

## Ombudsman's Determination

Applicant	Ms E
Scheme	The People's Pension ( <b>the Scheme</b> )
Respondent	The People's Pension Trustee Limited ( <b>the Trustee</b> )

## Outcome

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

## Complaint summary

2. Ms E's complaint concerns the Trustee's refusal to allow her to take her pension from the Scheme as a trivial commutation lump sum.

## Background information, including submissions from the parties

3. Ms E is a member of the Scheme, which is an occupational pension arrangement. Ms E serves as the sole controlling director of the sponsoring employer of the Scheme (**the Employer**).
4. The role of a sponsoring employer is to establish and maintain a pension scheme for the benefit of its employees. It is responsible for making contributions to the pension scheme, ensuring the scheme's financial health, and compliance with regulatory requirements.
5. On 10 November 2020 and again on 29 March 2021, the Trustee provided Ms E with retirement quotations which outlined the pension benefits she had accrued in the Scheme. These quotations included a booklet titled "Your options at retirement", which detailed the general retirement options available to Scheme members (**the Booklet**). The options listed in the Booklet included taking a pension as a trivial commutation lump sum or transferring pension benefits out of the Scheme to another provider.
6. Trivial commutation is an option whereby a pension scheme member may take their pension as a one-off lump sum payment provided that certain conditions are met. The HM Revenue & Custom's Pensions Tax Manual published on 27 March 2015 (**the**

**HMRC Manual**) details the conditions a pension scheme member needs to meet to be eligible for trivial commutation.

7. Specifically, PTM063700 of the HMRC Manual states that an authorised trivial commutation payment can only be made to a member that is at 'arm's length' from a sponsoring employer of the scheme paying the trivial commutation lump sum (See Appendix 1).
8. Also, PTM063270 of the HMRC Manual states that a member is said to be at 'arm's length' from a sponsoring employer if that individual is not a controlling director of the sponsoring employer of the scheme paying the trivial commutation lump sum. It further clarifies that a controlling director is someone who controls 20% or more of the ordinary share capital of the company (See Appendix 2).
9. Following the provision of the retirement quotations, Ms E decided to take her pension from the Scheme in the form of a trivial commutation lump sum. However, the Trustee refused her request.
10. On 21 October 2021, Ms E raised a complaint under the Scheme's Internal Dispute Resolution Procedure (**IDRP**) because she was dissatisfied with the Trustee's decision to not allow her to take her pension from the Scheme as a trivial commutation lump sum.
11. The Trustee considered Ms E's complaint under both stages of the IDRPP and decided not to uphold her complaint. It explained that the HMRC Manual clearly stated that if a pension scheme member was a controlling director of the sponsoring employer of the scheme paying the trivial commutation lump sum, then that specific member would be considered ineligible to take their pension as a trivial commutation payment. Taking this into account, the Trustee concluded that as Ms E was the sole controlling director of the Employer, she could not take her pension from the Scheme as a trivial commutation payment.

## **Adjudicator's View**

12. Ms E'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 in paragraphs 13 to 15.
13. Ms E complained that the Trustee had refused to allow her to take her pension from the Scheme as a trivial commutation lump sum. In the Adjudicator's opinion, Ms E's complaint could not be upheld as she was ineligible to receive a trivial commutation payment from the Scheme in accordance with the HMRC Manual.
14. Ms E was the sole controlling director of the Employer, and therefore was ineligible to trivially commute her pension from the Scheme as per PTM063700 and PTM063270 of the HMRC Manual. There was no discretion to allow such a payment to proceed.

15. Consequently, the Adjudicator was of the view that the Trustee's decision to refuse Ms E's request to take her pension from the Scheme as a trivial commutation payment was correct and in line with the HMRC Manual.
16. Ms E did not accept the outcome outlined in the Adjudicator's View and asked her to reconsider. Ms E said that she:
  - had diligently made pension contributions to the Scheme with the expectation of receiving a pension at retirement and if it was determined that she was ineligible for trivial commutation, all of her contributions would be lost; and
  - does not have any other pension pots available to her to rely on during her retirement.
17. The Adjudicator responded to Ms E, acknowledging her disappointment. However, she said that:-
  - The absence of other pension pots was irrelevant when considering whether or not Ms E was eligible for trivial commutation from the Scheme.
  - Ms E could not take her pension from the Scheme as a trivial commutation payment as she was ineligible for trivial commutation in accordance with the HMRC Manual.
  - The Trustee was required to follow the provisions outlined in the HMRC Manual in relation to trivial commutation. It was not in a position to make exceptions based on individual circumstances. Any deviation from the HMRC Manual on the part of the Trustee would constitute a breach of the HMRC Manual.
  - Ms E was entitled to receive a pension from the Scheme, but not as a trivial commutation lump sum. It was open to Ms E to transfer her pension benefits from the Scheme to another pension arrangement.
18. Ms E remained dissatisfied, and her complaint was passed to me to consider, however, I agree with the Adjudicator's View.

### **Ombudsman's decision**

19. Ms E's complaint concerns the Trustee's refusal to allow her to take her pension from the Scheme as a trivial commutation lump sum.
20. I will only make directions on cases if maladministration can be found in relation to the complaint. In this instance, I find that there has been no maladministration.
21. A trivial commutation lump sum was incorrectly offered by the Trustee to Ms E on 10 November 2021 and 29 March 2021. Although I understand Ms E's disappointment with the fact that she cannot receive her pension from the Scheme as a trivial commutation payment, I agree with the Adjudicator that the Trustee's decision is correct. While I accept that misinformation was provided, and it could be argued that

maladministration has occurred, I am not convinced that the severity warrants any payment for distress and inconvenience.

22. Having reviewed the provisions outlined in the HMRC Manual, I am satisfied that the Trustee has correctly determined that Ms E does not satisfy the necessary criteria to qualify for a trivial commutation payment from the Scheme. The HMRC Manual explicitly prohibits Ms E, as a controlling director of the Employer, from receiving payment of a trivial commutation lump sum in respect of the pension benefits she has accrued in the Scheme. Consequently, I find that the Trustee has reasonably refused to allow Ms E to take her pension from the Scheme as a trivial commutation payment.
23. The HMRC Manual is prescriptive, and the Trustee does not have the authority to exercise any discretion. The Trustee is required to comply with the HMRC Manual, not doing so would result in it making an 'unauthorised payment' that could lead to tax penalties being imposed on the Scheme and Ms E.
24. Although, the Finance Act 2004 allows pension schemes to offer the option to provide trivial commutation it is not mandatory. As there is no legal requirement for the Trustee to provide trivial commutation lump sums, the Trustee has not done anything wrong in refusing Ms E's request, especially since she does not meet the criteria outlined in the HMRC Manual.
25. Further, while Ms E cannot take her pension as a trivial commutation lump sum payment from the Scheme, there is nothing to stop Ms E from transferring her pension to another provider that would offer trivial commutation. I therefore do not agree that failure to pay her a trivially commuted lump sum would result in her losing her pension entitlement.
26. I do not uphold Ms E's complaint.

**Anthony Arter CBE**

Deputy Pensions Ombudsman

5 July 2024

## Appendix 1: HMRC Pensions Tax Manual Extract

### “PTM063700 - Member benefits: lump sums: small pension payments

#### Payments under occupational or public service pension schemes

...If a member has a small amount of benefit rights in a registered pension scheme, and that scheme is either:

- a **public service pension scheme**
- an **occupational pension scheme**

it is possible for those benefit rights to be paid as an authorised member payment in the form of a one-off lump sum to the member without the need for that lump sum to satisfy the tougher test for a trivial commutation lump sum. (The requirements for a trivial commutation lump sum are set out in [PTM063500](#).) The conditions that need to be met instead, for such a small lump sum to be an authorised member payment under regulation 11 are that:

- the payment is made on or after 1 December 2009, and
- the payment is made to a member who has reached the age of 55 (age 57 from 6 April 2028) or is entitled to take their benefits before age 55 (age 57 from 6 April 2028) because they either meet the ill-health condition (see [PTM062100](#)) or have a protected pension age (see [PTM062210](#)), and
- the member is at ‘arm’s length’ from any sponsoring employer of:
  - the scheme paying the small lump sum, and
  - any other scheme that is both an occupational pension scheme and a registered pension scheme, which relates to the same employment as the paying scheme relates to (any ‘related scheme’), and ...

A member is said to be at ‘arm’s length’ from a **sponsoring employer** as described at [PTM063270](#) ...”

**Appendix 2: HMRC Pensions Tax Manual Extract**

**“PTM063270 - Member benefits: lump sums: pension commencement lump sums (PCLS): payment of pension commencement lump sum after death**

... A member is said to be at ‘arm’s length’ from a sponsoring employer if that individual is

- not a ‘controlling director’ of a sponsoring employer (in relation to either the paying scheme or any related scheme), and
- not ‘connected’ with a person who is a controlling director of a sponsoring employer (in relation to either the paying scheme or any related scheme).

A person is a ‘controlling director’ of a sponsoring employer if the person is a director of the company and is able to control 20 per cent or more of the ordinary share capital of the company (as set out in section 417(5)(b) of the Income and Corporation Taxes Act 1988)”...