PENSION SCHEMES ACT 1993, PART X
DETERMINATION BY THE DEPUTY PENSIONS OMBUDSMAN

Applicant	Mr Reynold Finney
Scheme	Scottish Life Income Drawdown Plan (**the Plan**)
Respondent(s)	Scottish Life

Subject

Mr Finney's complaint against Scottish Life is that they provided him with incorrect policy valuations. He asks that they honour the value they had led him to believe that he had since 2008.

The Deputy Pensions Ombudsman's determination and short reasons

The complaint should be upheld against Scottish Life because they underpaid the transfer value that was due and have also sent Mr Finney a number of erroneous statements over the years. However Mr Finney has no entitlement to a transfer value greater than that which was available under the Plan.

DETAILED DETERMINATION

Material Facts

1. The Plan commenced in 2001 and has been in drawdown for some time. In August 2003 an income payment of £1,750 was made from the Plan. This it transpires has not been correctly accounted for in the Plan's value for some time.

2. In early 2013 enquiries were started by Mr Finney and his financial adviser in relation to a transfer to another provider. A transfer value quote given as at 18 April 2013 gave a fund value and transfer value of £387,733.15.

3. On 3 May 2013 the Plan was transferred to Alliance Trust. The transfer value paid was £385,918.50.

4. Mr Finney's financial adviser raised a query over the final value paid shortly thereafter. In an email of 28 May 2013 he was told by Scottish Life that the final transfer value paid of £385,918.50 was correct. They had carried out a full audit before the policy was transferred and discovered that the income payment of £1,750 was not deducted leading to the amounts that Mr Finney had been quoted being overstated. They apologised for the error and said that Mr Finney should have been contacted after the error was discovered and before the Plan's proceeds were transferred. The issue had been raised with their management team to ensure it didn't happen in the future.

5. Mr Finney wrote with a letter of complaint on 14 June 2013. Within this letter he said that he did not believe that the correct value was paid over to Alliance Trust and provided some figures to support this (a copy of this explanation is in the appendix to this decision). He said his advisers were told that a missed income payment explained this. However his view was that a missed income payment did not justify the reduction to the expected transfer value. He queried whether every annual valuation and GAD limit review for the last ten years had been incorrect. Further he said if had been given correct unit holdings and values over the years it would have affected the amounts that he would have switched into some funds and also his weightings in those funds. He asked that they honour a transfer value of at least £390,441.82 and issue a further £4,523.32 to Alliance Trust.

6. Scottish Life responded on 8 August 2013 and said their Income Drawdown department had reviewed the matter to establish what had happened. It was their procedure with all transfer requests to conduct an audit on the policy prior to the transfer being completed. They discovered that an income payment of £1,750 from August 2003 had not been applied correctly to the Plan even though it had been paid to Mr Finney. Over the history of the Plan it was included in values produced up to September 2008 but not after this time. They said that regrettably they were unable to establish at this point why this system error occurred. The Plan's final value was recalculated incorporating the past payment of £1,750 as well as the income payment of £1,062.50 on 1 May 2013, giving the figure of £385,918.50 on 3 May 2013. Further all GAD reviews up to this point would have been calculated correctly. The only GAD review that took place after 2008 was in July 2012 but as Mr Finney had not taken maximum income since then, nor had an overpayment occurred, he was not affected by this.

7. They went on to say that they did not agree that the issue impacted on his investment decisions since September 2008 as the income amount "represents roughly 0.005% of the fund value" and thus they did not think that it impacted on his subsequent investment decisions (it appears that Scottish Life meant to say that the payment represented around 0.005 or 0.5% of his fund value, but confused fractions with percentages). Their view was that as a result of the audit the correct transfer value was paid and it was not appropriate to pay him an incorrect figure. However the level of service provided fell short of that to which Mr Finney was entitled and he had been given an incorrect transfer value in April 2013. They offered £200 for any distress and inconvenience which may have been caused.

8. In a further letter of 16 October 2013 Mr Finney said that he had made a number of portfolio changes since 2008. He said that had he been aware that his fund was actually lower then he may have altered the percentage of overall investment into equities in order to attempt to recover the fund value. Or he may have instead decided to take a more cautious approach to protect the fund he had and invested more in gilts etc. He could easily show with the benefit of hindsight that even a small change in the specific funds chosen would have resulted in a higher fund value in April 2013, or conversely a lower fund value. Unfortunately it was impossible to know exactly what changes he may have

made. Therefore the "full fund value" as per his letter of 14 June 2013 should be honoured.

9. In a response to my office Scottish Life provided us with two spreadsheets. One was showing how the final transfer value actually paid was produced (i.e. after application of the income payment of August 2003) and the other showed how they came to the erroneous figure of 18 April 2013 (i.e. a set of figures ignoring the income payment of August 2003).

10. In a further letter to my office of 26 June 2014 Mr Finney revised the loss figure he was claiming from his earlier letter of 14 June 2013. This time he used the units and unit values as at 9 May 2013 to give a transfer value of £393,547.76.

11. After reviewing the response from Scottish Life one of my investigators raised a query over the figures within them. This was because Scottish Life had said up to that point in time that the statements given to Mr Finney up to September 2008 provided correct figures. But the spreadsheet showing how the value of 18 April 2013 was arrived at did not actually match the figures on statements given to Mr Finney prior to September 2008.

12. Scottish Life referred the matter back to the relevant area and provided revised spreadsheets. They said that another error had been identified and it now transpired that after another re-working of the Plan (another spreadsheet has been supplied to my office and in turn to Mr Finney) that the correct transfer value should have been £388,433.01. So Mr Finney's transfer value had in fact been underpaid.

Alliance Trust

13. Alliance Trust has confirmed that they are willing to accept a further payment into the plan that they hold on behalf of Mr Finney. They say that on 7 November 2014 the actual value of his plan was worth £385,976.72 and Mr Finney had drawn £24,500 in income payments.

14. They had performed a calculation to try and assess the lost investment returns due to the shortfall in the transfer value. But the plan value they gave my office for if the correct transfer value had been paid, and accounting for income payments, would only be £382,677.78. They performed calculations based on the unit price growth of Mr Finney's investments and to keep matters simple they have not factored in dividends received. This made a significant difference to the

value of the fund. Mr Finney's monies are invested in a number of income producing funds. While they could attempt to do a more accurate calculation to take into account the income received this would have to be done manually and would be very time consuming.

15. Unlike the Scottish Life plan their plan was a flexible drawdown arrangement. Therefore there was no issue over the possible recalculation of GAD limits due to the shortfall in the transfer value received.

Summary of Mr Finney's position

16. Scottish Life has, by providing him with inaccurate values since 2003, made it impossible to know what the value of the Plan was. From that date he had received well over 25 incorrect valuations.

17. However the offer of compensation from Scottish Life differed somewhat from the amount that he had calculated. They should honour the fund value of £393,547.76 (earlier he said it was £390,441.82) which resulted from the portfolio restructures since September 2008, based on valuations provided since then.

18. He could not fathom or accept how Scottish Life can unpick each fund switch back to 2003 and then reprocess them from 2003 with a lower fund value as his choices may have been different had I been provided with the correct information. He had restructured his portfolio on six occasions since September 2008 alone. Decisions on how much to invest in various funds assumed that the information regarding holdings in each fund was accurate.

19. Had he been aware of the correct position, i.e. a lower fund value, then he may have altered his investment in equities to try to recover the value or he may have put more in gilts to protect the value. It was now impossible to know exactly what changes he would have made when undertaking the six restructures and he had been denied the opportunity make accurate decisions. This is why he believes the incorrect value he has supplied should have been honoured. Also if pension firms were not held accountable for their actions then there was no incentive for them to improve their administration systems.

20. He accepts that while he had been given incorrect GAD figures in July 2012 this was not relevant as he was not taking maximum income. His transfer to Alliance Trust went into a flexible drawdown arrangement, whereas previously he was in a capped drawdown arrangement with Scottish Life.

21. Mr Finney has provided my office with a transaction history for the Alliance Trust plan, along with a valuation as at 19 August 2014 of £381,363.42. He had taken £19,000 in income payments up to that date. He says to accurately value the additional investment return he could have received would be extremely complex, due to the number of investment transactions and withdrawals he has made. However in simple terms if the current value of £381,363.42 is added to the income taken of £19,000 this gives a total of £400,363.42. This represents growth of 3.74% on the £385,918.50 transferred. Therefore to settle the matter in a fair manner he should be given 3.74% growth on top of the amount he is claiming for.

Summary of Scottish Life's position

22. They had failed to inform Mr Finney of the results of the audit as they should have done. Prior to a transfer a full data cleanse takes place and all transactions are run from scratch and all unit holdings are checked. Their communications here had been below par. They were looking into this issue to ensure that it did not happen in the future. They are unable to provide a definite explanation for the error. It was most likely down to human error, but it was now impossible to say.

23. The date used for the transfer value was 3 May 2013 as this was the date after receipt of the transfer request.

24. It was now also clear that valuations provided since August 2003 were incorrect, and not September 2008 as was said previously.

25. They thought that they had ensured that the policy was placed in the correct position prior to the transfer taking place. While they understand Mr Finney's comments in relation to his switch decisions the fact remains that the Plan's value was overstated. Had they incorrectly transferred the greater value then they would have enhanced the Plan by a value that he was not entitled to receive. Now it is clear that there was still a shortfall in the payment made.

26. The figure that Mr Finney supplied in his letter of 14 June 2013 is basically the amount of units that would have been in his fund on 3 May 2013 at the then bid price if the missing income payment had not been deducted from his fund. So this would have been the approximate value had they not discovered and correctly accounted for the payment. They do not agree that he could or should be entitled to this sum, rather he should be placed in the correct position he would have been in prior to the transfer taking place. If they pay any higher amount claimed for then again they will have enhanced the Plan by a sum that Mr Finney was not entitled to receive.

27. They apologise for the further issues identified at this late stage. They needed to place Mr Finney back in the position he should have been in on transfer. He should have received an extra £2,514.51 on his transfer value. They were prepared to make a further payment to Alliance Trust for the additional money. They also asked my office to advise the investment element that this sum would have attained had it originally been transferred correctly, later adding that they view that for this case to be settled correctly and fairly Alliance Trust should calculate the actual sum lost on investment growth. In light of the more recent developments they wished to increase their offer for distress and inconvenience caused to £350.

Conclusions

28. Having discovered an error in their calculations prior to transfer Scottish Life should, as they now appear to concede themselves, have contacted either Mr Finney or his adviser to inform them of the error. It appears that they had not planned to do so and the issue may not have come to light had Mr Finney's adviser not contacted Scottish Life. Of course the error itself amounts to maladministration. But I also view the failure to bring this issue to the policyholder's attention as an additional instance of maladministration.

29. Mr Finney asks that he be compensated for the figure he was led to believe that he had under the Plan. It is not uncommon for applicants to my office to ask for incorrect figures to be honoured. Mr Finney however asks for a figure that he has calculated himself, rather than one that Scottish Life has sent to him, to be honoured as this is what he was led to believe his fund was worth from earlier information. But even if Scottish life had quoted him a value of £390,441.82 (or

£393,547.76) the problem for Mr Finney is that the provision of incorrect information does not, of itself, create an entitlement for him to be treated as though the information was correct. He remains entitled to the benefits calculated in accordance with the terms of the Plan, and no more.

30. Also it is not the case that compensation is payable on the basis that the incorrect information (or rather what he may have been led to believe in this case) is treated as correct. To redress a claimed loss I would need to conclude that Mr Finney would have acted differently had he been given the correct figures all along. However he says himself that it would be impossible to say what switches he may or may not have made if he had the correct fund value all along. Mr Finney says he "may" have adopted a more or less aggressive approach if he had the correct figures. I agree that the steps that he may have taken, if any, are uncertain and cannot be evidenced. Also the amounts that we are talking about are so small in percentage terms of his overall fund value that I doubt whether they would have had any impact on his investment decisions at all. So I do not think that any claim for detrimental reliance on the incorrect figures is appropriate here.

31. There is no issue over the GAD reviews under the Plan and the parties appear to accept this. There is no issue with GAD reviews under the Alliance Trust scheme as that is a "flexible drawdown" arrangement and so is not subject to an income limit.

32. Scottish Life is willing to make a further payment to Alliance Trust in order to rectify the matter. To that end Alliance Trust has said that to work out the correct fund value now would be a difficult task. I must deal with the matter proportionately. In my judgment there has clearly been growth on his investments and the simplified method put forward by Mr Finney should be adopted, using the more recent figures provided to my office by Alliance Trust.

33. The original transfer value in May 2013 was £385,918.50. The value of the plan (as at 7 November 2014) is £385,976.72. But income payments of £24,500 have also been taken to date. Adding these back to the plan value would suggest a growth figure of 6.4% (£410,476.72/ £385,918.50) over the period in question. So on the shortfall sum of £2,514.51 he could have had investment growth of

£160.93. Therefore his fund is currently short of where it should be by about £2,675.44.

34. Mr Finney says he is not satisfied with the award for non-financial injustice as he incurred costs due to his financial adviser's help and that the award did not consider his time and efforts in pursuing the matter over 18 months. I am however only able to make modest awards for inconvenience. Also the circumstances in which I can award costs are limited and I do not view that such an award is appropriate here. He also says the issue was caused by Scottish Life's weak systems over the past decade. This he says is not appropriate when considering they were responsible for people's lifetime savings. My office is only able to consider the injustice caused to Mr Finney personally. Sometimes applicants look for punitive measures to be taken against respondents but such an action is outside my remit.

Directions

35. Within 28 days of this determination Scottish Life will arrange to make a further payment to Alliance Trust. This will be the sum of £2,675.44 plus interest calculated at the base rate for the time being quoted by the reference banks for the period from 7 November 2014 up to the date of the payment.

36. Also within 28 days of this determination Scottish Life will pay to Mr Finney £400 for the distress and inconvenience caused.

Jane Irvine
Deputy Pensions Ombudsman

19 December 2014

APPENDIX

Mr Finney's letter of 14 June 2013 contained the following text:

"An email was received on the 12th March confirming the number and value of units held after the switch were:-

Fund Name	Number of Units	Unit Bid Price (pence)	Value (£)
Invesco Perp	111776.565	151.00	£168,782.61
European	2176.322	2081.00	£45,293.61
Short 5 year IL	45569.963	155.00	£70,633.44
Scroder Man Bal	56272.445	182.60	£102,753.48
Total			£387,463.14

On the 18th April the following values were received by email:-

Fund Name	Number of Units	Unit Bid Price (pence)	Value (£)
Invesco Perp	111467.525	154.90	£172,663.20
European	2170.305	1988.00	£43,145.66
Short 5 year IL	45443.971	155.80	£70,801.71
Scroder Man Bal	56116.86	180.20	£101,122.58
Total			£387,733.15

The number of units had reduced which was logical as a gross income of £1,062.50 was paid on 1st April.

Had no income been paid on 1 April then using the unit holdings at 12 March with the unit prices of 18 April the fund values would be as follows:

Fund Name	Number of Units	Unit Bid Price (pence)	Value (£)
Invesco Perp	111776.565	154.90	£173,141.89
European	2176.322	1988.00	£42,265.28
Short 5 year IL	45569.963	155.80	£70,998.00
Scroder Man Bal	56272.445	180.20	£101,402.94
Total			£387,808.11

If £1,062.50 is taken from £387,808.11 then this gives £386,745.61 which is £987.54 lower than the figure actually provided on 18th April. However this is logically explained as the unit prices for the European, Invesco Income and Schroder Managed fund were higher on the 1st April than 18th April so less units needed to be surrendered to provide the £1,062.50 on the 1st April than the 18th April, so it would be logical to assume the figures provided on 18th April were correct.

Therefore using the units held as at 18th April and the fund prices as at 3rd May would give a fund value of:

Fund Name	Number of Units	Unit Bid Price (pence)	Value (£)
Invesco Perp	111467.525	157.10	£175,115.47
European	2170.305	2014.30	£43,716.45
Short 5 year IL	45443.971	155.10	£70,483.60
Scroder Man Bal	56116.86	182.10	£102,188.80

Total	£391,504.32

Again there would have been a withdrawal of £1,062.50 on the 1st May which if taken from the £391,504.32 would leave a fund of £390,441.82. As there was no dramatic movement in unit prices between 1st May and 3rd May then the figure of £390,441.82 would have been the figure expected to have been transferred to Alliance Trust on 3 May. Therefore you can only imagine my dismay when the figure received by Alliance trust was £385,918.50…"