



An tOmbudsman Pinsean  
Pensions Ombudsman

## **FINAL DETERMINATION**

### **and directions**

**by the Pensions Ombudsman under Section 139 of the**

**Pensions Act, 1990**

**In the complaint made by Donal Barry**

<b>PO Ref</b>	PO 140319890
<b>Complainant</b>	Donal Barry
	Kildimo Miltown Malbay Co Clare
<b>Complaint</b>	As set out in 1 below
<b>Name of Scheme</b>	Hunter Advertising Pension Scheme
<b>Type of Scheme</b>	Defined Benefit
<b>Respondents</b>	Irish Pensions Trust Friends First
<b>Interested Parties</b>	Phoenix Life Mercer



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## 1. Complaint/Dispute

- 1.1. On 12 March 2014 a complaint was received in my Office from Mr Donal Barry, Kildimo, Miltown Malbay, Co Clare (the complainant), alleging that he was unable to trace the proceeds of his deferred pension under the Hunter Advertising Pension Scheme. The event giving rise to this complaint is the failure of the complainant to receive a benefit from the trustees/administrators of the scheme on reaching his Normal Retirement Age in 2013.
- 1.2. Some of the issues before me might be seen as complaints of maladministration while others can be seen as disputes of fact or law; some maybe both. I have jurisdiction over either type of issue and it is not often necessary to distinguish between them. This determination should therefore be taken as the resolution of any disputes of facts or law and (where appropriate) a finding as to whether there has been maladministration and, if so, whether financial loss has been sustained as a result.

## 2. Background to Complaint/Dispute

- 2.1. On his complaint form the complainant stated that he was unable to trace his scheme which, he claimed, was originally administered by Irish Pensions Trust Limited (IPT). He indicated that he has had many unproductive communications with Mercer regarding the matter.
- 2.2. There were a number of documents enclosed with the complaint form. These included:
  - 2.2.1. A copy of a letter from IPT to the complainant dated 2 February 1983 stating that he was entitled to a pension of approximately £3,667.02 deferred to age 65 or an immediate transfer value of £1,372.03
  - 2.2.2. A copy of a letter dated 24 May 1983 from IPT to the complainant acknowledging the complainant's decision to defer his benefits.
  - 2.2.3. A copy of a letter dated 21 September 1984 from IPT to Hunter Advertising which states that the value (as at 27 January 1982) of the complainant's lump sum at retirement is £95.00.
  - 2.2.4. A copy of a letter dated 20 December 2013 from Phoenix Life to Mercer which confirms that the complainant's benefits were included in a bulk transfer to Friends Provident in March 1998.
- 2.3. In a letter dated 18 December 2014 to this Office Mercer requested that the complainant clearly formulate his complaint and the parties against which he is making his complaint.



- 2.4. On 13 February 2015 the complainant re-stated his complaint against the trustees of the Hunter Advertising Pension Scheme as follows:
- 2.4.1. *“They have withheld payments due to me, since my 65<sup>th</sup> birthday, under the terms of the above named pension plan*
- 2.4.2. *They failed to contact me at the maturity date of the above plan and to inform me of my entitlements thereunder.*
- 2.4.3. *They continue to fraudulently withhold payments under the above plan notwithstanding that I have contacted them and made them aware of their liabilities under the plan.*
- 2.4.4. *I hold the trustees liable for interest and all other consequential loss as a result of their failure to make payments due to me under the plan.*
- 2.4.5. *That the trustees failed to issue me with a copy of the policy document as specified in the letter from Irish Pensions Trust Ltd Ref DC/EK and dated 2 February 1983.”*

### **3. Enquiries/Examination prior to Investigation**

3.1. Following receipt of his initial complaint my Office contacted Mercer to establish the situation regarding the complainant’s benefits. The response from Mercer indicated that they were investigating the matter with Friends First and the previous insurer Phoenix Life.

3.2. On 17 June 2014 my Office received a letter from Mercer. It stated:

*“Mercer understands [the complainant’s] complaint to be that he has been unable to trace the Hunter advertising Ltd pension scheme. [IPT] was the trustee and advisor to Hunter Advertising on this scheme. The Scheme itself was originally administered and insured through Royal Life Limited (now Phoenix Life) before transferring to Friends Provident (now Friends First) in January 1983. We also understand from our investigation to date ... that Royal Life held assets for the Scheme until they were transferred to Friends First in 1998.*

*Mercer’s investigation into this Matter to date has included a full review of all files held in respect of the Scheme by Mercer and numerous requests for information from both Royal Life (now known as Phoenix Life Limited, who have historically held the scheme assets) and Friends First ... over a number of weeks. Unfortunately we have uncovered very few documents which are relevant to [the complainant].*

3.3. On 12 August 2014 I received correspondence from Phoenix Life Limited in response to a letter from me dated 20 June 2014. Copies of documents relating to the transfer of assets of the Hunter Advertising Pension Plan were enclosed.

One of the documents is a memo from the administrators of the Hunter Advertising Pension Plan to Royal Life Insurance Limited date 26 January 1998. It states:

*“You are hereby requested to pay to Friends Provident Life Insurance Company Limited the sum of £66,225 being the transfer value of that part of Group Policy No 1035 in our name, under which retirement benefits are secured for all members entitled thereto under the rules of the above named Scheme who have now joined the Hunter Advertising Limited Pension Plan Pension Scheme, so that the said transfer value may be applied for their benefit thereunder in accordance with the terms and conditions of the governing documents thereof, those members included in the transfer value are listed below:-”*

There follows a list of 29 scheme members each with a reference number, a vesting date and a transfer value. The complainant is included in the list with a vesting date of 10 April 2014 and a transfer value of £3,847.

#### **4. Decision to undertake Investigation (and dispense with IDR procedure):**

- 4.1. On 26 November 2014, pursuant to Section 131 (6) (b) of the Pensions Act, 1990 (as amended by Section 43 of the Social Welfare Law Reform and Pensions Act, 2006), I determined that this particular complaint should be formally investigated by my Office without reference to an Internal Disputes Resolution (IDR) procedure because the complaint is of such a nature that the operation of the IDR procedure is inappropriate in the circumstances of the case and it is reasonable in the circumstances that I should investigate and determine the complaint.

#### **5. Formal Investigation of Complaint**

- 5.1. On 24 November 2014 my Office notified Mercer of my decision to investigate the complaint and Mercer was instructed to provide a response within the 21 day statutory deadline.
- 5.2. On 5 December 2014 a response was received from Mercer. Under the heading “Summary” the response stated:

*“I can confirm that Mercer has conducted a detailed enquiry following [the complainant’s] request. This has involved both an investigation of Mercer’s own records but also those of the relevant former Scheme insurers and administrators.*

*Understandably, given the need for third party input and the time which has passed since the Scheme was wound up (2007), this has become a protracted process.*



*Although there are still some further enquiries lodged with the former insurer and administrator, Friends First, Mercer is able to provide a substantive response on this matter and set out the key issues which we have identified in relation to [the complainant's] enquiry.*

*We note that [the complainant] has not properly formulated a complaint at this stage but has asked the Ombudsman to intervene as he has been unable to trace the Scheme which he alleges was originally administered by IPT. He has not however indicated, or provided any evidence to confirm that he is entitled to any benefit from that Scheme. It appears his only concern is the time which [it] has taken to resolve his enquiry.*

*As the outcome of our investigations to date has not confirmed that [the complainant] has any right to any benefits from the Scheme, we summarise below the matters which support this view."*

5.3. Under the heading "Chronology" the response stated:

*"In order to put the findings of our investigations into context it is important to understand the chronology which is relevant to [the complainant's] membership of the scheme. Based on the records we have seen this can be summarised as follows."*

- "IPT were the trustee of the Scheme from on or around 1983. The Scheme was insured at that time with Law Union & Rock (later know[n] as Royal Life and now known as Phoenix Life). Law Union and Rock were also administrators of the Scheme."*
- "We do not hold any record of [the complainant's] employment with Hunter Advertising, but understand that he joined the Scheme on 1 January 1976, and was either at that time or subsequently, a member of the Director's Division. This is confirmed by membership schedules prepared by Royal Life in 1991 and 1995."*
- "[The complainant] has provided copies of correspondence with his complaint form suggesting that he left employment with Hunter Advertising on 27 January 1982 and, as a result, also left the Scheme."*
- "The Scheme was transferred to Friends First who insured and administered the Scheme with effect from January 1983. An instruction from the trustees of the Scheme to Law Union & Rock (later known as Royal Life) dating back to 1983 confirms this."*
- "We understand that the steps required to finalise the transfer took a significant period of time (although there is no explanation for the reasons for this in the papers we have seen). Therefore, the final termination and transfer values do not appear to have been*

*confirmed until 1991 and actual assets do not appear to have been paid over until 1998.”*

- *“We have seen an annotated membership schedule used by Friends First in 1995 which distinguishes three different types of member in the Scheme. Active members are marked ‘ACT’, paid up pensioners are marked ‘PUP’. Ten other individuals including [the complainant] have a box drawn around them. A written note on the document states that those ten individuals, including [the complainant], were ‘never members of the existing Scheme’. Friends First have confirmed that this was their understanding. [The complainant] was one of ten individuals who were not included in actuarial valuations for the Scheme at that time or going forward.”*
- *“Royal Life continued to hold Scheme assets until 1998 when there was a bulk transfer from Royal Life to Friends First. We attach a copy of a letter discharging Royal Life dated 26 January 1998 and a memo from IPT to Friends Provident. This confirms that [the complainant] did not retain any assets with Royal Life.*
- *A Scheme valuation report was completed in 1998 in respect of the Scheme. Appendix B1 of this valuation outlines the number of members in each category. If [the complainant] and the other individuals excluded from the 1995 schedule had been included in the transfer we would expect them to be included here. Instead the report confirms that there were only 18 members of the Scheme, which is consistent with the records referred to ... above.”*
- *“Friends First have confirmed, in response to a previous enquiry in 2010, that after 2001, they cannot locate any record or mention of the ten individuals, including [the complainant].”*
- *“In 2007, the scheme was wound up and all assets were distributed amongst the remaining members of the Scheme. [The complainant] was not included in this distribution because Friends First did not consider him to be entitled to benefits from the Scheme at this time.”*

5.4. Under the heading “Scheme history and key dates” the response from Mercer stated:

*“I can confirm that Mercer has taken all reasonable steps to assist [the complainant] but this has been a complex and time consuming process for a number of reasons. These are:”*

- *“Mercer’s records show that IPT were not the administrators to the Scheme. Although, [the complainant’s] complaint form*



- incorrectly refers to the Scheme being administered by IPT. IPT were actually Trustee of the Scheme and were not the administrator. Between 1983 and 2007, the Scheme was insured and administered by Friends First. Before this date, a previous scheme existed which was insured and administered by Royal Life (now known as Phoenix Life)."*
- *The Scheme employer has been dissolved which has extended the timescale needed to complete a thorough investigation."*
  - *The Scheme was wound up in 2007 and therefore IPT's role ceased at that point."*
  - *The relevant documentation and events identified as relevant to [the complainant] also date back significantly further back than the Scheme wind up in 2007. All available paper and electronic records held by Mercer have been reviewed and suggest that [the complainant] left Hunter Advertising and ceased to participate in the Scheme in 1982."*
  - *The Scheme's history is not straightforward due to the change of insurer and administrator in 1983, and subsequent bulk transfer from Royal Life to Friends Provident in 1998. Therefore, Mercer has had to await responses from these parties (following a review of their respective records) before being able to respond."*
  - *[The complainant] has not provided any evidence of his alleged entitlement to any benefits under the Scheme."*

5.5. Under the heading "No record of benefits due" the response from Mercer stated:

*"In line with Mercer's records, Friends First and Royal Life (now known as Phoenix Life) have not located any records of [the complainant] being entitled to benefits from the Scheme by the time the Scheme wound up in 2007."*

*"In fact, although historic membership schedules show that [the complainant] joined the Scheme on 1 January 1976 and [the complainant] has confirmed that he left the Scheme in 1982, no evidence has been located to suggest that [the complainant] was entitled to benefits from the Scheme at any point after 1998. After this date, records show that the Scheme was transferred to Friends First, but that bulk transfer excluded a number of members including [the complainant]."*

*"Friends First administered and valued the Scheme on the basis that [the complainant] no longer had benefits in the Scheme."*

*“We investigated whether [the complainant’s] benefits may have been retained by Royal Life in 1998. However, the contemporaneous discharge to Royal Life makes reference to [the complainant] suggesting his benefits were not retained.”*

*“The Scheme was wound up in 2007 and all assets were distributed at that time. [The complainant] was not included in that process.”*

*“[The complainant] has not provided any evidence that his benefits were retained with the Scheme or that he is entitled to make any claim against the Scheme.”*

- 5.6. The response from Mercer also made the following comments in relation to this complaint:

*“We note that [the complainant] has not properly formulated a complaint at this stage but has asked the Ombudsman to intervene as he has been unable to trace the Hunter Advertising Pension Scheme which he alleges was originally administered by IPT. He has not however indicated, or provided any evidence to confirm that he is entitled to any benefit from that scheme. It appears his only concern is the time which [it] has taken to resolve his enquiry.”*

*“[The complainant] does not state on his complaint form who his complaint against. If [the complainant’s] complaint is against the Scheme administrator, IPT/Mercer is not the correct party.”*

*“[The complainant] has provided no information in his complaint form. He notes that he has been unable to trace the Scheme but does not actually make a complaint or assert that he believes he is entitled to any benefits from the Scheme. Very little information or evidence has been provided by [the complainant] to support a conclusion that he is or was entitled to a benefit, or that an error or dispute of any nature has arisen.”*

*“It would be helpful if the Pensions Ombudsman could ask [the complainant] to confirm what his complaint is and the basis on which he believes that he is entitled to benefits from the Scheme (if that is his complaint).”*

*“It would also assist if the Pensions Ombudsman could ask [the complainant] to provide any copies of any announcements, letters or other documents he possesses in respect of the Scheme, including any benefit statements showing his entitlement”*

*“In conclusion there is no evidence that [the complainant] was entitled to benefit from the Scheme at the time the Scheme wound up in 2007. The evidence we have points to [the complainant] having been a member of the scheme in the past but having left the Scheme in the early 1980s. The 1995 schedule provided by Friends First suggests that [the complainant] was*

*not a member of the Scheme after it was transferred Friends First in 1983.”*

5.7. There were a number of documents enclosed with the response from Mercer. These included:

5.7.1. A copy of a memo dated 26 January 1998 from the administrators of the Hunter Advertising Pension Plan to Royal Life Insurance Limited requesting the payment of the sum of £66,225 to Friends Provident Life Assurance Company Limited. The memo includes a list of members and corresponding transfer values and the complainant is included in the list of members with a transfer value of £3,847.

5.7.2. A copy of a memo dated 20 March 1998 accompanying a cheque for £66,225 to Friends Provident with an instruction that it is to be invested in the managed fund of the Hunter Advertising Pension Plan. The memo also contains an instruction that Friends Provident will have to set up on their records those members who left before the scheme transferred to Friends Provident in the 1980s.

5.8. On 19 December 2014 my Office wrote to Mercer. In relation to the 1983 correspondence between the complainant and IPT that identified the complainant's benefits under the scheme Mercer were requested to provide either a copy of an up to date benefit statement or, if the benefit had been transferred out, details of the date of the transfer, the amount that was transferred and a copy of the covering letter associated with the transfer.

5.9. On 18 December 2014 my Office received a response from Mercer. It stated:

*“Unfortunately, there is little we can add to our substantive response of 5 December. As you will appreciate that letter set out Mercer's position in respect of this matter based on the information provided to date by [the complainant] and the historic records recovered from its files and those of the Scheme's insurers. As the Scheme wound up in 2007, the further information you have requested is not in our possession or under our power or control.”*

5.10. Under the heading “Request for further particulars/clarification” the response stated:

*“As requested in our letter dated 5 December, it would be helpful if [the complainant] could be asked to:*

- clearly formulate his complaint and the party(ies) against which he makes his complaint;*
- provide all additional information and evidence he has in his possession, showing his purported entitlement to benefits after 1983.*

*This will enable us to properly respond to any further issues which he may wish raise”*

5.11. Under the heading “Evidence of [the complainant’s] entitlement” the response stated:

*“Subject to any further information provided by [the complainant] we understand from your letter of 9 December that [the complainant] has provided evidence of an entitlement to a preserved benefit (letters dated 2 February 1983 and 24 May 1983).*

*However, as you will appreciate the only evidence [the complainant] has provided relates to his entitlement in 1983, which is not in dispute. Our concern is that no evidence has been provided of a continued entitlement since that date which is now over thirty years ago.*

*As set out in detail in our letter dated 5 December, there is documentary evidence which states that [the complainant] did not continue to hold benefits in the Scheme and was consciously excluded from membership information about the Scheme by Friends First between 1998 and the time the Scheme wound up in 2007 (and potentially, significantly before this date).*

*Mercer's view is that the available evidence points to [the complainant’s] benefits having been transferred out of the scheme or a refund of contributions having been made to [the complainant] some time after 1983.*

*It is Mercer's view (and we understand that it is also Friends First's view) that, at the date of the Scheme winding up in 2007, all benefits and assets were distributed properly and correctly. [The complainant] was not included in this distribution because Friends First did not consider him to be entitled to benefits from the Scheme at this time.*

5.12. Under the heading “Documentation requested” the response from Mercer stated:

*“You have requested that Mercer provide an up to date benefit statement in respect of [the complainant’s] benefits. We are unfortunately not able to meet this request because:*

- benefit statements for the Scheme cannot be generated because the Scheme wound up seven years ago and all assets were distributed at that time; and*
- in any event, there is no evidence that [the complainant] remains entitled to any benefit which would be the subject of an up to date benefit statement.*



*“You have also requested that, in the absence of the provision of an up to date benefit statement, details of the transfer of [the complainant’s] benefits be provided. We are also not able to meet with this request because:*

- this information is not in Mercer's possession and enquiries made of Friends First and Phoenix Life have not disclosed any records which confirm this;*
- It is clear from the records we have disclosed that [the complainant] was no longer recorded as member of Scheme post 1998; and*
- The Scheme was wound up in 2007. Mercers role came to an end at this point and all benefits and assets were distributed;*

5.13. On 6 January 2015 my Office again wrote to Mercer. It was pointed out to Mercer that my Office had not seen any evidence of the complainant receiving a refund of contributions or that his benefit had been transferred out in spite of Mercer’s claim that the available evidence pointed to one of those scenarios. It was also noted that if one of those two scenarios had occurred then Mercer/IPT, as trustees of the scheme, must have records of the transfer or refund.

5.14. On 2 February 2015 a response was received from Mercer. It stated:

*“Mercer’s position remains as set out in our previous correspondence. Whilst we recognise that there are some gaps in the documentation available, the documents we have on our files show a conscious decision by Friends First to exclude [the complainant] from membership of the Scheme. As a result of this, [the complainant] was not treated as being entitled to benefits by the time the Scheme wound up in 2007.”*

5.15. Under the heading “IPT’s Role” the response stated:

*“In order to clarify IPT/Mercer’s role and to avoid any confusion we have set out below some background which we hope will provide some context:*

- IPT was formerly a part of Sedgewick Group PLC, a separate entity to Mercer which became part of the Marsh and McLennan (of which Mercer is a subsidiary) in 1998.*
- In 1998, the bulk of IPT’s business was transferred to Mercer. IPT continued to carry on the business of acting as trustee of pension schemes, including this Scheme.*
- IPT was historically the corporate trustee of the Scheme (there were not any individual trustees) but this was only the case until 2007 when the scheme was wound up and ceased to exist.*

- *IPT/Mercer have had no role in respect of this Scheme since 2007 and there is no on-going administration or trusteeship in respect of this Scheme.*

5.16. Under the Heading “Records” the response from Mercer stated:

*“You comment in your letter of 6 January 2014 that IPT/Mercer must have records of any member refunds or transfers out of the Scheme.*

*We would agree with this comment if the Scheme was ongoing. As the Scheme was wound up in 2007, we disagree that Mercer can reasonably be expected to have retained full records relating to Scheme benefits for all members.*

*We would expect a Member to retain information and records pertinent to his own benefits. To date, we have only seen documentation dating back to the 1980s which does not provide any evidence that [the complainant] continued to be entitled to benefits from the Scheme until 2007. We would be grateful if [the complainant] could be asked to confirm whether he holds any further documentation which might assist the current investigation. If any further documentation can be obtained, we would be happy to consider this further.”*

5.17. Under the heading “Available evidence of [the complainant’s] entitlement” the response from Mercer stated:

*“As noted in your letter of 6 January, Mercer's view is that the available evidence points to [the complainant’s] benefits having been transferred out of the scheme or a refund of contributions having been made to [the complainant] some time after 1983. You also note that, in your view, that no evidence of this has been provided.*

*Whilst no documentary confirmation of a transfer or return of contributions has been located, when considered in light of the various membership schedules and historic correspondence Mercer have provided, this is in our view the most likely explanation. Particularly:*

- *It is clear from the documents provided that [the complainant] was consciously excluded from Scheme membership information by Friends First between 1998 and 2007 (and potentially, significantly before this date);*
- *[The complainant] was not included in the distribution of assets when the Scheme wound up in 2007 because Friends First did not consider him to be entitled to benefits from the Scheme at that time;*



*Given the time that has passed since the likely transfer or return of contributions and the fact that the Principal Employer and the Scheme have been wound up, it is not unsurprising that full records are no longer held.*

*In the absence of any evidence to the contrary, Mercer's view is that [the complainant] did not remain a member of the Scheme beyond 1998 and up to 2007 when the Scheme was wound up and was not entitled to benefits from the Scheme at that date."*

5.18. The response from Mercer dated 2 February 2015 also stated:

*"Mercer appreciate that [the complainant] may be disappointed that we are unable to provide further documentation or evidence to assist in this matter but unfortunately we do not hold any further information beyond what has already been provided to date.*

5.19. On 11 February 2015 my Office wrote to the complainant and informed him of Mercer's request that he clearly formulate his complaint.

5.20. On 16 February 2015 my Office received a letter dated 13 February 2015 from the complainant. He enclosed a statement detailing his complaint as set out at 2.4 above

5.21. On 17 February 2015 my Office sent a copy of the complaint to IPT and requested a response to the complaint within 21 days.

5.22. On 9 March 2015 a response was received from IPT. It stated:

*"By way of background information may I advise that the Plan commenced with effect from 1 January 1972 and was wound up in December 2007. Irish Pensions Trust Limited was the sole trustee from commencement. The Plan was an insured arrangement through Friends First. The administration of the Plan was carried out by Mercer."*

*"... in line with [Mercer's] advice it is contended that [the complainant] actually received his benefit..."*

*"The matters which we rely on to oppose [the complainant's] allegations are contained in a copy of correspondence received [by the Office of the Pensions Ombudsman on 2 February 2015] from Mercer."*

5.23. On 13 March 2015 IPT forwarded a copy of the trust deed and rules of the scheme to my Office.

5.24. On 31 March 2015 my Office sent a copy of the complaint to Friends First and requested a response to the complaint within 21 days.

5.25. On 6 May 2015 a response was received from Friends First. It stated:

*“Friends First administered the Hunter Advertising Defined Benefit Scheme from 1983 replacing a previous arrangement with Law Union & Rock (later known as Phoenix Life Limited). Some of the members of the Defined Benefit Scheme had benefits with Law Union & Rock. [The complainant] was not a member of the Defined Benefit Scheme taken on by Friends First in 1983*

*Friends First carried out its first Actuarial valuation on 1 January 1986. Our records show that on 24 January 1984, we received a memo from Irish Pensions Trust advising that it had been decided to make the benefits held by Law Union & Rock paid up. In this connection a schedule was attached detailing members paid up benefits as at 31 December 1982. There are 21 members on this schedule. [The complainant] is not one of them. Friends First based its first valuation on this information and on the renewal data received 18 December 1985.*

*We received a Royal Life schedule in 1 January 1998, this listed 31 names. This was the first mention of [the complainant] on our files. This schedule was compared to the previous schedule received. It would have been normal process to exclude any names that did not appear on the 1982 schedule and it was noted that they were not members of the Defined Benefit Scheme. It should also be noted that it was not uncommon at that time for Friends First to receive data with a mixture of Defined Contribution / AVC members / Defined Benefit Members.*

*There was a schedule on the file from 1995, this listed 31 names. On the schedule it clearly noted the active (ACT) and paid up (PUP) members. The 10 extra names, which included [the complainant], were highlighted with a box to indicate that they were not members of the Scheme. It is unclear who deemed these names to be active, paid up and non-members.*

*On 13 November 1997, we received a schedule from Irish Pensions Trust detailing the assets held by Royal & Sun Alliance. This listed 29 names, Friends First were consistent and once again only noted the existing members of the Defined Benefit Scheme. The valuation as at 1 January 1998 listed the membership in the Scheme **prior** to receipt of the transfer value. Again this did not include [the complainant].”*

5.26. In relation to the transfer of member funds from Royal Life to Friends First the response from Friends First stated:

*“On 20 February 1998, a sterling cheque for £66,225 was invested in the Managed Fund with Friends First Asset Management, the investment manager as instructed. This cheque represented the encashment of the assets held by Royal & Sun Alliance for the members of the above plan (Hunter Advertising). There was a memo only with this cheque, Friends First F&C Ireland Limited (all files checked) never received the Royal & Sun Alliance breakdown of the cheque. The memo included by Irish*



*Pensions Trust Limited stated “For investment in the managed fund” and referred to a schedule dated 13.1.1997. This detailed the current value at 01.01.1997 for members. The values did not match in any event because the transfer value received was calculated over a year after the effective date of the schedule.”*

5.27. In relation to the complainant’s membership of the scheme the response from Friends First stated:

*“Friends First refute the comment by Mercer that [the complainant] was “consciously excluded from membership information”. It is clear from our records that [the complainant] was never included in the Friends First scheme in the first place. Friends First as insurer and administrator of the Scheme only act on instructions from the Broker and ultimately the Trustees. IPT as the scheme trustees had oversight of this information and the amounts transferred. All premiums were invested in the Managed Fund as instructed by Irish Pensions Trust. Friends First only included the existing members in the Defined Benefit Scheme and the documentation issued with each valuation report supports and demonstrates this.”*

5.28. In relation to the scheme valuation reports the response from Friends First stated:

*“The following valuation reports listed the membership in the Scheme post receipt of the transfer value. These valuations do not include [the complainant] and this was never queried by the Trustees. The valuation as at 1 January 2007 was the last valuation prior to the Scheme wind up with effect from 31 December 2007*

- Actuarial Valuation 1 January 2001*
- Actuarial Valuation 1 January 2004*
- Actuarial Valuation 1 January 2007*

5.29. In relation to the wind up of the scheme the response from Friends First stated:

*“On the 11<sup>th</sup> December 2007, an email was sent [from Friends First] to Richard Daly (Hunter Red Cell) and to Dara Call (Mercer) regarding the wind up of the scheme. They received a detailed breakdown of assets and liabilities for all members of the scheme. The Trustees were asked how the surplus was to be distributed. A reply email was received from the company CFO confirming that the surplus was to be distributed to the members.*

*This was an important milestone in relation to this scheme as it not alone demonstrates that [the complainant] was not included in the detailed list*

*of members upon scheme wind up but also was the last opportunity to address the matter of accruing a transfer value for the potential 10 members not included up to date, if that was the position. There are now no funds available with Friends First to pay any further transfer values under the scheme.”*

5.30. The response from Friends First also stated:

*“We don’t know what happened to [the complainant’s] benefit and note the comments of Mercer in their letter dated 18/12/2014. The Scheme wound up and all assets and liabilities were discharged under the guidance of the Scheme Trustees and the financial advisors. The Scheme surplus was distributed to the existing members of the Scheme as instructed by the Trustees.*

*There was approximately a 9 year period from 1998 to the Scheme wind up in 2007 when any of the pre Friends First members could have been included in the Defined Benefit Scheme. The opportunity to include such members in the Defined Benefit Scheme ceased on wind up and the distribution of the Scheme surplus. [The complainant] or the Scheme trustees did not receive any documentation or correspondence from Friends First, at any stage, in relation to any benefit entitlement under this Scheme.*

*In conclusion we are of the view that it is unclear from our documentation whether there is a benefit payable to [the complainant]. It is however clear from our documentation and Actuarial valuations that [the complainant] was not included in the Friends First Defined Benefit Scheme and most importantly was not included and funded for when the scheme was wound up in 2007. The scheme trustees were fully involved and oversaw the scheme wind up and distribution of surplus to the specified list of scheme members.”*

5.31. There were a number of documents enclosed with the response from Friends First including:

5.31.1. A copy of a Scheme Membership List of the Royal Life Hunter Advertising Retirement Plan dated 1 January 1988. The complainant is listed under the Directors division of the list.

5.31.2. A copy of a schedule dated 1 January 1995 from Royal Life listing members and benefits of the Hunter Advertising Limited Pension Scheme. The complainant is included in the list. The copy has been printed on Friends First headed paper and a handwritten note on the schedule that references the complainant (amongst others) states “*never members of the existing scheme*”.



- 5.31.3. Copies of Actuarial Valuations for the scheme dated 1 January 1998, 1 January 2001, 1 January 2004 and 1 January 2007.
- 5.31.4. A copy of the memo dated 20 March 1998 from the trustees to Friends First that accompanied the £66,225 transfer of funds from Royal Life to Friends First. There is a handwritten instruction on the memo stating “*You will have to set up on your records those members who left pre the date of the scheme transferring to yourselves in the early 1980s.*”
- 5.32. On 11 May 2015 my Office wrote to Friends First requesting further information regarding the instructions from the trustees to Friends First in the memo dated 20 March 1998 (referred to at 5.7.2 and 5.31.4 above).
- 5.33. On 28 May 2015 a response was received from Friends First. It stated:

*“... the Scheme commenced in 1983 as a defined benefit arrangement, replacing a previous defined contribution arrangement with Law Union & Rock. The only members of the previous arrangement who transferred to the Scheme as administered by Friends First were members in active service with Hunter Advertising Limited.*

*[The complainant] was not one of these as he had left in 1982. He was never a member of the post-1983 Scheme as administered by Friends First. Active members received credit for company service prior to 1983 under the Scheme, and a transfer of assets was due from Law Union & Rock in respect of their former defined contribution entitlement, now converted to defined benefit service. There was a delay in receiving this transfer of assets, and the monies continued to be invested in Law Union & rock; the transfer was eventually made in 1998.*

*You will note that in the [memo from IPT to Friends First dated 20 March 1998], first page, the instruction from IPT in relation to monies received was as follows: ‘This cheque represents the encashment of the assets held by Royal & Sun Alliance for the members of the above plan.’ The [memo from IPT to Friends First dated 20 March 1998] refers above this statement to the scheme ‘Hunter Advertising Limited’. The Scheme administered by Friends First of that name only contained active members who transferred with the Scheme in 1983, and Friends First allocated the transfer payment to the assets of the defined benefit Scheme accordingly.”*

*“... in relation to [the instruction from the trustees in the memo dated 20 March 1998] while we do not have records of dialogue between us and IPT at the time, we assume that this was interpreted as a statement to separate out members of the old scheme who never joined the [defined benefit] Scheme.*

*In relation to the schedule attached to the [memo from IPT to Friends First dated 13 November 1997] we respectfully disagree with your interpretation that it clearly includes [the complainant] in the list of scheme membership. The Memo itself contains a statement by the Trustee indicating uncertainty as to the accuracy of the information contained in the schedule: ‘Check the details that I have inserted is [sic] correct. It could easily be the case that some of the members have opted to transfer their entitlement or where possible opted to receive early retirement benefits.’*

*We have undertaken a comprehensive review of our records and have been unable to locate any evidence indicating that [the complainant] had any beneficial interest in the Scheme subsequent to Friends First commencing its role as insurer and administrator of the Scheme in 1983.*

*As previously stated, Friends First have only ever acted on the instructions of the Broker and ultimately the Scheme trustees. Friends First was never tasked with administering benefits for deferred members of the former scheme, to the extent that such benefits existed.”*

## 6. Conclusions drawn from Investigation

- 6.1. The complainant was an employee of Hunter Advertising Limited (the company) until 27 January 1982.
- 6.2. At the time of the complainant’s employment the company had a defined contribution pension scheme of which the complainant was a member. Irish Pensions Trust Limited (IPT) were the trustees for the pension scheme and the assets of the scheme were invested with a company called Law Union and Rock.
- 6.3. The identity of the institution that held the original defined contribution funds changed over the years and the documentation examined in the course of this investigation references the different identities over time. The following table summarises these changes.

Year	Name of Institution	
...	Law Union & Rock Insurance Company Limited	
1964	Royal Insurance Company Limited	Policies with Law Union & Rock Insurance Company Limited moved to Royal Insurance Company Limited in 1964
1981	Royal Life Insurance Limited	Policies with Royal Insurance Company Limited moved to Royal Life Insurance Limited in 1981
1998	Royal & Sun Alliance Life and Pensions Limited	Royal Life Insurance Limited was renamed Royal & Sun Alliance Life and Pensions Limited in 1998



2005	Phoenix Life and Pensions Limited	Royal & Sun Alliance Life and Pensions Limited was renamed Phoenix Life & Pensions Limited in 2005
2006	Phoenix Life Limited	Phoenix Life & Pensions Limited policies moved to Phoenix Life Limited in 2006

- 6.4. The complainant left the company on 27 January 1982 and he became a deferred member of the Scheme.
- 6.5. After leaving the company the complainant opted to preserve his benefit in the scheme.
- 6.6. With effect from 1 January 1983 a new defined benefit scheme was set up by the company. Active members of the original defined contribution scheme became members of the new defined benefit scheme.
- 6.7. The complainant did not become a member of the defined benefit scheme when it was set up because he was no longer an active member of the defined contribution scheme. The complainant remained a deferred member of the defined contribution scheme.
- 6.8. IPT were trustees of the new defined benefit scheme. The funds of the defined benefit scheme were invested with Friends First.
- 6.9. In January 1998 the trustees of the defined contribution scheme instructed Royal Life Insurance to transfer the assets of the defined contribution scheme (including the complainant's benefit) to the defined benefit scheme.
- 6.10. The transfer of assets from the defined contribution scheme to the defined benefit scheme took place on 20 March 1998. The transfer included the complainant's benefit. At the time the transfer took place the trustees instructed Friends First to set up a pension scheme record for the complainant (and to set up records for other defined contribution scheme members who had deferred benefits at the time that the defined benefit scheme was set up in 1983).
- 6.11. Friends First did not act on the instructions of the trustees and failed to set up a pension scheme record for the complainant in the defined benefit scheme.
- 6.12. While the defined benefit scheme was active Friends First never paid the complainant a benefit and never transferred his benefit out of the scheme.
- 6.13. In 2007 the defined benefit scheme was wound up and the assets were distributed. The complainant was not paid any benefit under the distribution of assets on the wind up of the scheme.

## 7. Observations

- 7.1. Although pension scheme trustees have responsibility for the administration of their scheme, it is usually the case that the practical day-to-day functions are delegated to a professional administrator. The responsibilities that are delegated include the safe-keeping (or custody) of fund assets.
- 7.2. In this case the trustees of the complainant's defined contribution scheme delegated the administration of the scheme and custody of the assets to Royal Life Insurance Limited. In 1983 the company that had employed the complainant while he was an active member of the defined contribution scheme set up a new defined benefit pension scheme with the same trustees as the complainant's defined contribution scheme. The trustees appointed Friends First as the administrators and custodians of the defined benefit scheme.
- 7.3. The complainant's benefit remained in the safe-keeping of Royal Life Insurance Limited until 1998 when the trustees instructed Royal Life Insurance Limited to transfer the assets of the defined contribution scheme, including the complainant's benefit, to Friends First to be combined with the assets of the defined benefit pension scheme.
- 7.4. The transfer took place on 20 March 1998 and it is clear from the transfer documents provided by the trustees and by Phoenix Life that the total transfer amount of IR£66,225 included a transfer value of IR£3,847 in respect of the complainant.
- 7.5. The trustees understood that Friends First would not have any pension scheme record of the complainant and instructed Friends First to set up a record for the complainant and other members who, along with the complainant, became deferred members of the defined contribution scheme before the company set up the defined benefit scheme with Friends First.
- 7.6. Friends First failed to act on the instructions of the trustees and never set up a pension scheme record for the complainant. In 2007 the defined benefit scheme (along with the incorporated assets of the former defined contribution scheme, including the complainant's benefit) was wound up and the assets were distributed. The complainant was not included in the distribution of assets and did not receive any benefit on the wind up of the scheme because Friends First had not acted on the instruction from the trustees to set up a record for him.
- 7.7. When my Office asked Friends First about the instruction from the trustees Friends First stated that they do not have records of the dialogue at the time with the trustees and they assume that the instruction was interpreted as a statement to separate out members of the defined contribution scheme who never joined the defined benefit scheme. I cannot see how the clear instruction from the trustees could be interpreted in this manner.



- 7.8. In their response to my Office regarding the instruction from the trustees Friends First also refer to a memo dated 13 November 1997 in which the trustees provided Friends First with a list detailing the assets of members of the defined contribution scheme held by Royal & Sun Alliance (This memo is also referred to in the instruction from the trustees). The complainant is included in the list. The trustees provided additional information for some of the members on the list and requested that Friends First insert the missing details. The trustees acknowledge that the additional details provided will need to be checked because it would be possible for members listed by Royal & Sun Alliance who are also members of the defined benefit scheme to have already received benefits or to have transferred their benefit. Such members would have already received credit for service given while they were members of the defined contribution scheme. Friends First claim that this indicates uncertainty as to the accuracy of the information held in the schedule. However, I do not accept that it indicates any uncertainty about the complainant retaining a benefit in the defined contribution scheme which subsequently transferred to Friends First.
- 7.9. Friends First state that they have undertaken a comprehensive review of their records and have been unable to locate any evidence indicating that the complainant had any beneficial interest in the defined benefit scheme subsequent to Friends First commencing its role as insurer and administrator of the scheme in 1983. The investigation by my Office has discovered that the transfer of assets valued at IR£66,225 from Royal Life Insurance to the defined benefit scheme in Friends First included a transfer value of IR£3,847 in respect of the complainant and Friends First failed to set up a pension scheme record for the complainant as instructed by the trustees.
- 7.10. The failure to set up a pension scheme record for the complainant following the instruction of the trustee is maladministration on the part of Friends First. The failure to provide the complainant with a transfer value of his benefit on the wind up of the scheme (with effect from 31 December 2007) is also maladministration on the part of Friends First. The maladministration only came to light after the complainant reached his retirement age on 10 April 2013 and went in search of his benefit.

## 8. Final Determination, Directions and Orders

- 8.1. Having regard to the foregoing, and in exercise of the powers vested in me under Section 139 of the Pensions Act, 1990, it is my final Determination that the complainant has suffered financial loss because of the maladministration by Friends First and that this complaint can be upheld. As a consequence I order that Friends First redress the financial loss suffered by the complainant.
- 8.2. I direct that, within 21 days of the date of my final determination, Friends First must make retirement benefit options available to the complainant. The options are to be based on a value of IR£3,847 being invested from 20 March 1998 on

*Not start enquiries!*

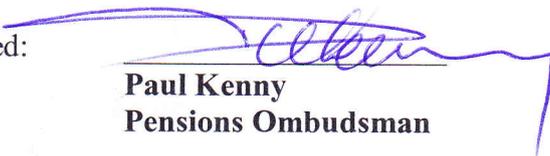
the same basis as the Hunter Advertising main scheme assets until the scheme wind-up on 31 December 2007 and on a similar basis since then.

- 8.3. I direct the complainant to provide any available and necessary documentation and information that is requested by Friends First to enable his benefit to be administered correctly by Friends First.
- 8.4. I recommend that Mercer and Friends First, in an exercise of prudent management that may avoid further complaints to this Office, carry out an examination of the relevant scheme records to establish if any other deferred members of the Hunter Advertising defined contribution scheme had assets transferred from Royal Life Insurance Limited to Friends First and were subsequently excluded from the distribution of assets on the wind up of the defined benefit scheme.

## 9. Notice Hereby Given

- 9.1. Consequent on this final Determination, I hereby give notice as follows:
- 9.1.1. This final Determination is binding on all parties to the complaint.
- 9.1.2. Section 140 of the Pensions Act, 1990 provides that a Determination of the Pensions Ombudsman may be appealed to the High Court by any party to the complaint, within twenty-one days of the date shown below.
- 9.1.3. Section 141 (1) of the Pensions Act, 1990 provides that if a party to this [complaint] [dispute] fails or refuses to comply with the terms of my final Determination, the Circuit Court may make an order to that party to carry out the Determination in accordance with its terms. Such an order may be applied for by the other party to the complaint or dispute, or by me, if I consider it proper to do so.

Signed:



**Paul Kenny**  
**Pensions Ombudsman**

Date:

17 November 2015.