

Ombudsman's Determination

Applicant	Mrs T
Scheme	Pirelli Tyres Ltd 1988 P&LAF (the Scheme)
Respondents	Pirelli Tyres Limited (the Company), Trustees of the Pirelli Tyre Ltd 1988 P&LAF (the Trustees)

Outcome

1. Mrs T's complaint against the Company and the Trustees is partly upheld, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld) the Company and the Trustees should each compensate Mrs T for the significant distress and inconvenience this situation has caused her.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs T's complaint concerns the Pension Increase Exchange (**PIE**) option that the Company offered members of the Scheme. She is dissatisfied that the PIE was not offered to her along with the first group of members that received it. She would like the Company to guarantee that she will receive a PIE offer no later than April 2020 and that the PIE will be backdated to April 2017, as this was when some members of the Scheme received theirs.

Mrs T is also unhappy that to date, she has not received a response to her complaint from the Company.

Background information, including submissions from the parties

4. Mrs T is a pensioner member of the Scheme and as well as receiving a pension in relation to the benefits she had accrued in the Scheme, she is also in receipt of a widow's pension, from the Scheme. In late 2016, the Company offered Scheme members a PIE. Mrs T was offered and subsequently accepted a PIE in relation to her own membership. But she was not offered a PIE in relation to her widow's pension.
5. Unhappy that she was not offered a PIE in relation to her widow's pension, Mrs T queried this with the Company. In response, the Pensions Manager said:

“the decision to exclude spouse’s pensions and delay the second round was entirely due to pressure of work. Since we started the process a number of other projects have come up which we have been unable to support due to the limited resources available to the pensions department. Accordingly, some things have to be moved about and the second tranche of the PIE offer was one of these.”

6. Unhappy with the response she received, Mrs T complained to the Company about her not being offered a PIE in relation to her widow’s pension. Mrs T also made the same complaint to the Trustees, invoking the Scheme’s internal dispute resolution procedure (**IDRP**). As part of her complaint, Mrs T explained that she believed that any PIE offer that is made to her in the future, should be backdated.
7. In the stage one IDRPs response dated 15 February 2018, the Trustees did not uphold Mrs T’s complaint. The Trustees explained that:

“the PIE Option which was introduced into the Scheme provides for the PIE Option offer to be made by the [Company] and so it is for the [Company] to determine whether to make an offer and what the terms of it should be. While the Trustee is under a duty to ensure that any PIE Option offers made by the [Company] are properly made, the Trustee is not able to dictate to the [Company] to whom offers should be made or the terms of any such offer.”
8. The Trustees explained that the Company had decided not to offer the PIE to members where reconciliation of the records held with the Scheme and HMRC regarding the GMP (defined) elements of their pension, had not yet taken place. It explained that when the first round of PIEs were offered, it was unclear what the GMP element of Mrs T’s pension was and therefore, it was necessary to reconcile the Scheme’s records.
9. The Trustees also said that the Company had said it would consider Mrs T’s request to have the PIE that is offered to her in the future, backdated.
10. Dissatisfied with the IDRPs one decision, Mrs T appealed by invoking stage two of the Scheme’s IDRPs. She was particularly unhappy that she had received conflicting information from the Pensions Manager and the Trustees, about why she had not been offered a PIE in relation to her widow’s pension, when the PIE was initially offered in 2016. She also explained that although she had complained to the Company and the Trustees, she had only received a response from the Trustees. But, she did not receive the Trustees’ IDRPs one decision until five weeks after the deadline for them to respond.
11. In the IDRPs two response dated 4 April 2018, the Trustees did not uphold Mrs T’s complaint. They explained that they considered the explanation given in the stage one response for why the PIE option was not offered to her in late 2016, was more detailed in comparison to the response that she had received from the Pensions

Manager. However, the Pensions Manager was attempting to reply to her query quickly. Therefore, his response was not unreasonable in the circumstances.

12. The Trustees explained why they did not consider that the need to reconcile resulted from any deficiencies in their record keeping. It apologised for any delay in responding to her, and reiterated that the Company would consider her request to have her PIE offer backdated, when deciding the terms to be made to those members who have not yet received an offer.
13. In a further letter dated 4 April 2018, the Trustees acknowledged that Mrs T was dissatisfied with the way her complaint had been dealt with. Therefore, it offered her £500 in full and final settlement of her complaint, on the condition that she did not refer her complaint to this Office.
14. Unhappy with the IDRPs two decision, Mrs T referred her complaint to this Office and reiterated that she considers she should have received a PIE offer when the other recipients did. She also said that although she believes that any future PIE offer should be backdated, the Trustees continue to state that the PIE offer is discretionary and it is for the Company to decide who should receive the offer. Consequently, there is no guarantee that she will be offered a PIE, unless the Ombudsman agrees she should receive such.
15. In a joint formal response to Mrs T's complaint, the Trustees and the Company maintained the stance of the IDRPs decisions. In addition, they made the following points:
 - the PIE will be offered to Mrs T in the near future;
 - the Trustees have apologised to Mrs T for failing to reply to her stage one IDRPs within the required timescales. They consider this is sufficient in the circumstances and do not believe that a financial award is appropriate in this case; and
 - Mrs T is in receipt of her full entitlement to benefits from the Scheme. The Company acted properly in deciding not to extend the PIE to Mrs T's widow's pension when the first PIE offers were made in 2016.

Adjudicator's Opinion

16. Mrs T's complaint was considered by one of our Adjudicators who concluded that the complaint should be partly upheld against the Company and the Trustees. The Adjudicator's findings are summarised briefly below:-
 - PIEs are made at the discretion of the companies that implement them. While there are certain rules that a company must follow in relation to implementing a PIE, the company does have discretion to say what class of scheme members it intends to offer the PIE to, and on what basis.

- The Adjudicator appreciated Mrs T's disappointment that she was not offered a PIE in relation to her widow's pension in 2016. However, the Trustees have confirmed that "the [Company] intends to offer the PIE Option to members who were not offered the option in 2016 in the near future. This will include making an offer to [Mrs T] in respect of her Widow's Pension."
- As the Company confirmed that it would offer Mrs T a PIE in the near future, it was the Adjudicator's view that I would not uphold this element of Mrs T's complaint. She did not consider that I would deem it reasonable to instruct the Company to offer Mrs T a PIE option now, as the Company needs to ensure it has correct information, in relation to members' benefits, to ensure that the PIE offered is appropriate.
- The Trustees confirmed to Mrs T that the Company has said it will consider her request to have her PIE offer backdated, when the PIE is offered to her in the future. In the Adjudicator's opinion, I would not consider this approach by the Company to be unreasonable. Therefore, she did not consider that, at this time, there would be a direction for the Company to backdate Mrs T's future PIE offer.
- The Adjudicator informed Mrs T that, if after receipt of the PIE offer in relation to her widow's pension, she was dissatisfied with the offer, she could complain to the Company about it. If she remained dissatisfied with the Company's response to her complaint, she could refer the matter to this Office to be investigated.
- The Adjudicator considered that I would agree that the service Mrs T had received from the Company and the Trustees was below standard.
- Because to date, the Company had not directly responded to Mrs T's complaint. She was also provided with conflicting information, regarding why she was not initially offered the PIE for her widow's pension. In the Adjudicator's opinion, this would have caused Mrs T significant distress and inconvenience.
- Therefore, in her opinion, the Company and the Trustees should each pay Mrs T £250 in recognition of the significant distress and inconvenience this matter has caused her.

17. Mrs T did not accept the Adjudicator's Opinion and in response made the following points:

- She is age 71 and has health problems. She does not want to have to wait years to be awarded what she believes she should have been offered in the first instance.
- She would like a reasonable time limit for the PIE offer to be made to her. She would like it to be paid no later than April 2020 and that the offer should be backdated to April 2017, as this is the time other Scheme members received theirs.
- She would also like to be paid the compensation the Adjudicator stated in her Opinion.

18. Both the Company and the Trustees accepted the Adjudicator's Opinion but in response to Mrs T's further points they said:
- The Company anticipates that a further round of PIE offers will be made around March or April 2019. It is committed to making a PIE offer to Mrs T and all other pensioners who did not receive the initial offer. However, the Company is not currently able to commit to offering the PIE by April 2020, although it is likely to be within that time frame, as the exact timing was subject to events and the Company's business priorities.
 - The Company is also not able to commit to backdating Mrs T's offer to April 2017. However, the Company is willing, in January 2019, to provide Mrs T with a further update as to the timing of further offers.
19. 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 Mrs T.

Ombudsman's decision

20. Mrs T's complaint concerns the PIE option that the Company offered members of the Scheme.
21. I have noted Mrs T's age and appreciate that she would like to be offered the PIE as soon as possible and would like the Company to guarantee that the PIE will be offered to her by April 2020. However, the Company has said that it anticipates the PIE will be offered to Scheme members, such as Mrs T, by March or April 2019. But, this is dependent on its business priorities, therefore it cannot commit to guaranteeing Mrs T that she will be offered the PIE by April 2020. However, the Company has offered to provide Mrs T with an update of the PIE offers in January 2019.
22. I do not find this to be unreasonable and therefore will not direct the Company to guarantee that the PIE will be offered to Mrs T by April 2020.
23. I understand Mrs T's disappointment that she was not offered a PIE in relation to her widow's pension, when the offer was initially made to certain classes of Scheme members in 2017. However, PIEs are offered at the discretion of the Company. The Company has confirmed that it will consider Mrs T's request for her PIE to be backdated to 2017, when it is offered to her. I do not find this approach to be unreasonable and therefore will not direct the Company to guarantee that it will backdate Mrs T's PIE when it is offered to her.
24. I find that the service that Mrs T received from the Company and the Trustees was below standard and would have caused her significant distress and inconvenience.
25. Therefore, I partly uphold Mrs T's complaint.

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Directions

26. Within 21 days of the date of this determination, the Company and the Trustees should each pay Mrs T £250, for the significant distress and inconvenience she has experienced.

Karen Johnston

Deputy Pensions Ombudsman
10 September 2018