PO-10409

# Ombudsman's Determination

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| **Applicant** | Mr Royston Muller |
| **Scheme** | County Tyre (Holdings) Limited Retirement Benefit Scheme (also referred to in correspondence as "The County Tyre Retirement Benefit Scheme 1972") (**the Scheme**) |
| **Respondent** | The County Tyre Group of Companies (**County Tyre**) |

## Complaint Summary

Mr Muller has complained that County Tyre wrongly stopped his monthly payments from the Scheme.

## Summary of the Ombudsman's Determination and reasons

My decision is that this complaint should be upheld. This is because the available evidence shows that Mr Muller was a pensioner Scheme member receiving a monthly pension up until November 2013. I am satisfied that County Tyre should have continued to pay the pension to Mr Muller after this date.

## Detailed Determination

### Material facts

1. Mr Muller is currently 95 years of age.

2. He started work at County Tyre in 1985 and joined the Scheme.

3. He says he retired in 1988 and started receiving his Scheme pension at that time. County Tyre stopped paying this pension to him from November 2013 and has not been paid since.

4. Mr Muller says he telephoned County Tyres on numerous occasions to challenge why his pension payments had stopped and to resolve the matter, but to no avail. He subsequently complained in writing to County Tyre on 1 September 2015. He enclosed a copy of the Minutes from a Trustee meeting that was held on 24 May 2000. The Minutes say:

   > "The County Tyre Retirement Benefit Scheme 1993, The County Retirement Benefit Scheme 1972 …
   >
   > Present:
   >
   > A J N Peters – Chairman – The County Tyre (Holdings) Ltd
   >
   > B P Duguid - Managing Director – The County Tyre (Holdings) Ltd
   >
   > R S England – Member nominated Trustee the County Tyre (Holdings) Ltd 1993 Scheme
   >
   > R L Maloney - Clarendon Financial Services
   >
   > …
   >
   > vii) A J N Peters requested a report on the progress in regard to the 1972 scheme. R L Mooney confirmed that with the exception of one former employee… all Retained Benefits had been distributed from this scheme. The dispersal of this member's benefits was presently under negotiation with him through his Financial Advisers.
   >
   > The current status of the scheme therefore was that there are pensioners in receipt of benefit who are identified as … [five individuals were listed including Mr Muller].
   >
   > It has been established that the cost of providing these benefits on an annual basis to County Tyre is identified as follows:-
   >
   > …
   >
   > Mr and Mrs Muller £969.24 per annum, level pension with a widow's pension of 50% of the male

> …
>
> It has been established that the Expectation of Life, using current Actuaries tables for all of these members, is an average of 8.4 years and the current cost to the Company funding the Trustees Bank account is £12,859.20.
>
> The Capital cost of providing immediate life annuities on the correct basis for the members as their entitlements accrue is in excess of £140,000 and the Trustees deem it uneconomic therefore to wind-up the scheme by this method".

5. Mr Freeman, the Managing Director of County Tyre, responded to Mr Muller in a letter dated 7 September 2015. He said that when he bought County Tyre in around July 2013, he did not know the company had a pension scheme. He enclosed a copy of a letter dated 28 February 2002 from the then Occupational Pensions Regulatory Authority (**OPRA**), which said:

> "The County Tyre Retirement Benefit Scheme 1972.
>
> OPRA has concluded that the wind up of the above scheme must be considered valid…
>
> Once a scheme has wound up, it is no longer required to comply with the requirements of the Pensions Act 1995. I can therefore confirm that OPRA does not expect an auditor or actuary to be appointed and would not expect an IDR to be put in place.
>
> Unfortunately, OPRA's powers are limited to ensuring compliance with the Pensions Act [1995] and we cannot therefore comment on the employer's decision to continue funding pensions out of income".

6. Mr Muller remained dissatisfied and referred the complaint to us. In support of his complaint, he has submitted a document which details the list of Scheme members. The document is entitled "The County Tyre (Holdings) Limited 1972 membership Data 1990". Under a sub-heading, "Member Names", the name of Mr R W V Muller is shown.

7. Mr Muller also provided a copy of a payslip dated 30 October 2013. The company name stated on the payslip is "County Tyre (Holdings) Pension". The payslip shows a gross monthly pension of £80.77.

8. Also included with Mr Muller's submissions was a copy of the Scheme booklet, which says:

> "<u>Definitions</u>
>
> "Employer" means the County Tyre (Holdings) Limited…

> "Commencing Date" means 1 October 1972.
>
> <u>How is my pension paid?</u>
>
> Your pension is payable for life from the date of your retirement by monthly instalments".

9. In response to the preliminary determination, Mr Freeman reiterated that he did not know County Tyre had a pension scheme when he bought the company. He added that OPRA's letter dated 28 February 2002, said that the Scheme was wound up.

**Summary of Mr Muller's position**

10. He received monthly pension payments from the Scheme from 1988 onwards.

11. The Minutes of the Trustees meeting on 24 May 2000 and the membership listing confirm that he was a pensioner member of the Scheme.

12. He received payslips showing that County Tyre was paying his pension.

13. County Tyre wrongly stopped paying his pension to him from November 2013.

14. His monthly pension should be reinstated from November 2013, with interested added to the backdated payments.

**Summary of County Tyre's position**

15. Mr Freeman says he had no knowledge of the Scheme at the time he bought County Tyre.

16. OPRA's letter dated 28 February 2002, says that the Scheme was wound up.

**Conclusions**

17. The Trustees' minutes of their meeting of 24 May 2000, indicate that most of the Scheme's assets had been "distributed", which would allow the winding-up of the Scheme to proceed. However, those minutes also show that the ongoing cost of paying the pensions for four (of the five pensioners listed) amounted to £12,859.20 per annum. The minutes show the Trustees decided it was uneconomic to buy out (secure) the pensions at that time. It is unclear how the Trustees arrived at this decision. Based on the average life expectancy of 8.4 years for this group, it seems that Trustees may, on a crude basis, have felt the future expenditure of roughly £108,017.28 (assuming that each pensioner in the group lived, on average, the 8.4 years expected) was preferred over buying out annuities, which had a cost of £140,000 (some £32,000 more).

18. I appreciate Mr Freeman has submitted a letter from OPRA, dated 28 February 2002, which says that the Scheme was wound up. But that letter also noted the Trustees' decision to continue to fund pensions out of the employer's own resources. That evidence suggests that the pensions in payment had, effectively, been secured with the employer, and the Company became responsible for paying the pensions instead of the pension scheme. It is highly likely that that decision would have been made with the employer's consent. Indeed, the employer has paid those pensions for a number of years since 2002.

19. The Scheme booklet indicates that the Scheme was established and in operation. The membership listing shows that Mr Muller was a pensioner member of the Scheme, and Mr Muller's payslip is evidence that the employer was paying him his pension until November 2013.

20. I note that the membership listing shows that Mr Muller was in receipt of an annual pension of £969.24. This figure is consistent with the payslips, which shows a gross monthly pension payment of £80.77 (12 monthly payments of £80.77 comes to £969.24).

21. I find that the evidence submitted to me indicates that Mr Muller was a pensioner member of the Scheme and in receipt of a Scheme pension up until November 2013. I also consider, in the absence of any contradictory information, that the annual pension amount stated in the membership listing is the amount of Scheme pension to be paid to Mr Muller.

22. Notwithstanding OPRA's letter dated 28 February 2002, concerning the winding up of the Scheme, I find that County Tyre wrongly stopped Mr Muller's pension payments in November 2013. In my judgment, County Tyre has a responsibility to continue to fund Mr Muller's pension. This is because the Scheme booklet says that the Scheme pension was payable for life from the date of retirement. So in effect, a promise was made to pay a pension, which is enforceable.

23. Furthermore, OPRA's letter dated 28 February 2002, confirms that County Tyre continued to pay pensions out of income. At the time of the apparent Scheme wind up, County Tyre took no action to buy Mr Muller an annuity in order to protect his future payments. As a result, County Tyre's obligation to pay Mr Muller his Scheme pension remains.

24. Mr Muller has experienced distress and inconvenience because County Tyre unjustifiably stopped his pension payments. He should receive appropriate compensation for this. My direction takes into account the fact that County Tyre's maladministration has left Mr Muller without a Scheme pension income since November 2013. It also takes into account the significant effect the maladministration would have had on Mr Muller at his age.

## Directions

25. Within 28 days of this determination, County Tyre shall reinstate Mr Muller's monthly pension of £80.77. This pension shall be backdated to November 2013. Interest shall be added to the back payment at the rate quoted for the time being by the reference banks from the date each pension payment was due up to the date when it is paid.

26. Within 28 days of this determination, County Tyre shall pay Mr Muller £1,000 for the distress and inconvenience caused to him by its maladministration.

**Anthony Arter**

Pensions Ombudsman
12 January 2016