

## Ombudsman's Determination

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| Applicant   | Mr K  |
| Scheme      | Railways Pension Scheme ( <b>the Scheme</b> )       |
| Respondents | Railways Pension Trustee Ltd ( <b>the Trustee</b> ) |

## Outcome

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

## Complaint summary

2. Mr K has complained that he was unable to commute his annual pension into a one-off lump sum payment. He said that this was needed to pay off his "debts" and to "make essential modifications" to his home.
3. Mr K said that the Trustee has discretion to allow for such payments under "special circumstances", and that his circumstances should qualify.

## Background information, including submissions from the parties

4. On 5 December 2008, Mr K began receiving his retirement benefits from the Scheme. At the time he elected to receive a tax-free lump sum payment and a reduced annual pension.
5. In September 2016, Mr K phoned the Scheme administrator asking to commute his pension into a one-off lump sum payment (a process known as trivial commutation). The Scheme administrator informed Mr K that this would not be possible.
6. On 12 September 2016, Mr K complained to the Trustee as he was not happy with the decision that had been made and wanted to officially appeal. Mr K said that his wife was disabled and was unable to care for herself. The lump sum payment would allow Mr K to purchase a stair lift and wet room which he said would "go a long way to help deal with her [Mrs K's] mobility problems". It would also improve their financial circumstances and reduce some of their debts.
7. The Trustee responded to the complaint the same day. It said Mr K did not meet the "eligibility criteria" for trivial commutation set by HMRC. It offered a referral to the Railways Benevolent Fund which provided financial support to eligible pensioners.

8. On 24 October 2016, the Scheme Administrator wrote to Mr K under stage one of the internal dispute resolution procedure (**IDRP**). Mr K's complaint was not upheld as the value of his benefits exceeded the £30,000 limit (**the upper limit**) set by HMRC and as such, he did not meet the eligibility criteria for trivial commutation.
9. On 10 November 2016, Mr K escalated the matter under stage two of IDRP. He was not happy with the decision that had been made and did not agree with the upper limit eligibility criteria.
10. On 16 February 2017, the Trustee responded under stage two of IDRP. It maintained that Mr K was not eligible for trivial commutation, as stated previously.
11. On 20 February 2017, the Scheme administrator wrote to Mr K about the stage two decision:-

- It was unable to reconsider his request to access his pension as a lump sum because his pension benefits exceeded the upper limit.
- It quoted the Pension Advisory Service (TPAS) website:

"Rules on taking a small pension as a cash lump sum:

You may be able to take the whole of your pension as a trivial commutation lump sum if:

- You're aged at least 55, or you're retiring at an earlier age because of ill-health; and the value of all your pension benefits (including defined contribution pensions and pensions already in payment, but ignoring any State Pension) when added together do not exceed £30,000 in total.

You may be able to take the whole of your pension as a small pot if:

- You're aged at least 55, or you are retiring at an earlier age because of ill-health; and
- The value of your pension arrangement does not exceed £10,000.

Valuing your defined pension before you have started to take it for trivial commutation purposes:

The value is your annual pension entitlement, multiplied by 20 plus any separate tax-free cash sum."

- It revalued Mr K's pension using the above rule. The value exceeded the upper limit set by HMRC so his request could not be actioned.
12. The advice from the TPAS website suggested the value of Mr K's pension benefit should be multiplied by 20, but this is for pension pre-payment. As Mr K had been in

receipt of his pension since 2008, the correct factor would be 25. In either case, Mr K's benefits exceeded the upper limit.

13. Mr K says that the Department for Work and Pensions (**DWP**) was reducing his income support payments and that both he and his wife were struggling financially and required the lump sum payment to pay off debts.
14. Mr K also says that both he and his wife have several health conditions and the lump sum payment would also be used to make adaptations to their home to improve their quality of life.
15. Mr K says that TPAS informed him that the Trustee can release his funds at its discretion and under special circumstances.

## Adjudicator's Opinion

16. Mr K's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised below:-
  - Paragraph 7(1)(a) to (e) Schedule 29 of the Finance Act 2004 (**the Act**) states that payments made on or after 16 September 2016 must meet six conditions to be classed as a trivial commutation lump sum. These conditions are: -
    - The member has not been paid a trivial commutation lump sum previously from any registered pension scheme.
    - The lump sum is paid in respect of a defined benefits arrangement or an in-payment money-purchase in-house scheme, or both.
    - The member's pension rights do not exceed the upper limit on the nominated date.
    - The lump sum is paid when the member has lifetime allowance available.
    - The lump sum stops the member's entitlement to defined benefits and in-payment money-purchase in-house scheme pensions under the registered pension scheme making the payment.
    - The lump sum is paid when the member has reached 55 or meets the ill-health condition or has a protected pension age.
  - Legislation is prescriptive and does not allow for a Trustee or Scheme administrator to exercise any discretion. Mr K failed to meet the criteria because the annual pension amount multiplied by a factor of 25 (the "**capital value**") exceeded the upper limit. Although Mr K would be disappointed by this, refusal by the Trustee to complete this request did not amount to maladministration.

- In order for a complaint to be upheld, maladministration must be identified. The Adjudicator's view was that while she sympathised with Mr K's difficult personal circumstances, there had been no maladministration in this case and Mr K remained ineligible for trivial commutation.
17. Mr K did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr K provided further comments which did not change the outcome. He said:-
- Both the Trustee and the Pensions Ombudsman have discretion to grant access to these funds in special circumstances.
  - Mr K and his wife have physical and mental health difficulties which impact greatly on their daily life. He is reliant on accessing his benefits from the Scheme as a trivial commutation lump sum to relieve their situation.
18. I agree with the Adjudicator's Opinion and I will therefore only respond to the points made by Mr K for completeness.

### **Ombudsman's decision**

19. Mr K is unhappy as he feels that discretion can be exercised in order to allow him to commute the retirement benefits he is receiving from the Scheme and be paid a lump sum. He feels that his situation should satisfy any "special circumstances" criteria.
20. In his submissions, Mr K describes his difficult financial situation and has said there is no doubt that he and his wife are in need of additional financial resources to help make quality of life alterations to their home. While I sympathise with Mr K, my role is to determine if there has been maladministration in the way pensions schemes are run. It is not my role to determine or facilitate health or social care support.
21. The Trustee has provided a full explanation of the eligibility criteria that must be met in order for a member to qualify for, and be paid, a trivial commutation lump sum. Mr K does not meet the eligibility criteria for trivial commutation as set by both HMRC and the Act. This is because his annual pension amount exceeds the upper limit set within the Act.
22. Neither I nor the Trustee can apply discretion to HMRC rules or legislation. I do not consider that there has been any maladministration on the part of the Trustee in relation to the decision not to permit Mr K to commute his pension for a lump sum.
23. I do not uphold Mr K's complaint.

### **Anthony Arter**

Pensions Ombudsman  
18 May 2020