

Ombudsman's Determination

Applicant	Mr John Savage
Scheme	The County Tyre (Holdings) Limited Retirement Benefit Scheme (the Scheme)
Respondent(s)	The County Tyre Group of Companies(County Tyre)

Complaint Summary

Mr Savage has complained that his monthly pension payments from the Scheme were wrongly stopped.

Summary of the Ombudsman's determination and reasons

The complaint should be upheld against County Tyre because the limited evidence that has been provided in this case shows that Mr Savage was a pensioner Scheme member in receipt of a monthly pension up until November 2013 and that it should have continued to be paid to him after that date.

Detailed Determination

Material facts

1. Mr Savage is currently 93 years old.
2. Mr Savage received a letter from Brian Duguid, (the previous Managing Director of County Tyre), dated 18 April 1985 in which he said,

“You have been on cover with the County Tyre Holdings Ltd. Pension Scheme since we took over Mohawk. To keep the Pensions Company’s record straight could you please complete the attached application form so that they have all your details on record...”
3. Mr Savage says he took his Scheme retirement benefits on 25 October 1988 and was receiving monthly pension payments from this date. He says that his monthly pension stopped being paid to him without prior notification from November 2013 and has not been reinstated.
4. Scottish Provident (now Phoenix Life) were the original Scheme administrators before Clarendon Financial Services took over in 1990. Mr Moloney who was employed by Clarendon Financial Services wrote to Kent Soper Life & Pensions, Mr Savage’s advisers on 27 June 2014. He provided documents which he said showed the existence of the Scheme and Mr Savage’s membership. This included a copy of the minutes of a Trustees Meeting held on 24 May 2000. The minutes were headed, “The County Tyre Retirement Benefit Scheme 1993, The County Retirement Benefit Scheme 1972”...The minutes said,

“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

R L Mooney confirmed ...the current status of the scheme ... was that there are pensioners in receipt of benefit who are identified as ...Savage...

...the cost of providing these benefits on an annual basis to County Tyre is identified as follows:-

Mrs and Mrs Savage £2,996.28 per annum, level pension reducing by 50% on the death of the male.

A J N Peters – Asked Clarendon Financial Services what the responsibilities were to the Trustees on the basis that the scheme was not wound up.

B P Duguid and A J N Peters both agreed that it was essential to increase the Funding into the County Tyre (Holdings) Ltd Pension Scheme Trustees account at a greater rate to cover this potential liability...”

5. Mr Maloney also provided Scheme membership listings. The first listing - “Disk 1” was headed, “The County (Holdings) Ltd – 1972 RB Scheme Membership Data 1990”. It showed under a sub heading, “Member Names”, the name of J K Savage.
6. Kent Soper Life & Pensions wrote to the this office on 17 March 2014 providing further submissions in support of Mr Savage’s complaint. They enclosed a copy the Scheme booklet, which said,

“Definitions

“Employer” means the County Tyre (Holdings) Limited...

“Commencing Date” means 1st October 1972

2. How is my pension paid?

Your pension is payable for life from the date of your retirement by monthly instalments...”

7. Also enclosed in the letter of 17 March 2014 were Mr Savage’s payslip for 30 October 2013. The company name stated on the payslip was “County Tyre (Holdings) Pension”. It showed a gross monthly pension payment of £249.60. Also enclosed were P60s for the years 2011, 2012 and 2013. The P60s showed County Tyre as the employer and an annual amount of £2,996.28 regarding total pay received for each respective year.
8. Mr Freeman the Managing Director of County Tyre wrote to this office on 5 June 2014 saying,

“ In response to your letter of...regarding Mr John Savage, unfortunately County Tyre got into severe difficulty and were very close to entering into administration filing losses in excess of £3 million over the last three years.

The Company was acquired by Malvern Tyres Holdings in June 2013 and we carried out a full audit of costs and found that John Savage has been receiving a goodwill monthly payment for nearly 30 years. The company simply cannot afford to make these payments and so these have ceased.

I consider these payments were not made from a Pension Fund and do not reflect any membership or liability to any existing Pension Scheme.”

9. In an email from Mr Moloney to Kent Soper Life & Pensions on 15 July 2014 he said,

“In regard to the original membership list- those members of the 1972 Scheme still actively employed by County had their benefits transferred into the current pension scheme operated by County- as far as I could establish in 1990.

...as far as I am aware the 1972 Scheme still existed in exactly the same format described in the Minutes of May 2000...

The 1972 Scheme had not been wound up and was operating as the original Trust Deed allowed- which I had examined in 1999/2000, the position being that benefits itemized ...of the Minutes were still provided from County's revenue.

It would appear that as the Scheme was not wound up and the benefits properly secured for the remaining members, County had not set up a separate administration...”

10. Despite several requests from my investigator County Tyre failed to provide a formal response to Mr Savage's complaint. They have subsequent to the preliminary decision submitted a letter from OPRA to Clarke Wilmott & Clarke dated 28 February 2002. The letter was headed, “The County Tyre Retirement Benefit Scheme 1972”. It said,

“...Opra has concluded that the wind up of the above scheme must be considered valid. This conclusion was reached after having referred the matter to our in-house actuaries and legal department.

Once a scheme has wound up, it is no longer expected to comply with the requirements of the Pensions Act 1995. I can therefore confirm that Opra does not expect an auditor or an 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 and we cannot therefore comment on the employer's decision to continue funding pensions out of income”

Summary of Mr Savage's position

11. He was informed by County Tyre that he was a Scheme member before and after he took retirement. His letter from them of 18 April 1985 and the Scheme booklet he received indicate his Scheme membership. He also received payslips and P60s showing that County Tyre were paying his Scheme pension.
12. The minutes of the Trustees meeting of 24 May 2000 and the membership listings provided by Mr Maloney confirms that he was a pensioner member of the Scheme. It also showed that the 1972 pension scheme did exist and was not wound up.

13. Mr Duguid confirmed to his son in a telephone discussion that he was entitled to a pension from the Scheme.
14. Prior to October 2013 his monthly pension was paid to him continuously for 25 years.
15. His monthly pension should be reinstated from November 2013 with interest added to the back dated payments.
16. He should be compensated for the distress and inconvenience caused to him by not having his pension paid to him and for having to pursue his complaint with County Tyre.

Summary of County Tyres' position

17. The 1972 pension scheme did not exist and Mr Savage was never entered into any scheme in the name of County Tyre.
18. The pension payments that Mr Savage received up until November 2013 were made as salary payments and were in effect goodwill payments. The letter from OPRA of 28 February 2002 states that the Scheme was wound up.

Conclusions

19. I note that despite several requests from my investigator County Tyre failed to provide a formal response to Mr Savage's complaint. I will be therefore be basing my findings on the evidence made available to me.
20. Mr Freeman has submitted a letter from OPRA of 28 February 2002 indicating that the Scheme was wound up. He asserts that the pension payments that Mr Savage was receiving up until November 2013 were in fact goodwill payments and were not from the Scheme. He also says that the 1972 pension scheme did not exist and Mr Savage was never entered into any scheme in the name of County Tyre.
21. However ,the Scheme documentation made available, namely, the Scheme booklet indicates that the Scheme was established and in operation. The membership listings provided by Mr Maloney and Mr Savage's payslip and P60s mentioned in the material facts show that Mr Savage was a pensioner member of the Scheme. I note that the amounts stated on the membership listing as to his annual pension, his payslip and P60s all indicate that he was in receipt of a gross annual pension of £2,996.28. I find that the evidence submitted to me indicates that Mr Savage 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 P60's represent the pension amount due to be paid.
22. Mr Freeman says that County Tyre could not afford to continue to fund Mr Savage's payments and so they had stopped doing so. However, notwithstanding the letter from OPRA of 28 February 2002, I find that Mr Savage's pension payments were wrongly stopped by County Tyre in November 2013 and that they have a

responsibility to continue to fund his pension. This is because, the Scheme booklet which is a mirror of the Trust Deed and rules 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. Further, OPRA's letter of 28 February 2002 confirms that pensions were continued to be funded by County Tyre out of income. At the time of the alleged Scheme wind up County Tyre took no action to buy Mr Savage an annuity to protect his future payments so their obligation to pay Mr Savage his Scheme pension remains.

23. In addition to County Tyre's failure to provide Mr Savage and this office with a proper response to his complaint he has suffered distress and inconvenience from having his pension unjustifiably stopped by them and should receive appropriate compensation for this.

Directions

24. Within 28 days of this determination County Tyre shall arrange to reinstate Mr Savage's monthly pension of £249.60. This pension shall be back dated to November 2013 and interest added to the back payment at the rate quoted for the time being by the reference banks from November 2013 to the date of payment.
25. Within 28 days of this determination County Tyre shall pay Mr Savage £650 for the distress and inconvenience caused to him by their failings as identified above.

Jane Irvine

Deputy Pensions Ombudsman
28 April 2015