

## Ombudsman's Determination

Applicant	Mr Y
Scheme	Fyffes Group Pension Scheme ( <b>the Scheme</b> )
Respondent	Fyffes Group Nominee Holdings Ltd ( <b>the Trustee</b> )

## Outcome

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

## Complaint summary

3. Mr Y's complaint is that the pension he was receiving from the Scheme has been stopped.

## Background information, including submissions from the parties

4. Mr Y was an employee of Fyffes and a member of the Scheme, a contracted-out final salary occupational pension arrangement.
5. In 1984 Mr Y left Fyffes. At that time he was informed that:-
  - He was entitled to a deferred pension of £3787.67 per annum, payable from age 65.
  - His additional voluntary contributions (AVCs) had accumulated a capital value of £4632.79, including interest, up to 31 January 1984. This sum would continue to accrue interest until his pension came into payment.
  - The deferred pension and AVCs could together be transferred to another scheme, if he wished to do so, subject to certain conditions.
6. On 5 June 1987 Mr Y signed an indemnification (**the Form**) for the transfer of his deferred benefits and AVCs to Scottish Mutual.
7. The Form states the transfer value as "CASH EQUIVALENT: £14956.24 plus value of AVC account". Part 4(a), says:

"I understand and agree that:-

(a) Upon payment of the premium by the Trustees no benefits shall be payable under the Scheme to me..."

8. A calculation sheet completed around that time details the calculation of Mr Y's deferred benefits transfer value of £14,956.24 and says,  
  
"Note AVC's to 31-3-84 total £7060.99 "
9. On 7 August 1987 the Scheme administrator (**Bacon & Woodrow Limited**) sent a cheque for £23,455.39 to Scottish Mutual care of Mercer Fraser Limited. The covering letter says:  
  
"Cheque for £23,566.39 made up of £14,956.24, Scheme Transfer Value, plus £8,610.15, AVCs with interest to date."
10. Mercer Fraser Limited confirmed receipt of the cheque on 11 August 1987.
11. Subsequently, Scottish Mutual issued a statement of benefits to Mr Y, dated 31 December 1987, detailing his 'Retirement pension' in two section 32 policies, 725217 and 730096, totalling £4,676 per annum. Later Mr Y later took an annuity payable by Guardian.
12. Following the transfer the Scheme administrator continued to send Mr Y annual benefit statements in respect of his AVCs; and in 2002 he commenced drawing a pension from the Scheme.
13. Following a Scheme audit in late 2015/early 2016 the pension payment error was realised.
14. In February 2016 Guardian (now called Reassure) confirmed to the Scheme's current administrator (**BBS Consultants & Actuaries**) that Mr Y's 1987 transfer had purchased policies 725217 and 730096 with Scottish Mutual.
15. BBS Consultants & Actuaries duly wrote to Mr Y. It said as the Trustee had a duty to only pay benefits that were due under the Scheme's Trust Deed and Rules it would consider stopping the pension unless he could provide documentary evidence that showed that the transfer had not occurred or that his benefits had been reinstated after 1987.
16. After further correspondence between the parties, the Trustee decided to stop making pension payments to Mr Y, effective from June 2016.
17. Mr Y engaged a solicitor who unsuccessfully claimed that Mr Y's pension should be reinstated.
18. Mr Y has received in excess of £100,000 in pension payments from the Scheme. The Trustee has informed Mr Y that it does not intend to recover the overpaid sum.

19. Mr Y remains of the opinion that he is entitled to a pension from the Scheme. He says he wants the pension restarted, or alternatively he is prepared to consider a cash settlement

### **Adjudicator's Opinion**

20. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised briefly below:-
- In 1987 Mr Y signed an indemnity to transfer his deferred pension and AVCs from the Scheme to Scottish Mutual.
  - It is clear that the transferred sum of £23,566.39 comprised the cash equivalent of his deferred pension plus the value of his AVCs with interest to date.
  - In June 2016 Guardian confirmed to BBS Consultants & Actuaries that the sum transferred purchased Scottish Mutual policies 725217 and 730096, which Mr Y later vested to receive an annuity.
  - There is no doubt that the transfer was completed and consequently it follows that the annual AVC statements sent to Mr Y after 1987 and the payment of a Scheme pension to him from 2002 to 2016 were sent in error. This amounts to maladministration by the Trustee, as it is ultimately responsible for the administration of the Scheme, including ensuring that correct benefits are paid from the Scheme.
  - As Mr Y is not entitled to a pension from the Scheme the Trustee was correct to stop its payment when the error was realised.
  - The Trustee has said that it does not intend to recover the overpaid pension. It is therefore not necessary to consider whether Mr Y has any defence against its recovery by the Trustee.
  - The Trustee's decision more than sufficiently compensates Mr Y for any distress and inconvenience that this matter has caused him.
  - Mr Y says he has incurred legal costs. But it was his choice to appoint a solicitor. Alternatively, he could have engaged the free service of the Pensions Advisory Service. Nevertheless, the fact that the Trustee has decided not to recover the overpayment again more than compensates Mr Y for its maladministration in this matter.
21. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y has 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**

22. Mr Y says:-

- He accepts that the original pension, including his AVCs, is accurate.
- His complaint concerns the “stopping of the compensation” that his Barrister sought from Fyffes following a police raid on his home in 1984 and the subsequent trial 18 months later at which he was acquitted.
- His subsequent receipt of AVC statements and then a pension from Fyffes were not mistakes.

23. Mr Y's arrest and trial are not matters for my consideration.

24. I am satisfied that Mr Y's Scheme benefits, including AVCs, were transferred to Scottish Mutual in August 1987.

25. It is consequently clear that the annual AVC statements that he subsequently received and the payment of a Scheme pension to him from 2002 to 2016 were administrative errors by the Trustee.

26. I agree with the Adjudicator that the Trustee's decision not to recover the pension payments more than adequately compensates Mr Y for the Trustee's maladministration.

27. Therefore, I do not uphold Mr Y's complaint.

**Anthony Arter**

Pensions Ombudsman  
20 March 2018