CAS-66581-S4T8

# Ombudsman’s Determination

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| Applicant | Mrs L |
| Scheme | Scottish Housing Associations’ Pension Scheme (**the Scheme**) |
| Respondents | Verity Trustees Limited (trading as TPT Retirement Solutions) (**the Trustee**) |

## Complaint Summary

Mrs L has complained that the Trustee failed to administer the trust in accordance with the Scheme rules.

## Summary of the Ombudsman’s Determination and reasons

The complaint is upheld against the Trustee for:

- Maladministration and failure to distribute the lump sum death payment in accordance with the Scheme rules at the time of the Member’s death; and
- Breach of equitable duty of care.

## Detailed Determination

### Material facts

1. Verity Trustees Limited is the Trustee (**the Trustee**) of the Pensions Trust (**the Trust**). The Trust includes several schemes, including the Scottish Housing Associations' Pension Scheme (**the Scheme**).

2. At all material times (and until October 2023), the Trustee was trading as "TPT Retirement Solutions" and "TPT" and administering the Scheme. Since October 2023, the day-to-day administration of the Scheme has been carried out by TPT Retirement Solutions Limited, a subsidiary of the Trustee and a separate legal entity.

3. TPT Retirement Solutions has been liaising with TPO on behalf of the Trustee and has delegated authority to do so.

4. The Trust is governed by the Pensions Trust Rules effective from 1 November 2014, as amended (**the Rules**).

5. The Rules set out that the Trust and its administration is governed by English law (Rule 26.3).

6. The Scheme is a defined benefits pension scheme, governed by the Rules and the Defined Benefits Rules in Appendix 3 and, it is subject to the Options in the schedules of the Scheme document (**the Scheme Document**), referred to as "Matrix Options" (see Appendix).

7. Lump sum death benefits in the Scheme Document are stated to apply when death occurs whilst the Member is still in Pensionable Service. Appendix 3 of the Rules further provides: -

   " *For the avoidance of doubt, Matrix Options may be applied flexibly so that (without limitation) different Matrix Options may for example apply to different categories of Members, different elements or amounts of Earnings and Final Earnings, and/or different periods of Service or Pensionable Service".*

8. The Scheme Document sets out the specific provisions for the Scheme. Lump sum death benefits are set in the sum of 3 x annual earnings at the date of death (in addition to the return of the Member's contributions).

9. The Scheme Document provides for continued life cover after retirement up to state pension age, where the member joined the Scheme prior to 1991. Specifically, option 251 applies. Section 14.3 of Appendix 3 provides:

   *"Option 251 in the case of Members of the Scheme in Pensionable Service, who were Members or members of a previous scheme of the Employer prior to 1 October 1991 and who retire early for any reason before age 65, the benefit payable under Defined Benefit Rule 14.2 (Matrix Option: lump sum) (other than a refund of the Member's contributions to the Scheme plus compound interest calculated at such rate as the Trustee decides after taking Actuarial Advice) shall be*

*payable on death before age 65 instead of the five year guarantee of pension (unless the Scheme Document states that the benefit shall be payable on death before age 65 in addition to the five year guarantee of pension).”*

10. Rules 7.1 and 7.2 of the Rules govern payment of lump sum death benefits.

11. Rule 7.1 states:

    *“A Member may at any time deposit with the Trustee a nomination for the payment of lump sum death benefits. A nomination or a change to or withdrawal of a nomination must be in writing signed by the Member, or submitted by the Member electronically in a form acceptable to the Trustee, and be received by the Employer or the Trustee before the Member’s death. The Trustee may, but is not obliged to, comply with a Member’s wishes as expressed in a nomination.”*

12. “Rule 7.2 (set out in full in the Appendix below) sets out payment of lump sum death benefits as follows:

    *“The Trustee will pay any lump sum death benefit to one or more of;*

    *7.2.1 the person or persons or organisation nominated by the Member;*

    *7.2.2 the Member’s legal personal representatives (“executors” in Scotland); or*

    *7.2.3 the Beneficiaries.*

    *The “**Beneficiaries**” are:*

    *(i) The Member’s surviving spouse (including a same-sex spouse) or Civil Partner;*

    *(ii) any ancestors and descendants of the Member, or of the Member’s surviving spouse or Civil Partner, and the spouses, Civil Partners and surviving spouses or Civil Partners of those ancestors or descendants;*

    *(iii) any brother or sister, uncle or aunt (whether of the whole or half-blood) of the Member, or of the Member’s surviving spouse or Civil Partner, and the spouses, Civil partners and surviving spouses and Civil Partners of those persons;*

    *(iv) any descendant of a person included in (ii) or (iii) above;*

    *(v) any person who, in the opinion of the Trustee, was formally engaged to be married to (or to become a Civil Partner of) the Member;*

    (vi) *any person with an interest in the Member’s* estate; and

    *(vii) the Member’s Survivors.*

13. Rule 7.2 further states:

*"The Trustee will pay any lump sum death benefit within 2 years of the later of the Member's death and the date on which the Trustee is notified of the Member's death. The Trustee will pay the benefit in such shares as it decides.*

*If a lump sum death benefit is not paid within 2 years of the Member's death, the Trustee will pay the benefit to the Member's legal personal representatives ("executors" in Scotland) or retain the benefit if it would otherwise forfeit to the Crown, the Duchy of Lancaster or the Duke of Cornwall. Where a lump sum death benefit is paid to executors of a Scottish estate, the Trustee will require confirmation in writing that the amount payable from the Fund is included in the "inventory" as "estate in England and Wales."*

14. The Rules also provide for pensions on death of the Member and the Scheme Document specifies the category of persons who qualify: a person who had been nominated by the member as a "Survivor" being one of them.

15. Option 270 – Survivor states:

*"The Member may at any time deposit with the Trustee a nomination in accordance with the Rules nominating a person as their Survivor as defined in Rule 1 (meaning of words used) or otherwise in the Scheme Document."*

The definition of Survivor is described in Rule 1–

*a. A Dependant of the Member; or*
*b. Any individual who is (or was at the date of the Member's death) cohabiting with the Member in a relationship closely resembling marriage (including same-sex marriage) and habitually sharing expenses with the Member or having financial interdependence with the Member.*

16. Mrs T was a member of the Scheme, (**the Member**), and was married to Mr T. Mrs L, the applicant, is the Member's daughter from the Member's first marriage. Mrs L is married to Mr L.

17. In 1983, the Member joined the Scheme.

18. On 14 July 2003, the Member wrote to the Trustee and requested that her nomination for the lump sum benefit was updated to reflect her daughter's change of maiden name following her marriage to Mr L.

19. On 17 July 2003, the Trustee wrote to the Member and confirmed her nominations were recorded as a partner's pension for Mr T, and a lump sum death benefit for Mrs L.

20. On 6 June 2005, when the Member completed her Retirement Option Form, she again restated her nomination for a partner's pension in favour of Mr T and her nomination for the lump sum death benefit, in the event of the Member's death within the 'five-year guarantee period' in favour of Mrs L.

21. On 3 September 2005, the Member retired and her benefits from the Scheme were put into payment.

22. On 16 October 2014, the Member wrote to the Trustee stating the following:

*"I had cancer last year and, as a result, I have had some financial difficulties with no assistance being forthcoming from the benefits system. The cancer returned within the year and I am undergoing further treatment. It would greatly help with my budgeting to have my pension paid monthly rather than quarterly. Is this possible?*

*I shall also be grateful if you would confirm that my husband, ..., is on record as the beneficiary to my pension, should I pre decease him."*

23. On 15 June 2016, the Member died, aged 63 (prior to the state retirement age). Mrs L and Mr L were appointed joint executors of the Member's Will.

24. On 28 June 2016, the Trustee wrote to Mr T and advised that a survivor's pension amounting to 50% of the Member's pension as at the date of the Member's death was payable to him. The pension was set up once the necessary forms were received.

25. On 5 August 2016, probate was granted. Mrs L was bequeathed a one-half share of the Member's property and her jewellery. The residue passed to Mr T. Mrs L and Mr T were the only two beneficiaries of the will.

26. Almost three years later, on 10 May 2019, the Trustee wrote to Mr T advising that an audit had identified that a Death in Service Payment was payable from the Scheme on the Member's death, equal to three times the Member's final salary. The benefits had not been paid within two years of the Member's death, so the Trustee had to pay the benefits to the Member's executors to be distributed in accordance with the Will (governed by Scottish law).

27. On 20 May 2019, the Trustee received a letter from Mr L and Mrs L, confirming their positions as executors. A copy of the Will was provided.

28. On 30 May 2019, the Trustee wrote to Mr L and confirmed the amount payable to Mrs L as per the nomination held on file. Payment details and verification of identity were requested to make the payment.

29. On 5 June 2019, the Trustee received the payment details. Correspondence from Mitchells Roberton Solicitors (**Mitchells Roberton**), acting on behalf of Mrs L, instructed that payment should be made to their account.

30. On 6 June 2019, the Trustee received a call from Mr T. He told the Trustee that he was to receive no benefit from the lump sum despite being a beneficiary in the Will.

31. On 7 June 2019, the Trustee informed Mr L that it was consulting its Legal, Risk and Compliance Team before making the payment.

32. On 14 June 2019, the Trustee emailed Mr L. The Trustee advised that the payment had to be made to the executors of the estate in accordance with the Scheme Rules.

The benefit had to be distributed in accordance with the Will. The amount payable had to be included in the "*inventory*" as "*estate in England and Wales*".

33. There was further correspondence between the Trustee and Mitchells Roberton, in which Mitchells Roberton raised a complaint with the Trustee, on behalf of Mrs L. It alleged that the Trustee had violated the Member's intentions by failing to follow the Rules of the Trust. If the lump sum death payment had been made to Mrs L, her family could have sought professional help to deal with their grief. The error, identified several years following the Member's death, had caused further distress for the family. Further, the Trustee had breached General Data Protection Regulations (**GDPR**) by writing to Mr T, as opposed to Mrs L, the nominated beneficiary. Mitchells Roberton proposed obtaining an Eik (Amendment) to Confirmation (an Eik to Confirmation is a document that allows executors to administer an item of an estate that has been overlooked), at the Trustee's expense, to enable the release of the funds. In order to do this, Mitchells Roberton required the Trustee to confirm in writing that the funds were due and payable to Mrs L, and that the Eik to Confirmation was to correct the Trustee's error.

34. On 16 September 2019, the Trustee responded to Mrs L's complaint, and apologised. The Trustee said there was no guarantee that the benefits would have been paid to Mrs L, even if they had been paid out within the two years following the death, due to their discretionary nature. If the benefit had been considered for payment within two years of the Member's death, under Rule 7.2 of the Scheme Rules (see Appendix), the Trustee would still have considered the legal representatives of the Member's estate, and if deemed appropriate, payment could have been made to the estate. Because payment had not been made within two years of the Member's death, payment now had to be made to the executors to be distributed in accordance with the Will. Under Rule 7.2, the Trustee no longer had any discretion regarding who the payment was made to. The Member's Will and Expression of Wish were simply indicative of the Member's intentions. Further, only the Member could have attested to her intentions at the time of completing the documents and at the time of her death.

35. The Trustee had not breached GDPR because Mr T fell within the definition of "beneficiaries" under Rule 7.2 and consequently had a legitimate interest in the lump sum, under Rule 7.2.3. The Trustee was willing to assist with an Eik to Confirmation but could not confirm that Mrs L was entitled to the benefits. Any discretion the Trustee had regarding the payment of the benefits, ceased to apply two years after the notification of the Member's death.

36. On 3 March 2020, Mrs L appealed the decision, this appeal was received by the Trustee on 5 March 2020. On 5 June 2020, a response was provided by the technical teams, and the matter referred to the Appeals and Discretions Committee (**the Committee**).

37. The Committee constituted under the Trust Deed and Rules and has delegated powers from the Trustee Board to consider appeals. On 24 August 2020, it apologised for the delay in response, which it said was due to the appeal having been

incorrectly identified as a technical query. The Committee acknowledged the response provided by the technical team, and it reaffirmed the content of that response, as set out below.

38. The Member had nominated Mrs L to receive any lump sum death benefit, both whilst she was an active member of the Scheme and at the time of her retirement. Mrs L would have been considered as a potential beneficiary, however, there was never a guarantee that the benefits would have been paid to her.

39. It was accepted that there had been maladministration on the part of the Trustee since it had failed to identify the benefits payable on the Member's death. However, since the period between the date the Trustee was informed of the Member's death and the date at which the error was identified was more than two years, the requirement under Rule 7.2 of the Rules, was that the benefit had to be paid to the executors.

40. The Committee concluded that the failure to correctly determine and pay the lump sum death benefit, at the time of the Member's death, amounted to a serious failure in administrative procedure. It apologised on behalf of the Trustee and offered £5,000 in compensation for poor administration and distress and inconvenience.

41. In December 2020, the Trustee paid the lump sum death benefit of £134,631.31 (including interest) to the executors.

42. During TPO's investigation into the complaint the Trustee reiterated its position as set out in previous correspondence. In addition, it said that a nomination is not binding on the Trustee in the way that the Rules are. The Trustee was asked to provide a list of the potential beneficiaries under the Scheme, including its submissions on how the benefit would have been divided had it been considered within the two-year period. Further information was provided by the Trustee, and it is reflected in its summary position, in paragraphs 50 to 56 below.

43. On 13 January 2025, I issued a Preliminary Decision into Mrs L' complaint and gave both parties to opportunity to comment.

44. Both the Trustee and Mrs L accepted my Preliminary Decision.

**Summary of Mrs L's position**

45. The Trustee had written to Mr T explaining that an error had occurred in relation to the Member's benefits from the Scheme. A death benefit was payable if the Member died prior to state retirement age. This was a term that the Member had agreed with the Trustee when she entered the Scheme in the early 1980s. The Member had died at age 63, which was before her state retirement age, so a death benefit was payable in June 2016. However, this was not discovered until an audit in 2018.

46. She was entitled to the death benefit by virtue of the nomination by the Member. The Member had restated her nomination in favour of her to avoid any confusion as to her

intentions. This had been around 2003, following her marriage to Mr L and well after the Member's marriage to Mr T (which took place around 1993).

47. The nominated beneficiary is strongly favoured in most cases. However, the Trustee failed to honour the nomination within two years following the Member's death. Due to this failure, it had to pay the benefit to the executors of the estate. As Mr T was sole residuary beneficiary of the estate, he received the death benefit payment. This was clearly an unsatisfactory outcome given that she was fully entitled to expect the death benefit in line with the Member's nomination.

48. She was subsequently forced to enter negotiations with Mr T, as a result of the Trustee's failure to deal with the death benefits correctly. Her mother's Will was varied to include a pecuniary legacy of £50,000 to Mr T, payable from the death benefit. She retained the balance of the death benefit.  In return, she transferred her mothers' share of the house to Mr T for a postponed security over half of the net sale proceeds. She was required to pay Mr T the £50,000 legacy within 3 months of signing the Agreement, which she complied with.

49. The Deed of Variation would not have been required had the Trustee paid out the death benefits correctly within the first two years.

50. Her alleged losses were therefore as follows:

a) £50,000 paid to Mr T from the death in service payment, following the Will Variation.

b) £5,000 for Distress and Inconvenience (as per the offer made by the Trustee on 24 August 2020);

c) approximately £1,140 for Legal Costs (to include complex legal arrangements and the setting up of the Deed of Variation); and

d) £173 of Outlays (Registering Documents).

**Summary of the Trustee's position**

51. Anyone who qualified under General Rule 7.2 could have been a beneficiary. There was no guarantee that the benefits would have been paid to Mrs L because the benefits were discretionary.

52. When exercising its discretion, the Trustee has to consider all relevant information. In usual circumstances, the Trustee would make further enquiries and gather further information to identify the range of potential beneficiaries. This is an important part of the process when the Trustee is exercising its discretion.

53. In the Member's case, as the lump sum death benefit was not identified as being payable until more than two years after the Member's death, the usual process of gathering information was not carried out.

54. The Trustee had some information about potential beneficiaries, but this information was not reviewed at the time to establish whether it was sufficient for a decision to be made. It was therefore not possible to confirm that the Trustee held all relevant information to determine how the Trustee would have distributed the benefit if it had done so within two years of the Member's death.

55. Rule 7.2 of the Scheme Rules meant that because payment had not been made within two years of the Member's death, it had to be made to the executors of the Will, to be distributed in accordance with the Will.

56. Mrs L and Mr T would have been known to the Trustee at the time of the Member's death. Further enquiries had not been made to identify other potential beneficiaries. However, in the circumstances, these would have been the two most likely beneficiaries who would have been considered for distribution of the death benefit.

57. It was not possible to speculate on the likely distribution of the benefit because further enquiries could have been necessary. The outcome of these enquiries could have been relevant to the Trustee's decision. By way of example, a nomination form had been completed by the Member which is typically a significant factor in the Trustee's decision making. However, this had last been updated in 2005 (over ten years before the Member's death). In such cases the Trustee might reasonably have made further enquiries of the potential beneficiaries to understand the circumstances in which the nomination form was made and any subsequent changes in those circumstances. The outcome of this exercise might have been that the benefit would have been paid in full to Mrs L, but there was also the possibility that it might not have been.

**Conclusions**

58. The Trustee has agreed it failed to pay the death benefit within two years of the member's death as required under General Rule 7.2 of the Scheme Rules. In doing so, the Trustee failed to properly implement the Scheme Rules and breached its equitable duty of care.

59. As a result of this failure to pay the benefits within two years of the Member's death, the Trustee lost discretion over whom to pay the benefits to. Under Rule 7.2 it had to pay the benefits to the executors of the Estate. However, due to this maladministration, Mrs L, who was the nominated beneficiary, was not considered for the benefit. The issue referred to me for consideration is to decide on the correct remedy for this breach.

60. There is no dispute that Mrs L had been nominated in 2003 and in 2005. This has been confirmed by Mrs L and the Trustee. The Trustee was asked for its position on how it would have distributed the benefits, if it had made the payment within two years of the Member's death. The Trustee said that to advise on how it might have paid out the benefits, it required to have all the relevant information. In this case, it said that it did not have all relevant information because, due to its failure to pay the benefits within two years of the Member's death, it had not carried out any further enquiries to ascertain all relevant matters.

61. The Trustee claims that, since the lump sum benefits were discretionary, there was no guarantee that they would have been paid to Mrs L in any event. However, the Trustee confirmed that it would have been aware of Mrs L and Mr T as two potential beneficiaries for the death benefit lump sum at the time of the Member's death. The Trustee also did not put forward any evidence to indicate that there is any reason to consider anyone else as a beneficiary. To the contrary, it advised, the most likely beneficiaries for the death benefit would have been Mrs L and Mr T.

62. As the hypothetical facts relate to the actions of the respondent, not to the actions of a third party, this is not a loss of a chance case, and as such I will need to determine, on the balance of probabilities, how the payment of the lump sum death benefit would have been determined but for the error. Therefore, whilst the decision to make the payment to Mrs L would have been discretionary, I must consider whether the Trustee would have paid the full benefit to Mrs L, if distributed on time. In reaching this decision, I have to ask myself whether, on the balance of probabilities, the Trustee would have considered any beneficiaries other than Mrs L and Mr T and whether, again on the balance of probabilities, the Trustee would have paid the entire benefit to Mrs L.

63. I have taken into consideration the fact that Mrs L and Mr T are the only beneficiaries of the Will, and that the Trustee has confirmed that it is most likely that Mrs L and Mr T would have been the only beneficiaries considered. Further, during the course of my investigations, I have not become aware of any other potential beneficiaries, and I am not aware of any reason to consider otherwise. Therefore, on the balance of probabilities, I am satisfied that Mrs L and Mr T are the only beneficiaries that the Trustee would have considered.

64. Next, I need to decide whether, on the balance of probabilities, any proportion of the Death Benefit would have been apportioned to Mr T.

65. The Trustee advised that a nomination form had been completed by the Member in 2003, and that this would have been a significant factor in the Trustee's decision-making. However, the Trustee said that if it had paid the benefit on time, further enquiries might have been made to understand the circumstances of the nomination.

66. Mrs L's position was that the Nomination was restated in 2003 to affirm the Member's intention for Mrs L to receive the lump sum death benefit. She advised that the nomination was restated to reflect her change in maiden name following her marriage to Mr L. She also said that this was some time after the Member's second marriage which had taken place around 1993.

67. The Trustee wrote to the Member on 17 July 2003 and confirmed that it held two nominations for death benefits. The nomination in relation to the Member's pension in favour of Mr T and the nomination for the lump sum death benefit in favour of Mrs L. These were clearly two separate nominations. One was for the Member to pass on her inheritable pension under Rule 15 to her survivor, while the other was to benefit the nominee with a lump sum in the event of death, under Rule 14.2. This is

important, as the Member's nominations in relation to survivor's benefits and lump sum death benefit did not appear to change throughout her lifetime. To the contrary, the evidence before me showed that the Member restated her nominations again on 6 June 2005.

68. Following the Member's cancer diagnosis, the Member wrote to the Trustee in 2014 to check that Mr T had been nominated to receive her pension, but she made no enquiries about her lump sum death benefit nomination. I accept that as it was over 10 years since the last nomination, it is also possible that the Member simply forgot about the lump sum death benefit. However, on the balance of probabilities, I find that, it is more likely than not, if she wanted to make changes to the lump sum death benefit nomination she would have done so.

69. In light of the above, I find that, on the facts as presented, there does not appear to have been any material change of circumstances since the lump sum death benefit nomination was restated in 2003 and 2005.

70. The Trustee has had every opportunity to put forward its submissions on the matter. It has not put forward any positive arguments or evidence to demonstrate why Mr T should have received a proportion of the Death Benefit. The Member took actions to restate her Nomination in 2003 and 2005, sometime after her marriage and Mrs L's marriage. Given that the Trustee has confirmed that the nomination is a significant factor in its decision-making, it had been restated twice, in favour of Mrs L, I find on the balance of probabilities that the Trustee would have honoured the death benefit nomination, if the distribution of the death benefits had been dealt with on time, and would have paid Mrs L the full discretionary lump sum death benefits.

71. Mrs L had little choice but to vary the term of the Member's Will by Deed of Variation to retain any of the benefits. Therefore, she has mitigated her losses and as such claims the difference of £50,000 as paid out to Mr T in accordance with the varied Will. This loss should therefore be paid to her.

72. Legal costs incurred by Mrs L in relation to drafting the Minute of Agreement and associated documents in connection with the Member's estate were £1,140. I consider that these were foreseeable given that the case involved a complex breach of duty. Additionally, Mrs L incurred a further expense of £173 for registering the variation of the Will and the Minute of Agreement.

73. The above failures have resulted in Mrs L having to spend a considerable amount of time and effort in mitigating her losses to some extent and I have no doubt the matter will have caused her distress and inconvenience. While I note the Trustee made an offer of £5,000 for the distress and inconvenience it had caused, I consider that the level of maladministration by the Trustee justifies an award for serious injustice of £1,000.

**Directions**

74. Within 28 days of the date of this Decision, the Trustee shall:

a. Pay Mrs L £50,000 in respect of the portion of the lump sum Death Benefit retained by Mr T;

b. Reimburse Mrs L's legal costs which I have accepted as £1,140.

c. Reimburse Mrs L £173 for the registration of the Variation of the Will and the Minute of Agreement;

d. Pay Mrs L £1,000 in recognition of the serious distress and inconvenience she experienced through the maladministration; and

e. Pay an amount equal to any tax charges paid or payable by Mrs L or from her interest in Mrs T's estate arising from the Death in Service Payment having been paid to the estate of Mrs T and then paid out of the estate rather than being paid directly from the Scheme to Mrs L as a discretionary defined benefit lump sum death benefit  within 2 years of Mrs T's death.

**Camilla Barry**

Deputy Pensions Ombudsman
05 February 2025

# Appendix

**THE PENSIONS TRUST**

**General Rules**

**7 Payment of lump sum death benefits**

**7.1 Nominations**

A Member may at any time deposit with the Trustee a nomination for the payment of lump sum death benefits. A nomination or a change to or withdrawal of a nomination must be in writing signed by the Member, or submitted by the Member electronically in a form acceptable to the Trustee, and be received by the Employer or the Trustee before the Member's death. The Trustee may, but is not obliged to, comply with a Member's wishes as expressed in a nomination.

**7.2 Payment of lump sum death benefits**

The Trustee will pay any lump sum death benefit to one or more of:

7.2.1 the person or persons or organisations nominated by the Member;

7.2.2 the Member's legal personal representatives ("executors" in Scotland); or

7.2.3 the Beneficiaries.

The "Beneficiaries" are:

(i) the Member's surviving spouse (including a same-sex spouse) or Civil Partner;

(ii) any ancestors and descendants of the Member, or of the Member's surviving spouse or Civil Partner, and the spouses, Civil Partners and surviving spouses or Civil Partners of those ancestors or descendants;

(iii) any brother or sister, uncle or aunt (whether of the whole or half-blood) of the Member, or of the Member's surviving spouse or Civil Partner, and the spouses, Civil Partners and surviving spouses and Civil Partners of those persons;

(iv) any descendant of a person included in (ii) or (iii) above;

(v) any person who, in the opinion of the Trustee, was formally engaged to be married to (or to become a Civil Partner of) the Member;

(vi) any person with an interest in the Member's estate; and

(vii) (vii) the Member's Survivors.

For this purpose, a relationship acquired by legal adoption shall be valid as a blood relationship and a step-child is deemed a descendant.

The Trustee may use all or part of the amount payable for the benefit of one or more of the Beneficiaries, instead of paying it direct to the Beneficiaries concerned.

So long as only Beneficiaries can become entitled to the benefit, the Trustee may:

(a) direct that all or part of the lump sum be held by themselves or other trustees on such trusts (including discretionary trusts) and with such powers and provisions (including powers of selection and variation) as the Trustee sees fit; or
(b) pay all or part of the lump sum to the trustees of any other existing trust.

The Trustee will pay any lump sum death benefit within 2 years of the later of the Member's death and the date on which the Trustee is notified of the Member's death. The Trustee will pay the benefit in such shares as it decides.

If a lump sum death benefit is not paid within 2 years of the Member's death, the Trustee will pay the benefit to the Member's legal personal representatives ("executors" in Scotland) or retain the benefit if it would otherwise forfeit to the Crown, the Duchy of Lancaster or the Duke of Cornwall. Where a lump sum death benefit is paid to executors of a Scottish estate, the Trustee will require confirmation in writing that the amount payable from the Fund is included in the "inventory" as "estate in England and Wales"

## Appendix 3

## Special Rules for Defined Benefit Schemes

### 1 Interpretation

Each Defined Benefit Scheme is governed by the Rules and the Defined Benefit Rules in this Appendix 3 subject to any additions or modifications contained in the relevant Scheme Document.

The Scheme Document of each Defined Benefit Scheme will indicate the options chosen from these Defined Benefit Rules on the commencement of the Defined Benefit Scheme (or a subsequent amendment). Any option not indicated in the Scheme Document of a Defined Benefit Scheme will not (unless the context requires otherwise) apply to that Defined Benefit Scheme.

……

For the avoidance of doubt, Matrix Options may be applied flexibly so that (without limitation) different Matrix Options may for example apply to different categories of Members, different elements or amounts of Earnings and Final Earnings, and/or different periods of Service or Pensionable Service. Different Matrix Options may also be selected by different Employers participating in a single Defined Benefit Scheme

## 2 Scheme documents, etc.

### 2.1 Scheme Documents

2.1.1 These Rules shall apply to each Defined Benefit Scheme and to the benefits which are or may become payable under the Scheme, subject to any additions or modifications contained in the Scheme Document for that Scheme.

2.1.2 Every Scheme Document shall give the name of the Defined Benefit Scheme, the date the Scheme commenced within the Fund and any modifications or additions to the definitions given in Rule 1 (meaning of words used), any agreements between the Trustee and the Employer or Employer Committee or Members (as the case may be), the options chosen from the Defined Benefit Rules, and any other provisions which are to apply to the Defined Benefit Scheme and which differ from the provisions of the Rules (including the Defined Benefit Rules) which would otherwise apply.

2.1.3 The terms of the Scheme Document shall override any conflicting terms in the Rules. However any references in a Scheme Document to a Clause or Rule in a previous version of the Rules will be interpreted as referring to the relevant provision of the Rules from time to time. This means, for example, that a reference to Clause 1 of the Trust Deed will interpreted as a reference to Rule 1 (meaning of words used).

### 14.2 Matrix Option: Lump sum

<u>Option 14.2 – SD</u>

As set out in the Scheme Document.

<u>Option 250</u>

In addition to the return of the Member’s contributions as described above for Members in Pensionable Service, such multiple of the annual rate of the Member’s Earnings at the date of the Member’s death as is specified in the Scheme Document.

A lump sum calculated in accordance with this Rule shall be payable in accordance with Rule 7.2 (payment of lump sum death benefits) as appropriate.

### 14.3 Matrix Option: Continued life cover

<u>Option 251</u>

In the case of Members of the Scheme in Pensionable Service, who were Members or

members of a previous scheme of the Employer prior to 1 October 1991 and who retire early for any reason before age 65, the benefit payable under Defined Benefit Rule 14.2 (Matrix Option: lump sum) (other than a refund of the Member’s contributions to the

Scheme plus compound interest calculated at such rate as the Trustee decides after taking Actuarial Advice) shall be payable on death before age 65 instead of the five year guarantee of pension (unless the Scheme Document states that the benefit shall be payable on death before age 65 in addition to the five year guarantee of pension).

**SCHEME DOCUMENT FOR THE PENSIONS TRUST - SCOTTISH HOUSING ASSOCIATIONS' PENSION SCHEME**

1. **Defined Benefit Rules**
This Scheme Document for The Pensions Trust - Scottish Housing Associations' Pension Scheme (the Scheme) is entered into, pursuant to Rule 2.2 of the Defined Benefit Rules of The Pensions Trust, between the Trustee of The Pensions Trust and the Employer Committee on behalf of the Employers.

2. **Scheme commencement date**
The Scheme commenced on 1 October 1993. The name of the Scheme is "The Pensions Trust - Scottish Housing Associations' Pension Scheme". Prior to 17 March 2011, the Scheme was known as "The Pensions Trust – SFHA Pension Scheme".

3. **Matrix options**
The Scheme shall be subject to those options from the Defined Benefit Rules as shown on the attached schedules. Except where a Matrix Option expressly states that it applies to Defined Benefit Options only, it shall also apply to the Defined Contribution Option. Defined Contribution Options which are not governed by the Matrix Options are set out in the Defined Contribution Schedule to this Scheme Document.

4. **Amendments**
This Scheme Document supersedes all previous Scheme Documents relating to the Scheme, and, for the avoidance of doubt:

(a) new entrants to the Scheme on and from 9 March 2006 and existing Members of the Scheme on and from 14 June 2006 do not have the option under General Rule 15.1 to transfer previous benefits to the Defined Benefit Options. Transfers may be accepted into the Scheme if they would entitle Members to benefits under the Defined Contribution Option.

(b) on and from 7 December 2006, the practice of augmenting pensions at retirement is discontinued.

5. **Interpretation**
The attached schedule includes sections headed "Notes for Administrators". These are intended as clarification for administrators, are not intended to have any legal effect and do not form part of the operative provisions of this Scheme Document.

**DEFINED BENEFIT RULES MATRIX OPTIONS**

**THE PENSIONS TRUST – SCOTTISH HOUSING ASSOCIATIONS' PENSION SCHEME**

| Rule | Option | Description |
|---|---|---|
| | | **Contracting out** |
| 3.2 | 40 | Option 40 (previously 340) applies to all Members' benefits to which the Defined Benefit Options apply, excluding 1/120ths Career Averaged Defined Benefit option. |
| | 41 | Option 41 (previously 341) applies to all Members' benefits to which the Defined Contribution Option and 1/120ths Career Averaged Defined Benefit option apply. |
| 3.2 | | ***Notes for Administrators:*** *contracting-out on a salary related basis ceased to be possible on and from 6 April 2016: as a result Matrix Option 40 ceased to apply to Defined Benefit Options for benefits accrued on and from 6 April 2016 and Matrix Option 41 applies in its place from that date.* |
| | | **Eligibility** |
| 3.3 | 101 | Option 101 (age range) applies but is modified so that no person shall be eligible to join the Scheme unless that person is age 16 or over and under age 75. |
| 3.3 | 102 | Option 102 (qualifying period) applies. Employees must satisfy a qualifying period specified by the Employer, not exceeding three months' employment before being eligible to join the Scheme. |
| | | **Aggregation** |
| 3.4 | 111 | Option 111 (re-entry) applies to any periods of membership of the Scheme which began before 1 April 2008 (Defined Benefit Options only). |
| 3.4 | 113 | Option 113 ("30 days") applies (Defined Benefit Options only). |
| | | **Normal Pension Age** |
| 3.6 | 120 | Option 120 ("65") applies. |
| | | **Transfer club** |

| Rule | Option | Description |
|---|---|---|
| | | **Ill-health pensions - actives** |
| 8.3 | 190 | Option 190 (Enhanced Pensionable Service) applies (Defined Benefit Options only). |
| | | **Options – Deferred pension** |
| 9.2.1 | 210 | Option 210 (Final Earnings) applies where a Member ceases to accrue all pension benefits (including in the Defined Contribution Option) in the Scheme before taking their pension (Defined Benefit Options only). |
| | | **Temporary absence** |
| 12.9 | 12.9 SD | Where a Member returns to work and elects to pay contributions that were missed during a period of temporary absence, the Employer shall also pay the Employer contributions relating to this period. The exception to this is in cases where the temporary absence is in respect of a 'lifestyle choice' and the break exceeds 6 months, where the Employer shall have absolute discretion over payment of any contributions missed. Life cover will continue to apply throughout the period of temporary absence. |
| 12.9 | 231 | Option 231 is amended so that the period for which Part 1 of Defined Benefit Rule 12 can apply shall be 30 months. |
| | | **Lump sum death benefits – death occurs whilst Member is still in Pensionable Service** |
| 14.2 | 250 | In addition to the return of Member's contributions, a lump sum on death in Pensionable Service of 3 x the annual rate of the Member's Earnings at date of death shall be payable. (Defined Benefit Options only) |
| | | **Continued life cover** |
| 14.3 | 251 | Option 251 (Continued life cover) applies (Defined Benefit Options only). |
| | | **Pensions on the death of a Member** |
| 15.2 | 260 | Option 260 (Potential Pensionable Service) applies (Defined Benefit Options only). |
| 15.2 | 261 | Option 261 (Earnings) applies (Defined Benefit Options only). |

| Rule | Option | Description |
|---|---|---|
| | | **Pensions on the death of a Member - payees** |
| 15.4 | 270 | Option 270 (Survivor) applies (Defined Benefit Options only). |
| | | **Pensions on the death of a Member – pension payable** |
| 15.5 | 280 / 283 | Option 280 ("50%") applies except that Option 283 – "1/160th" (Closed) applies instead to Members who died in deferment before 1 April 2002 (Defined Benefit Options only). |
| | | **Children's pensions** |
| 16.1 | 290 | Option 290 ("12.5%") applies for deaths occurring on or after 1 April 2002 (Defined Benefit Options only). |
| | | **Orphans' pensions** |
| 16.2 | 300 | Option 300 ("Doubled") applies for deaths occurring on or after 1 April 2002 (Defined Benefit Options only), subject to the below. |
| | 302 | Option 302 ("50% conditional") applies for deaths occurring before 1 April 2002. This option will continue to apply for deaths on or after 1 April 2002 in respect of those Members who joined the Scheme before 1 April 2002 where it provides a greater amount of benefits than would otherwise be payable under Options 290 or 300 (Defined Benefit Options only). |
| | | **Increases on pensions in payment** |
| 17.1 | 312 | Option 312 ("Index-linked") applies in respect of all Pensionable Service of Members who left Pensionable Service on or after 1 October 1993. This option applies to benefits in respect of Pensionable Service prior to 6 April 1997 as if statutory pension increases applied to those benefits on the same basis as for benefits accrued from 6 April 1997 to 5 April 2005 (Defined Benefit Options only). |
| 17.1 | 313 | Option 313 – Fixed (Closed) applies in respect of all Pensionable Service of Members who left Pensionable Service prior to 1 October 1993, except that 5% per annum compound increases will apply (Defined Benefit Options only). |
| | | **Deferred pension increases** |
| 17.2 | 17.2 SD | Option 322 ("Index-linked") applies to all Members whose Pensionable Service terminated on and from 1 October 1993. (Defined Benefit Options only). |