

Ombudsman's Determination

Applicant	Mr T
Scheme	Scottish Widows Personal Pension (the Scheme)
Respondent	Lloyds Banking Group PLC (Lloyds)

Outcome

1. I do not uphold Mr T's complaint and no further action is required by Lloyds.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr T has complained about Lloyds' decision not to allow him to take his Scheme benefits early, in the form of an unauthorised payment.

Background information, including submissions from the parties

4. On 1 October 2016, Mr T became a member of the OSM Aviation Group Personal Pension Plan (**the OSM Plan**). The OSM Plan was administered by Scottish Widows, which is part of Lloyds.
5. On 22 December 2016, Mr T transferred the value of a pension arrangement he had with Friends Life into the OSM Plan. The total amount transferred was £29,160.62.
6. In June 2018, Lloyds received notice from Mr T's employer that he had left its employment.
7. On 27 June 2018, the OSM Plan became a paid-up personal pension plan, under the name of the Scheme, following receipt of the last employer contribution.
8. On 30 March 2021, Mr T telephoned Lloyds to enquire whether he could receive his Scheme pension early.
9. On 31 March 2021, Lloyds confirmed to Mr T that he could not access his pension before age 55, unless he suffered from serious ill health, or the Scheme had a protected retirement age.

10. On the same date, Mr T raised a complaint as he was not satisfied with Lloyds' response. He said that he wanted to access his pension before age 55 due to financial difficulties.
11. On 6 April 2021, Lloyds responded to Mr T's complaint. It did not uphold it for the following reasons:-
 - On 6 April 2010, legislative changes increased the minimum retirement age to 55. This could potentially rise to age 57 from 6 April 2028.
 - As Mr T's funds were held in a "pension wrapper," he was unable to access them before age 55, which was a rule for everyone.

Mr T's position

12. Due to the pandemic, he lost his job in March 2020. The lockdowns caused a significant impact on his career and finances, which was the reason he sought to access his Scheme benefits early.
13. While accessing these benefits early may not be the best course of action, it is one of few options that can prevent potential financial ruin for him. The alternative may lead to an inability to seek further employment in his profession and should be avoided at all costs.
14. The value of his Scheme benefits was approximately £45,000. In an attempt to settle arrears with creditors, he approached Lloyds to discuss a full or partial withdrawal of his pension fund as an unauthorised withdrawal.
15. Government legislation indicates that an unauthorised withdrawal can be made, subject to tax implications, which he was happy to accept. The Finance Act 2004 allows this, as well.
16. Lloyds' decision must be overridden. It should be his right to access his pension fund under these severe and exceptional circumstances. Retaining his pension is of no benefit to him at this stage. It makes more sense to be able to accrue pension benefits again once he is able to find work again. Otherwise, he will have to "rebuild a destroyed credit record" through potential bankruptcy.
17. The issue had caused him ill health and distress.

Lloyds' position

18. While the option of an unauthorised payment is permitted by the Government, as a company Lloyds is not obliged to offer this option. It has taken the decision not to offer this option as it was likely that 70% of any payment would need to be paid as tax, comprised of an unauthorised member payment tax of 40%, a surcharge of 15% and a net scheme sanction charge of 15%. In its view, a tax deduction of 70% would be of no benefit to any of its customers, which is why Mr T's request had been declined.

19. It had explained to Mr T that the only way he could access his pension before the current government minimum retirement age of 55, is if he was suffering from serious ill health or his pension had a protected retirement age of less than 55. Neither of these criteria had been met.

Adjudicator's Opinion

20. Mr T's complaint was considered by one of our Adjudicators who concluded that no further action was required by Lloyds. The Adjudicator's findings are summarised below.
21. Section 164 of the Finance Act 2004 (**the Act**)¹, lists the categories of authorised payments a pension scheme member could receive. No other payment can be made to a member other than those listed. None of these types of payments applied to Mr T's circumstances. So, Lloyds' decision to decline his request for payment of the value of his scheme benefits was in accordance with the Act.
22. Mr T had misinterpreted the rules regarding unauthorised payments. The legislation did not permit the type of payment Mr T was seeking. An unauthorised payment or withdrawal was a payment that should not have been made and had occurred in error; it was not a payment that was permitted.
23. Consequently, the charges applied to unauthorised payments reflected the fact that such payments should not have been made in the first place.
24. The Scheme Rules explained the types of retirement benefits which members could request, as well as the procedure for surrendering or transferring the Scheme benefits. Lloyds was not obliged to offer Mr T his retirement benefits in the manner he had requested.
25. While sympathetic to Mr T's circumstances and the financial difficulties he was experiencing, the decision to refuse him access to his Scheme benefits through an unauthorised payment was correct.
26. Lloyds had not breached any regulatory guidance or acted contrary to the Scheme Rules, so there had not been any maladministration.
27. Mr T did not accept the Adjudicator's Opinion, and, in response, he provided further comments. In summary he said:-
- He had not misunderstood the rules regarding unauthorised payments. The Government's guidance on unauthorised payments provides common examples where payments are classified as unauthorised. This includes most lump sum

¹ <https://www.legislation.gov.uk/ukpga/2004/12/part/4/chapter/3/crossheading/authorised-member-payments>

payments to cash-in or access pension funds before age 55.² In his view, even though they are unauthorised, this does not mean they are not permitted.

- Section 1(c) of the Act clearly shows a process for unauthorised withdrawals. Whilst being unauthorised, this does not mean it is not permitted.
- An article in FT Adviser³ states, “The most obvious example of an unauthorised payment would be a member withdrawing money from their pension before age 55.”
- Lloyds’ refusal to allow him to take his benefits before age 55 was done for the purpose of “profiteering” rather than taking an objective view to observe the situation at hand, and an attempt to protect the client from financial distress.

28. Mr T did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr T provided his further comments which do not change the outcome. I note the additional points raised by Mr T, however, I agree with the Adjudicator’s Opinion and.

Ombudsman’s decision

29. I understand Mr T’s disappointment that Lloyds did not agree to pay his benefits as an unauthorised payment and acknowledge that Mr T accepts that he would be liable to pay a tax charge as a result of the unauthorised payment. However, I find Lloyds acted reasonably in not agreeing to make such a payment to Mr T.

30. Lloyds explained the possible implications that could result from it making the unauthorised payment which included putting the Scheme at risk of being deregistered by the Financial Conduct Authority and the Scheme incurring a surcharge.

Lloyds must not intentionally make decisions that may have an adverse effect on its members or the Scheme. There are clearly defined and regulated circumstances when a member can receive their retirement benefits before age 55. Lloyds has acted in accordance with legislation and the Scheme Rules by refusing to pay Mr T his benefits before age 55, as an unauthorised payment.

² <https://www.gov.uk/guidance/pension-schemes-and-unauthorised-payments#what-is-an-unauthorised-payment>

³ <https://www.ftadviser.com/pensions/2020/07/07/beware-of-unauthorised-pension-payments/>

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31. I do not uphold Mr T's complaint.

Anthony Arter
Pensions Ombudsman
17 October 2022