

Ombudsman's Determination

Applicant	Mr N
Scheme	The Maybourne Hotel Pension and Life Insurance Scheme (the Scheme)
Respondent	Trustees of the Maybourne Group Pension and Life Insurance Scheme (the Trustees)

Outcome

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

Complaint summary

3. Mr N is complaining that the Trustees commuted his benefits to a lump sum in 2015 and he had to return the cheque due to the possible impact on his state benefits.

Background information, including submissions from the parties

4. Mr N joined the Scheme (formerly known as the Savoy Hotel Staff Pension Scheme) on 1 October 2001. He became a deferred member on 31 March 2004. He applied for his benefits in early 2010, before changes were made to legislation increasing the minimum pension age from 50 to 55.
5. Pension freedoms were introduced from April 2015, which allowed pension scheme members with small pension "pots" to take these as a triviality commutation. If all of a member's pension benefits added together is under £30,000, members can ask for a triviality commutation payment (which would be taxed).
6. Following the introduction of pension freedoms, Mr N contacted the Trustees to take his benefits as a triviality commutation payment. He submitted the relevant form and asked that this be put on hold (this was acknowledged by the Trustees on 9 January 2015). He was also in correspondence with the Department for Work and Pensions (**DWP**) in relation to the impact on his state benefits should he receive a lump sum. The responses he received from DWP in March, April and May 2015 said they were unable to provide him with a definitive answer to his queries, but did provide details of what would happen should he receive a lump sum and subsequently spend it.

7. On 20 August 2015, the Trustees wrote to Mr N in response to his request for a triviality commutation payment. It stated that it would contact the Scheme's administrator, Scottish Widows, regarding the options available. A cheque was then sent to Mr N for £8,727.53 on 10 September 2015.
8. Mr N returned the cheque on 10 November 2015. Mr N's reasoning was that his preferred option is a cash equivalent transfer value (**CETV**) for his benefits in payment (a separate complaint to this which is not within the Ombudsman's remit to investigate). He wanted assurance from the Trustees that a CETV was not possible, including taking that complaint through the internal dispute resolution procedure (**IDRP**) and to this office, before taking a triviality commutation payment. Mr N had also taken advice from the Citizens Advice Bureau (**CAB**) that the cheque should be sent back to the Trustees. The Trustees replied on the same day apologising for sending the cheque as they had assumed that this was what he wanted.
9. The Trustees subsequently reversed the payment and Mr N's benefits remain in the Scheme. Due to Mr N's other complaint, his monthly pension payments remained on hold while he proceeded through the complaint process. As part of the response to the complaint process, the Trustees again offered a discretionary triviality commutation payment to Mr N on 15 November 2016. They also offered, should Mr N refuse to take a payment at that stage, to exercise their discretion at a later date, however the triviality commutation payment would be recalculated at the time of his request.

Adjudicator's opinion

10. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustees. The Adjudicator's findings are summarised briefly below:-
 - There was no maladministration as the Trustees have put Mr N back into the position he ought to have been in (i.e. his benefits have been reinstated back into the Scheme, as though the cheque had not been paid).
 - The Trustees had acted on Mr N's instructions and therefore there was no maladministration or financial loss, hence nothing for the Ombudsman to remedy.
 - The heart of the matter is more in relation to Mr N's regret over his original decision to take his benefits in 2010. Unfortunately, having taken his benefits, the Trustees are obligated to pay them in line with the Scheme rules and relevant legislation. To do otherwise could put his benefits at risk of being unauthorised, potentially costing Mr N and the Scheme additional tax charges of up to 55% of the value of his benefits.
11. Mr N did not accept the Adjudicator's opinion and provided the following (in summary):

- Despite sending information to the Trustees that the lump sum could risk his state benefits, the Trustees paid the lump sum regardless.
 - The Adjudicator was incorrect that he discovered after he had received the cheque that it would impact his state benefits, but that the DWP would allow him to take a lump sum in 2022 to pay towards the cost of his mortgage.
 - He requested that the Trustees not reinstate his monthly pension, but instead leave this (including any arrears) until 2022 and take a lump sum at that time. He is asking for either a transfer out of the Scheme or a lump sum in 2022.
12. As Mr N did not agree with the Adjudicator's view, the complaint has been passed to me to consider. His further comments do not change the outcome. I agree with the Adjudicator and I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman's decision

13. I agree with Mr N that the Trustees had not received an explicit instruction from him to pay the triviality commutation payment in August 2015 (although it had received a completed form from Mr N in early 2015, which was put on hold at his request). However, as they were aware of Mr N's financial position, they were trying to come to some resolution to assist him.
14. I agree with the Adjudicator that there has not been any financial loss to Mr N. On returning the cheque, his benefits were reinstated in the Scheme, as if the triviality commutation payment had not been made. He has therefore been put back in the position that he ought to be in and there is nothing for me to put right.
15. The Trustees had reached an agreement with Mr N to put his monthly pension payments on hold while he completed the complaint process. This was a decision made at their discretion, but one that they cannot continue to make until Mr N's normal retirement date in 2022. Scheme rules, along with various legislation and HMRC rules mean that, once Mr N has made the decision to take his benefits, the Trustees are obligated to pay them.
16. As the complaint process is now completed, there is nothing preventing the Trustees paying Mr N's pension arrears. It will be up to Mr N, at a later stage, to decide if a triviality commutation payment is in his best interests and to apply to the Trustees to exercise their discretion, in accordance with their offer on 15 November 2016.
17. Therefore, I do not uphold Mr N's complaint.

Karen Johnston

Deputy Pensions Ombudsman
9 November 2018