

Ombudsman's Determination

Applicant	Mr Y
Scheme	BT Pension Scheme (the Scheme)
Respondents	Accenture and BT Pension Scheme Management Limited (the Trustees)

Outcome

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

Complaint summary

3. Mr Y is unhappy about the decision of the Trustees to pay an incapacitated child's pension (**ICP**) to his mother, rather than directly to him. His complaint against Accenture is that they have administered this payment.

Background information, including submissions from the parties

4. The relevant rules are attached in the Appendix.
5. Mr Y's father (Mr EY) was a member of the Scheme and died in 1989. Mrs EY received a widow's pension and she also applied for an ICP for Mr Y as he suffers from a lifelong medical condition which has meant he has not been able to work.
6. At the time of his death, Mr EY's employer was the administrator of the Scheme. The decision was made in 1989 that an ICP was payable to Mr Y, but it would be reviewed again in five years' time. All correspondence was with Mrs EY. Mrs EY had completed the necessary forms and provided the medical evidence relating to Mr Y. Mr Y and Mrs EY were living together at the time.
7. The original 1989 decision was reviewed again in 1994. A "memo" is sent to Mrs EY which says: "Thank you for returning our form ... Our Pension Trustees have agreed that ... pension will continue to be paid, without any further review."
8. Due to Mrs EY's ill health, Mr Y took over her affairs in 2013. It is at this point that he says he became aware that Mrs EY was receiving the ICP on his behalf.

9. Mr Y made a complaint to both Accenture and the Trustees and used both stages of the Scheme's internal dispute resolution procedure (**IDRP**). His complaint was not upheld. The Trustees explained:
- “...one of the Trustee's fundamental duties is to act in line with the Scheme's rules. Where the Scheme's rules give the Trustee a power which it may exercise at its discretion, the Trustee must consider all relevant factors and disregard all irrelevant factors in deciding whether to exercise the discretion and in doing so not come to a decision which no reasonable trustee would reach. If the Trustee complies with these requirements, the general legal principal is that its decision whether or not to exercise its discretion may not be challenged.”
10. The Trustees went on to reject the complaint on the basis that the Scheme rules permit an ICP to be paid to another for the benefit of the “child” (in this case, Mr Y). They said that while it is unfortunate that there are no records as to how this decision was reached, there is no evidence to show that the decision made was unreasonable or that it was not made in good faith.
11. Mr Y asked for a definition of “for [your] benefit” and the Trustees argued that this had a broad meaning and that Mr Y could have benefited from the payments in a variety of ways, either directly or indirectly.
12. Mr Y remained unhappy with the response from the Trustees and therefore complained to my service.

Adjudicator's opinion

13. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by Accenture or the Trustees. The Adjudicator's findings are summarised briefly below.
- The Adjudicator felt there was not a complaint against Accenture as the original decision was made by the Trustees. Therefore Accenture were paying the ICP on the instruction of the Trustees.
 - Having considered the relevant Scheme rules, it was agreed that the Trustees had correctly interpreted and applied the rules by deciding to pay the ICP to Mrs EY for the benefit of Mr Y. Mr Y has highlighted that he was not mentally incapacitated, however, the relevant rules do not limit payments merely on the grounds of mental incapacity.
 - Due to the amount of time that had passed since the original decision was made, it was not possible to make a finding of fact as to how that decision was reached. The Trustees had kept records of how they reached the decision to pay the ICP, but there are no records as to why they decided to pay Mrs EY, instead of Mr Y directly (and there was no obligation on them to have kept such records at the

time). It is therefore difficult to know what the Trustees or Mrs EY's motives were in 1989 and 1994.

- It is difficult to make a finding of fact as to whether or not the ICP was used for Mr Y's benefit, this is because the person it was paid to is no longer able to state their position or explain what their intentions were.
- The Adjudicator felt that as Mrs EY had submitted the relevant paperwork, including personal medical information, and that Mr Y and Mrs EY were living together, the Trustees acted in good faith by paying the ICP to Mrs EY.

14. Mr Y did not agree with the views of the Adjudicator and further submitted the following points.

- Accenture are responsible for the administration of the Scheme and as such, along with the Trustees, they "failed to order and carry out regular reviews or even occasionally "data cleanse"". He maintains that he does not understand why records were not maintained, or regularly reviewed and updated.
- He does not feel the legal principles relating to the exercising of discretion have been explained to him.
- He believes that the relevant Scheme rule that refers to "mental capacity or other cause" "muddies the waters" and believes that this rule should never have been applied. He asks what other circumstances would apply.

15. Mr Y did not accept the Adjudicator's opinion and the complaint was passed to me to consider. Mr Y provided his further comments which do not change the outcome. I agree with the Adjudicator's opinion, summarised above, and I will therefore only respond to the key points made by Mr Y for completeness.

Ombudsman's decision

16. Mr Y has not put forward any new arguments that persuade me that the Trustees ought to have acted differently. They explained in their IDRPs Stage 2 decision, the legal principles that relate to exercising discretion (see paragraph 9 above) and, in following these principles, it is not my role to overturn their decision, merely because I may think differently.
17. The relevant scheme rules are clear that the Trustees may, at their discretion, pay an ICP to a representative on behalf of the "child". I agree with the Adjudicator that it is not possible to make a finding of fact as to how that decision was reached – there are no records of this, but that does not mean that the decision was wrong.
18. Using the information that is available, it can be seen that Mrs EY made the application on Mr Y's behalf; she was living with Mr Y at the time; and she had access to personal medical information about him. It does not seem unreasonable that, having received this information from Mrs EY, that the Trustees proceeded to pay the

benefit to her on Mr Y's behalf. However, it is not possible to know precisely the reason for Mrs EY's application to administer the ICP benefit on Mr Y's behalf, as she is no longer able to provide that information, or how she used the money for Mr Y's benefit. As the Trustees raised in their IDRPs response, Mr Y may have benefited indirectly as a result of the payments made to Mrs Y.

19. Mr Y has raised the issue about the completeness of the Trustees' records and that they ought to have regularly reviewed these to make sure that they were correct. I am unsure of what difference this would have made to Mr Y's complaint. If the reviews had occurred as he suggests, they merely would have confirmed that the benefit was being paid to Mrs EY in accordance with the Scheme rules. While he might disagree that the rules should not have been applied in this way, it does not mean that the Trustees have incorrectly applied them.
20. Therefore, I do not uphold Mr Y's complaint.

Anthony Arter
Pensions Ombudsman
04 November 2016

Appendix

Schedule 2 of the Scheme's General Rules (as at 2 March 1983)

(3) If the Trustees are satisfied that a beneficiary is unable by reason of mental incapacity or other cause to manage his own affairs the Trustees may at their discretion pay any benefits to which he is entitled to any other person for his benefit, and the receipt of such other person shall be a complete discharge of the Trustees who shall not be under any obligation or liability to see to the application of any sums paid.

Schedule 4 Section B of the Scheme Rules

Rule 14 (Children's Pensions)

(4) A child of a deceased pensioner or a deceased member who, at the date of death of the pensioner or member; is incapable of self support by reason of bodily or mental infirmity may at the discretion of the Trustees either receive or continue to receive (as the case may be) a child's pension for as long as the Trustees determine. For the purposes of this paragraph only, the age limits specified in the definition of "children" in Rule 1 shall not apply.