

Ombudsman's Determination

Applicant	Mrs S
Scheme	Scottish Power Pension Scheme (the Scheme)
Respondents	The Trustee of the Scottish Power Pension Scheme (the Trustee) Capita plc (Capita)

Outcome

1. I do not uphold Mrs S' complaint and no further action is required by the Trustee or Capita.

Complaint summary

2. Mrs S has complained that she was provided with the option to take her benefits as a lump sum through trivial commutation rules, she accepted this but then the option was taken away.

Background information, including submissions from the parties

3. The Scheme Administrator, Capita, sent Mrs S a retirement quotation and she opted to receive the trivial commutation payment of £4,789.59. Capita acknowledged this and gave a payment date of 15 March 2019.
4. Trivial commutation is an option whereby a pension scheme member may take one of more of their pension arrangements as a lump sum, provided they comply with certain statutory requirements. For example, the member must have reached a minimum retirement age of 55.
5. Capita wrote to Mrs S on 6 February 2019, informing her that as a member of the Scheme, she was contracted out of the State Earnings Relating Pension Scheme (**SERPS**). This meant that, at her state pension age, a Guaranteed Minimum Pension (**GMP**) would be payable. The GMP is equivalent to what Mrs S would have received from the state had she not been a member of the Scheme.
6. A recent High Court judgment, *Lloyds Banking Group Pensions Trustees Limited v Lloyds Bank Group plc and others [2018] EWHC 2839 (Ch)*, ruled that all GMP benefits accrued on or after 17 May 1990, in UK pension plans must be equalised for

males and females. Capita informed Mrs S that part of her GMP was accrued after 17 May 1990.

7. Although Mrs S had elected to receive a trivial commutation lump sum, Capita informed her that in order for it to be an authorised payment, the payment must extinguish all liabilities from the Scheme. If any inequalities arose from GMP equalisation, which remained uncertain, there was risk that the lump sum paid could have been seen to have failed to extinguish all liabilities, so would constitute an unauthorised payment. Unauthorised payments can result in Her Majesty's Revenue and Customs (**HMRC**) issuing tax charges to the member and the Scheme. As a result, the Trustee suspended all requests for trivial lump sum payments until further notice. Capita did not have a timescale of when a decision would be made about reinstating trivial commutation payments.
8. Mrs S was unhappy with the response so, on 11 February 2019, she wrote a letter of complaint to Capita. Mrs S said that she expected her payment to be made to her in full as promised on the next payroll date of 15 March 2019, as her retirement fell within a few weeks.
9. Capita responded to her letter on 22 February 2019. It provided her with details of the Scheme's internal dispute resolution procedure (**IDRP**).
10. Mrs S invoked stage one of the IDRP on 27 February 2019.
11. In response the Trustee said that payments of trivial commutation lump sums were at its discretion. The Trustee had made its decision to remove this option based on legal advice and with the view of protecting members. It did not uphold Mrs S' complaint.
12. Mrs S was dissatisfied and took her complaint through the second stage of the IDRP.
13. The Trustee provided its response under stage two of the IDRP. It said it had sought further legal advice in order to clarify beyond doubt whether payment of Mrs S' trivial commutation lump sum could still be made despite the ongoing uncertainty of GMP equalisation. The Trustee said it had received clear legal advice that trivial commutation lump sum payments could not be adjusted in a manner that removed the risks. The Scheme actuary had indicated that any adjustment would be an estimate and would not remove the risk that a lump sum would be deemed as an unauthorised payment by HMRC. The Trustee also said that the decision to suspend lump sum payments was not taken until February 2019, and this was in response to legal advice received at the time. There was never any attempt to conceal this information from Mrs S or other affected members.

Adjudicator's Opinion

14. Mrs S' complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or Capita. The Adjudicator's findings are summarised below:-

- There is no dispute that trivial commutation lump sum payments were offered by the Scheme, and that Mrs S received information which led her to believe that she could receive this type of payment. Although, Mrs S would have been disappointed when this option was removed, it does not mean that the Trustee acted incorrectly.
 - The retirement pack Mrs S received would have explained that all figures were subject to change. Therefore, the Trustee was not providing a legally binding promise at this stage.
 - After seeking legal advice, the Trustee made the decision to withdraw the option of trivial commutation lump sums. Although Mrs S was disappointed, it was a legitimate decision and it does not amount to maladministration that this option was removed.
 - The Finance Act 2004 allows schemes the option to provide trivial commutation, but it is not mandatory. As there is no legal requirement for the Trustee to provide trivial commutation lump sums, the Trustee had not done anything wrong in withdrawing this option to protect the Scheme and its members.
 - Also, there is nothing to stop Mrs S from transferring her benefits to another provider that would offer trivial commutation lump sum payments.
15. Mrs S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs S provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the points made by Mrs S for completeness.
16. Mrs S said that she appreciated that the Trustees were able to withdraw the option of trivial commutation, but as she had signed the paperwork, the Trustee should have honoured her option of a lump sum through trivial commutation.

Ombudsman's decision

17. Mrs S has complained that although she was provided with an option of taking her benefits as a lump sum trivial commutation payment the option was later removed.
18. The Trustee has explained that its decision to remove the option of trivial commutation was made to protect members and the Scheme from potential tax charges that might arise as a result of the equalisation of GMPs. The Trustee took legal advice before reaching its decision and I do not consider that the option being removed amounts to maladministration. The Trustee has a duty to ensure it makes decisions that would avoid foreseeable problems and to protect the Scheme and its members.
19. Mrs S believes that the Trustee ought to honour the trivial commutation option because she had signed and completed all the paperwork accepting that option. Although, I can appreciate Mrs S' frustration, just because she had completed the

paperwork does not mean she is now entitled to receive her benefits by way of a lump sum. The process had not been completed and in the interim the option was removed for valid reasons.

20. It is unfortunate that due to the timing, Mrs S had her expectations raised, and was provided with information which led her to believe she could commute her retirement benefits and receive a lump sum. But she has not lost her entitlement to her retirement benefits from the Scheme. It is simply that she is not permitted to receive them in the manner she would like.
21. Mrs S still has the option to transfer her benefits to another provider that would offer trivial commutation should she wish to do so.
22. I do not uphold Mrs S' complaint.

Anthony Arter

Pensions Ombudsman
29 January 2020