

Ombudsman's Determination

Applicant	Mr N
Scheme	Philips Pension Fund (the Fund)
Respondents	Philips Electronics UK Limited (Philips), Philips Pension Trustees Limited (the Trustee)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by Philips or the Trustee.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

Mr N has complained that the control and financing of his pension benefits have been transferred to an insurer and that he has been denied the option of taking up a pension increase exchange (**PIE**) as a consequence of that insurer's influence.

Background information, including submissions from the parties

3. Mr N is a pensioner member of the Fund having retired on 7 July 2001. In 2013 the Trustee completed a buy-in of the pensioner liabilities with an insurance company. A full buyout of the Fund was completed at the end of 2015. Prior to the buyout a PIE was conducted from which Mr N was excluded.
4. Mr N raised his complaints with the Trustee saying that the members should have been consulted over the buy-in, that his inclusion in the buy in resulted in his being excluded from the PIE, and as such he is being treated less favourably than other pensioners. Furthermore use of the members' personal data held by the Trustee in arranging the buy-in was not authorised under the Data Protection Act and was therefore a misuse of that data.
5. The Trustee replied to Mr N and said:
 - (a) The buy in contract was an investment of the Fund made by the Trustee under its investment powers and there was no requirement to consult with members over its investments;

- (b) The buy-in contract did not affect any payment of the members pension benefits;
and
 - (c) The data provided to insurers in relation to the buy-in contract was provided as part of the Trustee's legitimate actions in the management of the Fund. It was therefore permissible in accordance with the data protection legislation.
6. Mr N did not accept the Trustee's findings and brought his complaint to this service. Mr N says the buy-in was carried out without any consultation and without his consent. He became aware of the PIE as his wife was offered this but he was excluded. He believes his exclusion is because the financing and control of the pension fund have transferred to a third party insurance company who was making the decision to exclude him from the PIE.

Adjudicator's Opinion

7. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by Philips or the Trustee. The Adjudicator's findings are summarised briefly below:
- The choice of whether to insure the Fund benefits or not falls under the remit of the Trustee and its discretionary powers. The Trustee does not have to consult with the members over the choice of investments and the decision to purchase an annuity with an insurance company in respect of pensioner benefits does not affect the amount of pension that Mr N will receive. The Trustee has discretion to choose the investment strategy that it believes is appropriate for the membership.
 - There are some well-established principles that a Trustee is expected to follow in exercising a discretion. Briefly, the Trustee:
 - must take into account all relevant matters and no irrelevant ones;
 - must ask itself the correct questions;
 - must direct itself correctly in law
 - must not arrive at a perverse decision.
 - A perverse decision is taken to mean a decision which no reasonable decision maker, properly directing itself, could arrive at in the circumstances. The Adjudicator did not consider that the Trustee had acted incorrectly or that the decision was perverse; the Trustee had taken appropriate advice on choosing an insurance company and it could be argued that the purchase of the buy in annuities meant that the members' benefits were more secure than before and not dependent on the future ability of Philips to support the Fund.

- A similar position applied in respect of the PIE. The decision to commence a PIE exercise was taken by the Company and it was within its discretion to decide which members would be offered the PIE. There were a number of reasons why some members may be included or excluded from a PIE and it is not the role of this service to determine whether a member should be included in such an exercise or not. There had been no financial loss in respect of Mr N not being included in the PIE exercise and he was receiving the benefits he was entitled to under the Fund. It was more a loss of expectation as opposed to any real loss.
8. Mr N did not accept the Adjudicator's Opinion and the complaints were passed to me to consider. Mr N provided his further comments which I have considered along with previous submissions. Essentially I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman's decision

9. Mr N disagrees that Philips decided to introduce the PIE and asks for the outcome to be determined on the facts. He argues that if the decision to introduce the PIE was made by the Trustee then it has breached one of its primary duties to treat each member fairly – and in effect all the members excluded from the PIE should now be offered this.
10. But Philips have clearly said in its letter of 9 November 2015 to this service, which Mr N has seen, that it was the company's decision to make a PIE offer. This is consistent with the Deed of 6th August 2015 which sets out a process by which Philips may put an offer of an augmentation to a scheme member in exchange for surrender of rights to non-statutory pension increases. Although Mr N may dispute Philips' statement, I have no reason to doubt it.
11. Mr N asserts that the Trustees could have refused to execute the Deed which made the PIE possible, and it was wrong of them not to do so. I am satisfied that in executing the Deed the trustees made it possible for any of the members chosen by the company to have a PIE. In executing the Deed they did nothing to rule Mr N out of the exercise which followed.
12. Mr N considers that the insurance companies played the key role in determining who the PIE should be offered to because of their pre-existing contractual relationship with the trustees. He relies particularly upon the statement made to him that "the insurance companies' attitudes to insuring the changed benefits are key to selection for an offer." Plainly the insurance companies' pricing of individual risks with and without the PIE would be relevant to who was selected, but I cannot get from that statement to Mr N's position that the insurers had control over powers that rightly belonged to the Trustee. The obligations to pay Mr N's benefits had not transferred from trustee to insurer as a consequence of the legal relationship created by the buy

in contract. Philips have confirmed that it took advice from the insurance companies involved in the earlier buy-ins because they had information on the pensioners, but it was its ultimate decision which pensioners to exclude. The PIE offer was made to those members where it was anticipated the largest savings could be made in order to reduce the anticipated total cost of the buyout. I can see no reason to doubt Philips' assertion that it made the decision in light of its own commercial interests in securing the cheapest total scheme buy out.

13. Therefore, I do not uphold Mr N's complaints.

Karen Johnston

Deputy Pensions Ombudsman
25 May 2016