

Ombudsman's Determination

Applicant	Mr N
Scheme	Local Government Pension Scheme (the Scheme)
Respondent	West Midlands Pension Fund (WMPF)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by WMPF.

Complaint summary

2. Mr N complained that WMPF refused to allow him to receive his benefits in the Scheme as a lump sum payment.
3. Mr N said he is suffering financial hardship and needs the money to fund his living costs. He has also explained that he does not expect to live long enough to receive payment, through his annual pension, of the full value of his benefits.

Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the main points. I acknowledge that there were other exchanges of information between all the parties.
5. Mr N joined the Scheme on 11 December 2006 and became a deferred member on 21 April 2010.
6. On 21 May 2010, a letter was issued to Mr N which noted that he had ceased to be an active member of the Scheme on 21 April 2010. The correspondence set out that at that time, his deferred benefit entitlement from the Scheme was an annual pension of £2,428.90 and a tax-free pension commencement lump sum (**PCLS**) of £2,347.79. This would become payable when he reached age 65.
7. On 13 August 2019, Mr N took early retirement from the Scheme. He chose to receive payment of his benefits as a tax-free PCLS and an annual pension.
8. On 21 July 2022, Mr N telephoned WMPF to request payment of his Scheme benefits as a single lump sum.

9. On 9 August 2022, WMPF wrote to Mr N in response to his request. It said that to be eligible for trivial commutation, the combined value of all of Mr N's pension benefits had to be below £30,000. WMPF confirmed that the value of Mr N's Scheme benefits was £43,394.78. This was calculated by multiplying his annual pension of £1,648.33 by 20, then adding the PCLS he received at retirement of £10,428.18.
10. On 10 August 2022, WMPF wrote to Mr N with a further response to his request to commute his benefits. WMPF explained that it was bound the Scheme's Regulations, which were put in place by UK government legislation. It said that given that the value of Mr N's benefits exceeded the limit for trivial commutation, there was no legal basis on which it could facilitate his request. WMPF added that as Mr N's pension was in payment, he was unable to transfer his benefits to another provider.

Adjudicator's Opinion

11. Mr N's complaint was considered by one of our Adjudicators, who concluded that no further action was required by WMPF. The Adjudicator's findings are summarised below:-
 - WMPF must administer Mr N's pension benefits in accordance with the Scheme's Regulations and pensions legislation.
 - Mr N is not able to receive his benefits as a trivial commutation lump sum payment, or under the provisions for 'small lump sums'. This is because the lump sum amount would exceed the respective limits of £30,000 and £10,000.
 - An uncrystallised funds pension lump sum is not available to Mr N, because his benefits in the Scheme were accrued on a defined benefit basis and he has started drawing those benefits, meaning they have been 'crystallised'.
 - Given that Mr N has crystallised his benefits, current legislation would not permit WMPF to make an ill-health lump sum payment to Mr N.
 - Mr N is in receipt of a pension from the Scheme, so he cannot transfer these benefits to another pension provider.
12. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided further comments in response to the Opinion, which are summarised as follows:-
 - He reiterated that his financial circumstances are not good; he is struggling to pay his rent and for other essential items.
 - He tried to contact his MP about the complaint but has so far been unable to discuss the matter with his MP.

- His physical health is poor, which restricts his ability to work and his general day-to-day life. He has been diagnosed with cancer and does not expect to live for much longer. His mental health has also suffered badly.
 - He considers that receiving his benefits as a lump sum, rather than small monthly payments, would make a significant decision to his position. He has asked whether it is possible to make such a payment on compassionate grounds.
13. Unfortunately, Mr N's additional comments do not change the outcome of the complaint and I agree with the Adjudicator's Opinion.

Ombudsman's decision

14. Mr N has set out the very difficult circumstances in which he finds himself. I fully sympathise with Mr N's position; however, I can only make directions in accordance with the Scheme's Regulations and relevant pensions law.
15. There is currently no means to facilitate a lump sum payment, as requested by Mr N, for the reasons explained in the Adjudicator's Opinion.
16. Mr N has asked whether a payment could be made on compassionate grounds. At present, no allowance is made in pensions legislation for such a payment.
17. In summary, I do not uphold Mr N's complaint.

Dominic Harris

Pensions Ombudsman

19 April 2024

Appendix 1 – Extract from The Local Government Pension Scheme Regulations 2013

“34 Commutation and small pensions

(1) Any authorised payments within the meaning of section 164 (authorised member payments) of the Finance Act 2004 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;

(b) a trivial commutation lump sum death benefit within the meaning of section 168 (lump sum death benefit rule) of that Act; or

(c) a commutation payment under regulations 6 (payment after relevant accretion), 11 (de minimis rule for pension schemes) or 12 (payments by larger pension schemes) of the Registered Pension Schemes (Authorised Payments) Regulations 2009.

(2) Any payment under paragraph (1) shall be calculated in accordance with actuarial guidance issued by the Secretary of State.

(2A) In the case of an eligible member, the pension used to calculate a payment under paragraph (1) is to include—

(a) where the pension is in payment—

(i) any final guarantee amount calculated in respect of the eligible member's pension account under regulation 4B or 4C of the 2014 Regulations; and

(ii) any revaluation adjustment or index rate adjustment that has been applied to the retirement pension account as a consequence of a final guarantee amount;

(b) where the pension is not in payment, any final guarantee amount that would be paid were the payment under paragraph (1)(a) or (c) not to proceed; or

(c) where the eligible member is deceased—

(i) any survivor guarantee amount payable to the survivor member in respect of the eligible member; and

(ii) any revaluation adjustment or index rate adjustment that has been applied to a survivor member's pension account as a consequence of the survivor guarantee amount.

(3) If a member receives a payment under this regulation, any pension account relating to that payment must be closed and the member is entitled to no further benefits in relation to that account and no survivor benefits are subsequently payable upon the death of the member.”

Appendix 2 – Extract from Schedule 29 of the Finance Act 2004

“Part 1 Lump Sum Rule...

...Serious ill-health lump sum

4 (1) For the purposes of this Part a lump sum is a serious ill-health lump sum if—

(a) before it is paid the scheme administrator has received evidence from a registered medical practitioner that the member is expected to live for less than one year,

(b) it is paid when all or part of the member's lifetime allowance is available, and

(ca) either—

(i) it is paid in respect of an uncrystallised arrangement, and it extinguishes the member's entitlement to benefits under the arrangement, or

(ii) it is paid in respect of uncrystallised rights of the member under an arrangement other than an uncrystallised arrangement, and it extinguishes the member's uncrystallised rights under the arrangement.

(2) An uncrystallised arrangement is an arrangement in respect of which there has been no previous benefit crystallisation event.

(2A) In subsection (1)(ca)(ii) “uncrystallised rights” , in relation to the member, means rights of the member that are uncrystallised rights as defined by section 212(1) and (2).

(3) For the purposes of sub-paragraph (2)—

(a) the fact that benefit crystallisation event 5 or benefit crystallisation event 5B has occurred in relation to the member is to be disregarded, and

(b) anything which, but for paragraph 2 of Schedule 32, would have been a benefit crystallisation event is to be treated as if it were such an event...

...Trivial commutation lump sum

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,

(aa) it is paid in respect of a defined benefits arrangement, or in respect of a collective money purchase arrangement, or in respect of a scheme pension payable by the scheme administrator to which the member has become entitled under a money purchase arrangement that is not a collective money purchase arrangement

(an “in-payment money-purchase in-house scheme pension”), or in respect of any combination of such arrangements and scheme pensions,

(b) on the nominated date, the value of the member's pension rights does not exceed the commutation limit,

(c) it is paid when all or part of the member's lifetime allowance is available,

(d) it extinguishes any entitlement to defined benefits , and any entitlement to collective money purchase benefits, and any entitlement to payments of in-payment money-purchase in-house scheme pensions, that the member has under the pension scheme, and

(e) it is paid when the member has reached normal minimum pension age (or the ill-health condition is met).

(2) The commutation period is the period beginning with the day on which a trivial commutation lump sum is first paid to the member and ending 12 months after that day.

(3) The nominated date is the day within the period of three months ending with the first day of the commutation period nominated by the member (or, if no date is nominated, is the first day of the commutation period).

(4) The commutation limit is £30,000.

(4A) The Treasury may by order substitute for the amount for the time being specified in sub-paragraph (4) such larger amount as is specified in the order.

(5) The value of the member's pension rights on the nominated date is the aggregate of—

(a) the value of the member's relevant crystallised pension rights on that date (calculated in accordance with paragraph 8), and

(b) the value of the member's uncrystallised rights on that date (calculated in accordance with paragraph 9).”