

Ombudsman's Determination

Applicant	Mr S
Scheme	NCR Pension Plan (the Plan)
Respondent	Pension Insurance Corporation (PIC)

Outcome

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

Complaint summary

3. Mr S' complaint concerns PICs refusal to provide him with a Transfer Valuation (**TV**) in 2016. PIC said this is due to Mr S being beyond his Normal Retirement Date (**NRD**) and the Plan Rules state a member cannot request a TV if they are within 12 months of NRD.
4. Mr S argues that by this logic, PIC should not have provided him with a TV in 2015, as he was one month from NRD. Further, PIC did not at any stage inform him about the limitations affecting his right to transfer benefits.

Background information, including submissions from the parties

5. On 27 July 1987, Mr S joined the Plan. Mr S became a deferred member of the Plan on 31 July 1997, and his NRD was 14 July 2015, at age 65.
6. In October 2014, Mr S requested a TV, however, it appears there was a delay in this being provided, possibly as a result of the Plan transitioning to the management of PIC. This transition was completed in April 2015, when the Plan entered into an 'Annuity Contract' with PIC, which placed liability for the payment of all members' benefits with PIC.
7. On 18 May 2015, PIC was made aware of Mr S' TV request which had been made to the previous Manager of the Plan in October 2014. PIC took appropriate action to process the request.

8. PIC's usual policies do not allow for members to transfer their benefits where they are within 12 months of NRD, however, such a policy does not appear to have been adopted by the Plan's former Managers. In order to protect the member's best financial interests, and ensure no-one was financially disadvantaged following the 'Annuity Contract', PIC therefore offered to grant non-statutory transfers for members up to one year beyond NRD. Eligibility for this would be reviewed on a case by case basis.
9. On 15 June 2015, Mr S was provided with a TV, despite being only one month away from his NRD, and his benefits in the Plan were quoted to be worth around £411,894.00. The cover letter included with the TV advised that:

"If you ask for another transfer value quotation within 12 months of your original request, we may charge you for this."
10. Enclosed with the June 2015 TV, was a Policy Booklet (the **Booklet**), which gave details of the Plan's 'Policy Conditions' and the 'Schedule of Benefits' under PIC. The copy of the Booklet provided includes a handwritten note, stating this was provided with the 15 June 2015 letter. On page 3 of the Booklet is the "Can I Transfer my Policy?" Section, and it states the following:

"Before you start receiving your pension, you can elect to surrender your Policy and transfer the value of your benefits to another registered pension scheme or insurance company. You may ask for a surrender value of your Policy at any time provided: your pension is not in payment, you have more than 12 months to go to your Normal Retirement Age and you have not requested another surrender value in the last 12 months."
11. The Booklet also contains a Section entitled "Transfer Payments and Pensions Sharing on Divorce" (Section 2.12). Part 2.12.2 of this Section gives the conditions on which PIC would not be obligated to provide a TV:

"PIC shall not be obliged to provide a Member with a transfer value quotation for a transfer to another pension arrangement if: (i) the Member has reached Normal Retirement Age or is due to reach Normal Retirement Age within 12 months of the date on which a request is made..."
12. Mr S subsequently decided not to take any action to transfer his benefits at this time and his pension remained with PIC.
13. On 1 December 2016, approximately 5 months after his 66th birthday, Mr S requested a second TV from PIC. On 19 December 2016, PIC wrote to Mr S to advise that it was not able to comply, as he was over a year beyond his NRD. Mr S contested this position, and PIC subsequently emailed a copy of the June 2015 TV, enclosing the Booklet, confirming its policy on transfers.

14. On 6 January 2017, Mr S made a formal complaint to PIC. Mr S referred to the “Can I Transfer my Policy?” section of the Booklet, and said the restrictions were not clear. He argued that the initial sentence states a member can elect to transfer their policy, and the full stop after this point implied the following sentence was not connected.
15. On 13 January 2017, PIC responded to Mr S’ complaint, explaining that non-statutory TV’s could be provided until a members’ 66th birthday. It had taken this decision as the policy requiring a member to have at least 12 months until NRD had only been introduced upon the signing of the ‘Annuity Contract’. It was therefore agreed that a 2 year ‘extension’ of this deadline, would be in the best financial interests of those members already within 12 months of NRD at that time. Mr S had already passed his 66th birthday in July 2016, so PIC was unable to provide a further TV as requested in December 2016. PIC said that its policy on transfers was clearly stated in the Booklet, but apologised if Mr S did not feel this document offered sufficient clarity.
16. On 23 January 2017, Mr S emailed PIC regarding its response to his complaint. He questioned why it had provided him with a TV in June 2015, as he was only one month away from NRD. Mr S further queried why PIC failed to inform him on provision of the June 2015 TV that he was already outside of the standard time limit for TV requests. Finally, Mr S argued that the June 2015 TV had indicated an additional TV could be requested, although he may be charged if this was done within 12 months.
17. On 10 February 2017, PIC emailed Mr S’ in answer to his queries. It stated that when the ‘Annuity Contract’ was signed and liability for the Plan was passed to PIC, the Plan Rules were amended to align with standard PIC Policy. In amending the Plan Rules, PIC considered it would not be fair to disallow TV requests from members already within 12 months of NRD, so used its discretion to extend the deadline for affected members. PIC acknowledged Mr S’ point regarding the standard wording included on the June 2015 TV being misleading. It apologised and confirmed that the wording had been amended in all standard transfer packs to make the position clear, however, it was still unable to provide Mr S with a second TV.
18. On 15 May 2017, Mr S complained to this office, arguing that he had not been provided with sufficient information regarding the deadline to request a TV from the Plan, and that the wording in the June 2015 TV had led him to believe he was able to request a second TV. Mr S stated that, had he been aware of this, he would have taken action to transfer his benefits in 2015, but he was now unable to do so as a result of PIC’s ‘negligence’.

Adjudicator’s Opinion

19. Mr S’ complaint was considered by one of our Adjudicators who concluded that no further action was required by PIC. The Adjudicator’s findings are summarised briefly below.

- PIC was not obligated to provide direct notification of policy changes to individual members, particularly as it entered into the 'Annuity Contract' for the Plan in April 2015. The information was made available in the June 2015 TV sent to Mr S.
 - PIC has correctly identified and applied the appropriate Plan Rules in this case. The Pensions Ombudsman will not instruct a pension provider to act against the Plan Rules, and therefore cannot conclude that PIC should provide Mr S with a second TV.
 - It is accepted that the wording in the TV provided in June 2015 could be considered unclear, in that it advises that a second TV requested within 12 months could incur a fee. However, this is standard wording, and it is not stated that a further TV request will be accepted. PIC apologised that the wording was unclear in its email of 10 February 2017, and it has amended this.
 - PIC was not obliged to provide Mr S with a TV in June 2015, as he was within 12 months of his NRD, however, it took a business decision, given that this policy was only introduced from commencement of the Annuity Contract in April 2015, to provide TVs until a member reaches age 66. There was no requirement for PIC to provide a second TV in December 2016, as this request was made beyond Mr S' NRD, and beyond his 66th birthday.
20. 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 and I will therefore only respond to the key points made by Mr S in his email of 30 September 2017, for completeness.

Ombudsman's decision

21. Mr S has contested the point that PIC has no discretion regarding the Plan Rules, as it used such discretion to allow transfers for up to one year beyond a members' NRD. To clarify, the Plan Rules state that PIC is statue-bound to provide members with at least one TV in any 12 month period, free of charge, up to 12 months before the members' NRD. It has no discretion in this regard. If a member is within 12 months of NRD, PIC may use its discretion to provide a TV, but there is no obligation on it to do so, as this would be a non-statutory transfer. PIC is therefore within its rights to refuse to issue a further TV to Mr S, as he is beyond NRD, and I cannot direct it to do so.
22. Mr S argues that reference made by the Adjudicator to the standard policy regarding the provision of TV's is irrelevant, given that PIC had elected to allow an extension on this to members already within 12 months of NRD. With respect, these points are extremely relevant, as part of Mr S' complaint concerns a lack of information regarding restrictions on his right to transfer. It is reasonable for the Adjudicator to point out the standard restrictions communicated to Mr S by PIC.

23. Further, point 2.12.2 of Section 2.12 'Transfers and Payments' is of particular relevance, as this point confirms that PIC is not obliged to provide members with a TV where they are within 12 months of NRD. This does not necessarily mean a request will be refused, but it is made clear to members that PIC is not duty bound to provide a TV in this instance.
24. Mr S states that information regarding PIC's standard policy on the provision of TV's was not communicated at any time prior to his complaint. However, a copy of the TV sent to Mr S in June 2015 has been provided, which includes the Booklet, and makes clear reference to this policy. It may be the case that Mr S did not receive this document when it was posted, however, PIC fulfilled its responsibility by sending this information to Mr S, and it cannot be held responsible for any failures of the postal carrier, including the non-delivery of letters.
25. Mr S has made reference to the Financial Conduct Authority's (**FCA**) 'Consumer Outcomes', in particular, Outcome 3, which refers to customers being 'kept appropriately informed, and provided with clear information'. Given that PIC only entered into the 'Annuity Contract' and assumed liability for the Plan in April 2015, I agree with the Adjudicator that it could not reasonably have provided the information regarding its TV policy much sooner than it did, in June 2015 with regard to Mr S' TV. I find that PIC fulfilled its duty to keep Mr S 'appropriately informed', and that the information enclosed with the June 2015 TV was clear.
26. I accept that the wording on the June 2015 TV, concerning a request for another TV, could be considered misleading, however, PIC has apologised for this, explaining that it used standard wording. This wording has been amended to prevent such confusion in future, and I do not believe any further action is necessary.
27. Therefore, I do not uphold Mr S' complaint.

Anthony Arter

Pensions Ombudsman
5 October 2017