

Ombudsman's Determination

Applicant	Ms S
Scheme	BT Pension Scheme (BTPS)
Respondent(s)	BT Pension Scheme Trustees Limited (the Trustee) Accenture (UK) Limited (the Administrator)

Complaint Summary

Ms S has complained that the Trustee and Administrator used an incorrect normal retirement age when assessing her request for early payment of her benefits due to ill health in 2012.

Ms S has also complained that the Trustee and Administrator have incorrectly applied an earmarking order against her "Increase Your Fund" (**IYF**) amount and against her enhanced pension options.

Ms S has complained that she has been provided with incorrect and incomplete documentation.

Ms S has complained that the Trustee and Administrator have applied a non-standard commutation factor without explanation.

Summary of the Ombudsman's Determination and reasons

The complaint should not be upheld against the Trustee or the Administrator because, although the use of an incorrect normal retirement age was maladministration, Ms S did not suffer any injustice as a consequence. The Trustee is required to apply the terms of the earmarking order as they are written and cannot take into account discussions held between the parties prior to the order being made. Ms S has been provided with varying and sometimes confusing information but the Trustee offered appropriate redress for this. The Trustee is not obliged to use the same commutation factor as that used by HMRC for tax purposes.

Detailed Determination

Material facts

III Health Retirement

1. Ms S applied for the early payment of her preserved benefits under the BTPS in July 2012.
2. Rule 6.2 provides for a member with preserved benefits to choose to start receiving them before their normal retirement age. They will be reduced for early payment “on a basis determined by the Trustees on the advice of the Actuary”. Where the Trustee is satisfied that the member is suffering from incapacity the benefits will not be reduced for early payment. Incapacity is defined as:

“Incapacity that entitles the Member to retirement under the Employer’s medical retirement procedure or would have done had the Member been in Service.”
3. Ms S’ case was referred to the Trustee’s medical advisers, Health Management Limited (**HML**). On 28 January 2013, Dr Rustom, a consultant occupational physician, provided a report. He said the criteria for medical retirement were that the applicant was permanently incapable of giving regular and effective service in the duties of their former position by virtue of ill health. The Trustee has confirmed that this is correct. Dr Rustom went on to say “permanently” meant until the normal pensionable age for that person and that this was “currently usually 65 years”.
4. Dr Rustom advised Ms S did not meet the criteria for early payment of her preserved benefits. A summary of Dr Rustom’s report, together with other medical evidence considered by the Trustee in Ms S’ case is provided in an appendix to this opinion. The Administrator wrote to Ms S, on 1 March 2013, saying the Trustee was unable to allow her application based on the advice from its medical adviser. Ms S was informed she could appeal to BT’s chief medical officer, but would be expected to provide further medical evidence to support her case.
5. Ms S made a further application for the early payment of her preserved benefits on the grounds of ill health in January 2014. Her case was referred back to HML. Dr Hunt provided a report, on 2 April 2014, in which she expressed the view that Ms S did not have a medical condition which would render her permanently incapable of giving regular and effective service in the duties of her former position. She quoted the same definition of “permanently” as Dr Rustom. The Administrator wrote to Ms S, on 23 April 2014, saying the Trustee was unable to allow her application based on the advice from its medical adviser. Ms S was again informed she could appeal to BT’s chief medical officer, but would be expected to provide further medical evidence to support her case.
6. Ms S queried whether the correct normal retirement age had been referred to because in her case it should be 60 and not 65. Her application was referred back to

HML who confirmed that their opinion had altered on the basis of this information and they now supported her application. Dr Hunt amended her report accordingly.

7. The Trustee also asked HML if the advice given in their January 2013 report would have been different had they referred to a normal retirement age of 60. Dr Sheard advised, on the basis of the evidence available to them in late 2012 and early 2013, they would not be minded to alter their advice. He said:

“As you surmise the reason for the “changed” advice is the closer proximity to NRD, the lack of new medical treatments offered to or taken up by [Ms S] and “failure” of the condition to respond to the limited new treatments provided. Indeed although I believe the “changed” advice is reasonable and likely to be the opinion of the majority of occupational physicians who considered the case it perhaps tends to the more “doveish” than “hawkish” assessment. Certainly I do not believe that such an opinion would have been reached by the majority of occupational physicians some 14 months earlier.”

8. Ms S’ benefits were put into payment on the grounds of incapacity with effect from 31 January 2014.

Earmarking Order

9. A consent order (the **Order**) relating to divorce proceedings was issued in November 2001. Amongst other things, it stated:

- “(a) PROVIDED that the Applicant shall not have re-married at the date of the Respondent’s retirement/taking of benefits under the terms of her pension with British Telecom (“The Pension”)
 - (i) UPON drawing of the lump sum payable to her upon her retirement/taking of benefits under the terms of the pension the Respondent shall commute the whole of the benefit capable of commutation under the pension;
 - (ii) The Trustees or Managers of the pension do pay or cause to be paid to the Applicant on behalf of the Respondent a lump sum equal to 20% of the maximum lump sum payable to the Respondent; or
- (b) In the event of the Applicant’s re-marriage then the 20% lump sum referred to above should be based on the Respondent’s pensionable service from 22nd September 1984 to the date of this order.
- (c) Any such payment by the Trustees or Managers of the pension shall be treated for all purposes as the payment by the Respondent as the party with pension rights in or towards liability under this order.”

10. Ms S has provided copies of correspondence relating to the negotiations which took place prior to the Order being issued. In a letter to the Administrator, Ms S' solicitor explained that she hoped to put together a formula which would allow 20% of her lump sum commutation to be paid to her former spouse on her retirement, based on her current level of benefits. The solicitor said this would allow Ms S to continue to invest in the Scheme without fear that her further efforts would be as much for the benefit of her former spouse as for her. The Administrator provided some suggested formulae for Ms S and her solicitor to consider. At the time, the Scheme provided a separate lump sum, rather than a commutation option.
11. Ms S left employment with BT, in 2008, as part of a redundancy exercise referred to as "NewStart". Employees leaving under the NewStart exercise were able to use their leaving payments to increase their benefits under the Scheme. They were offered two options: "Increase Your Pension" (IYP), whereby they exchanged all or part of the leaving payment for an additional employer's contribution to the Scheme; and "Increase Your Fund" (IYF), whereby they could pay part of the leaving payment into an investment fund within the Scheme. The FAQ document (dated February 2008) explained:

"IYF is a tax efficient option that enables you to direct part of your Leaver payment into an investment fund within the BTPS, thereby avoiding tax on that payment. Furthermore, when your pension goes into payment it may be possible to take some, or all, of that accumulated fund out as a tax-free cash lump sum as part of your overall BTPS retirement benefits, depending on your individual circumstances. Initially, the money will be paid into the Abbey deposit fund, but you will be able to transfer it to any of the other funds available after you have left BT. You can switch your monies to any of the in-house AVC providers by writing to ..."
12. The FAQ document went on to explain that a member could take up to 25% of the capital value of their benefits as a tax-free cash sum. The document provided an illustration to show that it might be possible to take the whole of the IYF amount where the standard lump sum was less than 25% of the capital value. The illustration used a factor of 20 to convert the pension into a capital value and included a note explaining this was for illustration purposes only.
13. Employees were able to access financial advice from a company appointed by BT; Wealth at Work.
14. Ms S opted for IYF.
15. In 2012, the Trustee notified members of a change to their AVC investment options. It said it had decided to remove the Santander Deposit Fund and replace it with the Standard Life Managed Cash Pension Fund. Members were told that the contributions they had already made would be automatically transferred to the new fund. Ms S received an annual statement from Standard Life in 2014, for the year

ending 31 December 2013. This was headed "Group Additional Voluntary Contribution Plan".

16. On 6 June 2014, the Administrator provided an estimate of the benefits payable to Ms S on her retirement. Its covering letter contained the statement:

"Please note that the figures quoted do not include the 20% deduction from the lump sum to cover the Earmarking Order."

17. Ms S was provided with four options:-

- Taking her maximum tax free cash sum from the BTPS as a priority,
- Taking her maximum tax free cash sum from her AVC fund as a priority,
- Taking the maximum tax free cash sum with pension increase conversion (BTPS priority), or
- Taking the maximum tax free cash sum with pension increase conversion (AVC priority).

18. The different options provided varying amounts of pension and lump sum depending upon whether the lump sum was taken from the main BTPS benefits or the AVC fund and whether Ms S opted for pension increase conversion. A further set of options was sent to Ms S on 18 June 2014. The figures quoted appear to be the same as before.

19. Ms S made a formal complaint on 24 June 2014. She raised the matter of her normal retirement age in relation to her ill health retirement (see previous section) and said the Trustee and the Administrator were applying the Order to her AVC fund as well as her BTPS lump sum.

20. The Trustee sought advice from its solicitors. It has provided a copy of the advice it received. This is summarised below:-

- The Order should be viewed in the light of the BTPS rules and the legislation in force as at the date of the Order. At the time, the BTPS rules provided a separate pension and lump sum for which commutation was not required. They did not permit members to use AVCs to provide a lump sum or commute pension for lump sum.
- Two key events had happened since the Order: the Finance Act 2004 removed the restriction on the use of AVCs for pension commencement lump sums; and the BTPS rules now allowed pension to be commuted for lump sum.
- The Order required Ms S to commute the maximum amount capable of commutation, which would mean her former spouse would receive a significantly larger lump sum. They did not consider this could have been in the reasonable expectation of the parties or the Court at the time the Order was made.

- There would be grounds for Ms S to argue she should not be required to commute her AVCs. Instead she should be able to use them to enhance her pension.
- Both Ms S and her former spouse had grounds to argue their respective cases. The only way to obtain clarity would be for them to reapply to the Court for clarification of the Order.
- The most sensible way forward would be to pay the former spouse 20% of Ms S' main pension lump sum entitlement, excluding the AVCs and without further commutation.

21. The Trustee wrote to Ms S, on 22 July 2014, saying it had been advised to calculate the 20% lump sum based on the maximum amount of Ms S' main BTPS pension capable of commutation. It said this approach was based on the BTPS rules which applied at the time the Order was made, which provided for a separate pension and lump sum with no commutation option. It said it agreed that the calculation should exclude any lump sum derived from Ms S' AVCs.
22. The Administrator provided Ms S with a further estimate of her benefits. This provided just one option: an annual pension of £19,042.48 and a lump sum of £57,127.45. Ms S wrote to the Trustee disagreeing that she should only be offered the one option. She expressed the view that the Order could be satisfied by paying her former spouse 20% of her standard BTPS lump sum while she was free to choose from the other options. In response, the Trustee said it would instruct the Administrator to provide the additional options for Ms S. It went on to say that it would be obliged to pay 20% of any lump sum Ms S opted to receive (excluding AVCs) to her former spouse. The Trustee said, if this was not the intention of the parties to the Order, Ms S and/or her former spouse should seek clarification from the Court. It said it would be obliged to comply with the Order as it was currently drafted.
23. Further benefit options were sent to Ms S in August 2014. These included details of the lump sum which would be payable after deduction of the 20% for each option. Ms S completed the paperwork required and opted for "Standard benefits": an annual pension of £19,042.48 and a lump sum of £57,127.45 (before deduction). She also ticked the box to indicate she wished to arrange her own open market option for her AVC fund.
24. On 28 October 2014, the Administrator wrote to Ms S informing her that a payment of £11,425.49 (20% of £57,127.45) had been made to her former spouse.
25. Following further correspondence from Ms S, the Administrator said, having opted for an open market option for her AVC fund, Ms S could now only use them to purchase an annuity but they would not be subject to the Order.
26. The Trustee did not uphold Ms S' complaints concerning her ill health retirement application or the application of the Order. However, it found that some

correspondence had not been helpful; in particular, letters from the Administrator in June and July 2014 which did not provide information as to how the Order would be applied. It offered Ms S £250 for any inconvenience she had suffered. Ms S declined this offer. The offer was increased to £500 at the second stage of the internal dispute resolution procedure.

27. At the second stage of the internal dispute resolution procedure, the Trustee said HMRC rules allowed an individual to take their benefits as a tax free lump sum up to the maximum amount. Usually 25% of the capital value of the benefits coming into payment under the relevant arrangements under the scheme generating the lump sum payment. It said HMRC rules allowed an individual to take any part of his/her pension benefits as a lump sum up to the permitted maximum; i.e. AVCs, scheme lump sum, defined benefit pension or a combination. However, it said the legislation required the individual to take the remaining 75% as a pension within the same scheme as the lump sum. The Trustee said Ms S had chosen to take the standard scheme pension and lump sum, and had opted to arrange her own open market option for her AVCs (IYF). It offered to allow Ms S to revise her choice and take 25% of her IYF as a tax free lump sum. It said it would, however, be subject to the Order.
28. With regard to the commutation factors used to calculate the various options provided for Ms S, the Trustee said it used scheme specific factors to convert pension into lump sum; whereas the AVC fund could be taken at face value. It said it was for this reason that commuting pension to provide lump sum provided a lower value than taking AVCs as lump sum. In subsequent correspondence, the Trustee responded to Ms Simmonds' raising the Equality Act 2010 by saying it contained exceptions which allowed commutation factors to take account of the difference in life expectancy between men and women, and also to use age criteria.

Ms S' submission

29. Ms S' submissions are summarised below:-
- If the correct pensionable age had been applied at the time of her first application for early payment of her benefits, the outcome would have been in her favour. She had given up work because of ill health and was claiming Employment and Support Allowance (**ESA**). Her position was very strong.
 - The Order was made in 2001 when no enhanced benefits were available. However, the parties discussed what should happen should she leave BT under a redundancy scheme. It was decided that any benefits she should receive should be for her use only and excluded from the Order.
 - When she left, in 2008, her pension rights were frozen and any new changes to the BTPS do not apply to her. Changes in pension legislation cannot be applied retrospectively to her terms, but can give her additional options at the time her pension is released. If the new regulations and rules can be applied to

her frozen benefits, the changes relating to asset splitting and pension sharing should equally apply.

- When she left BT, under the NewStart 2008 scheme, she took part of her lump sum payments tax free in the first and second years and put some in IYF. She was told, if she invested in IYP, the resulting lump sum would be subject to the Order but, if she invested in IYF, it would provide an additional tax free lump sum. At no time was she told her IYF was an AVC. She does not believe that her pension lump sum and IYF sum exceed 25% of her total pension value, based on the transfer value¹ of her scheme benefits plus the IYF.
- The Trustee and the Administrator insist that her IYF is subject to the Order. They said the IYF would only be subject to the Order if she took any of the enhanced options but she was only offered these initially and had to ask for standard terms. She did not request the options available under the current BTPS rules, she asked for those provided as part of the NewStart 2008 process.
- She was also told she had to purchase an annuity with her IYF but has since been told she had to request a transfer to an external provider.
- The Trustee and the Administrator have failed to provide her with copies of the supporting documentation used in making their decision and also the documents and tools provided during the NewStart 2008 process; in particular, a modelling tool used to estimate benefits and tax liability. She recalls there was a pack of information covering payments and options, including investments. No-one has provided her with a copy of this pack and the agreement she signed is missing from her personnel records.
- She has been provided with a copy of FAQs but these refer to the BTRP and SLFPP² which did not come into existence until after the NewStart 2008 scheme. The FAQs referred to the IYF funds being similar to those available under the AVC facility; not the same as.
- The Trustee and the Administrator have not used the standard commutation factor of 20³. They have adjusted the commutation factor on the basis of age and gender which is contrary to the Equality Act.
- She has been dependent on state benefits, such as ESA, for an extended period. This has meant she has been unable to make more than interest

¹ Ms S was provided with a transfer value quote in 2011 of £354,508.50 (excluding AVCs of £39,157.23).

² BTRP refers to the BT Retirement Plan which was set up when Section C of the BTPS closed to new members. It opened to new members on 1 March 2001 and closed on 31 March 2009. SLFPP refers to the Syntegra Limited Flexible Pension Plan. It was a pension scheme for employees of Syntegra Limited which closed when this entity was integrated within BT in 1999.

³ "Relevant valuation factor" section 276, Finance Act 2004

payments towards her mortgage. She has been unable to update and decorate her house, buy a second hand caravan, take planned holidays, or support her daughter in the way she would like to. Her savings have been depleted and she has been unable to capitalise on investment returns. Her mental and physical health have suffered. She has been unable to afford a mobility scooter or complimentary treatment for her back. She has been unable to afford replacement spectacles or minor repairs to her car.

30. Having seen a provisional decision, Ms S made the following further comments:-

- The Trustee has “signed off” on its obligations under the BTPS by providing standard terms and paying 20% of her tax free cash sum to her former spouse. She suggests this forms a legal contract between her, the Trustee and her former spouse.
- She understands that the only option open to her is to purchase an annuity with the outstanding IYF/AVC fund and take 25% of this sum tax free without this being subject to the Order. If this is not the case, she should be able to revert to one of the enhanced options which would provide her with more cash.
- She also questions whether her IYF/AVC funds would be subject to the Order if she were to transfer them to another provider.

Response by the Trustee and Administrator

31. The Trustee submitted a joint response on behalf of itself and the Administrator. It is summarised below:-

- It received a medical opinion that it was correct to change the March 2014 opinion on the basis of a normal pension age of 60, but not the January 2013 opinion. The medical opinion stated this was because, in March 2014, Ms S was closer to her normal retirement age and had not responded to treatment. The medical adviser also pointed to the lack of new treatment options available to Ms S.
- When the Order was made in 2001, Ms S was entitled to a lump sum from the BTPS. Since then, more elements of Ms S’ benefits, including her AVCs, can form part of the maximum lump sum.
- The Order did not explicitly state whether its provisions should be applied in line with the law at the time it was made or the time when Ms S retired. It sought legal advice. It was advised the drafting was unclear but the better view was to interpret the Order in light of the law and the BTPS rules as they applied in 2001. This would mean no commutation of pension to lump sum was available and the Order would not apply to Ms S’ AVCs.
- Ms S was provided with an estimate of benefits containing the one option, under which she would not be able to take her AVCs as a lump sum. She

asked to be provided with all the options available to her and how the Order would apply to each of them. It apologised to Ms S for the confusion caused by its letter and explained why she had been given the one option. It agreed to provide all options but explained it would be obliged to pay 20% of any lump sum to her former spouse.

- It has acknowledged that communication with Ms S relating to the application of the Order fell below the standard it strives for. It has offered Ms S £500 compensation.
- It notes the additional evidence submitted by Ms S in the form of correspondence between solicitors acting for the parties prior to the making of the Order. It acknowledges this indicates that the intention appears to be for the Order to apply only to the BTPS lump sum. However, it is obliged to apply the Order as set out on the face of it. The option of seeking clarification from the Court has always been open to Ms S.
- Ms S has referred to her IYF being invested with the Abbey National Building Society and/or a separate managed fund, and not within the BTPS. Ms S' IYF was invested in the Abbey Deposit Fund, which became the Santander Deposit Fund, and was replaced by the Standard Life Managed Cash Fund. It would expect IYF to be paid into the BTPS and treated as an AVC for the purposes of the individual's retirement benefits. Ms S has not provided any evidence of a separate agreement for her IYF to be made outside the BTPS.
- Ms S has been provided with the FAQs relating to NewStart 2008. These explained how IYF operated. Ms S has complained that the terms of NewStart 2008 have not been applied correctly, but it is not clear what terms she is referring to. She has referred to taking her IYF as an additional tax free lump sum. A general explanation of the position was included in the FAQs but this did not guarantee that an individual would be able to take their entire IYF tax free.
- Ms S opted to take standard BTPS pension and lump sum, and an open market option for her IYF. It became clear she wished to take her IYF as a tax free cash sum and she would have been able to do so if she had selected a different retirement option. She was, therefore, allowed to re-select her retirement option because she was still within the time limit for payment of a pension commencement lump sum. Ms S did not contact the BTPS within the time limits. However, because her IYF remains uncrystallised within the BTPS, she can still take 25% tax free. This was explained in a letter to Ms S. She was also told any lump sum would be subject to the Order.
- Ms S has complained that she was not told she could transfer her IYF out of the BTPS and opt for flexi-access draw down. A letter was sent to Ms S in April

2015, explaining the new pension flexibilities being introduced from 6 April 2015. It cannot advise Ms S of her retirement options outside the BTPS.

- Ms S has complained that it would inform her former spouse of any transfer out of the BTPS. It is obliged to do so under regulation 5(3) of the Divorce etc. (Pensions) Regulations 2000 (SI2000/1123).
- Ms S has complained that she has not been provided with documentation and about the handling of her case. It has acknowledged that some of the communication fell below the standards it strives for and some things could have been explained in more detail. Ms S raised a number of complex queries and time was needed to investigate these and prepare appropriate responses. It is not aware of any documentation, which is available to it, which has not been provided for Ms S. The NewStart 2008 document is not a BTPS document, rather it is the basis upon which Ms S left BT.
- Ms S queried why it had not used the “standard” commutation factor of 20. It has explained that this is not a standard commutation factor, rather it is a simplified commutation factor used for the purposes of calculating whether an individual’s benefits are within HMRC limits. There is no legal requirement for it to use a commutation factor of 20.
- The use of gender specific commutation factors is permitted by the Equality Act 2010 (paragraph 5 schedule 7). The use of age criteria is permitted by the Equality Act (Age Exceptions for Pension Schemes) Order 2010 (SI2010/2133).

Conclusions

III Health Retirement

32. It may be helpful if I start by explaining that my role is not to review the medical evidence and come to a decision of my own as to whether Ms S should have received her benefits in 2012 on the grounds of incapacity. My concern is with the decision making process undertaken by the Trustee. The medical (and other) evidence is reviewed in order to determine whether it is appropriate and supportive of the decision reached. However, the weight which is attached to any of the evidence is for the Trustee to decide, including giving some of it little or no weight. It is open to the Trustee to prefer the advice it receives from its own medical advisers to that from other sources; unless that is there is a cogent reason why it should not, or should not without seeking clarification. The kind of issues I have in mind include errors or omissions of fact or a misunderstanding of the relevant rules by the medical adviser. If the decision making process is found to be flawed, the decision can be remitted for the Trustee to reconsider.

33. Clearly, reference to an incorrect normal retirement age is the kind of error on the part of a medical adviser which would require the Trustee to seek clarification before the resulting advice could be relied upon. The Trustee failed to pick up on Dr Rustom's reference to normal pensionable age being "usually 65 years". Before making a decision in reliance on his advice, it should have clarified matters with him. The failure to do so amounts to maladministration. However, before I can uphold Ms S' complaint, I must also consider whether the maladministration resulted in injustice to her.
34. When Ms S raised the question of her normal pensionable age in 2014, the Trustee asked HML to consider whether the advice it had given in 2013 would have been different if it had been given by reference to a normal pensionable age of 60. HML said it would not have been any different. Dr Sheard said this was because of Ms S' closer proximity to retirement age in 2014, the lack of any new treatment options, and her lack of response to treatment provided. The Trustee has accepted this advice and I have not identified any reason why it should not. I note Ms S was in receipt of ESA at the time. This is a strong indication that she was not, at that time, able to work. However, the BTPS rules require a member to be permanently incapable of giving regular and effective service in the duties of their former position. The criteria for ESA are different and do not consider the permanence of the individual's incapacity. Qualifying for ESA does not mean Ms S met the criteria for early payment of her benefits under the BTPS rules.
35. Ms S is in the same position she would have been in had the maladministration not occurred. On that basis, I do not uphold her complaint about the reference to an incorrect pensionable age in her first application for early payment of her benefits.

Earmarking Order

36. Ms S disagrees with the approach taken by the Trustee in implementing the Order. It is her view that the Order should only apply to her standard tax free cash sum under the BTPS.
37. It is clear, from the evidence provided by Ms S, that the question of what might happen should she be made redundant was considered prior to the Order being made. Having said that, the discussions did not include what might happen if Ms S opted to make an AVC to the BTPS in the event of redundancy. However, the Trustee must implement the Order as it is written. It cannot import conditions into the Order on the basis of prior correspondence between the parties and/or their solicitors.
38. I would agree with the parties that the wording of the Order is not entirely clear. For example, it requires Ms S to "commute the whole of the benefit capable of commutation under the pension". At the time the Order was made, Ms S did not have an option to commute pension for lump sum; the BTPS provided a pension and a separate lump sum. It has been suggested that the Order should be applied on the basis of the law and the BTPS rules which applied at the time it was made. There is

no specific requirement to that effect within the wording of the Order. In the absence of any requirement to the contrary, the Trustee should interpret the Order by giving its words their ordinary everyday meanings.

39. Ms S is required to commute the whole of her benefits under the BTPS which are capable of being commuted. The Trustee must pay 20% of the maximum lump sum payable to Ms S to her former spouse. It is a moot point whether, by opting for a standard BTPS lump sum, Ms S has fulfilled the requirements of the Order but I do not propose to consider this further. My concern is with the Trustee's obligations. I find that it is required to pay 20% of any lump sum payable to Ms S under the BTPS to her former spouse.
40. The main bone of contention is whether this includes any AVCs paid by Ms S. I am referring, of course, to her IYF. I note Ms S does not agree that the IYF is an AVC but, for the purposes of the BTPS and the wider pension legislation, it is. It was a lump sum Additional Voluntary Contribution paid by Ms S under the provisions of the BTPS. The Trustee must treat it as such.
41. Ms S seeks to rely on the terms of NewStart 2008. However, this was the redundancy package under which Ms S' employment with BT was terminated. It cannot override or amend the terms of the BTPS, including the provisions whereby members paid AVCs. As part of NewStart 2008, BTPS members were made aware that they could, if they wished, use part of their redundancy payment to increase their pension benefits. However, once the payment was made, it became subject to the rules of the BTPS and the wider pension legislation. The fact that the payment originated as a redundancy payment did not mean that the Trustee was required, or indeed able, to treat it differently. If Ms S takes part of her IYF as a lump sum, the Trustee must pay 20% of it to her former spouse.
42. I have been provided with a copy of the FAQ document issued to BT employees at the time of the NewStart 2008 redundancy scheme. The copy provided is dated February 2008. I note Ms S has expressed concern that this may not be the original version because of references to other pension schemes. It appears she is mistaken in this and I am satisfied that this is the version which was available to Ms S. The FAQs stated it might be possible for Ms S to take some or all of her accumulated IYF fund as a tax free cash sum. However, the FAQs made it clear this would depend on her individual circumstances. The illustrations provided were clearly marked as such. I do not find that the FAQs were misleading or amounted to a promise to Ms S that she would be able to take the whole of her IYF as a tax free cash sum.
43. Ms S has said she was told, if she invested in IYP, the resulting lump sum would be subject to the Order but, if she invested in IYF, it would provide an additional tax free lump sum. I take her to be referring to the financial advice she received at the time her employment was terminated. There is no evidence that the Trustee and/or the Administrator told Ms S this. The financial advice was provided by an independent

company and arranged by BT. I do not find that the Trustee can be held responsible for any advice given by Wealth at Work.

44. I note Ms S is of the view that there is more documentation relating to NewStart 2008 which the Trustee and/or the Administrator has failed to provide her with. As I have mentioned, NewStart 2008 was a redundancy exercise conducted by Ms S' former employer. The documents she is referring to are not BTPS documents and the Trustee is not responsible for providing Ms S with copies. I note it has tried to provide copies of the documents within its possession and has directed Ms S to BT for any additional documents.
45. This brings me to the information provided for Ms S. The Trustee has accepted that this was not always to the standard it strives for and that more explanation could have been provided at times. Following the agreement to early payment of Ms S' benefits, the Administrator provided Ms S with what appear to be the standard range of options now available to her. The covering letter noted that the figures did not include the 20% deduction under the Order. It could be argued that it would have been more helpful to provide figures which showed what would happen when the Order was applied. On the other hand, it would have been relatively simple for Ms S to apply the 20% herself.
46. The difficulties arose because of the disagreement between Ms S and the Trustee as to the way in which the Order should be applied. Ms S was adamant that she wished to use her IYF to provide a tax free lump sum but that none of this should be paid to her former spouse. As I have said, under the terms of the Order as they stand, this is not possible. Various options have been provided for Ms S. This is largely the result of the Trustee attempting to both accommodate Ms S' wishes and apply the Order correctly. I do not find that the varying information provided for Ms S amounts to maladministration on the part of the Trustee in the circumstances. I say this whilst acknowledging that one option open to the Trustee would have been simply to provide Ms S with the full range of benefit options now available to her, make it clear that it would deduct 20% from any lump sum, and proceed on that basis. It would then have been for Ms S to seek clarification from the Court if she disagreed. This might have reduced the confusion and time taken in settling Ms S' benefits. However, I consider it would be harsh to find the Trustee's attempts to accommodate Ms S' wishes amounted to maladministration. It has offered Ms S £500 for any inconvenience and, since I find this to be appropriate redress, I do not uphold this part of Ms S' complaint or make any alternative directions.
47. This brings me to the question of commutation factors. Ms S questioned the commutation factors used by the Trustee because of the difference in the amount of lump sum she could take depending on whether she commuted pension or took it from her AVC fund. Ms S is of the view that the Trustee should use a commutation factor of 20. There is no requirement that it should do so. HMRC use a factor of 20 in assessing whether benefits have exceeded the relevant limits for tax purposes. This does not mean that individual pension schemes are required to do so. The Trustee

uses scheme specific factors provided by its actuary. These factors take account of the member's gender and age which is allowed for under the Equality Act 2010 and the Equality Act (Age Exceptions for Pension Schemes) Order 2010. It does not amount to maladministration on the part of the Trustee.

48. Ms S has asked whether there is now a contract between her, the Trustee and her former spouse to provide benefits on the "standard terms". Ms S is in receipt of her benefits under the terms of the BTPS; not as a result of a contract with the Trustee. Ms S has suggested that she should be allowed to re-visit her choice to take the standard terms. This option was made available to Ms S by the Trustee and she did not take advantage of it within the required timescale. She has been provided with details of her remaining options.
49. Ms S has also queried what the position would be should she transfer her IYF/AVC to another provider. My concern is with Ms S' complaint of maladministration against the Trustee. It has, quite rightly, informed her that it has an obligation to notify her former spouse of any transfer. In so doing, the Trustee has fulfilled its responsibilities. If Ms S requires advice as to her position on transfer, it would be more appropriate for her to engage a solicitor or a financial adviser.

Anthony Arter

Pensions Ombudsman
16 May 2017