

Ombudsman's Determination

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

Outcome

1. I do not uphold Mr F's complaint and no further action is required by Pan Trustees and Phoenix. 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 son (**Mr J**), on behalf of Mr F's estate, is that they should pay the pension due to his father, in respect of Mr F's membership of the Scheme, to the estate.

Background information, including submissions from the parties

4. Mr F whose date of birth is 19 September 1915, worked for KME from 1963/64 to 1979. He was a member of the Scheme during that period.
5. The provider for the Scheme was originally Alba Life, subsequently taken over by Phoenix.
6. In 1979, the Trustees instructed Phoenix to surrender and pay the proceeds to them in respect of 150 members under the Scheme which included Mr F's benefits. 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 who signed the document on behalf of the Trustees.
7. Mr F died in 1999. There is nothing to show whether or not a benefit (either a pension or a lump sum) was paid to Mr F in respect of his membership of the Scheme.

8. The Scheme was wound up in 2000 by Pan Trustees.
9. 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 were the trustees of the Scheme;
 - the reason for the discontinuance of the Scheme was because KME had dissolved; and
 - a hand-written note dated 22 February 2000 said "Await OPRA appointment".
10. In 2013, Mr J contacted Phoenix to query the benefits due to his father from the Scheme. He was informed that they were unable to locate any benefits for his father. Following further enquiries in 2014, Phoenix informed Mr J:
 - after conducting a comprehensive search they found that his father's pension was £6.68 per annum, but this was surrendered and paid to the Trustees in 1979;
 - due to data protection issues, they could not advise him of the amount that was paid to the Trustees; and
 - they did not hold the day and month in 1979 when the monies were paid to the Trustees and, under the regulatory requirements, they only have to hold records for a set period. As the records date back to 1979 they are not always complete.
11. A letter, dated 24 January 2014, from HM Revenue & Customs (**HMRC**) to Mr J confirms that his father was contracted-out of the State Graduated Pension Scheme (**SGPS**) between 7 May 1973 and 5 April 1975. In their view, an Equivalent Pension Benefit (**EPB**) of £6.68 per annum from the Scheme is appropriate.
12. Throughout 2014, Mr J continued to correspond with Phoenix and Pan Trustees. He contacted his 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 (**TPR**) (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.
 - Mr F was not a member of the Scheme when they were appointed.

- 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.
13. 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 what pension Mr F had under these schemes.

Adjudicator’s Opinion

14. Mr J’s complaint was considered by one of our Adjudicators who concluded that no further action was required by Pan Trustees or Phoenix. The Adjudicator’s findings are summarised briefly below.
- Mr F’s benefits, together with 149 other members, were surrendered by Phoenix and paid to the Trustees. Therefore, no maladministration can be found on the part of Phoenix.
 - Pan Trustees did not become involved in the Scheme until 1999/2000, over 20 years after Mr F’s benefits were surrendered and paid to the Trustees. Therefore, no maladministration can be found on the part of Pan Trustees.
 - KME, as employer, have no responsibility with regards to the benefits under the Scheme. Therefore, no maladministration can be found on the part of KME.
 - KME, as trustees, are liable to ensure that the correct benefits are paid to the members. According to Phoenix, Mr F’s pension from the Scheme is £6.68 per annum. This is confirmed by HMRC to be an appropriate EPB figure as the Scheme was contracted out of the SGPS. There is no evidence to show that Mr F was entitled to a higher pension.
 - As KME no longer exists, it is not possible to ask them what may have happened to Mr F’s surrendered benefits. However, Mr F was 63 years old in 1979 when his benefits were surrendered by Phoenix and paid to the Trustees. Taking into account that he was close to retirement age and the amount of pension was small, it is possible that when his benefits were surrendered, he was paid a lump sum in lieu of his pension, but there is no evidence to substantiate this.
 - Even if maladministration could be found on the part of the Trustees, because KME no longer exists, any directions made against them will be futile.

15. Mr J 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.:

- In their formal response to the complaint and to enquiries raised by us, the remarks made by Pan Trustees were very insulting and insensitive about his father. He would like Pan Trustees to be reported to the appropriate authority.
- There has been a failure to establish the full length of time his father paid contributions into the Scheme and the different pension providers, who are now all, bar one, owned by Phoenix.
- There is nothing to show that his father was paid a pension or a lump sum before he died. In addition, his mother should have received a 50% widows' pension on his father's death.
- 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 to the 150 members whose pension was surrendered in 1979, 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.
- The complaint was not about the pension of £6.68, but about the contributions that his father paid into the Scheme while employed by KME.
- 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.
- Phoenix does have details of the date in 1979 when the surrender value was paid to the Trustees and the name of the person who signed the receipt on behalf of the Trustees.
- His father was not informed in 1979 that his benefits had been surrendered and paid to the Trustees. This would be a legal requirement.
- It had been stated that Pan Trustees were not the trustees of the Scheme. However, in his view, they were responsible for distributing the benefits. His father was one of the 150 members whose benefits were surrendered, so Pan Trustees are responsible for paying his benefits.

Ombudsman's decision

16. Dealing with the points raised by Mr J in the same order as in paragraph 15 above:

- a. I fully understand why Mr J found Pan Trustees' remarks insulting and insensitive and I do not condone Pan Trustees' remarks, and find that some of the remarks were unnecessary.
- b. As it is over 37 years since the Scheme discontinued, and Mr F's benefits were surrendered by Phoenix, understandable there are no records to show how long he was a member of the Scheme. But, it is not dispute that he had 15 years membership in the Scheme. Even if we were able to obtain these records, it will not help explain what happened to his benefits because the surrender value was paid to the Trustees and they no longer exist.
- c. I agree that there is no evidence to show that his father was paid a pension or a lump sum. The suggestion by the Adjudicator that a lump sum may have been paid, is just one possible explanation as to what may have happened. His mother would have received a widow's pension, if there were provisions under the Scheme for this benefit to be paid. As there are no copies of the rules of the Scheme or booklets which explain the benefit entitlements, it is not possible to say that a widow's pension would have been due.
- d. Pan Trustees was founded in 1993, 14 years after Mr F's benefits were surrendered by Phoenix and paid to the Trustees. Therefore, it is irrelevant when Pan Trustees first became involved with the Scheme. In addition, there is no evidence to show that they were responsible for paying Mr F his benefits from the Scheme.
- e. Phoenix have stated that, apart from the document showing that Mr F's benefits were surrendered in 1979, they have no other records for him. I do not believe that it is unreasonable after 37 years for Phoenix not to have any records for Mr F. Besides, the surrender value for Mr F's benefits were paid to the Trustees in 1979 so any records Phoenix had for Mr F before that date will not explain what happened to his benefits.
- f. Any contributions paid by Mr F would be in respect of benefits he would receive from the Scheme. The fact that Mr F had an EPB means that the Scheme was contracted out of the SGPS. At the time the Scheme discontinued, only defined benefit schemes could contract out of SGPS. Therefore, we can say with some certainty that the Scheme was a defined benefit scheme and Mr F's pension would have been based on his final pensionable salary at the time the Scheme discontinued. Consequently, his contributions would have had no bearing on the pension he could have received.
- g. 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 explain what happened to Mr F's pension.

- h. Phoenix have informed us that they do not have an exact date when the surrender value was paid to the Trustees in 1979, or the name of the person who signed the receipt. Even if we had this information, apart from telling us the exact date the surrender value was paid and the name of the person (who will be someone signing on behalf of KME) who signed the receipt, I am not sure what purpose that would serve.
 - i. The Trustees would have been responsible in 1979 for informing Mr F that his benefits had been surrendered. Phoenix would not be responsible for this.
 - j. It is clear that Pan Trustees became involved with the Scheme long after Mr F's benefits were surrendered by Phoenix. Therefore, the responsibility for paying his benefits lay with the Trustees and not Pan Trustees.
17. For the reasons given above, I do not uphold Mr J'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 did receive a benefit and therefore whether there has been maladministration by the Trustees; accordingly, I do not uphold the complaint against the Trustees.

Anthony Arter

Pensions Ombudsman
27 October 2016