

Ombudsman's Determination

Applicant	Mrs S
Scheme	Local Government Pension Scheme (LGPS)
Respondent	Wirral Council

Outcome

1. I do not uphold Mrs S' complaint and no further action is required by Wirral Council.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs S has complained that Wirral Council, the administering authority, have said she is not able to take her benefits as a trivial commutation payment in accordance with the de minimis rules.

Background information, including submissions from the parties

4. In February 2017, Mrs S contacted Wirral Council, she said she wanted to take her benefits as a small lump sum. Wirral Council informed her that she was not able to take her benefits through trivial commutation because all her pension pots amounted to over £30,000, which was Her Majesty's Revenue and Customs' (**HMRC**) limit for trivial commutation.
5. Mrs S began exploring other options available to her and found that the LGPS allowed for benefits to be taken as a de minimis payment. However, Mrs S was informed this was not an option for her because she was not an active member of the LGPS on 1 April 2008 when the Regulations that govern the LGPS were amended to allow members to commute their benefits through the de minimis rules.
6. Wirral Council responded and said it was following Local Government Pension Committee Guidance which prohibits de minimis payments to pre 1 April 2008 leavers.
7. Mrs S remained dissatisfied and took her complaint through the internal dispute resolution procedure.

8. Wirral Council provided the following response:

“When the de minimis payment rules were introduced the LGPS Regulations required amendment to enable de minimis compounding of members’ pensions - however when the amending regulations were issued they only allowed members who had left LGPS after 31.3.2008 to compound under de minimis. Unfortunately as you terminated your LGPS membership on 4.6.2007 the regulations do not allow you, or this fund to compound your benefits.”

The only way compounding would be possible would be if the Regulations that govern the LGPS were amended further to allow pre 2008 leavers to utilise the de minimis rules.”

9. Mrs S brought her complaint to the Pensions Ombudsman to be independently reviewed.
10. Wirral Council provided the guidance which sets out why pre 2008 members of the LGPS are not entitled to small lump sum payments of their benefits. It provided the following explanation of the current provisions:

“LGPS England and Wales

Pre-1st April 2008 leavers (other than councillors)

By virtue of Regulations 49 of the LGPS Regulations 1997 and Regulation 4 of the LGPS (Transitional Provisions) Regulations 1997, administering authorities in England and Wales may, in respect of benefits due to, or to the survivor of, a pre 1st April 2008 leaver (other than councillors). :

- pay (to a member) a lump sum which is a trivial commutation lump sum within the meaning of section 166 of the Finance Act 2004, and
- pay (to a survivor) a lump sum which is a trivial commutation lump sum with the meaning of section 168 of the Finance Act 2004.

but cannot pay (to a member or survivor) a lump sum which is a commutation payment under regulation 6, or a de minimis commutation payment under regulations 11 or 12, of the Registered Pension Schemes (Authorised Payments) Regulations 2009 [SI 2009/1171] as

- those regulations do not apply to survivors benefits, and
- the relevant amendments to the LGPS Regulations 1997 have not been made to allow such payments to a member. “

Adjudicator's Opinion

11. Mrs S' complaint was considered by one of our Adjudicators who concluded that no further action was required by Wirral Council. The Adjudicator's findings are summarised briefly below:-
- Before the provisions of the Finance Act 2004 were introduced, effective from 6 April 2006, trivial commutation was permitted under the LGPS Regulations. The Finance Act 2004 introduced overriding rules governing the commutation of trivial pensions. The LGPS Regulations were amended in 2012 to take account of the Finance Act 2004 but only for members who left after 31 March 2008.
 - Although the Regulations that govern the LGPS allows for members to commute their pensions through trivial commutation, the MPF are required to follow the overriding rules set by HMRC. In this case as Mrs S' pension pots amount to over £30,000 in total she is unable to access her benefits through trivial commutation in accordance with HMRC rules.
 - Mrs S considered taking her benefits through the de minimis rules, but has been unable to do so because of the restrictions in the LGPS Regulations which only allows members who are post 31 March 2008 leavers to have access to benefits through the de minimis rules. As Mrs S left employment on 4 June 2007, she is not allowed access to her benefits in this way either.
12. Mrs S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs S provided the following comments:
- the LGPS regulations are unfair and discriminate against a member purely because of when they left the LGPS;
 - Wirral Council staff lack knowledge pertaining to current pension rules and their attitude was bordering on contempt, and
 - the LGPS Regulations have not been amended since 2012, to take account of the March 2014 budget. Therefore, she has not been afforded the same rights and options given to all pension scheme members in the UK from 2015 when the 2014 budget changes came into force.
13. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs S for completeness.

Ombudsman's decision

14. Mrs S has complained that the LGPS Regulations discriminate against members. Because some members can access their pension through de minimis rules and other cannot depending upon when they left the Scheme.

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15. The Regulations only allow members from 31 March 2008 to access their benefits through de minimis rules. As Mrs S left on 4 June 2007, she is not able to access her benefits in this way. I sympathise that Mrs S considers she is being discriminated against, but Wirral Council have to comply with the Regulations that govern the LGPS and could not do anything other than it did.
16. Mrs S believes the Regulations are out dated and should be amended. It is not within my remit to direct that the Regulations should be amended. A change to the Regulations could only be achieved by an act of Parliament or a statutory instrument. I will only consider whether the Regulations are being applied correctly and in this case I consider that they have been.
17. Therefore, I do not uphold Mrs S' complaint.

Karen Johnston

Deputy Pensions Ombudsman
18 December 2017