

## Ombudsman's Determination

Applicant	Mr R
Scheme	The Royal Bank of Scotland Group Pension Fund (the <b>Fund</b> )
Respondents	Royal Bank of Scotland Plc ( <b>RBS</b> ), RBS Pension Trustee Limited (the <b>Trustee</b> ), Willis Towers Watson ( <b>Towers Watson</b> )

## Outcome

1. I do not uphold Mr R's complaint and no further action is required by RBS, the Trustee and Towers Watson.

## Complaint summary

2. Mr R maintains that his retirement was grossly mishandled. As a result of the delays and service issues, he had to use his savings and was denied access to his lump sum.
3. Mr R says that 75% of his lump sum was earmarked to repay his fixed rate mortgage, which was due to expire on 30 September 2017. He also suffered a loss of interest on the balance of his lump sum of £85,000.

## Background information, including submissions from the parties

4. Mr R was an active defined benefit member of the Fund. The Rules relating to Mr R's benefits are documented in Schedule 4 of the Fund Rules (**Schedule 4**).
5. In 2017, the Trustee outsourced the administration of the Fund to Towers Watson.
6. Mr R made additional voluntary contributions (**AVCs**) into the "APeC" fund.
7. A summary showing Mr R's unit holdings in the APeC fund as at 12 July 2017 (the **Summary**), indicates that the investments were held in six funds: the emerging markets equity tracker, the international equity fund, the diversified growth fund, the international equity tracker fund, the UK equity tracker fund, and the UK equity fund.
8. Mr R's units were valued at £136,435.77 as at the date of the Summary.

9. In late July 2017, in advance of Mr R's retirement on severance terms on 4 September 2017, Mr R notified RBS of his preference to take an "undiscounted pension and statutory redundancy".
10. On 4 August 2017, Mr R's units in the international equity fund and the international equity tracker fund were switched into the emerging markets equity tracker fund (the **Switch**). A screenshot (the **Screenshot**), of Towers Watson's database in respect of the transaction is displayed in Appendix A.
11. On 18 August 2017, Mr R contacted Towers Watson for retirement paperwork. Following notification of Mr R's revised exit terms on 1 September 2017, Mr R was provided with retirement options on 9 September 2017.
12. However, Towers Watson used an incorrect retirement date of 18 August 2017, Mr R's last day in the office. The options were also based on an incorrect pension and did not take into account that Mr R had individual protection (**IP**).
13. A pension scheme member with pension savings of more than £1.25 million on 5 April 2014 may apply for individual protection 2014 (**IP 2014**). A member with pension savings of more than £1 million on 5 April 2016, may apply for individual protection 2016 (**IP 2016**).
14. The lifetime allowance (**LTA**) in respect of an individual with IP 2014, is fixed at the value of the member's pension savings on 5 April 2014, or £1.5 million if lower. An individual with IP 2016, has an LTA of the lower of the value of his or her pension savings on 5 April 2016 and £1.25 million.
15. On 20 September 2017, Towers Watson issued retirement options based on the correct enhanced terms. Mr R returned the completed paperwork on 2 October 2017, by registered mail. However, it was not received by Towers Watson. The completed retirement forms were eventually received on 20 October 2017.
16. Mr R's unit holdings were encashed on 24 October 2017. The closing fund value amounted to £142,462.05.
17. On the date of the disinvestment, Mr R's units were invested across four funds: the emerging markets equity fund, the diversified growth fund, the UK equity tracker fund, and the UK equity fund.
18. To calculate Mr R's benefits in excess of his personal LTA (**PLTA**), Towers Watson used the Fund's cash commutation factors. The example provided in "PTM084000," contained in HM Revenue & Customs' (**HMRC**) Pensions Tax Manual (**PTM**), is displayed in Appendix C.
19. Rule 10: "Commutation of Pension" of Schedule 4 (**Rule 10**) provides that any "Member may commute part of his pension under the Fund at the date of its commencement for a lump sum." Neither Rule 10 nor the other provisions in Schedule 4 detail the Fund's cash commutation factors.

20. Mr R's lump sum was paid on 8 November 2017. The first instalment of Mr R's pension was paid on 18 November 2017.
21. Mr R complained about service issues with the handling of his retirement. Following contact from Mr R's local Member of Parliament (**MP**) in January 2018, RBS made a distress and inconvenience award of £500 to Mr R.
22. On 25 February 2018, Mr R complained under the Fund's internal dispute resolution procedure (**IDRP**). Under stage one of the IDR, Mr R was offered an additional £500, in respect of the service issues he had experienced with Towers Watson. However, the Trustee did not accept that Towers Watson had unreasonably delayed the retirement process.
23. On 16 April 2018, Mr R complained under stage two of the IDR. The Trustee made a revised offer of £1,500, and acknowledged that Mr R had incurred additional costs in respect of his mortgage. On 2 August 2018, following a subsequent exchange, the Trustee notified Mr R that it would not be increasing the offer.
24. On 16 July 2018, before submitting his application to The Pensions Ombudsman on 13 August 2018, Mr R proposed to the Trustee that the offer should be increased to £2,000.
25. Mr R's complaint was accepted for investigation on 20 September 2018. Mr R indicated that an overall award of £2,700, in respect of the financial and non-financial injustice he had suffered, "would appear fair, appropriate and acceptable." Mr R stated that this would help resolve his complaint.
26. On 31 October 2018, the Trustee provided its formal response. The Trustee accepted that there had been a delay in communicating and processing information at and around the time Mr R had left RBS. Consequently, payment of Mr R's retirement benefits had been delayed.
27. The Trustee offered to make a payment of £2,200.
28. In the response, the Trustee enclosed an excerpt of Rule 10. The Trustee also included a closing statement as at 24 October 2017 in respect of Mr R's units in the APeC fund (the **Closing Statement**).
29. The Closing Statement shows encashment of units across four funds valued at £142,462.05 at the date of the statement.
30. Mr R's position is summarised below.
  - In the absence of advice to the contrary, his expectation was that revised paperwork would be issued within a few days of him contacting RBS in late July 2017.
  - RBS had previously been responsible for communicating his pension choices to the Fund.

- He anticipated that the lump sum would be paid within a few days of his exit date, in time for him to clear his mortgage on 30 September 2017. His pension would then commence “seamlessly” on the next pay day, as had been the case for recent retirements.
- Three weeks passed during which nothing happened. RBS assured him on several occasions that it was escalating the matter with Towers Watson.
- It came as a “bit of a shock” when RBS informed him on his last day in the office that it was his responsibility to resolve his pension issues with Towers Watson.
- Towers Watson was not aware that he was leaving RBS. He was told that Towers Watson was changing its systems and that “everything would take a long time but they would do their best.”
- To expedite the [retirement] process, he asked Towers Watson if the paperwork could be emailed to him. He [even] offered to collect the paperwork from Towers Watson’s office.
- He contacted Towers Watson on 25 August 2017, and “basically got the same answer.” He asked to speak to a manager or supervisor. However, he did not receive the call back that he was promised.
- The average waiting time was 15 minutes. He also tried emailing Towers Watson; his emails remained unanswered. In frustration, he contacted RBS’ Chief Executive Officer (the **CEO**) on 5 September 2017.
- RBS’ resolution team totally understood the problem but seemed powerless to achieve any progress. So, he was delighted when he received a retirement pack on 9 September 2017. However, his initial euphoria was short lived.
- The figures quoted were “discounted”, based on him taking voluntary retirement, and would have denied him a further month’s pension accrual. Towers Watson also understated his pension by £9,000 per annum.
- Although he requested illustrations based on the maximum available tax-free lump sum Towers Watson ignored this.
- Towers Watson apparently lost his IP [certificate]. As a result, his options were understated by approximately £52,000. He sent details of his IP on four separate occasions.
- He complained again to the CEO on 10 September 2017. He received a “holding” letter that acknowledged the difficulties he had experienced with Towers Watson.

His case was then passed to Towers Watson. “No-one wanted to take responsibility and unsurprisingly there was no further progress.”

- Despites assurances, he was not provided with an update and his pension had not been settled. So, on 19 September 2017, he emailed the CEO and RBS’ Head of Pensions (the **Pensions Manager**)
- On 23 September 2017, he received a revised retirement pack. However, it was not clear how the lump sum in excess of the LTA had been calculated.
- The explanation he received at the time did not seem logical to him, as different commutation factors were used. So, he asked to see a copy of the Rules, as suggested by The Pensions Advisory Service (**TPAS**). He requested sight of the Rules on three separate occasions, without success.
- So as not to hold up the retirement process, he returned the forms and notified Towers Watson of this. However, “no-one seemed interested in monitoring the situation with a view to bringing it to a satisfactory conclusion.”
- On 20 October 2017, he was advised that his forms had not been received. At that point, it was evident that the transfer of the administration to Towers Watson “had been chaotic but this really was the last straw.”
- He had to resubmit the paperwork, more than two months after he initially notified RBS of his final pension choices. It then took a further two weeks for his lump sum to arrive in his account. The lump sum should have been paid approximately two months earlier. He received no apology for the delay.
- As he did not want to take the risk of moving to his lender’s standard variable rate for an indefinite period, his mortgage broker advised him to take out an offset mortgage. This “had the advantage of effectively putting him in the same position, interest wise when the [lump sum] eventually arrived, as if [he] had repaid [his] mortgage on retirement”, except for the fees attached to the mortgage.
- When Towers Watsons failed to pay his pension in the second month following his retirement he chased again. He was expected to self-fund his monthly outgoings from other means.
- It was an “incredibly stressful” time for him. He has calculated that he had to chase more than 30 times. When he had exhausted all avenues, he approached his MP.
- A commutation factor of 20 was used to calculate the excess over his PLTA, if taken as a pension. However, the factor falls to 17.95 if the excess is taken as a lump sum.

- He queried this at the time and received some calculations from Towers Watson. However, Towers Watson was unable to explain the rationale for the difference. As it affects both his lump sum and the amount of tax payable, he would like details of where the use of the lower commutation factor is documented.
- The layout of the Closing Statement is confusing, there are no “holding amounts” displayed and the funds appear to differ from those displayed in the Summary.
- He is concerned that the Closing Statement differs in respect of the range of funds and his unit holdings. It would help resolve his issue if he could “see a transaction history”, which reconciles the Closing Statement and the Summary.

31. RBS' position is summarised below.

- There were some initial “teething” problems after the administration of the Fund was outsourced to Towers Watson. Mr R was unfortunately caught up in that process.

32. The Trustee's position is summarised below.

- The delay in [the retirement process] was caused by a combination of factors. Consequently, the Trustee does not accept that it was responsible for much of the delay.
- Prior to 18 August 2017, Mr R was communicating with RBS, not Towers Watson. The exit terms were not notified to Towers Watson until 1 September 2017.
- The Trustee accepts that the pension figures provided on 9 September 2017, were incorrect.
- It was necessary to disinvest Mr R's AVCs before paying out his lump sum. The disinvestment process takes five working days.
- The Trustee acknowledges that if Mr R's retirement paperwork had been received shortly after 2 October 2017, his lump sum could possibly have been paid sooner. The first instalment of pension would have been paid in October 2017.
- The Trustee recognises that the service Mr R experienced fell short of the standard the Trustee would expect. The Trustee also accepts that Towers Watson delayed responding to Mr R when he complained in November 2017.
- Mr R incurred additional mortgage costs because payment of his lump sum was delayed. The Trustee's final offer of £2,200 was in response to the suggestion Mr R made in July 2018.
- £500 of the amount offered by the Trustee is in recognition of the inconvenience caused to Mr R. It is additional to the award of £500 already paid by RBS.

- £1,700 of the combined award of £2,700 [that is £1,700 of the offer of £2,200] is in respect of Mr R's financial loss.

33. Towers Watson's position is summarised below.

- Towers Watson does not accept that it is responsible for Mr R's alleged financial loss. There were delays on the part of RBS in notifying Mr R's exit terms.
- Mr R's retirement pack was issued promptly by Towers Watson. The benefits were set up within 20 days of Towers Watson receiving completed forms.
- Towers Watson cannot quote figures on enhanced terms based on a member's request, as providing enhanced benefits comes at a cost to RBS.
- Towers Watson accepts that the retirement pack provided to Mr R on 9 September 2017, should not have been issued. Towers Watson had by that time received notification of Mr R's correct exit terms from RBS.
- Towers Watson acknowledges that Mr R experienced some issues with the service Mr R received from Towers Watson.
- Towers Watson exceeded its service levels of 20 working days for member enquiries in Mr R's case.
- The payroll cut off for new pensioners is the start of the month. Towers Watson disinvest AVCs as close as possible to the member's retirement date to "ensure fair value."
- Consequently, it would not have been possible to pay the first instalment of Mr R's pension on 18 September 2017. The pension would more likely have been made on 18 October 2017.
- Mr R was provided with a breakdown of the [retirement] calculations. Towers Watson also had in depth discussions with Mr R in the past concerning the commutation factors.
- Mr R asked for details of how the tax free lump sum is defined. As it is not defined in the Rules, Towers Watson did not provide Mr R with a copy of the Rules.
- The option a member takes in respect of the excess over the PLTA determines whether a factor of 20 is used or whether age related commutation factors are used instead. This was explained to Mr R in September 2017.

- Towers Watson has adopted the practice outlined in PTM084000, which was to use either a factor of 20:1 or the more common practice of using the pension scheme's own commutation factors.
  - Towers Watson approached the calculation in the same way as the previous Fund administrators. The consistent approach has always been to use the Fund's own commutation factors.
  - Towers Watson is unable to provide a document that shows the factors approved by the Trustee for the calculation of benefits in excess of the LTA. However, Towers Watson considers that it has clearly shown how Mr R's pension figures were calculated.
  - Mr R switched his holdings on 4 August 2017 via Towers Watson's online portal. Consequently, Towers Watson cannot evidence that request.
  - As part of the Switch, Mr R sold his unit holdings in two funds and purchased additional units in the emerging markets equity tracker fund. The Screen Shot shows the switch that was processed at the time.
34. The reason for the difference in the value of Mr R's investments, as displayed in the Summary, when compared to the Closing Statement, is partly due to the Switch. It is also due to an increase in unit prices. Consequently, the Summary is out of date.
35. Mr R's calculated financial loss of £1,700 is the sum of his mortgage booking fee of £749, mortgage redemption fee of £195, funds transfer fee of £25, mortgage interest of £208 incurred under his old mortgage product, mortgage interest of £323 in respect of his current mortgage, £192 in lost interest on the balance of his lump sum of £85,000 over two months, and loss of interest on his monthly pension amounting to £15.
36. Mr R has provided a copy of his retirement illustration. Option 2a indicates that Mr R's benefits in excess of his PLTA were valued at £84,181 at that time. Under this option, it states that if Mr R chooses to take the excess as a pension, he will incur a tax charge of 25%. Option 2b states that Mr R can opt to take the value of his benefits above his PLTA, amounting to £75,556, subject to a tax charge of 55%.
37. The calculation of Mr R's [final] benefits above his PLTA is displayed in Appendix A.
38. During the investigation, Towers Watson provided a link to the Rules published on RBS' website. Towers Watson also provided unit prices as at 24 October 2017, in respect of the funds Mr R was invested in on 12 July 2017, the date of the Summary.
39. Based on those unit prices, the Adjudicator calculated that Mr R's closing AVC value would have been £142,465.76, had he remained invested in those same funds as at 24 October 2017. This compares with Mr R's actual closing balance of £142,462.05.



## **Adjudicator's Opinion**

40. Mr R's complaint was considered by one of our Adjudicators who concluded that no further action was required by RBS, the Trustee, or Towers Watson. The Adjudicator's findings are briefly summarised below:-
- Any financial loss caused to Mr R has already been remedied.
  - The Adjudicator was unable to agree that the evidence substantiated Mr R's claims concerning the alleged discrepancy in his investments as at 24 October 2017.
  - It is not the role of The Pensions Ombudsman to audit benefit calculations or to conduct investigations in the hope of uncovering errors.
  - The Ombudsman would more likely consider that it is a matter for the Trustee to decide factors to be used for the Fund, based on actuarial advice and recommendations.
  - The distress and inconvenience award of £1,000 is in line with what the Adjudicator considered the Pensions Ombudsman would direct for non-financial injustice in similar cases.
41. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr R has provided his further comments, but these do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr R for completeness.
42. Mr R says he is unable to find any provisions in Schedule 4 that requires different commutation factors to be applied to the excess over the LTA, depending on whether the excess is taken as a pension or a lump sum. Although calculations were provided, it is not the case that the position concerning the calculation of his benefits in excess of the PLTA has been explained to him.
43. Mr R says he also does not understand Towers Watson's explanation that the "option a member takes in relation to the excess over the PLTA determines if 20 is used or age-related commutation factors." His pension is a substantial sum of money and represent his life savings. He would like to be signposted to the relevant Fund provisions.
44. Mr R says that he would also like to see a record of his alleged request to switch his investments.
45. Mr R refutes that he instructed a switch of his unit holdings via the online portal. While he had the facility to keep abreast of his portfolio, the facility to move his investments via the portal was not made available to him. He considers that the information displayed in the Screenshot is "meaningless" and further evidence of the ongoing problems he has experienced in getting logical and clearly understandable information from the Fund. The Screenshot shows various dates in respect of the transaction; he has no idea what "SSAV/15/SWTH" means.

46. Mr R has explained that when he had to resubmit his pension choices for a fourth time in September 2017, he wanted to drop them off at Tower Watson's office. However, he was denied that opportunity. For expediency, he had to send the completed forms together with other sensitive paperwork via the "unencrypted internet". He was very unhappy at the time about the potential exposure and compromise of confidential information.
47. Mr R asserts that there were several repeated errors at the outset. He made numerous requests for assistance and for clarification. His enquiries were either ignored, or remained unanswered. This would have continued had he not sought the advice of his local MP.
48. Mr R says that he disagrees that an award of £1,000 is reasonable "given the stress, effort, time and inconvenience" caused to him. He considers that the specifics of his original complaint remain unresolved after two years. The "continuing unwillingness to answer straightforward questions is adding greatly to the two years of stress and angst this has caused [him]." This, in his view, is fundamentally wrong and symptomatic of the myriad problems he encountered, which has caused him "life changing personal stress and anxiety."
49. Mr R has explained that the matter had a detrimental effect on his health. He took an enforced and unplanned life decision to remortgage his home because of the delay in paying his lump sum. Rather than genuinely trying to put things right, there then followed "reluctant foot dragging" in "drip-feeding" increased offers over a sustained period of time. He considers that a distress and inconvenience award should be made that recognises the "severe" level of non-financial injustice caused to him.

### **Ombudsman's decision**

50. I recognise that Mr R considers that three main issues remain unresolved. Firstly, the alleged inability on the part of Towers Watson to provide a document to justify the commutation factors used in its calculations. Secondly, the difference in his final unit holdings shown in the Screenshot when compared with that displayed in the Summary. Lastly, the level of the distress and inconvenience award.
51. I note that Mr R has acknowledged that he was provided with a breakdown of Towers Watson's calculation of his benefits. I also note Mr R has not provided any evidence which supports that his benefits in excess of his PLTA were miscalculated by Towers Watson.
52. I accept that Schedule 4 does not detail the Fund's commutation factors. However, I am not aware that pension legislation requires commutation factors to be specified in pension scheme rules. Nor am I aware of any legal obligation on the Trustee to use specific actuarial factors for calculating benefits in excess of the LTA. The choice of factors to be adopted for the Fund is a matter for the Trustee and I do not comment or make any findings in respect of the factors used by Towers Watson.

53. In the absence of any evidence that Mr R's were miscalculated, I am unable to reasonably conclude that Mr R's final benefits were incorrectly calculated by Towers Watson.
54. I am mindful that Mr R disputes that he switched his unit holdings in August 2017. Even if I were to accept that Mr R's units were switched in error, the evidence tends to support the view that the final value of Mr R's investments would have been marginally higher by approximately £4 but for the Switch. Consequently, I do not consider that the matter warrants any further investigation.
55. Concerning RBS' role in what has gone wrong, I find that the award of £500 already made by RBS, is sufficient in respect of RBS' failure to provide the required notification to Towers Watson in good time. I accept that the delay adversely impacted the retirement process.
56. I also acknowledge that Towers Watson made a number of administrative errors in Mr R's case, and initially miscalculated Mr R's retirement options. The evidence indicates that Mr R's original retirement paperwork went astray, and that Mr R's IP certificate was misplaced by Towers Watson on more than one occasion.
57. Mr R's lump sum and first instalment of pension were paid approximately two months after he retired from RBS. This is not in dispute and the Trustee has made offers designed to compensate Mr R.
58. Having considered the timeline, I find that an overall award of £1,000 for non-financial injustice is reasonable and that a higher award would be disproportionate in the circumstances. I am satisfied that the offer already made by the Trustee is also sufficient to cover Mr R's calculated financial loss. Therefore I do not uphold Mr R's complaint.
59. Mr R should contact the Trustee directly if he wishes to accept the Trustee's offer.

**Karen Johnston**

Deputy Pensions Ombudsman  
25 February 2020

**Appendix A**

Unit prices as at 24 October 2017:

<b>Fund Name</b>	<b>Unit Price</b>
Emerging Markets Equity Tracker	3.149
International Equity Fund	2.293
Diversified Growth Fund	2.132
International Equity Tracker Fund	2.961
UK Equity Tracker Fund	2.048
UK Equity Fund -	2.161

**Switch of Unit Holdings**

<u>SSAV</u>	FIEM	15	SWTH	04/08/2017	07/08/2017	GBP £	6405.18	2083.66	N
<u>SSAV</u>	FIEM	15	SWTH	04/08/2017	08/08/2017	GBP £	2796.57	901.54	N
<u>SSAV</u>	FIIE	15	SWTH	04/08/2017	08/08/2017	GBP £	-2796.57	-1229.26	N
<u>SSAV</u>	FIIT	15	SWTH	04/08/2017	07/08/2017	GBP £	-6405.18	-2224.02	N
<u>SSNI</u>	FIEM	15	SWTH	04/08/2017	08/08/2017	GBP £	195.76	63.11	N
<u>SSNI</u>	FIEM	15	SWTH	04/08/2017	07/08/2017	GBP £	448.36	145.86	N
<u>SSNI</u>	FIIE	15	SWTH	04/08/2017	08/08/2017	GBP £	-195.76	-86.05	N
<u>SSNI</u>	FIIT	15	SWTH	04/08/2017	07/08/2017	GBP £	-448.36	-155.68	N

**Calculation of Mr R's benefits above his PLTA:**

Tax free lump sum: £302,021.25

Residual pension: £49,783.44 a year

1)  $£302,021.25 + (20 * £49,783.44 = £1,297,690.05)$ 

2) Available lifetime allowance - £1,208,085.00

3) Chargeable amount:  $1) - 2) = £89,605.05 / 20 * \text{commutation factor } (17.951) = £80,425.01$ 4) Lifetime allowance charge:  $£80,425.01 * 0.55 = £44,233.76$ 

The additional lump sum payable following the lifetime allowance charge:

£36,191.26 ( $£80,425.01 - £44,233.76$ )

## **Appendix B**

### Schedule 4: Former Members of the First and Second Schedules to the Rules of The Royal

#### **“10 Commutation of Pension**

10.1 Provided he has given prior notice in writing to the Trustees and notwithstanding the foregoing provisions of this Schedule, any Member may commute part of his pension under the Fund at the date of its commencement for a lump sum in an amount up to 25% of the value of his benefits (as determined by the Trustees) or, if lower, the maximum amount permitted as a pension commencement lump sum under Part 1 of Schedule 29 to the Finance Act, unless a greater amount may be payable in accordance with Part 3 of Schedule 36 to the Finance Act or as permitted by HM Revenue & Customs. For the purposes of Part 3 of Schedule 36 to the Finance Act the value of a Member's uncrystallised lump sum rights on 5 April 2006 shall be calculated according to the rules of the Fund in force prior to 6 April 2006; provided that:

10.1.1 the basis of calculating the amount of pension to be commuted for any such lump sum payment shall be determined by the Actuary and shall be notified to such Member and acceptable to HM Revenue & Customs; and

10.1.2 exercise of this option shall be subject to such restriction as the Trustees determine to be appropriate to ensure that the pension remaining payable to such Member shall not be less in weekly amount than the weekly rate of the GMP appropriate to him under Appendix B at the later of the date of commutation and the date of his attainment of pensionable age.

10.2 Provided he has given prior notice in writing to the Trustees and notwithstanding the foregoing provisions of this Schedule and subject to the deduction of any tax payable, any Member who is (as certified by a medical practitioner acceptable to the Trustees) in exceptional circumstances of serious ill-health may commute any pension becoming payable to him under the Fund at the date on which it would otherwise have commenced for a lump sum payment of an amount determined by the Actuary to be equivalent thereto; provided that the exercise of this option shall be subject to such restriction as the Trustees determine to be appropriate to ensure that there shall remain payable to the Member a pension not less in weekly amount than the weekly rate of the GMP appropriate to him under Appendix B at the later of the date of commutation and the date of his attainment of pensionable age.

10.3 Provided he has given prior notice in writing to the Trustees and notwithstanding the foregoing provisions of this Schedule and subject to the deduction of any tax payable, any Member may commute any pension becoming payable to him under the Fund at the date on which it would otherwise have commenced for a trivial commutation lump sum payment of an amount determined by the Actuary to be equivalent thereto if such pension (before exercise of any option under paragraph 10.1 or 10.2) does not exceed the limit referred to in paragraph 7(4) of Schedule 29 to the Finance Act (or such other amount as is prescribed by law from time to

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time); provided that:

10.3.1 in the event of any such commutation by a Member, any benefits contingently payable under the Fund on his death shall cease to be payable and any such cesser shall be taken into account by the Actuary in determining the amount of such lump sum payment;

10.3.2 this option shall not be available to any Member whose pension is due to commence before the date of his attainment of age 60 and who has a guaranteed minimum in relation to the pension to be provided for him under the Fund in accordance with the provisions of Appendix B; and

10.3.3 the Trustees shall require the Member to certify that the conditions referred to in paragraph 7(1) of Schedule 29 to the Finance Act are satisfied before payment of a trivial commutation lump sum may be made under this paragraph.

***(Amended by Deed dated 5 March 1012)***

## Appendix C

### HMRC: PTM084000

#### **“The lifetime allowance and the lifetime allowance charge: lifetime allowance excess lump sum**

...

Example showing the calculation of the chargeable amount

John is a member of a defined benefits arrangement. He decides to take his benefits in a tax year when the standard lifetime allowance is £1.5 million. John has already used up 90 per cent of his lifetime allowance and is subject to the standard lifetime allowance.

John is entitled to a scheme pension of £11,250 per annum and a lump sum of £75,000.

Before paying out the benefits, the scheme administrator calculates the amount that would crystallise for lifetime allowance purposes if those entitlements were drawn. This comes to £300,000 - the scheme pension would crystallise £225,000 through BCE 2 (£11,250 x a relevant valuation factor of 20 added to the £75,000 that would potentially crystallise through BCE 6 on the payment of the lump sum benefit). So the amount crystallising would be 20 per cent of the £1.5 million standard lifetime allowance.

Once the scheme administrator has written to John telling him the above and has received back details of John's available lifetime allowance, the scheme administrator establishes that only the first £150,000 crystallising will be covered by the available lifetime allowance (10 per cent of £1.5 million). The remaining £150,000 would fall as a chargeable amount, if paid as anticipated by the scheme administrator as a scheme pension/lump sum combination.

Using the 20:1 relevant valuation factor the scheme administrator establishes that a scheme pension of £5,625 (which represents a crystallised value of £112,500 through BCE 2), with the maximum permitted pension commencement lump sum of £37,500, would take John up to his 100 per cent lifetime allowance level. The remaining lump sum entitlement of £37,500 will still be paid, but as a lifetime allowance excess lump sum.

John is given the option of giving up the remaining £5,625 scheme pension in return for a further lifetime allowance excess lump sum. However, the scheme uses a commutation factor of 15:1 to give John £84,375 in return for giving up this part of his pension entitlement.

John decides to take the lump sum option giving a total (gross) lifetime allowance excess lump sum of £121,875 (£37,500 + £84,375). This is the chargeable amount for the purposes of the lifetime allowance charge. After the scheme administrator deducts the 55 per cent lifetime allowance charge due from this payment John gets a net lump sum of £54,844. This net lump sum is the amount which crystallises for lifetime allowance purposes through BCE 6.

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The amount actually crystallising for lifetime allowance purposes is £204,844 (£150,000 + £54,844). This is made up of the following elements:

- the maximum pension commencement lump sum payment of £37,500 crystallising through BCE 6. This is ranked as the first BCE that occurs.
- the reduced scheme pension entitlement of £5,625 per annum crystallises £112,500 through BCE 2. This is ranked as the second BCE that occurs.
- a lifetime allowance excess lump sum payment of £54,844 crystallising through BCE 6. This is ranked as the third BCE that occurs.

So the chargeable amount arising is actually only £121,875, not the £150,000 amount anticipated originally, based on John's full scheme pension entitlement."