

The complaint

Ms S complains about the administration of her annuity plan by Pension Insurance Corporation plc (PIC).

She says that the benefits under her Occupational Pension Scheme (OPS), which has now been wound up, provided her pension benefits at a retirement age of 60 years. Whereas PIC has informed her that her annuity benefits are split into four tranches with some of the benefits having a normal retirement age (NRA) of 60 years and the others an NRA of 65 years.

Ms S says that PIC has made an error and isn't providing her annuity in line with the benefits due under her occupational pension scheme.

What happened

Ms S started work with company A and joined an OPS with that employer, in 1989.

In 1997 her employer was taken over by another company, company B.

In 1998 Ms S wrote to company B to ask about the benefits under the scheme and specifically about her retirement age.

Company B responded and confirmed she was able to retire at 60 years on a full pension earned to chosen retirement date without any reduction for early payment. It also said normal retirement age for its members was 65 years.

On 6 April 2000 Ms S's former OPS issued a statement setting out her benefits which indicated her normal retirement age was 65 years.

In November 2000 Ms S left her employment.

In March 2001 her former OPS issued a leaver's statement setting out her deferred benefits which indicated that her normal retirement age was 65 years.

In 2015 a new pension scheme was set up which took over from the old scheme.

In July 2010 her former OPS issued a transfer statement which gave a transfer value, details of her deferred benefits and indicated her NRA was 65 years.

There was further correspondence in 2010, between Ms S's OPS and a financial adviser, in respect of the different tranches of her pension benefits

In September 2016 the new scheme sent Ms S an illustration of her retirement benefits which indicated her NRA was 60 years

In October 2018 the OPS produced a document detailing Ms S's retirement benefits, and her NRA was stated to be 65 years.

In November 2018 the new scheme sent Ms S another illustration of her retirement benefits which indicated her normal retirement age was 60 years.

In December 2018 the Trustees of the scheme entered into a bulk annuity policy with PIC.

In March 2021 the OPS wrote to Ms S to notify her that it was being wound up and her benefits would be provided by an individual annuity plan with PIC.

In 2022 the OPS was wound up. The trustees of the scheme agreed a contract with PIC, an insurer, whereby it would set up annuities to secure the members' benefits.

In February 2022 Ms S's annuity plan was issued by PIC.

Ms S then received some illustrations of her pension benefits issued by PIC. She contacted PIC to query the normal retirement age applicable to her plan.

PIC confirmed there were different normal retirement ages for the tranches that made up her plan with the pre 1988 and post 1988 Alternative Minimum Pension (AMP) tranches using a normal retirement age of 65 years, and the Pre 1997 FP revaluing and Post 1997 tranches having a normal retirement age of 60 years.

Ms S disagreed with PIC and said the retirement age for her benefits was 60. She provided PIC with correspondence sent to her in 1990 by her former employer, which she said demonstrated that she had the right to retire at 60 on a full pension without a reduction for early payment.

PIC reiterated that there were different retirement ages for the tranches that made up her plan. Ms S then made a complaint.

PIC didn't uphold her complaint. It said the benefits under her plan have a split normal retirement age (NRA) of 60 and 65. PIC said if Ms S were to retire at 60, the tranche with an NRA of 60 would remain unchanged. However the other tranche with an NRA of 65 would be reduced by an early retirement factor. Conversely, if she were to retire after age 60, the tranche with an NRA of 60 would have a late retirement factor applied.

PIC acknowledged that Ms S would be disappointed but said these were the benefits that had been insured and it was only able to pay out benefits in line with what had been insured.

Ms S disagreed and referred her complaint to our service. She said PIC had stated her plan had split retirement ages, which she said was incorrect.

Ms S said her right to retire at age 60, or at any time before age 65, based on the full pension to chosen retirement date without any reduction for early payment, was stated in various documents from 1989, 1990, 1998 and 2018 which she enclosed. Ms S provided Scheme Statements of Benefits from 1989 and 1990, a company announcement from 1990 and correspondence from 1998.

Our investigator considered Ms S's complaint but didn't think it should be upheld. She noted the background to the complaint ending in the OPS being wound up and PIC insuring the benefits. The investigator said when that happened PIC would've had an agreement with the previous trustees on what it could and would insure.

The investigator noted the documentation provided by Ms S but was of the view that the different normal retirement ages were due to actions taken by previous trustees of the former OPS, and that the trustees would've made Ms S aware of those changes.

Our investigator highlighted that the actions of the trustees of the OPS were not something that our service could consider. She noted that if Ms S wanted to make a complaint about the trustees, it would need to be directed to the Pensions Ombudsman.

The investigator said that as PIC could only pay out the benefits in line with what had been insured by the previous trustees, she didn't think that it had made an error.

The investigator explained that PIC had confirmed that if Ms S were to retire at age 65, the parts of her pension with a retirement age of 60 would have a late retirement factor applied. However, it couldn't provide an amount because it would change on a monthly basis and wasn't guaranteed.

Ms S didn't agree with the investigator's conclusions. In summary she said:

- PIC and the trustees of her OPS had entered into a legal agreement to transfer her

pension benefits. She had been advised that her benefits would continue unchanged and there was nothing for her to do, or to be concerned about.

- Ms S referred to correspondence from her OPS which indicated she had the right to retire at age 60, or at any time before age 65, based on full pension earned to chosen retirement date without any reduction for early payment. It was also acknowledged in that letter that the normal retirement date for members of the Occupational Pension Scheme was 65.
- She said that at the point of transferring pension benefits from her OPS to PIC, both organisations had obligations to ensure that full benefits were transferred for all members.
- She said as part of the due diligence process, PIC was required to take account of any historical benefits which had accrued for members with a retirement age of 60.
- PIC had made an error as it did not insure her for the correct level of benefits as part of their negotiations with the trustees of her OPS. So she said PIC was required to rectify the oversight.
- She said PIC had not fulfilled its obligations at the time of the buy-out. So, Ms S said it was required to renegotiate terms with the trustees of her OPS and provide her with the right to retire at 60 without penalty.

As no agreement could be reached Ms S's complaint was referred to me for review.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Ms S says that her benefits under her OPS scheme allowed her to take her retirement benefits at 60 and receive a full pension at that age without any penalty. She says that PIC has made an error in applying different retirement ages for different tranches of her annuity plan and in particular, the tranches which PIC says have a retirement age of 65.

Ms S points to scheme statements and illustrations from her former OPS in 1989, 1990, 2016 and 2018 which indicated the normal retirement age for her benefits was 60. She also refers to correspondence from her former OPS in 1998 which indicates she could take her benefits at age 60 without any reduction.

I can see that the scheme statements from 1989 and 1990 indicate her normal retirement age was 60 and the illustrations sent by her former OPS in 2016 and 2018, also indicate a normal retirement age of 60.

In correspondence from the OPS in April 1990 it states:

"At the same time as this improvement is being made certain changes in the way the XXXX pension schemes are structured and administered are being made. From 6th April 1990 the normal pension date for women will be 65. No existing member will be disadvantaged by this change. A woman currently entitled to retire at age 60 will retain the right to retire at that age, or at any time between 60 and 65, on the full pension earned to the date of retirement.

Continuing contributions beyond age 60 will secure additional pension benefits.”

The 1997 Benefit Statement issued to Ms S indicates that her normal retirement age is 65 years, and this is confirmed by the Scheme in correspondence from January 1998 responding to a query from Ms S.

It says:

“..you have the right to retire at age 60, or at any time before age 65, based on full pension earned to chosen retirement date without any reduction for early payment.

It then goes on to say

“ The normal retirement date for all members of the XXXX Pension Scheme is 65, therefore for Benefit Statement purposes all benefits are quoted assuming members remain in service until normal retirement age.”

PIC says it reached an agreement with the trustees of the OPS about what benefits it would insure and that is what it is providing to Ms S. So, it says there has been no error.

It also says that there are four different tranches (or slices) because the trustees of the scheme had made changes to the accrual details, thereby creating a new tranche.

PIC says it was the decision of those trustees to change the retirement ages on the different tranches, which is why the retirement dates were different.

When a member of an OPS leaves service before normal retirement age, as Ms S did here, the pension they've earned will be split into tranches. Each tranche is required to be revalued up to retirement and then increased whilst in payment at different rates.

The rate will depend on whether it relates to the Guaranteed Minimum Pension (GMP) earned as a result of the scheme contracting-out of the state earnings-related pension scheme (SERPS) and paying reduced National Insurance contributions, or the additional part of the benefits earned each year that are more than the GMP.

In Ms S's case, PIC has converted the GMP to an Alternative Minimum Pension (AMP). However, the same principle applies - that her preserved pension benefits have been split into slices with different rates. In addition, PIC says that different normal retirement ages apply to those slices.

I would also add, for information purposes, that PIC has confirmed that Local Government pension members who joined the former scheme could retire at 60 without any reduction, if the age of the member and the number of years served totalled 85 years. However, as Ms S had approximately 11 years' service, that was insufficient to retire at 60 without any reduction.

Correspondence from former schemes and scheme documentation

I have carefully looked at the correspondence provided by Ms S from her former OPS. There have been a number of changes overtime with the original company being taken over and then a new scheme being introduced in 2015.

Ms S says that each time, her right to retire at 60 without penalty was preserved. She points out that her OPS informed her in 2021, before the buy-out took place in 2022, that “ *Your benefits will continue as they would have done under the Scheme, so there is nothing for you to be concerned about.*”

The difficulty in this complaint is that the party that was formerly responsible for providing Ms S's benefits is not a party to the complaint, and it can't be because our service cannot look at the actions of the trustees of an OPS.

The trustees of the OPS entered into an agreement with PIC, whereby PIC agree to insure the benefits and provide annuities to its members. However, while I note the points made by Ms S, I think the obligation of PIC would be to deliver whatever was agreed between itself

and the trustees of the OPS, not what may, or may not have been promised by the trustees to the members of the OPS.

I consider there were changes made during the lifetime of the OPS schemes. For example, when Ms S first joined her NRA was 60 years.

The OPS at the time indicated that the NRA for women was 60 years and for men it was 65 years. Which I note mirrored the state pension age at that time.

The OPS documentation set out the way pension benefits were calculated if you left the company, which was the case for Ms S.

It said:

Leaving Service

The benefits you will receive on leaving the employment of the Company will depend on the length of your Pensionable Service.

If you leave having completed two or more years of Pensionable Service, you will have a pension preserved for you which can be transferred to another pension arrangement if required. The amount of this pension at the date of leaving will be -

PENSIONABLE SERVICE /60 X FINAL PENSIONABLE PAY

Where:

Pensionable Service will be the number of complete years (with days counting proportionately) you have been a member of the Scheme paying contributions and Final Pensionable Pay will be your highest annual Pensionable Pay in the last ten complete tax years prior to your date of leaving.

This pension will be increased every year until you reach age 65 (males) or 60 (females) Your pension at that age will be:-

“Your GUARANTEED MINIMUM PENSION at your date of LEAVING INCREASED BY THE Lesser of 5% per annum or the general rise in earnings

Plus

THE BALANCE OF YOUR PENSION AT YOUR DATE OF LEAVING INCREASED BY THE LESSER OF 5% PER ANNUM OR THE RISE IN THE RETAIL PRICES INDEX.”

In 1998 the OPS indicated to Ms S that the NRA for all its members was 65 years and the illustrations of benefits it provided were calculated on that basis.

I can see that in April 2000 a statement was issued to Ms S setting out her retirement benefits and that statement indicated that her NRA was 65 years.

Then in March 2001, her former OPS issued Ms S with a leavers statement setting out her retirement benefits which also indicated that her NRA was 65 years.

In 2010 a transfer statement setting out the value of Ms S's benefits was issued to an independent financial adviser, who I understand would have been acting on Ms S's behalf. Again, the NRA quoted on that statement was 65 years.

So it appears from that documentation that the NRA had changed from when Ms S initially joined the first scheme in 1989.

However, Ms S points out that she received illustrations from her former scheme in 2016 and 2018, and both of these indicated her NRA was 60 years.

I think there is a contradiction between the information provided in those illustrations and information provided by the Scheme in the preceding years. However, I take into account the warnings provided on those illustrations when considering how much weight to attribute to them.

There was a warning indicating:

"Please note this is an illustration only and the benefits quoted are not guaranteed."

And:

"The benefits payable are governed by the rules of the Scheme. In the event of any conflict between the terms of this letter and the rules of the Scheme, the rules of the Scheme prevail."

The benefits quoted in this letter are for illustration purposes only and should not be interpreted as a guarantee."

So I consider the statements issued in 2000, 2001 and 2010 are more likely to represent the true position than the illustrations provided.

And I think this is also supported by the details of Ms S's benefits issued in October 2018 which gave an NRA of 65 years.

In addition, I don't agree that the 1998 correspondence *clearly* stated that Ms S's NRA was 60 and that the pension benefits would be the same if they were taken at age 60, or between 60 and the normal retirement age of 65.

I think saying *"based on full pension earned to chosen retirement date without any reduction for early payment"* is contradictory because I think *"earned to chosen retirement date"* suggests somebody on the same benefits who chose a later retirement date, would be paid more.

I consider the key message from the 1998 letter was that Ms S *could* retire at 60 so she didn't have to wait until 65 to take her benefits but that her pension would be calculated to the age she chose to retire.

I am therefore satisfied on balance that although Ms S's NRA was initially 60 years, it was subsequently changed.

I should also say that I've set out my understanding of events above more for information purposes. Even if I'm wrong on some of the aspects above, as I've said above, the key issue here is what was agreed between the trustees of the former OPS and PIC. PIC didn't need to enter into any negotiations relating to the actual benefits which Ms S should be paid, nor do I think it would have been reasonable to expect it to challenge the benefits which the OPS considered should be payable to Ms S and request that the format of these be amended. For its part, it needed to enter an agreement to pay the benefits which the OPS confirmed would have been paid to Ms S.

So I think it would be reasonable to expect the benefits provided in annuity plans as a result of that agreement to broadly resemble the benefits provided by the scheme. And I can see that in Ms S's plan document it says:

"1.6. This policy has been brought by the Trustee of the Scheme in order to secure the deferred pension which would otherwise have been payable to the Member under the Scheme. This Scheme is a registered pension scheme. This Policy is accordingly an annuity contract by means of which benefits under a registered pension scheme have been secured but which does not provide for the immediate payment of benefits. It is to be treated as having become a registered pension scheme on the date on which it is made."

PIC undertakes under this Policy to insure all of the benefits payable or contingently payable to or in respect of the Member under the Scheme, except where such benefits were specifically excluded under the terms of the Bulk Annuity Policy, and subject to the benefit adjustment requirements that were included in that Bulk Annuity Policy. "

Glossary

“Bulk Annuity Policy means the bulk annuity policy dated 3 December 2018 entered into by the Trustee and PIC”

Ms S’s plan document issued by PIC indicates her NRA is 65 years as that is the later of the two split retirement ages and the annuity plan has to be taken as a whole. I consider this is in line with the statements sent by her former OPS in 2000, 2001, 2010 and the information produced in the 2018 document. So on balance, I think it’s more likely than not that an NRA of 65 years was agreed by the trustees as applying to part of Ms S benefits under the plan.

Has PIC administered Ms S’s annuity plan correctly?

PIC has said that two different normal retirement ages apply to different parts of Ms S’s benefits. So, if Ms S were to retire at 60 or between 60 and 65, the part of her benefits with an NRA of 65 years would have an early retirement factor applied, and they would therefore be decreased.

Conversely, if Ms S were to retire at 65, then the part of her benefits with an NRA of 60 years would have a late retirement factor applied, so they would therefore be increased.

For clarity, my role here is not to take the role of an auditor or actuary, and check that the calculations provided by PIC in relation to Ms S’s retirement benefits are correct. And as I have said, I cannot look at the actions of the trustees of the OPS scheme, other than as the factual background to this complaint, as it does not fall within my remit. To reiterate, if Ms S considers that the OPS trustees have made a mistake in setting out the manner in which the pension benefits should be paid, then Ms S may raise that with them, and if she remains dissatisfied, refer the matter to the Pensions Ombudsman.

As I’ve said above, my remit is to decide whether what PIC has set out in respect of Ms S’s benefits is broadly in line with what was agreed with her former scheme. And, on balance I think it is. So, I won’t be asking PIC to do anything further here.

My final decision

My final decision is that Ms S’s complaint against Pension Insurance Corporation plc isn’t upheld.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms S to accept or reject my decision before 17 May 2024.

Julia Chittenden
Ombudsman