

Ombudsman's Determination

Applicant	Mr TN on behalf of Master N
Scheme	Ford Salaried Contributory Pension Fund (the Fund)
Respondent	Ford Pension Fund Trustees (the Trustee)

Outcome

1. I do not uphold Mr TN's complaint and no further action is required by the Trustee.

Complaint summary

2. Mr TN has complained that the Trustee did not properly consider all the information available when deciding how to distribute death benefits from the Fund on the death of his son, Mr AN.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. Extracts of the relevant rules are included in the Appendix.
5. Mr AN was employed by Ford and was a member of the Fund.
6. On 10 August 2015, Mr AN completed an Expression of Wish form (**EOW**) and nominated his son, Master N, to receive 100% of any death benefit funds, to be held in trust.
7. On 1 December 2017, Mr AN made his Will. The Will stated that Mr AN's Executors should hold his Estate in trust for his son, Master N, until he attained the age of 25.
8. On 2 March 2018, Mr AN died.
9. On 22 March 2018, Mr TN, the father of Mr AN, telephoned Ford's Human Resources (**HR**) department and asked what information he needed to provide regarding a claim for death benefits on behalf of his grandson, Master N.

10. On 23 March 2018, HR sent an email to Mr TN and attached the forms that needed to be completed.
11. On 23 April 2018, Mr TN telephoned HR to clarify the process for applying for the death benefits and what information the Trustee would need to be able to assess the claim.
12. The same day, HR sent an email to Mr TN and resent the forms that needed to be completed. It reiterated the list of documents required. It also said:

“Should you wish to put forward any consideration for the Trustee Board to review, please include this in a covering letter when you return the forms.”
13. On 10 May 2018, Mr TN sent an email to HR and said that, in summary:-
 - There would be a slight delay in submitting the required information as he was still seeking one remaining document.
 - It was Mr AN’s wish that his Estate be managed by his nominated Trustee (**the Estate Trustees**). He believed the last EOW lodged in 2015 specifically requested that the lump sum death benefit (**the Death Grant**) due to Master N should be held in trust and managed by the Estate Trustees beyond the influence of others.
 - He would also be seeking the Trustee’s approval for exceptional consideration for Mr AN’s ex-wife, Ms MB, to receive a spousal pension. This request was related to the nature and outcome of Mr AN’s divorce settlement and the absence of any alternative dependent spousal claim.
14. On the same day, HR sent an email to Mr TN acknowledging his update and requesting that all the information be assembled and sent to them for review and consideration.
15. Mr TN then sent a further email to HR and said in summary:-
 - Its response was inadequate given the concerns he had outlined. The wellbeing of his young grandson was very much at stake.
 - Accordingly, he would appreciate the opportunity to meet with the Trustee or their representatives who could provide him with a better understanding, as next of kin, of how he could protect his grandson’s best interests.
16. On 18 May 2018, the Ford Pension Fund Manager (**the Pension Manager**) sent an email to Mr TN and said in summary:-
 - It would not be appropriate for the Trustee to meet with family members or potential beneficiaries.
 - The distribution of any Death Grant was a matter for the Trustee having regard to all factors.

- It could confirm that the Trustee would set up and would determine the terms of any trust that was needed, and it would be professionally administered.
17. On 4 June 2018, Mr TN sent a letter to the Pension Manager and enclosed an additional document setting out the position of Mr AN's family (**the supporting document**). He said the family's overriding concern was protecting Master N and ensuring his future wellbeing. He also asked that all communications to Ms MB and Master N be addressed to him as next of kin.
18. The supporting document provided a background to the family's situation and set out discussions with Mr AN about his wishes regarding Master N. The main points were:-
- From the moment of his marital separation in 2015, Mr AN's concern was that in the event of his early death all his assets would be protected and used for the exclusive long term benefit of his only son, Master N. Mr AN changed his EOW in August 2015 in favour of Master N as sole beneficiary, noting that these monies should be held in trust.
 - Following this, Mr AN sent an email to his parents and said that in the event of his death these funds should be used to repay the outstanding mortgage on his property and the Estate was to be held in trust until Master N was age 25. The directions from Mr AN determined that Ms MB would have no control whatsoever over his Estate.
 - The family was in no doubt that the breakdown of Mr AN's marriage was fundamentally centred on Ms MB's financial mismanagement and associated health breakdowns which caused her to have extensive work absences. This situation necessitated Mr AN's parents providing a £30,000 loan, several short term loans, and coverage of several subsequent large household costs. Around £23,000 of these debts remained unpaid.
 - In the divorce negotiations Ms MB made it clear that she wanted a clean break. Mr AN accepted this. To ensure that he could maintain a degree of control over the wellbeing of his son, Master N, Mr AN provided the minimum formal maintenance, while at the same time paying a direct contribution towards specific costs. In so doing he resisted attempts from Ms MB to make attachments to either his salary or future pension entitlements.
 - Further financial pressures were exerted on Mr AN in 2015 when, against Mr AN's wishes, Ms MB moved to Scotland. This caused significant travel costs for Mr AN to maintain contact with his son. In July 2017 Mr AN finally negotiated Ms MB's and Master N's return to England.
 - Ms MB was unable to identify suitable cost effective accommodation resulting in Mr AN agreeing to move out of his home, allowing Ms MB and Master N to occupy the property at a subsidised rental level. In doing so, Mr AN increased

his original divorce financial commitment level from £400 per month for Master N's maintenance to a total of £1,000 per month.

The family's expectations

- Mr AN's wish that his residential property (**the Property**) be retained for the long term benefit of Master N should be a key objective for the Trustee.
- Mr AN's personal direction to his family was that the Death Grant be used to repay the mortgage. This can only be achieved with the Trustee's placement of such monies within a trust managed by the Estate Trustees'. Management of these monies by Ms MB would be inappropriate and counter to Mr AN's wishes for Master N and the Property.
- To protect Master N's short term wellbeing, the tenancy of his mother at the Property should have been protected at least through to the Summer of 2020 when his primary school education was complete. If Ms MB's tenancy of the Property was not economically viable beyond the summer of 2020, the Estate Trustees would seek to provide her and Master N with appropriate levels of support through to him attaining age 18 or age 25.
- HR has indicated that, subject to the Trustee approval, Master N may benefit from a child's pension at a level of around £5,300 per annum. To ensure these funds were used in Master N's best interests it was strongly recommended they were put at the disposal of Ms MB but provided to the Estate Trustees in the form of a further trust.
- The nature of Mr AN's divorce settlement with Ms MB made it clear that Mr AN had every intention of providing ongoing supplementary support. The loss of Mr AN's legal maintenance payments and extensive supplementary support posed very real problems for Master N and his mother, thereby threatening Master N's ability to sustain and complete his secondary education in England.
- The Trustee was asked to give serious consideration to providing Ms MB with exceptional access to spousal pension benefits if only for the period during which Master N would be in receipt of a child's pension and at a financial level commensurate with his needs.
- They were aware of approaches made to HR by Ms O, Mr AN's partner who they believed also presented a case of qualification for Mr AN's spousal pension rights. There is no doubt that Mr AN was in a relationship with Ms O. However, the only reason he co-habited with her was because he needed to make the Property available to Ms MB to facilitate her return from Scotland with Master N.

- Ms O did not depend on Mr AN's contribution to her household and with no role in Master N's future there can be no argument for ongoing dependency or spousal pension support.

The Trust Requirements

- As a consequence of the circumstances outlined in the supporting document, the family requested the assistance of the Trustee in establishing the following trusts:-
 - Death Grant – a trust wholly for the benefit of Master N managed by the Estate Trustees. This would allow them to manage Mr AN's financial and monetary assets in an integrated manner, but without interference from Ms MB. However, the Estate Trustees would clearly work closely with Ms MB to ensure support was provided on a case by case basis, always focused on Master N's best interests.
 - Child's pension – payments to be made into a dedicated trust, managed by the Estate Trustees but wholly for the benefit of Master N.
 - Spousal pension – because such a pension, if granted, was principally to ensure the ongoing welfare of Master N, it was best for such funds to also be managed by the Estate Trustees within a separate trust into which payments should be made.
19. On 28 September 2018, the Pension Manager sent an email to Mr TN and said in summary:-
- It could confirm that the Trustee Board met on 19 September 2018 and decisions were taken regarding benefit entitlement.
 - It confirmed that there were no payments due directly to the Estate.
 - Trustee decisions that were made were communicated directly to the recipient of the benefit or to their guardian as appropriate.
 - The Trustee was unable to confirm to any other party who was not a direct recipient of a benefit as to the payment to others.
20. On 1 October 2018, Mr TN sent an email to the Pension Manager and said in summary:-
- He found the lack of transparency regarding payment of the death benefits unacceptable. The family needed certain knowledge of the decisions made.
 - If denied this knowledge the family would not be able to discharge its various personal and legal commitments to Mr AN.

21. On 4 October 2018, Mr TN made a complaint under the Fund's Internal Dispute Resolution Procedure (**IDRP**). He said in summary:-

- It was clear that the principal recommendations in the supporting document had been rejected and he sought to appeal the decision while also seeking information about the specific payments of the death benefits.
- Mr AN's circumstances at the time of his death and his desire that the Death Grant be used to redeem the mortgage outstanding on the Property was set out in the supporting document. He wanted to understand why this key request appeared to have been denied.
- While he understood confidentiality issues, the lack of information made it impossible for Mr AN's family and his Executors to deliver upon Mr AN's wishes.
- The supporting document articulated the risks associated with alternative arrangements for the pension benefits. It was hoped that when the family were provided with information about the Trustee's decisions this would provide them with greater reassurance.

22. On 15 October 2018, the Trustee sent an email to Mr TN and said in summary:-

- It recognised that his submissions and enquiries had been made with Master N's best interests at heart. However, the distribution of the Death Grant was a matter for the Trustee's discretion.
- The wishes of deceased members and their families were a relevant factor for the Trustee to consider and, for this purpose, members were asked to submit an EOW. Mr AN completed an EOW which simply named Master N as his preferred recipient. The wishes of members and their families were not the only relevant factor nor were they binding on the Trustee. The law was clear that the decision was ultimately one for the Trustee to make.
- The Trustee had duties of confidentiality, both under trust law and under legislation. It had sought legal advice which confirmed that it could not properly disclose to one person information about benefits paid to another party.
- However, the law did not prevent the Trustee from disclosing information if the recipient of the benefit expressly consented. Recognising that the lack of information had left the Executors in a difficult position, it had sought consent in this case. Consent had now been granted. On that basis it could confirm the following:-
 - The whole of the Death Grant of £261,436.76 would be paid to Master N. As Master N was a minor, payment would be made into a trust, the Death Grant Trust (**DGT**). The DGT would be set up by the Trustee and the sole trustee would be Irwin Mitchell who were a professional trustee company. The vesting age under the DGT would be 18.

- A child's pension of £5,358.58 per year would be paid for Master N for as long as he remained in full time education and unmarried (but not beyond age 23). Until Master N reached age 18, payment would be made to Ms MB on his behalf.
- No other benefits were payable to Master N or Ms MB.
- It recognised that Mr TN wished the Death Grant to be paid into the trust under Mr AN's Will with the idea that it might then be used to redeem the mortgage on the Property. Given the particular circumstances of this case, it would be willing to consider changes on the terms on which they usually set up DGTs. Specifically:-
 - Making the vesting age 21 rather than 18.
 - Give the DGT trustee discretion to lend or indeed pay out funds at any earlier age if the trustee deemed the loan or payment to be for Master N's benefit.
 - Irwin Mitchell indicated that in other cases the trustee had agreed to lend money from a DGT in order to redeem a mortgage and thereby secure a home for the beneficiary. The DGT trustee would place a charge on the property to secure the loan until the beneficiary reaches vesting age. When they reach that age, the charge is removed.
- These changes would need to be approved by the Trustee board but there was a board meeting on 17 October at which approval could be sought. It suggested the following:-
 - If approval was granted the Trustee would consult further with Irwin Mitchell as to the terms of the DGT. For this purpose, Irwin Mitchell had said that they would need to have details of the Will trust including the value of the Property, the mortgage payments, the amount needed to redeem the mortgage and the other assets within the trust.
 - Once it had Irwin Mitchell's advice the Trustee would write to set out its proposals. It would also share its proposals with Ms MB in her capacity as Master N's mother and guardian.

23. On 16 October 2018, Mr TN sent a letter to the Trustee and said:-

- At present, without Mr AN's maintenance and supplementary support, Ms MB was in a poverty trap resulting in the Estate Trustees having to temporarily waive monthly rental payments of £1,000 a month on the Property. Clearly Master N's monthly pension payment of £444 did not bridge this gap. So whatever ongoing trust arrangements were put in place would need to facilitate regular ongoing maintenance payments.

- The family supported the changes to the terms of the DGT but there were several matters that would need addressing before the change was implemented:-
 - The Estate Trustees would need prior information of the terms proposed for the DGT trust in order to take advice on whether they were appropriate to this particular situation. This especially related to flexibilities and tax liabilities.
 - Receiving Mr AN's freehold property in trust provided Master N with preferential tax benefits which would need to be protected given the manner by which pension proceeds might be used to settle related mortgage debts.
 - It had presumed any transfer of Death Grant from the DGT would remain in place until vesting age. But the circumstances faced may require the Property to be sold ahead of that date. So, what complications would result, especially any Inheritance Tax implications?
 - What would be the financing costs (interest and charges) for a loan from the DGT. Would other monies "paid out" by the DGT Trustee be distributions or be regarded as interest bearing loans?
 - The Estate Trustees would need to take advice on the preferred vesting age bearing in mind all other related factors.
- The need for a separate DGT trust was fully recognised, but the family would want the Estate Trustees to be involved.

24. On 22 October 2018, the Trustee sent a letter to Mr TN. It said:-

- The Trustee had agreed in principle to change the terms on which the DGT was set up to provide for a vesting age of 21, but with the power to loan or apply funds for Master N's benefit.
- This was the final decision of the Trustee. It would now consult with Irwin Mitchell as to the specific terms and operation of the DGT. It would consult with the Estate Trustee and Ms MB as the DGT arrangements were finalised.
- Inheritance was beyond the scope of the Trustee and was a matter for the Estate Trustees.
- It was satisfied that the appointment of a professional trustee was the appropriate course of action. The professional trustee would have a legal duty to act in the best interests of Master N.
- Mr TN indicated that Ms MB may contact the Trustee seeking further financial support. The Trustee could only pay the benefits specified in the Fund Rules.

That being the case, it could not offer Ms MB or Master N support beyond that already described.

25. On 23 October 2018, Mr TN sent a letter to the Trustee and thanked them for confirming the outcome of the Trustee meeting. However, the family had continuing concerns which were:-

- Although the Trustee has no concern on potential adverse tax implications, the family, and more especially the Estate Trustees, did. Accordingly, it was important they could take advice on the terms and details of the proposed DGT before it was finalised. He would appreciate being put in contact with Irwin Mitchell to facilitate this critical requirement.
- He had received a copy of the Fund Rules, and he wanted to know why the Trustee had not sought to use the discretion provided for them in Rule 31.1 of the Trust Rules (Powers of Trustee) to respond to his request in respect of the Estate Trustee's participation in the DGT. The exclusion of the Estate Trustee was in direct contravention of Mr AN's expressed wishes.
- There has been no mention of Mr TN's request to meet with Trustee representatives. This request was made on several occasions over the last eight months, and he still believed this would have helped with his understanding of the matters in question.

26. On 6 November 2018, the Trustee sent a letter to Mr TN and said:-

- The terms of the DGT were a matter for the Trustee.
- The selection and appointment of DGT trustees was also a matter for the Trustee. Its normal policy was to appoint Irwin Mitchell as an independent professional. It was satisfied that Irwin Mitchell would consult with family members and would make decisions in the best interests of child beneficiaries in accordance with its fiduciary duties.
- It had carefully considered the arguments Mr TN had raised, but it had decided to appoint Irwin Mitchell in accordance with its normal policy. It was confident that this was a decision it was entitled to reach.
- It was not its practice to meet family members to discuss the distribution of death benefits. It did however seek relevant information in writing. It was satisfied that its practice in this respect was appropriate.

27. On 29 November 2018, Mr TN sent a letter to the Trustee and said:-

- There had been zero input from Irwin Mitchell and thus uncertainty prevailed on how he could support Mr AN's wishes in respect of Master N's wellbeing.
- Fiduciary duty embraced legal and ethical responsibilities and as Mr AN's Father and next of kin he was deeply troubled with the way the Trustee had felt able to

deny his son's dying wish. The only relevant issue was whether such determinations were fair, equitable and in the best interests of Master N.

- The lack of consideration in respect of the support for Master N and his mother as sole guardian was a major issue of contention and he had learned that the Trustee had granted Ms O a spousal pension.
- The Fund Rules showed no apparent basis upon which such an award could rationally be made. He understood from Ford that discretionary awards must pass the dependency test. In the longer term, Mr AN would have hoped and expected that Ms O would have taken a strong participative interest in Master N's well-being and indeed taken a full part in his life. However, the infancy of their relationship had not allowed any relationship to develop between Ms O and Master N. Indeed, from the moment of Mr AN's death until present she had not made one gesture towards him.
- Furthermore, she has shown only hostility towards Ms MB. When asked by Mr AN's executors whether she would consider allowing part of the spousal pension to be used to assist in Master N's upkeep, she has made it clear that such suggestions would not be entertained.
- Mr AN saw no reason to make provisions for Ms O in his Will. He obviously did not consider her a dependant. Therefore, the morality of its decision to award Ms O a spousal pension was highly questionable, and he argued that it had erred in even considering Ms O's right to claim this pension.
- Mr AN divorced Ms MB in 2015 and his recent relationship with Ms O could not be described as long standing. Mr AN only co-habited with Ms O for a short period of time, an arrangement as previously explained, embarked on at short notice reluctantly and motivated by the need to facilitate his son's move back to England.
- His many requests for meetings had been made solely in the interests of clarification because throughout this entire process he had been denied access to the most basic level of information essential to a proper understanding of rights and benefits.

28. On 21 December 2018, the Trustee sent a letter to Mr TN and said:-

- Irwin Mitchell had been in touch with Ms MB in her capacity as Master N's parent and guardian and had been advised to contact the Estate Trustees.
- Whether the Trustee granted a pension to Ms O and, if so, on what grounds, were matters between the Trustee and Ms O. Mr TN's comments were perhaps based on an assumption that if the Trustee granted a pension to Ms O the result was to disqualify Ms MB from receiving a pension which would otherwise have been granted to her. This assumption would not be correct.

- It could pay benefits only in accordance with the Fund's Rules. It was satisfied that it had done so and had taken due account of Ms MB and Master N's circumstances as far as legally relevant.

29. On 7 January 2019, Mr TN sent a letter to the Trustee and said:-

- He believed it was reasonable that the Trustee provided full transparency to Mr AN's next of kin in respect of all awards made, if not in detail but to provide assurance that appropriate awards have been implemented.
- His last letter requested information on the regime under which Ms O's claim for a spousal pension was made, and he would appreciate receiving this information. He would like to request a copy of all Fund Rules relating to the Trustee deliberations and determinations in respect of Mr AN's pension plan including spousal pensions.
- He would like to be provided with the deliberations in respect of the efficacy of the Trustee decision making and the merits of Ms O's representation on co-habitation and dependency.
- The poverty trap that he had forecast now existed which demonstrated that the Trustee deliberately gave inadequate due regard to the circumstances faced by Master N and Ms MB. He was especially concerned to learn that the Trustee may have discretion available that it failed to exercise.

30. On 7 March 2019, Mr TN sent a further letter to the Trustee. He said he had to extend his original complaint to cover new matters of concern. He said:-

- All information relating to the payment of benefits resulting from Mr AN's pension plan were critical to the family's ability to comprehend the totality of the Trustee's actions.
- The family's desire had consistently been to ensure the maximum output from Mr AN's pension was directed at the well-being of his son Master N, no matter how that support could be provided. Irwin Mitchell has made clear that DGT funds were not to be used for Master N's day to day needs and Mr AN's property Trust would be fully committed to funding the retention of the Property as directed by his Will.
- While welcoming the contribution of a child's pension it was not enough when compared to the loss of his father's income and support. It was thus hypocritical in the extreme to suggest that the "Trustee took account of all relevant information when reaching its decisions".
- The Trustee clearly decided to ignore the supporting document and have denied the family the benefit of meeting the Trustee to further aid understanding. As a result, he believed fundamental errors had been made to the detriment of Master N's well-being and against Mr AN's wishes.

- The Trustee's comment seemed to suggest its principal concern was that all matters had been considered from a legal perspective. There was no reference to balanced judgement and need to satisfy the wishes of a late employee. Mr AN contributed to the Fund in the expectation that the Trustee would respect and use its discretion in the best interest of his only dependent, Master N. The outcome showed significant abrogation of such responsibility.
- The decisions made by the Trustee in not using its discretion in seeking to find greater support for Master N have been reinforced by the unwarranted spousal pension awarded to Mrs O. This decision lacked compassion, good judgement and showed that the Trustee had failed to avail themselves of all available information or consult with Mr AN's next of kin.

Additional Information discovered

- Although this has not been provided to him by Ford, he was now aware of an Employee Affairs Domestic Partner Benefits schedule that was available on the HR online site at the time of Mr AN's death which in summary said:-
 - Where there was no marital relationship or Civil Partnership the Company may need to satisfy itself that a genuine partnership existed.
 - It identified the requirements for substantiating the circumstances thus demonstrating the existence of a genuine partnership.
 - Employees who wished to discuss the application of these benefit provisions to their circumstances may do so in confidence with HR.
- He was left to wonder why such a document was not provided to family members to assist in their understanding of the Fund Rules.
- He knew Ms O was made aware of this information on the day of Mr AN's death and doubtless used this guidance and HR advice in constructing her petition. Why was a Ford employee provided with such an opportunity when bereaved family members were denied this?
- In considering the validity of Ms O's claim and the fact that she would doubtless have pressed the rights of her case, it was important for the Trustee to understand the relationship from Mr AN's standpoint.
- Rule 26.4 of the Fund Rules stated:

“Alternative Benefit

In the event that no pension is payable to the Widow or Widower of an Active Member who dies in Service leaving surviving Children the Trustee may at its discretion provide the Children with the total cash benefit calculated in

accordance with subparagraph (b) of rule 21.1 as an alternative to the benefits pursuant to Rule 26.1”

- He believed the Trustee’s discretionary determinations could and should have made such an alternative benefit award to Master N. He would like to know:-
 - Had Rule 26.4 been used previously by Trustee in making awards to children.
 - Did the award of Ms O’s spousal pension prevent an award to Master N under Rule 26.4.
 - In previous correspondence the Trustee said it could only pay benefits in accordance with the Fund Rules. Did the Trustee consider the merits of making such an award under Rule 26.4 and what were the reasons for not making such a discretional award to Master N?

31. On 16 April 2019, the Trustee sent a letter to Mr TN and said:-

- It noted the points he had made but would respond specifically to the one about Rule 26.4. The alternative benefit described in that Rule was payable only if “no pension is payable to [a] Widow or Widower”.
- “Widow or Widower” was a defined term. It included not only Widows and Widowers, but also other people chosen by the Trustee to receive a survivor’s pension in accordance with the definition in Rule 1. That being so the alternative benefit was not payable in the present case. These issues were considered by the Trustee when its decisions were made.

32. The Trustee’s position:-

- The Trustee did not accept that incorrect benefits were paid to Master N. The Trustee’s duty was to consider the respective positions of all potential beneficiaries, and to decide the benefits which would be paid to each, taking account of the available evidence. The Trustee submitted that this duty was properly discharged.
- The Trustee was satisfied Ms O was partially dependent on Mr AN.
- The Trustee had full regard to Mr TN’s representations.
- The Trustee did not accept that Mr TN had the right to challenge the award of a Widow’s pension to Ms O as the award to her did not prevent Master N from receiving a benefit which he would otherwise have received.
- When no Widow’s pension was paid, Rule 26.4 gave the Trustee discretion to pay a slightly enhanced lump sum benefit in lieu of a children’s pension. Specifically, the Trustee may choose to pay either:

(1) a Children's pension plus lump sum benefits equal to 400% of Final Pay

or

(2) a lump sum benefit equal to 400% of Final Pay plus the Member's contributions.

Given that Master N was age nine at the date of Mr AN's death and could be eligible to receive a child's pension with annual increases for more than 13 years, the benefit under (2) would have been less valuable than the benefit under (1) which was in fact provided.

33. Mr TN's position:-

- Despite assertions to the contrary, the outcome demonstrated that the Trustee had not taken into consideration the information provided in the supporting document. No clarification or expansion on the information was ever sought by the Trustee and the Trustee also refused to meet with the family.
- The Trustee had a right to use discretion, but the family were concerned at the adequacy of the evidence considered. Especially that relating to the degree of relationship that existed between Mr AN and Ms O, Ms O's level of dependency and the potentially dubious nature of Ms O's claim.
- Ms O was provided with support by Ford in the initial period after Mr AN's death which enabled her to start the application for spousal benefits within two days of Mr AN's death whereas the family did not know at this point that Widow's or spousal pensions could be claimed.
- Ms O does not meet the high bar necessary to satisfy the Widow's pension criteria. In successfully representing such a claim she has defrauded the Fund and prevented Master N from receiving benefits he would otherwise have been entitled to and so desperately /needs.

Adjudicator's Opinion

34. Mr TN's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are provided in paragraphs 35 to 51 below.

35. The role of the Pensions Ombudsman is to consider whether the procedure that the Trustee followed in exercising its discretion was reasonable.

36. There are some well-established principles which a decision-maker is expected to follow in exercising its discretion. The Ombudsman may only interfere with the exercise of discretion if the Trustee acted improperly in reaching its decision in that:-

- It failed to take into account all relevant factors or took into account irrelevant factors.

- It asked itself the wrong questions.
- It misdirected itself on a point of law, for example, by adopting an incorrect interpretation of the relevant rule; or
- It arrived at a perverse decision, that is, a decision no reasonable decision maker properly advising himself of all the relevant circumstances, could reach.

37. If the Pensions Ombudsman was not satisfied that the decision has been taken properly, he could ask the decision-maker to look at the matter again. However, the Pensions Ombudsman would not usually replace the decision with a decision of his own or say what the subsequent decision should be.

38. The death benefits that have been distributed following the death of Mr AN were a Death Grant to Master N, a child's pension to Master N and a Widow's pension to Ms O.

The Death Grant

39. The Trustee had followed the instructions in the EOW that Mr AN completed in order to decide to award the Death Grant to Master N. As Master N is a minor, the Death Grant was held in the DGT. The Trustee appointed Irwin Mitchell as professional trustee to operate the DGT in the interests of Master N.

40. Mr TN made representations that the DGT should be used for the payment of maintenance to Ms MB and Master N when needed and also that it was Mr AN's wish that the Death Grant should be used to pay off the mortgage on the Property.

41. As Master N is a minor, the Trustee did have the discretion to set up the DGT rather than paying the Death Grant to Master N's guardian. It also had the discretion to use a professional trustee. The Adjudicator also noted that the Trustee did provide the possibility within the DGT that the monies provided could be used to pay off the mortgage on the Property if this was required.

42. The fact that Mr TN did not agree with the decision to use a professional Trustee rather than the Estate Trustees did not make the decision improper. The decision had been taken by the Trustee Board, which was the correct party, so the decision could not be challenged on that basis. To show the decision was improper, Mr TN would have needed to provide evidence that the decision was made in consideration of irrelevant, irrational, or improper factors. From the information provided the Adjudicator could not see that this was the case.

43. The Trustee had taken note of the information in the supporting document provided by Mr TN and also consulted with Irwin Mitchell regarding the DGT and how it should operate. In the Adjudicator's opinion there was no maladministration in the payment of the Death Grant.

Child's pension

44. Master N fulfilled the definition of Child in the Fund Rules and so was entitled to receive a child's pension following the death of Mr AN. Mr TN asked that this pension was paid into a trust to be managed by the Estate Trustee rather than paid to Master N's guardian. The Trustee decided that, as Master N was living with his mother who was his guardian, she was the appropriate party to receive the benefit on his behalf. The Trustee did not have a discretion with regard to the award of the benefit as Master N was entitled to it under the Fund Rules.
45. There was no obligation in the Fund Rules for the Trustee to consider the suitability of a guardian to receive the payment of a child's pension. However, the Trustee did take note of the information provided in the supporting document regarding the suitability of Ms MB to receive the pension funds. It decided that there was no reason to deviate from the normal practice of making the payment to the child's guardian. From the information provided the Adjudicator could not see that there has been any consideration of irrelevant, irrational, or improper factors.
46. Mr TN also put forward that no Widow's pension should be awarded, and that Master N should receive an alternative benefit under Rule 26.4 in addition. The application of Rule 26.4 would be likely to result in Master N receiving a lower amount than the payment of the child's pension, and so it would not have been appropriate to have awarded this. In the Adjudicator's opinion there has been no maladministration by the Trustee in the payment of the child's pension.

Widow's pension

47. Mr TN has challenged the award of the Widow's pension to Ms O. He has said she did not meet the relevant criteria and she had been provided with additional information by Ford as an employee that helped her to submit her application for the Widow's pension. This put her in an advantageous position compared to the family.
48. In the Adjudicator's opinion, it was usual for employers to provide information to their employees about pension benefits and how to claim any Fund benefits. Master N has been awarded all the benefits that he was entitled to under the Fund Rules so there was no indication he was in a disadvantageous position due to the information provided to Ms O.
49. Mr TN has challenged the decision to award the Widow's pension on the basis that Ms O did not meet the relevant criteria. In the Trustee's view Mr TN was not entitled to challenge the decision as the payment of the Widow's pension does not impact on the benefits awarded to Master N. The Trustee has said that Master N could be put in a worse position if Rule 26.4 was applied and so the Widow's pension should not be converted into an alternative benefit. In the Adjudicator's opinion, the Trustee was correct, and the award of the Widow's pension had no impact on Master N's entitlement under the Fund Rules.

50. Mr TN has put forward that the purpose of the Widow's pension was to provide support to ensure the ongoing welfare to Master N. The relevant test was financial dependence or interdependence with the member. There was no direction as to how the pension should be used. In the Adjudicator's opinion, the intention of the relevant Fund Rules when they were drafted was that the Widow's pension was to replace the income that was being provided by the member as part of their joint living arrangements. In this case Mr AN did not provide Ms O with any monies that were payable for Master N's living expenses and so there was no expectation that the Widow's pension should replace any of the maintenance payments that Mr AN was making.
51. In the Adjudicator's opinion the Trustee took into account all relevant factors and none that were not relevant. In her view the decisions of the Trustee were ones that a reasonable decision maker could make.
52. Mr TN did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr TN's further comments are provided in summary in paragraphs 53 to 64 below.
53. The Adjudicator had failed to recognise the issue pivotal to this matter which was the criminal intent behind Ms O's claim on Mr AN's pension benefits. The Trustee failed to properly interrogate information provided which resulted in inadequate benefits being ascribed to Master N and Ms MB on his behalf as the guardian, while also providing an inappropriate spousal pension award to Ms O.
54. Mr TN was aware that the first duty of the Trustee in considering a claim against a Pension Fund was the exercise of due diligence in establishing the efficacy of a claim being made. The Adjudicator made no reference to having satisfied herself of proper due diligence being exercised by the Trustee in this regard or in respect of all the information provided by Ms O and Mr TN. Mr TN assumed as he had not been questioned about the information he provided, that it had been accepted as factually correct. However, as Ms O had a capacity for fraudulent misrepresentation such as when she compromised her fiduciary duty as executor of Mr AN's Will it was appropriate that he was provided with reassurance that the Trustee exercised full diligence when considering Ms O's evidence.
55. Mr TN thought there should be additional information provided in the background of the Adjudicator's opinion which related to the behaviour of Ms O:-
 - Within 24 hours of Mr AN's death Ms O contacted the Ford HR department and registered her 'next of kin' status. This was not declared to Mr TN or other family members who understood Ms O was simply seeking to learn the pension rights accruing. This was the first step of her betrayal of Mr AN.
 - The reason Mr TN telephoned the Pension Administrator's Office in March 2018 to enquire about next steps was because Ms O had failed to produce any next of kin forms as promised to the family. He was informed that a floral tribute had been sent to Ms O, as next of kin, and he should speak to the HR Office.

- Mr TN rang the HR Office, explained his disgust with the acceptance of Ms O's claim and asserted the family's next of kin status.
56. The Fund rules covering 'dependency' in respect of any other person, clearly did not embrace the nature of any dependency that Ms O may have evidenced. Detailed evidence already provided by Mr TN made it clear that Mr AN's contributions during the period of co-habitation were simply a matter of household cost sharing. Ms O had proposed a more structured sharing, with set monthly sums due, but Mr AN's ongoing financial commitments, and the additional burden of Ms MB moving back from Scotland with Master N, who was hugely dependent and living in his domestic property, made this impossible. As evidenced Mr AN struggled with managing the financial pressures upon him and his current account was frequently overdrawn at month end.
57. The Adjudicator referred to the fact that the Trustee was satisfied that Ms O was partially dependent on Mr AN. This finding was inconsistent with Mr TN's detailed factual assessment of the circumstances. Mr TN felt the Trustee evidence should be made available, but it was more important for the Ombudsman to properly interrogate the details. With the benefit of his close understanding of these circumstances, Mr TN was confident that a closer examination would fully demonstrate the false nature of Ms O's claim.
58. He could not agree with the Adjudicator's view that Ms O was entitled to access additional information from Fund staff. This may be so in respect of her own pension plan arrangements, but not where a person was presenting questionable input in making a claim against a deceased member's plan. Mr TN was also a retired member of an associate Fund, so by that standard he should have received appropriate access to Fund Trustees, but instead he was kept at arm's length.
59. Ms O's right to claim against Mr AN's pension plan depended on four factors:-
- Any dependency on Mr AN which was created during the brief period of their co-habitation.
 - No dependency was created.
 - Any merging of joint finances such that their management were truly intermingled.
 - Ms O's and Mr AN's finances remained separate with Mr AN making only regular contributions to household expenditure. A detailed spreadsheet analysis of Mr AN's current account has demonstrated this beyond any doubt. He presumed Ms O had provided similar evidence.
 - The creation of any partnership agreements, or joint residency arrangements.
 - Again, there were none.

- Any future dependencies continuing beyond the date of Mr AN's passing.
 - There were none and Master N's future was established with him continuing to live with his mother in Mr AN's Property.

60. It was important to explore what Mr AN's motivations and expectations were before his death. Specifically his motivation for directing that the Death Grant being held in trust for Master N. His Will was aimed at protecting his household property from Ms MB in the event of his death during her tenancy. These arrangements placed major restrictions on how the proceeds of his Will and from the Fund could be utilised. The following outcomes resulted:-

- The majority of the Death Grant, which was held in trust by Irwin Mitchell, was used as a loan to the Property Trust in place of the original mortgage.
- A small balance of approximately £50,000 was held in trust for Master N, from which Ms MB could draw support for his needs.
- Master N was provided with an annual pension of approximately £5,400.
- A Spousal Pension was allocated to Ms O.

The result of these determinations was to create the "poverty trap". The outcomes were partly a result of Mr AN's cautious approach to protecting his assets from the attentions of Ms MB, but counterproductive in supporting Ms MB in raising Mr AN's son.

61. The normal expectations of a bereaved spouse under the same Fund would be to receive:-

- The Death Grant as a cash sum
- An annual pension for all children of approximately £5,400
- An annual Spousal Pension for life, representing 50% of anticipated full retirement pension.

62. These outcomes would have been more representative of Mr AN's expectations and given Mr TN's representations should have been seriously considered by the Fund in its determinations. The only monetary award provided by the Fund for the purposes of day to day living costs to Ms MB was Master N's annual child's pension. This represented a total failure of the Fund to support the dependency of Master N.

63. The Trustees to Mr AN's Property Trust have managed the new tenancy with Ms MB as sensitively as possible but this is now in terminal crisis, which the Adjudicator's judgement is going to make even more difficult. There was an accumulated rental debt of £10,976. Mr TN was not privy to Ms MB's financial circumstances, but these shortfalls are the result of Ms MB's continuing, and forecast, difficulty in generating sufficient household income on a regular basis. Ms MB has paid no rent since

November 2023. The Trust's bank balance was now lower than its remaining debt to its trustees and there were accumulated essential repairs to the property due to be undertaken in spring with estimated repair costs of £2,500. Trustees have been awaiting the outcome of the Ombudsman's review before making final determinations on the future of the tenancy with Ms MB, and the outlook for Ms MB and Master N is bleak.

64. The Adjudicator recognised that Master N was living with his mother but failed to mention the dependency that existed up to the time of Mr AN's death. Under the Fund definitions he understood the dependency of a 'spouse' could include a former wife, from all the detail that has been provided there can be no doubting Ms MB's dependency at the time of Mr AN's death. She also has a continued dependency given the circumstances under which she will need to continue caring for Master N, pay rentals, with only Master N's annual income of £5,400, and her own limited and unreliable earnings. It is Mr TN's understanding that were a spousal pension not otherwise granted, a more meaningful award could have been made to Master N under several provisions of the Fund, and yet none has been provided.
65. I have carefully considered the additional points raised by Mr TN, but they do not change the outcome, I agree with the Adjudicator's Opinion.

Ombudsman's decision

66. I note that Mr AN has put forward a number of moral arguments as to why Ms O should not have been awarded a Widow's pension. It is not the duty of the Trustee to make a moral judgement regarding the suitability of a person to receive benefits from the Fund but rather to decide if they fulfil the relevant criteria in the Fund Rules.
67. The benefits payable under the Fund Rules on the death in service before Normal Retirement Date of an Active Member were, a Widow's pension, a Children's pension, and a lump sum, that is the Death Grant.
68. Master N fulfilled the definition of Child and so received the child's pension. In addition, Mr AN's EOW form indicated that Master N should receive the Death Grant. This was awarded to him in trust as he is a minor. There is no indication that Master N received incorrect benefits under the Fund Rules.
69. In addition to Master N's benefits a Widow's pension was payable. The definition of Widow is the person to whom a deceased Member had been married at the date of death. In the absence of a spouse or Civil Partner who qualified as a Widow or Widower the Trustee had the discretion to include a person not otherwise included in the definition but who was partially or wholly dependent upon the Member at his or her death. The Trustee has exercised its discretion and included Ms O in this category.

70. The Adjudicator has set out the criteria by which Trustee discretion is examined which is that I will only interfere if the Trustee acted improperly in reaching its decision in that:
- it failed to take into account all relevant factors or took into account irrelevant factors;
 - it asked itself the wrong questions;
 - it misdirected itself on a point of law, for example, by adopting an incorrect interpretation of the relevant rule; or
 - it arrived at a perverse decision, that is, a decision no reasonable decision maker properly advising himself of all the relevant circumstances, could reach.
71. The Trustee has reviewed the financial information provided by Ms O and also that provided by Ms MB to decide to whom the appropriate party was to pay the Widow's pension. There was no indication that there has been any criminal intent, fraudulent misrepresentation, or that the Trustee failed to appropriately consider the information that was provided by either party. Mr TN has put forward that the right to claim against Mr AN's pension plan depended on four factors. I would disagree with the factors he has put forward but rather would say that Mr AN and Ms O lived together and did share living costs as Mr TN himself agrees. It is not unreasonable in the circumstances for the Trustee to use this fact as evidence supporting its decision. I am satisfied that the Trustee has used its discretion appropriately in making the award to Ms O.
72. Mr TN has put forward that Ms O had access to Ford staff who aided her to put forward her claim for a Widow's pension. There is no indication that Ms O has been able to do anything other than send in evidence to be considered by the Trustee. I note that Mr TN is unhappy that Ms O had described herself as Mr AN's next of kin in her contact with Ford. I understand that it is important to Mr TN that he and other close family members were considered as Mr AN's next of kin however this is not a definition that is provided in the Fund Rules and does not impact on the payment of pension benefits.
73. Mr TN has raised the issue of Master N's and Ms MB's dependency on Mr AN at the time of his death. Master N has received a child's pension that reflects his status of the child of a member who died while in active service before his normal retirement date. The Trustee has decided that Ms MB has not provided the necessary evidence to show that she should be entitled to receive the Widow's pension. I note that Mr TN has said that Master N and Ms MB should be provided with additional support from the Fund following the death of Mr AN, however, the Trustee can only act within the Fund Rules. The Adjudicator has correctly agreed with the Trustee that Master N would be worse off if Rule 26.4 was applied, and the Widow's pension was converted to an alternative benefit. In the circumstances there are no additional pension benefits that can be paid to Master N, nor is he worse off for a pension being made payable to Ms O.

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74. Mr TN has also put forward what Mr AN's expectations were regarding the payment of his pension benefits from the Fund following his death. Mr AN did provide an EOW regarding the Death Grant and these wishes were followed by the Trustee. The professional trustee has also worked with the family to ensure that the Property was safeguarded. I sympathise with the position in which Ms MB finds herself but I find that the Trustee has properly considered all relevant information in making its decision in order to provide benefits in accordance with the Fund Rules.

75. I do not uphold Mr TN's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
7 March 2024

Appendix - The Ford Salaried Contributory Pension Consolidated Trust Deed and Rules dated 23 March 2011

“Section 1

1. Definitions

“**Child**” means in relation to a Member his or her child including a stepchild, a legally adopted child, and a child whom in the opinion of the Trustee the Member stood in loco parentis and whose inclusion in this definition has been approved by it. For the purposes of qualification for benefit under the Rules such child:

- (a) Must be under age 16 unless the Trustee determines to treat such child as qualifying for benefit under the Pension Fund for the whole or such part of a period while such child is not married and is receiving full time education after attaining age 16 and before attaining age 21 where the Member died before 1 December 2006 or the age of 23 years where the Member died on or after 1 December 2006

“**Dependant**” means in relation to a Member:

- (a) the spouse of the Member or any ancestor or descendant (however remote) of the Member or of his or her spouse and the spouse of any such ancestor or descendant;
- (b) any step-children brothers or sisters of the Member (whether of the whole or of the half-blood) and any descendant of any such brothers or sisters and the spouse of any such brother or sister or of any descendant of a brother or sister;
- (c) any step-brother or step-sister of the Member; whether or not in any of the aforesaid cases the Member was liable for or to contribute to their maintenance or support;
- (d) any other person who in the opinion of the Trustee has been dependent or partly dependent upon the Member for maintenance or support or of whom the Member has notified the Trustee as being a person the Member wished to be considered as a recipient of benefit under the Pension Fund on his or her death.

For the purposes of the foregoing definition:

- (i) “spouse” includes wife husband Widow Widower and any former wife or husband and a person with whom the Member has gone through the ceremony of marriage;
- (ii) “descendant” includes persons claiming by reason of adoption or by reason of having been treated as children of the family;

- (iii) the class of Dependants will be closed at the date of death of the Member except that it shall include persons then conceived who if they had then been born would have been Dependants;

....

“Dependant’s Pension” means a contingent annuity payable to a named Dependant who has been approved for this purpose by the Trustee and commencing not earlier than the date of the Member’s death. The Trustee shall not approve the nomination of a Dependant for this purpose unless it is satisfied that such nominee is either the spouse of the Member or a person to whose maintenance or support the Member has contributed.

...

“Surviving Beneficiaries” means in relation to a Member his or her Widow or Widower and any other Dependant in respect of whom benefit is payable or contingently payable under the Pension Fund or any one or more of any of them as appropriate to the context.

...

“Widow” or **“Widower”** means the person (if any) to whom a deceased Member had been married at the date of death or the person who was the deceased Member’s Civil Partner at the date of death PROVIDED that if death occurs after retirement on pension the Member shall have either been married to or entered into a civil partnership with such person at the date of retirement or for not less than six months before the date of death AND PROVIDED FURTHER that in the absence of a spouse or Civil Partner who qualifies as a Widow or Widower in accordance with the foregoing the Trustee may in its discretion include as a Widow or Widower a person not otherwise within this definition but partially or wholly dependent upon the Member at his or her death. Only a person qualifying as a Widow or Widower without the application of this Proviso is entitled as of right to benefits payable to a Widow or Widower under the Pension Fund

Section VI

Death Benefits

21. Benefits payable on Death

21.1 Death in Service of an Active Member before Normal Retirement Date

On the death in Service before Normal Retirement Date of an Active Member... there shall subject as provided by Rule 21.6 become payable:

- (i) a Widow's or Widower's pension in accordance with the provisions of Rule 22;
- (ii) a Children's pension in accordance with the provisions of Rule 26;
- (i) a lump sum equal to 250 per cent (or 300 per cent in the case of deaths occurring on and after 1 November 2008) of his or her annual rate of Final Pay at the date of his or her death.

21.7 Payment of lump sum benefits

Lump sum benefits payable under this Rule 21 shall be held upon the trusts set out in Rule 30.

22 Widow's or Widower's pension on death of an active member in Service.

22.1 Entitlement

On the death in Service of a Member to whom Rule 21.1 (a) applies a pension shall be payable to his Widow or her Widower of the amount specified in Rule 22.2. Such pension shall commence on the first day of the month next following the date of the Member's death.

22.2 Amount

The annual rate of pension payable to a Widow or Widower pursuant to Rule 22.1 shall subject to reduction in accordance with Rule 29.5 (age difference) be 50 per cent of the pension which would have been payable to the Member had he or she retired on immediate pension under Rule 10.1 (normal retirement)

...

26. Children's Pension on death of an Active member in Service

26.1 Entitlement

On the death in Service of an Active Member where Children's pensions are payable under Rule 21.1(a), a pension shall be payable in respect of each surviving

Child of such Member subject to a maximum of four children of the amount specified in Rule 26.2.

26.2 Amount

The annual rate of the pension payable in respect of each Child pursuant to Rule 26.1 shall be 25% of the pension payable to the Widow or Widower pursuant to Rule 22.2 (or which would have been payable if the Member had left a Widow or Widower) but disregarding any reduction due to age pursuant to Rule 29.5.

...

26.4 Alternative Benefit

In the event that no pension is payable to the Widow or Widower of an Active Member who dies in Service leaving surviving Children the Trustee may at its discretion provide the Children with the total cash benefit calculated in accordance with sub-paragraph (b) of Rule 21.1 as an alternative to the benefits pursuant to Rule 26.1

...

30. Trusts on which Death Benefits to be held

30.1 Trustee's discretion

A benefit which is expressed to be held upon the trusts set out in this Rule 30 shall be held by the Trustee upon trust with power to pay or apply the same within two years from the date on which the Trustee learned of the relevant death to or for the benefit of any one or more of the Dependants or legal personal representatives of the Member in such shares or proportions (if more than one) as the Trustee in its discretion shall think fit and any balance of the said benefit not so distributed within such period of two years shall be paid to the legal personal representatives of the Member.

In exercising such discretion the Trustee may have regard to any nomination made by the Member whether or not the persons so nominated are Dependants, legal personal representatives or other beneficiaries and the Trustee shall have the full discretion to declare such trusts.

31. Incapacity of Beneficiaries

31.1 Powers of Trustee

If a person entitled to benefit under the Pension Fund is a minor...

The Trustee may at its discretion pay or direct the payment of such benefit to the guardian of the minor or to any one or more of the dependants of such person or to any bank or institution or other person to be applied for his or her benefit and payment duly made in good faith to such guardian dependant bank or institution or

other person shall operate as a complete discharge to the Trustee or other the company or body making payment for the money so paid and the Trustee or other company or body as aforesaid shall not be under any liability to enquire into the application thereof.

Alternatively or in addition in the foregoing circumstances the Trustee shall have the power to declare in respect of any benefit payable under the Pension Fund or any part thereof such trusts terms and limitations (including such provisions for maintenance education or advancement or for accumulation of any income during a minority including such discretionary trusts and powers as the Trustee shall from time to time by deed revocable or irrevocable appoint but without infringing the rule against perpetuities) and so that any trust terms or limitations so declared shall be constituted and administered separately from the trusts of the Pension Fund and the Trustee shall have power to appoint as Trustee of such benefit or part thereof any two persons or a corporate trustee (whether or not being a trust corporation) and to remove any such Trustee and appoint any other trustee in place of any one removed (unless such powers are vested in another or in others under the deed of trust)”