

Ombudsman's Determination

Applicant	Mr S
Scheme	British American Tobacco UK Pension Fund (the UK Fund)
Respondent	British American Tobacco Limited (BAT Ltd)

Outcome

1. I do not uphold Mr S' complaint and no further action is required by BAT Ltd.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr S has complained that BAT Ltd are not offering him a Pension Increase Exchange (**PIE**) option. He believes this is discriminatory against him and other members of the Overseas Pension Fund (**the Overseas Fund**).

Background information, including submissions from the parties

4. PIE options were set up so pension funds and schemes would no longer have to pay increases on a yearly basis that may fluctuate, making the remaining liability to the fund difficult to calculate. In addition to the remaining pension liability being simpler to calculate, the member would benefit from a one off payment or an agreed increase in pension, with the understanding that no further increases would be paid.
5. On 6 June 2016, Mr S contacted BAT Ltd and asked whether a PIE option was available to him. BAT Ltd explained that its adviser had determined that the potential uplift to his benefits would be insufficient. Therefore, this was not available to him. Furthermore, BAT Ltd explained that Mr S' pension came from three different sources: the UK Fund, an Overseas Fund and an unfunded unapproved company pension. It said the Overseas Fund which was based in Lichtenstein, had a different Trust Deed and Rules, separate Trustees, and was consequently not subject to the same regulatory requirements as the UK Fund.
6. Mr S wrote to BAT Ltd on 13 June 2016. He requested a more detailed explanation why the decision had been made not to offer him the PIE option on the UK Fund.

Mr S believed it was unethical to only offer the PIE option to pensioners with higher pensions, and that logically people with the smaller pensions should be treated the same, if not better as their income was lower.

7. BAT Ltd said, in their letter of 7 July 2016, that UK Fund pensions of an insufficient value had been excluded from the exercise, partly because of the cost of making the PIE option available on such pensions is prohibitive. . It explained that there was another option available whereby the entire UK Fund could be exchanged for a one off lump sum payment. It said that the trustees of the UK Fund would contact Mr S in due course to provide other options available to him.
8. Mr S continued to question why the Overseas Fund was not receiving the PIE option. It was explained by BAT Ltd that the Overseas Fund was not regulated in the UK and had a different funding position which needed to be taken into consideration if a PIE option were to be considered for the Overseas Fund. BAT Ltd also explained that the Overseas Fund pensioners would continue to receive increases to their pensions in accordance with the rules of the Overseas Fund.

Adjudicator's Opinion

9. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by BAT Ltd. The Adjudicator's findings are summarised briefly below:
 - PIE is an opportunity for a company to remove potential liability risks from the Fund. It is at the discretion of the company to decide whether it offers a PIE option and also what category of member is eligible to take the option. BAT Ltd is entitled to make these decisions as long as it is clear and transparent about why the offer is not being made to certain members.
 - BAT Ltd have not done anything wrong in making the decision not to offer the PIE option to Mr S.
 - BAT Ltd made the decision not to offer a PIE option to members who have a small pension amount in the UK Fund because there were other options available to these members.
 - Mr S may be offered the opportunity to take his benefits under the trivial commutation rules. This meant he would receive a one off lump sum payment in lieu of all future pension payments from the UK Fund. If this option is available to Mr S then he is able to choose this or, if he prefers he can continue to receive his pension benefits with increases. Therefore, Mr S had not suffered an actual loss by not being offered a PIE option.
 - The Overseas Fund is administered in Lichtenstein, and so it is not governed by UK law and regulations, and does not fall within my remit.

10. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S 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 S for completeness.

Ombudsman's decision

11. Mr S' dispute centres around BAT Ltd's decision not to offer the PIE option to certain categories of member. I note Mr S' comment that he has brought his complaint for the benefit of all members who have not been offered the PIE option. My office does not consider class actions and so all complaints refer to the individual.
12. Mr S believes the decision not to offer him a PIE option is subjectively biased. I do not agree. BAT sought independent financial advice on the matter and it concluded that it would not be beneficial to offer a PIE option to UK scheme members with a lower income. In doing so it had regard to its own financial interests, which it was entitled to do. It also considered the particular vulnerability of certain UK members and offered alternative options.
13. Mr S considers that further information should have been requested from BAT Ltd as he felt there were questions that remained unanswered. I have not found it necessary to obtain any further information from BAT Ltd. There was sufficient information provided in the submissions to enable me to reach a decision. I do not consider that gathering further information would change the outcome of this case.
14. BAT Ltd are permitted to make the decision not to offer Mr S the PIE option. Furthermore, the decision did not in any event, cause Mr S financial injustice as he was offered the opportunity to take his benefits under the trivial commutation rules or to continue to receive his pension benefits with increases.
15. For these reasons I do not uphold Mr S' complaint.

Karen Johnston

Deputy Pensions Ombudsman
1 February 2017