

PO-11175

Ombudsman's Determination

Applicant	Mrs T
Scheme	Federated Flexiplan No 1 Scheme (the Plan)
Respondent(s)	Entrust Pension Limited (the Trustee)

Complaint summary

Mrs T has complained that the Trustee has not calculated her benefits in accordance with two judgments issued by the Courts in 2012.

Summary of the Ombudsman's determination and reasons

The complaint should not be upheld against the Trustee because it has correctly applied the Plan rules and the Court judgments in Mrs T's case.

Detailed Determination

Material facts

Background

1. The Plan is an industry-wide occupational pension scheme established in 1966. It closed to future accrual on and from 31 January 2010. Mrs T joined the Plan in 1992. She reached her normal retirement age in 2011 but did not retire until 2014.
2. Up until 10 July 2006, it had been the practice to pay members benefits based on length of pensionable service and final or average salary. These were referred to, in Plan literature, as target benefits. The 2002 actuarial valuation disclosed a funding deficit of £1.323 million. The 2005 actuarial valuation disclosed a funding deficit of £19.894 million. The previous trustee decided to cease providing target benefits for members who retired after 10 July 2006.
3. The Trustee became the sole corporate trustee on 15 May 2007. It decided to refer certain matters to the Court. These were the subject of two judgments: *Entrust Pension Limited v Prospect Hospice and another* [2012] EWHC 1666 (Ch) (the **First Judgment**) and *Entrust Pension Limited v Prospect Hospice Limited* [2012] EWHC 3640 (Ch) (the **Second Judgment**).
4. The Plan was established by an interim deed dated 12 August 1966. The first definitive deed was dated 12 November 1968 and included a schedule containing rules (the **1968 rules**). This was replaced by a deed dated 9 September 1976, with attached rules (the **1976 rules**). The 1976 rules were replaced by deed dated 29 September 2005, with attached rules (the **2005 rules**).

The 1976 rules

5. Rule 11(2) provided,

“In the case of every Member who becomes entitled to retire on pension the Trustee shall ascertain the aggregate amount of all sums credited to or in respect of such Member in the accounts of the Fund ... and there shall be added thereto (a) compound interest calculated at the rate of 4% per annum with annual rests ... and (b) such an amount (if any) as in the opinion of the Trustee may properly be added thereto as representing the retiring Member’s share of any actuarial surplus arising in the Fund as to which the decision of the Trustee shall be final and shall not be questioned. The total amount ascertained in accordance with the foregoing provisions is hereinafter referred to as the Member’s “Pension Capital”.”

6. Rule 41 provided,

“All or any of the provisions of the Group Plan may from time to time be altered by Deed executed by the Trustee PROVIDED ALWAYS

- (1) That no alteration or addition shall prejudicially affect any pension in course of payment or benefits already secured for Members at the effective date of the alteration ...”

The 2005 Rules

7. Rule 11(3) of the 2005 Rules states,

“In the case of a Member who becomes entitled to retire on pension the Trustee shall determine his ‘Pension Capital’ being the amount standing to the credit of his Account and such amount, if any, as in the opinion of the Trustee may properly be added thereto as representing the retiring Member’s share of any actuarial surplus arising in the Plan as to which the decision of the Trustee shall be final and shall not be questioned.”

Court Orders

8. Following the First Judgment, the Court issued an order (the **First Order**). This provided (amongst other things),

“The Trustee’s duty to consider whether to add an amount representing a share of surplus under Old Rule 11(2) and New Rule 11(3) continues to be capable of performance until such time as the Trustee determines that there is no surplus for the purpose of those Rules, at which point the power to credit a share of surplus lapses. While the duty remains performable it must be performed by reference to the amount of actuarial surplus at the date the duty is performed.

The [Trustee] is entitled, in administering the [Plan], to proceed on the footing that the Trustee’s duty to consider crediting a member with an amount representing a share of surplus under Old Rule 11(2) and New Rule 11(3) lapsed on 10 July 2006.”

9. A further order (the **Second Order**) was issued following the Second Judgment. This defined “Affected Members” as “all members who left service since the date of the Old Rules dated 9 September 1976 but who retired or will retire on or after 10 July 2006”. The Second Order provided,

“There was a valid exercise of discretion by the Previous Trustee under Rule 11(2) of the Old Rules to grant a deferred pension based on salary and service as at the date of leaving service in respect of all Affected Members leaving service before 31 March 2003, but not in respect of any Affected Members leaving service on or after 31 March 2003.

In respect of all Affected Members leaving service on or after 31 March 2003, the Trustee is entitled to administer and, in due course, wind up the Plan on the basis that none of those members received any augmentation of benefits out of surplus under Rule 11(2) of the Old Rules or 11(3) of the New Rules prior to 10 July 2006.”

Mrs T's position

10. The key points in the various submissions provided by Mrs T's representative are summarised below:-

- Mrs T is entitled to a final salary pension either as at today or as at the date she retired.
- Mrs T is entitled to the greater of her Pension Capital or her target pension. She should receive compensation equivalent to the capital required to purchase an annuity equal to her final salary pension, increasing at the lesser of CPI or 3% per annum in payment, less the pensions provided by the Plan and her stakeholder scheme. It should be calculated as at the date she retired (2014) and interest at the rate of 8% applied (the court rate).
- Members had always been entitled to the greater of the Pension Capital or the target pension. The final salary benefits had always been higher, so the trustee stopped bothering to calculate the money purchase benefits. The judge refers to a new system being introduced from 2003, but this was a restoration of the old system.
- The 2005 deed cannot impact on Mrs T's claim. She joined the Plan in 1992 so the 2005 deed cannot govern her rights to benefit. If it is a deed of variation, under rule 41 of the 1976 rules, it can only govern rights for the future and could not take away entitlements which she had already accrued.
- The Trustee is relying on the 2005 trust deed. It appears to be the Trustee's case that the 2005 deed gave it the discretion to pay members the lower of the two benefits. He does not accept that the Trustee could take such a step unless it had first told the members. The change took away nearly half the member's pension and changed their position from receiving a final salary pension to receiving contributions plus interest at 2% to purchase an annuity. No-one who understood this change would have agreed to it. The accounts show that the Plan fund grew by 11% in 2004/05 and 20% in 2005/06. He asks why the members would have settled for 2% growth.
- The language of the 2005 deed is not clear, comprehensible, accurate, free of jargon, or written in such a way as the average member of the Plan could understand it. This amounts to maladministration. The then trustee should have informed the members of the existence of the 2005 deed, offered to provide them with a copy, and provided a simple explanation of it. The fact that the trustee did not tell the members about the 2005 deed must amount to maladministration and prevent the Trustee from relying on it. The Trustee must have known the members had not been told about the 2005 deed but did nothing to rectify the situation.

- Between the 1968 rules and the 1976 rules, the trustee changed the wording so that it took away the discretion (under rule 14) to purchase an annuity. This should have been considered by the judge but he had been denied information as to the true wording of rule 11(3).
- He does not accept that the trustee had any discretion under the 1976 deed.
- The reference, in rule 11(2), to an actuarial surplus was inaccurate. The courts have distinguished between simple mathematical calculations performed by an actuary and calculations involving actuarial factors¹. The surplus is not defined in the Plan rules and can only be the difference between the amount needed and the amount available. The amount needed is the contributions plus 4% interest. Neither calculation involves actuarial factors.
- The reference to a discretion to apply the surplus is an illusion. There is no residual clause in the 1976 deed so there is nothing the Trustee can do with any part of the surplus which it does not give to the retiring member.
- The Plan rules say the member's Pension Capital comprises contributions plus interest plus a share of surplus. The Trustee says the target benefit comprises contributions plus interest plus a share of surplus. The Trustee is, therefore, arguing that the Pension Capital and the target pension are the same thing. Consequently, its discretion "vanishes into thin air".
- Rule 11(3) provides for the payment of a lump sum. It states that the amount remaining after payment of the lump sum shall be used by the Trustee to purchase an annuity. This is mandatory. If the Trustee is required to purchase an annuity, it did not have discretion to do something else; particularly to provide target benefits, which are not mentioned in the Plan rules. Therefore, the Trustee did not have discretion in the provision of benefits. Rule 11(3) was dismissed, as simply giving the member an option to take a lump sum, by the judge in the First Judgment. The judge, in the First Judgment, repeatedly said "shall" means it is mandatory. If it is mandatory to purchase an annuity, there cannot be a discretion to do something else; particularly to pay target benefits which are not mentioned in the deed or rules.
- The Trustee is saying that it had discretion to pay target benefits because it had discretion to add a share of surplus to the Accrued Amount. It may have had discretion to add a share of surplus, but this is a discretion to calculate the Pension Capital. The Trustee had no discretion as to what to do with the Pension Capital.

¹ *Aon Trust Corporation v KPMG* [2005] EWCA Civ 1004

- The question before the courts related to the exercise of the discretion to add a share of surplus to a member's benefits. The court was not asked if there was a discretion. There is, therefore, no judgment on this point and the Ombudsman may consider it.
- Rule 3 in the 1976 rules defines the Plan fund as contributions, transfer values, interest, dividends and other income. This is a straightforward money purchase scheme. There is no target in such a scheme and so there can be no surplus.
- The Trustee has asserted that the judge had found the Plan to be a defined benefit occupational pension scheme. It has, however, acknowledged that the Plan rules make no reference to target benefits. His interpretation of the judgment was that the judge found that the Plan was neither a defined benefit scheme nor a money purchase scheme but had elements of both. If the Plan is a defined benefit scheme, the Trustee would not need discretion to pay defined benefits. Correspondence shows that the Trustee demanded increased contributions from the employers which demonstrates a balance of cost obligation on the employers. The Plan must, therefore, be a final salary scheme.
- Given the apparent contradictory nature of the Plan, he suggests that there may be a lost deed which explained it all.
- If the Plan is a money purchase scheme which can only pay money purchase benefits, the trustee has been paying the investment return on Mrs T's contributions to earlier members in order to pay them final salary benefits. The extra cost of the final salary benefits could not have come from anywhere else because there can be no surplus in the Fund. This is a breach of trust and Mrs T is entitled to compensation.
- In the Second Judgment, the judge referred to a transfer value guaranteed for three months. The judge appeared to have concluded that the trustee would convert the Pension Capital into a pension, by way of a compulsory purchase annuity, and then turn it back into a transfer value. This is a tortuous and expensive way of changing a lump sum for no reason. Furthermore, he cannot see how the change from Pension Capital to deferred pension could work. The court and the parties appear to have looked at the Plan from a theoretical point of view, rather than how it would work in practice.
- As at 10 July 2006, the members were entitled to the greater of the two benefits. This was their accrued entitlement for the purposes of the Pensions Act 1995. Rule 41 of the 1976 deed states the Trustee cannot make changes which take away secured rights. The July 2006 change not only removed entitlement to the greater of the two benefits but did so from the date the member joined the Plan. This is in breach of rule 41 and also section 67 of the Pensions Act 1995.

- The rate of interest which should be applied to the contributions is 4%; as provided for under rule 11(2) of the 1976 rules.
- If, as the judge found in the Second Judgment, the Plan is an underpin scheme, rule 11(2) makes sense. The Trustee could be paying both final salary and money purchase benefits and the surplus would be actuarial. The Trustee would need discretion as to how much of the surplus to apply so as to ensure the Plan had enough to meet its obligations.
- In the Second Judgment, the judge said a report of June 2003 gave the impression that, when a member left service, he would be told both his Pension Capital and 'target pension'. Both would be revalued during deferment and recalculated at retirement. The member would receive whichever was the greater. Previously, members would have been told they would get a target pension. The judge concluded a new system was put in place from April 2003; the date of change being 31 March 2003.
- The judge found that the new system was incompatible with the valid exercise of discretion. The new system must still apply today. The new system does not allow for any discretion.
- The judge was only making a decision as to the rights of members who had left before 31 March 2003. He did not appear to consider the rights of members who left between 31 March 2003 and 30 September 2005. Since he concluded that the old system no longer applied after 30 March 2003, it is logical to conclude that the new system applied to all members from 31 March 2003.
- By cutting off his judgment at 31 March 2003, the judge in the Second Judgment left the entitlement for those members who became deferred members after that date unclear. The new system must apply to these members. This raises the following questions:-
 - Did the 2005 deed validly vary the new system and, if so, how and from when?
 - Did the 2006 announcement vary the new system and, if so, how and from when?
 - If the answer to either of the above is affirmative, did the change take effect from the date of the announcement or did the Trustee have the power to make the change retrospectively from the date the member joined the Plan?
- In the Second Judgment, the judge decided that a member who retired or took a deferred pension after 31 March 2003 was entitled to the greater of their target pension or their Pension Capital. The Trustee is paying the lesser of the two.

- The Trustee appears to accept that a new benefit system was introduced with effect from 31 March 2003 but says it only applied to “Affected Members”. It defines Affected Members as those who took a deferred pension before 1 October 2005. The judge found the system changed on 31 March 2003 and the Affected Members are those who took a deferred pension before this date. Since the new rules set out what is to happen when a member takes deferred benefits in the future, the rules do not just apply to Affected Members.
- Mrs T is not bound by the Court’s decisions, if she does not agree with them, because she was denied the opportunity to be represented in the proceedings. A representative employee was chosen but she took her deferred pension before Mrs T joined the Plan and could not, therefore, have represented her. It is arguable whether the proceedings related to active members after 2006. The judge in the Second Judgment was trying to deal only with deferred members. However, either directly or by implication, he has dealt with the rights of active members. This is being used against Mrs T. If the active members were not party to or represented in the proceedings, there must have been a breach of natural justice and/or the Human Rights Act.
- The definition of “Affected Members”, in the Second Order, is noted but there is no such definition in the judgment. The definition would cover Mrs T but it is not apparent that the judge considered her entitlement other than peripherally. Having seen the First Judgment, he wrote to the judge and was told he no longer had a role in respect of the matters covered by the First Judgment. He was told there was to be a second hearing but that this would relate to members covered by the 1976 Rules which did not apply to Mrs T.
- There are a number of errors in the First Judgment. At paragraph 5, the judge appeared to believe that the trustee calculated the accrued amount and then topped this up to meet the cost of an annuity which would provide the target pension. This is wrong. The 1998 accounts show that the trustee was paying a pensions payroll. At paragraph 24, the judge noted that rule 11.3 dealt with the calculation of the lump sum and thereafter ignores it. However, rule 11.3 does more than this; it provides that the trustee shall use the balance of the Pension Capital to purchase an annuity. He asks how the trustee could provide a final salary pension if it was required to purchase an annuity.
- The Trustee has refused to say when Mrs T became a deferred member of the Plan. She has not been provided with a leaving service statement. All that the Trustee will say is that there were no active members of the Plan after 31 January 2010.
- At some time in 2008 (likely to have been November), Mrs T ceased to contribute to the Plan and began contributing to a stakeholder scheme. There is reference to this in an announcement dated 31 July 2009. The Plan was closed to future accrual in February 2010. Mrs T must be a deferred member

but it is not clear from which date. She has never received a leaving service statement.

- The information provided to Mrs T would have led her to assume she had joined a final salary scheme. The trustee intended her to believe this.
- The Trustee misrepresented the result of the High Court judgments in announcements to members.
- In 1997, Mrs T received a letter from her employer. Although the letter was on her employer's headed paper, it must have been prepared by the then trustee because it contains calculations of the cost of providing for pension increase requirements introduced by the Pensions Act 1995. The trustee must be liable for what the letter says because it was written on its behalf. This letter told Mrs T that she had always been entitled to a sixtieth final salary pension and, if she increased her contributions, she would continue to be so. If the Trustee's position is accepted, this was a lie intended to deceive members into increasing their contributions. Mrs T agreed to pay the increased contributions.
- Mrs T received an announcement attached to her 1997 benefit statement which said the same thing as the employer's letter. It said members who did not pay the increased contributions would receive a sixtieth pension for service up to 31 March 1997 and eightieths thereafter.
- An announcement attached to Mrs T's 2001 benefit statement is the first to talk about guaranteed fund and target benefits. It stated that, on retirement, members would get the greater of the guaranteed fund and target benefits. This document was not referred to by the judge in the Second Judgment; although he should have been provided with a copy.
- Mrs T received an announcement dated October 2006. Mrs T cannot recall when she received this announcement but it is unlikely to have been before March 2007. It was maladministration for the trustee to decide to alter the Plan in such a way as to have a drastic effect on members' pensions and not tell them until several months later.
- Mrs T was told, in 2006, that her pension would be halved. She was due to retire in 2012 but continued to work until 2014. She now exists on a reduced pension. The compensation referred to above should be increased by 100% to compensate for distress and inconvenience and to act as penal damages.
- In 2006, it was announced that Capita Business Services had bought the FPS Group. They would have bought the group with all its assets and liabilities, including liabilities for dishonesty, negligence and maladministration. He assumes that, when the Trustee took over in 2007, it must similarly have bought the Plan with all its assets and liabilities. It must, therefore, be liable for anything which happened previously.

The Trustee's position

11. The Trustee's submission is summarised below:-

- It is satisfied that Mrs T's entitlement under the Plan is to her Pension Capital. She is not entitled to a target pension. Her benefits have been calculated in accordance with the Plan rules and the Court's ruling.
- The Plan rules provide that it may augment a member's Pension Capital by adding an amount representing a share of any surplus. The level of augmented benefits provided is referred to in certain Plan documentation as a target pension. The Plan rules themselves make no reference to a target pension.
- Until 10 July 2006, the practice was for the trustee to provide members with a target pension. Following deterioration in the Plan's funding position and after taking legal advice, the previous trustee decided the target pension would no longer be provided for future retirements.
- Mrs T became a deferred member on 31 January 2010. She reached her normal retirement age in 2011. She postponed taking her Plan benefits until 2014, when she transferred her Pension Capital benefits out of the Plan.
- Following its appointment, a question arose as to how the trustee's discretion had been and should be exercised. This, together with other questions relating to the construction of the Plan rules, were put to the Court. The issues related to the interpretation of both the 1976 rules and the 2005 rules.
- The 2005 rules apply to all members who were in active service on 1 October 2005. This includes Mrs T. Consequently, the findings by the Court in respect of the 1976 rules do not concern Mrs T.
- The key points from the First Judgment are:-
 - The trustee has a discretion to add an amount representing a share of actuarial surplus to the member's Pension Capital but is not obliged to do so.
 - Under the 1976 rules, the trustee was required to exercise its discretion at the date the member ceased to be in pensionable service.
 - Under the 2005 rules, the trustee was required to exercise its discretion at the date the member retired.
 - The duty to consider adding an amount to the member's Pension Capital continues to be capable of performance until such time as the trustee determines there is no surplus; at that point, the power to credit a share of surplus lapses.

- It is entitled to proceed on the footing that its duty to consider crediting a member with a share of surplus lapsed on 10 July 2006.
- In the Second Judgment, the Court concluded there had been a valid exercise of the trustee's discretion to grant a target pension as at the date of leaving service for those members who had left service before 31 March 2003, but not in respect of members who had left on or after 31 March 2003 and who retired or would retire after 10 July 2006.
- The Second Order provides that the Trustee is entitled to administer (and wind up) the Plan on the basis that none of the members who had left on or after 31 March 2003 and who retired or would retire after 10 July 2006 had received an augmentation of benefits.
- Members were provided with regular updates about the Court case. Section 5 of Member Announcement 8 summarised the effect of the Court's ruling.
- The 2005 rules provide that discretion to augment Mrs T's benefits would have been exercisable on 28 August 2014; when she retired. However, its ability to exercise this discretion lapsed on 10 July 2006. Furthermore, the Plan was still in deficit when Mrs T retired.
- Mrs T's representative has incorrectly referred to certain parts of the Court Judgments which relate to the 1976 rules as applying to her. The 1976 rules do not apply to her. However, even if they did apply, Mrs T would still not be entitled to a target pension because she did not leave pensionable service before 31 March 2003 or retire before 10 July 2006.

Conclusions

12. I will start by saying that, despite Mrs T's representative's dissatisfaction with the First and Second Judgments, both the Trustee and I are bound by them. The proper construction of the Plan rules has been decided by the Court and the question for me is whether the Trustee has applied the rules correctly in Mrs T's case. This position is unaffected by anything Mrs T's representative may have been told by the judge's clerk.
13. For the avoidance of doubt, I find that the 2005 rules apply in Mrs T's case. She was an active member of the Plan on 1 October 2005 when the 2005 rules took effect.
14. I note the comments as to the validity of the 2005 deed. Rule 41 of the 1976 rules provided that "no alteration or addition shall prejudicially affect any pension in course of payment or benefits already secured for Members at the effective date of the alteration". I do not find that any amendment introduced by the 2005 deed prejudicially affected any benefits already secured for Mrs T. The main alteration to affect Mrs T's benefits was the change in the interest rate which would be applied to the contributions paid in respect of her service after 31 March 2003. The Trustee later agreed that interest on employer and employee contributions continued to accrue at

4% until 29 September 2005 (Announcement No.5). This change did not, therefore, affect any benefits already secured and was not in breach of rule 41. I do not agree that the alteration to the interest rate changed the nature of Mrs T's entitlement from a final salary pension to an annuity based on contributions plus interest at 2%. Mrs T had never been entitled to final salary benefits under the Plan rules. I note Mrs T's representative argues that members had been entitled to the greater of their Pension Capital or their target benefits. This is not the case. Members were/are entitled to the Pension Capital; the target benefits were provided by the trustee's exercise of its discretion to add a share of surplus.

15. On that point, I do not agree that the trustee was paying Mrs T's entitlement to investment return to other members. Mrs T's entitlement was to the amount standing to the credit of her account; i.e. contributions plus interest at the specified rate.
16. Mrs T's representative seeks to argue that the Trustee has no discretion because rule 11(3) requires it to purchase an annuity. As I have mentioned, the interpretation of the Plan rules has already been determined by the Court. However, a requirement for the Trustee to purchase an annuity does not preclude a discretion to add to the amount used to purchase the annuity. The argument is somewhat academic since the Court found that the duty to consider exercising the discretion lapsed on 10 July 2006.
17. It is for this reason, I have noted Mrs T's representative's arguments concerning the nature of the Plan and the practical difficulties associated with running a money purchase arrangement on a final/career average salary basis but I do not consider it necessary to discuss them in any detail. Nor do I think it helpful to Mrs T's case to speculate on the possibility that there might be a missing deed.
18. Mrs T's representative has asked why the members would have settled for 2% interest. It is not clear whether he is suggesting the members might have objected to the amendment had they been notified before the deed was executed. There was no requirement for the trustee to consult members before making this alteration. The disclosure requirements in force at the time required the trustee to notify members of a material alteration "before that change takes effect, where it is practicable so to do, and in any event not later than 3 months after the change has taken effect"². Members appear to have been notified by an announcement dated October 2006. This is outside the timescale allowed for by the relevant regulations. However, the Trustee was not responsible for this and it cannot amount to maladministration on its part. I do not find that it affects the validity of the 2005 deed.
19. Mrs T's representative argues that the language of the 2005 deed is not clear, comprehensible, accurate, free of jargon, or written in such a way as the average member of the Plan could understand it. This may be the case but it does not amount to maladministration on the part of the Trustee or call into question the validity of the 2005 deed. The benchmark to which Mrs T's representative refers is intended to

² Regulation 4(5) The Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (SI1996/1655) (as amended)

apply to scheme literature written specifically for members, rather than the legal documentation governing the administration of a scheme.

20. Having said all this, I note the judge, in the First Judgment, found “the critical wording in rule 11(3) ... is in all material respects identical to rule 11(2)(b) of the 1976 Rules”. His answers to the issues raised in respect of the 2005 rules were the same as those he gave in respect of the 1976 rules. To a certain extent, it is immaterial whether the 1976 rules or the 2005 rules apply in Mrs T’s case.
21. The First Judgment and the First Order make it clear that the Trustee had a discretion whether or not to add an amount representing a share of surplus to Mrs T’s account; it was not obliged to do so. Mrs T’s strict entitlement under the Plan rules was to the amount standing to the credit of her account. The Trustee’s duty to consider whether or not to add a share of surplus to Mrs T’s account continued to be capable of performance until it determined there was no surplus; at which point the duty lapsed. The First Order provides that the Trustee is entitled to proceed on the basis that its duty to consider crediting Mrs T with a share of surplus lapsed on 10 July 2006. Since this was before the date of Mrs T’s retirement, in 2014, she was then only entitled to the amount standing to the credit of her account. I find that the Trustee has administered Mrs T’s benefits in accordance with the Plan rules, and the Court judgments and subsequent orders.
22. Mrs T’s representative has referred to a number of Plan documents and correspondence from the previous trustee. None of these can override the Plan rules and/or the Court judgments and orders. He has made the point that Mrs T was led to believe she was joining a final salary type pension scheme. I acknowledge that the Plan literature has not always been clear that the final salary benefits were an aim/target and not guaranteed. However, much of the literature referred to was issued before the Trustee was appointed and it cannot, therefore, be held responsible for it. I note also that later documents (for example, the notes to Mrs T’s 2001 benefit statement) do make reference to the target benefits not being guaranteed.
23. Mrs T’s representative has suggested the Trustee assumed responsibility for the assets and liabilities of the previous trustee when it was appointed in 2007. It is not the case that the Trustee bought the Plan or the previous trustee; it was appointed as an independent trustee. The previous trustee is a separate company. It is the case that the previous trustee took over the company which had been trustee before it. This does not happen as a matter of course when a new trustee company is appointed, however.
24. I do not agree that the Trustee misled members as to the outcome of the two Court cases. Whilst the information contained in the announcements is brief, it is accurate; particularly as to the implications for Mrs T. I do not find that there has been maladministration on the part of the Trustee in its provision of information for Mrs T.

PO-11175

25. I do not uphold her complaint.

Anthony Arter

Pensions Ombudsman
7 March 2017