

## Ombudsman's Determination

Applicant	Mr Y
Scheme	St Andrew's Healthcare Pension Scheme ( <b>the Scheme</b> )
Respondents	St Andrew's Healthcare ( <b>St Andrew's</b> )

## Outcome

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

## Complaint summary

3. Mr Y's complaint concerns St Andrew's decision to change the way the payment of pension increases from the Scheme are accounted for.

## Background information, including submissions from the parties

### Background

4. Mr Y is a pensioner member of the Scheme, an occupational pension scheme which was previously contracted-out of the State Earnings Related Pension Scheme (**SERPS**), now the State Second Pension (**S2P**). St Andrew's, a registered charity, is the Principal Employer for the Scheme.
5. Mr Y joined the Scheme on 14 December 1987, and started taking retirement benefits on 6 December 1996. All of Mr Y's service was accrued before 1997.
6. On 12 November 2013, the Scheme held its Annual General Meeting (**AGM**). A note from the AGM confirms the Scheme Actuary had explained: -

“...that the annual increases to pensions in payment which relate to service ‘pre-97’ are at the discretion of the Charity and not determined by the Scheme or the Pension Trustees. The Charity has therefore decided to determine and fund these on an annual basis.”
7. Notes detailing questions raised at the AGM confirmed: -

“The pre 97 pension increase has always been discretionary, it has been removed from the assumptions, the increase has always been approved by the Charity, in future this will be paid for on a ‘pay as you go basis’.”

8. The terminology ‘pay as you go basis’ was described as: -

“Should the charity decide to apply a discretionary increase this will be costed and a payment made into the pension scheme to cover the cost of the increase.”

### **Summary of Mr Y’s position**

9. On receiving the notes from the AGM, Mr Y became concerned that his membership of the Scheme had started to be referred to as ‘pre-97’. Mr Y considers that the reference to him being a ‘pre-97’ member was as a result of a change made to the Scheme in November 2013 which resulted in him being removed from the Scheme and subjected to different rules.
10. Mr Y says St Andrew’s refused to respond to the letters he sent enquiring about the apparent change to the Scheme. Further, he has not received any notes from the Scheme’s AGM since 2013.
11. Mr Y considers his pension entitlement has been affected as a result of the decision made at the 2013 AGM, and the reference to him now being a ‘pre-97’ member. This, he says, has the potential to cause a financial loss to his future benefits. Mr Y also said that he has suffered an actual loss of around £60 in general expenses incurred pursuing the complaint.

### **Summary of St Andrew’s position**

12. Mr Y has not been excluded from the main Scheme. Reference to Mr Y being a ‘pre-97’ member is simply to denote that his entire pensionable service was accrued prior to 1997.
13. The way in which discretionary increases are decided has not changed. These are, and always have been, a matter for St Andrew’s to decide.
14. St Andrew’s has responded promptly to Mr Y’s requests for information. It offered to send Mr Y a copy of the Trust Deed and Rules (**the Deed**) on request, but Mr Y did not ask for this. A copy of the Deed was however provided with the stage two internal dispute resolution procedure (**IDRP**) response.
15. Since 2014, the AGM notes have been made available on the Scheme administrator’s website. St Andrew’s acknowledged that Mr Y did not own a computer so it offered to send him copies of paperwork which were made available to members on the website.
16. St Andrew’s agreed to pay Mr Y £250 compensation to cover the incidental costs he incurred.

## Adjudicator's Opinion

17. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by St Andrew's. The Adjudicator's findings are summarised briefly below:

- The term 'pre-97' is commonly used by pension schemes, to distinguish between periods of service to which different levels of annual increase apply.
- Prior to April 1997, it was up to each pension scheme to provide pension increases, if it chose to provide any at all. Such increases were generally applied on a discretionary basis.
- After April 1997, statutory increases were introduced meaning that, as a minimum, pensions had to increase in line with inflation. But the statutory increase only applied to service accrued after April 1997. It is for this reason the term 'pre-97' is used by pension schemes to distinguish those members who do not have statutory increases applied to their pension.
- Mr Y retired in 1996 so all of his pensionable service was accrued prior to 1997. Consequently he has been referred to by St Andrew's as a 'pre-97' member. The use of this terminology seems to be the crux of Mrs Y's complaint.
- Although the use of the term 'pre-97' may have caused Mr Y confusion and left him believing his pension was treated differently, his pension has not been adversely treated by the Scheme as a result of referring to it as 'pre-97'. This designation is only relevant insofar as it determines the level of annual pension increase which applies to members of the Scheme.
- The Deed provides for discretionary increases to 'pre-97' benefits in excess of the guaranteed minimum pension (**GMP**). However such increases are discretionary and dependent on St Andrew's, as the Principal Employer, financing it. This is confirmed in Rule 12 of the Deed dated 1 July 2015: -

"12.1 Pensions in payment in excess of GMP will be increased on 1 May each year by such amount as the Trustees, with the consent of the Principal Employer, may decide, provided that the increase will not be less than:

12.1.1 in respect of Pensionable Service on and from 6 April 1997, 5% or, if less, the percentage increase in the Retail Prices Index in the 12 months prior to the preceding September; and

12.1.2 in respect of Pensionable Service on and from 1 December 2005, 2.5% or, if less, the percentage increase in the Retail Prices Index in the 12 months prior to the preceding September.

12.2 The Principal Employer will make such additional contributions in respect of any increases above the level set out in Rules 12.1.1 and 12.1.2 above as the Trustees may determine, having taken advice from the Actuary.”

- Rules 12.1.1 and 12.1.2 of the Deed broadly reflect the statutory increases in relation to post-1997 benefits, except that the increase is calculated with reference to the normally more generous retail prices index (**RPI**) rather than the Consumer Prices Index (**CPI**) specified in the legislation.
- The AGM, which gave rise to Mr Y’s complaint, was in 2013, before the current Deed became operative. However a similar provision existed within the former Deed, dated 25 November 2005, which was in force at the time of the AGM.
- Rule 17 of the 2005 Deed said: -

“17.1 In respect of Pensions Earned by Pensionable Service completed up to and including 5 April 1997 the Trustees shall review annually the Pensions being paid under the Scheme and may increase them from time to time with the consent of the Principal Employer, the rate of increase being such that it will not prejudice Approval and subject to Inland Revenue limits. The Principal Employer shall make such additional contributions in respect of such increases as the Trustees may determine having taken Actuarial Advice. Guaranteed Minimum Pensions shall be increased in accordance with the Contracting-Out Rules.”

- Consequently, it follows that in Mr Y’s case, any escalation of the pension in excess of the GMP is at the pure discretion of St Andrew’s, rather than being a statutory entitlement.
- Further, the rules make it clear that if St Andrew’s agrees to a discretionary annual increase, the Scheme Actuary will calculate how much money St Andrew’s will need to pay into the Scheme to cover the cost of providing this increase to the members.
- Historically the accounting assumptions, used for determining how much money the Scheme required to meet its liabilities, expected that there would always be a discretionary increase. In other words, working out how much money the Scheme needed to be able to pay its members their pensions was calculated on the basis that the pensions for pre-97 members would always increase.

- However, during the 2013 AGM, the Actuary decided that for accounting purposes, he did not want to factor in the discretionary increase, so it was agreed that this assumption would be removed when calculating the Scheme's liabilities.
  - This does not mean that St Andrew's has changed its position on discretionary increases; this is not for the Actuary to decide.
  - The decision made at the AGM is solely an internal decision about how to manage and calculate the Scheme's accounts. In practice, this decision has no actual impact on Mr Y. It always has been, and remains the case, that any increase Mr Y receives is at the sole discretion of St Andrew's.
  - As Mr Y's entitlement to his pension has not changed, it follows that there has not been, and will not be in the future, any financial loss to him as a result of the decision made at the AGM in November 2013, or as a consequence of St Andrew's using the phrase 'pre-97' member.
  - The Deed confers St Andrew's broad discretion about how the Scheme operates. The decision to remove the assumption that there would be annual discretionary increases from the future funding assumptions is not unreasonable. St Andrew's did not make a perverse decision at the AGM.
  - The Scheme administrator has now placed documents, relevant to the Scheme, on its website. St Andrew's has acknowledged that Mr Y does not have access to a computer and so is unable to access documents from the website. Whilst this is bound to be frustrating, St Andrew's has acted reasonably by offering to send Mr Y any documents he requires which he is unable to access.
  - Although Mr Y has alleged that St Andrew's did not respond properly to his correspondence, a review of the file papers does not support this claim.
  - There has been no maladministration on St Andrews' part, so no award for non-financial injustice, such as distress or inconvenience, can be recommended. That said, St Andrew's has offered Mr Y £250 and he can liaise directly with St Andrew's if he wishes to accept this offer.
18. 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. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr Y for completeness.

## Ombudsman's decision

19. Mr Y accepts that increases to his pension are at the discretion of St Andrew's, however he points out that documents he has received say, "the Trustees have awarded you an increase..." He is concerned about this apparent discrepancy in where the increase comes from.
20. The observation Mr Y has made is correct, insofar as it is the Trustees that award the increases. However, the Trustees can only do so with the permission of St Andrew's, which has the discretion to agree to the increases being paid. In this respect Mr Y has not received incorrect or misleading information.
21. Similarly, Mr Y remains concerned that he has been excluded from the Scheme on the basis that increases are decided by St Andrew's and are, "not paid out of pension scheme funds, but simply through it." Mr Y says both Age UK, and a solicitor who he consulted, agree with his opinion that he has been excluded from the Scheme.
22. On this point I disagree with Mr Y and with the guidance he has received. The Deed has always required the Scheme Actuary to calculate how much money St Andrew's will need to pay into the Scheme, to cover the cost of providing any discretionary increases that the Trustees decide should be award to members. Further the Deed has always required St Andrew's to contribute to the Scheme the amount calculated by the Actuary to pay for the increase. Thus the mechanics of how any discretionary increases are applied have not been altered.
23. All that changed as a result of the AGM was the way in which the discretionary increases were accounted for when assessing the Scheme's liabilities. This is strictly a change in accounting convention. The resolution passed at the AGM does not alter Mr Y's existing or future entitlement in any way.
24. I do not find that Mr Y has been excluded from the Scheme which, I hope, will provide some reassurance to him.
25. Mr Y points out that he is unable to request copies of information which is only published on the Scheme administrator's website, questioning, "how do I request documents/info when I have no idea what is happening."
26. I acknowledge the point Mr Y makes, however Mr Y goes on to say that St Andrew's has agreed to continue to issue paper payslips and letters, including the annual newsletter and AGM notes which is published each December. On this basis Mr Y will continue to receive, by post, the same information which is published on the website.
27. I find that Mr Y remains a member of the Scheme and that his entitlement to benefits from the Scheme has not been altered in any way. Consequently I cannot say that there has been any maladministration.
28. Therefore, I do not uphold Mr Y's complaint.

**PO-11862**

29. Finally, for completeness, Mr Y may want to contact St Andrew's directly to establish whether the £250 it previously offered remains available for him to accept.

**Anthony Arter**

Pensions Ombudsman  
18 September 2017