

## Ombudsman's Determination

Applicant	Mr F
Scheme	KME (Works) Retirement Benefit Scheme (the <b>Scheme</b> )
Respondents	Kirkby Manufacturing & Engineering Ltd ( <b>KME</b> ), the trustees of the Scheme (the <b>Trustees</b> ), Pan Trustees Limited ( <b>Pan Trustees</b> ) and Phoenix Life Limited ( <b>Phoenix</b> )

## Outcome

1. I do not uphold Mr F's complaint and no further action is required by Pan Trustees Limited and Phoenix Life Limited. The complaint is also not upheld against the former company, now no longer existing, KME, or the former Trustees (KME were also the trustees).
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. The complaint against KME, the Trustees, Pan Trustees and Phoenix, brought by Mr F's brother (**Mr J**), on his behalf, is that they should pay him a pension, in respect of his membership of the Scheme.

## Background information, including submissions from the parties

1. Mr F, whose date of birth is 12 July 1945, worked for KME between 26 August 1968 and 29 March 1979.
2. The provider for the Scheme was originally Alba Life, subsequently taken over by Phoenix.
3. In 1979, the Trustees instructed Phoenix to surrender and pay the proceeds to them in respect of 150 members under the Scheme. The document from the Trustees acknowledging receipt of the surrender value from Phoenix shows a year (1979) but not a day or a month; the sum paid to the Trustees is not shown; and it is not clear from the signature as to who signed the document on behalf of the Trustees. Mr F does not appear on the list of the 150 members whose benefits were surrendered.
4. The Scheme was wound up in 2000 by Pan Trustees.
5. Documents submitted to us by Phoenix shows:

- the name of the Scheme to be Kirkby Manufacturing Company Limited Retirement Benefits Scheme and not KME (Works) Retirement Benefits Scheme.
  - the Scheme discontinued on 27 March 1979.
  - KME are the trustees of the Scheme.
  - the reason for the discontinuance of the Scheme was because KME had dissolved.
  - a hand-written note dated 22 February 2000 which said “Await OPRA appointment”; and
  - a list of the names of members with preserved benefits as at the time the Scheme wound up. Mr F’s name does not appear on this list.
6. Mr J contacted his MP, the Rt Hon George Howarth MP, who in August 2014 wrote to Pan Trustees. Pan Trustees responded as set out below.
- They were not the trustees of the Scheme. Their appointment does not hold them liable for events prior to their appointment.
  - To the best of their knowledge, the Pensions Regulator (previously called OPRA) liaised with Alba Life to appoint them to approximately 150-200 schemes for the purpose of winding up and distributing the benefits.
  - All the work in the winding up of the Scheme was undertaken by Alba Life staff and all files were retained by Alba Life as part of the appointment agreement.
7. Mr Howarth has submitted that even though Mr F did not keep his wage slips, which would have confirmed that he had contributed to the Scheme, it is his understanding that all KME employees were automatically enrolled in the Scheme.
8. Mr J provided us with two undated documents he received from the Pensions Service, part of the Department for Work and Pensions, which are headed “PENSION SCHEME WE HAVE TRACED”. One document shows the organisation’s (employer’s) name as Fisher & Ludlow, the pension scheme name as Pressed Steel Fisher Limited (1950) Staff and Works Pension Scheme and the pension provider as Legal & General Assurance; and the other shows the organisation’s name as Clohurst Ltd and the pension scheme name as Kirkby Manufacturing & Engineering Company Limited Retirement Benefits Scheme and the pension provider as Alba Life. There are no other documents attaching to show that Mr F had a pension under these schemes.

## Adjudicator's Opinion

9. Mr F's complaint was considered by one of our Adjudicators who concluded that no further/further action was required by Pan Trustees Limited, Phoenix Life Limited. The Adjudicator's findings are summarised briefly below.
- There is no evidence to show that Mr F was a member or that he had accrued benefits under the Scheme. However, even if he was a member it is possible that no benefits may have been preserved for him under the Scheme.
  - Prior to 6 April 1975, there was no requirement under a pension scheme to provide a member with a preserved pension when they left service before retirement age. If a preserved pension cannot be provided, then members are paid a refund of their contributions (less tax), if they contributed to the scheme. Changes in legislation introduced on 6 April 1975 (by the Social Security Act 1973) meant the pension schemes had to provide a member with a preserved pension if they left the scheme having attained the age of 26 and had completed at least five years' qualifying service. However, the five years qualifying service was not retrospective and members could have a refund of their contributions, instead of a preserved pension, paid prior to 6 April 1975.
  - Therefore, assuming that Mr F was a member of the Scheme, he could have taken a refund of his pre-April 1975 contributions which would have left him with less than five years' pensionable service (i.e. his service from April 1975 to March 1979). As the remaining pensionable service is less than five years, he could have been paid a refund of contributions in respect of this service as well. If Mr F had received a refund of his contributions then no benefits would have been preserved for him under the Scheme.
10. Mr J, on Mr 's behalf, did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr J provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr J for completeness. Mr J makes the following points.
- There has been a failure to establish the full length of time his brother paid contributions into the Scheme and the different pension providers, who are now all, bar one, owned by Phoenix.
  - The Scheme was wound up in 2000, but it has not been established for how long Pan Trustees was involved with the Scheme, whether they paid any benefits or what happened to the funds that were left over after the Scheme was wound up.
  - Pan Trustees say that they had returned the records to Alba Life, but Phoenix who own Alba Life were not asked whether they had received any records.

- He was given information by the Pension Tracing Service which he passed on to us. This showed that his father had 15 years membership in the Scheme.

### **Ombudsman's decision**

11. Dealing with the points raised by Mr J in the same order as in paragraph 10 above:
  - a. As it is over 37 years since the Scheme discontinued, understandable there are no records to show whether Mr F was a member of the Scheme and if he was what benefits he had accrued.
  - b. Pan Trustees was founded in 1993, 14 years after the Scheme discontinued. As there is no evidence to show that Mr F was a member or had accrued benefits under the Scheme, it would not be possible to say that they had a responsibility for paying him a benefit when the Scheme wound up.
  - c. Phoenix have stated that they have no other records for Mr F. I do not believe that it is unreasonable after 37 years for Phoenix not to have any records for Mr F.
  - d. The documents Mr J says he received from the Pension Tracing Service only proves the existence of the Scheme, which is not disputed. It does not show that Mr F had an entitlement to benefits under the Scheme.
12. For the reasons given above, I do not uphold Mr F's complaint against KME, Phoenix or Pan Trustees. Due to the time that has elapsed, it is not possible to say whether or not Mr F had an entitlement to benefits under the Scheme; accordingly, I do not uphold the complaint against the Trustees.

**Anthony Arter**

Pensions Ombudsman  
27 October 2016