

## Ombudsman's Determination

Applicant	Mrs S
Scheme	BT Pension Scheme ( <b>the Scheme</b> )
Respondents	BT Pension Scheme Administration Limited ( <b>BT PSA</b> ) and The Trustee of the BT Pension Scheme ( <b>the Trustee</b> )

## Outcome

1. I do not uphold Mrs S' complaint and no further action is required by BT PSA or the Trustee.

## Complaint summary

2. Mrs S' complaint against the Trustee and BT PSA is that:-
  - The retirement options provided to her in 2014 were unclear regarding her additional voluntary contribution (**AVC**) fund (**the Fund**).
  - The option to transfer the Fund is no longer available to her.
  - BT PSA and the Trustee took a long time to respond to Mrs S' complaint and the Fund has been disinvested since 2014.

## Background information, including submissions from the parties

3. Mrs S' Scheme normal retirement date (**NRD**) was 3 September 2014. On 4 June 2014 Mrs S received a retirement pack which included:-
  - Six retirement options.
  - A fact sheet which explained the options in more detail, including a recommendation that Mrs S should take appropriate financial and tax advice before making her decisions.
  - The Pensions Regulator's "Making Your Retirement Choices" brochure.
  - A Benefit Crystallisation Event declaration/benefit options form (**the Options form**) for Mrs S to complete and return to claim her choice of the retirement benefits available to her.

4. Mrs S completed her Options form and returned it in October 2014. She had chosen Option 5 for her main pension benefits giving her a Pension Commencement Lump Sum (PCLS) of £104,434.25 together with a pension made up of: £8,188.45, annual increasing pension; and £5,416.12, annual non-increasing pension.
5. For the Fund, Mrs S chose Option 1a, which was the open market option, enabling her to shop around the various providers for a suitable annuity.
6. BT PSA acknowledged her choices, confirmed the date of her first pension payment and said her benefits would be revised upon receipt of her Fund from the AVC provider. Subsequently, it was confirmed that the Fund was valued at £41,230.50 and could be used to purchase an annuity from either the in-house broker or using the open market option.
7. A range of standard annuity quotations was provided and BT PSA asked Mrs S to review these and return the signed Retirement Annuity Summary to confirm her choice. BT PSA asked Mrs S several times to choose her preferred annuity option but she did not do so.
8. In March 2015 Mrs S complained to the Trustee saying she had intended to transfer the Fund to a personal pension. She said the information provided by BT PSA was misleading, and that she was not told the Fund would be crystallised when it was used to augment her PCLS. Mrs S said it also was not clear that having chosen Option 5 for maximum tax-free cash, the only remaining option for the Fund was to purchase an annuity, the purchase of which would simply increase her tax liability. Mrs S sought to have her benefits unwound.
9. After a delay of 21 months while it sought legal advice, the Trustee issued its formal response to Mrs S on 31 January 2017. It did not uphold the complaint, saying it had provided sufficient information at the appropriate time and had acted upon Mrs S' written instructions.
10. Mrs S appealed this outcome but, following both stages of its Internal Dispute Resolution Procedure (**IDRP**) the Trustee remained of the view that the Fund could not be unwound, no mistake had been made and sufficient information had been provided to Mrs S at the outset. However, in recognition of the significant distress and inconvenience Mrs S had suffered because of the delay in dealing with her complaint, the Trustee offered her an award of £750.

## **Adjudicator's Opinion**

11. Mrs S' complaint was considered by one of our Adjudicators who concluded that no further action was required by BT PSA or by the Trustee. The Adjudicator's findings are summarised below:-

12. The Adjudicator concluded that the information sent to Mrs S had indicated that the Fund could only be used either to buy an annuity on the open market or be depleted through its use to augment another benefit. The limits on the Fund under the Scheme Rules had been explained in writing, and there was no provision allowing for the Fund to be deferred or transferred out independently of the main Scheme pension.
13. The Adjudicator concluded that the Trustee had met its disclosure obligations under prevailing legislation at the relevant time.
14. The Adjudicator noted that there had been a recommendation in the fact sheet information provided to Mrs S that she should take appropriate financial and tax advice before making her decisions, and that such advice might have included the potential for arranging a deferred annuity to mitigate the income tax issues.
15. The Fund remained out of the market enjoying no growth as a result, because Mrs S took no action in respect of choosing her annuity options despite several requests by the Trustee to do so.
16. The Adjudicator said the award of £750 was appropriate in all the circumstances of this complaint.
17. Mrs S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs S provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the points made by Mrs S for completeness.

### **Ombudsman's decision**

18. Mrs S completed her Options form and the Trustee followed her instructions. Mrs S says she was not informed that the Fund would be crystallised if it was used to obtain the maximum PCLS. She wanted to be able to transfer her Fund to a personal pension rather than use it to purchase an annuity to avoid having to pay a higher rate of tax on the annuity income.
19. However, Mrs S had the opportunity to mitigate her tax situation by obtaining appropriate advice, but she appears to have proceeded on an assumption that she would be able both to take Option 5, using her Fund to substantially increase the amount of PCLS available, and to transfer it as a lump sum to an alternative arrangement.
20. The Trustee had an obligation to carry out her written instructions, which it did. It is not possible to transfer the Fund now that it has been crystallised. Mrs S can still have the benefit of the Fund provided she uses it to purchase an annuity.
21. While I understand her evident dismay at being unable to achieve her objective of transferring the Fund while also using it to obtain the maximum PCLS, she is entitled to the full value of her benefits and has been able to choose from several options in order to build the kind of pension income best suited to her particular circumstances.

22. The Trustee has provided all of the information required under legislation prevailing at the time.
23. In respect of the delay in dealing with her initial complaint while the Trustee sought legal advice, it was considerable and disproportionate to the complaint made. This would, obviously, have added to the overall distress and inconvenience Mrs S has experienced. I agree with the Adjudicator that the sum of £750 awarded by the Trustee is appropriate in the circumstances. Mrs S should contact the Trustee direct should she wish to accept the offer.
24. I do not uphold Mrs S' complaint.

**Anthony Arter**

Pensions Ombudsman  
05 February 2020