

Ombudsman's Determination

Applicant	Mr E
Scheme	Pension Protection Fund (the Pension Protection Fund)
Respondent	The Board of the Pension Protection Fund (the Board)

Outcome

1. I do not uphold Mr E's referral and no further action is required by the Board.

Referral summary

2. Mr E has referred an appeal of a decision by the Board's Reconsideration Committee dated 17 September 2020. The Referral concerns the determination of Mr E's entitlement to PPF compensation.

Background information, including submissions from the parties

3. Mr E accrued pensionable service in the McTay Engineering Group 1976 Staff Pension Scheme (**the McTay Scheme**) between 1 May 1985 and 1 July 1988.
4. On 9 October 1992, the trustee of the McTay Scheme wrote to the members (**the 1992 Letter**) and, as relevant, said:

"You will recall from the announcement letters issued earlier this year and the subsequent meetings...held to give members the opportunity to voice any queries and to enquire regarding the future of the [McTay Scheme].

After the meetings, all members were given an agreement form to sign, date and return. It was pleased to report that 100% of the McTay Scheme membership had indicated their agreement to the amalgamation of the McTay Scheme into the Mowlem Staff Pension and Life Assurance Scheme [**the Mowlem Scheme**].

Since then, discussions have continued with the Norwich Union and it was envisaged that the McTay Scheme funds would be transferred (in name only) to the Mowlem Scheme trustees [**the Trustees**], at the end of 1992. The actual funds will remain with the Norwich Union for the time being but, at 31 December 1992, the opportunity will be taken to transfer from the current insured fund to a managed fund.

Scheme contributions will continue to be remitted to the Norwich Union probably up to 31 December 1992 but, thereafter, would be invested with the Mowlem Scheme monies. Additional voluntary contributions made by existing contributors will continue to be remitted to the Norwich Union.

...the transfer to the Mowlem Scheme does not affect your scale of benefits or the calculation of your entitlements which will continue to be calculated in exactly the same way as under the McTay Scheme.”

5. Norwich Union is now known as Aviva and hereafter in this Determination, Norwich Union will be referred to as Aviva.
6. The McTay Scheme’s assets and liabilities were bulk transferred to the Mowlem Scheme on 31 December 1992.
7. The Mowlem Scheme was one of the Carillion defined benefit occupational pension schemes (**the Carillion Scheme**).
8. On 23 January 2018, Mr E wrote to the trustee of the Carillion Scheme and said in summary:-
 - As a member of the McTay Scheme, he had been in receipt of his pension since May 2014. He was concerned that the Trustees were about to place his pension with the PPF. The rules displayed on the PPF’s website stated that pensions accrued before 1997 would not increase, whereas his current pension provision increased by 5% each year.
 - This meant that over an expected 30-year period, the PPF would only pay approximately 43% of his current entitlement. This was inequitable, with deferred members receiving 90% of their scheme pension as well as some entitlement to annual increases.
 - The most recent actuarial valuation of the whole Mowlem Scheme was declared at 66% in the 2016 review. Therefore, even after a revaluation, it was highly likely that the members of the McTay Scheme would be far better off by retaining the McTay share of the Mowlem Scheme, and not being placed with the PPF. Pensions could be equitably adjusted, as necessary.
 - He realised that this would have had an impact on the other members of the McTay Scheme, but as the McTay Scheme was closed to new members in the early 1980s, he believed that they too would not benefit from increases but would benefit from his proposed measure. So, he requested a list of members and their contact details so he could give consideration to their views.
9. In the same letter, Mr E requested a transfer value for his pension so that he could consider his options before any action was taken which would impact his pension.
10. There is no record that the trustee of the Carillion Scheme replied to Mr E.

11. The Mowlem Scheme transferred to the PPF on 5 February 2020.

12. On the same date, the PPF sent Mr E a welcome letter and said in summary:-

- It had formally taken responsibility for the Mowlem Scheme on 5 February 2020. This meant that Mr E was now a PPF member, and he would receive compensation from the PPF rather than a pension from his original scheme.
- The PPF was set up to protect people if their employer or previous employer became insolvent and their employer could not afford to pay the pension they were promised. Mr E could rest assured that he would receive payments from the PPF.
- Mr E's gross annual compensation was £3,575.16. The PPF would pay him the first instalment of his ongoing compensation from 1 March 2020, and then future instalments every month. His first instalment would include any back payments he was due.¹
- If Mr E disagreed with the amount of compensation he was entitled to, he should get in touch with the PPF.

13. On 24 February 2020, Mr E wrote to the PPF and said in summary:-

- He was one of the last members of the McTay Scheme which was established before McTay Engineering was bought out by Mowlem Engineering (**Mowlem**). The McTay Scheme was set up and funded to pay annual increases of 5% and those increases were paid until Mowlem's insolvency.
- It appeared that somewhere along the way, the McTay Scheme became administered by the Mowlem Scheme. However, the McTay Scheme rules continued to be applied.
- The application of standard PPF conditions meant that members like him were likely to lose around 55-60% of their entitlement, yet actuarial valuations had taken into account their full 100% entitlement. It was inequitable to place the McTay Scheme with the Mowlem Scheme as the McTay Scheme would still be "far better off" outside the PPF.
- He also noted that the average funds market had recovered 14% since the date of the PPF assessment of assets, and this would have applied to the McTay Scheme, which meant that any shortfall was reduced.
- He disagreed with the PPF's inclusion of the McTay Scheme within the PPF and the level of compensation he was informed he was entitled to.

14. On 5 March 2020, the PPF replied to Mr E and said in summary:-

¹ This letter included a schedule of payments that showed the compensation Mr E was going to receive.

- It could confirm that he should receive the same level of pension that he was receiving from the Mowlem Scheme, before that Scheme transferred to the PPF.
- It understood that he had previously built-up pension benefits in the McTay Scheme before it was taken on by the Mowlem Scheme. It was also aware that the Mowlem Scheme had agreed to keep paying pension increases at the same rate when they took on the McTay Scheme.
- However, as the PPF was a statutory fund that was set up by the Pensions Act 2004 (**the 2004 Act**), once a pension scheme transferred to the PPF, a member's scheme benefits were no longer paid from the scheme itself but were replaced by compensation, in accordance with the 2004 Act.
- This also meant that, due to the legislation set out in the 2004 Act, only statutory increases would apply to a member's benefits instead of increases set out within the rules of their former scheme.
- There was no option for members to opt out of a scheme that they were receiving pension benefits from when it transferred to the PPF.

15. On 17 March 2020, Mr E sent a further letter to the PPF. In summary he said:-

- It appeared that the PPF had not understood his letter of 24 February 2020, particularly the fact that the McTay Scheme was a separate scheme from the Mowlem Scheme and was only administered by the Mowlem Scheme.
- The funding of the McTay Scheme was greater due to the need to pay annual increases of 5% for the member's lifetime. So, the shortfall was not as high as that applicable to the basic Mowlem Scheme.
- The PPF had a duty to address the funds attributable to the McTay Scheme. As the funds would pay pension levels higher than the PPF fixed levels, the McTay Scheme funds should not be absorbed by the PPF and used to subsidise other schemes.
- It had taken the PPF over two years to come to an incorrect conclusion, during which time there had been no transparency, his correspondence had been ignored and he had already suffered more than a 10% shortfall on his pension payments.

16. On 8 April 2020, the PPF replied to Mr E and said in summary:-

- Making sure that PPF members were treated fairly and paid the right amount was incredibly important to it. It was sorry to hear that he felt let down by the service he had received from the PPF.
- It had contacted the Trustees for their comments on Mr E's assertion that the McTay Scheme was a separate scheme from the Mowlem Scheme. The Trustees

informed it that the McTay Scheme had transferred to the Mowlem Scheme in 1992, and that this was communicated to all members of the transferring scheme.

- The PPF received copies of two separate communications from the Trustees, that were sent to all members (**the Communications**).² It was confident that Mr E's entitlement had correctly transferred to the PPF.
- The PPF was not a pension scheme. It was created through government legislation to ensure that members of eligible schemes that had failed and were unable to pay members their pensions, still received a substantial amount of the money that they were entitled to.
- Before a scheme entered the PPF, it had to go through the PPF assessment period where it was assessed to see whether it qualified for entry into the PPF. The Mowlem Scheme went through the assessment period and qualified to transfer to the PPF, as it could not afford to buy the level of benefits for its members that the PPF could provide.
- The PPF would broadly pay compensation at 100% for members who had reached their normal pension age (**NPA**), at the point that their former scheme entered the PPF assessment period, or who were receiving payments early due to ill health. The PPF would broadly pay compensation at 90% (subject to a cap) for members who, at that same point, had not reached their NPA.
- As Mr E had retired before the Mowlem Scheme had entered the PPF assessment period, he was receiving his full pension entitlement as compensation from the PPF. His compensation entitlement was not capped.

17. In relation to pension increases, the PPF said in summary:-

- The Pension Act 1995 introduced a requirement for all pension funds earned after April 1997 to have a guaranteed increase applied to them. Before this, there was no legislative requirement for pension funds to increase each year. All of Mr E's pensionable service was accrued prior to April 1997.
- When the PPF was created, the government decided that according to the PPF scheme rules, the increases payable on compensation would be the same as the increases that defined benefit (**DB**) pension schemes were obligated to provide as a minimum. There were no statutory requirements for DB pension schemes to pay increases on pre-1997 accrued benefits. The PPF compensation reflects those statutory minimum requirements.
- Although some schemes that transfer to the PPF allowed for increases on benefits pre-April 1997, this was not a legal requirement. Different schemes had different rules. Although some of those individual scheme rules were kept as part of the

² The PPF explained that due to COVID-19, it could not send copies of the Communications to Mr E in the post but that he could access the Communications on the PPF Members' website.

PPF legislation, such as those regarding dependant's pensions, unfortunately, not all of the individual scheme rules were included.

- So, Mr E's compensation entitlement with the PPF would not receive any pension increases.
- It appreciated that Mr E would be disappointed with its response, and it apologised that he felt his queries were not answered in previous correspondence. It hoped that it had now explained its position clearly.

18. In the same communication, the PPF explained that Mr E could appeal its decision but that those who would consider his appeal would be bound by the requirements of the law. The legislation governing the PPF was the responsibility of the Department for Work and Pensions and could only be changed by Parliament.

19. On 29 April 2020, Mr E wrote to the PPF and said in summary:-

- He had never seen the Communications before. He had received no communication from the Trustees since he ceased employment with Mowlem in 1998.
- When he joined Mowlem, he was advised that it was in his best interest to wait the qualifying year and then join the McTay Scheme, as it was superior to the Mowlem Scheme, and this is what he did.
- The McTay Scheme was an insured scheme with policies provided by Aviva. The scale of benefits and calculation of entitlement remained under the McTay Scheme terms, even if scheme contributions after December 1992 were invested with the Mowlem Scheme monies.
- When he left Mowlem in 1998, Aviva was to provide his McTay Scheme pension by insurance policies when he reached age 65, with the pension administrators for the Carillion Group providing his pension in accordance with the McTay Scheme terms and not the Mowlem Scheme's terms.

20. On 18 June 2020, the PPF replied to Mr E. It repeated some of the comments in its previous correspondence to Mr E and also said in summary:-

- It was writing to Mr E as his letter of 29 April 2020 had been treated as a request for a stage two formal review. The legislation which it reviewed in this case was in respect of any determination of a person's entitlement to compensation under the pension compensation provisions, under Section 162 of the 2004 Act.³
- Its legal team had looked at the documents provided by the Trustees regarding the transfer of the McTay Scheme to the Mowlem Scheme. It appeared that this was undertaken as a bulk transfer without consent, allowable under regulation 12

³ <https://www.legislation.gov.uk/ukpga/2004/35/section/162>

of the Occupational Pension Schemes (Preservation of Benefits) Regulations 1991 (**the Preservation Regulations**).

- The Preservation Regulations set out that a bulk transfer could be made without consent between occupational pension schemes relating to associated employers. It would have been necessary to give all transferring members at least one month's notice of the proposed transfer. However, it would not have been necessary to get their expressed consent to the transfer. The notification requirement would have been satisfied if the Trustees had sent the notice to the last known address it had on record for Mr E. As a deferred member at the time the transfer took place, his consent would not have been required for the transfer.
- The Trustees also confirmed that various letters were issued to Mr E, in the name of the Mowlem Scheme, indicating his pension had transferred to the Mowlem Scheme. Two cash equivalent transfer value (**CETV**) letters were issued upon his request, in 1998 and 2007. Along with this, the required Summary Funding Statements which were sent to all members every year to provide an update on the financial position of the Scheme would also have been sent to him. In addition, when the Mowlem Scheme entered the PPF assessment period, Mr E had completed a data verification statement. This showed the name of 'Mowlem Staff plc' as his employer.
- With regard to the contributions held with Aviva at the time the transfer took place, only the additional voluntary contributions were left invested with Aviva. The funds attributable to the main DB scheme Mr E was a part of, were invested with the Mowlem Scheme. This included the contributions paid by former McTay Scheme members prior to the amalgamation of the Schemes. Subsequently, the annuity policies held with Aviva were also transferred into the Mowlem Scheme.
- It was sorry that Mr E believed the Trustees and the previous administrators had failed to provide enough information in the past. However, their failure to do so did not make the transfer of the McTay Scheme into the Mowlem Scheme ineffective.
- It appreciated that prior to the Mowlem Scheme entering the PPF Mr E's benefits were receiving 5% annual increases. However, the PPF was bound by legislation and must adhere to it. It could not pay members more than they were entitled to.
- It noted Mr E's comment that the average funds market had recovered by 14% since the Mowlem Scheme had entered the PPF assessment period. However, all schemes' benefits were valued at the assessment date and any changes to the market after this date had no effect on the funding position of the former scheme, or the entitlement the PPF paid its members.
- It confirmed that in line with the response issued to Mr E on 8 April 2020, the McTay Scheme rightly transferred into the Mowlem Scheme. The compensation Mr E was currently receiving from the PPF was being paid according to the PPF's governing legislation. So, it did not uphold his complaint.

21. On 9 July 2020, Mr E referred his complaint to the Reconsideration Committee. In summary he said:-

- It was his understanding that the PPF's duty was to protect the pensions of members of pension schemes where employing organisations had become insolvent. However, the PPF had, so far, sought only to dispute his statements and to produce spurious unchecked documents.
- Having previously inferred that he had consented to a proposed transfer of his pension rights, the PPF now stated that his consent was not required, as it was only necessary to give him one month's notice of a proposed transfer.
- Just as no consultation was ever made, no notice of a transfer was ever given to him, and no advice of a transfer had ever been given prior to Carillion's insolvency. The Communications were not addressed to him and, in any case, did not mention a transfer of the McTay Scheme.
- He had a copy of a letter referring to the transfer value of his McTay Scheme pension, dated the 18 June 1992.⁴ There was no mention of any impending or proposed transfer to the Mowlem Scheme.
- Prior to his retirement date, he had received a retirement statement, together with the McTay Scheme rules. If the McTay Scheme had become the Mowlem Scheme, surely the Mowlem Scheme's rules would have been implemented. This was never the case as the McTay Scheme's rules were implemented.
- He noted that the PPF believed the verification of his personal details, when requested, on a form that gave Mowlem Staff plc as the employer meant that his entitlement under the McTay Scheme fell away. Although he was invited to join the McTay Scheme, his employer was always Mowlem. So, letters were always headed Mowlem.
- When he joined Mowlem he was advised to forgo pension scheme membership with the Mowlem Scheme as he was allowed to join the McTay Scheme if he waited for one qualifying year. He did so and sacrificed a year of pensionable salary, under the Mowlem Scheme rules, in order to receive a pension from the McTay Scheme, inclusive of the 5% annual increase. If he had been a member of the Mowlem Scheme then his starting pension would have been a third higher.
- A trustee for the McTay Scheme had previously written to him advising him not to transfer his McTay Scheme pension.⁵
- He left Mowlem's employment in 1998. At that time his pension was covered by Aviva annuity policies. One of the Communications dated 9 October 1992 referred to the transfer of funds in 1993. The PPF's letter dated June 2020 stated:

⁴ Mr E provided a copy of this letter to the PPF.

⁵ Mr E provided a copy of this letter to the PPF.

“Subsequently, the annuity policies held with Norwich Union were also transferred into the Mowlem scheme.”

- With his pension being covered, over five years earlier, by annuity policies taken out to pay it, he questioned why the PPF had denied him the benefit, when prior to Carillion's insolvency it was clearly covered and administered under the McTay Scheme rules and not the Mowlem Scheme rules.

22. On 17 September 2020, the Reconsideration Committee sent Mr E its decision not upholding his complaint. In summary it said:-

- The Committee had fully reviewed all the information Mr E had provided to it, as well as those on his record held by the PPF. It had also considered the relevant law.
- The McTay Scheme transferred into the Mowlem Scheme on 31 December 1992 and the transfer was validly made without consent in accordance with the Preservation Regulations. As the data passed to the PPF showed Mr E to be a member of the Mowlem Scheme, the PPF was paying his compensation in line with governing legislation.
- The Trustee was contacted at stage two of Mr E's complaint. It confirmed that Mr E had received correspondence that indicated he was a member of the Mowlem Scheme, although still paid in accordance with the rules of the McTay Scheme.
- Annuity policies held with Aviva were also transferred into the Mowlem Scheme, so Aviva no longer had any part in the Mowlem Scheme. The assets that were originally with Aviva had since been transferred to the Mowlem Scheme and had to be taken into account along with the Mowlem Scheme assets during the PPF assessment period. They could not be treated separately.
- The compensation Mr E was currently receiving from the PPF was being paid in accordance with the PPF's governing legislation.

23. Subsequently, Mr E referred his complaint to the Pension Protection Fund Ombudsman (**PPFO**).

24. Mr E and the Board provided further submissions to the PPFO. Although not a party, Aviva provided some information to help the PPFO with its investigations into this complaint. Mr E's, the Board's and Aviva's additional submissions have been summarised below.

Mr E's position

25. Mr E submits:-

- His pension, which commenced in May 2014, was secured by annuities purchased from Aviva, who set up the McTay Scheme. His pension was paid in

accordance with the McTay Scheme terms and conditions, which included 5% annual increases.

- When Carillion became insolvent, on 16 February 2018, the PPF commenced assessing the Mowlem Scheme. Mowlem had always been his employer in name but had offered him the opportunity of becoming a member of the McTay Scheme. Mowlem had acquired McTay some years earlier.
- On 20 February 2020, he received an undated letter from the PPF advising him that, in its eyes, he was a member of the Mowlem Scheme and his pension would be paid without any increases beyond that applied in 2017. This meant that, over his projected lifetime, he would only receive 43% of the entitlement secured by the Aviva annuities.
- In all his correspondence to Mowlem and then Carillion, he always stated that he was a member of the McTay Scheme. No response from either Mowlem or Carillion ever inferred that this was not the case.
- The PPF stated that he transferred to the Mowlem Scheme at the end of 1992 but has failed to provide any evidence of this. The PPF also stated that the Aviva annuities, which paid his pension, were later transferred into the Mowlem Scheme. The PPF has inferred that these annuities were subsequently cashed in but has not stated when.
- The regulation which the PPF quoted as allowing his pension to be transferred from the Mowlem Scheme without his agreement also requires an actuary's certificate to certify that the assets transferred are such that his rights would be no less favourable in the new scheme. He was not presented with this certificate.
- Under the PPF's decision this clearly would not have been satisfied if the Trustees cashed in the annuities and then failed to pay annual increases. Nonetheless, an actuary would have taken the view that the Aviva annuities were retained to guarantee payment of entitlement.
- His McTay Scheme pension entitlements, accrued up to him leaving Mowlem's employment in 1988, were clearly fully funded by way of purchased annuities well before the stated amalgamation of the Schemes. It would be fraudulent to cash them in and then deny his full pension entitlement.
- Also, the acknowledged fact that his pension was administered under the McTay Scheme rules clearly demonstrated that it was not operated as a Mowlem Scheme.
- It serves the PPF not to recognise the McTay Scheme and pay a much reduced sum in total, yet the PPF's own booklet states:

“Remember, we'll only need to step in if your pension scheme can't afford to pay you what we would. If the scheme is able to pay you more than we'd pay you, that's what you'll get.”

The Board's position

26. The Board has provided copies of emails between the PPF and Barnett Waddingham between 31 March 2020 and 2 June 2020. The Board's position is set out below in paragraphs 27 to 43.
27. There are three parts to Mr E's referral. These are:-
- Mr E asserts that he was not a member of the Mowlem Scheme but was instead a member of the McTay Scheme.
 - Mr E believes that his McTay Scheme pension was secured by the purchase of annuities with Aviva, including 5% annual increases, which would be substantially more generous than PPF compensation, because the PPF does not provide for pre-1997 increases. He believes that this benefit was guaranteed.
 - Mr E believes that it would be fraudulent for the Mowlem Scheme to have cashed in the Aviva policies and deny him his full pension entitlement, including 5% annual increases.

Mr E not being a member of the Mowlem Scheme

28. It considers that Mr E's pension transferred to the Mowlem Scheme on 31 December 1992 because at the time of the bulk transfer, the legislation permitted the trustees of the McTay Scheme to bulk transfer liabilities to the Mowlem Scheme without member consent. At the time, Regulation 12 of the Preservation Regulations allowed for the transfer to be without member consent provided that the scheme was being wound-up and the transfer was to another scheme that applied to employment with the same employer. An actuary had to certify to the trustees or managers of the transferring scheme that the transfer credits to be acquired for the members under the receiving scheme were at least equal in value to the rights to be transferred.⁶
29. The legal requirement to notify members of the bulk transfer was only introduced on 6 April 1997, in new regulation 4B of the Preservation Regulations.
30. Unfortunately, the McTay Scheme's governing trust deed and rules are not available, so it cannot comment on whether they contain a bulk transfer without consent power available to the trustee or the employer. However, even if this power was not available, it expected, noting general practices at the time, that it was likely that it would have been possible to introduce such a power by amending the legal documentation prior to the bulk transfer.

⁶ <https://www.legislation.gov.uk/ukxi/1991/167/regulation/12/made>

31. The Trustee confirmed that it administered the former McTay Scheme members benefits based on the terms set out in the 1976 McTay Scheme booklet.⁷ This is not unusual for legacy schemes. It noted that there was no restriction in the McTay Scheme booklet on bulk transfers out without consent.
32. It has limited information in respect of the 1992 bulk transfer. On balance, it considered that there was sufficient evidence to conclude that Mr E's pension was in the Mowlem Scheme when it transferred to the PPF because:-
 - As part of its investigations during the Mowlem Scheme's PPF assessment period, it sought confirmation on any historic transfers in. The Trustee confirmed that the McTay Scheme had transferred into the Mowlem Scheme.
 - The Pension Regulator's SCORE record (PSR number 10150809) confirmed the McTay Scheme's status as "wound up" and references "01/04/1997."
33. In respect of the requirement for an actuarial equivalence certificate, it recognised and accepted that this was not presently available. It also recognised and accepted that the Trustees did not provide more details and documentation in respect of the bulk transfer. However, it was not unusual for some documentation in respect of historic bulk transfers to be unavailable. It would not seek to reject Mr E's entitlement to PPF compensation on this basis alone, and instead, in these circumstances would consider other evidence available. After doing so, it concluded that, on balance, Mr E's DB pension was validly transferred to the Mowlem Scheme.
34. Mr E remained in the Mowlem Scheme's administrative system following the bulk transfer. For example, CETVs were provided in 1998 and 2007, and Mr E was a pensioner of the Mowlem Scheme when it transferred to the PPF.
35. If the Pensions Protection Fund Ombudsman was to take an alternative view, namely that Mr E's pension did not transfer to the Mowlem Scheme in 1992, then Mr E would not be entitled to PPF compensation and would be left trying to enforce payment of a pension against a scheme that has wound up, and where his former employer is insolvent.
36. It is required to assume responsibility for the DB liabilities that are transferred to it under legislation. Its view is that Mr E's pension transferred to the Mowlem Scheme in 1992, and then that liability transferred to the PPF on 5 February 2020. It has a responsibility to pay Mr E his PPF compensation and will continue to do so.

Annuities secured with Aviva with 5% increases

37. It is possible for insurance policies to be held by the trustees of a scheme or individual members. If the policyholder is the individual member, that member would have a contract with the insurer and would benefit from the rights provided by that contract and also be subject to the terms within it. If the policyholder is the trustee for

⁷ The PPF provided a copy of the booklet to the PPFO.

the scheme, the policy would be an asset of the scheme, and would not be for the benefit of specific members.

38. The statements on pages 1 and 3 of the McTay Scheme booklet clearly demonstrate that, at that time, the assets of the McTay Scheme were invested in funds provided by Aviva. The benefits of at least some members were secured by insurance policies provided by Aviva and held in the name of the Trustees.⁸ As these insurance policies were in the name of the Trustees rather than the individual member, the policies were for the McTay Scheme's benefit as a whole, as an asset of the McTay Scheme, and not for particular members.
39. The 1992 Letter referred to previous staff discussions on the McTay Scheme to Mowlem Scheme bulk transfer. That letter stated that "discussions have continued with [Aviva] and it is now envisaged that the McTay funds will be transferred (in name only) to the Mowlem Pension Scheme Trustees at the end of 1992." This supported the conclusion that the assets of the McTay Scheme were invested in funds provided by Aviva and the clear plan was to transfer these assets in-specie to the Mowlem Scheme.
40. To check this position, it asked the Trustees, who then checked with the Mowlem Scheme's previous administrators, whether it had additional information regarding Aviva. It was informed that previous insurance/annuity policies held by the McTay Scheme with Aviva were transferred into the Mowlem Scheme, and Mr E was not an annuitant under such a policy. So, Mr E was not one of the members who had their benefits secured by an insurance policy provided by Aviva, and even if he had, the insurance policy would have been in the name of the Trustee, and so would have been a general asset of the scheme, rather than an asset of Mr E.
41. It considered that, on balance, Mr E's McTay defined benefit pension transferred to the Mowlem Scheme. So, it must continue to pay him his PPF compensation on the basis of section 162 and paragraph 3 of schedule 7 to the 2004 Act.⁹ This meant that Mr E would not receive pension increases because all of his pensionable service is prior to April 1997.

Accusations of fraudulent activity by the Mowlem Scheme

42. Based on the available evidence, it considered that the Mowlem Scheme correctly accepted the insurance policies with Aviva as an asset of the McTay Scheme as part of the bulk transfer of assets and liabilities to the Mowlem Scheme.
43. It had no reason to believe the McTay Scheme or Mowlem Scheme trustees fraudulently cashed-in the insurance/annuity policies with Aviva. The insurance policies formed part of the general assets of the Schemes, and it has no reason to

⁸ Relevant extracts of the McTay Scheme booklet are provided in Appendix 1.

⁹ <https://www.legislation.gov.uk/ukpga/2004/35/schedule/7>

believe the trustees did not apply the proceeds of the insurance policies for the purposes of the Schemes, in accordance with their governing documentation.

44. Although not a party to the complaint, Aviva provided the following comments:-

- Mr E had four policies with Aviva, these were transferred from Aviva to another pension arrangement in 2015.
- There did not appear to be any involvement by McTay or Mowlem in the transfer process.
- There was also no record of an annuity with Aviva or the administration of the policies after 2015.

Adjudicator's Opinion

45. Mr E's referral was considered by one of our Adjudicators who concluded that no further action was required by the Board. The Adjudicator's findings are summarised below:-

- After reviewing the information that Mr E and the Board had provided, it was the Adjudicator's view that, on the balance of probabilities, Mr E's benefits in the McTay Scheme were transferred to the Mowlem Scheme and Mr E was being paid a pension from the Mowlem Scheme at the time that the Scheme entered the PPF.
- The Adjudicator appreciated that Mr E believed that the pension he was entitled to from the McTay Scheme was secured through the purchase of annuities with Aviva. However, it was the Adjudicator's view that, based on the available evidence, his benefits in the McTay Scheme were transferred to the Mowlem Scheme prior to his retirement, but at retirement, his pension was paid by the Mowlem Scheme administrator in accordance with the rules of the McTay Scheme.
- There was no evidence that an annuity was secured with Aviva for Mr E in respect of his benefits from the McTay Scheme. Further, in an email to the PPF dated 1 June 2020, Barnett Waddingham said:

“the Aviva annuitants are all McTay members... Mr [E] is not one of the annuitants.”
- In the Adjudicator's opinion, the PPF had taken reasonable steps to confirm that Mr E was a member of the Mowlem Scheme, following his letter of 24 February 2020, and his subsequent correspondence to the PPF in relation to this matter. As, on the balance of probabilities, the evidence showed that Mr E was a member of the Mowlem Scheme at the time that Scheme transferred to the PPF, it was correct for the PPF to pay him compensation payments.

- The Adjudicator appreciated that Mr E was disappointed that his compensation from the PPF did not include the 5% annual increase. However, it was the Adjudicator's view that Mr E's compensation entitlement was being paid in accordance with PPF legislation.

46. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. I agree with the Adjudicator's Opinion.

Ombudsman's decision

47. Mr E's referral concerns his belief that his entitlement to a pension from the McTay Scheme should not be included with his compensation entitlement from the PPF.
48. The evidence provided by the parties to the referral does not support Mr E's assertion that an annuity was secured with Aviva in his name in relation to his McTay Scheme benefits. Mr E has not been able to evidence that Aviva is responsible for paying him an annuity in relation to the benefits he accrued in the McTay Scheme.
49. In the absence of evidence to demonstrate that Mr E's McTay Scheme benefits were not transferred to the Mowlem Scheme, I find that the Board has correctly concluded that Mr E's McTay Scheme benefits transferred to the Mowlem Scheme in 1992 and should be included in his compensation payments from the PPF.
50. While I empathise with Mr E's position, I do not uphold his referral and no further action is required by the Board.

Anthony Arter CBE

Deputy Pension Protection Fund Ombudsman

9 August 2024

Appendix

Relevant extracts from the McTay Scheme booklet

1. Page 1 states:

“You will be pleased to learn that we have chosen to arrange the investment of the pension and death benefits with the Norwich Union Life Insurance Society / Norwich Union Pensions Management Limited. They have a proven record of outstanding investment performance coupled with financial strength – a combination which provides real security for your benefits.”

2. Page 3 states:

“Norwich Union issue insurance policies in the name of the Trustees, which secure your benefits.”