The Pensions Ombudsman

Ombudsman's Determination

Applicant	Mr E
Scheme	TNT Group Pension Scheme (**the Scheme**)
Respondent	Trustees of the TNT Group Pension Scheme (**the Trustees**)

Outcome

1. I do not uphold Mr E's complaint and no further action is required by the Trustees.

2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr E disagrees with the decision of the Trustees not to allow him to take advantage of Pension Freedoms and transfer his protected benefits out of the Scheme. He also says that the Trustees failed to inform him about his right to take a "bulk" transfer and thus keep the protected elements of his benefits.

Background information, including submissions from the parties

4. On 17 April 2015, Mercer (the administrators of the Scheme appointed by the Trustees) sent a standard letter to members, including Mr E. The purpose of the letter was to explain the impact of Pension Freedoms legislation on the Scheme. It explained that members who joined the Scheme before 6 April 2006 had protected benefits of a retirement age of 50 and the entitlement to a tax free cash lump sum greater than 25%. In bold, it said: "If you transfer your savings out of the Scheme you will lose your protected age and protected cash. The only option that allows you to retain your protected age and protected cash is the annuity option". The letter also recommended taking independent financial advice.

5. Mercer sent a similar letter to members again on 23 July 2015. This letter also explained that in order to keep the protected benefits, members would need to take the tax free cash lump sum from the Scheme and purchase an annuity. It also provided further details of how to obtain independent financial advice.

6. Mr E emailed Mercer on 16 September 2015 requesting details of the legislation that was preventing him from taking his enhanced tax free cash lump sum and then move the remainder of the fund elsewhere. Mercer replied on 23 September 2015 to say

that the Scheme rules[1] had not been amended following the introduction of Pension Freedoms and therefore the relevant rules stated that to take the enhanced tax free cash lump sum, an annuity would need to be purchased.

7. Mr E was unhappy with the response and raised a complaint on 5 November and 2 December 2015. The Trustees replied on 26 January 2016. They confirmed that the Scheme rules did not permit Mr E to take his benefits in the way that he had requested. They also highlighted that this is not permitted under the Finance Act 2004[2] and provided him with details of the relevant HMRC tax manual (PTM063150). Both of these references provided details of "block" transfers and the restrictions that applied.

8. On 1 June 2016, Mr E emailed the Trustees and asked that they table at their next meeting a motion to allow him to transfer and keep his protected benefits. Mercer replied on 25 July 2016. They stated again that it was not possible to take his benefits in the way that he was requesting. Mercer highlighted that if the Trustees were to allow Mr E to take his enhanced tax free cash lump sum and transfer the remaining funds into a drawdown account, then HMRC would consider the lump sum as an unauthorised payment and subject to significant tax charges on the member and the Trustees. Mercer said that the Scheme would not be providing a drawdown facility, and that this was in line with the majority of occupational schemes. Mr E was also provided with details of the Scheme's internal dispute resolution procedure (**IDRP**).

9. Sometime in December 2016, Mr E met with an independent financial advisor (**IFA**). The IFA confirmed, in an email to Mr E on 9 January 2017, that there was the option of a "block transfer", and that, if two or more members decided to transfer then the enhanced benefits could be preserved.

10. Mr E made an IDRP submission on 17 March 2017. In this, he again asked for an explanation on why he could not take his protected tax free cash lump sum and transfer the remainder into a scheme of his choosing. He also asked the Trustees to explain why they did not inform him, in January 2015, of the option to take a "block transfer".

11. The Trustees replied under the first stage of the IDRP on 18 April 2017. They explained that it was not possible under the Scheme rules, or the prevailing legislation, to take his benefits in the way he was requesting. They said:

> "However, where a member has protected tax-free cash it is not possible under legislation or HMRC requirements for a member to take the protected tax-free cash and then transfer out the remainder to an individual policy. The reason for this is because the tax-free cash can only be paid in connection with a pension taken or purchased via the scheme. These requirements are set out in paragraph 1 of Schedule 29 to the Finance Act 2004. To

---

[1] See Appendix I
[2] Paragraph 31 of Schedule 36 of the Finance Act 2004

> paraphrase the detailed requirements of the legislation, a member may take tax free cash from an occupational pension scheme, but must do so within a time window that begins 6 months before and ends 12 months after the member becomes entitled to a pension from the scheme. A pension in this context is defined as scheme pension, lifetime annuity or drawdown. Both the pension and tax free cash must be paid from the same scheme (see paragraph 1(3) of Schedule 29 to the Finance Act 2004. This is also confirmed in the Pensions Tax Manual (PTM063210)).
>
> …
>
> As mentioned in your complaint, Members can retain their right to protected tax-free cash via a transfer if they are part of a "block transfer" which protects the level of the tax free cash. The block transfer approach may be possible if two or more members were to join together to create a block transfer and all other relevant conditions are satisfied. Block transfers typically occur where, for example, trustees transfer all of a scheme's assets and liabilities to a receiving scheme, for example as part of a scheme merger where the transfer takes place without the members' consent. Such a mechanism ensures that all of the sums and assets held in respect of the transferring members are transferred in a single transaction. Whilst this is possible in respect of individual transfers out, it is clearly much more difficult to implement and there is scope for the transactions to be effected at different times, which would result in the transfer not being classed as "block transfers".

12. Mr E remained unhappy with the response and proceeded to the second stage of the IDRP. The Trustees responded on 18 May 2017 and did not uphold Mr E's complaint, essentially for the same reasons as they had previously provided. They also pointed out that Mr E has not suffered a loss, as he is still able to access his full benefits from the Scheme and it was possible for him to make a "block transfer" if he met the requirements. The Trustees said that they are only required to provided information relating to benefits and options from the Scheme and not to provide details of all the various options available to members (hence they recommend that members seek independent financial advice).

13. Following their response, Mr E was still dissatisfied and made a complaint to this Office.

Adjudicator's opinion

14. Mr E's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees. The Adjudicator's findings are summarised briefly below:

- Under the Pensions Act 2015, there is no requirement making it compulsory for defined contribution schemes to offer pension freedoms, instead it is up to individual schemes as to whether it is offered to their members. Therefore, the Adjudicator concluded that Mercer (acting as administrator of the Scheme) had not acted outside of the relevant legislation in informing Mr E that pension freedoms were not an option if he wished to keep his protected benefits. It was up to Mr E to decide if it was in his best financial interest to transfer.

- Under The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013, there is no requirement on the administrators or trustees to inform members of every option in the lead up to retirement. The option to take a "block" or "bulk" transfer is an unusual option to highlight to individual members and that there are still risks involved for Mr E should he wish to take this type of transfer. The Adjudicator concluded that the relevant regulations do not stipulate that Mr E be provided with all of his options and it would not have been reasonable to expect Mercer or the Trustees to have done so.

- The Trustees have agreed to allow a "block transfer", if Mr E meets the necessary requirements. They also highlighted to Mr E the risks of taking such a transfer. However, the Adjudicator noted that neither Mercer nor the Trustees can provide details of other members in order for Mr E to achieve this type of transfer. It would be up to Mr E to seek further independent financial advice should he wish to take this option.

15. Mr E disagreed with the Adjudicator and submitted the following:

> "I understand that the rules of the TNT/Mercer pension have total control of the 'protected cash', and there is no HMRC rule stopping them changing this rule.
>
> I know about data protection and I have never asked them to divulge any other member's details, if I was aware of the buddy system I knew of plenty of people within TNT in January 2015 I could have approached under this system.
>
> Of course I am dissatisfied with your initial findings, it is their responsibility to tell members especially if they know that [sic] member is not happy with their response as they were fully aware in early January 2015, they seen [sic] to be hiding behind various guises when all they had to do was mention the buddy system and I could have done the rest myself.
>
> If nothing else is to be done then hopefully they can be instructed to let members know instead of the of all [sic] options instead of the 'protected cash' only if you take the annuity, this cannot be fair now or in the future."

16. As Mr E did not accept the Adjudicator's opinion, the complaint was passed to me to consider. Mr E 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 E for completeness.

Ombudsman's decision

17. Mr E is correct that there is nothing within HMRC rules and guidance that prevent the Trustees from changing the Scheme rules to allow him to take his benefits in the way that he would like. But, also there is nothing in the legislation that compels them to change the Scheme rules to fit Mr E's personal circumstances. Therefore, I do not find that there has been any maladministration on the part of the Trustees in deciding not to amend the Scheme rules.

18. With regard to providing Mr E with details of all of the different transfer options including "block transfers", I agree with the Adjudicator that the Trustees are under no obligation to inform Mr E of the different transfer options that may be available. I note that in the letters sent on 17 April and 23 July 2015, it is highlighted that members should seek independent financial advice. Mr E does not appear to have done this until December 2016, but perhaps if he had taken such advice earlier, he would have been aware of the "block transfer" option sooner. I also note that in their email of 26 January 2016 the Trustees provided Mr E with details of the Finance Act 2004 provisions and the relevant HMRC tax manual, which details "block transfers". However, it does not seem that Mr E raised this with the Trustees until his IDRP submission on 17 March 2017, 15 months after he was provided with information concerning the "block transfer" option.

19. Mr E is still able to take his benefits via a "block transfer" should he manage to complete the necessary requirements, or via an annuity purchased through the Scheme. I recommend that he seek independent financial advice before making such a decision.

20. I do not uphold Mr E's complaint.

Anthony Arter

Pensions Ombudsman
11 January 2018

Appendix I

TNT Group Pension Scheme – Definitive Trust Deed and Rules

Clause 17 - SECURING BENEFITS

(a) Except as provided for below benefits are to be secured by the purchase of an appropriate annuity in respect of each Beneficiary. For the avoidance of doubt the Trustees may purchase such annuity in, or transfer it into, the name of the said Beneficiary.

…

Rule 9 – NORMAL RETIREMENT

9.1 Pension Provision

Subject to Rules 7.3, 10, 11 and 12 a Member who reaches his Normal Retirement Date shall retire and receive an immediate pension in accordance with this Rule 9 commencing at his Normal Retirement Date and payable during his lifetime. The pension will be equal to the amount secured on behalf of the Trustees from his Member's Account (after taking into account any Nominee's Pension and any lump sum payment arising under Rule 15).

9.2 Annuity contract to be in the Member's/Beneficiary's name

Any annuity contract purchased from a Member's Account to provide a Pension in accordance with this or any other rule of this Deed will whenever possible be placed in the name of the member of the Beneficiary whom the annuity contract is to benefit and not in the name of the Trustees.