

## Ombudsman's Determination

Applicant	Mr R
Scheme	Malcolm Group Staff Pension Scheme ( <b>the Scheme</b> )
Respondents	Mercer Limited ( <b>Mercer</b> ) The Trustees of the Malcolm Group Staff Pension Scheme ( <b>the Trustees</b> )

## Outcome

1. Mr R's complaint is upheld and to put matters right Mercer Limited should accept the liability for paying Mr R's Guaranteed Minimum Pension (**GMP**).
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr R is complaining that Mercer and/or the Trustees have not been able to trace his GMP entitlement from the Pension and Life Assurance Plan of Caledonian Veterinary Holdings Limited, which had been transferred to the Scheme in 1993.

## Background information, including submissions from the parties

4. Mr R's complaint relates to two periods of contracted out employment with the Caledonian Veterinary Holdings Limited Pension and Life Assurance Plan (**the Plan**) – 14 June 1984 to 2 October 1989 and 3 October 1989 to 5 April 1990. Both periods were in reference to his employment with C-Vet Limited. Caledonian Veterinary Holdings Limited was the parent company of C-Vet Limited.
5. Mr R sought the assistance of the Pensions Advisory Service (**TPAS**), in order to locate his GMP entitlement. TPAS after contacting several pension schemes, managed to establish that Clerical Medical (**CM**) used to administer the Plan for Caledonian Veterinary Holdings Limited.
6. On 5 April 1990, the Plan transferred via bulk transfer to the Scheme (formerly the Grampian Holdings Pension Scheme (**Grampian**)). The Scheme was administered by Mercer (formerly Sedgwick Noble Lowndes). Caledonian Veterinary Holdings scheme subsequently wound up.

7. Mr R held GMP with the Plan between June 1984 and October 1989 so any transfer would have included the GMP liability.
8. On 9 October 1995, the Contribution Agency (now part of HMRC), wrote to CM regarding five members, including Mr R, and said:

“I have been advised by Sedgwick Noble Lowndes that these members did not transfer to the Grampian Holdings Plc Staff Retirement Benefits Plan, SCON S0710226Y. Are you able to advise what happened to their benefits?”
9. On 11 March 1996, the Occupational Pensions Board wrote to CM after Sedgwick Noble Lowndes asked it to contact CM regarding the five members including Mr R. The Occupational Pensions Board asked CM the following:

“I would appreciate any help you can give regarding how the Guaranteed Minimum Pensions (**GMP**) was secured in respect of these members...”
10. On 3 June 1996, CM replied to the Occupational Pensions Board. Regarding Mr R, it said:

“[Mr R]...were all included on the RD560 completed when the assets of the above Plan were surrendered. Please find attached various copies of correspondence which I trust will enable you to ascertain how these members GMP's have been secured and confirm that the Society no longer has the liability.”
11. We do not have copies of the correspondence that CM sent to the Occupational Pensions Board. However, on 20 June 1996, the Contributions Agency wrote to CM saying, in reference to three members, including Mr R, that:

“I have been advised by the Occupational Pensions Board that the above members [Mr R] transferred to the Grampian Holdings Plc Staff RBP (S070226Y). Please forward the relevant transfer form.”
12. On 18 September 1996, CM wrote to the Contributions Agency enclosing a completed RD560. It said:

“With reference to your letter dated 20 June 1996, and subsequent telephone conversation...we are pleased to enclose a completed RD560 as requested.”
13. On the completed RD560, CM used the SCON referenced in the correspondence from the Contributions Agency.
14. In February 2012, Mercer received information from HMRC showing the GMP liability/contracted out benefits for Mr R was held with the Trustees. The Trustees said that their records did not match with those of HMRC and that they had no information that they were liable to pay Mr R's GMP.
15. HMRC has confirmed to TPAS that the Trustees are liable for GMP for the contracted out period of 14 June 1984 to 2 October 1989 and 3 October 1989 to 5 April 1990. In

December 2014, DWP Pension Centre confirmed to TPAS that Grampian is linked with the Scheme.

16. Mercer initially responded on behalf of the Trustees, it seems the Trustees were not party to Mercer's responses to this office.
17. Mercer disagrees by saying that CM used the SCON incorrectly. They say that on 18 September 1990, before the bulk transfer even completed, CM was using Scheme's SCON to notify relevant agencies. Mercer says that it is unclear why the Scheme's SCON was being used by CM before the bulk transfer. So, based on this, Mercer believes that CM has been incorrectly using their SCON when Mr R's GMP liability was recorded with HMRC. When TPAS asked for evidence of this, Mercer could not provide any.
18. The Trustees do not agree that it should hold the liability for Mr R's GMP entitlement as they are unable to trace his benefits from its records. They say that Mr R's transfer has not been recorded on their database hence their conclusion is that he was never part of the bulk transfer, even though the evidence available suggests that after the wind-up a bulk transfer did occur and the money was sent to the Trustees. The Trustees have said that CM was prompted by the Contributions Agency to complete some paperwork that should have been covered at the time of the wind-up. This took place some four years after the bulk transfer had been paid. At that point that RD560 was completed. The Trustees contend that this RD560 is not evidence of a transfer of liability, but cessation of contracted-out employment in respect of the C-Vet Plan. The confusion arose because CM, incorrectly and without authority, used SCON of the Scheme rather than that of the C-Vet Plan. The Trustees assert that HMRC's records are incorrect as a direct result of the error made by CM in its submission to Contributions Agency in 1996.
19. The Trustees have suggested that CM may have paid a refund of contributions to Mr R. The Trustees have said that they have found records of other members of the Scheme who transferred at the same time as Mr R, however they know at least for one case that a refund of contributions had already been paid. Therefore, the Trustees have concluded that Mr R should not have been transferred to the Scheme by CM and therefore an error has occurred.
20. Mr R says he did not receive a refund, if he had had a refund he would not now be trying to trace his missing GMP. He points out that he had contracted out service in excess of five years so would not have qualified for a refund in any event.

## **Adjudicator's Opinion**

21. Mr R's complaint was considered by one of our Adjudicators who concluded that further action was required by Mercer. The Adjudicator's findings are summarised briefly below: -

- SCON is a mandatory data item on payroll submissions to HMRC for those employees who are contracted-out of the state pension scheme. SCON is always sent to HMRC by the transferring scheme. So, it is reasonable to assume that it would have been sent by CM. The receiving scheme would have been the Scheme administered by Noble Lowndes, now known as Mercer.
  - The Adjudicator has considered the evidence from HMRC that shows the Scheme is responsible for the contracted-out period from 14 June 1984 to 2 October 1989 in relation to Mr R.
  - The Adjudicator has also considered the evidence provided by Mr R that shows CM did process the transfer for both contracted-out periods. In light of this, it is reasonable to assume that Mr R's GMP liability is with the Scheme.
  - The explanation that has been provided by Mercer in respect of the SCON incorrectly applied would only be relevant if by mistake the Scheme had received the monies when the bulk transfer would be intended for another provider. This was not the case, as the Trustees are unable to provide any evidence to show that they were not the intended recipient of the transfer value.
  - HMRC has confirmed that the GMP entitlement rests with the Scheme, as such based on this information the Trustees must make good the GMP to Mr R.
  - To put matter right, the Trustees should liaise with HMRC and establish how much GMP is due to Mr R and then apply the correct rate of revaluation that applies to Mr R's GMP. After doing so, the Trustees should pay Mr R's GMP entitlement.
22. The Trustees did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. The Trustees provided their 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 the Trustees for completeness.
23. The Trustees maintained their stance and have added that the discrepancy relating to Mr R's GMP records was discovered as part of the on-going GMP reconciliation process which can be lengthy. They assert that the GMP reconciliation process is continuing and would not be appropriate to pre-empt its outcome by imposing a decision now while the process designed to sort out precisely this type of issue is continuing.

### **Ombudsman's decision**

24. The Trustees say that Mr R did not transfer in the bulk transfer. I accept that that Mr R was not included in the names of members provided as part of the bulk transfer in 1990. This led to the Contributions Agency contacting CM, after Sedgewick Noble Lowndes told them that some members, including Mr R did not transfer across. The Contribution Agency said, "I have been advised by Sedgwick Noble Lowndes that

these members did not transfer to the Grampian Holdings Plc Staff Retirement Benefits Plan.”

25. It is unknown precisely what chain of events triggered that statement and I find it impossible to deduce any more from it than the fact that there was a dispute about whether Mr R’s records were processed properly during the cessation of contracted out service in 1990 and the bulk transfer in 1992. I accept the Trustees’ submission that there was a ‘tidying up’ exercise in 1996 which included Mr R’s records.
26. Considering the available evidence, it is clear that CM was instructed to send the RD560 to the Contributions Agency after the Occupational Pensions Board was satisfied that the outstanding members, including Mr R, should have transferred to the Grampian Holdings. The Occupational Pensions Board informed the Contributions Agency, “... that the above members [Mr R] transferred to the Grampian Holdings Plc Staff RBP (S070226Y)”.
27. The Trustees say that CM used the SCON, without its consent and should not have used it. However, the fact remains that the SCON was used and the few records which now exist tend to show that Mr R had benefits which were transferred to the Scheme.
28. I note the Trustees say that Mr R may have received a refund, as was the case with one of the members on the list supplied to CM by the Contributions Agency. However there is no evidence of any refund being made to Mr R. He has no recollection of receiving a refund of contributions and no evidence of such a refund being paid appears to have been found when CM and the Contributions Agency were attempting to establish what had happened to the members, including Mr R, in 1995/96. A refund of contributions was not the explanation given to the Occupational Pensions Board and the Contributions Agency. On balance, I do not consider it likely that a refund was paid to Mr R.
29. For the reasons above, and with HMRC confirming that Mr R’s GMP is held within the Scheme. I find that the complaint should be upheld.
30. I recognise that the Trustees and HMRC are undertaking a GMP reconciliation exercise, but it is not a given that this will produce any better evidence than is now available. I am also mindful that such exercises can take considerable time during which Mr R is out of his pension. In the circumstances I consider it necessary to make a decision and give directions based on the best evidence now available.

## **Directions**

31. Within 28 days of this Determination, the Trustees shall liaise with HRMC and establish how much GMP is due to Mr R and then apply the correct rate of revaluation that applies to Mr R’s GMP and bring his benefit into payment forthwith.

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32. The Trustees shall pay any arrears of GMP as a lump sum and add interest on sums since the date they were due at the rate quoted by reference banks.

**Karen Johnston**

Deputy Pensions Ombudsman  
20 March 2018