

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

**Applicant** : Mr J T Hull  
**Scheme** : MABO Precision Engineering Group Limited Pension Scheme (the **Scheme**)  
**Respondents** : Alexander Forbes Financial Services Ltd (**Alexander Forbes**)

**Subject**

Mr Hull complains that Alexander Forbes:

- provided incorrect benefit calculations;
- transferred in liabilities from a previous scheme so that most of the subsequent premiums paid by the employer and himself were used to cover the guaranteed minimum pension (GMP) deficit;
- have delayed providing benefit options and failed to respond to requests for details of his entitlement from the Scheme.

**The Ombudsman's determination and short reasons**

The main complaint should be not upheld against Alexander Forbes because:

- Mr Hull did not act on any incorrect information that he received
- advice given by Alexander Forbes at the time of the transfer is not within my jurisdiction;
- the reason that his benefits have not been settled is that Mr Hull considers the GMP should have greater protection.

However, the complaint is upheld to the extent that Mr Hull has been caused distress by unclear communication.

## DETAILED DETERMINATION

### Relevant extracts from the rules of the Scheme

#### “15A TRANSFER OF ASSETS TO THE SCHEME

(a) Subject to the benefit limits and the provisions of this rule where a Member has an interest in another retirement benefits scheme or a personal pension scheme or an arrangement which is approved under Section 620 of the Act (hereinafter called the “Transferring Scheme”) the trustees may accept from the trustees or managers of the transferring scheme a transfer of such assets as represent that interest and the interests, if any, of the Member’s Dependants or such part of those assets as the trustees or managers of the Transferring Scheme are empowered to transfer. The assets transferred, to the extent that they represent the value of the benefits (or part thereof) under the Transferring Scheme, or such other amount as may be agreed between the Trustees and the member, shall be applied as single contribution to the member’s Allocated Account. Any balance thereafter shall be applied to the Unallocated Account.”

#### “20. WINDING UP OF ALL OR PART OF THE SCHEME

(d) When a Participating Employer stops participating the following liabilities shall have priority over any other liabilities of the Scheme:

(i) guaranteed minimum pensions and accrued rights to guaranteed minimum pensions under the Overriding Appendix;...”

## Material Facts

### Background to the winding up of the Scheme

1. Mr Hull was a member (and a member nominated trustee) of the Victor Holdings (Luton) Group Retirement and Death Benefit Scheme (the **Victor Holdings Scheme**). The Victor Holdings Scheme was wound up in 1993 when the principal employer went into liquidation. The directors subsequently set up the Scheme, insured with Scottish Equitable. On 17 February 1993 Mr Hull signed his agreement to the transfer of his benefits from the Victor Holdings Scheme to the Scheme.
2. In February 1993 Mr Hull received a letter from his then employer telling him that the winding up of the Victor Holdings Scheme had been finalised and that a transfer was being made to the Scheme. In addition the letter stated:

“The previous scheme was contracted out of the Government Scheme and you are guaranteed that the amount of pension resulting from your transfer cannot be less than the Guaranteed Minimum Pension required under the Contracting-out Regulations.”

3. In February 2002 the Scheme went into wind up following the insolvency of the principal employer. The winding up has been conducted by the remaining trustees. Alexander Forbes (previously Johnstone Douglas) are appointed to provide actuarial services to the Trustees, but have agreed, on a no fees basis, also to assist in certain aspects of the winding up process.
4. At the time winding up commenced Mr Hull was a deferred member and has a claim to a guaranteed minimum pension (**GMP**). Alexander Forbes states that members' money purchase funds are insufficient to secure GMPs. There are very little unallocated funds available to the Trustees and insufficient funds available to meet the costs of winding up.
5. The Department for Work and Pensions has confirmed that if section 32 policies are purchased it will not hold Scottish Equitable responsible for the provision of the full GMP. In light of this, a meeting was held between the Trustees and Scottish Equitable on 5 June 2008 to progress the wind up. In Mr Hull's case this will mean, if he does not take a transfer of his money purchase fund, the Trustees will secure a pension on his behalf.
6. Alexander Forbes has secured the removal of transfer penalties which will help expedite the winding up process.

### **Background to the complaint**

7. Mr Hull reached his normal retirement age of 65 on 15 July 2004. It seems that he raised the matter of drawing his pension with Alexander Forbes.
8. On 21 October 2004 the Alexander Forbes wrote to Mr Hull. The letter referred to Mr Hull's previous conversation and explained that there had been a delay essentially due to the Scheme being in wind up. Although it is not immediately clear from the letter itself, it did not come from the part of Alexander Forbes that dealt with pensions administration. It came from their "National Advisory Unit" and its main purpose was to put forward a provider from whom an annuity could be bought to provide the GMP. It said:

“..In our independent capacity, our research has shown that the company can provide the GMP of £4,572.36 per annum and the lowest purchase price to secure this benefit is £76,935.65 with Legal and

General. As your total fund is now worth £92,921.12 the remaining £15,985.47 is available as tax free cash, which you confirmed that you wanted to take.”

9. Alexander Forbes also provided an illustration stating that an annuity of £3,617.64 per annum, pre 1988 GMP and £954.72 per annum, post 1988 GMP, which would increase by 3%. They confirmed that the rate quoted was guaranteed until 8 November 2004 and told Mr Hull that if he wished to proceed with the recommendation he would need to complete the Legal and General annuity proposal form and Scottish Life discharge forms that were attached.
10. Mr Hull decided to speak to an independent financial adviser, (the **IFA**). On 31 December 2004, in response to this information, the IFA wrote to Alexander Forbes complaining that Mr Hull’s retirement was overdue and that the tax free cash amount quoted had appeared very low while the GMP figures had appeared very high.
11. Alexander Forbes replied on 20 January 2005. They said that Mr Hull had been provided an illustration by the advice unit (which was “independent from us”) which he had decided not to pursue and regarding the illustration that had been provided:

“Mr Hull’s GMP relates to service from a previous scheme which was subsequently transferred in to the MABO Scheme. NICO have informed us that this amounted to £37.08 per week at the date of leaving the previous scheme.

Our understanding is that the MABO Scheme ceased to contract out with effect from April 1999. Increasing the above figure by S148 Orders up to 1999 and by fixed revaluation thereafter produces a figure consistent with the £62.87 per week that you quoted in your letter.

I think that the £87.93 per week figure was incorrectly produced by revaluing the GMP at the fixed revaluation rate of 17.5% per annum for the whole period...

..In your position as Mr Hull’s financial adviser you may have already obtained up to date retirement quotes on his behalf. If Mr Hull is happy with the amounts quoted, then we can try to organise for the necessary forms to be completed by the trustees so that Mr Hull’s monies can be transferred and he can start receiving his pension without further delay.”

12. The IFA replied on 25 January expressing concern about whether the GMP had been adequately protected on transfer and about advice that Mr Hull had received to transfer. On 5 April the IFA wrote again to Alexander Forbes making a formal

complaint on Mr Hull's behalf. The IFA said that there had been a number of telephone conversations, but the matter had not been progressed and he could not provide Mr Hull with a report on his retirement options.

13. After a reminder, Alexander Forbes responded, though initially not treating the matter as a complaint. The correspondence became more heated on the IFA's side. On 28 June 2005 Alexander Forbes said that because the wind up had started in 2002 Mr Hull was a deferred pensioner at the time and would have to wait until the wind up was complete before his benefits could be settled.
14. There then followed correspondence with the Trustee's solicitors and with the Pensions Advisory Service, during which the key issue crystallised as whether the GMP should have been protected on transfer from the Victor Holdings Scheme to the Scheme.
15. Mr Hull's position
  - Alexander Forbes failed to give appropriate advice to the Trustees of the Scheme when they advised them to transfer in the liabilities from the Victor Holdings Scheme. Instead, Alexander Forbes should have advised them to have secured the GMP from the accumulated fund and a separate guarantee to include any excess benefits. Records relating to the transfer should exist as the Financial Services Authority requires them to be kept indefinitely.
  - Alexander Forbes consistently told Mr Hull that he could not access his pension while the Scheme was in wind up and this is the cause of his financial loss of about £20,000 in past pension payments.
  - Mr Hull was a trustee of the Victor Holdings Scheme but only in a nominal way having been appointed to represent the workforce. It does not appear that Mr Hull received anything to help him carry out his duties. Any information should have actually come from Alexander Forbes.
  - When Mr Hull retired (with an earmarked fund that was more than sufficient to cover the GMP liability), Alexander Forbes provided him with incorrect options. Requests for Alexander Forbes to provide a retirement pack seem to have been ignored.

- At the time of the transfer, particularly as the Victor Holdings Scheme was in surplus, it would have been possible for Mr Hull's GMP rights to have been secured through a separate policy.
- There is no evidence for the assertion by Alexander Forbes that whilst a member of the Victor Holdings Scheme Mr Hull was given the option of having his benefits 'bought out' or transferred to a personal pension.
- Alexander Forbes Financial Services Ltd is a single organisation with corporate responsibility for all its departments and should be held accountable as such. If it is not accountable to me then it must be accountable to someone else.

#### Alexander Forbes's position

- Mr Hull was a trustee of the Victor Holdings Scheme and it was a trustee's responsibility to ensure member's benefits were protected during the transfer process.
- Mr Hull accrued his GMP benefits whilst a member of the Victor Holdings Scheme. The Victor Holdings Scheme wound up whilst he was a member and he had the option of having his benefits bought out, transferring to a new scheme of MABO or to his own personal pension. .
- The transfer from the Victor Holdings scheme was with Mr Hull's consent. He was offered a guarantee by the employer on transferring to the Scheme which was worthless, however, as the employer went into liquidation.
- Even if Mr Hull's GMP rights had been kept under a separate policy from the start there would be no guarantee that the value of the policy at retirement would have been sufficient to meet his GMP. Any shortfalls would still have had to be met from a solvent sponsoring employer.
- The Trustees have offered to allow the transfer of members' funds but Scottish Equitable has wanted to apply significant penalties and so members have been reluctant to transfer voluntarily. Scottish Equitable additionally has applied a 10% penalty on exit although it is understood in Mr Hull's case that

this additional penalty would not be imposed since he has already reached his retirement date.

- Alexander Forbes is not responsible for authorising transfers and is not responsible for preventing a transfer in respect of Mr Hull. Mr Hull has been made aware of this. Mr Hull, like every other member has been free to take his money purchase fund at any time and use it to secure his benefits.

## **Conclusions**

16. There does not appear to be a dispute that the benefit quotation dated 21 October 2004 provided an incorrect GMP figure by wrongly using a fixed revaluation rate of 7.5% per annum for the whole period. Mr Hull did not act on the basis of the information provided and did not suffer as a result of the error. This part of his complaint is not therefore upheld.
17. To the extent that the complaint is about advice given by Alexander Forbes to either the trustees of the Victor Holdings Scheme or the Scheme, it is not within my jurisdiction. I can deal with complaints against Alexander Forbes as administrator of the Scheme. They may have been the administrator at the time that advice was given, but that does not make advising the trustees an act of administration. The fact that one activity carried out by them is within my jurisdiction does not mean that all the activities of the same corporate body are within jurisdiction.
18. It is a matter for legislators whether advice given by advisers to trustees and employers that may affect members of occupational pension schemes should be subject to an ombudsman's jurisdiction. At present it is not within mine.
19. I could not anyway uphold a complaint from Mr Hull that the trustees of the Victor Holdings Scheme should have acted differently (or should have been advised differently, since Mr Hull was himself a trustee and was responsible for deciding to follow any related advice.
20. Finally, even if the advice had been in jurisdiction, whilst the GMPs could have been protected on transfer (quite possibly, as Mr Hull argues, through a separate policy) I have seen nothing that would allow me to decide that advising that GMPs should not be protected in this way would have been advice that Alexander Forbes could not reasonably have given. (In passing I note that the FSA do not, as far as I am aware,

have anything to say about record keeping in relation to advice concerning transfers from one occupational pension scheme to another. Even if it had been advice to Mr Hull as a customer, it is not regulated advice.)

21. I do consider that there was maladministration by Alexander Forbes in the way they communicated. If it was true that settling Mr Hull's benefits needed to await the completion of the wind up he could have been told this much earlier. In fact he seems to have had the option of transferring out at any time (so it was not true). In fact Mr Hull was told correctly that he could transfer in January 2005. He did not do so then because his adviser became embroiled in an ill-tempered and largely unhelpful debate with Alexander Forbes over the lack of security given to GMPs many years earlier. What has stopped Mr Hull from receiving his benefits is his view, encouraged by his adviser, that the contributions to the Scheme should not be used to pay for the GMP transferred in. I can understand why he would be upset that they are being used in that way, but Alexander Forbes are not to blame.
22. In any event, the claim that the delay (whatever the reason for it) has cost £20,000 is misconceived. The benefits have not been lost. They are available to be taken.
23. The complaint is upheld only insofar as Alexander Forbes have caused some delays in correspondence and have not been entirely clear in their explanations. This will have caused Mr Hull some annoyance and distress.

#### **Directions**

24. Within 28 days of the date of this Determination Alexander Forbes are to pay Mr Hull £100 to compensate him for the distress and inconvenience identified above.

**TONY KING**  
Pensions Ombudsman

31 October 2008