

Ombudsman's Determination

Applicant	Mrs K
Scheme	EP1 Retirement Fund (the Scheme)
Respondent	Fast Pensions Limited (Fast Pensions)

Outcome

1. Mrs K's complaint is upheld, and to put matters right Fast Pensions should pay Mrs K the lump sum death benefit of £79,160.94, plus £1,600 for her distress and inconvenience. Fast Pensions should also pay any tax charges that arise due to the late payment of the lump sum death benefit.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs K complains that Fast Pensions has refused to pay her the lump sum death benefit arising under the Scheme on the death of her husband, Mr K, in March 2015.

Background information, including submissions from the parties

4. Mr K was a member of the Scheme provided by Fast Pensions. In 2013 he had agreed to a recommendation from an independent financial adviser to transfer his accrued benefits under the NHS Scotland pension scheme to the Scheme on the basis that, due to his alcoholic dependency, his life expectancy was short and the death benefits payable from the Scheme would be better for Mrs K: the old scheme would provide a small pension and no lump sum whereas the Scheme would provide a lump sum equal to twice the value of his pension fund.
5. In a letter to Mr K dated 10 June 2013, Fast Pensions said:

“We are writing to advise you that the death benefit cover on your pension policy has now begun. As per the terms of your policy, this will entitle you to two times the value of your pension should you die before your Normal Retirement date (the scheme rules deem this to be 65 years of age). This is subject to the terms and conditions of the policy, which are enclosed in this letter.”

6. Sadly, Mr K died of cirrhosis of the liver on 6 March 2015. His pension fund value then was £79,160.94.
7. As Mrs K had been named (under her maiden name) on an expression of wish form that Mr K had completed before he died, Mrs K contacted Fast Pensions to claim the death benefits arising under the Scheme. Fast Pensions told her that there was an insurance company exclusion for death caused by alcohol addiction. Mrs K complained that she and her husband had been unaware of the restriction, and had thought the whole benefit would be paid automatically.
8. On 5 June 2015 Fast Pensions sent Mrs K a letter which said: "The value of the pension fund is £79,160.94 and as you were the named beneficiary on the policy, would you please complete the enclosed form advising us of the bank details to where the payment is to be made." However, there was a delay in her receiving the letter, and Mrs K said she was upset that Fast Pensions put the phone down on her when she tried to chase their response. Mrs K completed the form on 17 July 2015.
9. Fast Pensions then said that before it could pay out the fund value to her it would need to see confirmation of Mr and Mrs K's marriage and confirmation of Mr K's will. Mrs K disputed that that evidence was necessary under Scots law, but Fast Pensions said that was its policy. The confirmation requested was obtained on 23 July 2015 and sent to Fast Pensions a few days later.
10. Mrs K then invoked Fast Pensions' internal dispute resolution procedure as she said she was unhappy with the service that it had provided and because of the delays she still had funeral debts, mortgage arrears and solicitor's bills to pay.
11. Fast Pensions told Mrs K's financial adviser on 2 September 2015 that it was not using delaying tactics, as had been suggested, and said the trustee of the Scheme was reviewing the documentation submitted.
12. Fast Pensions' letter of 16 September 2015 to Mrs K explained that on joining the Scheme the members had agreed that their funds would be invested for a minimum period of six years in order to achieve the targeted rate of return. On a member's death, a lump sum would be payable straightaway - subject to the insurer's terms and conditions - and there was a time limit in the Scheme rules for the trustee of the Scheme to distribute the fund value, worded as follows:

"The Trustees shall, within two years after the Trustees being notified of the Member's death, or of such earlier date from which the Trustees could reasonably have been aware of the Member's death, pay the whole or part of the lump sum to, or for the benefit of, any one or more of the beneficiaries in such manner, in such proportions and on such trusts (if any) as the Trustees, in their absolute discretion shall decide."
13. Fast Pensions said that in Mr K's case there was no payment due from the insurer, due to the exclusion clause, but his fund value would be paid out when his funds had been disinvested.

PO-15939

14. On 28 October 2015 Fast Pensions told Mrs K's representative that it had not been involved in the pension selling process, and that its welcome pack issued to Mr K on 1 March 2013 had contained full details of the standard terms and conditions of the group life assurance.
15. On 15 December 2015 Fast Pensions sent a letter to Mrs K which said that the fund disinvestment process was still ongoing. However, Mrs K received no correspondence from Fast Pensions in 2016.
16. Mrs K contacted us in February 2017. She said she would like to receive the lump sum death benefit and also compensation for the significant distress and inconvenience that she had been caused.
17. One of our Adjudicators pointed out to Fast Pensions' new administrator on 22 February 2017 that the two year period for distributing the lump sum death benefit would expire in March 2017, so this matter would require Fast Pensions' urgent attention. Fast Pensions' administrator replied "I am taking advice from the lawyers on this as I have not done a death claim like this before."
18. Unfortunately there has been no further correspondence from Fast Pensions.

Adjudicator's Opinion

19. Mrs K's complaint was considered by one of our Adjudicators, who concluded that further action was required by Fast Pensions. The Adjudicator's findings are summarised briefly below:
 - The lump sum death benefit arising under the Scheme should have been paid on or before 5 March 2017, within two years of Mr K's death, as prescribed in the rules of the Scheme. However, payment had still not been made, even though the necessary paperwork was sent to Fast Pensions in 2015. The delay constituted maladministration on the part of Fast Pensions.
 - Because of the exclusion terms in the insurance policy, the lump sum should be calculated as the fund value at the date of Mr K's death, namely £79,160.94.
 - Fast Pensions had never suggested that anyone other than Mrs K should be the beneficiary, so it should pay the lump sum benefit to Mrs K.
 - If any tax charge were to be imposed on the Scheme or on Mrs K by HM Revenue & Customs for late payment of the lump sum, that amount should be paid by Fast Pensions, because Mrs K was not responsible for the delays that occurred.
 - It was clear from the correspondence that Mrs K had suffered much distress and inconvenience as a consequence of the delays on the part of Fast Pensions. We had investigated and determined several other complaints about delays on the part of Fast Pensions. Those determinations are available on our website (www.pensions-ombudsman.org.uk). We upheld those complaints, and there were not any significant differences here which would warrant a different outcome.

PO-15939

- Therefore Mrs K's complaint should be upheld and she should also be compensated for her distress and inconvenience.
20. The Adjudicator's Opinion was sent to Fast Pensions' last known address, but was returned in the post. The Opinion was then emailed to Fast Pensions' current email address, but Fast Pensions did not respond.
 21. Mrs K accepts the Opinion, but is concerned that Fast Pensions will ignore it, as it has with previous correspondence.
 22. The matter has therefore been passed to me for determination.

Ombudsman's decision

23. I agree with the Adjudicator's Opinion, summarised above.
24. I note that Fast Pensions has failed to comment on the Adjudicator's Opinion and has not provided an up-to-date correspondence address.
25. We have dealt with a number of other cases recently involving Fast Pensions, where there have been continued failures to respond to requests and payment/transfer applications. Fast Pensions has also failed to communicate effectively with this office.
26. Based on the evidence we have, I agree that maladministration has been established, and therefore I uphold Mrs K's complaint.

Directions

27. I direct that Fast Pensions shall:
 - within 28 days of this determination, pay Mrs K the lump sum death benefit of £79,160.94;
 - within 28 days of this determination, pay Mrs K £1,600 to reflect the significant distress and inconvenience caused to her by Fast Pensions' maladministration; and
 - promptly pay any tax charge that HM Revenue & Customs imposes on the Scheme or on Mrs K for payment of the lump sum death benefit more than two years after Mr K's death.

Karen Johnston

Deputy Pensions Ombudsman
28 April 2017