

Ombudsman's Determination

Applicant	Ms O
Scheme	BT Pension Scheme (the Scheme)
Respondents	BT Pension Scheme Trustees Limited (the Trustee) Accenture

Outcome

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

Complaint summary

3. Ms O has complained that her then IFA (**the IFA**), was given incorrect information by Accenture, that indicated that she could take a tax free lump sum (**TFLS**) from her pension credit (**PC**) rights.
4. Ms O estimates her financial loss to be significant as she says she made an offer on a house based on the wrong information. When she became aware of the correct position, she took a lump sum from her State Pension, to complete the house purchase, and incurred additional income tax. She considers reimbursement of the one-off tax charge of £9,116, as well as the ongoing tax on her monthly State Pension payments, as reasonable compensation for the financial loss.
5. The Trustee and Accenture do not accept that a mistake has been made or that they are required to tell an ex-spouse whether they can take a TFLS from PC rights.

Background information, including submissions from the parties

6. Where a pension in payment is subject to a pension sharing Order (**PSO**), the ex-spouse's PC is classed as a disqualifying pension credit (**a DPC**) and cannot be included in the calculation of their TFLS at retirement.

7. In March 2010, Ms O was granted a share of the value of her ex-spouse's pension in payment under a PSO. Shortly after this, Accenture, the Scheme administrators, received a copy of the sealed Consent Order (**the Order**) and the annex to the Order (**the Annex**). Around the same time the IFA advised Accenture that Ms O would be applying to transfer out her PC. The IFA said Accenture did not need to provide any information at that point as Ms O had already given it to them.
8. The IFA arranged a pension scheme for an external transfer of Ms O's PC. The receiving scheme's "Transferring Scheme Authority" form was then completed by either Ms O or the IFA. The completed form said the transfer was from uncrystallised funds.
9. Shortly after receiving the transfer payment from Accenture, the receiving scheme contacted Accenture and were told that the transfer payment was the result of a PSO and that Mr O's pension was in payment. Around that time, Accenture issued a "notice of discharge of liability" to Ms O.
10. The IFA says she does not recall seeing either the Order or the Annex. She says if she had then it would have been very obvious that Ms O's ex-spouse had already taken benefits and consequently that no TFLS would be payable from Ms O's PC. The IFA also says that Accenture failed to provide correct details about Ms O's TFLS entitlement/restrictions when she asked if there were any in April 2010.
11. Accenture say, before November 2014, call recordings were only retained for six months, consequently recordings of the calls the IFA says she made to Accenture are not available.
12. Ms O says she gave a copy of the Order to the IFA. The fact that she needed advice on the contents of the Order was the reason she first contacted the IFA and the PSO was also discussed at their subsequent annual review meetings.
13. The IFA's letter of May 2010, detailing her advice and reasoning behind her recommendation to Ms O, stated that Ms O's ex-spouse was drawing benefits from the Scheme.
14. In September 2013 Ms O made a cash offer on a house; a decision she says was based, in part, on the TFLS of around £12,000 that she expected from her PC rights. After the offer was accepted, Ms O was informed by the receiving scheme that no TFLS could be taken from her DPC.
15. Ms O decided to proceed with the house purchase and took a lump sum in exchange for the State Pension she had deferred.

Adjudicator's Opinion

16. Ms O's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or Accenture. In summary, the Adjudicator said there was no documentary evidence to corroborate that the IFA asked Accenture

about Ms O's TFLS entitlement or if there were special terms relating to the Order. Nonetheless, Ms O continued with the property purchase after she knew that she could not take a TFLS from her PC.

17. Ms O did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms O has provided her further comments but they 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 Ms O for completeness.

Ombudsman's decision

18. It is not a legal requirement to confirm the ex-spouse's TFLS position in the notice of discharge of liability (**the notice**) to the ex-spouse. I agree with the Adjudicator that, after the PSO was implemented, Accenture provided the information required under the applicable pension legislation.
19. Ms O says the IFA asked Accenture for an explicit statement about whether a TFLS could be taken from her PC rights and that Accenture gave the IFA wrong information. Ms O argues that the IFA's email to this Service, (and the IFA's conversation with the Adjudicator), indicates that this was the case.
20. Contrary to what the Adjudicator said in the Opinion, I believe that, on balance, Ms O did give the IFA a copy of the Order. Consequently, it would not have been reasonable for the IFA to have relied on the incorrect information the IFA says Accenture provided in April 2010 – there is no contemporaneous record of what was said.
21. Nonetheless, Ms O knew the correct position before completing the purchase of the property. She could have withdrawn, but chose to proceed. Consequently, any financial loss is the result of Ms O's decision to take a lump sum from her State Pension.
22. Therefore, I do not uphold Ms O's complaint.

Anthony Arter

Pensions Ombudsman
22 June 2016