

**PENSION SCHEMES ACT 1993, PART X**  
**DETERMINATION BY THE PENSIONS OMBUDSMAN**

**Applicant** Mr Thomas Worden  
**Scheme** Phoenix Life Personal Pension Plan  
**Respondents** (1) Phoenix Life Ltd (**Phoenix Life**)  
(2) Standard Life Assurance Limited (**Standard Life**)

**Subject**

Mr Worden complains that Phoenix Life have not transferred the proceeds of his two personal pension policies to Standard Life because both Phoenix Life and Standard Life have incorrectly refused to acknowledge the efficacy of a deed purporting to terminate the trust that had been declared in relation to one of the two policies to be transferred (i.e. policy 551671Y (**the Plan**)). Mr Worden complains that he has suffered financial loss and distress and inconvenience as a consequence of the respondents' failure to recognise the termination of the trust and, therefore, facilitate the transfer of the proceeds of the policies.

**The Pensions Ombudsman's determination and short reasons**

The complaint is upheld against Phoenix Life and Standard Life because the actions of both caused the failure to transfer the proceeds of the Plan from Phoenix Life to Standard Life.

## DETAILED DETERMINATION

### Material Facts

1. The Plan was held under trust. The trust was created by a Trust Deed executed on 3 March 1982. The Trust Deed says that the Plan was issued pursuant to section 11 of the Married Women's Property Act 1882. Policies issued under that section create trusts in favour of the spouse (or civil partner) and children of the assured. Mr Worden, who is the assured, says that he and Mrs Worden are the only possible beneficiaries under the trust.
2. Phoenix Life received a transfer request from Standard Life on 24 October 2012. The request asked Phoenix Life to transfer the proceeds of Mr Worden's two personal pension policies to Standard Life. One of these policies was the Plan. Mr Worden had intended to invest in Standard Life's "Managed Cash Fund".
3. An entry in a Phoenix Life memo of 28 December 2012 (**the Phoenix Life Memo**) for 30 October 2012 records that Phoenix Life informed Standard Life that before the transfer of the proceeds of the Plan could take place, Standard Life needed to confirm that they were willing to accept the transfer "with the knowledge that a trust applies to the policy monies". It appears that Phoenix Life held a copy of a deed governing the trust (**the Trust Deed**) which they accepted was valid and were therefore under the impression (whether correctly or incorrectly) that the Plan was held subject to a trust at that time.
4. Mr Worden provided Phoenix Life with a copy of a deed purporting to terminate the trust (**the Deed of Termination**) by letter dated 19 November 2012. The Deed of Termination had been executed that day. The recitals to the Deed of Termination said that Mr and Mrs Worden were the only persons interested in the trust (whether as trustees or beneficiaries), that the trust was to be terminated from the date of execution of the Deed of Termination and that the proceeds of the policy previously subject to the trust would be applied to Mr Worden on termination. The operative clause of the Deed of Termination declared the trust "terminated and discharged". The Deed of Termination was signed by both Mr and Mrs Worden. Both signatures were independently witnessed.

5. A copy of the Trust Deed was sent to Standard Life by Phoenix Life enclosed in a letter dated 28 November 2012. In that letter Phoenix Life said that “we must draw your [i.e. Standard Life’s] attention to the fact that a trust was declared in relation to the above policy(s) [sic] and that this trust deed [i.e. the enclosed Trust Deed] contains no provision that it will come to an end on any transfer of the policy monies to a new provider”. Further, the letter reiterated the previous request that Phoenix Life required confirmation that Standard Life “is willing to accept the transfer, with the knowledge that a trust applies to the policy monies” and says that if such confirmation was given the transfer could proceed.
6. Standard Life responded to Phoenix Life by letter dated 3 December 2012. This letter simply said: “I [i.e. Standard Life] can confirm that we are unable to accept a transfer payment from any plan where a Trust Deed applies”.
7. Phoenix Life faxed the Trust Deed and the Deed of Termination to Standard Life on 10 December 2012. Phoenix Life’s letter to Mr Worden of 30 January 2013 suggests that Standard Life called Phoenix Life on 11 December 2012 to tell Phoenix Life that they “had looked at the Trust Deed as well as the Declaration of Termination of Trust [i.e. the Deed of Termination] and were unable to accept a transfer with a Trust attached”. In addition, the Phoenix Life Memo says that on 3 January 2013 Standard Life confirmed that they had “seen the declaration of termination of trust but still they cannot accept it [i.e. the transfer]”.
8. By contrast, Standard Life’s email to Mr Worden dated 11 December 2012 says that Standard Life had received the Deed of Termination on 10 December 2012 and that Phoenix Life had asked them “to confirm if we [i.e. Standard Life] are satisfied with the document [i.e. the Deed of Termination]” but that Standard Life said that as the Plan was with Phoenix Life and Phoenix Life were not prepared to confirm that the trust no longer applied, they could not accept the proceeds of the Plan.
9. The proceeds of the Plan have, to date, not been transferred from Phoenix Life to Standard Life (or any other receiving arrangement).

**Summary of Mr Worden's position**

10. Phoenix Life refused to acknowledge the efficacy of the Deed of Termination and therefore wrongly told Standard Life that the Plan was subject to a trust. This misinformation caused Standard Life to refuse to accept a transfer of the proceeds of the Plan.
11. Standard Life should have acknowledged the efficacy of the Deed of Termination upon receipt of it in December 2012 and therefore facilitated the transfer of the proceeds of the Plan at that time.
12. Phoenix Life failed to inform him of their non-acceptance of the Deed of Termination.
13. Mr Worden no longer wishes to transfer to Standard Life. However, he says that Phoenix Life should be compelled to state, in writing, that the Deed of Termination effectively terminated the trust, and this information should be made available to any scheme providers to which Mr Worden may wish to transfer the proceeds of the Plan.
14. He has suffered financial loss and distress and inconvenience as a consequence of Phoenix Life's failure to recognise the termination of the trust.

**Summary of Phoenix Life's position**

15. It is not their responsibility to dissolve the trust and they are not able to do so.
16. It is not their responsibility to take any view on the Deed of Termination. Standard Life, as the receiving arrangement, must be satisfied that the Deed of Termination is effective (and thus the trust has been dissolved) as it is Standard Life's requirement that they cannot accept the proceeds of the Plan if they are subject to a trust.

**Summary of Standard Life's position**

17. Standard Life now accept that the Deed of Termination effectively dissolved the trust and so they would be prepared to accept a transfer of the proceeds of the Plan.
18. They should have taken a view on the Deed of Termination upon receiving a copy of it in December 2012, but failed to do so.

19. To compensate Mr Worden for the distress and inconvenience their failure to consider the efficacy of the Deed of Termination until recently has caused him, they would like to offer Mr Worden £150.

### **Jurisdiction**

20. Section 146(c) of the Pension Schemes Act 1993 provides that I am able to investigate and determine “any dispute of fact or law in relation to an occupational or personal pension scheme between – (i) a person responsible for the management of the scheme, and (ii) an actual or potential beneficiary”. The issue of whether the trust is dissolved by the Deed of Termination relates to the Plan and the Plan is a personal pension scheme. Accordingly, I have jurisdiction to determine whether the trust was effectively dissolved on the execution of the Deed of Termination.

### **Conclusions**

#### *Dissolving the trust*

21. Standard Life have, in their formal response to my office dated 6 June 2014, said that they have taken legal advice and concluded that the Deed of Termination does effectively terminate the trust. However, Mr Worden wants Phoenix Life to accept that the trust has been effectively terminated. Phoenix Life have said that acceptance of the termination of the trust is a matter for consideration by Standard Life (as the receiving arrangement) and so have refused to take a view on whether the Deed of Termination effectively terminates the trust under which the Plan is held.
22. As I have said above, it is within my jurisdiction to determine whether the trust was effectively dissolved on the execution of the Deed of Termination.
23. A trust can end in a number of ways. The most common way a trust ends is on the exercise of a power of appointment or power of advancement which empties the trust of all of its assets. Also, in more uncommon circumstances, a trust may end in accordance with the rule set out in the case of *Saunders v Vautier* [1841] EWHC Ch J82 or if directed by the court.
24. Powers of appointment are powers to create or change beneficial interests. A power of appointment must be expressly included in the trust documentation to be valid. There are no express powers of appointment in the Trust Deed.

25. A trust may also be ended by the exercise of a power of advancement. A power of advancement enables trustees to pay or apply capital to, or for the benefit of, a beneficiary. A power of advancement may be express or statutory. There are express powers of advancement in the Trust Deed at (aa), (bb), (cc) and (dd). However, these powers do not apply in these circumstances, as they relate only to the distribution of assets “on death”. The statutory power of advancement, as set out in section 32 of the Trustee Act 1925, also does not apply in these circumstances. This is because the Deed of Termination applies all of the proceeds of the Plan to Mr Worden and the Trust Deed has not extended any power of advancement to allow the proceeds of the Plan to be paid to just one of two possible beneficiaries.
26. However, the rule established in the case of *Saunders v Vautier* says that if the beneficiaries of a trust are all 18 or over, have capacity and are together absolutely entitled to all the trust assets, the trustees must follow the beneficiaries’ directions.
27. As considered above, Mr Worden has confirmed that he and Mrs Worden are the only possible beneficiaries under the trust and therefore are entitled to all of the proceeds of the Plan. Further, Mr and Mrs Worden are both over 18 years of age and there is no suggestion that they do not have the capacity to deal with affairs of this nature.
28. As a consequence, in my judgment the criteria in the rule in *Saunders v Vautier* have been met in these circumstances. Accordingly, the trustees must follow the beneficiaries’ directions as to the distribution of the proceeds of the Plan and the dissolution of the trust. In the Deed of Termination Mr and Mrs Worden declare that the trust is ended and all of the proceeds of the Plan should be applied to Mr Worden. Both Mr and Mrs Worden have signed the Deed of Termination, essentially in their capacity as both trustees and beneficiaries of the trust. Therefore Mr and Mrs Worden have, in their capacity as beneficiaries of the trust, directed that the proceeds of the Plan should be paid to Mr Worden.
29. Thus the trust was effectively dissolved by the Deed of Termination with effect from 19 November 2012. The Plan has, therefore, not been held under trust since 19 November 2012.

*Responsibility for failure to transfer*

30. As I have now established that the Deed of Termination effectively dissolved the trust with effect from 19 November 2012, I must consider who is responsible for the failure to facilitate the transfer of the proceeds of the Plan from Phoenix Life to Standard Life.
31. Standard Life have accepted that they – as the receiving arrangement – should have taken a view on the efficacy of the Deed of Termination in December 2012 and that, had they have done so, they would have concluded that it effectively terminated the trust. This would have allowed Phoenix Life to transfer the proceeds of the Plan to Mr Worden in December 2012.
32. Phoenix Life’s position is that they, as the ceding arrangement, do not have a responsibility to dissolve the trust and, therefore, take a view of the efficacy of the Deed of Termination. Their view is that Standard Life, as the receiving arrangement, must accept that the trust is dissolved.
33. Whilst I can appreciate Phoenix Life’s position (and recognise that it has been vindicated by Standard Life’s admission that they should have taken a view on the efficacy of the Deed of Termination in December 2012), I do also think that their inconsistent approach to the issue of the termination of the trust was an influential factor in the failure to make the transfer. Although my view is that it was not Phoenix Life’s responsibility to take a view on the efficacy of the Deed of Termination, they seemed to suggest to Mr Worden on two occasions that they had taken a view.
34. Firstly, Mr Worden says that in a telephone call with Phoenix Life on 4 December 2012 the Deed of Termination was described as “a simple letter” and, accordingly, inadequate to terminate a trust. This comment suggests that Phoenix Life had taken a view on the Deed of Termination and concluded it was ineffective. Further, Phoenix Life also asserted in their letters to Mr Worden dated 11 December 2012, 12 December 2012 and 30 January 2013 that their belief was that the trust was irrevocable. This suggests that Phoenix Life had reviewed the provisions of the Trust Deed to check if it was capable of being terminated and thus they had, if only indirectly, taken the view that the Deed of Termination could not be effective. Accordingly, Phoenix Life’s underlying approach – that it was not their responsibility to advise on

the termination of the trust – was not consistently applied. This inconsistency has undoubtedly contributed to the confusion that has ensued.

35. In addition, I find it highly unsatisfactory that Phoenix Life should take it upon themselves to tell Standard Life that there was a trust, but then decline to take a view on whether that remained the case. If Phoenix Life thought that they needed Standard Life's confirmation of the acceptability of a policy under trust to be sure of an effective discharge, then they also needed to reach a view as to whether the trust existed (because if it did not, then the confirmation was not required). If Phoenix Life did not need Standard Life's express confirmation, then they need not have told them about the trust at all. Once they had, they took on some responsibility for the consequences.
36. However, Standard Life as the recipients needed to decide whether anything prevented them from accepting the transfer – in this case requiring a decision as to the efficacy of the Deed of Termination, so they should bear more responsibility than Phoenix Life for the failure to make that decision and therefore bring the transfer into effect.

*Loss suffered by Mr Worden*

37. Mr Worden no longer wishes to transfer to Standard Life. He does not say that the fact that the transfer did not go ahead has caused him a direct loss. And Standard Life say that there would have been no growth in Mr Worden's fund had he transferred to the Managed Cash Fund, so there has been no loss.

*Distress and inconvenience*

38. Although Mr Worden has not suffered any financial injustice, it is clear that Phoenix Life and Standard Life's failure to make up their minds about the transfer of the proceeds of the Plan have caused Mr Worden distress and inconvenience. The matter became unnecessarily protracted with Mr Worden trapped between the two providers unwilling to decide whether they could carry out his wishes. I consider that that the amount of £500 is reasonable in all the circumstances.
39. As I have said previously, it is my view that responsibility for the failure to make the transfer should be shared between the parties in unequal shares. In my judgment, 60% of that compensation should be borne by Standard Life (£300) and the remaining 40% (£200) by Phoenix Life.



*Summary*

40. Mr Worden's complaint against Phoenix Life and Standard Life is upheld.
41. The Deed of Termination is dated 19 November 2012. Accordingly, as the Deed of Termination effectively terminated the trust, the Plan was not subject to a trust with effect from that date.

**Directions**

42. Within 28 days of this Determination Standard Life must pay Mr Worden £300.
43. Within 28 days of this Determination Phoenix Life must pay Mr Worden £200.
44. Consistently with my finding above, Phoenix Life are not to inform future potential recipients of a transfer that the Plan is or may be subject to a trust.

**Tony King**  
Pensions Ombudsman

15 August 2014