

Ombudsman's Determination

Applicant	Ms Z
Scheme	Local Government Pension Scheme (the Scheme)
Respondent	London Borough of Barnet (the Council)

Outcome

1. I do not uphold Ms Z's complaint and no further action is required by the Council.

Complaint summary

2. Ms Z has complained that she incorrectly completed her pension claim form by stating that she would like to take the standard lump sum option, but the Council has unreasonably refused her request to amend this to the maximum lump sum option.
3. Ms Z has argued that the overall service she received relating to her request for her retirement benefits was poor.

Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
5. In 1996, Ms Z commenced employment with Fremantle Trust (**the Employer**) and joined the Scheme, which is a defined benefits, (**DB**) pension scheme.
6. The Finance Act 2004, (**the 2004 Act**) states:-

"166 Lump sum rule

(1) This is the rule relating to the payment of lump sums by a registered pension scheme to a member of the pension scheme...

No lump sum may be paid other than:

- (a) a pension commencement lump sum,
- (b) a serious ill-health lump sum,

(ba) an uncrystallised funds pension lump sum,

...

Schedule 29 ...

7(1) For the purposes of this Part a lump sum is a trivial commutation lump sum if:

- (a) it is paid when no trivial commutation lump sum has previously been paid to the member (by any registered pension scheme) or, if such a lump sum has previously been paid, before the end of the commutation period,
- (b) on the nominated date, the value of the member's pension rights does not exceed the commutation limit..."

7. The Scheme is governed by The Local Government 2013 Regulations, (**the Scheme Regulations**), which stipulate that:-

"34. (1) Any authorised payments within the meaning of section 164 (authorised member payments) of the Finance Act 2004 (28) listed in sub-paragraphs (a) to (c) may be paid in accordance with the rules relating to the payment of such benefits under that Act or relevant regulations under that Act:

(a) a lump sum which is a trivial commutation lump sum within the meaning of section 166 (lump sum rule) of that Act..."

8. The provisions of the 2004 Act allow a member of a DB scheme whose total retirement benefits from all registered pension schemes does not exceed £30,000 to commute or exchange those benefits for a one-off lump sum. This process is known as trivial commutation. HMRC deems any trivial commutation lump sum paid outside of these restrictions to be an 'unauthorised payment'.
9. On 12 November 2015, Ms Z wrote to Capita, the administrator of the Scheme at the time, and said she had left the Employer due to retirement on 9 July 2015 and would like to claim her pension.
10. On 25 January 2016, Capita wrote to Ms Z in response, and with regard to the benefits payable said:-

"Annual pension	£8,292.64
Pension commencement lump sum (PCLS)	£11,577.18

...

Under the current [Scheme] Regulations you have the option of taking the annual pension and PCLS quoted above, or of taking a smaller annual pension and larger PCLS...Under Inland Revenue rules the maximum to which you can increase your PCLS is 25% of your crystallised benefits. The figures given below show the maximum PCLS available and the correspondingly reduced pension. You can elect to receive a PCLS of any amount in between the amount shown above and the amount shown below.

Annual pension	£5,951.19
Maximum PCLS	£39,674.59
...	

11. Capita concluded the letter by stating:-

"[The] Employer and Capita are unable to advise you on what choices you should make in connection with your retirement. If you feel that you would like to take financial advice before proceeding it is recommended that you contact an Independent Financial Adviser."

12. Attached to the letter was a pension claim form (**the pension claim form**), which included the following three options and explanatory note:-

"A. I elect to increase my tax-free lump sum to the maximum available.

B. I elect to increase my tax-free lump sum to £... (Must be between your standard and maximum lump sum).

C. I do not elect to increase my tax-free lump sum.

Note

An election to increase your tax-free lump sum (A) **must be made before your benefits come into payment...**once you submit this form you cannot change your mind."

13. A declaration in the signature area of the pension claim form relating to five questions numbered 1 – 5 on possible chargeable tax amounts under HMRC's lifetime allowance guidelines stated:-

"If I become aware of any alteration to the information I have given in Questions 1 – 5 on this form after it has been submitted to my administrator, I agree to notify them of any alterations at the earliest opportunity."

14. On 22 July 2016, Ms Z completed and signed the pension claim form and elected to take Option C, meaning she had chosen the standard lump sum option.

15. On 29 July 2016, Capita wrote to Ms Z, having received the pension claim form, and confirmed that her lump sum and residual pension would be paid and backdated to 9 July 2015.

16. On 2 August 2016, Ms Z emailed Capita and said she had not understood the letter of 25 January 2016, and that she would like to claim her pension fund as a one-off lump sum.

17. On 28 September 2016, Capita wrote to Ms Z in response and said:-

- Ms Z was not offered the option of claiming her pension fund as a one-off lump on the pension claim form.

- Option A, which was included on the pension claim form, related to increasing the PCLS to the maximum available, which reduced the pension payable.
- Since Ms Z's pension was already in payment in accordance with her claim, it would not be possible to change the option she had originally chosen.

18. On 2 July 2018, Ms Z emailed Capita and said:-

- She had received advice from her solicitor, (**the Solicitor**) that the declaration in the signature section of the pension claim form gave her the right to change her retirement option.
- She became aware that such an amendment was required on 2 August 2016, shortly after she had completed the pension claim form on 22 July 2016.
- Her mistake was due to not understanding the pension claim form.
- Having taken advice, she would like to increase her PCLS to the maximum available.

19. On 3 July 2018, Capita emailed Ms Z in response and said:-

- A note in the pension claim form stated, "once you submit this form you cannot change your mind."
- This letter of 25 January 2016 encouraged Ms Z to seek independent financial advice if she required assistance in selecting the appropriate retirement option.
- Since Ms Z had submitted the pension claim form on 22 July 2016, her decision was final and could not be amended.
- The maximum PCLS quoted under Option A in the pension claim form was calculated as 25% of Ms Z's unpaid fund value.
- As Ms Z's pension had since gone into payment, it was no longer possible to retrospectively increase the value of her PCLS.
- This was in line with HMRC legislation, rather than under the Scheme Regulations or otherwise applied by Capita.
- The declaration in the signature section of the pension claim form related specifically to questions 1 - 5 of HMRC's guidance on possible chargeable amounts relating to the lifetime allowance.

20. On 11 October 2019, Ms Z complained to Capita under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**).

14. On 26 November 2019, Ms Z emailed Capita and said she would like details regarding her records held by Capita, the benefits she had accrued in the Scheme, and clarification as to how this figure could be paid as a one-off lump sum.

15. On 26 November 2019, Capita emailed Ms Z and said:-

- The Government introduced new pension freedoms in 2015 that allow members of defined contribution (**DC**) schemes to claim their pension fund as a one-off lump sum.
- The Scheme is a DB arrangement, so that option is not available to Ms Z.
- Before Ms Z had claimed her pension, it would have been possible for her to transfer to a DC scheme and claim her benefits as a one-off lump sum.
- The Scheme Regulations do not allow a pension in payment to be transferred, and Capita does not have discretion to allow such a transfer.

21. On 27 November 2019, Capita emailed Ms Z and in summary said:-

- Ms Z did not have an individual pension fund, and the value of the Scheme under the management of the Council could not be accurately calculated.
- Ms Z's contributions simply give her entitlement to receive annual retirement benefits for which the funds are held by the Council.
- The Scheme does not facilitate the provision of individual pension plans such as those commonly used in DC schemes.
- Under the Scheme Regulations, a pension can only be exchanged for a one-off lump sum under the rules for trivial commutation, if its value is less than £30,000.
- The value of Ms Z's pension is far in excess of this figure at £188,254.18. So, she does not qualify to take her pension as a one-off lump sum.

22. On 4 December 2019, Ms Z emailed Capita and asked why it had said there was no possibility of confirming her fund value, but then a figure was later provided. Ms Z said she did not accept that no lump sum was payable, and felt her benefits were being unjustly withheld.

23. On 5 December 2019, Capita emailed Ms Z in response and said the email of 27 November 2019 referred to the impossibility of calculating the total value of the funds managed by the Council, and no benefits were being withheld from Ms Z.

24. On 14 January 2020, Ms Z emailed Capita to complain about its failure to complete the IDRP.

25. On 17 January 2020, Capita emailed Ms Z to apologise for the delay in investigating her complaint under the IDRP and confirmed that the matter remained open.

26. On 1 November 2020, West Yorkshire Pension Fund (**WYPF**) took over as administrator of the Scheme.

27. On 8 February 2021, WYPF wrote to Ms Z and acknowledged her complaint under stage one of the IDRP. WYPF also said that it hoped to send a response by 8 April 2021.
28. On 14 April 2021, WYPF wrote to Ms Z and said that the investigation into her complaint was still ongoing, but it was hoped that a response would be sent by 30 April 2021.
29. On 18 May 2021, WYPF wrote to Ms Z in response to her complaint under stage one of the IDRP and said:-
- When the pension claim form was received from Ms Z, she had elected to take Option C and her benefits were put into payment accordingly.
 - Ms Z subsequently contacted WYPF and said that she would instead like to claim her benefits as a one-off lump sum.
 - Since Ms Z had already taken Option C, she was not allowed to change this under the 2004 Act, which only permitted the PCLS that she had received to be paid once.
 - Ms Z did not qualify to take her benefits as a one off lump sum (trivial commutation lump sum) because the value of her pension exceeded the £30,000 limit.
 - Capita's delay in completing the IDRP was unreasonable, so an award of £500 to Ms Z was appropriate in recognition of the distress and inconvenience caused.

Ms Z's position

30. Ms Z said:-
- She incorrectly completed her pension claim form by stating that she would like to take Option C.
 - The Council has unreasonably refused her request to amend this to Option A in respect of the maximum lump sum.
 - She ought to be allowed to take her benefits as a one-off lump sum rather than receive a pension, but Capita has unreasonably denied that option.
 - The value of her pension is in excess of £30,000 and the full amount is required as a lump sum in order to fund her lifestyle.
 - The pension claim form was confusing, which caused her to claim Option C in error.
 - Having realised her mistake on 2 August 2016, she wrote to Capita and asked if she could change her initial instruction and instead take Option A.

- The overall service she received was poor.

The Council's position

31. The Council said:-

- Ms Z selected Option C and it paid her benefits in line with this request.
- Ms Z did not satisfy the criteria to receive a trivial commutation lump sum.
- During November 2020, WYPF identified that Ms Z had submitted an IDRP application in October 2019.
- Following an enquiry it was established that Ms Z's IDRP stage one response remained outstanding, and an acknowledgement letter was sent to her on 8 February 2021.
- The IDRP stage one response letter sent to Ms Z on 18 May 2021, included confirmation of a £500 award in recognition of the distress and inconvenience caused by the delay in completing the IDRP.
- The £500 award was then paid to Ms Z on 24 May 2021.

Adjudicator's Opinion

32. Ms Z's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Council. The Adjudicator's findings are summarised below:-

- In its letter of 25 January 2016, Capita said:-

“[The] Employer and Capita are unable to advise you on what choices you should make in connection with your retirement. If you feel that you would like to take financial advice before proceeding it is recommended that you contact an Independent Financial Adviser.”
- The Council could not reasonably be held responsible for Ms Z failing to act in accordance with this suggestion. If Ms Z had sought financial advice, she would have been aware of the implications of selecting Option C on 22 July 2016.
- A note in the pension claim form stated, “An election to increase your tax-free lump sum (A) **must be made before your benefits come into payment...**once you submit this form you cannot change your mind.” The Adjudicator was of the opinion that this part of the pension claim form was clear, but that Ms Z could have asked Capita for clarification if she needed it.
- Amending Ms Z's retirement claim to Option A would require the Council to reduce her pension in order to provide a larger lump sum. As current legislation does not permit a pension in payment to be reduced this was not possible. So, the Council

has correctly concluded that Ms Z cannot amend her retirement claim from Option C to Option A.

- The Pension Claim Form that Ms Z signed did not include an option to claim her pension fund as a one-off lump sum. The Adjudicator formed the opinion that Capita had correctly excluded that option, since the 2004 Act only permits members, including Ms Z, to claim their full pension fund as a one-off lump sum under the trivial commutation regulations, if their benefits from all registered pension schemes do not exceed £30,000.
- Capita had confirmed that Ms Z's pension fund in the Scheme was valued at £188,254.18 which clearly exceeds the trivial commutation limit.
- The Council had acknowledged that Ms Z submitted a complaint under stage one of the IDRP in October 2019, and that there was a delay in providing a response until 18 May 2021. Consequently, the Council paid Ms Z £500 in recognition of the distress and inconvenience caused.
- An award of £500 is in keeping with my guidance for significant non-financial injustice and was sufficient recognition of the distress and inconvenience Ms Z had suffered.

33. The Council accepted the Adjudicator's Opinion. Ms Z did not, and the complaint was passed to me to consider. The Council and Ms Z provided further comments, which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by the Council and Ms Z.

Ms Z's additional comments

34. She emailed the Council and said that she had changed her mind about selecting Option C well before her pension went into payment.
35. The Council had ample time in which to act on her request for a change to Option A, but instead continued to process her original claim for Option C.
36. The pension payable from the Scheme is her own money, so she should be allowed to change her retirement option and receive a one-off lump sum.
37. There was no legal requirement for her to seek financial advice before selecting her retirement option.

The Council's additional comments

38. While the actual payment of Ms Z's pension was not made until after her email of 2 August 2016 was received, the pension claim form had already been processed.
39. Ms Z's lump sum that she had claimed under Option C was then credited to her bank account at around the same time as the receipt of her email.

Ombudsman's decision

40. Ms Z complained that she incorrectly completed the pension claim form by stating that she would like to take Option C and the Council unreasonably refused her request to amend the choice of option in order to receive the maximum lump sum specified under Option A.
41. Ms Z has argued that she emailed the Council and said that she had changed her mind about selecting Option C well before her pension went into payment. She said that the Council had ample time to act on her request for a change to Option A, but instead continued to process her original claim.
42. Ms Z emailed Capita on 2 August 2016, and said that she would like to change her retirement claim to Option A. By that time Capita had already written to Ms Z, on 29 July 2016, confirming that payment of her benefits would be made in accordance with the pension claim form that she signed on 22 July 2016, stating she elected to take Option C.
43. Given that the Council has confirmed that Ms Z's standard lump sum, under Option C, was paid at around the time of receiving the email requesting a change of option, it is clear that her retirement claim had already been processed when the request was received. I do not agree that there was sufficient time for the Council to have acted on Ms Z's request.
44. Ms Z contends that there was no legal requirement for her to seek financial advice before selecting her retirement option. I acknowledge that it was for Ms Z to decide whether or not to seek financial advice. However, Ms Z has also said that she found the pension claim form confusing. So, financial advice would undoubtedly have helped her to resolve this confusion. The Council cannot be held responsible that Ms Z failed to follow the advice given to her.
45. Ms Z submits that the pension payable from the Scheme is her own money, so she should be allowed to change her retirement option and receive a one-off lump sum. The Council are prohibited by the 2004 Act from paying Ms Z's retirement benefits as a trivial commutation lump sum because her fund value exceeded the £30,000 limit set by the 2004 Act. Further, current legislation does not permit retirement options to be changed once benefits have come into payment. Consequently, it is not possible for Ms Z to now change her retirement option and claim a one-off lump sum or to increase the PCLS she has been paid.
46. I do not uphold Ms Z's complaint.

Anthony Arter

Pensions Ombudsman
18 November 2021