

Ombudsman's Determination

Applicant	The Estate of Mrs S (the Estate)
Scheme	Tesco Plc Pension Scheme (the Scheme)
Respondent	Tesco Pension Trustees Limited (the Trustee)

Outcome

1. I do not uphold this complaint, and no further action is required by the Trustee.

Complaint summary

2. Mr S as the executor of the Estate, has complained that:-
 - The Trustee failed to use its discretionary power to pay Mrs S a higher benefit as a serious ill health lump sum (**SIHLS**); and
 - The Trustee failed to treat his initial complaint as a complaint under the Scheme's Internal Dispute Resolution Procedure (**IDRP**), despite his request for it to do so.
3. He would like the Trustee to compensate the Estate for the consulting fees Mrs S incurred for transferring her benefits out of the Scheme, and for the distress and inconvenience she also suffered.

Background information, including submissions from the parties

4. The complaint was initially brought to The Pensions Ombudsman (**TPO**) by Mr S on Mrs S' behalf, while Mrs S was still alive. Following Mrs S' death, Mr S continued with the complaint on behalf of the Estate.
5. On 18 March 2009, Mrs S joined the Scheme, which was a defined benefit scheme. She was contracted out of the State Earnings Related Pension Scheme (**SERPS**) from 18 March 2009 to 21 November 2015.
6. The Scheme is governed by the Rules of The Tesco Pension Builder effective from 1 June 2012 (**the Rules**). An extract from the Rules is set out in Appendix 1.
7. On 26 May 2021, Mr S informed the Pensions Team at the Scheme of Mrs S' serious ill health. The Pensions Team wrote to him on 14 June 2021 enclosing the relevant form to complete in order for Mrs S to claim her benefits. It said in the letter:

“If your medical condition is likely to be permanent, it may be possible for your pension to be paid early on an enhanced basis. For the Trustee to agree an ill health retirement they will need to see a medical report from your doctor...if you would like the Trustees to pursue this possibility, please complete the enclosed form and return it to us, so we can ask your doctor to forward a report.”

8. On 21 June 2021, Mrs S' GP provided his report to the Pensions Team. In his report he said that Mrs S' “condition from a respiratory point of view, is considered end stage, and she is now under the care of a hospice...her situation is compounded and makes it increasingly likely that the patient will live less than 12 months.”
9. Following Mrs S' request for a cash equivalent transfer value illustration, the Pensions Team provided it on the same date. The transfer value was £32,628.00 and was guaranteed for three months.
10. On 7 July 2021, the Pensions Team wrote to Mrs S saying it was sorry to hear that she was retiring due to ill health. It said:

“The Trustees have agreed we can pay you a one-off cash sum instead of a pension. The full ill health pension with effect from 7/07/2021 would be £1,370.72 per annum. The Trustees have agreed we can pay this as a once only tax-free cash sum of £7,092.50.”
11. On 9 July 2021, Mr S raised a complaint to the Pensions Team regarding the amount of SIHLS offered to Mrs S. In summary he said:-
 - He wanted confirmation that the sum of £7,092.50 was the full commutation value on the grounds of serious ill health with a life expectancy of less than 12 months.
 - If the amount was the full commutation value, he wanted the Trustee to explain why the figure was significantly lower than the transfer value.
 - Transferring out of the Scheme was not a helpful option in Mrs S' situation as it could take months to complete.
 - While the Trustee must follow the Rules, he understood that there was an allowance for 'Power of Augmentation'. He wanted the Trustee to consider this given that Mrs S' GP had confirmed that she had less than 12 months to live.
 - He had to suspend working to look after Mrs S and now required the funds to allow her some quality of life.
 - He and Mrs S found the situation quite brutal in that the Trustee advised the best option was to transfer out of the Scheme in order to access a higher value. But the transfer from a defined benefit scheme was not easy and required financial advice and time.

- The tax laws permitted a tax-free lump sum to be paid specifically on the grounds of serious ill health which was distinct from retirement on the grounds of ill health.
 - He wanted to know whether the sum offered would be the same as the benefits payable upon Mrs S' death.
 - He expected that if the value of approximately £32,000 could be moved to another scheme and released to Mrs S, then a value of the same amount should be payable to her directly.
12. On 20 July 2021, the Pensions Team wrote to Mr S acknowledging his complaint. In order to consider Mrs S' eligibility for the SIHLS, it asked her to complete the enclosed form. It said:
- “Your private pensions, whether or not currently in payment, would need to total £30,000 or less when added together with this Tesco Plc Pension in order for us to be able to pay your benefits under the trivial commutation ruling.”
13. On 23 July 2021, Mr S wrote to the Pensions Team enclosing the completed forms along with a copy of a lifetime allowance certificate. He asked that the Trustee consider this information together with his letter of 9 July 2021.
14. On 27 July 2021, the Pensions Team wrote to Mr S in response to the complaint of 9 July 2021. It said in summary:-
- Unfortunately, there were strict government rulings and calculations which form part of the Rules which the Trustee must abide by and so this restricted the option it was able to offer.
 - To calculate the SIHLS, two separate calculations would be performed. One on an unreduced basis and the other on a reduced basis to determine the higher lump sum value of the pension. It would only offer the lump sum that was higher in value than the tax-free cash lump sum that would be offered on a standard retirement quotation.
 - The transfer value represented the amount the Trustee would need to pay to a receiving scheme to enable the member to receive equivalent benefits to what they would have received in the Scheme, had they not transferred out.
 - The Scheme could offer payment of the pension wholly as a lump sum if the benefits held by the member (including other private pensions) did not exceed £30,000 in total (trivial commutation).
 - Unfortunately, having discussed the other benefits that Mrs S held, her benefits exceeded the £30,000 value set by the government, and so the Trustee had no recourse to offer her benefits as a trivial commutation.

- It might be in her best interest to transfer her pension benefits to another pension provider where there may be other options available.
 - It was unable to offer any advice and would recommend that she contact an independent financial adviser if she felt this was appropriate. However, as the transfer value was over £30,000, the rules set by the government required Mrs S to obtain financial advice prior to transferring.
15. On 13 August 2021, Mr S asked the Trustee if Mrs S could claim a SIHLS in line with section 18.1 of the Rules. He asked the Trustee to treat his complaint under stage one of the IDRP.
16. On the same date, the Pensions Team emailed Mr S saying that it could not facilitate the request for a higher SIHLS than the £7,092.50 offered on 7 July 2021 in line with the Rules. It said that the Trustee was unable to change the Rules and offer a larger SIHLS. In response, Mr S challenged the decision in that the Trustee had a discretion when deciding to pay a larger SIHLS. He also wanted to know whether the advice came from an actuary and if the calculation of SIHLS used was the same as for the trivial commutation.
17. On 19 August 2021, the Trustee responded to Mr S' complaint and said in summary:-
- While it had the ability to review the benefits offered in the Scheme, this would not be offered on a sole case basis and any review of the calculation of these benefits could constitute a revision of the full Rules.
 - It had an obligation to adhere to the Rules in all of its discretions, and the current method of calculation for all serious ill health cases did abide by the Rules.
 - The calculations for SIHLS were different from trivial commutation ones. The SIHLS would normally commute the pension as a one off lump sum but there were still death benefits payable in the event of a member's death. For example, 60% of the member's full pension revalued to date of death as a spouse's pension payable for life.
 - The trivial commutation calculation would take into account all the member's pension benefits and spouse's benefits upon payment. The trivial commutation lump sum calculation was broadly in line with the transfer value calculation.
 - The trivial commutation calculation of Mrs S' benefits in the Scheme was £28,370. When added to Mrs S' additional pensions, this took the value above the £30,000 threshold. The SIHLS offered was £7,092.50.
 - The calculations for serious ill health cases were calculated and performed initially by the Scheme actuaries, and this then became an automated process for the Administrator to action for all future serious ill health quotations. This calculation was reliant on factors that were reviewed and calculated by the actuary on an annual basis.

- It hoped the above explanation had answered Mr S' concerns. However, he had a right to raise a complaint under IDRП.
18. In December 2021, Mrs S transferred out her benefits totalling £36,005.01, from the Scheme.
19. On 21 April 2022, Mr S raised a complaint under the Scheme's IDRП. In his submissions he said in summary:-
- The Trustee did not exercise appropriate discretion for Mrs S' circumstances.
 - The Trustee twisted his wording, for example by saying he had asked it to change the Rules in Mrs S' favour.
 - In his first complaint he asked the Trustee to treat the complaint under stage one of the IDRП, but it never did. The first IDRП form he saw was in August 2021.
 - He had to take the complaint to the Financial Ombudsman Service instead.
 - He had to employ Hub Consulting who managed to do a transfer out of the Scheme. But its service cost £3,000.
 - It was distressing having to go through this process knowing that his dying wife could not access the money she had earned during her life.
 - He wanted the Trustee to reimburse the cost of £3,000 he had to pay to Hub Consulting and compensate him for the extra work and stress involved.
 - He wanted the Trustee to make a formal apology with no caveats and no hiding behind the Rules.
20. The Trustee expedited Mr S' complaint and on 24 June 2022, it sent him its stage two IDRП response. The Trustee said in summary:-
- It was sorry that his formal complaint was not treated under the IDRП when he had asked for it to be. It was a mistake. For this reason, it had immediately escalated this complaint to stage two of the IDRП instead of stage one. This was to ensure that it was focussing on it with the weight and attention it deserved.
 - In light of Mr S' comments, it had asked the Scheme actuary to check whether the SIHLS was calculated correctly. The actuary confirmed that it was calculated correctly and that there were good reasons why the sum was lower than the updated transfer value of £36,005.01, which Mrs S chose to accept.
 - The difference between the SIHLS and the transfer value was significant because they took account of different things. A transfer value did not take account of Mrs S' health and ended all other payments such as a spouse's pension.

- For this reason, it would not be legally appropriate for it to act inconsistently and unfairly when taking decisions about members' benefits. So, it legally could not make an exception for the benefits payable in respect of Mrs S.
- It had reflected on what it could learn from its mistake in this case. Extra training was being provided about handling formal complaints about lump sums and the guidance was being updated on these processes, to make sure the improvements were implemented consistently going forward.
- Given the above. It would like to offer £1,500 for the distress and inconvenience caused. This was what it would expect the Pensions Ombudsman (**the PO**) to award in these circumstances.
- It could not compensate Mr S for the £3,000 he paid to Hub Consulting. Although it understood why he chose to get help with Mrs S' transfer, it was his and Mrs S' choice to spend money on this service.

Summary of Mr S' position

21. Mr S submitted:-

- Anyone with a terminal illness should be able to get their pension in full as it is their money. Mrs S was denied getting her pension in full in her dying days.
- Another of Mrs S' defined benefit scheme agreed to pay her 73% of the fund value immediately and it retained 27% for the spouse's pension. Mrs S was happy with that.
- The Trustee had "skewed" the complaint as it should have been a complaint that covered all members that may have a terminal illness.
- The Trustee "misquoted" the complaint because he and Mrs S had not asked for the SIHLS to be increased to the full transfer value.
- Mrs S felt cornered as the only credible way to obtain her money was to follow the Trustee's suggestion to transfer her benefits out of the Scheme.
- The Trustee did not behave responsibly and fairly in Mrs S' case. This was neither right nor fair.

Summary of the Trustee's position

22. It considered it had exercised its powers relating to Mrs S' request for a SIHLS under the Rules, correctly.
23. It also confirmed with its actuaries that the amount of Mrs S' SIHLS had been calculated in line with the Rules and law.
24. It did not consider it would have been legally appropriate for it to make an exception in this case and increase Mrs S' SIHLS to a higher amount.

25. Regarding mischaracterising the complaint, the summary of the points in stage two of the IDRPs, was based on its (the Trustee's) understanding of what Mr S was complaining about. However, it was sorry if that summary did not fully capture the complaint.
26. The same approach taken with the payment of SIHLS and the difference in values would apply to any member who was seriously ill and looking to take their benefits in the Scheme.
27. Its understanding was that giving extra benefits of any amount would be an 'augmentation' under the Rules. It may only augment the benefits if asked by Tesco and set conditions were met.
28. Although it was very sad to hear of Mrs S' situation, it did not consider it would have been appropriate for it to have used its augmentation power to increase the amount of the SIHLS. This would not have been consistent with other SIHLS cases.
29. It generally allowed a member suffering from serious ill health to take their benefits as a lump sum, but it must calculate and administer members' benefits in line with the Rules and law.
30. There are a number of benefit options available to members who are seriously ill, provided they meet the conditions; (i) a SIHLS, (ii) an ill health early retirement pension, (iii) a transfer-out of the benefits, or (iv) in some cases, depending on the amount of the benefit, a trivial commutation. Each of these options are not directly comparable as they require different calculations.
31. It also considered whether Mrs S' benefits were under the £30,000 limit for trivial commutation, but they were not.
32. The actuaries independently checked the amount of the SIHLS offered and confirmed it was correct. However, it felt it would not be helpful or appropriate to share the underlying actuarial calculations with Mr S, but it would certainly do this if this would be useful to him. However, the IDRPs response did clearly explain that the amount had been checked and set out why there was a difference between the SIHLS and transfer value.
33. Regarding the fact that Mrs S was paid a higher amount of benefit under another scheme, it was not appropriate for it to comment on how a different pension scheme administered her benefits. Different schemes have different rules and amount/type of benefits.
34. It did not "suggest" or recommend to Mrs S that she should transfer her benefits from the Scheme. This would have been financial advice, which it was not authorised to provide. Instead, it simply let Mrs S know that transferring out of the Scheme was one of the ways in which she could take her benefits.
35. As her benefits were over £30,000, by law she had to take independent financial advice, and she would have needed to pay for the advice process regardless.

36. While it was not clear whether the £3,000 fees paid related only to providing the legally required advice, or also covered support with the transfer process more generally, it was ultimately Mrs S' choice to pay those fees.
37. It had negotiated special rates through Origen for Scheme members needing financial advice to transfer out. Details of this were included in Mrs S' transfer-out pack. This explained that the cost was likely to be less than other financial advisers. It did not appear that this option was pursued by Mrs S. So, it was not appropriate for it to compensate for these fees.
38. Regarding the £1,500 compensation offered to Mr S as a gesture of goodwill, in relation to not treating the complaint under the IDRPs, the offer was still available, and it would be in full and final settlement of any claims Mr S may have against it.

Adjudicator's Opinion

39. The 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, in paragraphs 40 to 50.

Payment of a higher SIHLS

40. Under the Rules, the Trustee may allow the Member to give up all of his or her benefits under the Scheme in return for a lump sum. However, this would only be allowed if payment of a "serious ill-health lump sum" was permitted under Part 4 of the Finance Act 2004 [**the 2004 Act**] and the Contracting-out Regulations. So, although, the Trustee had a discretion to pay all of a member's benefits in return for a lump sum, this would only be permissible if the conditions were met under the Part 4 of the 2004 Act and the Contracting-out Regulations. The Adjudicator acknowledged Mr S' argument that the Trustee could have made a decision to pay Mrs S a higher SIHLS. However, Mrs S was contracted-out of SERPS. This meant that there were other conditions to be considered when calculating the value of her SIHLS.
41. As the Scheme was a contracted-out final salary scheme, the Trustee had a legal obligation to follow Contracting-out Regulations. Notwithstanding the payment of SIHLS, the Trustee had to provide for a spouse's pension/survivor's pension after Mrs S died. This was a requirement under the Rules and under the HMRC's Registered Pension Schemes Manual (**RPSM**) summarising the Finance Act requirements.
42. The Contracting-out Regulations (see Appendix 2 below) prevailed over the Rules.
43. The RPSM stated that:

"Where because of contracting-out requirements, dependants' benefits have to be retained under the scheme, then either before or at the time a serious ill-health lump sum is paid, the dependants' benefits might be moved to a separate arrangement to satisfy the above conditions."

44. Further, under Regulation 18 of The Occupational Pension Schemes (Schemes that were Contracted-out) (No2) Regulations 2015 (SI 2015/1677), the Scheme was required to “continue to provide for a survivor’s pension notwithstanding the payment of a lump sum to the earner.”
45. Having considered all the above, it was the Adjudicator’s view, that the Trustee had followed the Rules and the legislation correctly. It was not unreasonable for the Trustee to consider the benefits it would have to pay to Mrs S’ beneficiaries, following her death, in its calculation of Mrs S’ SIHLS.
46. The Adjudicator appreciated Mr S and Mrs S’ situation at the time must have been very difficult as she was suffering from a terminal illness. However, as explained in paragraphs 40 to 46 above, the Adjudicator did not identify any maladministration by the Trustee in not agreeing to pay Mrs S a higher SIHLS. The Adjudicator noted that Mr S said that another pension scheme agreed to pay a higher lump sum to Mrs S. However, each scheme was governed by its own rules and had different types of arrangements.
47. The Adjudicator was satisfied that the Trustee provided options to Mrs S at the time and explained adequately why it could not pay her a higher SIHLS than it had offered to her. It would have been more helpful if the Trustee had explained its reasoning for not paying Mrs S a higher SIHLS in more detail at the time when Mr S complained. However, the Trustee’s failure to do so did not amount to maladministration.

Transfer fees

48. Regarding the fees incurred by Mr S and Mrs S for the transfer out of the Scheme, the Adjudicator appreciated that Mr S and Mrs S felt that Mrs S’ only option to achieve the maximum benefits was to transfer out of the Scheme. However, as the value of Mrs S’ Scheme benefits was over £30,000, by law, Mrs S was required to obtain financial advice. The Trustee could not be held responsible for reimbursement of the fees. It was Mr S and Mrs S’ decision to transfer out and use the service of Hub Consulting in relation to the transfer.

The IDR process

49. Regarding Mr R’s initial complaint not being treated as an IDR complaint, the Trustee apologised for this error. It also offered Mr S, in his capacity as the representative of the Estate, £1,500 for any distress and inconvenience this error may have caused. Based on the guidance on non-financial injustice published on TPO’s website, it was the Adjudicator’s view that the PO would not direct the Trustee to make a higher award to Mr S, should his complaint be formally determined.
50. Mr S did not accept the Adjudicator’s Opinion, and the complaint was passed to me to consider. Mr S did not provide any new arguments, he reiterated his comments and disagreed with some of the Adjudicator’s interpretation of the facts. Mr S’ response to Opinion does not change the outcome. I agree with the Adjudicator’s Opinion.

Ombudsman's decision

51. Mr S said that the Trustee should have used its discretion to pay Mrs S a higher SIHLS than it offered to her. The Rules permit the Trustee to use its discretion to pay all of member's benefits in return for a lump sum, if the conditions under Part 4 of the 2004 Act and the Contracting-out Regulations are met. As Mrs S was contracted out of SERPS the Trustee had to provide for a spouse's /survivor's pension after Mrs S died. This was a requirement under the Rules and under the RPSM summarising the Finance Act requirements.
52. I empathise with the position Mr S and Mrs S were in at such a difficult time and acknowledge that it would have been upsetting for Mrs S to learn that she was not entitled to a higher SIHLS. However, I have seen no evidence of maladministration by the Trustee in dealing with this matter.
53. Regarding the fees, as explained by the Adjudicator, the Trustee cannot be held responsible for reimbursement of them. It was Mrs S' decision to transfer her benefits out of the Scheme and to use the services of Hub Consulting to provide advice and facilitate the transfer.
54. While I note that Mr S disagreed with some of the facts in the Opinion he did not provide any evidence to contradict the Adjudicator's interpretations. I am satisfied that the facts as presented in the parties' submissions were properly presented.
55. I find that the Trustee's offer of £1,500 to Mr S, in his capacity as the executor of the Estate, for the distress and inconvenience caused by not treating the initial complaint under the IDRPs, is reasonable in the circumstances. Mr S may wish to contact the Trustee directly regarding the offer.
56. I do not uphold this complaint.

Camilla Barry

Deputy Pensions Ombudsman
16 January 2025

Appendix 1

1. 18.1 Discretionary benefits

Serious ill-health lump sums

“It may be that the Trustee receives evidence from a registered medical practitioner that a Member is expected to live for less than one year. If this happens before the Member starts to receive benefits from the Scheme, the Trustee may allow the Member to give up all of his or her benefits under the Scheme in return for a lump sum. However, this will only be allowed if payment of a “serious ill-health lump sum” is permitted under Part 4 of the Finance Act 2004 and the Contracting-out Laws.

The Trustee will calculate the lump sum on a basis decided by the Trustee, after considering advice from an actuary.

Note: The Finance Act permits payment of a “serious ill-health lump sum” only if any benefits payable on the Member’s death are first moved to a new arrangement within the Scheme. The Trustee will record the creation of this new arrangement as it thinks fit.”

General rules about benefits

Contracting-out

“The Trustee will operate the Scheme in accordance with the Contracting-out Laws that apply to salary-related contracted-out schemes.

...

In spite of Rules 4.3 (early retirement) and 9.2 (early pension), a Member cannot choose a pension that starts before Normal Pension Age unless the Trustee is satisfied that the pension will satisfy the requirements of this Rule without any additional cost to the Scheme.

This Rule overrides all other provisions of the Scheme, except those that are in accordance with the Pension Schemes Act 1993. However, it does not require any pension to be paid to any person in any circumstances where the Scheme is not required to provide a pension for that person under the Contracting-out Laws.”

Appendix 2

1. HMRC's Registered Pension Schemes Manual (RPSM) summarising the Finance Act requirements.

PTM063400 Payment of a serious ill-health lump sum

“For payments made on or after 16 September 2016, the payment must extinguish all uncrystallised rights under the arrangement. If no benefits have yet been taken under the arrangement (none have crystallised so far), this means that all of the rights in the arrangement must be commuted and paid as a serious ill-health lump sum. If only some benefits have previously crystallised, then the full remainder of uncrystallised rights under the arrangement must be commuted for the serious ill-health lump sum.

The reference to extinguishing the member's entitlement to benefits or to uncrystallised rights under the arrangement is to all the benefits or rights that could reasonably have been known about at the time of the payment. The lump sum will not cease to be an authorised payment purely because further entitlement is later created that could not have been known about at the time of the initial payment, for example, through a pay revision. Where because of contracting-out requirements, dependants' benefits have to be retained under the scheme, then either before or at the time a serious ill-health lump sum is paid, the dependants' benefits might be moved to a separate arrangement to satisfy the above conditions. This requires no more than documenting the creation of a new arrangement in a manner which is considered acceptable under the scheme.”

2. Occupational Pension Schemes (Schemes that were Contracted-out) (No2) Regulations 2015 (SI 2015/1677)

Part 3 Additional Requirements in Relation to Rights Attributable to Contracted-out Employment on and after 6th April 1997.

“18 Payment of a lump sum instead of a pension

(1) A relevant scheme may not provide for the payment of a lump sum instead of a pension that is attributable to section 9(2B) rights, unless the payment to be made is authorised under section 164 of the Finance Act (authorised member payments) and the payment is—

(a) permitted by the lump sum rule in section 166 of the Finance Act and qualifies as—

- (i) a pension commencement lump sum for the purposes of paragraph 1 of Schedule 29 to that Act;
 - (ii) a serious ill-health lump sum for the purposes of paragraph 4 of that Schedule;
 - (iii) an uncrystallised funds pension lump sum for the purposes of paragraph 4A of that Schedule;
 - (iv) a trivial commutation lump sum for the purposes of paragraph 7 of that Schedule; or
 - (v) a winding-up lump sum for the purposes of paragraph 10 of that Schedule;
- (b) permitted by the lump sum death benefit rule in section 168 of the Finance Act and qualifies as a trivial commutation lump sum death benefit for the purposes of paragraph 20 of Schedule 29 to that Act; or
- (c) made by a registered pension scheme (within the meaning of section 150(2) of the Finance Act), is a payment that is described in Part 2 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 (commutation payments), and is made to or in respect of a member.
- (2) Where, under the scheme—
- (a) an earner qualifies for a lump sum payment on the ground of serious ill-health; and
 - (b) the earner's widow, widower or surviving civil partner qualifies for a pension (“a survivor's pension”), the scheme is to continue to provide for a survivor's pension notwithstanding the payment of a lump sum to the earner.”