# Ombudsman's Determination

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| Applicant: | Mr Y |
| Scheme: | Pension Protection Fund (**PPF**) |
| Respondent: | The Board of the Pension Protection Fund (the **Board**) |

## Outcome

1. I do not uphold Mr Y's complaint and no further action is required by the Board of the Pension Protection Fund

## Complaint summary

2. Mr Y has complained that he has not been allowed to take a one-off lump sum from the PPF instead of receiving small amounts of periodic compensation.

## Background information, including submissions from the parties

### Background

3. Mr Y's complaint relates to pension benefits he built up between October 1988 and January 1991. At the time, Mr Y was employed by a company called Rent Equip and a member of its pension scheme. This business was subsequently bought by Hewden Stuart plc, which was subsequently re-named HS Realisations Limited. Mr Y's pension benefits were transferred to the Hewden Pension Plan (the **Hewden Plan**).

4. At the time Mr Y left employment in 1991, his annual pension was £240.36, including a Guaranteed Minimum Pension (**GMP**) of £70.72.

5. In November 2015, Mr Y was provided with a transfer value quotation for his Hewden Plan benefits. The transfer value at that time was quoted as £29,994, including £14,523 in respect of his GMP. This figure was guaranteed until February 2016.

6. On 22 November 2016, HS Realisations Limited entered into administration. This is a qualifying insolvency event for the purposes of the PPF. The Hewden Plan entered into an "assessment period" during which it was to be assessed for possible transfer to the PPF. The Hewden Plan transferred to the PPF on 6 July 2018.

7. Mr Y's benefits in the Hewden Plan were the subject of a complaint by him against the trustees and Mercer. In January 2019, the Pensions Ombudsman issued a Determination not upholding Mr Y's complaint[1]. This investigation cannot reconsider any matter which was the subject of the earlier Determination.

8. In December 2019, Mr Y completed retirement forms to enable him to receive compensation from the PPF. Mr Y's PPF compensation was put into payment with effect from October 2019.

9. The Board calculated an annual compensation amount of £667.69 or a tax free cash sum of £3,542.56, with a residual annual payment of £531.38. These figures were based upon the value of Mr Y's benefits in the Hewden Plan as at 22 November 2016 (the **Assessment Date**). Mr Y's annual compensation was reduced by the application of an early retirement factor because he wished to take his benefits before his normal retirement date (**NRD**). The annual compensation figure put into payment was 90% of the reduced compensation. In addition to the annual compensation and tax free cash sum, the Board also calculated what a one-off trivial commutation lump sum would be. This amounted to £17,353.26.

10. Mr Y made enquiries about taking the trivial commutation lump sum. Following further enquiries, the Board informed Mr Y that, because he had other pension arrangements which were valued at more than £30,000, he was not able to take a trivial commutation lump sum.

11. Mr Y asked for this decision to be reviewed. He also raised concerns about the value of his PPF compensation when compared with the 2015 transfer value. Following a number of telephone conversations and exchanges of emails with Mr Y, the Board issued a formal review decision on 17 January 2020. This is summarised as follows:-

    - Trivial commutation is an option available to individuals with small pension entitlements; up to the value of £30,000.

    - The conditions for taking a trivial commutation lump sum were set by HMRC and were:-

        - The total value of all of Mr Y's pension benefits, whether in payment or not, must not exceed £30,000;

        - He must not have taken a trivial commutation lump sum more than 12 months previously; and

        - He had to have some Lifetime Allowance available.

    - Mr Y had several other pension arrangements and, when the values of these were combined, the £30,000 limit was exceeded. The option to take his PPF compensation as a trivial commutation lump sum was not available to Mr Y.

[1] PO-23320

- A transfer value represented a value of Mr Y's pension and was intended to be used to provide a benefit in a new pension arrangement. A transfer value was not an amount paid to an individual member; it could only be paid to another pension arrangement.

- The difference between the 2015 transfer value and the tax free cash sum from the PPF was likely to be the result of differences in market conditions and calculation assumptions.

- The PPF paid compensation in place of Mr Y's pension. The legislation which governed the PPF was different from the legislation which governed pension schemes.

- Under Section 135(4), Pensions Act 2004, it was not possible to transfer out of the PPF.

- The PPF did not receive a specific pot of money for each member of a scheme for which it became responsible.

- The assets received from the Hewden Plan amounted to £23,626,117. The liabilities which the PPF assumed for members of the Hewden Plan amounted to £24,296,772. The PPF did not receive enough assets from the Hewden Plan to pay the members their PPF compensation.

- The PPF was not a pension scheme. It was created by the Government to pay members of pension schemes which had failed, so that the members still received a substantial proportion of the money they would have been entitled to. Members were paid from the PPF assets, which were made up of assets from transferred pension schemes, a levy on eligible pension schemes, investment returns and funds recovered from insolvent employers.

- It had made enquiries about the transfer of Mr Y's benefits to the Hewden Plan. The former trustees of the Hewden Plan had confirmed that Hewden Stuart plc had acquired Rent Equip in the 1990s and there had been a bulk transfer into the Hewden Plan. Mr Y should have been informed of this at the time.

12. Mr Y asked for this decision to be reviewed. The Board's Reconsideration Committee issued a decision on 25 March 2020. It upheld the previous decision.

**Mr Y's position**

13. Mr Y submits:-

    - The Hewden Plan transferred £23.6 million to the PPF. Included within that was the £29,994 transfer value he had been quoted in 2015. The Board now says that the £29,994 is worth £3,400 and he is being paid £9 per week.

    - If he had been allowed to transfer his benefits, he would have been able to take 25% as a tax free lump sum. This amounts to around £7,500.

- He has sustained a financial loss of around £35,000.

**The Board's position**

14. The Board has referred to its review decisions.

## Adjudicator's Opinion

15. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Board. The Adjudicator's findings are summarised below:-

- The PPF was brought into being by the Pensions Act 2004. It is not, itself, a pension scheme; it is intended to provide compensation for the members of an occupational pension scheme which is unable to pay the benefits which have been promised to them. Briefly, the circumstances in which the PPF will accept a pension scheme are:-

  - The pension scheme is a defined benefit[2] arrangement and commenced winding-up after April 2005;

  - A qualifying insolvency event has occurred in relation to a sponsoring employer;

  - An insolvency practitioner has confirmed that a scheme rescue is not possible; and

  - The assets of the pension scheme are less than would be needed to provide benefits at or greater than the level of PPF compensation for the members.

- The above conditions applied in the case of the Hewden Plan and it transferred to the PPF in July 2018. At that point, the Hewden Plan, effectively, ceased to exist and its members became eligible to receive compensation from the PPF.

- The amount of PPF compensation payable and the terms and conditions under which it is paid are set out in the Pensions Act 2004, and regulations made under it. Generally speaking, for someone in Mr Y's position; that is, a member who has not reached normal retirement age, the PPF compensation is roughly equivalent to 90% of the benefits which he would otherwise have received from the Hewden Plan. The details of how the PPF compensation is calculated are set out in Schedule 7, the Pensions Act 2004 (**Schedule 7**), and The Pension Protection Fund (Compensation) Regulations 2005 (SI2005/670) (as amended) (the **Compensation Regulations**).

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[2] Generally speaking, in a defined benefit scheme, members are promised a certain level of pension and the scheme is funded to meet this promise; whereas, in a defined contribution scheme, the pension will depend upon how much the member has by way of funds and the market cost of buying a pension at retirement.

- Mr Y's complaint concerned his wish to take a one-off lump sum instead of receiving periodic payments of compensation.

- Paragraph 24 of Schedule 7 and Part 7 of the Compensation Regulations set out the circumstances in which an individual was able to exchange some or all of their periodic compensation for a lump sum. One of the conditions for exchanging all of the periodic compensation for a one-off lump sum is that the value of a person's entitlement to PPF compensation plus any other pension rights does not exceed "the commutation limit". The commutation limit is set out in paragraph 7(4) of Schedule 29, the Finance Act 2004, and is £30,000.

- Mr Y has other pension arrangements and the value of these, together with his PPF compensation, exceeded £30,000. It was for this reason that the Board had been unable to agree to Mr Y's request to take his PPF compensation as a one-off lump sum.

- The Adjudicator said she appreciated Mr Y's frustration at not being able to receive his PPF compensation in the form he would prefer. However, the Board was required to administer the PPF in accordance with the Pensions Act 2004, and the Compensation Regulations.

- Mr Y had also raised a concern about the apparent disparity between the transfer value he had been quoted in 2015 and his PPF compensation amounts. Mr Y had received a transfer value quotation of £29,994 in 2015. This figure would have been calculated on the basis of the actuarial value of the benefits held for Mr Y in the Hewden Plan; that is, an estimate of how much it might cost to provide those benefits. The calculation of the transfer value would have taken into account factors such as: the amount of pension which had been promised to Mr Y, when it was due to be paid, likely investment returns over the period to his normal retirement age and beyond and mortality rates. The idea being that, if this amount had been paid to another pension arrangement, Mr Y should have been able to secure similar levels of benefit to that which he had under the Hewden Plan.

- Because, the Hewden Plan was a defined benefit arrangement, the transfer value did not represent a specific pot of money set aside for Mr Y. Instead, the Hewden Plan held common assets which would have been used to provide the members with their promised benefits as and when they became due for payment. Unfortunately, when the Hewden Plan was wound-up the assets were not sufficient to secure all of the benefits which had been promised to the members. In fact, the assets were not sufficient to secure benefits at or above the level of compensation which the PPF would pay to the members and, for this reason, the Hewden Plan was accepted by the PPF.

- Rather than compare his PPF compensation with the 2015 transfer value quotation, the Adjudicator suggested that it might be more reassuring for Mr Y to make the comparison with the pension he had built up in the Hewden Plan. At the time Mr Y left employment in 1991, his annual pension had been £240.36. It would have been this pension, revalued over the period to his normal retirement date, which the Hewden Plan would have paid to Mr Y. And this formed the basis for the compensation which he received from the PPF.

- Mr Y had expressed concern that £23.6 million was transferred to the PPF when the Hewden Plan was wound-up. He feels that this should have resulted in a higher level of compensation for him. The amount of compensation which the PPF pays is not related to the amount of assets which it receives from a failed pension scheme. The compensation is calculated by reference to the benefits which the person would otherwise have received from their former scheme if it had continued. In fact, the £23.6 million which was transferred from the Hewden Plan to the PPF did not cover the cost of providing compensation for the transferring members. The Board had explained that there was a shortfall of £670,655. This shortfall was met by funds which the PPF received from other sources, such as investment return and the levy on continuing eligible pension schemes.

- Mr Y was also concerned that he became a member of the Hewden Plan when he had not worked for Hewden Stuart plc. The Board had made enquiries and had been told that there had been a bulk transfer into the Hewden Plan when Hewden Stuart plc acquired Rent Equip. It was not unusual for there to be such a transfer when one company was acquired by another and there were two pension schemes. Responsibility for notifying Mr Y about the transfer would have been with the trustees of the Rent Equip scheme at the time. For the purposes of the PPF, it was appropriate for the Board to accept Mr Y as a deferred member of the Hewden Plan on its transfer to the PPF.

16. Mr Y did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr Y provided further comments which are summarised below. I note the points raised by Mr Y, but I do not find that they change the outcome. I agree with the Adjudicator’s Opinion.

**Mr Y’s further comments**

17. Mr Y submits:-

- He questions how someone could have £30,000 in a pension account and end up with £8.52 per week.

- His pension fund was entrusted to a pension provider with whom he did not have a contract and with a firm for which he had not worked.

- He is £30,000 out of pocket. He has also been told by the Department for Work and Pensions that he is four years short on his National Insurance contributions because of opting out of the State Earnings Related Pension Scheme (**SERPS**).

## Ombudsman's decision

18. Mr Y's complaint is, essentially, that the compensation he is receiving from the PPF does not reflect the £29,994 transfer value he was quoted in 2015. In addition, he would prefer to receive his PPF compensation as a one-off lump sum and has been told that this is not possible.

19. It may help to begin by clarifying that the £29,994 quoted in 2015 does not represent what Mr Y would have been paid by the Hewden Plan if it had continued to exist. The Hewden Plan was a defined benefit[3] type of pension scheme where the amount of pension paid in retirement is promised in advance; usually by reference to the member's length of service and salary. When Mr Y left employment in 1991, his pension amounted to £240.36 per annum (£4.62 per week). This figure would have been increased over the period between Mr Y leaving employment and his retirement age. For example, if the whole pension had been revalued to keep pace with inflation, it would have amounted to roughly £520[4] per annum in 2019 (£10 per week); when Mr Y chose to retire. If he retired before his normal pension age, the annual pension would have been reduced to reflect the fact that it would be paid for longer than had been anticipated.

20. The 2015 transfer value was calculated on the basis of what the Hewden Plan's actuary thought was the cost of providing Mr Y's pension. The calculation would have taken into account factors such as likely inflation rates over the period to his normal retirement age, likely investment returns and mortality rates. In other words, the actuary calculated that, if the Hewden Plan paid £29,994 to another pension scheme in 2015, the other scheme should have been able to pay Mr Y a similar amount of pension to that which he would otherwise have received from the Hewden Plan. However, the Hewden Plan was not going to pay Mr Y £29,994 directly.

21. In defined benefit schemes, the members do not have separate 'pots' of money. The scheme assets are held in common. This is because the benefits which are to be paid do not depend upon the amount of funds held for that particular member. This is different from a defined contribution[5] type of pension scheme where the amount of a member's pension is not known until retirement when the 'pot' is used to purchase a pension.

22. The Hewden Plan was accepted into the PPF because, when it came to be wound up, there were insufficient assets to provide for all of the pensions which had been promised to the members. In other words, it was unable to fulfil the promise to pay Mr Y £240 per annum (as revalued to retirement) when he reached his normal retirement age.

23. As my Adjudicator explained, the PPF is not a pension scheme itself; it is a compensation scheme set up to provide members of failed pension schemes with

[3] Also known as a final salary scheme.
[4] Bank of England inflation calculator based on an average annual inflation of 2.8% between 1991 and 2019.
[5] Also known as a money purchase arrangement.

some protection against losing all of their promised benefits. For a member in Mr Y's position; that is, someone who has not reached normal retirement age at the Assessment Date, the PPF provides compensation equal to 90% of the amount of pension they would otherwise have received from the failed pension scheme. For example, someone who was entitled to £520 per annum from their pension scheme would receive £468 PPF annual compensation (£9 per week). These are, of course, rough figures simply to demonstrate the relationship between what the member could have expected to receive from their pension scheme and the compensation they receive from the PPF. Someone who opts to take their compensation before their normal retirement age would receive a reduced amount; in the same way as their pension would have been reduced by the failed pension scheme if it was paid before normal retirement age.

24. The calculation of PPF compensation is governed by the Pensions Act 2004 and the Compensation Regulations. The Board is required to pay Mr Y compensation as set out in the Pensions Act 2004 and the Compensation Regulations. It is not required to relate Mr Y's PPF compensation to the transfer value quote he received in 2015. Mr Y has not lost £30,000 as a result of the transfer of the Hewden Plan to the PPF because he was never entitled to receive that amount directly. He is in receipt of compensation from the PPF which replaces the pension he would otherwise have lost when the Hewden Plan was wound up in deficit.

25. Mr Y would prefer to take his PPF compensation as a one-off lump sum. He is prevented from doing so not by any improper action by the Board but because he has other pensions and the value of these exceeds £30,000. This limit is set out in the Finance Act 2004, and would also have applied to the Hewden Plan if it had continued to exist.

26. I do not uphold Mr Y's complaint.

**Anthony Arter**
Pensions Ombudsman

18 November 2021