

complaint

Mr W has complained that Zurich Assurance Ltd won't allow him to transfer his pension with them to an overseas pension plan as he's not able to provide a UK National Insurance number, or confirmation that HMRC is unable to issue him with one.

background

Mr W, who isn't a UK citizen, took out the pension with Zurich in 1990 while he was working in the UK. The plan mainly received employer contributions totalling £2,250 plus £240 of employee contributions to which tax relief was added. Mr W then left the UK to work overseas and subsequently returned to his home country.

Whilst Mr W was briefly working in the UK, it appears he was issued with a temporary National Insurance number (NINo) which was used to pay his wages via PAYE, but he didn't apply for a permanent number. The temporary number was in a different format to permanent NINos issued in the UK.

When the Department of Social Security, now the Department for Work and Pensions (DWP) informed Zurich that the temporary NINo wasn't valid for Mr W's plan to qualify to receive National Insurance rebates, Zurich says it asked its adviser to obtain the correct one in September 1991 but didn't bear back from him.

Several decades later Mr W asked Zurich to transfer his pension to a Qualifying Recognised Overseas Pension Scheme (QROPS) – and as part of approving this Zurich asked him for his NINo. Mr W complained about this requirement in May 2018 and Zurich responded:

'... in line with the guidance notes at www.gov.uk a list of the requirements to transfer a fund to a Qualifying Recognised Overseas Pension Scheme (QROPS) includes:

Their National Insurance number or, where applicable, confirmation in writing that they do not qualify for a National Insurance number.'

It said another HMRC reference Mr W had provided didn't match the conventional format of NINos, so it was unable to proceed without the matter being clarified with HMRC.

Mr W disagreed with this. He said he'd given all the information he could reasonably be expected to provide, bearing in mind the time gap of some thirty years. He wasn't happy that Zurich's adviser had never told him that the NINo hadn't been accepted in 1991.

One of our investigators considered the complaint. He asked Zurich to explain how relief had ever been processed on Mr W's pension if the NINo wasn't valid. He also noticed that Mr W's annual statements had read "DI SC RE P" where Mr W's NINo would be displayed, and asked why Mr W personally hadn't been contacted about this problem.

Separately, he spoke to HMRC who confirmed that Mr W's situation wasn't unheard of and he would need to obtain a valid NINo for the transfer to take place. This wasn't something that Zurich would be able to do on Mr W's behalf.

Zurich responded that as Mr W's plan was part of a Group Personal Pension arrangement, the employer was responsible for administering tax relief – and it disputed that the invalid NINo meant that Mr W was ineligible to contribute to the pension. It also confirmed that it had records of initiating contact directly with Mr W about this issue. It appears that it had only assumed that it would have notified its adviser at the time:

'...the Business naturally asked its representative to contact his client to establish the correct number. There's no reason to doubt that [adviser] attempted to do so, but there's no evidence a response was ever received.'

Our investigator reached the view that ultimately Mr W would need to resolve the issue of the NINo directly with HMRC. He provided Mr W with the contact details for him to do this. However, because of the significant period of time over which Zurich failed to highlight the discrepancy, it was likely Mr W was going to be caused greater upset than would otherwise have been the case. He recommended that Zurich pay Mr W £250 to compensate for this.

Zurich agreed to the offer and Mr W initially thought it was fair. But after contacting HMRC he was made aware he might have to attend the UK for an interview, because a person must be in the UK to obtain an NINo. He estimated it would cost him €200 in travel expenses to attend a same-day interview in a part of the UK nearest his home, or €450 if he had to travel to London. He was also concerned that he might not be granted a NINo as he isn't actually resident in the UK.

In the meantime Zurich provided Mr W with a cheque for £250 which it said was in full and final settlement of the complaint. Mr W rejected this cheque as he does not hold a Sterling bank account and didn't consider the matter to be settled. As agreement couldn't be reached, the complaint was passed to me for a final decision.

my findings

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

As there is some concern that Mr W wasn't eligible to contribute to his pension, I'd like to clarify that the former Inland Revenue Guidance Notes (IR76) were simply that Mr W had to be under age 75 with *relevant earnings* – defined as income which is chargeable to UK tax. As the contributions paid to Mr W's pension were mainly by his UK employer, and by him when he worked for that employer, there is little doubt that he was eligible at the time he paid those contributions.

From what I can see, the query about Mr W's tax code was actually raised by the DWP's predecessor (which administered the collection of National Insurance contributions), rather than the then Inland Revenue (now HMRC). The use of a temporary NINo wouldn't, as far as I'm aware, have prevented Zurich from claiming tax relief on the small amount of Mr W's contributions as part of the bulk claims from HMRC which scheme administrators make for all their customers. Providing Zurich was satisfied that Mr W was paying UK tax on sufficient earnings to justify his employee contributions, which it was, it was correct to apply for the tax relief.

I'm puzzled that Zurich makes reference to a net pay arrangement where Mr W's former employer would claim the tax relief. It's true that the bulk of the contributions to Mr W's plan were employer contributions which didn't qualify for tax relief (but which the employer wrote off as a business expense). However the employer couldn't claim tax relief on employee contributions as this was the scheme administrator Zurich's role – as IR76 makes clear:

'GROUP PERSONAL PENSIONS

4.36 An employer (or group of employers) may arrange with a personal pension provider for their employees to make individual arrangements under the same scheme. The employer is

*not a party to the contract, but for convenience may collect contributions on behalf of all the employees involved. This is acceptable provided the employer's and each employee's contributions are separately identifiable and the employer does **not** apply the net pay arrangement to the employee's contributions. The net pay arrangement is described in PN 4.3 and is only applicable for contributions to occupational pension schemes...*

EMPLOYEES

5.4 Employee contributions are paid net of basic rate tax under The Personal Pension Schemes (Relief at Source) Regulations 1988 (SI 1988/1013). For example, an employee who wishes to pay £100 a month will only pay the net amount (£78 a month for the year ended 5 April 2001).

The scheme administrator will recover the basic rate tax by making a claim to Inland Revenue.'

The section of IR76 dealing with contributions after 6 April 2001 – whilst not strictly relevant in this case – does also shed some useful light on the use of temporary NINOs:

'Individuals who are unlikely to have a National Insurance number

14.37a Scheme administrators may find it useful to know that the following individuals are unlikely to have a National Insurance Number (NINO):

- a married woman who has not worked since 1975...*
- a person who had always lived abroad and who has not paid NICs or claimed benefits since arriving in the UK,*
- a non-resident individual who is a partner in a UK partnership...*
- a person who was not the subject of a child benefit claim immediately before their 16th birthday and who has not claimed benefits, worked or paid NICs since,*
- foreign nationals who are exempt from NICs in the UK as they are continuing to pay National Insurance contributions in their country of origin.*

Where any of the above applies, the scheme administrator should allocate a dummy identifier beginning with "NC" followed by six numbers based on the individual's date of birth and ending with "M" for male or "F" for female. For example, for a man born on 18 June 1950, the scheme administrator should allocate a dummy identifier of "NC180650M"...

I'm noting this for completeness as Mr W did not fall into any of these categories, and Zurich therefore did not use this notation for his NINo. But IR76 continues (with my emphasis):

'14.37b...Some individuals are given a temporary NINO substitute by their employer, usually where they have recently commenced employment and have lost their NINO, or where they have returned from a period abroad. Temporary NINOs are usually in the format TN999999M or 99Y999999.

Individuals who only have temporary NINOs should complete the application form as if they did not have a NINO.

...

An individual who is not within any of the categories at 14.37a and does not have a NINO should apply to their local DWP office for an appointment to apply for a NINO.'

I'm not in a position to establish, so many years after the event, what the precise procedure was in 1990. But the temporary NINo entered on to Mr W's application form and the other HMRC reference Mr W has found from later in 1993 fit the *TN999999M* and *99Y999999* formats. And IR76 appears to confirm that:

- Having a temporary NINo wasn't a barrier to Mr W taking out a personal pension; and
- The onus was on Mr W to apply for a permanent NINo.

The problem in Mr W's case was that it would always have been an inconvenience for him to potentially attend an appointment in person at a DWP office to get a permanent NINO, because he had left the UK. But that in my view would not have been Zurich's fault. It hadn't done anything wrong in allowing Mr W to take out a plan with a temporary NINO, and by doing so Mr W benefited from £2,500 of employer contributions. Clearly it's unfortunate that Mr W or his employer didn't obtain a permanent NINO – I understand this may partly be because the employer ceased trading soon after Mr W emigrated.

However I do agree with the investigator that Zurich hasn't demonstrated that it made enough, or in fact any, effort to remind Mr W when it became aware that he hadn't obtained a permanent NINO. It merely assumes, without any evidence, that it would have asked the adviser to get in touch with Mr W. There's evidence that Zurich's adviser was in touch with Mr W overseas in November 1992, but with no mention being made of the NINO issue. As Zurich has retained other file papers going back this far I would expect to see mention of something this important. On balance, I find it unlikely that Zurich did in fact contact the adviser and it is even less likely still that the adviser contacted Mr W.

Should this mean Zurich needs to do anything further to assist Mr W now in his attempts to transfer to a QROPS? The fact remains that Zurich would be sanctioned by HMRC for allowing a transfer without one of the following:

- a valid NINO, or
- written confirmation that the consumer is not entitled to a NINO

So from what I can see the HMRC regulations do make allowance for Mr W's situation, in that they recognise that there may be people who have taken out pension plans but who do not, for whatever reason, have a NINO. Nor do the regulations appear to be saying that Mr W requires a NINO in order to transfer. But he does need, at the very least, written confirmation from HMRC/DWP that he's not entitled to a NINO.

Despite Zurich's potential contribution to the length of time this matter has been unresolved, I don't think it's unreasonable for it to expect Mr W to now obtain the confirmation he was always expected to obtain. That may involve him travelling to an appointment in the UK. To the extent that those are HMRC/DWP's rules I think that may always have been a requirement. The Financial Ombudsman Service has no control over UK Government departments, but I'll set out below what the gov.uk website currently says in the introductory text to form CA5403 (which is normally used to find a misplaced NINO where a permanent one was once issued):

'Do not fill in this form if you've never had a National Insurance number before.

Instead you should contact one of the following:

- *if you're a UK citizen telephone the National Insurance Registrations Helpline on 0300 200 3500*
- *if you're not a UK citizen telephone Jobcentre Plus on 0800 141 2075 or go to 'Apply for a National Insurance number'*

The QROPS application form Mr W completed also indicates he would need to contact Jobcentre Plus, where it said, *'If you have contacted Jobcentre Plus and are not entitled to a NINO, please state the reasons and give any HMRC reference number that you have received.'* At the time of his application Mr W referred to historic tax information in this box, but what Zurich would reasonably expect to see here is the result of a recent enquiry to Jobcentre Plus.

Mr W may need to be patient until the COVID-19 restrictions are lifted. But if, ultimately he isn't satisfied that HMRC is able to either give him a NINo or provide written confirmation he doesn't need one, HMRC has a complaints process at gov.uk which he may need to follow.

I recognise this is very inconvenient for Mr W. I notice he has an adviser based in his home country who was assisting him with transferring to a QROPS, and who may be in a position to assist. But as it would always have been Mr W's responsibility to obtain a permanent NINo (or confirmation that he is not entitled to one), I have concluded that it wouldn't be appropriate for me to consider making a specific award for any costs he might incur.

I'm sorry to disappoint Mr W, but all I consider it would be appropriate for me to award in this case is a payment to recognise that what would always have been an inconvenient situation has been made worse by Zurich's failure to highlight this issue to Mr W over 25 years ago.

Zurich agreed to pay Mr W £250 originally, but in view of Mr W's difficulties in accepting a Sterling payment it has now agreed to pay €300 (more than the equivalent amount) by bank transfer. I consider this to be a fair and reasonable settlement in view of the added distress and inconvenience Zurich has caused, but recognising that there are still steps that only Mr W can take to achieve what he is looking to do with this pension.

my final decision

I uphold Mr W's complaint in part. I require Zurich Assurance Ltd to pay him the sum of €300 by bank transfer in compensation for the distress and inconvenience it has caused. To enable it to do so, Zurich says Mr W will need to provide it with his International Bank Account Number (IBAN) and SWIFT code.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 5 July 2020.

Gideon Moore
ombudsman