The Pensions Ombudsman

Ombudsman's Determination

Applicant	Ms N
Scheme	Communication Managers' Association Retirement Benefits Scheme (the **CMA Scheme**)
Respondents	AEEU Pensions Trustee Limited (**APTL**), Phoenix Life Assurance Limited (**Phoenix Life**)

Complaint Summary

1. Ms N's complaint against APTL and Phoenix Life concerns the decision to refuse a transfer of her pension.

Summary of the Ombudsman's Determination and reasons

2. The complaint is upheld against Phoenix Life because it is ultimately responsible for Ms N being denied the opportunity to transfer.

Detailed Determination

Material facts

3. Ms N has a deferred entitlement in the CMA Scheme, a work-based pension arrangement. APTL is the sole corporate trustee.

4. On 16 April 1971, the Post Office Management Staffs Association, the "Principal employer", signed a proposal for assurances and annuities to be provided by National Provident Institution (**NPI**) under a retirement benefits scheme (the **Omnibus Proposal**).

5. The Omnibus Proposal documented the appointment of the "*persons who from time to time hold the offices of Chairman, General Secretary and Deputy General Secretary* [original emphasis]," as the "first Trustees" of the scheme. The accompanying notes stated that a trustee may be an individual or a corporate body, for example a limited company, "or any other company incorporated under the Companies Acts."

6. The Post Office Management Staffs Association Retirement Benefits Scheme, (the **Post Office Scheme**), was subsequently established by a Declaration of Trust in May 1971 (the **Declaration of Trust**).

7. On 7 July 1977, the Post Office Management Staffs Association, the "Principal Employer", and the "Trustee" adopted the rules of the Post Office Scheme (the **1977 Rules**).

8. Under the 1977 Rules, the term "Trustee" means:

   "trustee or trustees from time to time appointed, of whom the first [Barrett] (**Chairman**), [Pratt] (**General Secretary**), [and Doyle] (**Deputy General Secretary**)."

9. The Trustee took out a policy with NPI to provide the benefits determined under the 1977 Rules (the **Policy**). The Policy was later transferred to Phoenix Life. The Policy is currently administered by Diligenta on behalf of Phoenix Life.

10. Rule 15 of the 1997 Rules provides that:

    "The Trustee shall be two or more individuals or a body corporate acting as sole trustee or jointly with one or more individual trustees. Power of removing a trustee and of appointing a new or additional trustee is vested in the Principal Employer and shall be exercised by the execution of a deed, provided that if the Principal Employer is in liquidation, otherwise than for the purpose of amalgamation or reconstruction, these powers are vested in the Trustee.

    …

    Any two individual trustees or a corporate trustee shall have power to give a binding receipt for any payment owing to the Trustee or a binding release from any liability to the Trustee."

11. Rule 18 of the 1997 Rules (**Rule 18**): "Winding-up," states:

    "The trusts of the Scheme shall terminate if

    (a) the Principal Employer ceases carrying on business otherwise than in such circumstances that arrangements satisfactory to the Trustee are made for another employer to undertake the Principal Employer's obligations under the Scheme, or

    (b) the Trustee considers it necessary or desirable that the Scheme be terminated."

12. By virtue of a resolution made on 22 September 1981, (the **Trustee Resolution**), the Post Office Management Staffs Association changed its name to the Communication Managers' Association (**CMA**). The Trustee Resolution substituted the definition of "Principal Employer" in the 1977 Rules accordingly.

13. A deed was made between CMA, Ms N “the Continuing Trustees” and Mr Jones, the “New Trustee” on 12 September 1994 (the **1994 Deed**). This removed Mr McGregor, the “Retiring Trustee”, and appointed the “New Trustee”.

14. An “Instrument of Transfer of Engagement” (the **1998 Instrument**) was later approved by the National Executive Council (the **NEC**), of the Manufacturing, Science and Finance Union (the **MSF**). This merged the CMA into the MSF, (the **1998 Transfer**), and created the CMA Section in the MSF with effect from May 1998.

15. Paragraph 3 of the 1998 Instrument says:

“MSF has, by a resolution of its [**NEC**] dated 18th October 1997 undertaken to fulfil the engagements of CMA.”

16. On 19 August 1998, a deed was made between CMA, Mr Thomas, Mr Shaw: the “continuing Trustees”, and Mr Deegan: “the New Trustee” (the **1998 Deed**). It removed Ms N and appointed the “New Trustee” to act with the Continuing Trustees in the trusts of the CMA Scheme.

17. With effect from January 2002, members of the Amalgamated Engineering and Electrical Union, (**AEEU**), and MSF merged to form Amicus (the **2002 Instrument**). On 16 March 2007, Amicus merged with the Transport and General Workers Union to form Unite the Union (**Unite**) (the **2007 Instrument**).

18. Section 105 of Chapter VII of the Trade Union and Labour Relations (Consolidation) Act 1992 (the **Act**) states:

“Where an instrument of amalgamation or transfer takes effect, the property held—

(a) for the benefit of any of the amalgamating unions, or for the benefit of a branch of any of those unions, by the trustees of the union or branch, or

(b) for the benefit of the transferor trade union, or for the benefit of a branch of the transferor trade union, by the trustees of the union or branch,

shall without any conveyance, assignment or assignation vest, on the instrument taking effect, or on the appointment of the appropriate trustees, whichever is the later, in the appropriate trustees.

19. In the case of property to be held for the benefit of a branch of the amalgamated union, or of the transferee union, “the appropriate trustees” means the trustees of that branch, unless the rules of the amalgamated or transferee union provide that the property to be so held is to be held by the trustees of the union.”

20. The Certification Officer (**CO**) for the Trade Unions and Employer’ Association is responsible for statutory functions relating to trade unions and between employers’ associations. The CO’s responsibilities include ensuring compliance with the legal requirements governing mergers between such entities.

21. On 15 February 2013, a deed of appointment and removal was made between Unite and APTL (the **2013 Deed**). It states:

“**BACKGROUND** [original emphasis]

…

4 The Employer is a trade union within the meaning of section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992 and is the successor following various transfers and amalgamations to the engagement of the Communication Managers’ Association and is therefore now the principal employer in relation to the Scheme.

[Mr Shaw, Mr Baron and Mr Skyte] (the “**Retiring Trustees**”) are the current trustees of the Scheme.

By Rule 15 of the Rules, the power of removing and/or appointing a trustee is vested in the Employer.

Unite the Union Trustee Company Limited …is entitled to execute this deed on behalf of [Unite] the Employer.”

OPERATIVE PROVISIONS

1 With effect from the date of this deed:

1.1 In exercise of their power under Rule 15 of the Rules the Employer removes the Retiring Trustees from the trusts of the Scheme and appoints the New Trustee to act in their place.”

22. Under Rule 14 of the 1977 Rules, a deferred member may request that the Trustee make a transfer payment to the member’s new employer’s pension arrangement. Rule 14 states that the Trustee will surrender the policy in respect of the member’s benefits and pay the surrender value to the receiving scheme.

23. On 3 June 2013, Phoenix Life received Ms N’s completed transfer discharge form (the **Discharge Form**). Ms N requested a transfer of £344,176 to the Unite Amicus Section Pension Scheme, (the **Amicus Section**), a defined benefit (**DB**) scheme.

24. The notes in the Discharge Form advised that the transfer payment would be the value of Ms N’s benefits on the day Phoenix Life received all the correctly completed documentation. It warned that this may be higher or lower than the amount stated.

25. On 13 August 2013, Phoenix Life wrote to APTL concerning the validity of the 2013 Deed and the change of principal employer. In the communications that followed, APTL advised that the 2013 Deed did not offer assurance that APTL could provide Phoenix Life with a valid discharge of its liabilities under the Policy.

26. APTL’s legal advisers, (the **Advisers**), offered to obtain a valid discharge of Phoenix Life’s liabilities from the trustees properly appointed at the time CMA merged with

MSF. They requested that Phoenix Life provide the wording it required the trustees to agree. Following further exchanges, Phoenix Life asked for a court order confirming that the 1998 Deed contained "mistakes".

27. Phoenix Life has clarified that the CMA Scheme has two policies, both executive pension plans. While Phoenix Life accepts that CMA became a section of the MSF, it does not accept that it automatically succeeded CMA as principal employer. The 1977 Rules do not contain express provisions for the replacement or substitution of the principal employer identified in those rules.

28. **Summary of Ms N's position**

- Unite had legal power to execute the 2013 Deed in its capacity as the principal employer.

- The combined legal effect of the Instruments of Amalgamation made in May 1998, January 2002, and May 2007, and the relevant provisions of Chapter VII of the Act, was to vest MSF's legal obligations, powers, assets and the like in Amicus and then in Unite. Consequently, since 2007 Unite has effectively become the principal employer of the CMA Scheme.

- The 1977 Rules provide that, where the "Principal Employer" ceases to carry out business, there will be a substitution if arrangements are made for an alternative employer to take on that role. The 1977 Rules do not require a deed of substitution, or for the Trustee to confirm its agreement to a substitution in a particular format.

- Even if it is assumed that CMA ceased to carry out business in 1998, the CMA Scheme trustees continued to run the scheme. This tends to support the view that the change of principal employer to MSF, then Amicus, and more recently Unite, "have been arrangements which are satisfactory to the trustees."

29. **Summary of Phoenix Life's position**

- Phoenix Life does not consider that the CMA Scheme has a valid principal employer or validly appointed trustees. Phoenix Life obtained advice from its technical team and legal department on the issue.

- Phoenix Life can only discharge its liability under the Policy if there are validly appointed trustees in place. A court order was requested to rectify past mistakes to enable Phoenix Life to act on instructions from those claiming to be the current trustees. Given the high value of Ms N's benefits, Phoenix Life does not consider that it acted unreasonably.

- Phoenix Life has not seen a deed in respect of Mr Shaw's appointment as trustee.

- Rule 18 of the 1977 Rules, (**Rule 18**), recognises the need for the Trustee to confirm agreement for another employer to undertake the Principal Employer's

obligations under the CMA Scheme. This should have been via a deed of substitution, as the legal entity of the principal employer changed in 1998 and CMA ceased to exist.

- The 1998 Instrument had no legal effect on the CMA Scheme. The subsequent amalgamation documents were also ineffectual. In each case, the employer was not the Principal Employer. The CMA Scheme should therefore have been wound up in 1981.

- Phoenix Life accepts that it has delayed the transfer of Ms N's benefits. It also accepts that a redress calculation will need to be undertaken once [the matter] has been settled. This will determine whether Ms N has been financially disadvantaged.

30. **Summary of APTL's position**

- A combination of the instruments dated 1998, 2002 and 2007, and the relevant provisions in Chapter VII of the Act, satisfactorily achieved a change of principal employer to Unite for the purposes of the CMA Scheme.

- MSF was incorrectly referred to as "CMA" in the CMA Scheme's deeds made after the 1998 Transfer. However, the intention was for MSF to execute the 1998 Deed. The mistake was the result of confusion, as certain assets and liabilities of CMA were held separately in the Communication Managers' Section of the MSF.

- If the then Trustee had not been satisfied with the substitution of CMA by MSF as principal employer, the default position under Rule 18 is that CMA would not have been substituted. Consequently, the CMA Scheme would have wound up.

- The Trustee's satisfaction with the successive change of principal Employer is not recorded. However, the fact that the CMA Scheme continued to run after the 1998 Transfer, is adequate evidence of its satisfaction with these arrangements.

31. In response to the preliminary decision that I issued in respect of the complaint in September 2019, Diligenta raised the following points on behalf of Phoenix Life:-

- The Omnibus Proposal and the Declaration of Trust contain no express provisions in respect of the substitution of a new principal employer in place of the Post Office Management Staffs Association.

- In the 1977 Rules, the "Principal Employer" is identified as the Post Office Management Staffs Association. There are no specific requirements in those rules relating to the replacement, or substitution of the "Principal Employer".

- The 1977 Rules refer to a supplement to the Declaration of Trust dated 26 July 1972. This was passed by the trustees and the Principal Employer to extend the

timeframe for adopting the rules. The supplement contains no additional provisions relating to the Principal Employer.

- The lack of clarity on the requirements in Rule 18, appears to have caused some confusion. Rule 18 recognises the need for the trustees to confirm their agreement to the arrangements made for an alternative employer to undertake the Principal Employer's obligations under the pension scheme.

- There are no additional provisions that set out how the Principal Employer should be changed, replaced or substituted.

- The Trustee Resolution documented the Post Office Management Staffs Association's change of name on 1 July 1981. The Trustee Resolution was not a substitution of the Principal Employer.

- Tolley's Pension Law Service indicates that a "Succession as principal employer", would usually be in the form of a short "Deed of Substitution". This would be between the "vendor," as the original principal employer, the "purchaser," as the new principal employer, and the trustees of the scheme.

- Tolley's Pension Law Service emphasises the important of checking the scheme documentation to ensure that a substitution of principal employer is permitted under the relevant trust deed and the rules. It states that it may be possible to use the scheme's amendment power to introduce provisions enabling the substitution to take place. Any change in principal employer would need to be notified to HM Revenue & Customs (**HMRC**), and the scheme's contracting-out certificate amended.

- The "arrangements" referred to in Rule 18, should therefore be in the form of a Deed of Substitution, to which the trustees are a party. The trustees were not a party to the 1998 Instrument. There is nothing in this deed that refers to the substitution of Principal Employer. Phoenix Life's view is that a Deed of Substitution was required because the legal entity of the Principal Employer changed.

- The 1998 Instrument dealt only with the assets of CMA. The CMA Scheme was not an asset of CMA since it was vested in the trustees. Similarly, nothing in the 1998 Instrument altered the identity of the principal employer of the CMA Scheme.

- In June 2001 and June 2002, CMA purported to execute two deeds appointing Mr Baron and Mr Skyte as trustees of the CMA Scheme. Contrary to APTL's position, the deeds were not executed on behalf of the newly formed CMA Section of the MSF, but on behalf of CMA itself. As acknowledged by APTL, CMA ceased to exist in 1998. Consequently, it would not have been possible for CMA to have executed the deeds.

- Phoenix Life has seen no documentary evidence that a third trustee, Mr Shaw, was appointed as a trustee of the CMA Scheme. Phoenix Life is also unable to find evidence that any of the parties who were trustees immediately prior to the 1998 Transfer have subsequently been removed as trustees.

- Similarly, the documents in respect of the subsequent mergers had no effect on the trusteeship of the CMA Scheme, or the identity of the principal employer. In the case of the merger of Amicus with the Transport and General Workers Union, the "ceding" employer named in the documents was not the CMA Scheme's principal employer.

- Contrary to the findings in the preliminary decision on the complaint, APTL is not the sole corporate trustee of the CMA Scheme. The power of appointing and removing trustees is vested in the principal employer. No document has been validly executed to change the CMA Scheme's principal employer at any time.

- Since 1998, the various appointments and removals of trustees have been carried out by entities which had ceased to exist, or were not the CMA Scheme's principal employer. Consequently, they must be invalid. This includes the appointment of APTL.

- Phoenix Life questions whether NPI was informed of the various transfers and amalgamations. A change of principal employer had to be notified to the Inland Revenue for approval within a prescribed timeframe. This is detailed in IR12 (2001): The Occupational Pension Schemes Practice Notes (the **Practice Notes**). These reporting requirements would have applied in 1998 and 2001.

- If NPI had been advised, NPI would have offered to provide the documentation required to formally change the Scheme's principal employer and obtain approval from the Inland Revenue.

- Phoenix Life disagrees that the MSF replaced CMA automatically in its role as principal employer of the CMA Scheme as a result of the transfer of engagements.

- Phoenix Life accepts that any legal obligations and powers which CMA had as principal employer of the CMA Scheme, became legal obligations and powers of MSF under the terms of the relevant Instrument and the Act. However, a scheme specific "Deed of Substitution" was necessary to evidence that the trustees had consented to the substitution of MSF as "Principal Employer" of the CMA Scheme.

- All the transfers that have taken place since 1998 in connection with the CMA Scheme are therefore presently invalid. The persons purporting to exercise the powers were not authorised to do so.

- It follows that the trustees of the CMA Scheme are those that were "validly appointed" immediately prior to the amalgamation of CMA and MSF: Mr Jones, Ms N and Mr Thomas.

- Phoenix Life's contractual relationship is with the trustees of the CMA Scheme. The proposed disinvestment instruction is for a "significant (six figure) sum". It is reasonable for Phoenix Life to expect that the instruction, and the discharge of Phoenix Life's liability under the Policy in respect of these funds, to come from the CMA Scheme's validly appointed trustee(s).

- In seeking a discharge from a trustee that can be relied upon, it is reasonable for Phoenix Life to expect that the trustee should be correctly appointed. The position is unclear, and the interpretation of the documents and other evidence is subjective.

- Since APTL is not a validly appointed trustee, Phoenix Life considered that the uncertainty over the identity of the trustees needed to be first resolved by a court in order to rectify the mistakes of the past.

32. In response to the preliminary decision, the Advisers made the following additional points on behalf of the APTL:-

- APTL does not consider that there is any confusion concerning the change of principal employer provisions. Under Rule 18, the trustees have to convey, in some way, their satisfaction with a substitution of principal employer to the extent that a former principal employer has ceased to carry on business. There is no requirement for the trustees to confirm their agreement in any particular format.

- The fact that the trustees from time to time continued to run the CMA Scheme since the 1998 Instrument, is "powerful" evidence of their satisfaction that there has always been an employer to undertake the principal employer's obligations under the CMA Scheme. Otherwise, the default position under Rule 18 is that the CMA Scheme would have been wound up.

- The combined effect of the 1998 Instrument and the Act, was to transfer both assets and obligations of the transferring union to the receiving union. This is consistent with the reference to a "transfer of engagements" at paragraph 3 of the 1998 Instrument.

- Ms N, in her position as both a previous trustee of the CMA Scheme and CMA, has confirmed that the trustees' advisers did not recommend that they enter into a deed at the time. It would appear that as advisers, they were also "comfortable as to the operation of law".

- A deed of substitution is not required in these circumstances. Section H1.23 of Tolley's Pension Law Service deals with the sale of a business. It explains the uses

of the term “vendor” and “purchaser.” It does not have the detailed provisions of trade union legislation in mind.

- It is speculative what NPI would have done 20 years after the event. It is unclear whether Phoenix Life considers that NPI was responsible for updating the Inland Revenue. Or, more importantly, alleging that the Inland Revenue was not notified.

- In any event, failure to comply with the Inland Revenue’s reporting requirements would not invalidate the operation of law to change the principal employers in 1998 and 2002.

- APTL has not disputed that the deeds that postdate the 1998 Instrument up to 2002, should have identified the principal employer as MSF. However, the omission does not affect the ability of Unite to validly appoint APTL as a corporate trustee of the CMA Scheme via the 2013 Deed.

- “The provisions of clause 1.2 of the 2013 Deed which solely vests the property of the Scheme into APTL arguably remove and discharge all other former trustees.”

- Nevertheless, Rule 15 of the 1977 Rules expressly provides that APTL, as the appointed corporate trustee, can direct and discharge Phoenix Life in respect of the transfer of Ms N’s benefits. This is irrespective of whether there are other individual trustees appointed. If the possible existence of additional trustees remains an issue for Phoenix Life, Unite could simply execute a further deed removing any former trustees, except APTL.

- It is clear that APTL has been validly appointed and that Phoenix Life will be properly discharged [from any further liability in respect of Ms N], once APTL has completed the relevant transfer paperwork. Particularly following a determination by the Pensions Ombudsman to this effect. APTL does not consider that a court order is required.

- The Pensions Ombudsman was designed to provide a quick, inexpensive and informal means of settling complaints and disputes such as this. Phoenix Life has offered no alternative solution beyond stating that it can only make the transfer on the basis of a court order. In doing so, Phoenix Life appears to challenge the powers of the Pensions Ombudsman.

- By virtue of Section 151 of the Pensions Schemes Act 1993, Phoenix Life can proceed with the transfer on the basis of a determination by the Pensions Ombudsman without fear of future recourse. Phoenix Life would simply be complying with a legally binding determination.

- This matter has been ongoing for several years. During this time, Ms N has suffered considerable distress concerning the future and security of her pension. By

suggesting further and ongoing delay, while the "parties unnecessarily go to court, would only exacerbate Ms N's distress."

- Ms N is the only party that suffers while her complaint remains resolved. There is a potential risk that the receiving scheme will at some point in the future not be able to accept the transfer.

33. Phoenix Life says that it now accepts there is no prospect of further evidence coming to light that would resolve this matter. Should Ms N's complaint be upheld on the lines of my preliminary determination, Phoenix Life will not appeal against that decision.

34. Phoenix Life accepts that an award of £2,000 in respect of the non-financial injustice caused to Ms N, would be appropriate in the circumstances.

Conclusions

35. I acknowledge that APTL has been unable to make a transfer of Ms N's pension because Phoenix Life has prevented APTL from surrendering the Policy.

36. The issue here is that Phoenix Life does not recognise APTL to be a legitimate trustee to the CMA Scheme. It therefore does not consider that APTL had legal authority to effect a change in the principal employer from CMA to Unite.

37. I recognise that Phoenix Life can only receive valid discharge of its liability from trustees who have been properly appointed. This avoids a further claim should it subsequently come to light that APTL's appointment is invalid.

38. I also acknowledge that the Omnibus Proposal and the Declaration of Trust are silent on the process for substituting a principal employer.

39. However, I find that Phoenix Life has misinterpreted the 1977 Rules in this case and has no grounds to prevent a transfer of Ms N's benefits. Rule 18 of the 1977 Rules provide that:

    "The trusts of the scheme shall terminate if - (a) the Principal Employer ceases carrying on business otherwise than in such circumstances that ***arrangements*** satisfactory to the Trustee are made for another employer to undertake the Principal Employer's obligations under the scheme [emphasis added]."

40. The winding up provisions under Rule 18, therefore allows the "Trustee" to terminate the CMA Scheme if the Trustee considers it necessary or desirable to do so. While Rule 18 provides that the CMA Scheme shall otherwise terminate, Rule 18 does not require that the "arrangements" be documented.

41. The substitution of "Principal Employer" from CMA to MSF is not documented by any deeds or written resolutions. A deed of substitution enables the principal employer of a trust-based pension scheme to be replaced by a new principal employer.

42. There is no explicit requirement for a Deed of Substitution under the CMA Scheme's governing provisions. Rather, the trustees must be satisfied with the "arrangements". There is also no express manner concerning how the trustees must show their satisfaction. Therefore, it is entirely reasonable in these circumstances that the trustees could show their satisfaction by continuing to run the CMA Scheme to fulfil the requirement under Rule 18.

43. Since the CMA Scheme was not wound up, it reinforces the view that the arrangements under which CMA was replaced as Principal Employer were acceptable to the "Trustee" at the time.

44. I note that APTL maintains that MSF was erroneously named in the 1998 Deed as CMA. Although this appears to support Phoenix Life's position that the deed is invalid, I am not persuaded that this affects the validity of APTL's appointment as the current Trustee. In taking this view, I have also considered that Unite, the current principal employer, is correctly named in the 2013 Deed under which APTL was appointed.

45. The 1977 Rules stipulate that:

> "[the] Trustee shall be two or more individuals or a body corporate acting as sole trustee or jointly with one or more individual trustees."

46. Consequently, there is no set maximum limit on the number of trustees at any one time. In the absence of a limit, I find that APTL's appointment was effective irrespective of whether or not past trustees were validly removed under deeds executed before the 2013 Deed.

47. Rule 15 of the 1997 Rules provides that any two individual trustees or a corporate trustee, has power to give "a binding release from any liability to the Trustee". Rule 15 does not require that a corporate trustee giving release from liability must be the sole trustee. On that basis, I see no reason why APTL as the current corporate trustee cannot give the necessary instruction and discharge of liability to Phoenix Life in accordance with Rule 15.

48. I acknowledge that Phoenix Life has commented on the process that it considers NPI would have followed at the time. Since NPI is not a party to this complaint, any issues relating to NPI's role in this matter falls outside the scope of this complaint and I do not comment on those issues or make any findings in relation to NPI.

49. The Practice Notes refer to the reporting requirements under The Retirement Benefits Schemes (Information Powers) Regulations 1995 (the **Information Powers Regulations**). The regulations set out the information and documents trustees of approved schemes are required to provide to the Inland Revenue. Under the Information Powers Regulations, a change in the name of any employer participating in the scheme must be notified not later than 180 days after the end of the scheme year in which the event occurs. However, any alleged failure on the part of the trustees to comply with these reporting requirements, do not materially change the outcome in this case. I am satisfied that the successive substitutions of "Principal

Employer, were "arrangements satisfactory to the Trustee" at the relevant points in time and therefore valid.

50. I accept that all previous trustees of the CMA Scheme should have been validly removed and discharged from their liability. Nonetheless, APTL, as the current Trustee, has the legal power to give a discharge to Phoenix Life in respect of Ms N's rights under the Policy.

51. I am mindful that Ms N has been prevented from transferring her pension since June 2013. The necessary steps should be taken as soon as possible to ensure that the transfer can be effected. I note that the receiving arrangement is a DB scheme. Any service credit Ms N would otherwise have secured may be lower than what she will now receive. However, it is also possible that the surrender value of Ms N's pension has increased in value potentially offsetting any such loss.

52. To put the matter right, Phoenix Life should obtain the necessary discharge from APTL to enable Phoenix Life to transfer Ms N's pension. Phoenix Life should also pay £2,000 to Ms N in recognition of the severe non-financial injustice Ms N has suffered.

Directions

53. Within 21 days of the date of this Determination Phoenix Life shall:

    (i) obtain the necessary instruction and discharge of liability from APTL and any further paperwork required from Ms N to proceed with the transfer,

    (ii) on receipt of the completed documentation, pay to the Amicus Section the higher of the current surrender value of Ms N's pension and the value as at 3 June 2013,

    (iii) obtain confirmation from the administrators of the Amicus Section on whether Ms N has secured a lower service credit because of the delay in completing the transfer and make good that loss; and

    (iv) pay an award of £2,000 to Ms N in respect of the serious distress and inconvenience caused to her.

Karen Johnston
Deputy Pensions Ombudsman
29 April 2020

Appendix

Trade Union and Labour Relations (Consolidation) Act 1992

“**Chapter VII**
Amalgamations and similar matters
Amalgamation or transfer of engagements

97 Amalgamation or transfer of engagements.

(1) Two or more trade unions may amalgamate and become one trade union, with or without a division or dissolution of the funds of any one or more of the amalgamating unions, but shall not do so unless—

(a) the instrument of amalgamation is approved in accordance with section 98, and

(b) the requirements of **[F[1]** section 99 (notice to members) and section 100 (resolution to be passed by required majority on ballot held in accordance with sections 100A to 100E)**]** are complied with in respect of each of the amalgamating unions.

(2) A trade union may transfer its engagements to another trade union which undertakes to fulfil those engagements, but shall not do so unless—

(a) the instrument of transfer is approved in accordance with section 98, and

(a) the requirements of **[F[1]** section 99 (notice to members) and section 100 (resolution to be passed by required majority on ballot held in accordance with sections 100A to 100E)**]** are complied with in respect of the transferor union.

(3) An amalgamation or transfer of engagements does not prejudice any right of any creditor of any trade union party to the amalgamation or transfer.

(4) The above provisions apply to every amalgamation or transfer of engagements notwithstanding anything in the rules of any of the trade unions concerned.

…

98 Approval of instrument of amalgamation or transfer.

(1) The instrument of amalgamation or transfer must be approved by the Certification Officer and shall be submitted to him for approval before [**F[1]** a ballot of the members of any amalgamating union, or (as the case may be) of the transferor union, is held on the resolution to approve the instrument.]

[F[2](2)If the Certification Officer is satisfied—

(a) that an instrument of amalgamation complies with the requirements of any regulations in force under this Chapter, and

(b) that he is not prevented from approving the instrument of amalgamation by subsection (3),

he shall approve the instrument.

(3) The Certification Officer shall not approve an instrument of amalgamation if it appears to him that the proposed name of the amalgamated union is the same as the name under which another organisation—

(a) was on 30th September 1971 registered as a trade union under the Trade Union Acts 1871 to 1964,

(b) was at any time registered as a trade union or employers' association under the Industrial Relations Act 1971, or

(c) is for the time being entered in the list of trade unions or in the list of employers' associations,

or if the proposed name is one so nearly resembling any such name as to be likely to deceive the public.

(4) Subsection (3) does not apply if the proposed name is the name of one of the amalgamating unions.

(5) If the Certification Officer is satisfied that an instrument of transfer complies with the requirements of any regulations in force under this Chapter, he shall approve the instrument.**]**

…

99 Notice to be given to members.

(1) The trade union shall take all reasonable steps to secure **[F[1]**that every voting paper which is supplied for voting in the ballot on the resolution to approve the instrument of amalgamation or transfer is accompanied by**]** a notice in writing approved for the purpose by the Certification Officer.

(2) The notice shall be in writing and shall either—

(a) set out in full the instrument of amalgamation or transfer to which the resolution relates, or

(b) give an account of it sufficient to enable those receiving the notice to form a reasonable judgment of the main effects of the proposed amalgamation or transfer.

(3) If the notice does not set out the instrument in full it shall state where copies of the instrument may be inspected by those receiving the notice.

[F[2](3A)The notice shall not contain any statement making a recommendation or expressing an opinion about the proposed amalgamation or transfer.]

(4) The notice shall also comply with the requirements of any regulations in force under this Chapter.

(5) The notice proposed to be supplied to members of the union under this section shall be submitted to the Certification Officer for approval; and he shall approve it if he is satisfied that it meets the requirements of this section.

…

[F[1]100 Requirement of ballot on resolution.

(1) A resolution approving the instrument of amalgamation or transfer must be passed on a ballot of the members of the trade union held in accordance with sections 100A to 100E.

(2) A simple majority of those voting is sufficient to pass such a resolution unless the rules of the trade union expressly require it to be approved by a greater majority or by a specified proportion of the members of the union.]

…

F[1]100A Appointment of independent scrutineer.

(1) The trade union shall, before the ballot is held, appoint a qualified independent person (“the scrutineer”) to carry out—

(a) the functions in relation to the ballot which are required under this section to be contained in his appointment; and

(b) such additional functions in relation to the ballot as may be specified in his appointment.

(2) A person is a qualified independent person in relation to a ballot if—

(a) he satisfies such conditions as may be specified for the purposes of this section by order of the Secretary of State or is himself so specified; and

(b) the trade union has no grounds for believing either that he will carry out any functions conferred on him in relation to the ballot otherwise than competently or that his independence in relation to the union, or in relation to the ballot, might reasonably be called into question.

An order under paragraph (a) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) The scrutineer’s appointment shall require him—

(a) to be the person who supervises the production of the voting papers and (unless he is appointed under section 100D to undertake the distribution of the voting papers) their distribution and to whom the voting papers are returned by those voting;

(b) to—

(i) inspect the register of names and addresses of the members of the trade union, or

(ii) examine the copy of the register as at the relevant date which is supplied to him in accordance with subsection (9)(a),

whenever it appears to him appropriate to do so and, in particular, when the conditions specified in subsection (4) are satisfied;

(c) to take such steps as appear to him to be appropriate for the purpose of enabling him to make his report (see section 100E);

(d) to make his report to the trade union as soon as reasonably practicable after the last date for the return of voting papers; and

(e) to retain custody of all voting papers returned for the purposes of the ballot and the copy of the register supplied to him in accordance with subsection (9)(a)—

(i) until the end of the period of one year beginning with the announcement by the union of the result of the ballot; and

(ii) if within that period a complaint is made under section 103 (complaint as regards passing of resolution), until the Certification Officer or Employment Appeal Tribunal authorises him to dispose of the papers or copy.

(4) The conditions referred to in subsection (3)(b) are—

(a) that a request that the scrutineer inspect the register or examine the copy is made to him during the appropriate period by a member of the trade union who suspects that the register is not, or at the relevant date was not, accurate and up-to-date, and

(b) that the scrutineer does not consider that the member’s suspicion is ill-founded.

(5) In subsection (4) “the appropriate period” means the period—

(a) beginning with the day on which the scrutineer is appointed, and

(b) ending with the day before the day on which the scrutineer makes his report to the trade union.

(6) The duty of confidentiality as respects the register is incorporated in the scrutineer's appointment.

(7) The trade union shall ensure that nothing in the terms of the scrutineer's appointment (including any additional functions specified in the appointment) is such as to make it reasonable for any person to call the scrutineer's independence in relation to the union into question.

(8) The trade union shall, before the scrutineer begins to carry out his functions, either—

(a) send a notice stating the name of the scrutineer to every member of the union to whom it is reasonably practicable to send such a notice, or

(b) take all such other steps for notifying members of the name of the scrutineer as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.

(9) The trade union shall—

(a) supply to the scrutineer as soon as is reasonably practicable after the relevant date a copy of the register of names and addresses of its members as at that date, and

(b) comply with any request made by the scrutineer to inspect the register.

(10) Where the register is kept by means of a computer the duty imposed on the trade union by subsection (9)(a) is either to supply a legible printed copy or (if the scrutineer prefers) to supply a copy of the computer data and allow the scrutineer use of the computer to read it at any time during the period when he is required to retain custody of the copy.

(11) The trade union shall ensure that the scrutineer duly carries out his functions and that there is no interference with his carrying out of those functions which would make it reasonable for any person to call the scrutineer's independence in relation to the union into question.

(12) The trade union shall comply with all reasonable requests made by the scrutineer for the purposes of, or in connection with, the carrying out of his functions.

(13) In this section "the relevant date" means—

(a) where the trade union has rules determining who is entitled to vote in the ballot by reference to membership on a particular date, that date, and

(b) otherwise, the date, or the last date, on which voting papers are distributed for the purposes of the ballot.**]**"

“**INSTRUMENT OF TRANSFER OF ENGAGEMENT**

BETWEEN THE COMMUNICATION MANAGERS’

ASSOCIATION AND THE MANUFACTURING, SCIENCE

AND FINANCE UNION [original emphasis]

PREAMBLE

1. This is an instrument of transfer of the engagements of the Communication Manager’ Association (hereinafter called “CMA”) …to the Manufacturing, Science and Finance Union (hereinafter called “MSF”) …which will, if duly approved by a resolution of the members of CMA, take effect on 8th May 1998 or on the date of registration of this instrument whichever is later (hereinafter called “the Effective Date”).

MEMBERSHIP

2. On the Effective Date the former members of CMA will become members of MSF and be subject to that union’s rules (save that former Honorary Members of CMA will become Honorary Members of the Communication Managers’ Section only, and former Honorary Members of CMA Branches will become Honorary Members of the relevant branches in the Communication Managers’ Section only). References in this instrument to “former CMA members” are to those CMA members, and only those members, who become members of MSF under the terms of this instrument on the Effective Date. The period of membership of CMA, immediately prior to the Effective Date will, for the purpose of qualification for benefits, be considered as part of the continuous period of membership of MSF.

RESOLUTION OF MSF

3. MSF has, by a resolution of its National Executive Council (“NEC”) dated 18th October 1997 undertaken to fulfil the engagements of CMA.”

“**THIS INSTRUMENT OF AMALGAMATION**

Made between the AMALGAMATED ENGINEERING & ELECTRICAL UNION (“AEEU”) and the MANUFACTURING, SCIENCE AND FINANCE UNION (**“MSF”**) [original emphasis]

(together “the merging unions”) shall, if duly approved by a resolution of the members of each of the merging unions take effect upon the date of registration of this instrument (“the effective date”)

IT IS HEREBY AGREED AS FOLLOWS: -

1. Upon the effective date the members of each of the merging unions shall become members of the New Union and shall become subject to that Union's rules.

   …

4. The assets, funds and property of the merging unions shall, upon the effective date, continue to be held by the corporate trustees or individuals who were the trustees of the merging unions prior to the effective date in trust and for the benefit of and in accordance with the rules of the New Union.

…

SCHEDULE

GENERAL RULES [original emphasis]

…

(1) The Union formed under these rules shall be called Amicus."

"**THIS INSTRUMENT OF AMALGAMATION**

Made between the **Amicus** and the **Transport and General Workers Union ("TGWU")** (together "the merging unions") shall, if duly approved by a resolution of the members of each of the merging unions take effect upon the date of registration of this instrument ("the effective date").

…

4. The assets, funds and property of the merging unions shall, upon the effective date, continue to be held by the corporate trustees or individuals who were the trustees of the merging unions prior to the effective date in trust and for the benefit of and in accordance with the rules of the New Union."