

Ombudsman's Determination

Applicant	Mr Y
Scheme	Midcounties Co-operative Pension Scheme (the Scheme)
Respondent	Midcounties Co-operative Pension Trustee Limited (the Trustee)

Outcome

1. Mr Y's complaint against the Trustee is partly upheld. To put matters right, the Trustee shall award Mr Y £1,000 in recognition of the serious distress and inconvenience which he has experienced dealing with this matter.

Complaint summary

2. Mr Y has complained that the member record held by the Trustee for him is incorrect because it only shows that he was an active member of the Scheme from 1 September 1992 until 21 August 1997. He considers that: (a) the Trustee has lost his membership details for the period 19 April 1980 to 31 August 1992, and (b) he is entitled to around an additional 12 years' pensionable service in the Scheme.
3. He is also dissatisfied with how the Trustee handled his subsequent complaint under the Scheme's Internal Dispute Resolution Procedure (**IDRP**).

Background information, including submissions from the parties

4. The Scheme was established in February 2008 following the merger of the Oxford, Swindon & Gloucester Co-operative Society Limited Employees' Pension Scheme (**the OSG Scheme**) with the West Midlands Co-operative Employees' Superannuation Fund. The OSG Scheme was later renamed as the Scheme.
5. Mr Y was employed by the Oxford & Swindon Co-operative Society Ltd (**Oxford & Swindon Co-op**) between 12 June 1978 and 25 January 1985. He subsequently worked for J D Barclay Limited/Oxford Garage Group¹ between 26 January 1985 and 31 August 1992, and Motorworld Toyota from 1 September 1992 until 21 August 1997.

¹ J D Barclay Limited (**J D Barclay**) became a part of the Oxford Garage Group in 1987.

6. J D Barclay/Oxford Garage Group and Motorworld Toyota were franchises of the Oxford & Swindon Co-op.
7. The Trustee says that employees of these subsidiary companies were originally offered membership of pension schemes which were distinct from the Oxford & Swindon Co-operative Society Limited Employees' Superannuation Fund (**the OS Fund**). The OS Fund was subsequently incorporated into the OSG Scheme.
8. According to a letter dated 14 July 1986 from the Co-operative Union Limited to the Oxford & Swindon Co-op:-
 - The Oxford & Swindon Co-op and the trustees of the OS Fund at the time were contemplating a consolidation of the pension schemes operated by the subsidiary organisations with the OS Fund.
 - Two schemes considered for merger with the OS Fund were the J D Barclay Pension Fund and the Oxford Garage Group Pension Plan².
 - The J D Barclay Pension Fund was a final salary scheme that was contracted out of the State Earnings Related Pension Scheme (**SERPS**). It was invested in a with profits group policy that was managed by Provident Mutual³. The benefits available from the J D Barclay Pension Fund were related to the amount which a member was earning at the time of retirement, death or leaving pensionable service and to the period of his/her pensionable service.
 - The Oxford Garage Group Pension Plan was a money purchase scheme that was contracted into SERPS and operated on a cash accumulation basis by London & Manchester Assurance Company Ltd⁴. The benefits available from the Oxford Garage Group Pension Plan depended on the contributions paid, usually increased by an amount based on the investment return on those contributions.
 - Given the wide variety of pension arrangements offered by the subsidiary companies, it would be difficult merging them with the OS Fund.
9. The Trustee held scant information about the pension benefits which Mr Y accrued prior to 1 September 1992 in its records. However, while considering Mr Y's complaint at Stage Two of the IDRPs in November 2018 (see paragraph 21 below), it discovered a "Superannuation Ledger" (**the Ledger**) in its archives which showed the following details for Mr Y handwritten on it:-
 - The date on which Mr Y joined the "Fund"⁵ was 19 April 1980.

² According to a supplementary trust deed dated 8 April 1987 for the Oxford Garage Group Pension Plan, J D Barclay was a participating employer in the Plan.

³ Provident Mutual was bought out by Aviva in 2015.

⁴ London & Manchester Assurance Company Ltd was later acquired by Friends Provident which traded as Friends Life which is now part of Aviva.

⁵ The Trustee says "the Fund" is the OS Fund.

- From this date, Mr Y paid employee contributions into the Fund. Details of Mr Y's total employee contributions with accrued interest were annotated in the column headed "Balance" after each payment.
- Mr Y's employment was transferred to J D Barclay on 26 January 1985.
- The last entry in the section headed "Rate of Contributions" was made on 26 January 1985.
- Following the employee contributions of £109.96 and £4.84 paid on 26 January and 2 February 1985 respectively into the Fund, there were no further employee contributions made by Mr Y until a one-off payment of £761.63 in January 1991. (see paragraphs 10 and 11 below).
- Interest continued to accrue in the Fund on the contributions which Mr Y had paid into it prior to his transfer to J D Barclay in January 1985.
- Mr Y's total employee contributions, with interest, as at January 1991 were £2,076.85. This included the payment of £761.63.

10. According to an internal memo of the Oxford Garage Group dated 9 January 1990 entitled "Pensions", the contributions payable by Mr Y and his employer at the time were:

<u>Payment Period</u>	<u>Employee Contributions</u>
10/87 - 12/88	£303.09
01/89 - 12/89	£217.92
01/90 - 12/90	£240.62
<u>Payment Period</u>	<u>Employer Contributions</u>
10/87 - 12/89	£881.38
01/90 - 12/90	£240.62

Total	£2,866.43

11. The total employee contributions paid by Mr Y from October 1987 to December 1990 were £761.63, that is £303.09 + 217.92 + 240.62. This was identical to the figure shown on the Ledger for Mr Y's one-off employee contribution in January 1991.
12. Mr Y's joining form for the OS Fund was completed by the Oxford, Swindon & Gloucester Co-operative Society Ltd and date-stamped 8 November 1993. The unsigned form said that Mr Y was an employee who joined the OS Fund on 1 September 1992.

13. The OS Fund annual report and accounts for the year ended 23 January 1993 showed that:-
 - Members of the OS Fund were contracted out of SERPS from 2 January 1989.
 - New contributing members who joined the OS Fund between 24 January 1992 and 23 January 1993 included 69 employees from “the Motor Division”, following the decision made by Oxford & Swindon Co-op “to discontinue support for the separate Motorworld schemes”.
 - The amount of money transferred into the OS Fund from other pension funds during the year ending 23 January 1993 was £9,880.
14. According to the National Insurance (**NI**) records held by HM Revenue & Customs (**HMRC**) for Mr Y, he was contracted out of the OSG Scheme (incorporating the OS Fund) from 1 September 1992 until 21 August 1997.
15. The section titled “Constitution of the Scheme” in the Trust Deed and Rules for the OSG Scheme dated 14 October 1994, showed that assets from three pension schemes had been transferred into it, that is from:-
 - Chipping Norton Co-operative Society Ltd Employees’ Pension Fund in November 1968;
 - Swindon & District Co-operative Society Ltd Employees’ Pension Fund in March 1969; and
 - Gloucester & Severnside Co-operative Society Ltd Employees’ Pension Fund in June 1994.
16. In December 2017, Mr Y’s Independent Financial Adviser (**IFA**) informed the Trustee, via the current Scheme administrator, that the deferred pension and current cash equivalent transfer value (**CETV**) available to Mr Y from the Scheme had been calculated using 1 September 1992, instead of 19 April 1980, as his date of joining the Scheme.
17. The Trustee replied that it would look into this issue and extended the guarantee period for Mr Y’s CETV until the outcome of its investigation was known.
18. Mr Y subsequently made a formal complaint under the Scheme’s IDRPs on 12 February 2018.
19. In her Stage One IDRPs decision letter dated 11 April 2018 to Mr Y, the Scheme Secretary said that: (a) the Scheme record held for him was correct, and (b) he was consequently only entitled to benefits from the Scheme accrued for the period 1 September 1992 to 21 August 1997.
20. Mr Y disagreed with this decision and appealed it.

21. In its Stage Two IDRPs decision letter dated 28 March 2019, the Trustee notified Mr Y that his appeal was unsuccessful. It said that:

“You have previously been advised of the searches that have been made of Scheme records and archives...You have been provided with all of the documents and correspondence following your Subject Data Access request made on 2 May 2018.

One of these searches on 6 November 2018 found a Scheme record that recorded you had joined the then Oxford & Swindon Scheme on 19 April 1980 and left the Scheme on transfer to Barclays...

The Trustee in considering your appeal looked at:

- the pension arrangements that were in place for the employees of J D Barclay and Motorworld and also, if when employed at these franchises, employees were eligible to join the Scheme – formerly the Oxford & Swindon Scheme;
- any documents that you had in support of the missing periods of membership that you were claiming; and
- the short service benefit rules that were in place in 1985.

The Trustee also noted that the period of membership that was recorded for you was of less than five years.

The Trustee’s investigations resulted in the following further information becoming available in considering your appeal.

1 The pension arrangements that were in place for employees of J D Barclay and Motorworld

Further enquiries about the pension arrangements that were in place between 1985 and 1992 were made to a Senior Society Manager who had responsibility for pension matters at that time. The manager confirmed that at the dates for which you are claiming membership it was not possible to join the Scheme. There were separate pension arrangements in place for both J D Barclay and Motorworld employees...The information provided by this Senior Manager was consistent with the information provided by a previous Society Personnel Officer.

...The Scheme records from this time have been reviewed by the Trustee. The records include the names of the members that transferred from the J D Barclay Managers Scheme into the Scheme. You were not a manager and therefore not eligible to join this scheme and the Trustee noted that your name was not recorded as having had benefits transferred.

2. The Scheme's Short Service Benefits Rules that were applicable when you transferred to J D Barclay in 1985.

The Trust Deed and Rules of the Oxford & Swindon Co-operative dated 13 August 1985...states that members with less than 5 years' service were not eligible for a deferred benefit option. This meant that you would have been issued with a short service refund when you transferred to J D Barclay in 1985 and you would not have been entitled to any further benefits from the Scheme. The Trustee did enquire if the records of this refund were available and were advised that they were not.

3. To consider any documents or paperwork that you had to support the period of membership claimed

The Trustee requested that you provide any paperwork or documents to support your claim and in particular the statement...that you considered you had made a past service transfer into the Scheme for the period 1980-1992. You confirmed by e-mail on 18 February 2019 to the Scheme Secretary that you had no paperwork to support the period of membership claimed.

Taking all of the above information into consideration...there is no basis to change the decision given by the Scheme Secretary on 11 April 2018. Although additional information has been obtained that confirms that you joined the Scheme when employed in 1980, the Scheme records found in November 2018 confirmed that you joined the then Oxford & Swindon Scheme on 19 April 1980 and left on 27 January 1985 on transfer to J D Barclay. This meant that under the Scheme Rules that were applicable in 1985 you would have received a short service refund and not entitled to a deferred pension in the Scheme.

However, should you in future find any new documents that support your assertion that you were a Scheme member for the periods claimed, the Trustee will consider these and if necessary review the decision..."

22. During the course of my Adjudicator's investigation into Mr Y's complaint, the Trustee found a copy of the Trust Deed and Rules for the OS Fund dated July 1980.
23. Section 12 headed "Transfers" stipulated that:

"(b) To another scheme:

...a member may apply for payment of a transfer value as determined by the Actuary to the Fund if he leaves the Society's service and becomes a member of a scheme which is not a scheme operated by a Society member of the Co-operative Union Limited but is a scheme approved for the purpose of this provision by the Commissioners of Inland Revenue, subject always to the requirements of the Inland Revenue in this respect being met. Provided that if in such a case the member concerned has not at the date of leaving qualified

for short service benefit the transfer value shall be the amount of the member's contributions and interest together with such part, if any, of any transfer value previously received in respect of the member as did not represent the member's contributions together with any interest added."

24. In his letter dated 14 October 2021 to the Trustee, Mr R⁶, the last remaining former trustee of the Oxford Garage Group Pension Plan said that:

"As I recall, this Plan was eventually transferred to the Co-operative Society. From that time they would have carried out all necessary administrative duties connected with the Plan and my duties as a Trustee would have ceased.

I believe, eventually, the whole arrangement was transferred to the Norwich Union Insurance Company.

Due to the lapse of time I am unable to recall any other information that may help."

25. In its letter dated 1 December 2021 to the Trustee, Aviva said that:

"...the principal employer for F38434 Oxford Garages Ltd Premier Retirement Plan⁷ is Midcounties Co-operative MG Limited and we hold no record for any other schemes for this company.

With regards to Oxford Garage Group and Oxford Garages Ltd, we can confirm that we also do not hold any schemes under these names.

We can confirm that for Motorworld Group we have scheme F64566 Motorworld New Generation Transplan, this contains a collection of individual section 32 policies as previously advised."

26. Aviva provided further information about the Oxford Garages Ltd Premier Retirement Plan in its letter dated 23 December 2021 to the Trustee as follows:

"We can confirm that this scheme is an occupational, unit-linked, money purchase arrangement.

We have reviewed our records and unfortunately, we were unable to locate any policy for Mr Y."

27. Aviva also suggested that Mr Y try to find his missing pension benefits using the Government's pension tracing service. Mr Y used this service without any success.

⁶ Mr R died in November 2021.

⁷ Aviva says that the Oxford Garages Ltd Premier Retirement Plan has not been wound-up, and it deals directly with the four remaining members because the "employer is showing as converted/closed on Companies House". Mr Y is not one of these four members.

Mr Y's position

28. He did not receive a refund of the employee contributions which he paid into the OS Fund prior to 26 January 1985. The Trustee has not provided any concrete evidence to corroborate its statement that this refund was paid to him.
29. It is the Trustee's responsibility to keep accurate records of Scheme members and pay out the correct benefits at the right time from the Scheme.
30. It is unacceptable for the Trustee to acknowledge that he had paid employee contributions after 26 January 1985 and then say it did not know what they relate to. The Trustee's lack of knowledge about these contributions is a clear admission of maladministration on its part which has resulted in a loss of around 12 years of his pensionable service in the Scheme.
31. He paid regular employee contributions in good faith and presumed that they would secure the correct level of pension benefits available to him on retirement. As such, he has a legitimate expectation that these benefits would be paid to him. The Trustee should discharge its fiduciary obligations to him by paying his accrued pension, in full, from the Scheme.
32. It is unreasonable for the Trustee to say that he is responsible for providing additional evidence in support his claim. The burden of proof is on the Trustee to explain what has happened to the employee contributions which he paid from 1980 to 1991, as shown on the Ledger.
33. The Trustee's decision under the IDRPs is flawed. It has not been able to provide a credible explanation to counter his contention that: (a) all his employee contributions were paid into the Scheme, and (b) he consequently has continuous pensionable service from 19 April 1980 to 21 August 1997 in the Scheme.
34. The Trustee took over a year to locate the Ledger in its off-site archives during the IDRPs. It did so only because he persevered with the complaint. If he had simply accepted the Trustee's original view that he did not have any benefits in the Scheme prior to 1 September 1992, the Ledger would never have been discovered. The Trustee only belatedly accepted that he had joined the Scheme in April 1980 after finding the Ledger.
35. He has encountered a high degree of resistance to his enquiries and the information provided by the Trustee has been supplied in a piecemeal and disorganised manner.
36. The Trustee's approach to its investigation of his complaint has neither been thorough nor diligent.
37. Oxford & Swindon Co-op owned all of the businesses which he worked for from 1980 to 1997 and is ultimately responsible for administering the pension schemes sponsored by its subsidiary companies. The many mergers that took place during his years of employment were clearly an ideal time for his member records to be mislaid or lost.

The Trustee's position

38. It accepts that Mr Y was a member of the OS Fund from 19 April 1980 to 26 January 1985. Statutory legislation applicable in 1985 stipulated that entitlement to short service benefits was dependent on a member having at least a minimum period of five years' qualifying service. Mr Y did not meet the criterion for this period of pensionable service in the OS Fund. So, Mr Y was not entitled to preserved benefits and it would seem that he most likely received a refund of his contributions.
39. When Mr Y's employment transferred to J D Barclay in January 1985, he could no longer participate in the OS Fund. He would have had to join a different pension arrangement offered by his new employer.
40. Membership of the OSG Scheme (incorporating the OS Fund) was available to employees of the subsidiary companies of the Oxford & Swindon Co-op for future service only from 1 September 1992. The pension arrangements sponsored by the subsidiaries were subsequently wound up and the benefits available to its members secured with insurance companies.
41. The pension schemes operated by the subsidiary organisations were administered independently to the Scheme and it was not responsible for them. It has no record of Mr Y's membership in these pension schemes.
42. The Ledger shows that Mr Y paid employee contributions from 1980 onwards but these were not continuous. There was a period during which he made no payments, with only interest being added to his total contributions. The information in the Ledger does not prove that Mr Y continued to pay contributions into the OS Fund after his employment was transferred to J D Barclay.
43. It does not know why the Oxford Garage Group internal memo dated 9 January 1990 was sent. There are no action points shown on the memo.
44. The records held by both the current Scheme administrator and Scheme actuary also show that Mr Y joined the Scheme on 1 September 1992. They also have no evidence of any earlier period of Mr Y's membership in the Scheme.
45. It is unclear which pension scheme Mr Y joined while working for J D Barclay/Oxford Garage Group and what his post 1985 employee contributions relate to. This is not, however, sufficient to establish the additional period of pensionable service which Mr Y is seeking when the evidence of: (a) the transfer of his employment to J D Barclay, (b) his joining form for the OS Fund, and his NI record held by HMRC points away from it.
46. It has responded promptly to Mr Y's correspondence and kept him fully informed throughout the complaint process. It has been diligent in its efforts to locate relevant documentation and the approach which it took to share this information with him has been open and transparent.

47. Its position has always been that it would grant Mr Y the extra pensionable service in the Scheme if there is sufficient evidence to support this. There has been no attempt on its part to abdicate responsibility for providing Mr Y with his correct benefits. It is mindful, however, of its duty to act in the best financial interests of all members in the Scheme and cannot therefore agree to Mr Y's request based on his assertions alone.
48. The onus is on Mr Y to provide concrete evidence to demonstrate that he is entitled to the additional benefits from the Scheme. To date, Mr Y has not been able to do so.

Adjudicator's Opinion

49. Mr Y's complaint was considered by one of our Adjudicators who concluded that further action was required by the Trustee. The Adjudicator's findings are set out in paragraphs 50 to 72 below.
50. The fundamental duty of a trustee is to give effect to the provisions of the trust deed. Trustees' other duties are many and varied including: (a) paying out the right benefits at the right time; and (b) keeping accurate records of the members and their dependants.
51. According to the member record held by the Trustee for Mr Y, he was an active member of the Scheme from 1 September 1992 until 21 August 1997. Mr Y disputed the accuracy of this record. He contended that the Trustee had lost the details of his membership for the period 19 April 1980 to 31 August 1992, and he was consequently entitled to around an additional 12 years' pensionable service in the Scheme.
52. The events relating to Mr Y's complaint took place 30 to 40 years ago. Furthermore, the OS Fund underwent several consolidations with other pension schemes before being incorporated into the Scheme. In order to comply with the Data Protection Act, the Trustee could not keep personal data for longer than necessary. For these reasons, it was not entirely unexpected that the Trustee encountered difficulties finding evidence of Mr Y's membership in the Scheme prior to 1 September 1992.
53. However, during Stage Two IDRPs, the Trustee discovered the Ledger in its off-site archive which showed that: (a) Mr Y joined the OS Fund on 19 April 1980, (b) he paid regular employee contributions into it until 26 January 1985, (c) a small residual payment was made on 2 February 1985, (d) no further employee contributions were then paid until a payment of £761.63 in January 1991 and (e) interest continued to accrue on his total contributions up to January 1991.
54. The internal memo dated 9 January 1990 showed that Mr Y's total employee contributions from October 1987 to December 1990 while working for Oxford Garage Group was £761.63. This amount corresponded to the contribution payment made in January 1991 as shown on the Ledger.

55. It was unclear, however, what employee contributions Mr Y paid for the periods: (a) 3 February 1985 to 30 September 1987, and (b) 1 January 1991 to 31 August 1992. No information about these contributions was recorded in the Ledger.
56. What was clear from the available evidence was that:-
- In 1986, the Oxford & Swindon Co-op and the trustees of the OS Fund had been considering a merger of the J D Barclay Pension Fund and the Oxford Garage Group Pension Plan with the OS Fund.
 - The OS Fund annual report and accounts for the year ended 23 January 1993, showed that new members who joined the OS Fund during the scheme year included 69 employees from the Motor Division after the Oxford & Swindon Co-op decided to no longer support the separate Motorworld schemes. This report also showed that the amount of money transferred into the OS Fund from other pension funds during the scheme year was not large.
 - According to the Trust Deed and Rules for the OSG Scheme, dated 14 October 1994, the assets transferred into it over the years did not come from the pension schemes operated by the subsidiary companies of the Oxford & Swindon Co-op.
 - Mr Y's joining form showed that he joined the OS Fund on 1 September 1992. This date aligned with HMRC's record for when he was contracted out of SERPS through the OSG Scheme (incorporating the OS Fund).
57. Based on the points set out in Paragraph 56 above, it was the Adjudicator's view that:-
- Mr Y could no longer participate in the OS Fund when he joined J D Barclay in January 1985 and he had to participate in a different pension scheme.
 - Mr Y was most likely one of the 69 employees from the Motor Division who joined the OS Fund during the scheme year ending 23 January 1993.
 - There was no transfer of his pension rights from the scheme which Mr Y joined while working for J D Barclay/Oxford Garage Group into the OS Fund.
58. The Trustee was not, however, responsible for the pension schemes operated by the subsidiary organisations of the Oxford & Swindon Co-op. These schemes had their own trustees and were administered independently to the Scheme. There was consequently no requirement for the Trustee to keep full details of Mr Y's membership in his new pension scheme following his transfer to J D Barclay.
59. Although it was not possible to establish precisely which pension scheme Mr Y joined based on the evidence presented, in the Adjudicator's view, it was reasonable, on the balance of probability, to conclude that Mr Y most likely joined the Oxford Garage Group Pension Plan because:-

- There is clear evidence of Mr Y and the Oxford Garage Group having paid employee and employer contributions into a pension scheme.
- The Trustee's records do not indicate that Mr Y had been a member of the J D Barclay Pension Fund.

60. In light of this, it was the Adjudicator's opinion that Mr Y did not have continuous pensionable service in the Scheme from 19 April 1980 to 21 August 1997.
61. The Trustee said that Mr Y probably received a refund of his contributions for his period of membership in the OS Fund from 19 April 1980 to 25 January 1985 as he needed to accrue at least five years' pensionable service to qualify for a deferred pension in accordance with statutory legislation applicable at the time.
62. In the Adjudicator's view, the available evidence did not support the Trustee's position on this issue. Mr Y contended that he did not receive such a refund and the Trustee had not been able to provide any evidence to refute his contention. Furthermore, the Ledger clearly showed that interest continued to accrue up to January 1991 on Mr Y's employee contributions paid into the OS Fund prior to his transfer to J D Barclay. This would not have happened if Mr Y had indeed received a refund of his contributions.
63. Furthermore, section 12 headed "Transfers" of the Trust Deed and Rules for the OS Fund, dated July 1980, specified that it was possible for a member who did not qualify for short service benefits from the OS Fund at their date of leaving to transfer their employee contributions with interest into their new pension arrangement.
64. It was therefore the Adjudicator's view that the employee contributions which Mr Y paid into the OS Fund prior to joining J D Barclay were most likely transferred into the Oxford Garage Group Pension Plan.
65. It was disappointing that despite correspondence with the Trustee, former trustees and Aviva, that it had not been possible to ascertain what had happened to the pension benefits that Mr Y accrued from 19 April 1980 to 31 August 1992.
66. Until critical evidence was found from which it could be established precisely: (a) the pension scheme that Mr Y joined when he transferred to J D Barclay; and (b) the insurance company now responsible for paying his missing pension benefits, regrettably it was the Adjudicator's view, that it was not possible to determine who should now be responsible for putting matters right for Mr Y.
67. Although the Adjudicator fully empathised with Mr Y's unfortunate position, it was his opinion that the evidence fell short of establishing that he was entitled to approximately, an additional 12 years' pensionable service in the Scheme.
68. The Adjudicator agreed with Mr Y that the Trustee had provided the information which he had requested in a fragmented way. This was partly caused by foreseeable difficulties in finding evidence of his membership in the Scheme some 30 to 40 years ago.

69. In the Adjudicator's view, the Trustee should, however, have been more thorough and proactive in its search for pertinent evidence during the IDRPs before notifying Mr Y of its decision. Indeed, a lot of relevant new information was supplied by the Trustee only in response to an extensive investigation by the Adjudicator.
70. If the Trustee had obtained this new evidence by itself during the IDRPs, in 2018 and 2019, in the Adjudicator's opinion, it might have reached the same conclusion as he had about what happened to the contributions which Mr Y paid into the OS Fund prior to joining J D Barclay.
71. In the Adjudicator's view, the failure of the Trustee to properly carry out the IDRPs was maladministration on its part. Although Mr Y had not suffered any actual financial loss as a result of the Trustee's response to his claim, it was clear that he had experienced serious distress and inconvenience.
72. The Pensions Ombudsman's awards for non-financial injustice are modest though and not intended to punish a respondent. In the Adjudicator's view, the non-financial injustice which Mr Y had suffered was serious and warranted an award of £1,000.
73. The Trustee accepted the Adjudicator's Opinion and did not provide any further comments.
74. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y provided his further comments which do not change the outcome.
75. Mr Y said that:
- Midcounties Co-operative, incorporating Oxford & Swindon Co-op, was the "umbrella company" under which J D Barclay operated. When J D Barclay closed, the paperwork relating to its pension schemes would have been transferred to Midcounties Co-operative, as its parent company. In his view, Midcounties Co-operative is "the liable respondent" to his complaint.
 - The Adjudicator's conclusion on his missing pensionable service in the Scheme would appear to be based upon an absence of evidence as to the party responsible for compensating him.
 - He has requested clarity "on what steps the Ombudsman has taken to investigate matters" and assist him "raising enquiries not just of the Scheme itself but my former employer and prospective insurers to whom my contributions from 1980-1985 may have been transferred".
 - There was a "clear parallel" between his complaint and that of Mrs N (PO-20365) which was upheld by the Pensions Ombudsman. Mrs N had complained that her missing years of service should be reinstated to "the scheme in question". The adjudicator concluded that "the starting point in assessing any dispute around missing years is that liability remains with the original pension scheme unless it can be proven, on the balance of probabilities, that a past service transfer was made out of the scheme".

- The evidence is clear that he did not receive a refund of the contributions which he paid into the OS Fund prior to 26 January 1985. Therefore, it is “proportionate and reasonable” that he should, at the very least, be reimbursed these contributions with “accrued investment returns”.
- An award of £1,000 in recognition of the serious distress and inconvenience which he has suffered dealing with this matter is “minimal” compared to the actual financial loss which he has suffered.

76. I note the additional points raised by Mr Y but I agree with the Adjudicator’s Opinion.

Ombudsman’s decision

77. Having carefully examined all the available evidence, I find, on the balance of probabilities, that the contributions which Mr Y paid into the OS Fund prior to joining J D Barclay in January 1985 were transferred into the Oxford Garage Group Pension Plan. My reasons for saying this are essentially the same as those given by the Adjudicator in his Opinion.
78. In view of this, I do not consider it appropriate to direct the Trustee to return these contributions with interest to Mr Y. By doing so, Mr Y would then incorrectly be entitled to benefits from the same contributions in two distinct pension arrangements.
79. Mr Y now contends that Midcounties Co-operative is the “liable respondent” to his complaint because the paperwork concerning the pension schemes, which J D Barclays established for its employees, would have been transferred to it. But apart from the recollections of Mr R, one of the former trustees of the Oxford Garage Group Pension Plan, there is scant evidence that would substantiate his assertion.
80. In any event, I consider that it was the trustees of the Oxford Garage Group Pension Plan who should have been responsible for keeping precise details of Mr Y’s benefits, including those which were transferred into it. One of the fundamental duties of a trustee is to keep accurate records of the members and their dependants.
81. Correct administrative records are of fundamental importance when a pension scheme is eventually wound up or transferred to another administrator. If the membership data records were inaccurate or incomplete when the winding up or transfer process was being completed, this could result in the loss of benefits to those members who were not identified as being beneficiaries.
82. If there had been any mistakes made in the identification of beneficiaries or in the calculation of their benefits during the transfer of the Oxford Garage Group Pension Plan to Aviva, I do not consider that the Trustee, or indeed Midcounties Co-operative, can be held accountable. The appropriate respondents would have been the parties involved in the transfer process.

83. The onus however is on Mr Y to establish whether this had occurred. The Pensions Ombudsman is impartial, we look at the facts of a case and consider the issues without taking sides.
84. When Mr Y's complaint was allocated to the Adjudicator, he considered it necessary to ask the Trustee for more information before forming his Opinion. However, once the Adjudicator considered that he had all the facts he needed in order to do so, he brought the exchange of correspondence to a close. In some cases, while information is being gathered, an adjudicator might be able to resolve the problem informally. I share the Adjudicator's disappointment that it has not been possible in Mr Y's case despite protracted correspondence with the Trustee, former trustees and Aviva.
85. However it is not the role of The Pensions Ombudsman to assist an applicant trace lost pensions. For example, there is a dedicated government body, called the Pension Tracing Service, which can help. Its contact details and how to access its service, can be found on the gov.uk website.
86. The benefits available to Mr Y from the Oxford Garage Group Pension Plan regrettably cannot currently be found, but this does not mean that it will always be the case. I cannot disregard the possibility that key evidence showing what happened to Mr Y's missing benefits and who is responsible for putting matters right for Mr Y still remains to be discovered.
87. Should Mr Y be able find this evidence, with his solicitor's assistance if necessary, he can then try to resolve the problem with the party identified as responsible for it. If Mr Y is not happy with the way in which this party handles his request or the outcome, it will be open to him to refer it to me for investigation.
88. I sympathise with Mr Y's unfortunate position. However, I do not find, from the available evidence, it has been clearly established that he was entitled to around an additional 12 years' pensionable service in the Scheme.
89. It is evident to me though, that Mr Y has experienced serious distress and inconvenience because of the failure of the Trustee to properly carry out its IDRPs and this amounts to maladministration on its part. My awards for non-financial injustice are modest and not intended to punish a respondent. I consider that the non-financial injustice which Mr Y has suffered is serious and so warrants an award of £1,000.
90. I partly uphold Mr Y's complaint.

Directions

91. Within 28 days of the date of this Determination, the Trustee shall pay Mr Y £1,000 in recognition of the serious non-financial injustice which he has suffered dealing with this matter.

Anthony Arter

Pensions Ombudsman
20 July 2022