Pensions Ombudsman Focus for the period
March 2015 to May 2015

Our aim is to provide you with a quarterly review of important determinations of the Pensions Ombudsman and alert you to Ombudsman-related issues of practical relevance. If you wish to discuss these issues and how they might affect you, please contact Mark Blyth, Partner of our specialist Pensions Litigation Group, on (+44) 20 7456 4246.

If you would prefer to receive this booklet in electronic format in the future, please email: pensionsgroup@linklaters.com
Mrs Catherine Whelan against Teachers’ Pension Scheme

The complaint was made by Mrs Whelan on behalf of the estate of Mrs Catherine Whealing.

Mrs Whealing (formerly Mrs Oxley) started receiving a spouse’s pension after her husband’s death in 1994. She also had her own pension from the Teachers’ Pension Scheme. The regulations governing the scheme said that if Mr Oxley had only been in pensionable employment before 1 January 2007, then payment of the spouse’s pension ceases upon remarriage or cohabitation. There was no evidence confirming that Mrs Whealing had been told this when Mr Oxley died.

The Paymaster General’s office was responsible for payment of pensions at the time Mrs Whealing’s widow’s pension came into payment. In order to receive a spouses’ pension, an applicant was usually required to complete a form declaring her entitlement. The “Conditions of Payment” in the form stated that “a widow’s allowance ceases on the widow commencing to cohabit with a man to whom she is not married and, unless the Secretary of State otherwise decides, on her remarriage”. Teachers’ Pensions could not produce evidence that Mrs Whealing signed the form in 1994.

In 2008, Mrs Whealing remarried and started co-habiting with her husband, Mr Whealing; she was 82. Mr Whealing said that in 2008 he wrote to banks, tax authorities, pension providers, and other parties, to inform them of their marriage. On 10 September 2012, Teachers’ Pensions wrote to Mrs Whealing, referring to Mr Whealing’s 2008 letter, stating that they had overpaid her spouse’s pension, and requested repayment.

The Ombudsman found that Teachers’ Pensions had six years to recover the overpayment from the time that (with reasonable diligence) they could have been aware that overpayments were made. Therefore, they had six years from being informed of the marriage in 2008. As Teachers’ Pensions started trying to recover the overpayments in 2012, this fell within the six-year period.

The Ombudsman held that the primary question was whether Mrs Whealing knew, or ought to have known, that the pension would stop on remarriage.

The Ombudsman found that although Teachers’ Pensions could not produce evidence that Mrs Whealing had completed the form in 1994, it was highly likely that she did, because she had to give this information before her payments could start. Teachers’ Pensions would probably not have accepted this information if she had given it by letter. Even taking into account that Mrs Whealing was likely very distressed at the time and may not have completed the form herself, nevertheless the Ombudsman found that she ought to have known that her spouse’s pension would cease if she remarried.

This case concerned the mistaken overpayment of pension. A member’s widow who remarried ought to have known that her widow’s pension would cease upon her remarriage.
The Ombudsman said that it was probably the case that she did not know the pension would stop, and she had not been dishonest. However, her actual knowledge is irrelevant, as is the fact that she was old when she remarried and might have forgotten something she once knew in 1994. The only test is whether a person acting with ordinary prudence would have known that the pension ceased on remarriage.

Therefore, Teachers’ Pensions can recover the overpayments.
Mr Mark Crossland against Henley Retirement Benefit Scheme

Mr Crossland complained that he requested a transfer out of the Henley Retirement Benefit Scheme (the “Henley Scheme”), and that Omni, the scheme administrators, refused to act on his request.

On 2 March 2014, Mr Crossland requested a transfer value from Omni, without stating which scheme he wanted to transfer into. On 3 June 2014, he made another transfer request, asking to transfer to the Genwick Retirement Benefits Scheme. This was an occupational pension scheme, but Mr Crossland was not employed by an employer in relation to it.

The primary question was whether Mr Crossland had a legal right to transfer out of the Henley Scheme. The Ombudsman could not determine whether the Henley Scheme gave Mr Crossland a freestanding right to transfer out, because the Henley Scheme's governing documents were not available. Nevertheless Mr Crossland had a statutory right to transfer under the Pension Schemes Act 1993 that could not be taken away.

The second question was whether Mr Crossland’s transfer request satisfied the statutory requirements for a request for a CETV, thus giving rise to the statutory six month time limit for payment. To satisfy the statutory requirements, his request needed to require Omni to use the transfer value to buy credits in an occupational or personal pension scheme, that had trustees or managers who were willing to accept payment. The Ombudsman held that both Mr Crossland’s requests failed to satisfy the statutory requirements.

The Ombudsman held that it was the Henley Scheme's lack of response that stopped the transfer. Although Mr Crossland’s transfer requests failed to meet the specific requirements for the exercise of his statutory transfer right, it was nevertheless maladministration to fail to respond to his requests.

Omni were ordered to pay the transfer value to any named scheme which Mr Crossland might request a transfer value to, as long as that scheme met the statutory requirements and was willing to accept his transfer. Omni had to do this within 14 days of Mr Crossland making this request.
Mr and Mrs Cooper against Ken Ballard Limited Retirement Benefits Scheme

Mrs Worden retired on 6 August 2007. On 16 October 2007, the Scheme Administrator wrote to her:

> asking her to confirm that she had left employment on 6 August 2007 and that she wanted to take her benefits from that date;
> urging her to consult her financial adviser; and
> telling her to complete the enclosed “Benefit Crystallisation Form” if she wanted to crystallise her benefits.

The Benefit Crystallisation Form requested information including the proposed pension start date and whether she wanted to take a pension commencement lump sum. Mrs Worden did not return this form.

The Trustees wrote to Mrs Worden a total of three times after she retired, detailing what they required from her in order to progress a pension claim, and enclosing the Benefit Crystallisation Form. Mrs Worden never returned the form.

On 20 August 2010, Mrs Worden died. She had no expression of wish form, and her Will left £5,000 to Mr and Mrs Cooper and the remainder to three minors (who were not her blood relatives). Her Will did not leave any of her estate to her only daughter.

In July 2012, the Trustees decided to transfer Mrs Worden’s one-third interest in the Scheme’s assets into a discretionary trust for her daughter. This was because they considered her to be a “dependant” under the Rules, and therefore they could make an authorised payment to her.

The questions at issue were whether the Trustees were at fault for not putting Mrs Worden’s pension into payment, and whether they had followed the correct procedure when making the decision to use their discretion to set up a trust for her daughter.

The Ombudsman held that Mrs Worden did not complete the necessary form to obtain her pension benefits, and therefore her benefits did not crystallise. The onus was on her to complete the Benefit Crystallisation Form, and she should have asked for advice if she did not understand what to do. The Trustees had done everything that was required of them.

As the benefits remained uncry stallised, there was no debt due to the estate in respect of any unpaid pension, and therefore on her death the Trustees were entitled to use their discretion to deal with the uncry stallised benefits.

The Ombudsman held that the Trustees followed the correct process when deciding to use their discretion to set up a discretionary trust for Mrs Worden’s daughter. They had enquired about the expression of wish form, found that Mrs Worden had never completed one, considered her Will, and had correctly obtained advice on any other issues they should consider before deciding to set up the trust in favour of her daughter.
Mrs Joan Whitehead against Mattioli Woods Trustees Limited

Mrs Whitehead’s late husband, Mr Whitehead, was a member of the Progressive Foundries Retirement Benefits Scheme (the “Scheme”). The Trustees were Mattioli Woods Trustees Limited. Mr Whitehead’s funds had been in drawdown since before 2006.

Before his death Mr Whitehead had been intending to transfer his benefits to the La Vie Plan, which was an overseas scheme in Guernsey, where he lived. On 27 November 2013, he told the Trustees that he wanted to transfer his benefits to the La Vie Plan, and requested details on the next steps. On 10 December 2012, Mr Whitehead completed his application to join the La Vie Plan, and his certificate of membership was completed on 17 December 2012.

On 20 December 2012, the Trustees sent forms which Mr Whitehead needed to complete in order for the transfer to proceed, and his advisers completed these forms on 3 January 2013, but they were not sent back until 15 January 2013. The forms included a Memorandum of Understanding between the trustee of the La Vie Plan, Mattioli Woods plc and Mattioli Woods Trustees Limited, Mr Whitehead and his financial advisers. This memorandum stated that Mr Whitehead wanted to transfer, subject to the covenants, which required him and the La Vie Plan trustees to indemnify Mattioli Woods plc and Mattioli Woods Trustees Limited for any future costs or liabilities arising from the transfer.

On 3 February 2013, Mr Whitehead died, and on 5 February the Trustees wrote to inform his son that they were suspending the transfer. This was because, at the time Mr Whitehead died, the bank had not completed the transfer, and therefore the funds would be kept in the Scheme’s account.

Mr Whitehead’s son complained that the Trustees should not have cancelled the transfer. He argued that the Trustees held legal ownership of the assets, but the beneficial ownership was separate and had been transferred to the trustees of the La Vie Plan before Mr Whitehead’s death. The Trustees had been given all the information they requested before the benefits could be transferred, and had agreed with the trustees of the La Vie Plan that the benefits would be transferred. The transfer had actually taken place at the point of agreement, and merely needed to be finalised by the physical transfer of the assets. Therefore the Trustees held the transfer value on a bare trust for the trustees of the La Vie Plan.

The Ombudsman did not uphold the complaint. The transfer was not complete at the date of Mr Whitehead’s death, and so on that date the Trustees were entitled to stop the transfer. At the date of death, the funds remained in the Scheme’s bank account, and no legal transfer had been made. The transfer of the beneficial interest could not be separated from the transfer of the assets.
Dr Derek Aldridge against City of London

Mr Aldridge was employed by the City of London Environmental Services and was a member of the Local Government Pension Scheme (LGPS). On 1 April 2006, he retired and commenced his pension of £23,689 a year. On 28 May 2006, he was re-employed by City of London on an ad hoc basis.

On 24 March 2006, the Pensions Manager sent Mr Aldridge a statement of his retirement benefits. City of London claims that it sent him a cover letter with this benefit statement, which told him that he had to inform the Scheme as soon as he became employed by any employer who participates in the Scheme. This is because if he became re-employed in further LGPS employment, then his pension would be reduced if his new income and pension exceeded his pensionable pay at retirement.

On 6 September 2011, City of London wrote to Mr Aldridge saying that they had recently discovered his re-employment as a result of a data matching exercise and discovered they had made a total overpayment of £32,838.81 from 18 May 2007 to 17 May 2011. In order to recover the overpayment, they wanted to deduct £1,000 a month from his pension.

Mr Aldridge complained under the LGPS Internal Dispute Resolution Procedure (IDRP). He said that in May 2006 he had told the Pensions Manager about his re-employment, and that he was already drawing his pension and could not make further contributions into the LGPS. He said that the employing Environmental Services Department, Human Resources (HR) Department and the Payroll Department all knew that he had become re-employed, and therefore he argued that if the Pensions Department did not know, then this was due to their own negligence in failing to notice that he had returned to work.

Mr Aldridge also argued that the benefit statement he received on 24 March 2006 arrived in a hand-addressed envelope with no cover letter. The HR and Pensions Departments had made mistakes and he would not have worked the hours he did if he had known that his pension would be abated.

City of London argued that they took every step to tell Mr Aldridge about their abatement policy. They claimed that they definitely had sent out a cover letter on 24 March 2006. It is unlikely that he would not have been sent that letter as there is nothing else within the retirement pack that has his address on it and therefore they would not have known where to send it without the letter.

City of London argue that while Mr Aldridge may have spoken to the Pensions Manager about his re-employment, they had no note of the telephone conversation and the Pensions Manager did not remember the conversation.

City of London could not explain why previous data matching exercises did not identify Mr Aldridge’s re-employment.
The Ombudsman held that it was likely on the balance of probabilities that the cover letter was included in the benefit statement sent to Mr Aldridge on 24 March 2006. He should therefore have been aware of the abatement process and the fact that he needed to inform City of London in writing if he became re-employed.

The Ombudsman said that it was surprising that the HR and Payroll Departments were aware that Mr Aldridge had been re-employed but the Pensions Department was not. Mr Aldridge was re-employed by the same organisation and in a similar role. City of London should not have taken so many years to realise that Mr Aldridge was re-employed, and should have abated his pension at a much earlier stage. This would have meant that the overpayments they made to Mr Aldridge would not have been quite so large. However, most of the responsibility for the overpayments lies with Mr Aldridge himself.

The Ombudsman concluded that Mr Aldridge is not entitled to benefits which exceed what the LGPS rules allow. However, City of London was also to blame for not noticing the overpayments at an earlier stage. Therefore, Mr Aldridge should make repayments, but they should be reduced to account for the fact City of London was partly responsible for the extent of the overpayment.
Mr Mark Green and Ms S against NHS Pensions and the North West London Hospitals NHS Trust

Ms Anderson was a member of the NHS Pension Scheme (the “Scheme”) who died intestate on 29 January 2011. She had been employed by the North West London Hospitals NHS Trust (“NWLH Trust”). On 16 February 2011, a letter was sent to Ms Anderson’s next of kin, Mrs D, by the pensions manager at the NWLH Trust stating that Ms Anderson was a member of the Scheme and that benefits may be payable. Mrs D responded to this letter saying that she was the legal representative and that Ms Anderson had two children, Ms S and Ms J. The NWLH Trust responded to Mrs D on 24 February 2011 enclosing claim forms for a lump sum and children’s allowance.

NHS Pensions were notified of Ms Anderson’s death on 12 April 2011. On 28 April 2011, NHS Pensions asked NWLH Trust to issue form AW11 (claim for a life assurance lump sum) to Ms Anderson’s next of kin. On 4 July 2011, NHS Pensions received the completed forms to claim a death gratuity and a dependent children’s allowance from NWLH Trust.

The amount due to be paid was £44,056.12. On 27 July 2011, NHS Pensions wrote to Mrs D stating that they were required to see documentation showing that she was the legal personal representative before they could authorise the payment, because the death gratuity was in excess of £5,000.

On 2 August 2011, the payment of a dependent children’s allowance was authorised to Ms S.

NHS Pensions did not receive the appropriate documentation from Mrs D, having sent a number of reminders. Two of these reminders repeated that if payment was not made within two years of being notified of the member’s death, it would be subject to a 40% tax charge.

Mr Green telephoned NHS Pensions on 13 September 2012 regarding a claim for children’s allowance for his younger daughter with Ms Anderson, Ms J, and was sent a claim form. The children’s allowance claim for Ms J was authorised in October 2012. Mr Green telephoned NHS Pensions again on 3 December 2012 to query the level of children’s allowance being paid to Ms J. During this conversation, the NHS Pensions staff member confirmed that a death gratuity was payable to the estate of Ms Anderson and that it would be paid to the person named on probate.

On 16 April 2013, the High Court of Justice, Principal Registry of the Family Division, granted administration of Ms Anderson’s estate to Mr Green and Ms S. NHS Pensions wrote to Mr Green and Ms S on 18 April 2013 to say that the payment due was deemed an unauthorised payment, attracting a 40% tax charge because two years had lapsed since Ms Anderson’s death.

Mr Green complained to the Ombudsman that the death gratuity should have been brought to his attention when he first contacted NHS Pensions on 13 September 2012.
and a claim for the payment could then have been made in time to avoid the tax charge. NHS Pensions argued that there had been no maladministration on their part and their duties were discharged when they provided guidance to the NWLH Trust.

The Ombudsman held that the NWLH Trust’s responsibility was to send the relevant forms to the next of kin, Mrs D, and return those to NHS Pensions, which they did. The Ombudsman was satisfied with the reasons given by the NWLH Trust to support the assertion that Mrs D was the next of kin and dismissed the complaint against them.

In relation to NHS Pensions, the Ombudsman concluded that they did not need to tell Mr Green about the death gratuity on 13 September 2012 and were entitled to wait to see if Mrs D obtained probate. In the Ombudsman’s view, Mr Green was a less likely candidate for the death gratuity than Mrs D as he was an estranged partner of Ms Anderson and NHS Pensions acted reasonably by telling him about the death benefit in December 2012. In addition, Mr Green contacted them about a children’s allowance and did not introduce himself as legal representative or mention that he was applying to become one.

The complaint against NHS Pensions was dismissed.
Mrs Bone was a member of the Friends Life Personal Pension Plan (the “Plan”) and her retirement date was 10 April 2012. At this time, capital units should have been converted to accumulation units but this did not happen. In January 2014, Mrs Bone asked Friends Life for a valuation and the figure given was £55,583.72. Mrs Bone requested confirmation of this figure in writing and made a complaint in February 2014 as she still hadn’t received the requested confirmation. Friends Life sent a statement to Mrs Bone on 28 February 2014 which showed the value as £46,888.42.

Mrs Bone complained about this figure as it was lower than that originally quoted and it was agreed that Friends Life would honour the value quoted in January 2014 of £55,583.72. A retirement pack was sent on 1 April 2014 confirming the value of £55,583.72 and a copy was sent to Mrs Bone’s independent financial adviser. On 3 April 2014, Mrs Bone’s financial adviser was informed that if the request to transfer the funds was received before 30 April 2014 the quote of £55,583.72 would be honoured.

Although Mrs Bone completed and returned the relevant forms before this deadline, her financial adviser was told that the amount to be transferred was £50,582.29. On 20 May 2014, Mrs Bone complained to Friends Life and was told that the original quote was not guaranteed because it could fluctuate on a daily basis. She was also told that the change in amount was due to a mistake in 2012 not being rectified. Friends Life stated that it had put the Plan in the position that it would have been in had the conversion happened correctly in 2012.

Mrs Bone complained to the Ombudsman that Friends Life should honour its original quotation of £55,583.72. Friends Life submitted that the law limits entitlements to the correct benefits when there has been a mistake and any compensation should be limited to financial loss caused by the mistake. In this instance, there wasn’t any financial loss. However, Friends Life offered £800 for any distress caused and for loss of expectation.

The Ombudsman acknowledged that Mrs Bone was in principle only entitled to the correct benefits under the Plan and the initial mistake did not entitle her to more than that. However, the decision by Friends Life to honour the figure quoted in January 2014 was an offer made to Mrs Bone to settle her complaint. Mrs Bone was told that the offer was open until 30 April 2014 and she accepted within that time. Therefore, all the elements of a contract were present; there was an offer which was accepted for the consideration of Mrs Bone withdrawing her complaint.

The Ombudsman directed Friends Life to make up the difference in the value between the lower amount transferred and the higher amount quoted and to pay £100 for inconvenience caused.
Use of publicly available information about the value of a member’s home and confidential financial information on a medical file is not an inappropriate way to assess a member’s injury award.

Mr Bruce Lightfoot against West Yorkshire Police Authority

Mr Lightfoot retired from the West Yorkshire Police Authority (“WYPA”) on medical grounds in 1987 and was in receipt of a scheme pension and an injury benefit award. On 7 April 2009, WYPA wrote to Mr Lightfoot to inform him that guidance issued by the Home Office says that once a former officer receiving an injury benefit reaches the age of 65 (state pension age) he should be placed in the lowest band of injury award because there is an expectation that he would no longer be earning a salary. The letter also said that WYPA was giving Mr Lightfoot 12 months’ notice of the reduction as he was then aged 64. The reduction would take effect on 7 April 2010. The letter quoted the reduction in Mr Lightfoot’s injury award from £4,540.99 a year to £476.10 a year.

On 9 May 2012, WYPA wrote to Mr Lightfoot to inform him that it had adopted the position that the guidance issued by the Home Office used to assess Mr Lightfoot’s injury benefit was flawed and his injury benefit would be restored to its original level, with interest added to the back payments.

Mr Lightfoot complained to the Ombudsman that WYPA’s prolonged maladministration had an effect on his health. He complained that the initial letter of 7 April 2009 caused him severe distress because he thought he would have to sell his home. Mr Lightfoot visited his doctor on two occasions in April 2009 and the doctor confirmed that he was suffering from stress and heart palpitations. Mr Lightfoot also travelled to Leeds twice to attend medical examinations and put his home up for sale in late April 2011 with a view to reducing monthly outgoings in the future, incurring marketing costs of £474.

In addition, WYPA used financial information from his medical file to build up a picture of his financial standing in order to reduce his pension. Mr Lightfoot said that he had given his consent to access to his medical file for medical reasons only.

Mr Lightfoot also stated that the £600 offer of compensation made by WYPA only recognised the anxiety and distress he suffered during the 18-month period of his pension reduction. He stated that there was no recognition of the effect that WYPA’s actions had on his physical and mental health from April 2009 when he was notified of the intended pension reduction.

WYPA argued that they acted in good faith and provided full restitution. In relation to the financial information on Mr Lightfoot’s medical file, WYPA stated that Mr Lightfoot could have asked his GP to withhold the financial data or redact the document and the consent form does not limit consent to only medical data.

The Ombudsman held that WYPA’s use of available information on Mr Lightfoot’s medical file or other publicly available information on house prices was not inappropriate and WYPA’s offer of compensation represented an award for all the anxiety and distress he suffered. The Ombudsman stated that it was not necessary to distinguish between different periods of time in assessing the level of compensation offered to Mr Lightfoot. Therefore, WYPA were directed to pay Mr Lightfoot £640 in compensation for the distress he suffered and the expenses that were incurred.
For the purposes of assessing a member’s benefits, an employer is allowed to put more weight on the opinion of the Scheme’s medical adviser than the opinion of the member’s own doctor.

Ms Joan Hill against the Department for Education and Teachers’ Pensions

Mrs Hill was a lecturer in child education and was a member of the Teachers’ Pension Scheme (the “Scheme”). She was on sick leave from 23 August 2011 to 18 May 2012. Mrs Hill applied for ill health early retirement on 26 May 2012. In order to be eligible to receive retirement benefits, Mrs Hill had to satisfy the conditions that she was “incapacitated” and was “likely to be incapacitated permanently” and also that her ability to carry out any work was likely to be impaired by more than 90%, in line with the Teachers’ Pensions Regulations (the “Regulations”).

Mrs Hill’s GP, Dr Craven, said that Mrs Hill had suffered from stress related problems since February 2011 and that her symptoms prevented a return to teaching. Dr Craven concluded that Mrs Hill’s incapacity was likely to prevent her from teaching either part-time or in an alternative establishment.

Mrs Hill’s application was referred to the Scheme’s medical adviser, Atos Healthcare. This assessment concluded that the medical evidence did not meet the criteria set out in the Regulations. Teachers’ Pensions therefore did not grant the ill health pension on the basis that her health should not prevent her from continuing her profession until her normal retirement age.

Mrs Hill appealed against the decision not to grant her an ill health pension and provided a letter from Dr Craven dated 7 December 2012, which stated that she had ongoing medication and counselling, but was unfit to work. The matter was again referred to Atos Healthcare and they considered Mrs Hill’s appeal. The doctor who carried out the assessment concluded that Mrs Hill was not incapacitated.

In June 2012, Mrs Hill’s husband appealed on her behalf. Atos Healthcare considered a letter dated 7 June 2013 from Dr Craven. Dr Craven said that although there had been some improvement in Mrs Hill’s condition, she still suffered from depression and anxiety and would be unable to return to teaching duties or any other employment in the future. Despite this, Atos Healthcare again concluded that Mrs Hill did not meet the criteria for an ill health pension.

Mrs Hill complained to the Ombudsman that her application for an ill health pension had not been considered correctly. The Ombudsman was satisfied that in considering the initial application, and the first and second stage appeals, both Teachers’ Pensions and the Department for Education had taken relevant matters into account. The Ombudsman acknowledged that the Scheme’s medical adviser said that it was not possible to say that Mrs Hill is permanently incapacitated and concluded that Teachers’ Pensions and the Department for Education were allowed to put more weight on the opinion of the Scheme’s medical adviser.

On the basis of the medical evidence that was available, it was not perverse for Teachers’ Pensions to have decided that the criterion for ill health early retirement benefits in the Regulations had not been met. Therefore, the Ombudsman dismissed the complaint.
A Scheme booklet which stated that the Scheme pension was payable for life provided sufficient evidence that a Scheme was in operation and created an enforceable promise to pay a pension.

Mr John Savage against the County Tyre Group of Companies

Mr Savage was a member of the County Tyre (Holdings) Limited Retirement Benefit Scheme (the “Scheme”) and had been receiving monthly pension payments from 25 October 1988. His monthly pension stopped being paid to him without prior notification in November 2013 and he complained that these payments were wrongly stopped.

In support of Mr Savage's complaint, Kent Soper Life & Pensions, Mr Savage’s advisers, provided a copy of the Scheme booklet which stated that the pension is payable for life from the date of retirement by monthly instalments. Kent Soper & Life also provided Mr Savage’s payslip for 30 October 2013 which showed a gross monthly pension payment of £249.60 and P60s which showed an annual amount of £2,996.28 received each year.

The Managing Director of County Tyre, Mr Freeman, wrote to the Ombudsman on 5 June 2014 and said that County Tyre had got into severe difficulty and could not afford to continue making goodwill monthly payments to Mr Savage. Mr Freeman argued that these payments were not made from a pension fund and do not reflect membership or liability to any existing pension scheme. Mr Freeman submitted that Mr Savage was never entered into any scheme in the name of County Tyre. Despite several requests, County Tyre failed to provide a formal response to Mr Savage’s complaint.

The Ombudsman decided that the Scheme documentation, namely the Scheme booklet, indicates that the Scheme was established and in operation. The Ombudsman concluded that Mr Savage was a pensioner member of the Scheme and in receipt of a Scheme pension up until November 2013. The Ombudsman also concluded that the annual pension amount stated in the P60s represented the pension amount due to be paid. Mr Savage’s pension payments were wrongly stopped by County Tyre in November 2013 and they had a responsibility to continue to fund his pension because the Scheme booklet said that the Scheme pension was payable for life from the date of retirement. In effect, a promise was made to pay a pension, which is enforceable.

The Ombudsman directed County Tyre to reinstate Mr Savage's monthly pension of £249.60. The Ombudsman directed that this pension was to be back dated to November 2013 and interest added to the back payment from November 2013 to the date of payment. The Ombudsman also awarded Mr Savage £650 for distress and inconvenience.