

## Ombudsman's Determination

<b>Applicant</b>	Mr Y
<b>Scheme</b>	Admiral Pest Management Ltd (1996) Retirement Benefits Scheme (the <b>Scheme</b> )
<b>Respondent</b>	Friends Life

### Complaint Summary

1. Mr Y has complained that Friends Life failed to contact him in a timely manner to implement a Pension Sharing Order (the **PSO**) and then implemented that order incorrectly. Friends Life also ignored his various complaints.

### Summary of the Ombudsman's Determination and reasons

2. The complaint should not be upheld against Friends Life because:-
  - The Managing Trustees were jointly responsible for implementation of the PSO. Friends Life required information from the Managing Trustees which they requested numerous times between 2006 and 2010, but were not provided with it until March 2010.
  - Friends Life then promptly calculated the pension credit, and provided discharge notices, in reliance on information provided by the Managing Trustees.
  - Friends Life did not ignore Mr Y, but they did fail to treat his concerns as a formal complaint sufficiently promptly. Friends Life have offered Mr Y £100 and I do not consider that an increased award is warranted.

## Detailed Determination

### Material facts

3. The Scheme is a Small Self-Administered Scheme of which Mr Y and Mrs N are the only members. Mr Y and Mrs N are Managing Trustees. In 2006, Mr Y and Mrs N were both Directors of the Scheme's Principal Employer, Admiral Pest Management (**APM**), but Mrs N has since been made redundant.
4. Mr Y and Mrs N divorced in 2006. Under the PSO made by Chelmsford County Court, effective 27 March 2006, Mrs N became entitled to a pension credit of 37% of Mr Y's benefits under the Scheme.
5. The PSO annex stated that the order should be implemented by the person responsible for the Scheme within the period of four months beginning with the later of:  
  
    "the day on which this order takes effect; or  
  
    the first day on which you are in receipt of ...the pension sharing order including this annex..."
6. Friends Life received a copy of the PSO on 4 April 2006 from Mrs N's solicitors. On 8 June 2006, Mrs N confirmed she wished to retain her benefits in the Scheme.
7. In terms of the Scheme's assets in 2006, both Mr Y and Mrs N had policies with Friends Life. Additionally, there were self-invested funds, namely a 5-year loan to APM, the repayments from which funded CoFunds investments. The loan was funded by the surrender of £14,513.68 units from Mr Y's Friends Life policy; £14,513.67 units from Mrs N's Friends Life policy, and £5,972.65 from unallocated units.
8. The unallocated fund was not subject to the PSO (as it was unallocated on 27 March 2006) and was dealt with by agreement between Mr Y and Mrs N, namely 53%/47% in Mr Y's favour in September 2010.
9. Friends Life requested values of the self-invested assets from the Managing Trustees in order to implement the PSO. They wrote to Mrs N on 19 June 2006. On 7 August 2006, Mrs N told Friends Life that she had written to the Scheme Accountants and Mr Y on 17 July 2006 to ask for the information requested, but had not received a response. Friends Life wrote to Mr Y on 16 August 2006, to request the same information. This letter referred to the legal requirement on the Scheme Administrators to implement the PSO. The Administrators are the Managing Trustees (see Scheme rule 12.2). Friends Life then wrote to the Scheme's financial adviser (**the IFA**) on 15 November 2006, 26 September 2008, 29 December 2008, 14 September 2009 and 19 January 2010.
10. The IFA provided the necessary information on 1 March 2010, by way of an 'A-Day Fund & Tax-Free Cash Protection Questionnaire'.

11. Discharge notices were sent to the Managing Trustees on 13 July 2010. The pension credit was calculated to be £18,311.10, equating to £5,959.76 from the loan and £12,351.34 from Mr Y's Friends Life policy.
12. Friends Life provided detailed calculations to Mr Y and Mrs N on 9 May 2011. A letter from the Scheme's IFA on 12 May 2011, refers to the 9 May 2011 calculations and states "We can confirm that we are happy with the figures that you have produced therefore please arrange for the appropriate discharge documentation to be issued".
13. Subsequently on 10 June 2011, the IFA wrote to Friends Life with queries and Friends Life responded on 21 June 2011. The IFA also wrote to Friends Life on 22, 23 and 24 August 2011; all letters were responded to on 31 August 2011.
14. Further detail was provided by Friends Life on 8 September 2011, in response to an email from the IFA on 2 September 2011. On 24 November 2011, Mr Y contacted Friends Life by telephone to request further details of the calculations. Friends Life responded by letter on 2 December 2011.
15. On 1 August 2012, Mr Y again queried the calculations and a response was sent on 7 August 2012. Mr Y also wrote on 24 June 2013, to which Friends Life replied on 5 July 2013. Mr Y made further queries on 15 July 2013, and a reply was sent on 19 July 2013. Mr Y sent some additional queries on 9 September 2013, which were replied to on 13 September 2013.
16. On 12 July 2014, the IFA wrote to Mrs N to say, "I have no issues with the FL calculations / fund split and [Mr Y] knows this." A similar point is made by the IFA on other occasions, including as far back as 1 November 2011.
17. Ultimately, Mr Y felt unable to agree to the calculations provided.
18. In May 2010, the Scheme entered the winding up procedure. The Friends Life policies were surrendered and the monies paid into a low-interest bearing bank account (the **Co-op account**). Friends Life requested more information to enable wind up of the Scheme, but that was never received and so it has not been completed.
19. A mandate was signed by all the Trustees to add SunTrust (part of the Friends Life group) and Mrs N as co-signatories of the Co-op account in October 2010. The parties agree that as of today's date, Mr Y is the only trustee who is a signatory on the Co-op account. It is not clear how that came to be. Mr Y provided a photograph of a recent bank statement for the Co-op account, but would not agree to me sharing it with the other parties, so I have not been able to take it into account.
20. On 1 August 2012, Mr Y emailed Friends Life to confirm he was unhappy with the calculations provided in September 2011. The email Mr Y sent on 24 June 2013 includes the following: "despite raising complaints and forwarding legal and independent financial advice no complaint procedure has ever been implemented".

On 20 December 2013, Mr Y confirmed by email his intention to refer matters to the Pensions Ombudsman.

21. On 6 November 2014, Friends Life replied to say that it was now treating the matter as a formal complaint. An acknowledgment letter was sent on 19 November 2014, and a formal complaint response sent on 3 December 2014.

### **Summary of Mr Y's position**

22. Mr Y's complaint can be summarised in four main points:

- 20.1 Friends Life did not contact the Managing Trustees to implement the PSO;
- 20.2 as a result, the PSO was implemented outside of the time limit;
- 20.3 when Friends Life did implement the PSO, they did so incorrectly; and
- 20.4 since then, Friends Life has ignored and/or failed to adequately address Mr Y's correspondence and complaints.

21. Mr Y says that Friends Life did not contact the IFA until 2010 and did not contact him personally at all. He says that even if Friends Life did contact the IFA before 2010, that was insufficient, Friends Life was required to contact Mr Y personally.

22. Mr Y says that the reason for the delay in implementing the PSO was Friends Life's failure to contact him. He, via the IFA, provided the information sought as soon as it was requested in 2010.

23. Mr Y objected to Friends Life's calculations for three reasons:-

- 23.1 First, he does not accept that Mrs N could elect to have her 37% share "in specie", that is to say Mrs N remaining in the Scheme and re-assigning her share of Mr Y's policy and loan to her pot. It was his choice, as Principal Employer, how Mrs N took the pension credit. He would have chosen to transfer the sum due from his Friends Life policy and not transfer any of the loan. Had the PSO been implemented in time, Mr Y says this option would have been open to him as he had sufficient units in his Friends Life policy to transfer the pension credit.

- 23.2 Secondly, the sum Mrs N was entitled to was 37% of the whole pension fund, rather than her pot plus 37% of Mr Y's share.

- 23.3 Thirdly, that the PSO is not a correct reflection of the agreement that he and Mrs N reached at mediation, which was for a specific figure, not a percentage. He says it was that agreement which was intended to be reflected in the PSO and it is that agreement which should be implemented.

24. Mr Y says it is not possible to calculate the pension credit without having up-to-date scheme accounts and so he could not agree to the calculations in any event.

25. With regard to the Co-op account, Mr Y says some of the funds were transferred to the Co-op account, but not all, and the Co-op account is a company account (with other monies in it) so Mrs N and Friends Life were not entitled to access it. Mr Y also says Mrs N was no longer a Trustee by this point.
26. Mr Y complains that Friends Life ignored numerous communications concerning problems with the calculations and as a result he could not fulfil his duties as a Trustee. Friends Life also failed to register those communications as a formal complaint.
27. Mr Y would like Friends Life to put him in the position he would have been in had Mrs N taken her pension credit from his Friends Life policy in March 2006. He does not think he should have to pay Friends Life's fees in the circumstances and would like Friends Life to compensate him for his time spent on the matter.

### **Summary of Friends Life's position**

28. Friends Life say that implementation of the PSO was the responsibility of the Managing Trustees. In any event, Friends Life did contact the Managing Trustees to implement the PSO, whether directly or via the IFA, numerous times between 2006 and 2010. It did not have access to the self-invested assets and so could not calculate the pension debit/credit until those values were provided. The delay was because the Managing Trustees failed to provide the necessary information.
29. The information was provided by the IFA on 1 March 2010, and the PSO was implemented shortly thereafter. The calculations were done in May/June 2010 and discharge notices were sent on 13 July 2010.
30. Friends Life say that although the PSO was not implemented until 2010, it was based on values as of 5 April 2006. Friends Life would have preferred values as of 27 March 2006 (the effective date of the PSO), but because of the delay it was content to proceed with the 5 April values. Friends Life say backdating meant that the delay did not impact on the fund split.
31. As to whether the data was accurate, Friends Life say that it relied on the data provided by the Managing Trustees. Friends Life is content that the calculations are correct, and that:-
  - 31.1 Mr Y is wrong to say that it was his choice on how Mrs N took the benefits. She was entitled to keep her benefits in specie within the Scheme. She is a member of the Scheme and all the Trustees have a duty to treat both members fairly, which Friends Life did.
  - 31.2 Mr Y is wrong to say the correct sum is 37% of the entire pension pot. The order requires 37% of Mr Y's share of the pot. Mrs N keeps her own share.
  - 31.3 Friends Life has to implement the court order as it is, which it has done.

32. Friends Life relied on its final response to Mr Y's complaint. Friends Life found that the PSO was correctly implemented and the delay was not its fault. Nonetheless, Friends Life had failed to treat two of Mr Y's communications as formal complaints when it should have done, namely his emails of 1 August 2012, and 20 December 2013. Further, it also sent a formal complaint acknowledgement to an incorrect address for Mr Y, which was a data protection breach. Friends Life has responded throughout and always tried to give full explanations.
33. Friends Life contend that what Mr Y wants is not possible. First, Friends Life say that the PSO required that 37% of Mr Y's pot was transferred to Mrs N (and she retained her pot), not that only 37% of the entire fund be attributed to Mrs N. Friends Life say that it was Mrs N's right to elect to retain benefits, in specie, in the Scheme and that it cannot force her to do otherwise.
34. Friends Life say that it is entitled to be paid for its work notwithstanding that the Scheme is in wind up. Friends Life is prepared to accept reduced fees of £2,000, rather than £10,800, if the Scheme is wound up by 30 September 2018. However, this amount will have to be paid by 20 July 2018.

## **Conclusions**

35. In order to reach a conclusion on Mr Y's complaint, I need to consider who was responsible for implementing the pension sharing order and decide at which point it should have been implemented. In addition, I need to consider whether the delay and failure to implement it caused any injustice.
36. I note that Mrs N brought an application to me against Mr Y for obstructing access to her pension. This being dealt with as a separate complaint.

## **Implementation**

37. According to the pension sharing annex, the PSO was to be implemented by "the person responsible for the pension arrangement". That means the Managing Trustees, who are jointly and severally liable.
38. Mr Y says that Friends Life did not contact the Managing Trustees to implement the PSO. I find that Friends Life attempted to find out the necessary information to implement the PSO promptly. It received the PSO on 4 April 2006, and wrote to Mrs N with a request for information, on the same day. Mrs N informed Friends Life that she had not received the request, so it was resent on 19 June 2006. Mrs N confirmed, on 7 August 2006, that she did not have all the required information but had requested it from the Scheme's accountants and Mr Y. Shortly thereafter, on 16 August 2006, Friends Life wrote to Mr Y directly to request the information. That letter made it clear that there was a legal requirement on the Scheme Administrators to implement the PSO.
39. Thereafter, Friends Life communicated via the Scheme's IFA. I accept that Friends Life wrote to the IFA requesting the information on 15 November 2006, 29 December

2008, 14 September 2009, and 19 January 2010. I also find that it was appropriate to communicate with the IFA.

40. Friends Life did contact the Trustees and the obligation to implement the PSO was the Managing Trustees' responsibility, they are the Scheme Administrators (see Scheme rule 12.2). Friends Life and Mrs N tried to get the necessary information, but Mr Y did not provide it. Even if Mr Y had not heard from Friends Life, it was not safe to assume that this meant the PSO had been implemented. All the Trustees had to ensure that they were complying with their duties. Mr Y and Mrs N must have known that the PSO existed because they were parties to it. If Mr Y had contacted Friends Life about its implementation, he would have been told that Friends Life required more information. It is reasonable to expect Mr Y to have done so.
41. I therefore do not uphold this part of Mr Y's complaint.

#### Incorrect Data

42. Section 29(4) of the Welfare Reform and Pensions Act 1999 (the **Act**) (see Appendix), states that the valuation to be used is the valuation applicable on the day before the pension sharing order was issued. In this case, 26 March 2006. The Act does not say that pension scheme assets must be realised. It does require the Trustees to use the asset values to calculate a cash equivalent transfer value (**CETV**), which will be the basis of the pension credit. This means that their accrued entitlement under the Scheme must be calculated and valued, and assets equal to that monetary value must be made available for transfer, whether internally or externally. That is what is meant by the CETV. The CETV does not require that a cash lump sum is paid or assets are realised.
43. Friends Life did not have access to the self-invested funds. It required the Managing Trustees to provide the information. Friends Life is entitled to rely on information provided by the Managing Trustees without further enquiry, pursuant to rule 3.7 of the Scheme rules.
44. The IFA supplied figures for the self-invested assets, not from the day before the pension sharing order was issued, but as at 5 April 2006. It is not clear why the Trustees could not have obtained figures as at the date stipulated by the Act, but for the sake for concluding this matter without further delay the April 2006 figures will suffice, as I consider that it is sufficiently close to the relevant date.
45. Mr Y's argument that, had the PSO been implemented on time, Mrs N could have been required to take her pension credit solely from his Friends Life policy, is incorrect. This is not what the PSO said nor what the Act requires. Mrs N is a member of the Scheme. It was open to Mrs N to transfer her pension credit to another pension scheme, but it was equally open to her to not do so. Mrs N chose to take her benefits in specie and remain in the Scheme. Mr Y's objection to that course is that it would have been easier or more convenient for him to transfer Mrs N's pension credit from his Friends Life policy. Unfortunately, it was not his decision. The Act does not require

the transfer of benefits to another Scheme; it is permissible to discharge liability of a pension credit by conferring appropriate rights under that Scheme with the consent of the person entitled to the credit: Schedule 5, para 1(2)(a) of the Act. The Scheme rules provide for assignment in this scenario: rule 13.6 and the addendum, part 3, rule 2.

46. Mr Y's argument that the PSO provided for Mrs N to be given a 37% share of the entire Scheme funds is also incorrect. The Trustees needed to allocate 37% of Mr Y's share of the Scheme to Mrs N. That is the normal course of events with PSOs and what the PSO itself states: "the specified percentage of the member's CETV to be transferred: 37%".
47. Mr Y also contends that the PSO fails to accurately reflect the agreement reached between Mr Y and Mrs N at mediation. Mr Y has provided documentation which he says demonstrates that the split in fact agreed was for specific sums. I do not need to decide whether the mediation document does show what Mr Y suggests, because the PSO overrides it. The PSO should be implemented as it stands unless, and until, it is successfully challenged. The PSO has not been challenged to date.
48. Although it is now Mr Y's position that Mrs N should not have been given a share of his loan, and that Mrs N is entitled to 37% of the entire fund rather than 37% of Mr Y's fund, that was not his position at the time the PSO was agreed. On 16 February 2006, Bawtree & Sons (Mrs N's solicitor) wrote to Holmes & Hills Solicitors (Mr Y's solicitor) to advise that they had amended the draft consent order as it had not previously included the loan, but only the Friends Life policy, so Mrs N's share would have been unduly limited. As a result, Mr Y's policy number was deleted from the consent order and the Scheme reference inserted, to ensure both the policy and the loan was included in the split. It said: "*It will also be necessary to make it clear to [Friends Life] when the Annex is re-submitted that the application relates to all your client's assets under the Scheme, including his self-invested assets.*" The PSO provides the policy reference number and states "all assets under the Scheme including [Mr Y's] self invested assets".
49. Mr Y says the Trustees need the Scheme accounts in order to complete the calculations and implement the PSO. I agree that it is unsatisfactory that no accounts have been completed, but that does not mean that Mrs N's pension credit cannot be calculated. Friends Life made calculations based on values of the assets. For our purposes, that was sufficient. Mr Y says that in the absence of accounts it is not possible to say whether Friends Life retained any funds when there was a transfer to the Co-op account. I have not seen any evidence to say that Friends Life retained any assets after the transfer to the Co-op account. The calculations, as at 5 November 2012, demonstrate otherwise.
50. I find that all the Scheme's assets were transferred to the Co-op account and that Friends Life's calculations properly implemented the PSO. The Co-op account appears, from what has been said, to hold company monies as well as trust monies.



The Scheme should, of course, have its own bank account under the control of the Managing Trustees, which is separate from the company bank account.

#### Delay

51. I have already found that between August 2006 and January 2010, Friends Life attempted to get the necessary information to calculate Mrs N's pension credit.
52. The requested information was provided by March 2010, and discharge statements were issued on 13 July 2010. Calculations have been updated on several occasions, most recently to reflect the fund value on 5 November 2012.
53. It is not in dispute that there was delay in implementing the PSO. Until March 2010, the reason the PSO was not implemented promptly was that the necessary information had not been provided to Friends Life. I do not accept that the reason for the delay was a failure on the part of Friends Life to contact the Managing Trustees.
54. From the date of the 9 May 2011 calculations, Mr Y disputed the figures. I have found that those calculations properly implemented the PSO. It was that dispute which caused the delay from July 2010 to date.
55. The delay was therefore not the fault of Friends Life. In any event, when the PSO was implemented, calculations were completed on the basis of asset values as at 5 April 2006, so the delay made no difference to the outcome. I therefore do not uphold this part of Mr Y's complaint.

#### Response to complaints

56. Friends Life did not escalate Mr Y's concerns as quickly as they ought to have done. It should have been clear that the formal complaints process had to be instigated from, at the latest, 20 December 2013. This amounted to maladministration. However, I conclude that there would have been no change in outcome even if that had happened. Although Friends Life did not treat the correspondence as a formal complaint, it replied consistently and comprehensively. I therefore do not find that any distress and inconvenience caused was significant, so I do not uphold Mr Y's complaint.
57. Friends Life has offered Mr Y £100, for failing to recognise his communications as a formal complaint and sending an acknowledgment letter to an incorrect address.
58. Mr Y would not accept this in the resolution of his complaint. Having considered all the available evidence, I do not find that the non-financial injustice suffered by Mr Y was significant and I do not consider that an increased award is warranted. Mr Y seeks to charge for his time spent on this matter. We do not calculate inconvenience awards in direct proportion to the time spent, or based on the sort of fees that a professional person might have charged. I will leave it to Mr Y to contact Friends Life direct if he wishes to accept its offer.

PO-5645

59. I do not uphold Mr Y's complaint.

**Anthony Arter**

Pensions Ombudsman

19 July 2018

## **Appendix - Relevant legislation**

### **Welfare Reform and Pensions Act 1999**

#### **Section 29 Creation of pension credits and debits**

“(1) On the application of this section

(a) the transferor's shareable rights under the relevant arrangement become subject to a debit of the appropriate amount, and (b) the transferee becomes entitled to a credit of that amount as against the person responsible for that arrangement.

(2) Where the relevant order or provision specifies a percentage value to be transferred, the appropriate amount for the purposes of subsection (1) is the specified percentage of the cash equivalent of the relevant benefits on the valuation day.

(3) Where the relevant order or provision specifies an amount to be transferred, the appropriate amount for the purposes of subsection (1) is the lesser of (a) the specified amount, and (b) the cash equivalent of the relevant benefits on the valuation day.

(4) Where the relevant arrangement is an occupational pension scheme and the transferor is in pensionable service under the scheme on the transfer day, the relevant benefits for the purposes of subsections (2) and (3) are the benefits or future benefits to which he would be entitled under the scheme by virtue of his shareable rights under it had his pensionable service terminated immediately before that day.

(5) Otherwise, the relevant benefits for the purposes of subsections (2) and (3) are the benefits or future benefits to which, immediately before the transfer day, the transferor is entitled under the terms of the relevant arrangement by virtue of his shareable rights under it.

(6) The Secretary of State may by regulations provide for any description of benefit to be disregarded for the purposes of subsection (4) or (5).

(7) For the purposes of this section, the valuation day is such day within the implementation period for the credit under subsection (1)(b) as the person responsible for the relevant arrangement may specify by notice in writing to the transferor and transferee.

(8) In this section

"relevant arrangement" means the arrangement to which the relevant order or provision relates;

"relevant order or provision" means the order or provision by virtue of which this section applies;

"transfer day" means the day on which the relevant order or provision takes effect;

"transferor" means the person to whose rights the relevant order or provision relates;

"transferee" means the person for whose benefit the relevant order or provision is made"

### **Section 33 Time for discharge of liability**

(1) A person subject to liability in respect of a pension credit shall discharge his liability before the end of the implementation period for the credit.

(2) Where the trustees or managers of an occupational pension scheme have not done what is required to discharge their liability in respect of a pension credit before the end of the implementation period for the credit

(a) they shall, except in such cases as the Secretary of State may prescribe by regulations, notify the Regulatory Authority of that fact within such period as the Secretary of State may so prescribe, and

(b) section 10 of the Pensions Act 1995 (power of the Regulatory Authority to impose civil penalties) shall apply to any trustee or manager who has failed to take all such steps as are reasonable to ensure that liability in respect of the credit was discharged before the end of the implementation period for it.

(3) If trustees or managers to whom subsection (2)(a) applies fail to perform the obligation imposed by that provision, section 10 of the Pensions Act 1995 shall apply to any trustee or manager who has failed to take all reasonable steps to ensure that the obligation was performed.

(4) On the application of the trustees or managers of an occupational pension scheme who are subject to liability in respect of a pension credit, the Regulatory Authority may extend the implementation period for the credit for the purposes of this section if it is satisfied that the application is made in such circumstances as the Secretary of State may prescribe by regulations.

(5) In this section "the Regulatory Authority" means the Pensions Regulator.

### **Section 34 Implementation period**

(1) For the purposes of this Chapter, the implementation period for a pension credit is the period of 4 months beginning with the later of

(a) the day on which the relevant order or provision takes effect, and

(b) the first day on which the person responsible for the pension arrangement to which the relevant order or provision relates is in receipt of

(i) the relevant documents, and (ii) such information relating to the transferor and transferee as the Secretary of State may prescribe by regulations.

## **Schedule 5 Pension credits: mode of discharge**

1 (1) This paragraph applies to a pension credit which derives from—

- (a) a funded occupational pension scheme, or
- (b) a personal pension scheme.

(2) The trustees or managers of the scheme from which a pension credit to which this paragraph applies derives may discharge their liability in respect of the credit by conferring appropriate rights under that scheme on the person entitled to the credit—

- (a) with his consent, or
- (b) in accordance with regulations made by the Secretary of State.

(3) The trustees or managers of the scheme from which a pension credit to which this paragraph applies derives may discharge their liability in respect of the credit by paying the amount of the credit to the person responsible for a qualifying arrangement with a view to acquiring rights under that arrangement for the person entitled to the credit if—

- (a) the qualifying arrangement is not disqualified as a destination for the credit,
- (b) the person responsible for that arrangement is able and willing to accept payment in respect of the credit, and
- (c) payment is made with the consent of the person entitled to the credit, or in accordance with regulations made by the Secretary of State.

(4) For the purposes of sub-paragraph (2), no account is to be taken of consent of the person entitled to the pension credit unless—

- (a) it is given after receipt of notice in writing of an offer to discharge liability in respect of the credit by making a payment under sub-paragraph (3), or
- (b) it is not withdrawn within 7 days of receipt of such notice.

## **The Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 SI 2000/1053**

### **Regulation 18 Adjustments to the amount of the pension credit - increasing the amount of the pension credit**

(1) For the purposes of paragraph 10 of Schedule 5 to the 1999 Act (adjustments to amount of pension credit) the trustees or managers of an occupational pension scheme to

which paragraph 1(3) or 3(3) of Schedule 5 to the 1999 Act applies shall increase the amount of the pension credit by

- (a) the amount, if any, by which the amount of that pension credit falls short of what it would have been if the valuation day had been the day on which the trustees or managers make the payment; or
- (b) if it is greater, interest on the amount of that pension credit calculated on a daily basis over the period from the valuation day to the day on which the trustees or managers make the payment, at an annual rate of one per cent above the base rate.