

## Ombudsman's Determination

Applicant	Mr I
Scheme	Lloyds Bank Pension Scheme No.1 ( <b>the Scheme</b> )
Respondent	Lloyds Banking Group Pension Trustees Limited ( <b>the Trustee</b> )

## Outcome

1. I do not uphold Mr I's complaint and no further action is required by the Trustee.

## Complaint summary

2. Mr I's complaint against the Trustee is in three parts:
  - he has requested that his Scheme benefits be paid to him as a lump sum, but the Trustee has refused;
  - he has requested to transfer his Scheme benefits to another scheme, but the Trustee has refused this too; and
  - he does not want Lloyds Banking Group (**the Bank**) involved in any way in the management of his benefits in the Scheme.

## Background information, including submissions from the parties

3. Mr I was originally a member of the Heart of England Building Society Pension and Life Assurance Scheme. This Scheme was transferred into the Cheltenham & Gloucester Building Society Pension Fund in 1995 and then transferred into the Scheme in 2001.
4. On 16 October 2017, Mr I wrote to Willis Towers Watson (**WTW**), the Scheme administrator, to inform it that the Department for Work and Pensions (**DWP**) had sent it forms to be completed in relation to his benefits in the Scheme.
5. On 14 May 2018, Mr I wrote to WTW stating that the DWP had ceased paying his state pension credit, as the forms the DWP had sent had not been completed and returned by WTW.
6. WTW responded to Mr I confirming that it had not contacted DWP with information about his pension entitlement as it had not received "trace information" back from the

DWP. It also explained that it had previously attempted to contact Mr I with regard to his pension entitlement without success, because it did not have his current address.

7. On 30 May 2018, WTW wrote to the DWP to advise it that Mr I had a pension entitlement in the Scheme.
8. On 31 May 2018, Mr I emailed WTW and requested a retirement quote. He explained that he had suffered a heart attack on 12 March 2018 and was in poor health.
9. On 13 June 2018, WTW issued Mr I's retirement quote. He was informed that his options were: either, to take a pension of £3,021.41 a year; or, a tax-free lump sum of £894.38 and a residual pension of £2,960.36 a year.
10. On 14 June 2018, Mr I confirmed to WTW that he had elected to take a pension commencement lump sum (**PCLS**) of £894.38.
11. During June and July 2018, Mr I exchanged several emails with WTW regarding his pension entitlement, lump sum options and the distress and inconvenience he had suffered.
12. On 6 July 2018, Mr I's GMP was put into payment, which was effectively his residual payment after receiving his lump sum.
13. On 24 July 2018, Mr I accepted an offer from WTW for £200 in respect of distress and inconvenience as a result of being unable to take all his benefits as a lump sum.
14. On 2 August 2018, following a request from Mr I to take all his benefits as a lump sum, WTW informed him that as he was already in receipt of his pension, it was not possible for him to receive a lump sum in lieu of his benefits. WTW stated that there were no other options available to him at the time of his retirement.
15. On 20 August 2018, Mr I emailed WTW saying that he had reviewed the Heart of England section of the Scheme Rules and spoken to legal advisers. He argued that the Trustees could grant his request for a lump sum in lieu of his pension due to his ill-health.
16. On 24 August 2018, WTW responded to Mr I, explaining that a lump sum in lieu of his pension, on grounds of serious ill health, could not be considered as he was past his normal retirement age and in receipt of his pension. Further, even if it was permissible, his life expectancy could not be medically ascertained as being less than 12 months, which was also a requirement under the Scheme Rules.
17. On 7 September 2018, Mr I wrote to the Trustee, describing his poor relations with the Bank and stating that he did not want his Scheme benefits to be managed by it.
18. On 25 September 2018, after reviewing correspondence between WTW and Mr I, the Trustee said that Mr I should have been informed by WTW, following his email of 31 May 2018, of the possibility of an ill-health commutation of his Scheme benefits. The Trustee offered Mr I the option to provide medical evidence that he would have met

the relevant requirements in May 2018. It confirmed the IDR process would be paused until such evidence could be reviewed.

19. On 10 December 2018, the Trustee informed Mr I that, having reviewed the medical evidence provided, it did not consider that he would have met the requirement for the ill-health commutation lump sum option and, accordingly, did not uphold his appeal.
20. On 13 December 2018, the Trustee issued its stage one IDR response to Mr I. It stated that although it was possible under the Scheme Rules for the Trustee to ask the Bank to agree to a transfer-out of Mr I's Scheme benefits, it did not think this was a viable option for him in practice. This was because section 69 of the Finance Act 2004, provides that the transfer must be a 'recognised transfer'; and, it is particularly difficult for the transfer of a pension in payment to qualify as a 'recognised transfer' within the terms of the legislation. In order to qualify as a 'recognised transfer', the receiving arrangement must provide a scheme pension which is at least at the same level as that provided under the Scheme. The Trustee was of the view that it was very unlikely that a defined contribution arrangement would be able to accept a transfer payment on that basis.
21. The Trustee made reference to the special circumstances Mr I had raised in his complaint. It said that as the medical evidence did not support the main requirement set out in the Finance Act 2004, namely that his life expectancy was less than 12 months; even if WTW had made him aware of this option at the time in May 2018, when he was considering his retirement options, it would not have affected his case, because he would not have qualified. Therefore, it did not think he had suffered any financial detriment as a result of WTW's omission. However, the Trustee did think there were some unnecessary delays in WTW's handling of his complaint and offered Mr I £300 in recognition of the distress and inconvenience caused.
22. On 13 December 2018, Mr I appealed. He re-iterated that he wanted his Scheme benefits to be 'paid out or transferred' to another pension scheme.
23. On 7 February 2019, the Trustee issued its stage two IDR response to Mr I. It said that, having considered the serious ill-health lump sum commutation option; and, having concluded that Mr I did not meet the requirement of this option, it did not consider that there were any further options available under the Scheme Rules which would enable it to grant his request that his benefits be paid out to him as a lump sum. It said that Mr I did not have a right under the Scheme Rules or legislation to transfer his pension to another arrangement, as the prospect of his meeting the statutory requirement was low and would necessitate expensive financial advice.
24. The Trustee acknowledged Mr I's frustration over his dealings with the Bank. It said the Scheme was a trust-based occupational pension scheme, which is separate from the Bank and is administered on behalf of the Trustee by WTW, which was also a separate legal entity from the Bank. It confirmed that the Bank was not responsible for managing his Scheme benefits; only WTW on behalf of the Trustee, was responsible for this.

25. However, the Trustee accepted that there were three potential instances of maladministration in Mr I's case. First, the failure by WTW to explore his potential eligibility to receive a serious ill-health commutation lump sum in May 2018. Second, the failure of WTW to respond to his letter of 16 October 2017. And third, the delays caused by WTW in dealing with some of his queries. It awarded £1,000 in respect of the distress and inconvenience Mr I would have suffered as result of these failings.

## **Adjudicator's Opinion**

26. Mr I'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 below:-
- The Trustee was under a legal duty to administer the Scheme in accordance with its Rules and applicable legislation. Therefore, it was only able to pay benefits to Mr I in accordance with his entitlement under the Scheme Rules. The Scheme Rules provide that the only circumstances in which a member is able to fully commute his pension entitlement are either (1) on the grounds of "triviality" or (2) where he is in serious ill health, namely that he has a life expectancy of less than 12 months. Both criteria are set out in the Finance Act 2004 and neither are permitted after the benefits have come into payment. If the Scheme were to pay out benefits other than in accordance with the Finance Act 2004, a significant tax charge would be applied to any amount paid. The Trustee does not have a general discretion to act outside the provisions of the Scheme's Trust Deed and Rules except in 'special circumstances.'
  - The Scheme Rules reflect requirements in contracting-out and tax legislation and therefore do not allow the Trustee to pay Mr I's benefits to him as a single lump sum, unless they are valued at less than £30,000 ((1) in the paragraph above); or, he is eligible to receive a serious ill-health commutation lump sum ((2) in the paragraph above). Neither of these circumstances apply to Mr I. Further, as Mr I's residual pension is made up of his GMP, legislative restrictions apply to prevent its commutation. These restrictions mean that the only circumstances in which he can commute his pension are the same as those under the Finance Act.
  - Mr I has said that the Trustee should be able to use its discretion to fully commute his pension benefits under the Scheme, in light of various factors, including his health and the stress he is experiencing due to the time taken to resolve his complaint. The Trustee does not have a general discretion to act outside the specific provisions of the Scheme Rules and the applicable legislation in order to pay Mr I's benefits as a lump sum. It has a legal obligation to administer the Scheme in accordance with its Trust Deed and Rules, which it has done.

- Mr I has said he would like to transfer his pension benefits out of the Scheme. Legislation gives members a statutory right to request a guaranteed transfer value and transfer their benefits into an alternative pension scheme which is willing to accept those benefits, up until a year before the member reaches his normal retirement age (**NRA**). After that, members do not have a statutory right to transfer their benefits. There is no sign that Mr I made a request to transfer-out a year or more before his NRA and, accordingly, he does not have a statutory right to a transfer.
- Although the Bank has discretion to allow a transfer out, the Trustee cannot ask the Bank to exercise this, in circumstances where doing so would: breach contracting-out legislation; lead to a tax charge being incurred; or, be highly unlikely to be feasible. In any event, Mr I would not suffer any financial loss as result of being unable to transfer out, as his pension would remain payable from the Scheme albeit not in the form he would like.
- Mr I has said he does not trust the Bank and does not want it involved in any way in the management of his benefits in the Scheme. however, the Scheme is a trust-based occupational pension scheme and a separate entity from the Bank. The Trustee is responsible for managing the Scheme, including Mr I's benefits in payment. The Bank has no role in this respect. In any event, Scheme members do not usually have a right to insist on who manages their pension benefits in these circumstances.
- Mr I has said that due to the delay in WTW contacting him before his NRA, he was unable to exercise his options in relation to his Scheme benefits. It is clear that WTW had attempted to contact Mr I but was unable to do so as it did not have his current address. But, even had that not been the case it remains that Mr I would not have had an option to take his Scheme benefits as a lump sum. This is because he would not have met, the requirements to commute his benefits on grounds of serious ill-health. Nor did he meet the criteria to "trivially" commute his Scheme benefits, as the total value of his benefits exceeded the £30,000 trivial commutation threshold.
- The Trustee, which is responsible for any acts and omissions by WTW, had awarded Mr I a total of £1,200 in recognition of the distress and inconvenience caused as a result of the failure by WTW to explore his potential eligibility to receive a serious ill-health commutation lump sum in May 2018, the failure of WTW to respond to his letter of 16 October 2017, and delays caused by WTW in dealing with some of his queries. This level of award was in line with the Ombudsman's published guidance where there had been maladministration which had caused "serious" distress and inconvenience.

27. Mr I did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr I provided his further comments which 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 I for completeness.

## **Ombudsman's decision**

28. Mr I says that he should be entitled to receive his Scheme benefits as a lump sum. However, I agree with the reasons given by the Adjudicator, I do not find that the Trustee has acted incorrectly. The Trustee would have been unable to pay out Mr I's Scheme benefits as a lump because their total value was more than the £30,000 triviality threshold. In addition, Mr I would not have met the serious ill-health test, because it could not be verified by a medical practitioner that he had a life expectancy of less than 12 months at the relevant time.
29. Mr I also says that he should be able to transfer his benefits out of the Scheme. However, as explained by the Adjudicator in the Opinion, Mr I has already attained his NRA and so does not have a statutory right to transfer his benefits. I therefore find that the Trustee has applied the relevant regulations correctly. While I sympathise with Mr I's frustration that he is unable to take his Scheme benefits in the way he would like, I am bound to uphold the legal and statutory requirements and, I do not find that there is any maladministration on the part of the Trustee in refusing to accede to Mr I's request.
30. Mr I believes the Trustee's offer of £1,200, for non-financial injustice, does not adequately reflect the level of distress and inconvenience he has suffered. However, I consider that the award of £1,200 is within with my published guidance for awards in respect of the maladministration. I do not find that a higher award is justified in the circumstances. The offer still being available, I leave it with Mr I to decide, on reflection, whether he wishes to contact the Trustee to accept its offer.
31. I do not uphold Mr I's complaint.

**Anthony Arter**

Pensions Ombudsman  
12 November 2019