

Ombudsman's Determination

Applicant	Ms M
Scheme	Federated Flexiplan No.1 (the Scheme)
Respondents	Entrust Pension Limited (Entrust)

Outcome

1. I do not uphold Ms M's complaint and no further action is required by Entrust.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Ms M is unhappy that Entrust are providing her with a Pensions Capital Benefit (**PCB**) under the Scheme, rather than a Target Pension Benefit (**TPB**). Entrust has said this is because she did not leave her employment before the required cut-off date for TPB. However, Ms M feels that an exception should be made in this case and that she should be offered TPB.

Background information, including submissions from the parties

4. On 30 January 2003, Ms M was told by her employer – Health Professions Council - she was being made redundant. At the same time, she was told she would no longer be a member of the Scheme. She was placed on gardening leave for three months and her employment officially terminated on 30 April 2003.
5. Entrust subsequently took over the Scheme and imposed a cut-off date for applications regarding TPB from deferred members. It said the cut-off date was 31 March 2003, and members had to have had their employment terminated by this date in order to qualify for TPB. As Ms M's employment had not terminated until a month after the cut-off date, she was not entitled to TPB.
6. Ms M felt this was unfair and, in support of her case, cited the ruling in Entrust Pension Limited V Prospect Hospice Limited (1) & Yvonne Hunter (2) (**the court case**). In particular she highlighted that, within Henderson J's ruling, it said there were anomalies in relation to the cut-off date. Furthermore, Henderson J had ruled that some members whose circumstances were anomalous could be provided TPB.

7. Entrust noted that Ms M was referring to paragraphs 113-118 (see appendix) of the judgment. It agreed that Henderson J had discussed anomalies. In particular, he had referred to a number of known cases which could be considered anomalous in relation to the cut-off date. Henderson J had said there was one anomalous case where the member should be seen as falling on the favourable side of the cut-off date (**the favourable anomaly**), and four where the members should be considered as falling on the wrong side. Regarding the four members, Henderson J noted that they had left service after the cut-off date and simply received old style leaving service statements. For this reason, they did not fall under his definition of a favourable anomaly.
8. Ms M said that, as Henderson J had discussed known anomalies, there must be unknown anomalies by default. She said her case was an unknown anomaly. She added that it need not align with the exact circumstances of the favourable anomaly for Entrust to consider she should be offered TPB too.
9. Entrust did not agree that Ms M's case was similar to the favourable anomaly, but it agreed that the anomalous cases considered by Henderson J were not an exhaustive list. However, it did not feel – by refusing to provide Ms M with TPB – that there had been an inconsistency or discrepancy in relation to the ruling. It therefore maintained its position that Ms M was not entitled to TPB.

Adjudicator's Opinion

10. Ms M's complaint was considered by one of our Adjudicators who concluded that no further action was required by Entrust. The Adjudicator's findings are summarised briefly below.
 - The court case indicates that the cut-off date ought to be applied strictly. Therefore, Entrust has not acted unreasonably by applying it strictly.
 - Henderson J indicated that it is unlikely there would be other anomalies in relation to the cut-off date. However, even if there are, there is nothing about Ms M's circumstances to show that she should be treated as another favourable anomaly.
11. Ms M did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. In response to the Adjudicator's Opinion, she has emphasised that her circumstances are unusual and out of her control.
12. Ms M's further comments do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Ms M for completeness.

Ombudsman's decision

13. Whilst I sympathise with Ms M's position, I do not feel it is relevant that her termination date was out of her control. I believe that for other Scheme members affected the termination date would have been out of their control. As such, her circumstances are not unusual in this regard.
14. The favourable anomaly Henderson J considered in the court case included a Scheme member whose termination date fell long before the cut-off date. Ms M's termination date does not fall before the cut-off date. Therefore, Entrust has acted reasonably by not treating Ms M's case as another favourable anomaly. I agree with Entrust that its decision is consistent with the ruling of the court case, and I therefore I do not find that there has been maladministration.
15. If Ms M feels her termination date should have been before the cut-off date, then that is a matter she would need to raise with her employer and it is not for me to amend her termination date retrospectively.
16. I do not uphold Ms M's complaint.

Anthony Arter

Pensions Ombudsman
31 January 2017

Appendix

Extract from Henderson J's ruling in *Entrust Pension Limited V Prospect Hospice Limited (1) & Yvonne Hunter (2)* (paras 113-118):

113. In view of the conclusion which I have reached, it is now necessary to consider the precise form of declaration which the court should make. Entrust is rightly concerned that any relief granted by the court should be both based on a clearly identifiable principle and administratively workable, while recognising that this process involves two stages. The underlying principle must be determined without regard to administrative workability, and it is only when that has been done that the court can consider how best to assist the Trustee in the practical application of the declaration which it has made.
114. The question of principle requires (a) a cut-off date to be identified when the new policy came into effect, and (b) a decision on what the criterion should be for placing individual cases on either side of the cut-off date. There appear to be two realistic possibilities. First, the Previous Trustee might have decided that all members who left service after the cut-off date would not receive target benefits on leaving service, but that all who left on or before that date would do so. Alternatively, the decision might have been that all members whose deferred benefits fell to be computed after the cut-off date would not receive target benefits, but that all those whose deferred benefits had been computed on or before that date would do so. I have little hesitation in preferring the former of these alternatives. The date of leaving service is the date when the status of the member changed from active to deferred, and when the entitlement to a deferred pension arose. It therefore seems logical that the member's deferred pension should be calculated by reference to criteria in force on that date, even if the calculation was not performed until later. By contrast, the date on which a member's deferred benefits were computed could have varied for a number of reasons, which may or may not have been within the Previous Trustee's control. In my view the likelihood is that the decision to move to the new basis of calculation was taken by reference to the date when members left service, and I infer that this is indeed what happened.
115. The next question is what the cut-off date was. At first blush, one might expect it to have been 1 April 2003, that being the first day of the new Scheme year. However, at least two leaving service statements in the new form were issued to members who left service on 31 March 2003, and after some initial hesitation counsel for the members submitted that this was the appropriate date, because it is otherwise very hard to understand why the starting date of the new policy should have been anticipated in this way. As with so many aspects of this case, certainty is impossible on the available evidence; but on balance I agree with the submission of counsel for the members, and I am encouraged to do so by the fact that 31 March 2003 was a Monday. It seems to me not implausible that the Previous Trustee may have decided to introduce the new policy at or around the start of the new Scheme year, and then for administrative convenience placed the cut-off date at the beginning of the relevant working week.

116. If I am right this far, there remains a small handful of anomalous cases for which a solution needs to be found. There is one member, Ms Kathryn Martin, who left service on 31 October 2002, well before the cut-off date, but nevertheless received a new style leaving statement, the surviving copy of which is undated but appears not to have been issued until 2005. On the available evidence, there is no explanation for this long delay, nor is it clear whether she had received any other leaving service statements in the meantime. In my view the first step should be for to Entrust to revisit Ms Martin's file to see if any further light can be thrown on the history of her case after she left service. Prima facie, she was clearly entitled to receive target benefits, because when she left service those administering the Scheme were still under instructions to make awards on that basis. If no further evidence emerges, I would incline to the view that she was indeed entitled to receive target benefits, and that she was erroneously sent a statement in the new form in 2005. It is easy to see how such an error could have occurred, since the new system had by then been in operation for some two years.
117. On the other side of the line, there are four known cases where members left service after the cut-off date but nevertheless received old style leaving service statements. For example, Mrs L Roworth-Stokes left service on 6 June 2003, but was nevertheless sent a statement in the old form on 25 July 2003. In my view these few instances must be regarded as errors, and counsel for the members expressly accepted that they should be treated as falling on the wrong side of the cut-off date. That conclusion is, of course, without prejudice to any personal claim that they may be able to bring against the Previous Trustee on grounds such as misrepresentation or estoppel.
118. Apart from the few anomalous cases which I have mentioned, the existence of which should occasion no great surprise in a Scheme as carelessly administered as this one at times appears to have been, there is as I understand it no conceptual or evidential difficulty in separating members who left service by reference to a cut-off date of 31 March 2003, and in the vast majority of cases the leaving service statements are consistent with that conclusion. Accordingly, subject to any further submissions when this judgment is handed down, that is the nature of the basic declaration which I propose to make.