

Ombudsman's Determination

Applicant	Mrs H
Scheme	Drayton Controls (Engineering) Ltd Works Pension Scheme (the Scheme)
Respondents	Zurich Assurance Ltd (Zurich)

Outcome

1. I do not uphold Mrs H's complaint and no further action is required by Zurich.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs H has complained that she did not receive a spouse's pension from the Scheme following the death of her late husband in May 2014. (Furthermore, Mrs H says she has no recollection of her late husband ever receiving a pension benefit from the Scheme when he reached Normal Retirement Age (**NRA**) 65, on 5 February 1997.).

Background information, including submissions from the parties

4. Zurich said Mr H's original file/paper records have been destroyed because "the plan went off the books in 1997". It only holds limited computer records indicating that a normal retirement claim was paid - the action date of that claim was 31 January 1997.
5. Computer records showed Mr H's benefit of £213.12 per annum at age 65, and that a spouse's benefit, equal to 50% of the members benefit existed. Zurich records held the correct home address and indicated Mr H had been a deferred member in the Scheme.
6. During the period between 8 January 1997 and 5 February 1997, central filing records showed a number of Zurich employees had dealings with Mr H's pension file (around his NRA).
7. Zurich said that as the member's pension was less than £260 per annum, it was most probably commuted for a one off payment on the grounds of triviality. But

without the original file, it cannot say with absolute certainty how much was paid out to Mr H. However, Zurich did say the payment would have been made by cheque at that time.

8. Zurich believe its assumptions to be reasonable on the grounds there was no pension in payment record set up with Zurich for Mr H, and because the pension was quite low, it was very unlikely an Open Market Option was taken up with another company.
9. During the investigation with my organisation, the representative of Mrs H (her son) was asked to approach his late father's bank to establish if any bank statements existed around the date of the claim in 1997. The bank in question confirmed its policy that it was unable to hold historic statements for a period greater than 10 years.
10. In an email to this organisation dated 14 June 2016, Zurich confirmed it had checked its records again and said:

“... we can see Mr H has claimed benefits at his normal retirement date. Our system shows a payment date of 31 January 1997. Unfortunately we are unable to establish what has been paid as the file has been destroyed... We have checked our pension payment system and as suggested this confirms we are not paying an annual pension, therefore we believe Mr H has claimed a trivial lump sum payment in 1997. Due to the fact this has taken place quite a while ago we are unable to provide any proof of the trivial lump sum payment.

I have done a quick calculation and the estimated amount as at Mr H's normal retirement date would have been £2,200.22... this figure is before tax.

The commutation would have extinguished all rights under the plan but unfortunately we no longer hold any records to evidence exactly what happened – given the passage of time since the transaction took place – but then nor are we required to still do so.”

11. Mrs H's representative provided a number of responses on 20 June 2016, which are summarised below:

“... it is clearly still our view that a company that deals in pension schemes should keep detailed records of any pensions/payments/final payments. This clearly has not happened... this is a major pension scheme that sells or runs accounts that may last for 40 plus years. We feel it clearly is their responsibility to keep detailed accounts and records.

What stops them taking advantage of the little man in the street by refusing to pay out this type of claim only to state they paid out but can't provide any evidence to show payments.

I am as sure as can be that my father did not receive any payment in settlement of the Drayton Controls pension. I have yet to see any proof of any payment being made. I also revert back to the fact when I spoke to Zurich via a phone call that the individual stated that this was a live policy and there was a payment to be made, although they could not say what it was but would contact my mother direct.

(Zurich employee) suggested there was a live policy and that we would need a copy of my father's death certificate to claim what was in that policy."

12. In response to the content of the telephone call, Zurich responded on 27 June 2016, and said:

"After an extensive search we have been unable to locate a recording of any conversation between Mr H (representative) and (Zurich employee); these calls are usually recorded and other calls from around that time have been retained, but we do not know why this call is missing; it may perhaps be a system error or the call may have been taken on a different and/or unrecorded line, but unfortunately and rather frustratingly I'm afraid I cannot throw any more light on the conversation that took place at that time. I believe you have, however, seen a copy of the file note that was taken during that call and the subsequent letter within a couple of days confirming that no pension benefits now existed for the late Mr H."

Adjudicator's Opinion

13. Mrs H's complaint was considered by one of our Adjudicators who concluded that no further action was required by Zurich. The Adjudicator's findings are summarised briefly below:

- It was confirmed that the late Mr H had one bank account with Lloyds and it was not in joint names with Mrs H. The bank had no legal entitlement to retain Mr H's historical bank statements under the Data Protection Act (**DPA**) going back to 1997. Mrs H therefore had no evidence that Mr H had not received a payment from Zurich around his NRA in February 1997.
- There was no disputing the fact that Zurich had not retained paper records/files going back to 1997, because a 'destruction' date marker had been set in accordance with its DPA requirements. What Zurich had was a basic electronic 'skeleton' record which confirmed it held the correct address for Mr and Mrs H and therefore, there was no reason why Zurich would not have been able to make contact with Mr H at his NRA.
- Zurich records showed an action/payment date of 31 January 1997, which is around Mr H's NRA. As there was no pension in payment recorded and no paper record/file beyond that date, it was most likely that a triviality lump sum

was paid, meaning there would be no future spouse's benefit payable under the Scheme.

- The central filing evidence showed that at least three Zurich staff members had been dealing with Mr H's file around the time of his NRA. Whilst that was not definitive evidence of a payment being made, it clearly showed his file and pension record had been actively worked on at his NRA in February 1997.
- The initial Zurich assessment was that a trivial payment of between £3,000 and £5,000 had been paid by cheque in 1997. That figure was later confirmed as being around £2,200 before tax and included all future spouse's benefits in the Scheme.
- Zurich's original wording had been questioned as it indicated Mr H's pension was non-commutable. But that did not mean his benefits could not be commuted on the grounds of triviality. It simply meant that on retirement he could not commute part of his single life pension for a tax-free cash sum and a reduced annual pension.
- Whilst the evidence was limited (the matter goes back 19 years), it was the Adjudicator's overall opinion there had been no maladministration on the part of Zurich for not retaining pension records or paper files, and it was more likely than not, that a triviality lump sum had been paid to Mr H around early February 1997.

14. Mrs H did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. I agree with the Adjudicator's Opinion, summarised above, and I will only respond to the key points, and some later submissions made by Mrs H's representative, on 20 June 2016, for completeness.

Ombudsman's decision

15. It is often very difficult to piece together events that took place nearly two decades ago. But from the evidence that is available, I find that it is possible to say, on the balance of probabilities, that Mr H did receive a lump sum payment on the grounds of triviality. It is not that I disbelieve Mrs H when she says she has no recollection of her late husband receiving such a payment, but there is simply more evidence suggesting it was paid rather than it not being paid.
16. I do accept the point made about a provider such as Zurich being expected to retain detailed records for many years. Under normal circumstances that is correct and if someone, for example, has a pension in payment, or future entitlement then detailed records will be retained indefinitely. However, if no benefits are indicated to exist, then it is not unreasonable for a provider such as Zurich to set a destruction date and destroy all paper records.

17. The DPA is very clear on this point and one of its principles states that “personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes”. In other words, as Mr H had no benefits in the Scheme, Zurich could not retain that information indefinitely.
18. Regarding the telephone conversation that was mentioned. I suspect the call handler was part of the general enquiries team (part of a high volume call centre) responsible for fielding initial queries. In my opinion the individual concerned would not be an expert on the Scheme (Drayton Controls) that Mr H had once been a member of, and they were unlikely to be familiar with the rules of that scheme. Even if the call handler suggested there was a “live policy” that did not mean benefits were payable. After the telephone note was made, the specific task of checking would have gone to an operational/administration team within Zurich, where on this occasion, it was confirmed in writing a few days later that there was no spouse’s pension benefit payable to Mrs H.
19. It is disappointing that Zurich could not trace the audio recording of the telephone discussion. However, irrespective of what was, or what was not said, it would not affect the overall outcome in my view. I accept that it possibly raised expectation or hope that a benefit was payable, but that in itself was not maladministration meaning a spouse’s benefit then had to be paid to Mrs H.
20. Therefore, I do not uphold Mrs H’s complaint.

Anthony Arter

Pensions Ombudsman
12 July 2016