

## Ombudsman's Determination

Applicant	Mrs T
Scheme	Social Housing Pension Scheme ( <b>the Scheme</b> )
Respondent	The Pensions Trust

## Outcome

1. I partly agree with Mrs T's complaint against the Pensions Trust, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld) the Pensions Trust should pay Mrs T £500 for the distress and inconvenience she has suffered.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mrs T is complaining that she received information from the Pensions Trust which led her to believe she could take her benefits as a one off lump sum payment. Mrs T says she made decisions based on the incorrect information.

## Background information, including submissions from the parties

4. On 9 April 2015, the Pension Trust wrote to Mrs T and said her accrued pension was £1,443.36 per annum. It said for the purpose of trivial commutation the value of her benefits as at 6 July 2015, were £23,440.54. It said as long as all of Mrs T's pension plans did not exceed £30,000, then she may be eligible to receive her benefits as a one off payment under trivial commutation rules. It said Mrs T would have to contact any other pension providers to ensure she was eligible. Mrs T was also advised that she only had a twelve month period to commute all of her benefits.
5. No further action was taken until Mrs T contacted the Pensions Trust by telephone making further queries about trivial commutation. On 22 February 2016, the Pensions Trust wrote to Mrs T and said she could not take her benefits under trivial commutation rules. It explained that she started taking her benefits on 8 June 2009, when she took a lump sum payment of £8,203.96 and a gross annual pension of £1,230.64.

Following Her Majesty's Revenue and Customs (**HMRC**) conversion rates her benefits were over £30,000. The calculation the Pensions Trust needed to make was  $(£1,230.64 \times 20) + £8,203.96 = £32,816.76$ .

6. Mrs T raised a complaint against the Pensions Trust, who responded on 12 May 2016, and said it considered that the incorrect information had not caused Mrs T an actual loss but it did recognise that this would have caused a loss of expectation. It offered £200 by way of an apology.
7. On 23 May 2016, Mrs T wrote to the Pensions Trust and said that she was dissatisfied with its offer.
8. Mrs T provided further evidence following the Adjudicator's opinion. She says she made the decision to build an extension on her house, at a cost of £96,778.24. She agreed with her builder to pay for this in stages, to date she has paid a total of £45,000 and the outstanding amount is £51,778.24, which is due to be paid in April 2017, if payment is not met then the builder will start adding interest to the amount due. Mrs T said she relied on the information received in April 2015, and is now unable to pay the outstanding balance to the builders.

### **Adjudicator's Opinion**

9. Mrs T's complaint was considered by one of our Adjudicators who concluded that no further was required by the Pensions Trust. The Adjudicator's findings are summarised briefly below:
  - There was no dispute that the Pensions Trust provided Mrs T with misleading information, which led her to believe she could receive a one off payment under trivial commutation rules.
  - The incorrect and misleading information would have caused Mrs T significant concern when she found out that she was not eligible to take her benefits under trivial commutation rules.
  - Mrs T did not suffer an actual loss but a loss of expectation. The Pensions Trust are unable to make payments that would contravene HMRC legislation.
  - It was unfortunate that Mrs T entered into a building arrangement before she had received the one off lump sum payment, but the responsibility for her making that decision did not fall with the Pensions Trust.
  - Mrs T should be awarded £500 for the distress and inconvenience she has suffered.
10. Mrs T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs T provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mrs T for completeness.

## Ombudsman's decision

11. Mrs T says she would not have agreed to build the extension on her property had she known she would not have been able to receive her benefits from The Pension Trust as a one off payment. She says she planned to use her commutation benefit to fund a stage payment to her builder in April 2015, but in the event she had to use her husband's pension early instead. She says this resulted in a reduced surrender value for his pension and they are now at risk of incurring interest if they do not meet the balance of payment due by end April 2017.
12. It is difficult for Mrs T to argue that she decided to have the extension built on her house solely because of incorrect information she received from the Pensions Trust. The total cost of the extension was £96,778.24, so the incorrectly advised amount of £23,440.54 would have only covered about a quarter of the cost. There were clearly pressing personal reasons driving the decision to extend the house.
13. Whilst I do not find that Mrs T solely relied on the incorrect information in making her decision to build an extension. I can see how she might have relied on the information with a view to covering a part of the overall cost. However, there is no suggestion that Pensions Trust knew how she was using the information provided to her to plan stage payments and I do not think it was foreseeable that her husband would incur losses in the way that Mrs T says he has or that she would incur interest on the builders charges. It is unfortunate that Mrs T is now in the position she finds herself but I cannot hold The Pensions Trust responsible for the fact that Mrs T decided to make detailed payment planning decisions on the strength of caveated information she had received nearly a year earlier.
14. Mrs T has outlined her personal circumstances in the hope that a discretion can be exercised in her favour. However, the Pensions Trust can only pay benefits in line with the HMRC legislation. While I sympathise with Mrs T's situation, that legislation also binds me. I am satisfied that Mrs T's benefits have been calculated correctly and that she is not eligible to receive a one off payment under trivial commutation rules because her benefits exceed £30,000.
15. However the misinformation provided by Pensions Trust did amount to maladministration. I accept that Mrs T has suffered significant distress and inconvenience and I believe that by a way of compensation for providing the incorrect information the Pensions Trust should pay Mrs T £500.
16. Therefore, I partly uphold Mrs T's complaint.

**PO-13614**

**Directions**

17. Within 28 days the Pensions Trust are to pay Mrs T £500, for the distress and inconvenience she has suffered.

**Karen Johnston**

Deputy Pensions Ombudsman  
30 March 2017