



# Pensions Ombudsman Update – February 2022

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# Mr S (PO-11134) – Schemes should update transfer processes promptly

The Pensions Ombudsman (the **Ombudsman**) has **ordered** a scheme to reinstate a member after erroneously allowing a transfer out, and to make a payment for distress and inconvenience.

## Facts

Mr S was a deferred member of the Armed Forces Pension Scheme (**AFPS**). He took a transfer to the Capita Oak Pension Scheme, operated by Imperial Trustee Services Limited (**Imperial**). Imperial was subsequently forced into compulsory liquidation, and Mr S believes his benefits have been lost. He complained that he had been allowed to transfer to a fraudulent arrangement.

## Decision

The Ombudsman held that Mr S had no statutory right to transfer, and that the Ministry of Defence (**MoD**) should have identified this had it undertaken adequate checks.

A transfer from one Occupational Pension Scheme to another allows only an “earner” to acquire “transfer credits”. The MoD did not check Mr S’ employment status, and indeed, during the transfer process had received evidence that Mr S was in receipt of Jobseekers’ Allowance. Therefore, Mr S did not have a statutory right to a transfer – and the scheme rules did not allow a discretionary transfer. The transfer was void.

In addition, the Pension Regulator’s (**TPR**) “Scorpion” guidance had been issued in February 2013. Although Mr S’s transfer started before this date, it only completed in September 2013. The MoD did not update its transfer processes to reflect TPR’s new guidance until November 2013.

The Ombudsman found that there had been maladministration: despite concluding that Mr S would still have taken his transfer, the MoD should have acted with greater due diligence and informed Mr S of the risks (sending the Scorpion literature, noting “red flags”, such as the fact that the Capita Oak scheme was overseas and only recently established). The Ombudsman did not accept the argument that no timescale for compliance with the guidance applied as TPR did not give one, nor did it accept that a reasonably competent pension provider would have been unaware of the new guidance for six months. It was the responsibility of the MoD to keep up to date with pensions standards and guidance, the guidance being issued put “prudent administrators on notice of the standards expected”, and six months was sufficient time for them to have acted on it in relation to Mr S’s transfer.

The MoD was ordered to reinstate Mr S’s membership of the AFPS, and to pay £2,000 for his severe distress and inconvenience.

## Impact

The Determination is a reminder that the Ombudsman (in particular, following 2020’s **Determination** in the case of Mr R, where one month was held to be “generally sufficient”), expects schemes to act swiftly to update their processes following changes in legislation or significant guidance.

This should be borne in mind as the **new statutory transfers regime** develops.



The Determination is a reminder that the Ombudsman, expects schemes to act swiftly to update their processes following changes in legislation or significant guidance.

# Mr L and Mr E (CAS-56678-K8C8 and CAS-59621-L3K9) – No entitlement to additional pensionable service

The Ombudsman has **concluded** that members were not entitled to additional pensionable service, despite receiving a letter from their employer which the members interpreted as stating otherwise.

## Facts

Mr L and Mr E (the **Applicants**) were employed by Nokia UK Ltd (**Nokia**) and members of the Nokia 1990 Final Salary Section (the **Section**) of the Nokia UK Retirement Plan.

The Section closed to future accrual in April 2012, and the Applicants then held deferred defined benefits (**DB**) in the Nokia Solutions and Networks Trust (the **NSN Trust**).

In 2016, Nokia acquired a corporate group with a final salary scheme in which members were still accruing final salary benefits (the **Alcatel-Lucent Pension Scheme**).

In January 2018, Nokia proposed to close all current final salary schemes to future accrual, and open a new defined contribution arrangement for all members.

In April 2018, Nokia sent the Applicants a letter confirming the changes that had been made (the **Letter**). The Letter stated under a heading “*DB Related Benefits in NSN and Alcatel Lucent Trusts*” that “*At the time employment with Nokia UK ceases the value of the deferred DB benefit will be the greater of (i) the deferred DB benefit increased in accordance with the plan rules or (ii) the value calculated considering years of service to 30 April 2018*”. The Letter continued that all Nokia employees who were active DB members as at 30 April 2018 would receive a benefit statement as soon as possible.

In June 2019, Mr L asked Mercer, the administrator, to provide an annual benefit statement including pensionable service up to April 2018, noting that this was based on the content of the Letter. Mercer informed Mr L that he was not entitled to pensionable service up to April 2018.

In March 2020 the Applicants each complained to the Trustee of the Nokia Retirement Plan (the **Trustee**) that on a correct interpretation of the Letter they were entitled to a revised annual benefit statement based on pensionable service up to April 2018.

The Trustee did not accept that the Letter could reasonably be read to grant the Applicants additional pensionable service, as the Section had closed in 2012. The Applicants complained to the Ombudsman.

## Decision

The Applicants’ complaint was considered by an adjudicator, who found that no further action was required from Nokia, Mercer, or the Trustee.

The Applicants did not accept this decision, and the complaint was referred to the Ombudsman, who said that while the relevant extract from the Letter was not clear and was open to interpretation, it referred to active DB members as at 30 April 2018 only, and as such did not apply to the Applicants. The Trustee must follow the Scheme rules, which did not allow for additional pensionable service to be granted to the Applicants.

## Impact

Where schemes have multiple sections, or where employers have multiple schemes, communications need to be clear to which members the communication applies.

In this complaint, the Ombudsman found that the relevant communication was “*not clear*” and “*open to interpretation*”. Whilst the Ombudsman did not uphold the complaint, had the communication been clearer, the employer, trustee and administrator would have avoided the time, and no doubt cost, of defending the application.

Communications to members should be reviewed carefully to ensure that they are clear, and a “one size fits all” approach should be avoided if it does not adequately distinguish which members the relevant section of the communication applies to.

# Miss CS (PO-21507) – Administrator with delegated powers must act within the scope of its delegated authority

The Ombudsman has **concluded** that although a scheme administrator acted outside the scope of its delegated powers in granting a death benefit, the Trustee corrected the error when it revisited the decision and considered all relevant beneficiaries afresh.

## Facts

Mr R, a member of the Railways Pension Scheme (the **Scheme**), died in 2014 without submitting a nomination form to the Railways Pension Trustee Company Limited (the **Trustee**).

Mr R cohabited with Ms KS from 2000 to December 2013. Miss CS, Ms KS's daughter, was born on February 2002. Miss CS believes that Mr R is her father although he is not stated to be so on her birth certificate.

Mr R's will named Ms KS as his sole executor, and left 9/10ths of the residue of his estate to Ms KS or, if she pre-deceased him, to her children.

On Mr R's death, a lump sum was payable to one or more "Beneficiaries", including his siblings, children, and any other person with an interest in his estate under the Rules of the Scheme. The discretion to make decisions about death benefits when there was only one potential beneficiary had been delegated to the Scheme administrator, RPMI, who should act in accordance with the Trustee's guide on discretionary lump sums, which sets out the enquiries RPMI must make, including "*proportionate wider enquiries*" and cross-checking the member's will.

A death benefit form was completed by Mrs L (Mr R's sister) who stated that Mr R was single, intestate, had no children, and that she knew of no other person who may be entitled to receive benefits. Consequently, RPMI approved the payment of a lump sum to Mrs L (the **Decision**).

Miss CS' representative challenged the Decision under the Scheme's two-stage internal dispute resolution procedure (**IDRP**). At stage one, the Trustee agreed with the Decision, as RPMI took reasonable steps to identify all relevant beneficiaries. It concluded that although not all relevant beneficiaries were identified, this did not invalidate the Decision. After taking legal advice and considering the evidence provided, it came to the same conclusion in stage two of the IDRP.

Miss CS complained to the Ombudsman.

## Decision

The Ombudsman found that, had the decision process been run as expected, RPMI would have collected relevant information which would have identified Ms KS and Miss CS as falling within the class of potential beneficiaries, and then referred the decision to the Trustee. As it did not, it had acted outside the scope of its delegated powers and the initial Decision was therefore void.

However, the Ombudsman found that at stage two of the IDRP the Trustee, having obtained legal advice and having considered further evidence on all potential beneficiaries, reached a separate and valid decision.

## Impact

This complaint raises two issues: how trustees should exercise their discretion, and how those with delegated powers must act.

Where trustees choose to delegate powers around discretionary decision making they should ensure this decision making process is audited frequently and that they remain informed of the decisions taken, and the reasons on which they are based.

Where a party is acting under delegated powers, it should be aware of the scope of these powers and how to exercise them. In the event of uncertainty, the decision should always be referred to the trustees for their input.

# Mr S (CAS-33317-H3P1) – Trustee ultimately responsible for the administration of the Scheme, and liable to pay award to member following confusing information sent by administrator

The Ombudsman has **concluded** that the Trustee must pay Mr S £2,000 in recognition of the severe distress and inconvenience caused to him by confusing information sent by the administrator.

## Facts

Mr S was an active member of the Quartzelec Pension Scheme (the **New Scheme**) from 2002 until 2007, and was previously an active member of the Alstom Pension Scheme (the **Former Scheme**).

In 2004, Mr S's employer issued an announcement informing members that it had decided to establish the New Scheme, and that members could either preserve their benefits in the Former Scheme, or transfer their pensionable service from the Former Scheme to the New Scheme. If they transferred their benefits from the Former Scheme, their pensionable service would be treated as continuous.

Mr S said that he elected to transfer his pensionable service, and had sent the relevant paperwork to the administrator by the deadline set out in the announcement. This was disputed by Quartzelec Pension Trustees Limited (the **Trustee**), which said that it has no record of Mr S' benefits in the Former Scheme being transferred, and that he was only entitled to benefits from the New Scheme in respect of the period from 2002 until he became a deferred member in 2007.

After corresponding with the Trustee and the Scheme's administrators and receiving conflicting information as to his proper entitlement, Mr S complained under the Scheme's IDRPs that, amongst other things, he had transferred his benefits from the Former Scheme to the New Scheme. The Trustee did not uphold Mr S' complaint.

Mr S complained to the Ombudsman on the grounds that when he reaches his normal retirement date his benefits from the Scheme will be 40–50% less than anticipated due to the conflicting and confusing information he received from the administrator.

## Decision

The Ombudsman partially upheld Mr S' complaint.

The Ombudsman noted the *“confusing information the Scheme sent to Mr S between 2007 and 2018”*, sent by the Scheme's administrators, on behalf of the Trustee, which was *“far from clear”*. This information included correspondence that indicated that Mr S did not transfer his benefits from the Former Scheme, whilst other correspondence confirmed that he had.

Whilst the conflicting information provided on behalf of the Trustee was not enough to substantiate a claim for negligent misstatement against the Trustee, the Ombudsman found that the Trustee had not shown sufficient care in the provision of the correct information to Mr S.

The Ombudsman awarded Mr S £2,000 in recognition of his loss of expectation and severe distress and inconvenience.

## Impact

Inadequate record keeping is a common cause of complaints to the Ombudsman. In this complaint, the issue was exacerbated by various parties issuing the member with confusing and conflicting information. Ultimately, the trustee is responsible for the administration of the scheme, and should show sufficient care in the provision of correct information to the scheme's members.

# Mr H (PO-28801) – Employer’s decision regarding the appropriate level of incapacity retirement benefits was not improperly reached

The Ombudsman has **concluded** that an employer’s decision not to grant a member a “Total Incapacity” pension was reached properly, as the employer applied the Rules correctly and considered the relevant evidence, including that provided by the employer’s medical advisor.

## Facts

Mr H was employed by Shell International Limited (**Shell**), and was a member of the Shell Contributory Pension Fund (the **Scheme**).

The rules of the Scheme (the **Rules**) define two levels of incapacity:

1. where the incapacity makes it unlikely that the member will ever again obtain any employment (**Total Incapacity**); and
2. where the incapacity prevents them from undertaking their current occupation (**Partial Incapacity**).

It is for Shell, acting on medical advice, to decide which level applies.

In 2012, Mr H retired on the grounds of incapacity and Shell awarded him a Partial Incapacity pension.

In 2013, Mr H wrote to Shell outlining his current medical conditions. Shell referred Mr H’s case to its medical advisers (**Shell Health**), who reviewed the case and sought reports from Mr H’s specialists. Shell Health advised that there was not enough evidence to say it was unlikely that Mr H would ever again obtain any employment.

In 2014, Shell informed Mr H that it had decided to continue paying him a Partial Incapacity pension, and provided a copy of the advice it had received from Shell Health.

Following a review, Shell informed Mr H in 2015 that he continued to meet the criteria for a Partial Incapacity pension only. In deciding this, Shell had referred to medical advice from Mr H’s GP and specialists, which said that many of Mr H’s conditions might be amenable to ongoing or further treatment. Mr H disagreed with Shell’s decision, and provided Shell Health with further medical reports regarding his conditions. Shell responded that, after considering these reports, its decision had not changed.

In 2017, Mr H submitted a complaint under Shell’s Incapacity Dispute Procedure (**IDP**) on the grounds that he should be entitled to a Total Incapacity pension. The IDP upheld Shell’s decision, and Mr H complained to the Ombudsman.

## Decision

The Ombudsman concluded that no further action was required by Shell.

The Ombudsman considered whether Shell had applied the Rules correctly when deciding that Mr H did not qualify for a Total Incapacity pension, and whether this was supported by the available evidence. The Ombudsman noted that in the definition of Total Incapacity, the term “employment” is unqualified. This means that to satisfy this definition, the member must be considered permanently incapacitated from undertaking any employment.

In deciding whether this was satisfied, Shell was required to weigh up all the relevant evidence available to it. The Ombudsman found that it was open to Shell to rely on the advice of Shell Health in interpreting the medical evidence when making its decision. As a consequence, the Ombudsman concluded that Shell’s decisions to maintain Mr H’s Partial Incapacity pension was properly reached.

## Impact

Decision makers must apply the qualifying criteria for incapacity pensions as set out in the scheme rules. Members may struggle to understand this process and, on occasion, consider it unfair. To mitigate this, communication is key. Whilst trustees do not have to explain their discretionary decision making, it is often helpful to do so in clear terms to enable members to better understand the decision making process within the remit of the scheme rules.

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