

## Ombudsman's Determination

Applicant	Mr P
Scheme	W S Cowell Pension & Life Assurance Fund ( <b>WS Cowell Scheme</b> )
Respondents	Broadstone Corporate Benefits Ltd ( <b>Broadstone</b> )

## Outcome

1. I do not uphold Mr P's complaint and no further action is required by Broadstone.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr P has complained that Broadstone reassured him that his pension would not be affected by the transfer of the WS Cowell Scheme into the Financial Assistance Scheme (**FAS**). His FAS assistance is less than the pension he was being paid from the WS Cowell Scheme.

## Background information

4. Mr P was a member of the WS Cowell Scheme. He retired in 1989. Mr P had been a member of the Cowells Plc Executive Benefits Plan. Prior to his retirement, Mr P opted to transfer his pension rights into the WS Cowell Scheme. By notice dated February 1989, Mr P was told the WS Cowell Scheme would provide a tax free cash sum of £150,000 and an annual pension of £90,081.00. He was told increases would be applied to his pension annually in line with increases in the Retail Prices Index.
5. At the time of Mr P's retirement, the WS Cowell Scheme was administered by Scottish Widows. Subsequently, the administration transferred to Kerr & Co; then to Pope Anderson LLP; and finally to Broadstone.
6. The principal employer, Security & General Media plc, was placed into receivership on 30 September 1998 and was dissolved on 23 August 2005. It had ceased to pay contributions to the WS Cowell Scheme with effect from 31 December 1997.
7. The FAS was established by the Pensions Act 2004. The relevant regulations are the Financial Assistance Scheme Regulations 2005 (SI2005/1986) (the **FAS**

**Regulations).** The Board of the Pension Protection Fund (the **Board**) has been appointed the manager of FAS.

8. In order for a scheme to qualify for the FAS, it must have begun to wind-up between 1 January 1997 and 5 April 2005 (regulation 9). In 2011, the Board determined that the WS Cowell Scheme began winding-up on 31 December 1997.
9. The WS Cowell Scheme was accepted into FAS in April 2015. The Board wrote to Mr P informing him that there had been an overpayment amounting to £178,401.27. It also informed him that it proposed to recover the overpayment by reducing future payments of his FAS assistance to £154,298.48 per year; a reduction of £19,794.87 per year. Mr P's FAS assistance was subsequently adjusted to £159,040.53 per year on receipt by the Board of additional data relating to the WS Cowell Scheme. The overpayment was adjusted to £137,781.66.
10. In response to Mr P's complaint, Broadstone has said it does not dispute his recollections of conversations with a member of its staff. It says it has been unable to verify the content of the conversations because the member of staff no longer works for it and there are no file notes. However, Broadstone says, regardless of what Mr P might have been told by its staff, he had been provided with information about the FAS; in particular, he had received a notice from the WS Cowell Scheme trustees and the leaflet "What the Financial Assistance Scheme means to you".

## **Adjudicator's Opinion**

11. Mr P's complaint was considered by one of our Adjudicators who concluded that no further action was required by Broadstone. The Adjudicator's findings are summarised briefly below:-
  - Mr P's complaint against Broadstone is, essentially, that a member of its staff led him to believe that his pension would not be affected by the transfer of the WS Cowell Scheme to the FAS. In fact, because of the way in which FAS assistance is calculated, Mr P receives less than he was receiving as a pension under the WS Cowell Scheme. In addition, the Board has informed him that an "overpayment" has occurred and it will be reducing his FAS payments going forward in order to recover this.
  - In the majority of cases involving incorrect information, the complainant asserts he/she has been given incorrect information about the scheme of which he/she is a member. In Mr P's case, he asserts he was given incorrect information about a scheme to which he was transferring.
  - However, regardless of anything he might have been told by Broadstone, Mr P's FAS benefits must be calculated in accordance with the legislation which governs that scheme.

- It remained to consider whether Mr P had relied to his detriment on incorrect information provided by a member of Broadstone's staff and, if so, whether it was reasonable for him to have done so.
  - In Mr P's case, there is little in the way of evidence as to what he may have been told about the transfer to FAS. The Adjudicator accepted that Mr P had given his recollection of his conversations with the Broadstone staff in good faith. Broadstone did not dispute his recollection of the conversation(s), but made the point that Mr P had other sources of information about what would happen when the WS Cowell Scheme transferred to FAS. This is relevant to the question of how reasonable it was for Mr P to rely on what he may have been told by Broadstone staff. The Adjudicator acknowledged that Mr P would have seen the Broadstone staff as likely to be more conversant with the issues of transferring to FAS than he was himself. However, if he was given information which contradicted or appeared to contradict information provided by FAS itself (in the form of the booklet), he could be expected to query this.
  - It is not clear that Mr P relied on the information to his detriment. In the questionnaire he completed for FAS, Mr P said he did not make any decisions or incur any expenditure in reliance on what he was told about his FAS assistance. He has not said he would have taken any different action. On that basis, Mr P cannot be said to have suffered any financial loss as a consequence of any incorrect information he may have been provided with.
  - The injustice suffered by Mr P amounted to disappointment and annoyance. However, this was not of a magnitude which would warrant an award of compensation. Broadstone has apologised to Mr P for the delay in responding to his requests for information more promptly and the Adjudicator considered this to be appropriate redress.
  - Mr P had provided a considerable amount of evidence relating to his retirement and subsequent events. This evidence was reviewed by the Adjudicator but was not included in the Opinion because it does not relate directly to his complaint against Broadstone.
12. Mr P did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr P provided further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr P for completeness.

### **Ombudsman's decision**

13. Following receipt of the Adjudicator's Opinion, Mr P again provided comprehensive detail about the events surrounding his retirement. In particular, he mentions the trustees' refusal to purchase an annuity for him. Mr P also refers to contact he had with the previous WS Cowell Scheme administrators. It is clear from this that Mr P

found the events leading up to and following his retirement distressing. It appears he had concerns about the security of his retirement benefits and sought assurance over the years. However, all of this pre-dates Broadstone's involvement. It became the WS Cowell Scheme administrators following its acquisition of Kerr and Company in 2012.

14. The events referred to in Mr P's submissions are well outside the time limits for making an application to the Pensions Ombudsman. In any event, Broadstone would not be the appropriate respondent since it was not involved with the WS Cowell Scheme at the relevant times. I do not, therefore, need to go into any further detail here.
15. So far as Mr P's complaint against Broadstone is concerned, it does not dispute his recollection of what he was told about the transfer to FAS. It appears the Broadstone staff member was under the impression that Mr P would continue to receive his pension in full. If that was the case, this view was incorrect. However, there is no evidence that Mr P relied to his detriment on any incorrect information provided by a member of Broadstone's staff.
16. Therefore, I do not uphold Mr P's complaint against Broadstone.

**Anthony Arter**

Pensions Ombudsman  
15 June 2017