

## Ombudsman's Determination

Applicant	Mr R
Scheme	BBC Pension Scheme ( <b>the Scheme</b> )
Respondents	BBC (Finance) ( <b>the Company</b> ), BBC Pension Trust Limited ( <b>the Trustee</b> )

## Outcome

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

## Complaint summary

3. Mr R has complained because he is dissatisfied with the Pension Increase Exchange option (**PIE**) that he was offered, and subsequently accepted, from the Company.

## Background information, including submissions from the parties

4. Mr R had been in receipt of his pension since 1997 when in 2015 he was offered the PIE by the Company. The PIE was the option for Mr R to exchange some of his future pension increases for an immediate uplift.
5. The Company appointed an independent financial adviser (**IFA**) to discuss with eligible members whether or not the PIE option was suitable for them in their circumstances. Following his meeting with the IFA, Mr R was informed by the IFA that the PIE was not suitable for him.
6. The deadline to accept the PIE was 4 March 2016 but prior to the deadline, Mr R complained to the Company as he felt that the PIE discriminated against pensioner members who no longer required a dependant element attached to their pension. On 1 March 2016 the Company responded to Mr R and said that the Company did not believe that it discriminated against any group of pensioners, in regards to the PIE option. The Company said that the offer, which it made to all eligible pensioners and which they had no obligation to accept, was based on a balanced deal percentage (**BDP**) of 75% for all members. The Company explained how the BDP was calculated and also explained the offer that was available to Mr R.

7. The Company informed Mr R that if he accepted the PIE he would not be surrendering his current pension and a new pension would not commence. Instead, he would be surrendering some of his future pension increases in exchange for an uplift to his current pension. The Company informed Mr R that it believed the offer was fair and in line with the Code of Good Practice: incentive exercises for pensions published in 2012 (**the Code**). Further, it was for him to decide whether it was suitable for him after taking financial advice. The Company informed Mr R that it would not provide him with an individual BDP as it would not be appropriate or fair to other pensioners to do so. In addition, the Company informed Mr R that the PIE was an option and that he did not have to accept it.
8. Mr R accepted the PIE but made a subsequent complaint to the Company and the Trustee through the Scheme's internal dispute resolution procedure (**IDRP**) at stages one and two, because he was unhappy with the terms of the PIE he was offered and accepted. Mr R considered that he should have been offered an additional uplift for the dependant element of his pension as he no longer had a dependant.
9. The Company responded to Mr R's complaint in August 2016 and explained that the Scheme's Actuary had confirmed that his offer was correct. It reiterated that the offer was made to all eligible pensioners in line with the Code and that the uplift Mr R was offered was in line with those offered to other pensioners of the same age and similar circumstances. As a result, the Company did not uphold Mr R's complaint.
10. In the IDRP one and two responses to Mr R's complaint, the Trustee explained that the Company and the Trustee are two separate entities. The Trustee explained that the PIE was an employer led exercise and that the structure of the PIE was a matter for the Company. It told Mr R that it was satisfied that the Trustee had acted properly in regards to the PIE and said:

"The Trustees' role was to ensure that in presenting the PIE to members the BBC's process was properly run and the communications accurately set out the position in a fair, clear, unbiased and straightforward way as required by the Code. I consider that the Trustees acted properly in this regard and the communications that were ultimately issued were appropriate and compliant. I do not believe there are any grounds on which the Trustees' conduct could be considered negligent or deficient. As such, the Trustees are unable to offer you any form of redress."

11. Dissatisfied with the Trustee's and the Company's responses, Mr R referred his complain to this Office and said:

- The Company insisted on a dependant's pension being included in the new pension that was offered in exchange for the existing one, although it was not needed.
- His decision was made even more difficult than it should have been because he was provided with false, inconsistent and misleading information regarding the BDP figure.

- The Company unreasonably refused to let him have an individual BDP figure for his particular circumstances. This caused him to spend a considerable amount of time doing his own calculations. He only asked for the BDP that would apply to those in his particular position. It was not meant to be a personal percentage that would have taken his health, lifestyle, and other personal circumstances into account.
- The Company is at fault for designing a PIE that was fundamentally unfair to some members. The Trustee is also at fault for agreeing to the PIE.
- His basic complaint which is that he should have been offered a PIE pension that did not include a provision for a dependant was not seriously addressed at any stage of the Company's complaint procedure.

12. In response to Mr R's complaint the Trustee said:-

- The Trustee acted properly in regards to the PIE offer that was made to members. However, complaints regarding the terms of the PIE (and the inclusion or otherwise of the dependant's pension), the BDP in the offer document and the way in which complaints regarding this have been handled are a matter for the Company and not the Trustee.
- The Trustee took advice regarding its duties and responsibilities in relation to the PIE and what steps it would need to take in terms of rule amendments to facilitate the PIE.
- PIE exercises are covered by the Code and the Code contains a number of principles to ensure that a PIE is:
  - Carried out fairly and transparently.
  - Communicated in a balanced way and in a manner that members can easily understand.
  - Provides members with appropriate financial advice to enable them to reach their own, informed, choice as to whether to opt-in.
- The responsibility for complying with the Code rests with the Company and the Trustee did not have any legal duty to follow the Code. However, the Trustee scrutinised the Company's actions and took appropriate steps to satisfy itself that the principles within the Code were met.
- Mr R was provided with independent financial advice and the IFA recommended that Mr R should decline the PIE. Mr R accepted the PIE contrary to the advice he was given.
- The Trustee does not consider that any of its actions in relation to the PIE could be considered negligent or deficient. The terms of the offer were a

matter for the Company and members were free to accept or decline the offer that was made.

- The Trustee is satisfied that the description of the offer was clear and unbiased and members were in a position to make an informed choice about the offer on the basis of the independent advice that was provided to them.

13. In response to Mr R's complaint, the Company said:-

- Mr R accepted the PIE offer (despite independent advice to the contrary) but has subsequently complained about the structure of the offer given to him, the information he received regarding the offer both during and after the exercise and the way in which his complaint was handled.
- When formulating the PIE option to members, the Company took great care to ensure that the exercise was carried out in accordance with the Code. Two of the most significant principles as stated in the Code when undertaking a Modification Exercise are that:
  - either the value requirement should be met (i.e the BDP should be 100% or more) and guidance should be provided to the member or, full advice is provided to the member in the absence of the BDP being met; and
  - communications with members should be fair, clear, unbiased and straightforward.
- It explained how the BDP was calculated and said that as the BDP was less than 100% it ensured that all eligible members were given independent financial advice.
- In its opinion, the PIE was communicated to all eligible members in a fair, clear, unbiased and straightforward fashion, with details of the BDP prominent in the offer communications.
- It liaised with the Trustee in the preparation of the member communication and the Trustee was satisfied that the documents met the principles of the Code.
- The value offer was at its discretion and whether or not to accept the offer was entirely Mr R's choice, after receiving the funded financial advice. No undue pressure or influence was placed on Mr R to accept the offer and he was given sufficient time and information to consider it properly. If Mr R had not accepted the offer his pension would have continued to be calculated and paid in the same way as it always had.

## Adjudicator's Opinion

14. Mr R's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Company or the Trustee. The Adjudicator's findings are summarised briefly below:-
15. Mr R considers that the Company should have removed the dependant's element for the PIE he was offered and it should also have provided him with a BDP for individuals in his position. However, having considered the information that all parties to the complaint have provided, it was the Adjudicator's opinion that Mr R had misunderstood the purpose of the PIE the Company had offered him.
16. The PIE offer was an option for eligible members to give up future increases for an immediate, one-off uplift. It was not an option for Mr R to replace the existing pension he had been in receipt of from the Scheme since 1997, with a new pension. Therefore, as Mr R was already in receipt of his pension at the time he was offered the PIE, there was no option for him to cancel the dependant's pension that was attached to his benefits. As a result, the Adjudicator did not consider the Company acted unfairly by not allowing him to do so.
17. The PIE was an option and was not compulsory. After reviewing the information the Company provided to eligible members when it informed them of the PIE option, it was the Adjudicator's view that Mr R was aware of all the relevant facts prior to him accepting the PIE and, this included details of the BDP for all eligible members.
18. The Code states that the BDP is:

“...a calculation of the expected present value of members' additional benefits to be awarded following the Modification Exercise (assuming 100% take-up) as a percentage of the expected present value of the benefits being given up to arrive at the BDP. It is an aggregate calculation for all members who are informed that the Modification Exercise offer is open to them (including any members who are informed of the exercise on an “opt-in” only basis). The BDP calculation will result in a single BDP for all members.”
19. In the Adjudicator's opinion, it was not unreasonable for the Company not to provide Mr R with a BDP for individuals in his position because there is no requirement in the Code for it to do so. Although the Company did not provide Mr R with a separate BDP, it did inform him that the BDP for all eligible members was 75%.
20. As a result of this and in accordance with the Code, the Company paid for Mr R to meet an IFA. This advice was tailored to Mr R's personal circumstances and he was advised by the IFA that he should not accept the PIE as it was unsuitable for him. The Adjudicator appreciated that Mr R had said that he was initially told, by the IFA to accept the pie. However, the IFA's final recommendation was that he should not accept it.

21. Prior to accepting the PIE, the Company had informed Mr R that it was not possible for him to have the dependant element of his pension removed as part of the PIE offer and that it would also not provide him with an individual BDP. Therefore, the Adjudicator did not consider that it was reasonable for Mr R to accept the PIE and then subsequently complain about the PIE, when he was aware of the relevant facts, prior to accepting it.
22. If Mr R had not accepted the PIE he would have continued to received his pension on the same terms that he was previously. Therefore, the Adjudicator did not consider that he would have been financially disadvantaged if he had not accepted it.
23. Having reviewed the Code it was the Adjudicator's view that the Company adhered to the requirements in the Code when it offered the eligible members the PIE. She appreciated that the Code says "Whilst the Code does not does not require each member's individual balanced deal calculation to exceed 100% in order for the **Balanced Deal Percentage** to be in excess of 100%, approaches to designing **Modification Exercises** that leave some members materially below 100% of the balanced deal and others materially above should be avoided." The Code does not say that it must be avoided. In her view, the Code made this statement as it is not unreasonable to expect that some members' BDP would be below 100%.
24. The PIE was introduced by the Company and not the Trustee. Therefore, the Adjudicator considered that the Trustee could not be held accountable for the terms of the PIE.
25. As a result, of the above, it was the Adjudicator's view that the Ombudsman would not uphold Mr R's complaint against the Company or the Trustee.
26. Mr R did not accept the Adjudicator's Opinion and in response made the following comments:-
27. The findings the Adjudicator based her Opinion on does not cover a number of points that are crucial to his complaint such as:
  - Whether there was a variation in the BDP between different categories of member and whether such variation constitutes non-compliance with the Code. His calculation which the Company said was reasonable and broadly equivalent to their own showed there was a significant variation. His calculation shows a BDP of not much more than 60% for members no longer having a dependant. The Code has a specific requirement that Modification Exercises which leave some members materially below 100% of the BDP and others materially above should be avoided.
  - Whether an offer that includes a benefit of no value resulting in a lower uplift to certain categories of member, than would otherwise have been the case, is fair and suitable for the Code. The Code requires suitability to be assessed which is defined in the same way as the FSA requirements in relation to whether a financial choice and/or financial product is suitable for a client.

28. He strongly objects that he misunderstood the purpose of the PIE. He understood that the offer did not include any option to surrender a dependant's pension. However, for the offer to be fair and suitable for all categories of member and also for the Company to be fully compliant with the Code, it was a necessary consequence and therefore should have been included. Throughout the course of his complaint he has studied the Code in detail and has completed his own BDP calculation.
29. He accepts that the PIE did not constitute a replacement pension and was simply a modification of terms of his existing pension. However, this does not mean that the uplift could not have been calculated to properly reflect members' current situations regarding dependants. The Adjudicator finding that the Company did not act unfairly does not appear to cover the possibility of a more appropriate offer being made.
30. He was not aware of all the relevant facts prior to accepting the PIE, specifically only the aggregate BDP applying to all eligible members. He was still seeking the actual BDP that applied to his category of member which the Company were and still are refusing to provide. He was in the unreasonable position of having to rely on his own calculations.
31. The BDP as defined by the Code is an aggregate figure. The requirement to only provide this aggregate figure to members assumes that there is no material difference for some members. There is no requirement in the Code to provide BDPs for specific categories of member because the Code requires there to be no material difference between any such categories. Only providing the aggregate BDP when there is a difference between categories is insufficient for the BDP to be used as a decision criteria. Which it could otherwise be.
32. The Company only paid for a telephone conversation, not a meeting with an IFA. The IFA's initial advice, following fact finding questions was to accept the offer. It was not an off the record piece of advice and would have been followed by formal written confirmation had he not asked about the basis of this advice. During the process of explaining how the decision to accept had been reached, the IFA's advice changed to not accepting the offer.
33. His decision was finely balanced, hence the importance of knowing what the actual BDP was for members in his category. He would not have been financially disadvantaged had he not accepted the PIE but he believes he was financially disadvantaged by the way in which the uplift in the PIE offer was calculated.
34. The offer would not have been put to members if the Trustee had not been satisfied with the terms so there is clearly an implicit acceptance by them. There is no evidence that the Trustee studied the details of the terms. Had it done so and spotted the dependant's issue, it would have had to refer it back to the Company as it clearly disadvantaged one section of members.
35. The Code is not a contractually binding agreement nor a Government statute. The Adjudicator's reliance on the significance of the word should as opposed to must is

therefore entirely misplaced. If you were to look at the seven principles of the Code you would see that they are all expressed in terms of should with no mention of must anywhere. Taking the Adjudicator's argument about the wording to its logical conclusion, the Code could still be said to be being followed even if all seven principles were completely ignored.

36. After receiving details of his own BDP calculations showing a BDP for him as approximately 60% the Adjudicator is only able to say this may be the case, which suggest that she has been unable to obtain the Company's figure for those no longer having dependants. If the Company has refused to let her have its BDP calculation for such members, does that not suggest that their final figure is similar to his but it does not want to formally admit it?
37. In conformance with the Code, PIE offers cannot be compulsory. The fact that he accepted the offer does not mean that he agreed that the terms were fair nor that they were appropriate for members who no longer had a dependant. He accepted the offer because he thought that the uplift was still worthwhile even though it was not as much as it should have been had the BDP for this category been 75%. He was simply minimising his loss by accepting it. If he had not accepted it he would have missed out on a potential financial benefit, even though it was less than it should have been.
38. He was formally advised not to accept the PIE. However, what the Adjudicator fails to mention is that this was a very marginal decision, as witnessed by the IFA changing her mind about it during the latter stages of their discussion. The determining issues were his financial situation and the poor state of his health. He disagreed with the IFA's formal decision as he felt he had more knowledge of his heart problems on his life expectancy than the IFA.
39. The complaint was passed to me to consider. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr R for completeness.

### **Ombudsman's decision**

40. PIEs are usually introduced as a cost saving exercise by companies for their long term obligations. I appreciate that Mr R believes that a more appropriate PIE could have been offered to pensioner members like himself who no longer required a dependant element attached to their pension. However, the way the PIE uplift was calculated for eligible members was at the Company's discretion. Mr R disagreeing with the way the uplift was calculated does not mean that the Company was wrong or unfair in the offer it made to eligible members.
41. The Company has explained that in accordance with the Code, it provided members with independent financial advice as the aggregate BDP was less than 100%. This advice would have been tailored for the individual member's circumstances and by ensuring it was available I am satisfied that the Company and the Trustee complied with the Code.



42. Mr R has said the advice he received from the IFA was finely balanced, therefore, he decided to accept the PIE. He said he accepted the PIE despite not agreeing with the terms because he considered that the uplift was still worthwhile, even if it was not as much as it would have been because the BDP for members in his position was less than 75% (according to his calculations). Additionally, he considered he would have missed out on a financial benefit if he did not accept it.
43. It is my view that Mr R accepted the PIE because of the immediate financial benefit which he calculated he would gain. In fact he has said, the deciding factors for him in accepting the PIE were his health and his financial situation and he preferred his own judgment about those factors to advice received when making his decision. I am satisfied that Mr R was aware of the relevant facts prior to accepting the PIE and that he considered it would be more financially beneficial for him to accept the PIE than for him not to.
44. I can see no evidence of maladministration in the way that the offer was constructed or explained. It is not reasonable for Mr R to accept the PIE to gain an immediate financial benefit and then subsequently complain about the terms of the PIE. Therefore, I do not uphold Mr R's complaint. Against the Company or the Trustee.

**Karen Johnston**

Deputy Pensions Ombudsman  
21 February 2018