Ombudsman's Determination

Applicant	Mrs G
Scheme	Local Government Pension Scheme (**LGPS**)
Respondents	Merseyside Pension Fund (**the Fund**)

Outcome

1. I do not uphold Mrs G's complaint and no further action is required by the Fund.

2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs G has complained that the Fund did not provide her with her correct entitlement options when she retired in 2015 and that she has now been denied access to a 'trivially commuted' lump sum payment.

Background information, including submissions from the parties

4. In 2015, Mrs G was made redundant from her post working for Knowsley Council.

5. As she was still in active LGPS employment and over the normal retirement age (**NPA**) when she was made redundant her pension was payable automatically, unreduced.

6. Mrs G's effective date of retirement was set as 31 August 2015.

7. Upon notification of Mrs G's redundancy the Fund was asked to begin the retirement process and to calculate Mrs G's pension entitlement.

8. Part of the retirement process involved ensuring the pension benefits payable exceeded the threshold below which a member would be eligible to receive a trivially commuted lump sum, currently set by HM Revenue & Customs (**HMRC**) at £30,000.

9. A trivially commuted lump sum (or trivial commutation) represents a one off lump sum payment to a member that would extinguish all their pension liabilities for any particular period of pensionable service.

10. Using a HMRC approved valuation method the Fund determined that Mrs G's commuted pension benefits exceeded the £30,000 threshold and as such she was ineligible to receive a trivially commuted lump sum.

11. As Mrs G's benefits exceeded the HMRC threshold the option of trivial commutation was not included in the retirement pack issued by the Fund.

12. Mrs G elected to receive the maximum 25% tax free cash lump sum available and received a correspondingly lower annual pension.

13. In 2017, Mrs G approached the Fund about the possibility of receiving her residual entitlement as a trivially commuted lump sum. The Fund refused and Mrs G brought a complaint to this Office.

Adjudicator's Opinion

14. Mrs G's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Fund. The Adjudicator's findings are summarised briefly below:-

    - Payment of a trivially commuted lump sum results in a single lump sum payment that is paid to the recipient instead of a continuing small annuity or pension.

    - The Finance Act 2004, specifically states that a registered pension scheme may pay a member a trivial commutation lump sum only if their pension rights are valued at no more than the "commutation limit" on "the nominated date".

    - The Act sets conditions that a lump sum payment must meet to be considered a trivial commutation lump sum:

        - The member has not been paid a trivial commutation lump sum previously (from any registered pension scheme), except any earlier payment within the commutation period.

        - The lump sum is paid in respect of a defined benefits arrangement or an in-payment money-purchase in-house scheme pension, or both.

        - On the nominated date, the value of the member's pension rights do not exceed the commutation limit of £30,000.

        - The lump sum is paid when the member has available lifetime allowance,

        - The lump sum extinguishes the member's entitlement to defined benefits pensions under the registered pension scheme making the payment. The reference to extinguishing the member's entitlement to benefits under the scheme is to all the rights that could reasonably have been known about at the time of the payment.

  - The lump sum is paid when the member has reached the age of 55 or meets the ill-health condition.

- On 31 August 2015 (**the Nomination date**) Mrs G's retirement benefits exceeded the "commutation limit" of £30,000. As such, Mrs G does not qualify for a trivially commuted lump sum payment. The Fund were therefore correct in not providing this as an option to Mrs G when she retired. There has therefore been no maladministration.

15. Mrs G did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs G provided her further comments, detailed below, which do not change the outcome:

    - The Fund did not notify her of her correct entitlement to a trivial commuted lump sum.
    - The Fund knew Mrs G wanted to take the maximum cash amount available upon retirement.
    - Mrs G states she is a widowed pensioner and needs the money for essential home maintenance.

16. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points for completeness.

Ombudsman's decision

17. Mrs G has argued that she has been denied access to a trivially commuted lump sum by the Fund as she was not given this option in 2015. However, Mrs G has been unable to provide any reason for this assertion or why she believes she is entitled to a trivially commuted lump sum.

18. Upon retirement it is necessary for the Fund to calculate an individual's retirement benefits. When doing this it is essential that the Fund assesses whether that individual is eligible to receive a trivially commuted lump sum. The criteria for doing so in the first instance relates to the level of benefit the individual is due upon retirement.

19. The Finance Act 2004 is clear in stating when a trivially commuted lump sum is payable and there is a clear method used when ascribing a value to an individual members benefits for the purpose of assessing their eligibility.

20. The method used to value the pension benefits of a Defined Benefit (**DB**) arrangement for trivial commutation purposes is clear. The amount the individual would have been entitled to on their retirement date is multiplied by a relevant valuation factor of 20. If the scheme provides a separate lump sum, that lump sum is added to the amount obtained. If the total of this calculation exceeds £30,000 the member is said to not qualify for a trivially commuted lump sum.

21. In Mrs G's case her full pension upon retirement was £1,486.91. This figure is then multiplied by 20, giving a total of £29,738.20. Mrs G's maximum lump sum entitlement of £9,912.55 is then added to this figure giving a total of £39,650.75.

22. Mrs G therefore clearly exceeds the £30,000 threshold and is not eligible to receive a trivially commuted lump sum.

23. All trustees have a fiduciary duty to ensure that benefits are paid correctly and in accordance with the Trust Deed and Rules of the Fund and adhering to wider pensions legislation. In this case I am satisfied that the Fund has acted correctly in not offering Mrs G a trivially commuted lump sum.

24. Therefore, I do not uphold Mrs G's complaint.

Karen Johnston

Deputy Pensions Ombudsman
26 October 2017

Annex 1

Finance Act 2004 Schedule 29 Paragraph 7

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,

(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 the member's entitlement to benefits under the pension scheme, and

(e) it is paid when the member has reached the age of 60 but has not reached the age of 75.

(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 1% of the standard lifetime allowance on the nominated date.

(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).

8(1) The value of the member's relevant crystallised pension rights on the nominated date is the aggregate of-

(a)the value of the member's relevant crystallised pension rights on 5th April 2006, calculated in accordance with paragraph 10 of Schedule 36 (as if the member were the individual mentioned there), as adjusted under sub-paragraph (2), and

(b) the aggregate of the amounts crystallised on benefit crystallisation events in the period beginning with 6th April 2006 and ending with the nominated date, as adjusted under sub-paragraph (3).

(2) The adjustment referred to in sub-paragraph (1)(a) is the multiplication of the value of the member’s relevant crystallised pension rights on 5th April 2006 by-

By-

$$\frac{SLAN}{FSLA}$$

Where-

SLAN is the standard lifetime allowance on the nominated date, and

FSLA is £1,500,000 (the standard lifetime allowance for the tax year 2006-07).

(3) The adjustment referred to in sub-paragraph (1)(b) is the multiplication of the amount crystallised by a previous benefit crystallisation event by-

$$\frac{SLAN}{PSLA}$$

Where-

SLAN is the standard lifetime allowance on the nominated date, and

PSLA is the standard lifetime allowance when the previous benefit crystallisation event occurred.

9(1) The value of the member’s uncrystallised rights on the nominated date is the aggregate value of the member’s uncrystallised rights on that date under each arrangement relating to the member under a registered pension scheme.

(2) The value on the nominated date of the member’s uncrystallised rights under such an arrangement is to be calculated in accordance with section 212 (valuation of uncrystallised rights for purposes of section 210).