitled to claim compensation from age 55 but could not because he lost mental capacity. If the PPF had sent annual statements or regular updates to him/her from age 55, his compensation would have been claimed and used for funding his care.

### **Ombudsman's decision**

24. Miss K says the PPF's protocol is not fair, and its governing legislation and procedure need to be changed so members, in circumstances like Mr K's, are given more than one opportunity to claim their PPF compensation.
25. However, I can only consider Miss K's referral as far as it relates to the estate of Mr K. Additionally, only Parliament can amend the PPFs governing legislation.
26. Miss K contests whether the PPF's welcome letter of 16 June 2014 was sent to Mr K. The Board says it was sent to Mr K and that it was not returned undelivered. I note that the letter was addressed to Mr K at 31 R...R...
27. Where legislation is silent the legal convention is that the Interpretation Act 1978, should be considered in the first instance unless a contrary provision applies. Where

a document is to be given by post the Act provides that “the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post”.<sup>4</sup>

28. While Miss K says she did not see the letter, my view, on the balance of probability, is that it was sent.
29. Nonetheless, this was not the only communication from or concerning the PPF that was sent to 31 R...R.... Spence, acting on behalf of the Trustees, wrote to Mr K on 21 October 2013, and again on 6 May 2014, while the Scheme was in the PPF assessment period. Additionally, the Board says that an initial letter was sent around June 2015, and a second in August 2015, notifying members of the former Scheme that the administration of the PPF was moving/had moved in-house, and from 2016, it sent an annual newsletter. The Board says no correspondence marked for Mr K’s attention was returned undelivered. So, the PPF had no reason to trace Mr K.
30. I note that the PPF was not informed of Mr K’s condition prior to his death or that he had ceased to reside at 31 R...R...
31. As the Adjudicator said in his Opinion, the PPF has no discretion in the payment of compensation. The terms and conditions under which PPF compensation is paid are set out in the Pensions Act 2004 and The Pensions Protection Fund (Compensation) Regulations 2005.
32. Under the legislation, there is no requirement for the PPF to contact members approaching their NMPA and members are required to contact the PPF if they wish to claim compensation prior to their NPA.
33. As Mr K died before he reached his NPA of 65, no compensation is payable to his estate.
34. While I very much empathise with Miss K, I do not uphold the referral and no further action is required by the Board.

**Anthony Arter CBE**

Deputy Pension Protection Fund Ombudsman  
27 September 2023

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<sup>4</sup> Provision 7 ‘References to service by post’.