

Ombudsman's Determination

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| Applicant | Mrs Y |
| Scheme | BASF UK Group Pension Scheme (the Scheme) |
| Respondent | BASF Pension Trustee Ltd (the Trustee) |

Outcome

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

Complaint summary

3. Mrs Y's complaint concerns the Trustee's decision not to pay her a spouse's pension as an unauthorised lump sum payment.

Background information, including submissions from the parties

4. Mrs Y's husband was a pensioner member of the Scheme when he passed away on 20 December 2017. On the same day, Mrs Y informed the Scheme of Mr Y's death and, she also asked the Scheme to provide her with details of a lump sum option, when it informed her of its requirements, to enable her to claim the spouse's pension.
5. On 8 January 2018, the Administrator of the Scheme wrote to Mrs Y to inform her of the annual spouse's pension she was entitled to. The letter also said :

"In line with pensions legislation you do not meet the criteria in order for you to commute your benefits and take a lump sum instead of a pension. This is because the lump sum you would be entitled to exceeds £30,000."
6. On 10 January 2018, Mrs Y called the Administrator as she was disappointed that she could not receive her spouse's pension as a one-off lump sum. On the same date, Mrs Y's son, on her behalf, made a complaint to the Scheme through the Scheme's internal dispute resolution procedure (**IDRP**), as Mrs Y was not happy that she was not offered the option to have her pension paid as a one off-lump sum, nor was she offered a death benefit lump sum.

7. In the IDRP one response dated 14 February 2018, the Scheme explained the circumstances in which the spouse's pension could be taken as a lump sum. The letter also explained that:

“In this instance the only option is to pay your Mother the spouse's pension which amounts to £3,310.92 per annum gross (£275.91) monthly. Please note that the payment of a spouse's pension is not driven by the wishes of the member, it is an automatic right under the Scheme rules where there is a legal spouse.”
8. Unhappy with the IDRP one response, Mrs Y's son appealed on her behalf through stage two of the IDRP. In the appeal, Mrs Y's son gave details of Mrs Y's income and expenses and asked the Trustee to pay her the spouse's pension as an unauthorised lump sum payment.
9. In the stage two IDRP response dated 25 April 2018, the Trustee did not uphold Mrs Y's complaint. It sympathised with Mrs Y's financial situation but explained that to make an unauthorised payment to Mrs Y, would create several issues. This is because the unauthorised payment could result in the Scheme being deregistered by the Financial Conduct Authority (**the FCA**) or, the Scheme incurring a surcharge which could be between 15% and 40% of the value of the unauthorised payment. It concluded that the Trustee would not permit the unauthorised payment to be made to Mrs Y.
10. Dissatisfied with the responses she received from the IDRP, Mrs Y referred her complaint to this Office and explained why she had asked the Scheme to pay her the spouse's pension as an unauthorised payment.
11. In response to the complaint, the Trustee provided a copy of the Rules and provided copies of correspondence between the Scheme, the Administrator and Mrs Y regarding her benefit entitlement and her complaint. The Trustee also made the following comments:
 - There was no lump sum death benefit payable to Mrs Y following Mr Y's death. A lump sum is only payable if the member dies within five years of retirement. Mr Y was in receipt of his pension since 2007. Therefore, a lump sum did not apply in this case.
 - It considered whether the spouse's pension could be trivially commuted, but its value is more than the £30,000 Her Majesty's Revenue and Customs (**HMRC**) limit. Therefore, a trivial commutation is not possible.

Adjudicator's Opinion

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

- The Trustee's role is to administer the Scheme in accordance with the Rules that govern it.
- Rule 7 of the Scheme's Trust Deed & Rules (**the Rules**) gives details of the spouse's pension payable and states that the spouse's pension is 60% of the member's pension.
- Rule 8 of the Rules gives details of the lump sum that is payable after a member's death. Rule 8.2.1 states:

"On the death of a Member within five years after his pension started, a lump sum death benefit will be paid equal to the pension payments which would otherwise have been paid to him during the remainder of the five year period (but disregarding future increases),..."

- Therefore, as Mr Y passed away after the expiration of the guaranteed period, no death benefit lump sum was payable. The only option available to Mrs Y was for her to receive an annual spouse's pension.
- The Adjudicator appreciated that Mrs Y had requested the spouse's pension should be made to her as an unauthorised lump sum payment and that she accepts that she would be liable to pay a tax charge as a result of the unauthorised payment. However, the Adjudicator believed that the Trustee acted reasonably in not agreeing to make such a payment to Mrs Y.
- The Trustee had explained the possible implications that could result from it making the unauthorised payment. This included putting the Scheme at risk of being deregistered by the FCA and, the Scheme incurring a surcharge.
- As well as the Trustee administering the Scheme in accordance with its Rules, the Trustee must also ensure that it makes decisions that would not be detrimental to its members. Therefore, while the Adjudicator sympathised with Mrs Y's financial situation, she did not consider it would be fair to the other members of the Scheme for the Trustee to put the Scheme and their benefits at risk, by paying the unauthorised payment to Mrs Y.
- In the Adjudicator's opinion, there was no maladministration by the Trustee in the way it had administered Mrs Y's spouse's pension and, the Adjudicator believed that Mrs Y is receiving the correct pension she is entitled to, from the Scheme.
- Therefore, it was the Adjudicator's view that this complaint should not be upheld.

13. Mrs Y did not accept the Adjudicator's Opinion and in response said:

- There is nothing in the Rules that says she cannot take the pension as a lump sum.

14. The complaint was passed to me to consider. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs Y for completeness.

Ombudsman's decision

15. I understand Mrs Y's disappointment that the Trustee has not agreed to pay her the spouse's pension as a lump sum. However, there is no provision in the Rules that permits this. I appreciate that the Rules do not explicitly say that Mrs Y cannot be paid a spouse's pension as a lump sum. However, the Rules do say how a spouse's pension should be calculated and, when a lump sum death benefit can be paid following a member's death. There is no option, within the Rules for Mrs Y to receive her spouse's pension as a lump sum.
16. The Trustee must not intentionally make decisions that may have an adverse effect on its members or the Scheme. Therefore, I do not find that the Trustee not agreeing to pay Mrs Y, the spouse's pension as an unauthorised lump sum, amounts to maladministration.
17. Consequently, I do not uphold Mrs Y's complaint.

Karen Johnston

Deputy Pensions Ombudsman
2 November 2018