

PROCEDURE – Strike out application – Failure to comply with Tribunal rules – Reference notice fails to identify issues in determination notice that Applicant wishes Tribunal to consider – Reply – Reply fails to state grounds on which Applicant relies and to identify matters in dispute – Unless order – Pensions Regulator Tribunal Rules 2000, rules 4,6 and 33

THE PENSIONS REGULATOR TRIBUNAL

NIGEL ANTONY RYDER

Appellant

- and -

THE PENSIONS REGULATOR

Respondents

Tribunal: STEPHEN OLIVER QC (Chairman)

Sitting in public in London on 14 March 2006

No appearance for the Appellant

Christine Brightwell, counsel, for the Pensions Regulator

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DECISION

1. The Regulator has applied to strike out the reference notified to the Tribunal
5 by Mr N A Ryder on 17 September 2005. The grounds for the Regulator’s application
are Mr Ryder’s failure to have addressed the determination made by the
Determinations Panel of the Regulator in either his original reference notice or in his
reply of 6 January 2006 to the Regulator’s Statement of Case.

10 2. Mr Ryder was sent a copy of the Regulator’s application to strike out on 27
February 2006. On 7 February 2006 he had written to the Tribunal in response to a
notification of a pre-hearing review stating that – “I will not be attending the pre-
hearing as I feel that I have said everything that needed to be said in my previous
letter”. I shall refer to the details from Mr Ryder’s previous letters in due course.
15 These consistently express his profound sense of grievance at what has happened to
his pension rights. Mr Ryder did not, as he had want, attend the present hearing.

3. I decided to go ahead and hear the Regulator’s application. Rule 24(4)(a) of
the Pensions Regulator Tribunal Rules 2005 (“the Rules”) permits this. Christine
20 Brightwell, representing the Regulator, explained the background to the reference and
took me through the statutory provisions. She pointed out that the thrust of Mr
Ryder’s grounds in his initial reference notice and in his reply of 6 January 2006 to
the Regulator’s statement of case was his grievance against his employer company;
the grounds did not allege that the Regulator’s determination had been improperly
25 made. By the conclusion of the hearing I had formed the view that neither the reasons
for making the reference as set out in Mr Ryder’s reference notice nor the contents of
Mr Ryder’s later letters addressed “the determination which is the subject-matter of
the determination notice”; these disclosed nothing capable of being referred to the
Tribunal under section 96(3) of Pensions Act 2004.
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4. It would be wrong to strike out or dismiss Mr Ryder’s reference without
giving him the opportunity to put his case to the Tribunal. I have, therefore, produced
a Direction designed to enable Mr Ryder to do this, if he chooses. In this decision I
have set out my provisional views as to the strength of Mr Ryder’s case. Mr Ryder is
35 invited to consider these and, if he has reasons for disputing any of the conclusions
that I have expressed, he should explain what his objections are and why he objects.

The Determination Notice referred by Mr Ryder to the Tribunal

40 5. The Determination Notice was issued on 5 September 2005. The
Determinations Panel of the Regulator had met on 25 August 2005 and considered a
determination made by the OPRA Determinations Committee (“the ODC”) on 19
January 2005. The Determinations Panel of the Regulator upheld the decision of 19
January 2005 that an application by The Trust Corporation Ltd (in its role as statutory
45 independent trustee of the pension scheme of which Mr Ryder is a member) under
regulation 13(a)(i) of the Occupation Pension Schemes (Transfer of Values)

Regulations 1996 for an extension of the time limit for the payment of a cash equivalent transfer be granted to 19 July 2005.

Background to the Determination Notice

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6. Mr Ryder is a member of the Sheffield Forgemasters Pension Scheme (“the Scheme”) which is a salary related occupational pension scheme. Mr Ryder was a directly affected party for the purposes of the determination for which he seeks the reference, the review having been granted in respect of another scheme member.

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7. On 26 February 2004 Mr Ryder signed a form of request to transfer the cash equivalent (which appears from the form to have been £80,426), “the CETV”, requiring the trustees of the scheme to use that amount for the purpose of securing rights for Mr Ryder under a personal pension scheme chosen by him. The “guarantee date” was apparently expressed as 18 February 2004.

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8. On 6 June and 7 July 2004 the scheme trustee applied under regulation 13 of the Occupational Pension Schemes (Transfer of Values) Regulations 1996 for an extension of time for paying the transfer of value. It will be noted that a member who within three months of the guarantee date accepts his CETV by making a relevant application to the trustee of the scheme in accordance with section 95 of the Pension Schemes Act 1993 gains a “right” under section 94(1)(aa) to that so-called “guaranteed” CETV. The CETV must then be dealt with in accordance with the member’s instructions (usually being transferred to another scheme) within a “payment period” of six months from the guarantee date. The trustee may apply to the Regulator for the Regulator to exercise the power under section 99(4) of the 1993 Pension Schemes Act to extend the payment period. That discretion is exercisable on three grounds alone; the ground relevant to the present situation was that “the scheme is being wound up or is about to be wound up”.

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9. Mr Ryder’s guarantee date being 18 February 2004, the payment period would have ended on 18 August 2004. However on 8 July 2004 The Trust Corporation Ltd, as trustee of the scheme, applied to the Regulator for extension of the payment period. The trustee had hoped that during the six month extension period the future of the scheme would be decided; the most probable outcome, the trustee believed, would be that the scheme would commence winding up and there would be insufficient funds to pay members’ CETVs at the values quoted. An extension was therefore necessary to allow the trustees to reduce the CETVs within the extended payment period on the basis of the priority order then taking effect under section 73 etc of the 1995 Pensions Act. The application was considered by the ODC (the OPRA Determinations Committee) in January 2005. On 19 January the ODC determined that the period for payment of a CETV from one member (a Mr J) be extended until 19 July 2005. Mr Ryder, as one of the fifteen other members, was a directly affected party. (Mr Ryder was directly affected in that, if the extension had been improperly granted in relation to Mr J’s CETV, Mr Ryder would have been able to ask the trustee to make payment of his own CETV.) The basis for the ODC’s determination was that the scheme was about to be wound up.

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10. On 27 January 2005 Mr J applied to OPRA for a discretionary review of the 19 January 2005 determination of the ODC. That application, supported by Mr Ryder, was granted by an OPRA determinations panel on 16 March 2005.

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11. The Pensions Regulator assumed its statutory functions under the Pensions Act 2004 on 6 April 2005. On 25 August 2005, as noted at the start of this Decision, a Determinations Panel of the Regulator reviewed the OPRA determination of 19 January 2005 and on 5 September 2005 published its determination upholding the OPRA decision to grant the extension to 19 July 2005.

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The determinations of the Determination Panel

12. It is the determination of the Determination Panel released on 5 September 2005 that Mr Ryder has referred to this Tribunal. The first question for the Panel's determination was whether the ODC should have made their determination on the grounds that the scheme was about to be wound up. The Determinations Panel's view was that on the evidence available to it on 27 August 2005 the scheme was about to be wound up; in this respect the Determinations Panel considered it was entitled to look at the evidence contemporary to its (the Determinations Panel's) decision. (In fact on 26 July 2005 the winding up of the scheme had been triggered by an employer's notice that it was ceasing to make contributions; on 27 July the employer had lodged proposals at the County Court for a company voluntary arrangement and on 27 July the scheme entered the Pensions Protection Fund assessment period.)

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13. The Determinations Panel also considered whether it had been reasonable for the ODC to have exercised its discretion on 19 January 2005 to extend the payment period. The Determinations Panel concluded from the evidence that was available at that date that it was reasonable to grant the application because the likely consequence of a decision by OPRA to refuse the application for an extension would have been to trigger a sufficient number of further CETV requests, thereby resulting in a disparity of treatment for the generality of the members.

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14. Then the Determinations Panel considered whether the current facts, namely that the scheme was then in the process of winding up, changed their view. They concluded it did not. If the extension were not granted there would be a differential between the benefits of those who had applied already for transfers and the generality of members assessed on the papers at some 8%. There would probably be further applications for transfers before the value of the scheme was finally assessed and the involvement of the Pensions Protection Fund at assessments stage gave rise to further uncertainty as to the ultimate valuations that would be made. The Determinations Panel decided that it was appropriate in all the circumstances to extend the period of payment of the CETV so that the position of all members of the scheme could be dealt with equally by the trustees.

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15. For those reasons the Determinations Panel decided that the decision of the ODC to grant an extension of the time limit for the payment of the CETV in respect of Mr J to 19 July 2005 should be upheld.

5 **Mr Ryder's reasons for making the reference to the Tribunal**

16. I quote the reasons in paragraph 8 of Mr Ryder's reference notice:

10 "The company took six month to give transfer value. This was then signed and returned then over three months had passed, then they applied for a pensions extension.

15 If I am not mistaken the company has three months from me signing to pay out, this they did not do, and then after three months applied for a extension. This as I am aware is legally wrong. To me this cannot be any clearer and hope you can see this. I do not what else to say, I have my further in your hands, I have received a letter from Downing Street, and this is going to be looked into now by the Pensions dept."

20 17. I take the reasons point by point.

18. Mr Ryder's first observation is that it took the employer company six months to provide the CETV. I understand the legal position to be as follows. Under section 25 93A of the Pension Schemes Act 1993 trustees or managers of a salary related occupational pensions scheme must on receipt of an application from a deferred scheme member provide him with a written Statement of Entitlement. The statement must set out the amount of the cash equivalent of his accrued benefits within the scheme at the guarantee date (i.e. the date at which the calculation is based). This amount is known as the CETV. The statement of entitlement must usually be 30 provided within three months or, in exceptional circumstances, within six months of a member's application (see regulation 6 of the Occupational Pension Schemes (Transfer Values) Regulations 1996).

19. The authority of this Tribunal is, for present purposes, limited to determining 35 what is the appropriate action for the Regulator to take in relation to the matter referred to the Tribunal; see section 103(4) of the Pensions Act 2004. In the present case the "matter referred" is the determination of the Regulator as set out in the Determination Notice of 5 September 2005.

40 20. Mr Ryder's first observation is not directed at any decision or act taken by the Regulator; nor does it question any determination of the Regulator. Insofar as any improper delay occurred, it was the fault of the employer company or of the trustees of the scheme. No such improper delay (if indeed there was such a delay) has been the subject matter of any decision by either OPRA or the Regulator. The observation 45 is therefore outside the scope of any reference to this Tribunal.

21. Mr Ryder's second observation, i.e. that he signed and returned the CETV within three months is not in dispute. By signing it within three months of the guarantee date Mr Ryder gained the "right" under section 94(1)(a) of the 1993 Pension Schemes Act to that guaranteed CETV (which then had to be dealt with in accordance with Mr Ryder's instructions and transferred to another nominated scheme within six months of the guarantee date (section 99(2)(a) of the 1993 Pensions Act)).

22. Mr Ryder's third observation is that "they" (the employer or the trustees) then applied for an extension. Mr Ryder's reasons, set out later in the Reference Notice, say that the company should have made the application within three months of his signing the CETV. As I read the law the trustees were entitled to apply to the Regulator (OPRA) and ask OPRA to exercise its power to grant an extension to the payment period. The payment period is six months from the guarantee date which in Mr Ryder's case was 18 February 2004. The payment period therefore lasted until 18 August 2004. OPRA received the trustees' extension application on 8 July 2004 which was within the payment period. For those reasons I do not agree with Mr Ryder when he asserts that the trustees' application for an extension was legally wrong in that it was made out of time. By making an effective in-time application for an extension of the payment period, the trustees lawfully postponed the time at which they would otherwise have had to have dealt with Mr Ryder's CETV, i.e. transferred it to the other scheme.

23. None of the reasons advanced by Mr Ryder in the Reference Notice disclose anything wrong or improper that has been done by his employer or by the trustees. More to the point, however, nothing in those reasons is in any way directed at the determination of the Determinations Panel or at any of the matters on which the determination was based. In particular no challenge is made to the grounds for the ODC's decision (upheld by the Determinations Panel's determination) that the scheme was being wound up or was about to be wound up. There is therefore nothing, so far as the Reference Notice is concerned, that engages the authority of the Tribunal to make a determination under section 103(4) of the Pensions Act 2004.

Mr Ryder's reply to the Regulator's Statement of Case

24. I quote from Mr Ryder's reply letter of 6 January 2006:

"As to the details of this case I will try to make things clear. First and foremost I only worked for the company for about 4½ years, but was told by members of staff that it was a very good scheme. So I transferred all my previous job's pension into it. When I left some months later I decided to move my pension to my new job, but every time I got in touch about it I was passed from pillar to post and could not get a real answer, in the end I got a transfer value of some £33,000. This took from September to March. Some seven months. This was accepted and signed right away and sent back. My present company in July told me they still had not been sent the cheque. So I chased this matter up, at which point I was told the company had applied for a pensions extension. No info. or straight answers were given at first but in the end was

told that this was applied for late in June. My transfer value was signed and returned at the beginning of March. So after waiting seven months for a quote then another four for the cheque I have been robbed of my future, this is legal theft. The company have deliberately held back and kept this ongoing
5 knowing what was going to happen. These practices were not supposed to happen any more, but still people continue to be robbed. Seven months to give me a value is just disgusting and it was done on purpose all my lifes pension gone when this plan has some £140+ million in the scheme.”

10 Whether it took six months or seven months for the CETV to be produced is not clear. What is clear is that no complaint was made to the Regulator; nor was the fact that it might have taken seven months to produce the CETV taken into account by the ODC in reaching its determination of 19 January 2005 to allow extension of the payment period; nor was that fact taken into account by the Determinations Panel in reaching
15 its decision published on 5 September 2005.

25. Nothing else in the Reply letter of 6 January in any way impacts on or challenges the determination of the Determinations Panel of 5 September 2005 or the earlier determination of the ODC. The other points made in the letter draw attention
20 to the loss suffered by Mr Ryder as a result of the actions and shortcomings of his employer company and the trustees. In summary, none of the points made in the Reply letter engage the Tribunal’s authority to make a determination under section 103(4) of the Pensions Act 2004.

25 **Should I strike out the reference?**

26. If the reference hearing is now to take place and the case is to proceed on the points taken by Mr Ryder in the reference notice and in his reply letter of 6 January
30 2006, I would be bound to decide the matter against Mr Ryder and dismiss his reference. But Mr Ryder may have stronger arguments to make and so long as those arguments go to the point at issue, i.e. the correctness of the determination of the Determinations Panel of 5 September 2005, the Tribunal will consider them on their merits at the hearing.

35 27. In this connection the Tribunal is given power by the Tribunal Rules to ensure that the cases for both parties are properly explained and prepared. Rule 4 requires that the Applicant shall set out in his reference notice “the issues concerning the determination notice ... that (he) wishes the tribunal to consider”. I have already explained that Mr Ryder’s reference notice contains nothing that effectively
40 challenges the Determination Notice. Rule 6 requires the Applicant to put in a written representation that states “the grounds on which he relies in the reference” and identifies “all matters in the statement of case which are disputed by (him)” and states his reasons for disputing this. Nothing in the reply letter of 6 January 2006 does any of those things.

45 28. What happens if an application does not comply with either or both rules 4 and 6? Rule 33 gives the Tribunal the power to, among other things, dismiss the whole or

part of the reference when the Applicant has, without reasonable excuse, failed to comply with a provision of the Rules. But by rule 33(4) the Tribunal cannot take that step without giving the person in question the opportunity to make representations against the Tribunal's dismissal of the reference.

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29. I am more than aware that Mr Ryder is unrepresented and has been drawn into this by matters outside his control. At the same time I do not want to waste his and the Regulator's time and effort by pursuing a pointless dispute before the Tribunal. Moreover I am aware that the scheme entered the Pensions Protection Fund scheme in July 2005. This means that any payments out of the scheme can now only be made in accordance with section 135 of the 2004 Pensions Act and, in the case of guaranteed CETVs to which members have gained rights under section 94(1)(aa) of the 1993 Pensions Act, regulation 16 of the Pension Protection Fund (Entry Rules) Regulations 2005 provides that, during the assessment period, trustees can make payment of such CETVs in accordance with regulation 16(2). I cannot comment as to the actual amount the trustee may be permitted to pay out during the assessment period. If the Pension Protection Fund should assume responsibility for the scheme at the end of the assessment period those members which do not transfer out of the scheme will receive compensation in their form of pensions in accordance with the Pension Protection Fund legislation.

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Action

30. I have decided that Mr Ryder should be given 28 days in which to lodge a reply, if he wishes to do so, that conforms with the requirements of rule 6(2). The reply must explain why the determination of the Determinations Panel is wrong and should be set aside and what different determination should be made. It must identify all the matters relied upon in the Regulator's Statement of Case which Mr Ryder disputes and it must state his reasons for disputing them. If Mr Ryder either does not respond to this direction or makes a response that fails to touch on the points I have just identified, I will then consider dismissing the reference; but before doing so Mr Ryder will have the opportunity to make representations why I should not do that.

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31. Finally I should mention that the Regulator asked me to order that Mr Ryder's reference be struck out "for what of prosecution". On reflection I do not think that this would be an appropriate direction. I would not make such a direction unless a party had either ignored the proceedings or allowed nothing to be done for an excessively long time.

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**STEPHEN OLIVER QC
CHAIRMAN**

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RELEASED:

PRT/05/001