

PENSION SCHEMES ACT 1993, PART X
DETERMINATION BY THE DEPUTY PENSIONS OMBUDSMAN

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| Applicant | Professor Kevin Thompson |
| Scheme | Teachers' Pension Scheme (TPS) |
| Respondent(s) | Teachers' Pensions (TP) |

Subject

Professor Thompson's complaint against TP is that they incorrectly calculated his notional salary which resulted in their provision of incorrect retirement figures to him. He says that this caused him financial loss.

The Deputy Pensions Ombudsman's determination and short reasons

The complaint should not be upheld against TP. This is because; although the provision of incorrect information by TP to Professor Thompson was maladministration, he had not relied on the incorrect information in a way that was detrimental to him and TP had offered him reasonable compensation.

DETAILED DETERMINATION

Material Facts

1. Professor Thompson's normal retirement date under the TPS was 9 August 2012, age 60.
2. He left pensionable employment on 26 August 2004 and was subsequently employed by the Hong Kong Academy for Performing Arts. He elected to pay combined employee and employer contributions to purchase added years of service for the period following his date of leaving. The notional salary on which to base the contributions according to the TPS Regulations should be calculated as his salary he received from his last employer at date of leaving increased annually in line with the retail price index, RPI. The notional salary after RPI increases may be used in the calculation of final average salary at retirement.
3. TP wrote to Professor Thompson on 9 January 2007 saying that Darlington College of Arts, his previous employer, had reconfirmed his salary as £98,000 and that with added annual increases it would continue to apply during his payment of combined contributions.
4. Professor Thompson emailed TP on 14 May 2009 saying,

“I wonder if...you might be able to give me some idea of what my annual pension, based on notional annual salary, and current figures,would be? I realise that this can only be notional at this stage...”
5. TP sent an email response on 21 May 2009 to Professor Thompson's email of 14 May saying,

“ Unfortunately I cannot give you the calculation as we will not know what the factor for the final notional salary will be until next year.

You can ...calculate an estimate yourself based on your own assumptions using the retirement calculator on our website ...”
6. TP provided Professor Thompson with an estimate of his retirement benefits on 8 March 2011. This showed pensionable service of 37 years 166 days, average salary of £144,726.71, an annual pension of £67,758.86 and a lump sum of £203,276.59. The notes attached to the statement said,

“ The figures in this statement are for illustration only...this statement confers no rights to the benefits quoted. Please read the on-line frequently asked questions that give information on

what action to take if you think your service details may be incorrect.”

7. Professor Thompson wrote to TP on 1 March 2012 saying,

“Could you send me an up to date statement of my ... pension as I will be returning to the UK when my contract expires on 31 August 2012 and when I return from employment.”
8. Professor Thompson wrote to TP on 30 March 2012 saying,

“ My pensions adviser has looked at the estimate and advised all looks as it should be. There are just three questions, if I may just clarify with you, as follows:

...How the average salary figure of £144,726.71 is derived?

Please note that I shall be retiring on August 2012. I shall be returning to the UK in July. As I am presently working overseas, would you wish me to confirm this in the form of a formal letter?..”
9. TP wrote to Professor Thompson on 16 April 2012 in response to his letter of 30 March. They said that the service and salary details confirmed from his employer was 1 April 2010 to 31 August 2010 and £158,286 respectively. Also that the average salary of £144,726.71 was calculated by using the last 365 days of salaries.
10. Professor Thompson completed an application form to receive his normal retirement benefits. This was received by TP on 10 May 2012. He then wrote to TP on 25 May 2012 in response to their letter of 16 April still querying the salary figures.
11. TP wrote to Professor Thompson on 21 June 2012 saying that the average salary of £144,726.71 was the final 365 days and that the information shown in their letter of 16 April 2012 was correct. They also said that they were aware that the £158,286 salary figure was in respect of current added years. They mentioned that they had requested that the relevant area contact Professor Thompson to show how the increase had been applied at 1 April 2010 as this would appear to be the crux of his concern.
12. Professor Thompson wrote to TP on 18 July 2012 in response to their letter to him of 21 June saying,

“ ... My pension advisor has suggested that I seek further advice on the figure which you correctly identify of £158,286 as being the main issue. I understand from your informative letter that you

have kindly requested the relevant area to contact me...i look forward to hearing from them.

...the figure quoted is important as it contributes to the calculation of my pension and lump sum. As it stands, the quoted figure would produce an annual pension of approximately £2,500 more (and a lump sum of approximately £7,500 more). As this will be starting in September, naturally, I should prefer to have the matter settled well before then. Could you please check where we are with this now?"

13. Professor Thompson obtained an on line statement from the TP website on 28 July 2012. The statement showed pensionable service of 37 years 166 days, average salary of £144,726.71, an annual pension of £72,569.74 and a lump sum of £ 217,709.23. The notes attached to the statement said,

“ The figures in this statement are for illustration only...this statement confers no rights to the benefits quoted. Please read the on-line frequently asked questions that give information on what action to take if you think your service details may be incorrect.”
14. TP wrote to Professor Thompson on 10 August 2012 saying that his retirement benefits were calculated and ready for payment. They enclosed a statement showing pensionable service of 37 years 166 days, average salary figure of £136,415.82, an annual pension of £63,867.84 and a lump sum of £191,603.49 payable from 9 August 2012.
15. TP wrote to Professor Thompson again on 13 August 2012 and told him that an incorrect factor was applied to his notional salary increase for the financial year 2010/2011 which resulted in an incorrect salary being used to calculate his required payments. They said that this resulted in an overpayment of both his TPS contributions and additional pension payments made in respect of his added years election. They also said that a refund of outstanding contributions paid in respect of the finalisation of his past added years election was also due because the salary on which the costs were based had reduced. A total refund payment of £6,233.57 would be credited to his bank account.
16. TP wrote to Professor Thompson on 9 November 2012 saying that there was an error in the calculation of his notional salaries for the years 2008, 2009, 2010 and for the period from April to August 2010. This resulted in notional salaries being greater than was allowed for under the TPS Regulations. They said that contributions he made were collected on the incorrect high notional salaries and

that a refund was due to be paid to him. Also that unfortunately any estimates of retirement benefits that he received were overstated. They mentioned that an overpayment balance of his retirement benefits of a pension of £656.84 net and a lump sum of £9,370.15 had arisen after the refund of excess contributions paid, plus interest of £670 was offset against the overpayment. They also mentioned that in addition to the interest payment TP would pay him £200 for the distress and inconvenience caused to him. They enclosed calculation sheets showing how the refund of the excess contributions and the average salary figure of £122,379 had been calculated. Appendix 2 said,

“ Summary of overpayment

Overpayment of lump sum: = £19,714.45

Less

Refund of contributions = £9,674.30

Interest = £670.00

Net Overpayment = £9,370.15

Overpayment of pension = £1,095.24

Less

Tax adjustment = £438.40

Net Overpayment = £656.84

Total Overpayment = £10,026.99”

17. Professor Thompson received a revised retirement benefits statement from TP on 12 October 2012. This showed a pensionable service of 37 years 166 days, average salary figure of £122,379.74, a salary of reference of £98,000, an annual pension of £57,296.35 and a lump sum of £171,889.04 payable from 13 August 2012. It also included calculations of his refund of contributions and said that the total of contributions to be refunded was £15,907.87 of which £6,233 had already been refunded, leaving a balance of £9,674.30.
18. TP sent Professor Thompson an invoice dated 9 November 2012 detailing a remittance advice for the payment of £10,026.99.
19. TP have increased their offer of compensation to Professor Thompson for their errors to £1,500 including the interest payment of £670 previously offered.

Summary of Professor Thompson's position

20. The miscalculation by TP of his notional salary meant that he had to pay excessive contributions amounting to £15,907.87 for which he has not been properly compensated.
21. He had queried the retirement figures he received from TP with them on more than one occasion. As an example he wrote to TP on 14 May 2009 to query the figures and he received a response from them on 21 May 2009 saying that they could not provide the calculation as they would not know what the factor for the final notional salary would be until the following year.
22. TP had a duty to check the accuracy of their retirement calculations and failed to spot their errors. In their letters of 16 April and 21 June 2012 they indicated that incorrect notional salary figures were verified.
23. As TP created a legitimate expectation as to the value of his retirement benefits, they should be debarred from recovering any overpayment of benefits made to him as a result of their errors.
24. He relied upon the incorrect retirement estimates and made a decision to retire that he would not have made had he been aware of the correct position. His decision to retire was taken from 8 March 2011 on receiving TP's retirement estimate of that date and after he sought final confirmation from an independent financial adviser in March 2012 that retirement was financially possible from August 2012. If he had been aware of the correct level of pension benefits he would have chosen to reapply and continue working in Honk Kong. Therefore TP should be liable for any loss of salary from September 2012 to June 2013 that has occurred as a result.
25. His letters to TP in May and July 2012 querying the salary figures were sent after his decision to retire was taken.
26. TP had increased the notional final salary each year since 2005. TP also stated in their letter to him of 9 January 2007 that his final salary would be subject to added annual increase. It was not the case that there was a sudden and significant increase in his notional salary in March 2011. So he was unaware that the figures were obviously incorrect. He was paying contributions based on these notional salary figures, so it was not unreasonable to expect that the salary that his contributions were based on was indeed correct.

27. If he had made the decision to retire irrespective of his retirement income why would he have returned to employment.
28. TP should compensate him for the distress and inconvenience caused by their errors. This should include but not be limited to the cost of removals, storage etc., necessitated by his moving to Macau in July 2013.
29. The standard term of employment at the Academy was 2-4 years. He had already been granted a further 4 years' term in addition to his original 4 years contract. He was invited to reapply for a further 4-year term, but declined this offer early in 2012. The option is now no longer open and cannot be revisited.

Summary of TP's position

30. Professor Thompson received an estimate on 8 March 2011 showing reckonable service of 37 years 166 days with an average salary of £144,726.71 and showed the salary for the period from 1 April to 31 August 2010 as £158,286. His salary on leaving employment was confirmed to him as being £98,000. This represents an increase of over 60%. Inflation during this six year period was in the region of 20%. Professor Thompson should have realised immediately that the salary figure in the 8 March 2011 estimate was incorrect and queried this with TP at that time. If he had the error could have been rectified over a year before his retirement.
31. Professor Thompson in his letters to TP of 30 March and 25 May 2012 queried the two incorrect salary figures but regrettably the responses from TP of 16 April and 21 June 2012 simply assumed that the salary figures already in Professor Thompson's service record were correct.
32. Professor Thompson is currently in receipt of the benefits to which he is entitled.
33. Professor Thompson had reached normal retirement age. He had been living in Hong Kong for 8 years, separated from his wife and with frail elderly parents to consider it is likely that he had planned long term to retire from his post in Hong Kong at age 60.
34. Professor Thompson's employer had begun recruitment of his successor in January 2012, so he must have decided to leave well before this date.

35. The excess contributions made by Professor Thompson will be refunded and an interest payment of £670 was offered to him by TP in compensation but he declined the offer. After further consideration TP have revised their offer to £1,500 to include the interest payment of £670.
36. TP does not accept that it is responsible for any alleged loss of salary from September 2012, as it is not clear that his employment would have continued.
37. TP does not accept that it is responsible for removal costs incurred by Professor Thompson taking up a post in Macau. He was free to move to Macau or not. Given the level of the retirement benefits payable to Professor Thompson there was certainly no pressing necessity for the move other than his desire to achieve a certain standard of living.

Conclusions

38. It is not disputed that TP gave Professor Thompson incorrect information about his notional salary and retirement benefits on more than one occasion. The provision of incorrect information by TP amounts to maladministration by them. However, this does not confer on Professor Thompson the right to those incorrectly quoted benefits. This is because he was only entitled to the benefits calculated in accordance with the TPS Regulations.
39. Professor Thompson says that he relied upon the incorrect retirement estimates and would not have made a decision to retire, nor left his post in Hong Kong had he been aware of the correct position. He says he was invited to reapply for a further 4-year term, but declined this offer early in 2012. However, I do not consider that it was reasonable for Professor Thompson to have made his election to retire in 10 May 2012 from age 60 based on the incorrect retirement estimate that he received prior. This is because his retirement benefits were not finalised at that stage. TP had stated in their retirement estimates of 8 March 2011 that the figures shown were for illustration only and conferred no rights to the benefits quoted. I note Professor Thompson's comments that TP had increased the notional salary annually from 2005 so he was unaware that the figures were obviously incorrect. However,, I take the view that he should have been aware of the significant difference in the salary figures quoted in the estimates of 8 March 2011 and 28 July 2012 compared to his salary at date of leaving of £98,000 which was confirmed to him by TP on 9 January 2007 and that

he could not turn a blind eye to it. He clearly had doubts about the salary figure being used in his retirement estimates as he continued to query it with TP on 25 May 2012 and 18 July 2012. So even if Professor Thompson was wrongly told by TP that the estimates in question were correct, he still could not ignore the fact that the estimates were incorrect, particularly as he did not receive a response from TP to his queries about the salary figures prior to taking his retirement benefits.

40. I think that there were significant contributory factors other than his receiving the incorrect retirement figures which led to his decision to take retirement when he did. In his letter to TP of 1 March 2012 he clearly indicates that he would be returning to the UK when his contract expired on 31 August 2012. He also says that he sought final confirmation from an independent financial adviser that retirement was financially possible in March 2012. Professor Thompson submits that his letters to TP in May and July 2012 querying the salary figures were sent after his decision to retire was taken. So noticeably he had made this decision to retire prior to March 2012 and while he still had queries about the figures. This correlates with TP's statement that Professor Thompson's employer had begun recruitment of his successor in January 2012, so he must have decided to leave his post well before this date and before receiving confirmation from his financial adviser in March 2012 that retirement was feasible.
41. In addition, from the outset Professor Thompson had considered taking his benefits at his normal retirement date and the retirement estimates he had received were on that basis. Although he had not made his decision to retire at that stage, for the reasons I have already mentioned I find that it was more likely than not that he would have taken his retirement benefits irrespective of receiving the incorrect information about his retirement benefits. Consequently, I do not consider his claim for loss of future earnings from September 2012 to June 2013 was reasonable. It follows that I also do not consider that Professor Thompson's decision to relocate to Macau could reasonably be attributable to any expectation that he may have had of receiving the incorrectly quoted pension payments from the date of his retirement. There clearly would have been other contributory factors involved in that decision.

42. TP have confirmed that they would refund to Professor Thompson the excess contributions he made of £15,907.87 plus interest. This in my view puts him back in the position he should be in in this regard.
43. Professor Thompson contends that he should not have to repay the overpayment of benefits made to him as a result of their errors. However, TP having discovered that the overpayment had arisen had a duty to recover the total amount from Professor Thompson. I therefore do not think that they had acted incorrectly in requesting that he repay the total amount outstanding. TP are entitled to request that Professor Thompson repay the outstanding overpayment of £10,026.99. I note that TP offered him the option of offsetting the refund of his excess contributions plus interest of £670 against the overpayment due reducing it to ££10,026.99. This was in my reasonable. Professor Thompson should therefore contact TP to agree reasonable repayment terms for the balance of the repayment.
44. It is my view that Professor Thompson has not acted to his detriment on the strength of the incorrect retirement estimates and suffered any identifiable loss as a result. He has nevertheless had his expectations raised and to that extent has been caused distress. He was contemplating retirement when the incorrect information was provided; I therefore think that his loss is higher than it may otherwise have been. In addition there was more than one incidence of maladministration. However, I consider that the revised amount being offered by TP of £1,500 which after the deduction of the interest payment of £670 leaves a balance of £830 is sufficient redress for the distress and inconvenience that he has suffered. This is in line with what I would normally direct in similar cases. It still open for Professor Thompson to accept TP's revised offer.
45. I therefore do not uphold Professor Thompson's complaint.

Jane Irvine
Deputy Pensions Ombudsman

18 November 2014