

Ombudsman's Determination

Applicants	Mrs L and Mr H
Scheme	Manflex Limited Retirement Benefits Scheme also known as the Manflex Limited Executive Pension Plan (the Plan)
Respondent	Mr Eric Dutton

Complaint Summary

1. Mrs L and Mr H have complained that Mr Dutton misappropriated benefits due from the Plan on the death of their brother Mr S.

Summary of the Ombudsman's Determination and reasons

2. The complaint should be upheld against Mr Dutton because he refused to allow Mr S to transfer his preserved benefits, ignored Mr S' wishes as well as the Plan Rules and statutory requirements, and improperly shared out Mr S' fund between Manflex Limited and its employees.

Detailed Determination

Material Facts

3. Mr S was a director of Manflex Limited (**Manflex**) and a member of the Plan, which was administered by the National Provident Institution (**NPI**). NPI is now part of Phoenix Life Assurance Limited (**Phoenix**). Mr S was born on 23 November 1956. Mr Dutton was the Managing Director of Manflex and sole trustee of the Plan, which was set up on a non contributory basis.
4. The Plan commenced on 1 March 1988, and was the successor to an earlier NPI pension scheme established on 1 March 1981. Mr Dutton has provided minutes of a Manflex directors' meeting, which are typed but with a blank space where the date – 18 November 1988 - has been inserted in handwriting. The minutes record that Mr S and the company's pensions adviser were among those present when the establishment of a pension scheme for the directors was discussed. The minutes say:

“It was emphasised by [Mr Dutton] that in the deliberations it had been decided that if the Scheme was Contributory then there would be no “local” or Company” rules additional to the “Providers” Rules. If the Scheme was Non Contributory then there would be enforcement rules by the Company on set up which were as previously discussed and agreed by all that as the Scheme was for a Pension on Retirement ONLY then the “local” rules would be built around that fact.

The Rules were briefly as follows:

1. Retirement age was to be sixty years of age.
2. On retirement at 60 the member was entitled to organise his own “annuity” conditions.
3. If the member left [Manflex] before retirement at 60 the Rules would still apply at retirement and the Member would be obliged to write to [Manflex] to inform it of his address and retirement.

It had been agreed and it was today confirmed that in the event of the Member dying before the age of 60 then the full sum of the member's fund would be distributed as follows:-

1. If married with children and living together then the payment would be in full.
2. If married with children but divorced or living apart payment would be @ 70% with the balance being held by the Trustee to be used at his discretion for the good of either the Member's children or [Manflex].
3. If unmarried but with children, as 2.
4. If unmarried with no dependants then payment would be only 10% but would be at the discretion of the Trustee to pay off any

debts, etc. due or pending, from the balance. Any residual would be held by the Trustee and distributed to the other Scheme members or used for the benefit of [Manflex] at his sole discretion and in the most tax efficient way.

5. If married with no children then payment would be at 50% to the widow with the balance being used by the Trustee as he feels fit for the good of [Manflex], and as under 4.

In the event that the Appointed Trustee], being a Member, dies before other Members then his pension contributions will be treated in the same way as above.

It is agreed that [Mr Dutton] should be Trustee of the Scheme and if this is not possible due to death then the position must be taken by a person qualified to manage Pension Funds, that is a representative of a qualifying Pensions Broker or other.”

5. Mr Dutton has also provided a draft share purchase agreement dated 20 May 2001, which says, so far as is relevant to the complaint:

“Mr S would receive benefit of £10,000 per year for five years to be paid into his NPI pension fund ...in the event of Mr S not achieving pensionable age it is agreed that his death in service benefit would accrue to Manflex Ltd and [Mr S] will be expected to renew this commitment in the light of the present share transfers.”

6. Another document provided by Mr Dutton is a copy of a nomination made by Mr S. This is typed and is not on an NPI nomination form. It says:

“Copy – original sent to NPI via [Manflex’s pensions adviser].
Form of Nomination – Manflex Executive Pension Scheme.
Number 764814 (NPI) organised by [Manflex’s pensions adviser].
Dated 18.11.1988.

I [Mr S] hereby nominate the persons and/or companies listed below to receive any cash sum payable under this plan (scheme) on my death if this occurs before my stated pension retirement date (Death in Service). I understand that this form will not bind the Trustee(s) of the plan, but will help them to pay the benefits as I would wish. This Declaration is irrevocable unless I and the Trustee(s) agree to any future changes which I may request from time to time.

1. To my heirs and successors in accordance with my Will – up to 10 per cent which will include an amount for payment of funeral expenses and other incurred costs.

2. To Manflex Company number 117844 or alternatively personally to the Trustee(s) to invest in Manflex Ltd at their discretion – up to 90%.

3. If I am married with children at the time of my death before retirement then the 90% (as in 2) is reduced to 50% with the difference passing to my wife. The Trustee(s) may at their discretion reduce the Manflex percentage and vary upwards the other two amounts.

(Note:- Changes in personal circumstances will not affect this nomination. If you wish it to be altered at any time then you must complete a new form. The information on this form will be treated as confidential. If you wish to make it secret you may place it in a sealed envelope and hand it to a Trustee for safe keeping. The envelope will not be opened except on your instruction or unless a cash sum death benefit becomes payable)."

The document was signed by Mr S and Mr Dutton.

7. Mr S left Manflex in 2005. In November 2008, Mr S' independent financial adviser (**IFA**) recommended that he transferred his preserved benefits to the Liverpool Victoria Friendly Society. Mr S signed an NPI "Retirement Discharge Form" on 18 November 2008, authorising the transfer. Manflex wrote to Mr S on 1 December 2008 saying:

"We have received a communication from CBG advising the Company that they have heard from NPI with a request purporting to come from you indicating that it is your desire for a Retirement Discharge from the [Plan]. The matter has now been passed to the Scheme Trustee Mr Eric Dutton for his consideration and he will be communicating with you via this office.

We have been asked to remind you that the Scheme was set up in order to provide you with an income after early retirement at age sixty years - it was non-contributory in that the secured amount is standing at over £185,000 with you being able to take any tax-free lump sum of over £65,000.

In the opinion of the Trustee this is not the right time to interfere with your Fund and there is a question mark over the advice you may have been given. In order that the Company can act correctly in this matter in your best interests we ask that you write to the Trustee at this office confirming your intentions for a Retirement Discharge at this time. If you wish Mr Dutton to write

to you personally with his comments then please feel free to ask for such advice prior to committing yourself in any way.

PS Due to time constraints and holidays will you please let us have your letter within seven days."

Mr Dutton did not sign the discharge form and the transfer did not proceed.

8. On 19 October 2010, Mr S signed an NPI nomination form in favour of Mrs L and Mr H, in equal shares. Mr S' IFA sent the form to Mr Dutton on 24 October 2010. An undated note sent to Mr S by his IFA says:

"I have now spoken to Mr Dutton and explained that the law would insist that he carried out your instructions in the event of your death.....Mr Dutton tried to argue that these were employer contributions and were therefore somehow the property of Manflex, but I made it clear that it doesn't matter who makes the contributions, the benefits (on death or at retirement) belong to the beneficiary!

At the end of the conversation, I think that Mr Dutton appreciated that he would have to instruct the administrator to distribute the funds in accordance with your wishes in the event of your premature death or to pay the benefits out to you on your retirement. He asked whether I would ask you to name Manflex as one of the beneficiaries of your will! I agreed to pass the message on.

The fact that he has now received your instructions by registered post means that he is required to carry them out and this will be enforced (with legal help if needed).

I have also received confirmation today that NPI has also received your instructions....."

9. Mr S sent an email to his IFA following a telephone conversation between them on 28 October 2010. The email said:

"I've listed below the key points that Mr Dutton highlighted to me during his phone call.

'He's gone back on his word', alleging that he cannot remember saying that he will have the disposition removed from my EPP.

90% of my EPP fund going to the trustees [sic] and 10% to my estate.

He is prepared to implement a change to my EPP from a 90/10 split to 60/40 in favour of Manflex and possibly a 50/50. As he doesn't think it's fit for my brother and sister to benefit any more from demise, as I've not received any benefit from them. (His words).

I ended the conversation by saying "I'll think about it and get back in touch."

10. In October 2010, Mr S' Will was drawn up by his solicitor. Mrs L was appointed sole executor and trustee of Mr S' estate, which was to be divided equally between Mrs L and Mr H, subject to certain specific legacies. Mr S signed the Will on 18 November 2010, but his signature was not witnessed so the Will was invalid.
11. On 28 January 2011, Mr S' IFA sent the new nomination form to Pearl, which had taken over NPI. The IFA asked Pearl to keep the nomination in its records as it was likely that Mr Dutton would ignore it. However, the nomination is not in the papers held by Phoenix. Phoenix only has the first nomination drawn up in 1988.
12. Mr Dutton wrote to Mr S on 27 November 2011, saying:

"The previous letter to you on this subject sent to you by [Mr Dutton's secretary] at my request and direction (I was away from base) was intended to clear up any questions which you may have had and to help you to more fully understand and come to terms with the questions and facts that the present situation has created for you. I had felt that the explanations were sufficiently clear and detailed in order to achieve such understanding. It now seems likely that either you did not fully appreciate the points raised which surprises me as you are a party to the original negotiations, OR the other people involved here, your brother and sister and now I understand your brother-in-law also, having little or no knowledge of pensions law found it hard going. I have to presume that you allowed [them] to read the full contents and presumably passed a copy to your "Adviser" who unfortunately for you seems unable to accept the facts. I was first contacted by him in November last year, I sent him your sealed copy of the "Irrevocable Determination" or Disposition, then no further contact until I had to request the return of the document which happened in June this year. He unfortunately believes that his argument and views based on some years in "pensions" are very correct when

the rest of the industry including NPI and the Pensions Regulator advised me that he is completely wrong. He did not become active again until, I understand, your brother-in-law stirred his pot and decided to "help" you presumably.

Let me make a number of things crystal clear for you [Mr S] and the parties now involved.

1. Manflex was the provider of the money for the EPP Fund ONLY. No other contributors, including you.
2. Manflex is not the administrator of the fund.
3. Manflex nor its directors or employees have any connection with the EPP fund.
4. The manager of the EPP fund is NPI (it was formed with them if you remember) now part of the Pearl Assurance Group. They will provide any eventual pension provision or lump sum payment, or transfer under a section 32 agreement, to you, the member, all under my specific direction as the sole trustee of the fund. All the Local Rules would still apply in full.

As the sole trustee I have full and complete authority to deal with the EPP fund for individual members as I deem to be correct and proper, bearing in mind both the NPI Rules together with the agreed "Local Rules" which were set down in 1988 and agreed by both you and [another director of Manflex] and were transmitted to NPI at the start of the EPP.

5. NPI and the Office for Pensions Regulations have yet again confirmed that my view and interpretation of our Local Rules as laid down in 1988 is correct and they remain "irrevocable", sight of which you [Mr S] have recently had with your own witnessed signature. Your pension age cannot be moved from 60 years unless and until I die and you and [another director of Manflex] as the surviving members can vote if inclined to change the Local Rules, and/or a new and suitably qualified person is appointed as Sole Trustee and feels it correct to vote on the Rules.

There is another aspect to this situation on which I will express a view and a threat. [Mr S] please make it absolutely clear to the members of your family and in particular your brother-in-law, that any further interference on his part with the staff of Manflex Ltd.,

any further harassment, intimidation or further verbal abuse by visit or by phone will lead to me taking action against him. The same goes for your "Adviser" - he can deal with me and only me - any further emails with their contained threats to any member of Manflex staff will be reported to his Professional Association. He can write to me at the above address. I know that he feels he is knocking his head on the wall and getting no-where - with his attitude it is not surprising and if he really was able to fully understand the position with the Manflex EPP, or could obtain some proper advice rather than presuming he has the necessary knowledge in this matter to advise you, then he may be less frustrated and more directed on your problems. Will you also make him aware that any "costs" which he has already brought into the equation, and threatened with, will be his or yours only. I will not under any circumstances allow the Fund, at any time, to pay any such costs or disbursements. If he wishes to go to court to obtain a judgement that is up to him, at his cost. The judgement will have to decide all the questions relating to the "Local Rules for Pension Schemes" and I am told that he would be better advised to read previous judgements handed down over the years.

I have mentioned that I cannot by law now be in any contact with your "Adviser", nor can I speak or communicate with any member of your family, UNLESS you write to me giving me specific instruction to receive their contact (in writing). I know that this all sounds a bit over the top but it is all due to Data Protection, Protection of you and your Fund, etc, and it is all being created by your "Adviser" speaking to me or me speaking to him, without having your written permission to do so, and your "Adviser" knew the rules. As the trustee I am not allowed to communicate with anyone about your affairs, without having your written permission and this error has been noted.

I realise [Mr S] that I have gone on a bit but I felt that I had to this time to make matters clearer for you. Let me assure you again that in the event of my requirement to act in accordance with your expressed wishes then your family will be treated without hesitation in absolute correct accordance with my Duties as your Trustee.

I did ask last time if we could meet but got no reply is it now possible. I look forward to hearing from you."

13. Mr S received a further letter from Manflex, which is undated and unsigned, saying:

“....In the last week or so we have had letters, again from [Mr S’ IFA] from both NPI [now part of the Pearl Group] and from the Pensions Regulator. The matter of your wishing to Reissue the Policy into a section 32 is the chief issue and Mr Dutton as the Pension Trustee has asked me to convey to you that he has no problem with this at all, providing the Scheme Rules as laid down at the Scheme formation will apply, that is, your Disposition made at the formation will apply, i.e. your Disposition made at the formation will continue to apply. Both NPI and the Pensions Regulator have now confirmed that this would continue to be the case.

Mr Dutton is however very worried that you are having considerable undue pressure applied to you by your sister and brother in law to change the position now when they would no doubt be beneficiaries. Ten per cent of your fund is still a lot of money. When you last discussed this matter with Mr Dutton some two years ago (at the Fir Grove) you agreed that everything should stay in place as is. On two previous occasions Mr Dutton had asked you to transfer your pension to a Self Administered Scheme which you preferred not to do even though the papers had been prepared for you. If it goes to law, which it will have to, and the Disposition is undone, then the fund is considerable and because of this Mr Dutton is fearful for you and therefore disinclined to allow any changes until the matter goes to Court for a Decision.

It has been said that you do not remember the Disposition Nomination which you and [another Manflex director] signed at a meeting prior to the Scheme formation which was attended by....the Pensions Adviser, representing BHC, the document and Minute Notes being signed by all present. A copy of the typed Minutes are available if required but you will probably remember the Basic Company Rules on Formation briefly being as follow:-

“It has been voted and decided by the two members Mr S and [another Manflex director] that the Scheme should be Non Contributory and as a result of this vote it is agreed that the Company will apply its own local rules to govern any eventual Distributions from the Fund, unless the Rules are changed by unanimous vote of all the Directors of Manflex.

1 Unless the Company ceases trading there will be no Retirement until age sixty years regardless of any future changes which may happen to alter the present Retirement Laws, without the written agreement of the Trustee, or in the event of his death, by agreement of the Members.....”

14. Mr S died on 4 January 2012, and a Grant of Administration dated 4 July 2012 appointed Mrs L as personal representative and administrator of Mr S’ estate. The solicitor dealing with the estate asked Mr Dutton to pay Mr S’ fund in accordance with his latest nomination. Mr Dutton responded on 10 February 2012, refusing to recognise the Coroner’s Interim Certificate of Death as valid. Mr Dutton continued:

“If you are cognisant with Private Pension Law you will no doubt know that I have two years to deliberate before making know [sic] to Mr S’ brother and sister the value of the Manflex EPP sum which will attach to the Estate.

As things stand at present the Deposition signed by Mr S provides for them to receive 10% of the Fund but at my discretion I can increase this percentage but unfortunately I cannot decrease it.....”

15. Mr Dutton signed an NPI discharge form dated 1 November 2012, naming himself as beneficiary and claiming 100% of the benefit. On 22 November 2012, NPI paid £212,797.55 into Mr Dutton’s bank account. Mr Dutton did not pay anything to Mrs L or Mr H. He says that he shared most of the money out between Manflex employees, who received between £1,000 and £7,000 each, as well as paying about £22,000 to Manflex to cover tax liabilities on these payments. Mr Dutton says that he did not keep any of the money.
16. The Plan is still in existence, but is inactive with no funds. Mr Dutton has asked Phoenix to wind it up.

Scheme Rules

17. A copy of the original Trust Deed and Rules is not available. Phoenix has provided copies of the Deed of Amendment dated 11 June 2010, and the Rules as amended on that date. The amendments are standard ones relating to pensions simplification and do not affect the definitions and Rules relating to this complaint. The Rules say:

“**Normal Pension Date** means the date on which a member is expected to take his benefits...a member's normal pension date may not be earlier than his 60th birthday...

Pension Date means a date on which a member may choose to take his benefits under the **scheme** instead of on his **normal pension date**. A **member** may not choose a pension date which is earlier than **normal minimum pension age**, except as permitted under **rule 4.1(1)(c)** [incapacity]...The **trustees** must secure the agreement of the **member's employer** to the early payment of benefits before allowing the **member** to choose a pension which is before his **normal pension date**.

...

5.1 Benefits On Death If a member dies before taking his benefits under **rule 4**, the **trustees** will calculate as a monetary amount the surrender value of his **retirement account** (and any life assurance under the **policy**) and will apply the monetary amount to provide a lump sum and/or a pension payable to one or more of the **member's spouse** and **dependants**...Any lump sum will be paid in accordance with **rule 5.3**.

...

5.3 Payment of lump sums on death

(1) If a lump sum is payable on a **member's** death before taking benefits under **rule 4**, the **trustees** will pay it to one or more persons or other entities in the following classes of **beneficiary** or apply it for their benefit in such proportions as the **trustees**, in their absolute discretion, see fit. The classes of **beneficiary** who may benefit (in no order of priority) are:

- (a) the **member's spouse**,
- (b) the **member's children**,
- (c) the **member's dependants**,
- (d) any person with an interest in the **member's** estate, and
- (e) any individual, incorporated body or unincorporated body nominated in writing by the **member** to the **trustees**.

Any nomination made by the **member** in accordance with (e) above shall be an expression of wish only, and shall not bind the **trustees** in any way in the exercise of their discretion.

...

Transfers To And From The Scheme

....

7.2 The transfer option

(1) The transfer option is available to:

- (a) a **member** who leaves *service*,
- (b) a **member** who leaves the **scheme** without leaving **service**,
and
- (c) all **members** if the **scheme** is terminated,

provided that no benefits have already been paid to or in respect of the **member** under the **scheme**.

(2) A **member** who is entitled to the **transfer option** is also entitled to the cash equivalent under the **1993 Act**.....

(3) The **member's** application to the **trustees** to exercise the **transfer option** must be made in writing, and must relate to the whole of the surrender value of the **member's** retirement account.

...

(6) The **trustees** will comply with the **transfer value laws**.

[Defined as "the laws concerning transfer values under Chapter IV Part IV of the 1993 Act"].

...

14.3 Expenses and charges

...

(3) A **trustee** will be indemnified by the **employers** against any liabilities which he incurs through his trusteeship other than those which arise out of his own conscious wrongdoing or fraud."

Summary of Mr Dutton's position

18. Mr Dutton says:

- His actions were completely correct at all times.
- He will not comply with any directions that I might make.
- If Mrs L does not withdraw all her allegations, he will institute legal proceedings for libel. Her claim is spurious and should not be taken seriously.
- He is no longer a trustee.
- Mr S did not want his next of kin to receive more than 10% and would have preferred all the money to go to the employees of Manflex, so Mr Dutton decided not to pay anything to Mrs L and Mr H. He might do so in the future, depending on the tax position.
- He had known Mr S since he was a child. Mr S went to the same school as Mr Dutton's son and Mr and Mrs Dutton treated Mr S as one of the family.
- If an oral hearing was held, he could explain the closeness of the bond between him and Mr S and how Mr S would have wanted the money to go to Manflex employees.
- Mr S was an alcoholic who had been told that he had three months to live unless he stopped drinking. He was scared of Mrs L and her husband and sought Mr Dutton's advice about resisting their attempts to interfere with his financial affairs,

such as taking him to a solicitor to make a Will and to an IFA to review his pension arrangements.

- Mr S was bound by the terms of his “Disposition”, comprising the “Local Rules” agreed at the meeting on 18 November 1988, and the nomination he signed on the same day.
- As the Plan was non contributory, the “Local Rules” agreed in 1988, took precedence over the Plan Rules and Mr Dutton decided what happened to Mr S’ fund, as Manflex had paid for it.
- The Plan provided pensions at 60 and not before, and Mr S knew that there was no entitlement to a payment in the event of his death before that age.
- Mrs L’s inheritance from Mr S was sufficient for her needs.
- It was for him alone to decide whether to accept Mr S’ nomination.
- He does not understand why Mrs L thinks she is entitled to any of the money.
- Mr S was naive when it came to financial matters and so he needed protection and guidance from his brother and sister, who knew how ill he was and wanted to get hold of his fund.
- Mr S decided not to pursue the transfer and nomination issues when they had been properly explained to him by Mr Dutton.

Summary of Mrs L and Mr H’s position

19. Mrs L and Mr H say:

- Mr Dutton should not have blocked Mr S’ attempt to transfer his fund to the Liverpool Victoria Friendly Society.
- Mr S wanted to transfer his preserved pension away from Mr Dutton’s control and to a provider that would permit retirement before 60.
- Mr S was bullied by Mr Dutton and was frightened of him. His family are appalled by Mr Dutton’s assertion that Mr S was treated as part of Mr Dutton’s family, and hold Mr Dutton responsible for Mr S’ death.
- Mr Dutton misappropriated the money that should have been paid out in accordance with the Plan Rules and Mr S’ nomination dated 19 October 2010.

Conclusions

20. Oral hearings are not held simply to allow statements to be made verbally instead of in writing. Given the amount of contemporaneous written evidence that is available and Mr Dutton’s explanation of what he did with Mr S’ fund, in my view an oral hearing is unnecessary.
21. Mr S’ entitlement to a transfer value is governed by the Plan Rules, relevant provisions of the Pension Schemes Act 1993 (as amended) and the Occupational Pension Schemes (Transfer Values) Regulations 1996 (SI 1996/1847) (as

amended). Essentially, these statutory provisions required Mr Dutton to comply with Mr S' transfer request. Mr Dutton did not do so, despite Mr S' IFA explaining the requirements to Mr Dutton.

22. Mr S completed two nomination forms. In 1988 he nominated Manflex and the beneficiaries of his Will. In 2010 he nominated his sister and brother. These forms were statements of Mr S' wishes, and acted as guidance for the trustee. When Mr S died, Mr Dutton's duty as trustee was to carefully consider Mr S' wishes as stated on the forms, and make enquiries to assist him in paying the money to the most appropriate person. In exercising his discretion, Mr Dutton had to take into account all relevant factors and disregard irrelevant ones. He had to ask himself the proper questions and comply with the Plan Rules.
23. Mr S' 1988 statement of wishes seems to have been drawn up by Mr Dutton, or at his direction. It seems odd that Mr S would want most of his retirement fund to go to a former employer in the event of his death, and not his next of kin. It would be difficult to attach much weight to Mr S' first nomination following Mr S' death, bearing in mind that Mr S left Manflex in 2005 and his later nomination and draft Will were both in favour of his brother and sister.
24. Mr Dutton blocked Mr S' attempt to transfer his fund in 2008, and ignored Mr S' 2010 statement of wishes. I have considerable difficulty in accepting Mr Dutton's assertion that Mr S agreed with his actions on both occasions. Mr S had articulated his wishes to his IFA and solicitor and those wishes were not what Mr Dutton says they were. Mr Dutton's written dealings with Mr S, his solicitor and IFA, demonstrate that Mr Dutton was determined to enforce his so-called "Local Rules", to the extent of disregarding the Plan's Trust Deed and Rules and the relevant statutory provisions. Preventing Mr S from transferring his fund did not protect him as Mr Dutton claims, but it did keep Mr S' fund under Mr Dutton's control.
25. Mr Dutton stated on NPI's discharge form that he was the beneficiary, although he did not fall into any of the categories of potential beneficiaries.
26. Mr Dutton did not exercise his discretion at all. He has made it plain that from the beginning he had no intention of complying with the Plan Rules and the statutory requirements. He ignored Mr S' second nomination altogether. His actions appear to have been motivated by a determination to retain control of Mr S' fund. No doubt Mr S' family wanted him to get his financial affairs in order, but it does not necessarily follow that their motives were improper. In any event, Mr S' pension fund was not for Mr Dutton to take and hand out to Manflex employees who had no conceivable claim on it. Far from protecting Mr S' pension fund, Mr Dutton's refusal to co-operate and failure to carry out his duties as trustee constituted maladministration. His responsibility for the maladministration, and the injustice caused by it, is not diminished by his no longer being a trustee.

27. Given Mr Dutton's conduct over a long period, no useful purpose would be served by directing him to consider the matter properly and make a decision. It therefore falls to me to decide who should have received the £212,797.55 paid by NPI. Mr S' latest nomination and his draft Will were both drafted in favour of his sister and brother in equal shares. He was professionally advised in relation to both documents, and I have concluded that the weight of contemporaneous written evidence supports Mrs L's contention that the full amount should have been paid to her and her brother in equal shares.
28. Rule 14.3(3) provides for Manflex to indemnify Mr Dutton against liabilities incurred through his trusteeship, with certain exceptions. It would be for the directors of Manflex (including Mr Dutton) to decide whether to indemnify Mr Dutton, and take steps to recover the improper payments previously made by Mr Dutton.

Directions

29. Mr Dutton shall pay Mrs L and Mr H £212,797.55, together with interest at the base rate for the time being quoted by the reference banks, in equal shares within 28 days of the date of this Determination.

Anthony Arter

Pensions Ombudsman
2 August 2016