PO-27384

Ombudsman's Determination

Applicant	Mr S
Scheme	Price Tool Sales Limited Retirement Benefit Scheme
Respondents	Scottish Widows

Outcome

1. Mr S' complaint is upheld. To put matters right, Scottish Widows shall provide Mr S with a deferred annuity equal in value to the deferred pension benefits that accrued for and in respect of him under the Scheme up to 5 April 1996, making allowance for the statutory revaluation increase that the deferred pension benefits would have attracted to date, inform Mr S in writing of the current value of that deferred annuity, and pay Mr S £500 for his significant distress and inconvenience.

2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr S has complained that the pension benefits he accrued whilst he was a scheme member have gone missing, and Scottish Widows as scheme administrator should take responsibility for providing those benefits for him.

Background information, including submissions from the parties

4. On 1 July 1988 Mr S joined an occupational pension scheme then known as the WH Price Ltd Retirement Benefits Scheme (**the Scheme**). The Scheme was administered and managed by Scottish Widows on behalf of its trustees.

5. In 1995 WH Price Ltd was acquired by the Hewden Stuart group. It appears that the Scheme name was then changed to the Price Tool Sales Limited Retirement Benefits Scheme.

6. On 5 April 1996 Mr S left the Scheme with an entitlement to a deferred pension. Scottish Widows completed form RD562A to list leavers as at 5 April 1996 entitled to fixed rate Guaranteed Minimum Pensions (**GMP**). The list did not include Mr S.

7. On 6 April 1996 Mr S became a member of the Hewden Stuart Pension Scheme, then administered by Sedgwick Noble Lowndes (later Mercer).

8. On 12 August 1996 Scottish Widows issued a statement of Mr S' deferred pension under the Scheme and his current transfer value.

9. On 8 July 1997 Sedgwick Noble Lowndes received a list from Scottish Widows of the members transferring to the Hewden Stuart Pension Scheme, plus three members transferring to the M&H Plant scheme. These lists did not include Mr S.

10. Later in 1997 a transfer payment was made from the Scheme to the Hewden Stuart Pension Scheme in respect of consenting members.

11. On 9 August 2002 Mercer sent a letter to Scottish Widows. This pointed out that form RD562A submitted by Scottish Widows was incorrect, as it should have referred to full rate GMP revaluation, not fixed rate. The writer also said that she was returning forms CA1625 for Mr S and four other members

> "as they were not part of the bulk transfer. You will note that they are not included in the copy transfer form which is enclosed. I can only conclude that another notice was issued for these employees giving the revenue the ECON/SCON for the Hewden Stuart Scheme. Please advise the Revenue this is incorrect".

12. On 4 November 2003 Scottish Widows wrote to TL Clowes Financial Services Ltd, a financial adviser (**TL Clowes**). Scottish Widows explained that for over six months it had been liaising with the Inland Revenue National Insurance Contributions Office (**NICO**) in an attempt to reconcile the membership and GMP records of the Scheme members. NICO had informed Scottish Widows that Mr S and five other members had transferred out of the Scheme, but Scottish Widows thought they were still members. Scottish Widows questioned whether NICO was correct.

13. Scottish Widows phoned TL Clowes on 19 January 2004 and sent a letter on 21 January 2004. It said that according to the Inland Revenue, Mr S and the other named members had transferred to the Hewden Stuart Pension Scheme. Scottish Widows subsequently modified its records to show that Mr S' past service benefits had been transferred to the Hewden Stuart Pension Scheme.

14. The Scheme was wound up in 2005. WH Price Ltd was dissolved in 2009.

15. In February 2017 Mr S contacted Scottish Widows because he was concerned that his deferred pension benefits under the Scheme may have gone missing.

16. Scottish Widow's reply of 30 June 2017 said that it no longer provided administration services for the Scheme, but according to its records Mr S had transferred his benefits to the Hewden Stuart Pension Scheme in about January 2004.

17. On 25 July 2017 Scottish Widows wrote again to Mr S. It said that it could not find any paperwork about his transfer, but the HM Revenue & Customs (**HMRC**) website had

shown that his GMP under the Scheme was held by the Hewden Stuart Pension Scheme.

18. On 4 August 2017 Scottish Widows upheld Mr S' complaint. It paid him £110 for his distress and inconvenience for the time taken, poor service and his telephone costs. Scottish Widows later agreed to pay him an additional £75.

19. On 19 September 2017 Mr S emailed his paperwork to Scottish Widows and asked for the missing transfer to be investigated, as he thought the matter was being passed from Scottish Widows to Mercer and back again.

20. Scottish Widows wrote to HMRC on 30 October 2017 to ask for any relevant CA form as Hewden Stuart had said it had not received a transfer.

21. On 21 November 2017 HMRC told Mr S that its records showed he had been contracted out under Price Tool Sales between the period from 6 April 1988 to 5 May 1998, and was contracted out under the Hewden Stuart Pension Scheme from 6 May 1998 to 31 July 2007.

22. On 29 November 2017 Mr S wrote to The Pensions Advisory Service (**TPAS**) as he was thinking about taking an early retirement pension. He said that Mercer administered the Hewden Stuart Pension Scheme but had no record of his transfer in. He was worried that his pension had disappeared.

23. On 28 December 2017 NICO emailed Scottish Widows. NICO said its file for the Scheme had been closed in March 2011, and no archived information was available. It could not say if there had been a bulk transfer or individual transfer. A statement of liability would be sent to Mercer.

24. On 30 January 2018 TPAS told Mercer that HMRC records showed that the Hewden Stuart Pension Scheme had taken on his past service liability. TPAS told Mr S that it had asked Mercer to check its records.

25. On 12 April 2018 TPAS sent Scottish Widows' paperwork to Open Trustees Ltd (the current trustee of the Hewden Stuart Pension Scheme). This indicated that Mr S was one of a small number of members who were transferred to the Hewden Stuart Pension Scheme for future service benefits, but were not part of the bulk transfer of past service benefits.

26. On 16 April 2018 Mercer wrote to TPAS, setting out the relevant events since 1997. Mercer said that Mr S had not been named on a RD562A form. Form CA1625 had been sent to Mercer in respect of five members including Mr S, but that was the wrong form. Mercer had undertaken a reconciliation of Hewden Stuart Pension Scheme members employed by WH Price. Members who chose to transfer their past service benefits were in a membership category of "WH Price". Members who elected not to transfer their past service benefits were in a membership category of "Hewden Stuart". Mr S was listed as "Hewden Stuart", which was consistent with his Scheme benefits not being transferred to the Hewden Stuart Pension Scheme.

27. Mercer added that HMRC records could be unreliable as they depended on the accuracy of the data sent to HMRC: Scottish Widows had probably failed to tell HMRC that those five members were not part of the bulk transfer, so HMRC still thought that they had been included in the transfer payment. In the view of Open Trustees Ltd, Mr S' past service benefits under the Scheme had not been transferred to the Hewden Stuart Pension Scheme, and there was insufficient evidence to persuade the Hewden Stuart Pension Scheme to grant him past service benefits.

28. On 30 April 2018 TPAS wrote to Scottish Widows to say that, according to the trustees of the Hewden Stuart Pension Scheme, Mr S' past service benefits were never transferred to that scheme.

29. On 4 July 2018 Scottish Widows said that JLT had replaced it as the Scheme administrator, and in accordance with data protection legislation Scottish Widows no longer held Scheme data as it was no longer a data controller.

30. On 31 July 2018 Scottish Widows admitted to TPAS that Mercer's evidence looked stronger than its own: Mercer had put up a strong argument that the liability remained with Scottish Widows.

31. On 12 September 2018 Scottish Widows said that it held a small stakeholder pension plan for Mr S but no other pension arrangements; it no longer had full records for the Scheme.

32. On 10 October 2018 TPAS contacted three former trustees of the Scheme to ask if they could remember how the Scheme's pension liabilities had been dealt with.

33. On 5 November 2018 TPAS told Mr S that as the former trustees had not responded he could submit a complaint to us.

34. On 14 November 2018 Mr W (one of the former trustees of the Scheme) said that his recollection was that the WH Price employees who were employed in the workshop in 1995 had been transferred to the Hewden Stuart Scheme, but a group employed in the sales team were transferred to another scheme.

35. On 15 November 2018 Mr S confirmed that he had been employed in the WH Price workshop.

36. On 28 February 2019 Mr S explained that there had been two different people with his name who had worked for WH Price Ltd; he had carried on working for Hewden Stuart but the other man became employed by Price Tool Sales, owned by Birchwood Tools.

37. When we asked Scottish Widows for its formal response, it replied that it could not prove or disprove that the liability remained with it. Apart from the small stakeholder pension plan, there was no money in any Scottish Widows policy or scheme for Mr S, which suggested that Mr S had been transferred out. Due to the unavailability of historical records it could not confirm whether it had any relevant correspondence with Mercer or HMRC after it received Mercer's letter of 9 August 2002.

38. 39. On 8 April 2019 Mr S said he could not understand how Scottish Widows could say that his benefits had been transferred out when it could not provide any evidence of that.

Adjudicator's Opinion

39. Mr S' complaint was considered by one of our Adjudicators, who concluded that further action was required by Scottish Widows. The Adjudicator's findings are summarised briefly below:-

- It was clear from the deferred benefit statement issued by Scottish Widows that Mr S was an active member of the Scheme until 5 April 1996. It was also clear from the Hewden Stuart Pension Scheme benefit statements that Mr S joined that arrangement on 6 April 1996 for future service benefits.

- What was less clear was where the liability lay to provide the pension benefits that accrued for Mr S in respect of his pensionable service up to 5 April 1996. If they were not retained in the Scheme, they would have been transferred to another pension arrangement. They could not have vanished.

- The starting point must be that the liability remained with the original pension arrangement unless it could be shown, on the balance of probabilities, that the deferred benefits were transferred to another pension arrangement.

- Scottish Widows thought the deferred benefits had been transferred to the Hewden Stuart Pension Scheme, as that was consistent with HMRC's data. However, Mercer made the point that HMRC records could be incorrect because they relied on the accuracy (or inaccuracy) of the information provided by the scheme administrator.

- The Adjudicator considered that Mercer's letter of 9 August 2002 to Scottish Widows was significant. It strongly suggested that Scottish Widows had submitted incorrect information to HMRC, as it asked Scottish Widows to contact HMRC to rectify the position. Scottish Widows had admitted that it could not provide any evidence to show that it responded to Mercer's letter, either (if it agreed with Mercer) to inform HMRC that a data error had been made or (if it disagreed with Mercer) to dispute what Mercer had told it.

- In the Adjudicator's view, the documentary evidence provided by Mercer was more persuasive than the documentary evidence provided by Scottish Widows. That led the Adjudicator to conclude, on the balance of probabilities, that Mr S' deferred pension benefits were not transferred from the Scheme to the Hewden Stuart Pension Scheme.

- Mr S could not be reinstated in the Scheme because it had been wound up. However, Scottish Widows could provide Mr S with a deferred annuity of equal value to the deferred pension that he had accrued up to 5 April 1996, so that he (and his surviving widow, if appropriate) did not lose out financially. In the Adjudicator's view that was the most appropriate solution.

- It was therefore the Adjudicator's opinion that the complaint should be upheld, because Scottish Widows could not show that it had discharged its liability to provide benefits for Mr S in respect of his pensionable service up to 5 April 1996, and it would be inequitable for those benefits to lapse with no value.

- It would have been very distressing for Mr S to be told by Scottish Widows that his pension benefits in respect of his membership of the Scheme could not be traced, through no fault of his own, and this matter had dragged on for some time. The Adjudicator considered that Scottish Widows should also make an award to Mr S for the significant distress and inconvenience that he had suffered.

- To put matters right, the Adjudicator considered that within 28 days of the finalisation of the Opinion:

  - Scottish Widows should provide Mr S with a deferred annuity equal in value to the deferred pension benefits that had accrued for and in respect of him under the Scheme up to 5 April 1996, making allowance for the revaluation increase that the deferred pension benefits would have attracted to date, and inform him in writing of the current value of that deferred annuity, and

  - Scottish Widows should pay Mr S £500 for his significant distress and inconvenience.

40. Scottish Widows did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Scottish Widows provided 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 Scottish Widows for completeness.

41. Scottish Widows said that its only liability had been to pay the managed fund policy proceeds to the trustees, and that having done so it had no liability to provide Mr S' pension benefits.

42. Scottish Widows also said that if the complaint was to be upheld, only simple interest at bank base rates should be added to the value of the missing deferred pension. To support this argument Scottish Widows cited the previous Ombudsman's Determination in favour of Mr Smith, 76660/1, in 2011.

43. Finally, Scottish Widows accepted that an award of £500 for Mr S' distress and inconvenience was appropriate.

Ombudsman's decision

44. At all relevant times Scottish Widows was the administrator of the Scheme, appointed by its trustees. It was Scottish Widows' responsibility, among other matters, to

calculate the Scheme benefits and transfer values, submit the correct information to HMRC/NICO and manage the Scheme investments.

45. It seems clear from Mercer's correspondence in 2002 that Scottish Widows gave incorrect information to HMRC about members of the Scheme transferring out, and that Mr S' deferred benefits were not transferred to the Hewden Stuart Pension Scheme. Those benefits remained a liability of the Scheme, which was later wound up. I consider that Scottish Widows lost track of Mr S' benefits, and that constitutes maladministration on its part.

46. Mr S should not lose out financially as the situation that has arisen is no fault of Mr S. On the balance of probabilities it is the fault of Scottish Widows.

47. With regard to the appropriate remedy to be applied in these circumstances, I agree with the Adjudicator that Scottish Widows should provide a deferred annuity for Mr S. I also agree with the Adjudicator that a revaluation factor should be added to the pension benefits that had accrued for Mr S up to 5 April 1996. The revaluation should accord with the requirements of the Pension Schemes Act 1993.

48. Scottish Widows have contended that a smaller adjustment should be made, citing the Determination in respect of Mr Smith. I am not bound by previous Determinations. Furthermore, the earlier case can be distinguished on the grounds that there was a very different interest rate environment covering the period of deferment in that case, given that it ended in 2011, compared to Mr S' case. To use a base rate calculation here would not in my view provide a fair outcome to Mr S. The revaluation method is the better one in any event, as it puts the applicant into as close a position to that which he should have been in had the error not occurred.

49. Therefore, I uphold Mr S' complaint.

Directions

50. Within 28 days of the date of this Determination, Scottish Widows shall

- provide Mr S with a deferred annuity equal in value to the deferred pension benefits that had accrued for and in respect of him under the Scheme up to 5 April 1996, making allowance for the statutory revaluation increase that the deferred pension benefits would have attracted to date, and inform him in writing of the current value of that deferred annuity, and
- pay Mr S £500 for his significant distress and inconvenience.

Karen Johnston

Deputy Pensions Ombudsman
17 April 2020