

**PENSION SCHEMES ACT 1993, PART X**  
**DETERMINATION BY THE DEPUTY PENSIONS OMBUDSMAN**

<b>Applicant</b>	Mrs A Gwynn
<b>Scheme</b>	ICL Group Pension Plan ( <b>the Plan</b> )
<b>Respondent(s)</b>	Fujitsu Services Limited ( <b>Fujitsu</b> ) The Trustees of the Plan ( <b>the Trustees</b> )

**Subject**

Mrs Gwynn's complaint against the Trustees and Fujitsu, the administrators of the Plan, centres on the problems and delays she experienced when trying to transfer her entitlement under the Plan to Partnership Assurance in order to buy an annuity. She says these issues have caused her a loss in pension income.

**The Deputy Pensions Ombudsman's determination and short reasons**

The complaint should not be upheld against the Respondents as Mrs Gwynn's initial request was unclear and there were no unreasonable delays in processing the transfer. While there was an issue with the information provided in the transfer pack this only caused distress, rather than delays and a financial loss, and an appropriate amount of compensation has already been offered for this.

## DETAILED DETERMINATION

### Material Facts

1. Mrs Gwynn's date of birth is 3 October 1948 and she joined the Plan in 1989. She ceased to be an active member of the Plan on 31 March 2011. The normal retirement age under the Plan is age 65 and so her normal retirement date is 3 October 2013.
2. On 31 May 2011 a letter from Fujitsu set out Mrs Gwynn's options now that she had become a deferred member of the Plan. One of the options detailed to her was to transfer her benefits to another pension arrangement, saying also that a transfer value was available on request from the pension department.
3. Mrs Gwynn says that in May or June 2012 she had telephoned Fujitsu and requested a quote for her benefits and a fund value with a view to getting a quote on the open market. She says she was told in response that her "only option was to take a pension from the ICL Pension Fund". A fuller overview of her comments, and that of her financial adviser, is in the submissions section.
4. On 6 June 2012 Mrs Gwynn sent an email to Fujitsu, which said:
 

"I am retiring on 3<sup>rd</sup> October 2012. Please can you send me a pensions quote and let me know if I need to do anything to receive a pension from that date..."
5. On 11 June 2012 Fujitsu sent a retirement benefit statement to Mrs Gwynn based on the benefits payable on 3 October 2012, when she would be 64. This gave a number of options including an increasing pension of £24,358 a year with a tax-free lump sum of £19,210 (which was made up of additional voluntary contributions). There was also an option to give up some of the future increases on her pension and receive a "higher flat rate pension" of £26,802 a year with the same lump sum amount and increases only on pension earned from 6 April 1997.
6. A telephone note recorded by Fujitsu on 24 August 2012 says:
 

"member asked what was the value of her fund for open market value purpose. Explained final salary pension, n/a. But can use tthe [sic] AVC fund to buy pension on OM. NFA at this point."

7. Mrs Gwynn says that in early September her financial adviser suggested that she ask for a transfer value as she was over a year from her normal retirement date. She then got into contact with Fujitsu, on 20 September 2012, to request this. The telephone note taken by Fujitsu said:

“memembr [sic] leaving teh [sic] company on 03/10 wants a TVOQ”

8. On 28 September 2012 a transfer value pack was sent by Fujitsu to Mrs Gwynn. This gave a transfer value of £537,143 in respect of Plan benefits, which was guaranteed until 24 December 2012, plus an AVC amount of £19,394. This asked for a number of items of documentation to be returned before a transfer could proceed. This included, amongst other items, a form of consent from Mrs Gwynn, a receiving scheme questionnaire, a copy of the new provider’s contracted-out certificate and a copy of the new provider’s HMRC scheme approval. It was also said that if she decided to proceed with the transfer, payment would only be made on receipt of all the listed forms and certificates and to ensure a transfer at the amount quoted the relevant forms needed to be returned before the end of the guarantee period.
9. Partnership sent an annuity quotation to Mrs Gwynn’s adviser on 8 October 2012. This was based on a total annuity purchase price of £537,143.86 with a pension commencement lump sum of £19,394. The annuity provided was for £27,043.20 a year which was a level annuity, with a ten year guarantee and on a 50% joint life basis. It was guaranteed subject to confirmation of acceptance within 14 days of issue and receipt of the purchase price and necessary documentation within 28 days of issue.
10. Mrs Gwynn signed the Plan transfer forms on 8 October 2012 and also completed and returned Partnership’s forms on the same day, which they received on 11 October.
11. Some transfer paperwork from Partnership was received by Fujitsu on 12 October 2012. The letter from Partnership referred to the quotation dated 8 October 2012 saying that if they did not receive the funds by 5 November 2012 they would need to issue a new quotation which could lead to a reduction in benefits payable. However Fujitsu say that the mailed items did not include the requested contracted-out certificate or the HMRC approval letter.

12. On 15 October 2012 an email from Fujitsu to Partnership requested the outstanding items. Partnership emailed a copy of the contracting-out certificate only the same day.
13. Fujitsu say they responded requesting the HMRC approval letter as well. Partnership emailed them a copy of the HMRC approval letter on 24 October 2012.
14. Another quote dated 25 October 2012 from Partnership Assurance was again based on a total annuity purchase price of £537,143.86 and gave the same figures and guarantee conditions as the quote of 8 October 2012.
15. Fujitsu wrote out to Mrs Gwynn on 5 November 2012 to say that they now had all the documentation needed to transfer her pension benefits to Partnership Assurance. However as she was now within one year of her normal retirement age it was necessary under the Rules of the Plan to gain trustee approval to proceed with the transfer. (It is prescribed in the relevant pension regulations that a final salary scheme only needs to provide for a right to a statutory transfer value up until twelve months before a member's normal retirement age under the scheme). Fujitsu asked for an enclosed transfer request form to be completed so that they could refer her case to the Trustees to consider. They also needed her to confirm her reasons for deciding on a transfer and that she had taken financial advice.
16. Mrs Gwynn replied on 7 November 2012. She said that she had decided to transfer as she had been made a "better offer" by another provider as they were taking into account medical conditions. She also confirmed she had taken financial advice. Mrs Gwynn referred also to an earlier conversation in May. She said that in September her financial adviser had suggested that she ask for a transfer value as she was just over a year from normal retirement age.
17. Fujitsu wrote to Mrs Gwynn on 21 November 2012 and confirmed that the Trustees had approved the transfer of her benefits. But as she had AVCs under the Plan before the transfer could complete they needed to arrange the return of her AVCs held with Equitable Life. They could not have made this request until approval from the Trustees for the transfer had been received. They had now sent a request to Equitable Life asking for her funds to be disinvested urgently and upon receipt her transfer value to Partnership would be paid as soon as

- possible. They apologised for misunderstanding her request in May and also for not advising that the transfer forms needed to be returned by 3 October 2012.
18. On 7 December 2012 a further letter from Fujitsu confirmed that the transfer payment to Partnership Assurance had been finalised, with payment having been made by BACs and that it would clear within five working days.
  19. Partnership received the transfer payment on 11 December 2012. The final annuity figures of the same date were based on a total annuity purchase price of £537,256 and a pension commencement lump sum of £19,394. The annuity provided was for £26,905.06 a year which again was a level annuity, with a ten year guarantee and on a 50% joint life basis. The first payment date was 11 January 2013.
  20. Mrs Gwynn subsequently made a formal complaint regarding her issues with information she was given, or not given, and the delays in processing her transfer. But for these issues she said she could have started her pension on 3 October 2012 and so had lost two months' annuity payments. She noted that the administrators had acknowledged that they had misunderstood her request in May.
  21. The complaint responses from the Trustees said that they had acted in accordance with the Plan's rules and also statutory requirements when processing the transfer. The Trustees accepted that the administration team could have provided her with more information regarding the timescales for taking a transfer without Trustee approval. In recognition of this the Trustees made an offer of £250 for the distress and inconvenience caused. However they did not accept that it would have been possible for a transfer to have completed by 3 October 2012, even if she had been made aware of the importance of this date, when the request for a transfer value was only made on 20 September 2012.
  22. Partnership Assurance (who are not a respondent to the application) have told my office that they first produced a quote for Mrs Gwynn on 7 September 2012 (this quote is based on a very small purchase price and seems to be for a transfer from another pension scheme) with a further quote being given to her on 8 October 2012 which she accepted on 11 October.

### Summary of Mrs Gwynn's position

23. Mrs Gwynn or her representative on her behalf, which is her financial adviser, has said the following.
24. There are three main parts to her complaint. (i) She was misinformed in May/ June 2012 when she telephoned Fujitsu to request a transfer value. (ii) She was later sent a transfer request form and not informed about the reply deadline. (iii) The time taken by the administrator to complete the transfer caused her a loss of income.
25. She does not recall the exact date of the first call to Fujitsu. Her adviser says that the transfer value request was made following a meeting in late May 2012. At the meeting Mrs Gwynn advised that she had decided to retire a year early. After carrying out a fact find and establishing her preferred retirement options he recommended that she ask for a benefit statement and transfer value, after which comparisons could be obtained.
26. In her application to my office Mrs Gwynn said that after she received the pension quotation of 11 June 2012 she called Fujitsu and asked for the "fund value" with a view to transferring the pension (other submissions from her say the call may have been earlier in May 2012 and another says that a call was made on the same day as her email of 6 June 2012, immediately prior to the call). She was told in no uncertain terms that there was no fund value, as the scheme was a final salary scheme, and her only option was to take a pension from the Plan. The member of staff she spoke to was so positive about her answer that she did not ask for the details to be put in writing. While she accepts that she got the terminology wrong she is disappointed that she was not told of the option of a transfer value at this time.
27. The Trustees/ administrator should be conversant with straightforward pension terms, whereas uninformed scheme members would not be so knowledgeable. It was hard to believe that her request was not understood and if they had not then surely she should have been asked to clarify. This would have avoided the subsequent delays, such as the wait for trustee consent (see further below).
28. It was odd that there is no record of this earlier call but there was a record of later calls. The fact that making notes of conversations was the administrator's customary practice suggests that it was customary but not absolutely so. Also in

earlier dispute correspondence (her adviser points to the letter of 21 November 2012) there was a clear apology for giving earlier misinformation in May 2012. Mrs Gwynn also says that she has contacted her former employer in an effort to track down a record of her call but that they do not have a record of any calls.

29. In September 2012 she was advised (presumably by her adviser) that the information she had been given was incorrect and that she had to be provided a transfer value if she was more than one year from normal retirement age. She immediately went back, on 20 September 2012, and requested the transfer value. Over a week later she got the transfer papers with a statement that the transfer value was guaranteed until 24 December 2012. This led her to believe that she did not need to return the papers until then, when in fact she only had 3 working days to return the documentation.
30. The subsequent calls were made on 24 August and 20 September 2012 on the advice of her adviser and in his presence. To ensure that transfer information was issued an email was also sent after the 20 September call.
31. Her adviser adds that Mrs Gwynn's request for a transfer value on 6 June 2012 does have merit, as a transfer value should have been provided under "the 12 month rule". The Respondents were clearly not aware of this rule which prior to the introduction of enhanced annuities the standard annuity offered by the employer would probably not have beaten.
32. The transfer request from Partnership was received by Fujitsu on 12 October 2012. Yet she was not told that there was a problem with her request until 5 November 2012. She had to write back on 7 November to explain why she wanted to transfer her pension rights with the transfer finally taking place on 11 December 2012.
33. Mrs Gwynn asks to be compensated in full for the time she should have been in receipt of her pension. She has ended up with a pension of £26,905.06 a year whereas she could have got a pension of £27,043.20 a year if she had been able to start it on 3 October 2012. The difference in annual income will equate to £7,243.36 over 20 years. She should have received her first payment in November 2012 but received it in January 2013 and so has also lost two months of payments totalling £4,484.17 and she also asks for interest to date.

## Summary of the Respondents' position

34. A joint response has been submitted to my office by the Respondents.
35. They do not hold any voice recordings of the telephone calls from Mrs Gwynn. The only attendance notes of calls from Mrs Gwynn that they hold are for 24 August 2012 and 20 September 2012. There is no record of any earlier telephone call. Initially they thought that this may have been an administrative oversight as it was the administrators' normal procedure to produce an attendance note of all telephone conversations (it appears that in earlier responses Mrs Gwynn's account of events had simply been accepted without question and without checking for any calls). Now they question whether there was an earlier call.
36. They have spoken to the member of staff who took the calls and asked for her recollection of the conversations with Mrs Gwynn. That member of staff recalls that Mrs Gwynn raised a query about taking only her AVCs as a tax-free lump sum payment independent of her main scheme benefits. The response was that it would not be possible to draw only the AVCs without putting her main Plan benefits into payment. She had no recollection of any earlier call prior to 24 August 2012 or any call other than those for which attendance notes were produced. She also confirmed that her usual practice was to make notes.
37. The fact that no notes can be found on Mrs Gwynn's file of any earlier conversation supported their staff member's comments that there was no earlier call. Also the fact that her recollection of the subject matter of her first conversation with Mrs Gwynn is consistent with the 24 August 2012 notes suggests that there was no prior telephone conversation between them.
38. According to their telephone notes Mrs Gwynn asked for her "fund value" in a call on 24 August 2012. This was consistent with her comment that the conversation took place after 11 June 2012. The administrators did attempt to help her in her request for an open market option, as well as understanding what was behind her request, and explained that this was possible with her AVC fund, but not in relation to her main Plan benefits.
39. My office wrote to the Respondents and asked them to clarify with the staff member who took Mrs Gwynn's calls whether she was told that her "only option was to take a pension from the ICL Pension Fund", as asserted by the



applicant. They had spoken to the staff member concerned at length about the situation and, aside from having no recollection of a call prior to 24 August 2012, she says that the attendance note accurately recorded the content of the first conversation with Mrs Gwynn. Having reviewed that note they conclude that Mrs Gwynn's recollection was incorrect and she was not told her only option was to take a pension from the Plan. It should also be appreciated that the staff member took a lot of telephone calls in her role and was being asked to recall the contents of specific calls from around two years ago.

40. Even if it were accepted that there was an earlier telephone call in May/ June 2012, prior to the email of 6 June 2012 from Mrs Gwynn, their understanding was that there was a discussion regarding buying an annuity on the open market and Mrs Gwynn was advised that this was not an option. It was not understood that a transfer value was being sought and so there was no reason to provide one. Mrs Gwynn had since accepted that she used the incorrect terminology. In light of the unclear terms of her request the administrator acted reasonably. There was no obligation or duty on administrators to provide information or advice to members, not only in respect of an option that they were querying but also in relation to other options that were potentially available to them. It was not within an administrators remit to provide advice which would be outside their professional competence as well as being a regulated activity. Her IFA could have contacted them on her behalf or he could have written down the details of the request to ensure that Mrs Gwynn communicated their request correctly.
41. To become entitled to a cash equivalent transfer value (**CETV**) the relevant legislation required a member to write to the Plan formally requesting this. The first written communication from Mrs Gwynn was her email of 6 June 2012. In this she did not make a written request for a CETV as required by the legislation. As a result, and in light of the unclear terms of her requests, Fujitsu did not appreciate that a CETV was being sought and she was only sent a retirement quotation. This communication also said that she should contact the administrators with any further queries, but none were received. It was only on 20 September 2012 that they received a formal, and therefore compliant, request. It was not accepted that either the Trustees or Fujitsu had misinformed Mrs Gwynn about her transfer rights.

42. The payment of Mrs Gwynn's CETV was made without any undue delay and within statutory timescales as it was paid within six months of the date of the quotation provided. So even if (i) Mrs Gwynn's earlier communications had been recognised as a CETV request (which they do not), and (ii) a CETV had been provided in mid-June 2012 and (iii) all relevant papers (both from Mrs Gwynn and Partnership) were provided before the end of the guarantee period, the statutory deadline for making payment would have been around 14 December 2012. The actual payment was made before this date and so in any case the transfer would have been completed before the statutory deadline had her initial request been taken as a request for a CETV.
43. Mrs Gwynn's/ Partnership's actions indicate that Mrs Gwynn was not actually expecting the transfer to take effect by 3 October 2012. The CETV was requested on 20 September and was provided within eight days, but she took a fortnight to complete her acceptance forms and then Partnership took another two weeks to send through the correct transfer documentation.
44. They apologise for not pointing out that the transfer needed to complete before 3 October 2012, else payment would need Trustee approval, and accept it was incorrect to say that the usual three month acceptance period applied. She only had until that date to accept the quotation in order to acquire a statutory right to transfer out of the Plan, rather than a conditional right subject to the Trustees' consent. In recognition of this issue the Trustees offered an amount of £250 for distress and inconvenience, which Mrs Gwynn declined. However it was not accepted that the provision of incorrect information had caused any loss of pension income.
45. The Trustee should not be responsible for the fact that annuity prices, and the factors involved in setting that price, may have changed over the period during which the transfer payment was being processed. Equally they do not consider that a delay of two months would cause her to "lose" the value of those two months of pension. Instead to reflect the fact that they need to pay a pension for two months less than previously estimated, the pension that it will provide would be increased so that the overall value of the pension purchased will be of the same value (i.e. the value of the amount transferred from the Plan).

46. The Trustees did accept that Mrs Gwynn's annuity may be slightly lower than that which may have been provided by an earlier transfer but did not accept that it was liable for the difference because:

(a) Mrs Gwynn and Partnership took until late October 2012 to provide all the paperwork needed for a transfer to proceed, and therefore it would have been impossible to have made payment earlier.

(b) Even if she had been advised of the deadline and all the papers had been provided by 3 October 2012 (which they doubt would have happened) the Trustee still would not have had sufficient time to make the payment by that date, regardless of the consent issue.

(c) Additionally the purpose of statutory deadlines for payment of a CETV is to allow administrators a sufficient and reasonable amount of time to make the necessary arrangements for a transfer payment to be made. During such a period market conditions and other factors could work for or against a member in terms of the annual pension they are able to secure on the open market, once the transfer takes effect (it is possible, for example, that Mrs Gwynn may have benefitted from payment being made later). In this particular case the statutory deadlines were met and the administrator acted as swiftly as they were able to.

47. Moreover the difference in the annuity finally bought was £137.96 a year against that which she could have purchased at the beginning of October 2012. This does not tally with Mrs Gwynn's claim for £4,484.17.

## Conclusions

48. The first question that I need to decide on is whether there was an earlier telephone call from Mrs Gwynn in May or June 2012 and, if there was such a call, what was said. It is always difficult to reach a satisfactory conclusion where, at the heart of the complaint, there is a dispute about what was said previously when a significant amount of time has passed. In these cases where there is no direct evidence, such as here where there is no recording of any calls, I can only reach a decision based on an assessment of what evidence is available and decide what seems most likely to have happened. Often a decision will conflict with one party's recollection of events, especially where years have passed since the events in question.

49. The submissions here are inconsistent and there is no evidence that there was an earlier telephone call from Mrs Gwynn. For a start we have been told at different times that the call was in May 2012 but at other times that it was after she received the early retirement quote of 11 June 2012 or on the day she requested the quote itself (6 June). The lack of an attendance note from the administrator for any earlier call, when notes were made for later calls, suggests that it is likely that one did not take place. Mrs Gwynn's former employer was not able to provide any records, for any of the calls, either.
50. There is also the noted content of the 24 August call. The notes of what were discussed are very similar to what Mrs Gwynn says was discussed earlier in the year. I think it very unlikely that Mrs Gwynn called around May/ June 2012 with a view to moving her money out of the Plan, received a negative response, and then called again on 24 August 2012 and had a very similar conversation where she was again told that this was not possible.
51. It is entirely possible that Mrs Gwynn made a call just prior to requesting her early retirement quotation and the call was not noted. But while I have no doubt as to the sincerity of Mrs Gwynn's recollection in this regard in my judgment it is very unlikely that there was any earlier call in May/ June 2012 within which the possibility of moving her monies out of the Plan was discussed. I find that the first such call took place on 24 August 2012. I would stress that my decision is not in any way to be taken as an indication that Mrs Gwynn's recollection of events is not sincerely held, only that there is insufficient evidence for me to conclude on the balance probabilities that she made two such calls before finally requesting a CETV in September 2012.
52. Her adviser says there is merit in her request for a transfer value on 6 June 2012. There is no evidence of a call on that date. The email of that date from Mrs Gwynn clearly could not be read as a request for a transfer value. It was only asking for early retirement figures under the Plan. I see no fault in treating this as such.
53. Mrs Gwynn's claim is for her to be put in the position she would have been in had the transfer completed by 3 October 2012. My view is that there was no earlier request for a transfer in May/ June 2012 and that her first contact in relation to seeking a transfer value was in August 2012. So the more pertinent

questions are whether Mrs Gwynn was given incorrect or misleading information in the call of 24 August 2012 and whether more could have been done to help her from this stage with a view to drawing benefits on 3 October.

54. We have been told, by her financial adviser, that the August 2012 call was made in his presence (but he apparently did not question her being told that it was not possible to move monies out of the plan, as they assert). Mrs Gwynn says that during another meeting with her financial adviser in September 2012 he told her that she did have a right to a transfer value in her situation. It seems more likely that he was not present during the August 2012 telephone call (and indeed in earlier submissions we were told he met Mrs Gwynn in May and September 2012, not in August 2012, and further Mrs Gwynn asked her employer to check for a record of the calls as she tells us the calls were made from her workplace, not her adviser's office).
55. Mrs Gwynn says that she was told during that phone call that her only option was to take a pension from the Plan. If she was told that, then the information would clearly be incorrect as she still had a statutory right to a transfer value at that time. But there is no clear evidence that this is what she was told (and the Respondents dispute she was told this). What is clear is that Mrs Gwynn asked for a fund value with a view to taking an open market option and she was told that this was not applicable to final salary schemes, but that it was an option for her AVC funds.
56. In my view the administrator should not have been expected to alert Mrs Gwynn to the possibility of a CETV. The terms "fund value" and "open market option" are not relevant to a final salary scheme. So they simply answered her question as it was put to them. I do not think that it is correct to say they were under any general duty to proffer information on other options potentially available to the member, unless they were asked for such.
57. I note also that the Respondents are concerned that telling the applicant about the option of taking a transfer value might have constituted giving advice. It is correct that administrators are not permitted to give advice. It can be a fine line in drawing a distinction between providing information and giving advice but no further information or advice was given here to Mrs Gwynn. So all I need to consider is whether, in the circumstances, the failure to detail the possibility of a

transfer value (after guessing what she was really after) would amount to maladministration. I do not think that the failure to do so constitutes maladministration. I would add that a member's statutory right to a transfer value is detailed in the Plan's Scheme Booklet (which last appears to have been updated in April 2005) and other general sources of information. It was also confirmed to Mrs Gwynn in the statement she was sent at the end of May 2011, right after the Plan closed to future accrual. So written information available to her was clear about her rights.

58. Mrs Gwynn points to unnecessary delays as a result of not being told about the "twelve month" rule and then having to seek trustee consent. In return the Respondents say that there were delays on the part of the applicant and Partnership in returning forms, although they concede Mrs Gwynn should not have been given a guarantee date of 24 December 2012. In my view there was no unnecessary delay on the part of the Respondents. Having received the transfer forms on 12 October 2012, after the relevant cut-off date of 3 October, they did not actually have enough documentation to process the transfer (I would add that it was clearly marked at the outset that all such papers were needed in order to proceed). Even when Fujitsu wrote back asking for the two outstanding items to be provided only one was provided, causing a further delay. In my view the administrator was entitled to obtain the outstanding papers before seeking to obtain trustee approval. Once that approval was granted matters were concluded in good time.
59. Failing to point out the imminent lapse of the statutory right to a transfer value was in my judgment maladministration, but this only caused distress and inconvenience rather than an actual financial loss. Mrs Gwynn was no doubt annoyed and inconvenienced by having to go through the extra step of gaining trustee approval. But even if the transfer pack of 28 September 2012 had pointed to the key date of 3 October 2012 it was not going to be practical for Mrs Gwynn to complete the relevant forms, get them to Partnership and then have them, in turn, write back to the Plan's administrators in time. So while she may have unexpectedly had to complete this extra step it was unavoidable given the timeframe involved. I consider that the existing offer of £250 is sufficient to cover any non-financial injustice and the Trustees should make arrangements for this offer to be repeated after my final determination.

60. Mrs Gwynn's adviser disagrees and says that, notwithstanding the complaint regarding the information given to his client, the transfer still was not processed within a reasonable timescale. He argues that Mrs Gwynn's CETV request of 20 September 2012 (which was made just before 5pm on that day) was not responded to until 28 September, causing a delay of seven working days. He is also of the view that it was possible for Mrs Gwynn to have returned the pack prior to 3 October 2012, thus avoiding the Trustees' involvement, if she had been made aware of that deadline and their response had been earlier.
61. However I do not consider that this was an unreasonable time to respond to her request. The relevant legislation allows a period of up to three months to calculate a CETV from the date of request and a further ten working days, from the date of the calculation, to pass this to the member. I do not consider that the time taken to respond (which was actually six working days in total, but more like five) was unreasonable.
62. He adds that it appears that Fujitsu had overlooked the AVCs that Mrs Gwynn held also causing a delay. I think that is unlikely as said value was referred to, and indeed split from the main Plan's CETV, in the response that they sent her. We have been told that they delayed making the disinvestment instruction until Trustee approval was given and I see no issue with that approach.
63. He also asks that my office investigates whether a transfer of the AVCs alone was possible and to obtain here a copy of the rules. I do not see how this information would advance Mrs Gwynn's case either way. If it were the case that the AVCs could not be transferred independently of the main Plan's benefits then of course the administrators would have to wait for Trustee approval before doing anything to the AVC fund, as it could only go across to Partnership along with the main Plan benefits (i.e. all together).
64. If instead it is the case that the AVC monies could have been transferred independently of the main Plan's benefits then there would be a potential issue in that Mrs Gwynn had not requested or signed for a transfer of her AVCs only. So she may not have wished to transfer them in isolation if Trustee consent was not given to transfer her main Scheme benefits too (indeed she planned to take, and eventually did take, that AVC fund as a tax-free cash amount and so it seems

unlikely that she would want this). The administrators likely would have had to stop and check whether she wanted these benefits transferred in isolation, and possibly issue new forms too, before making any transfer – so more time would have elapsed in any event. The prudent course of action was always to wait and see what the decision on main Plan benefits was. The situation may have been different if an open market option for the AVCs had been asked for, irrespective of any decision on her main Plan benefits, but that was not Mrs Gwynn's request.

65. It is further submitted that Fujitsu should have asked for a copy of the HMRC scheme approval letter at the outset. But the paperwork we hold shows that this was requested at the very start on 28 September 2012 (and a further time on 15 October 2012).
66. For the reasons given I do not uphold the complaint against either Respondent.

**Jane Irvine**  
Deputy Pensions Ombudsman

10 September 2014