

## Ombudsman's Determination

Applicant	Ms E
Scheme	Teachers' Pension Scheme ( <b>the Scheme</b> )
Respondent	Teachers' Pensions ( <b>TP</b> )

## Outcome

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

## Complaint summary

2. Ms E has complained that TP misled her into believing that she was purchasing seven years and 205 days of past added years (**PAY**) even after she began to work part-time.

## Background information, including submissions from the parties

3. The relevant regulations in this case are the Teachers' Pensions Regulations 1997 and the Teachers' Pensions Regulations 2010 (referred to collectively as the **Regulations**).
4. Ms E was a member of the Scheme through her employment, during which time she worked different part-time and full-time working patterns.
5. In June 2003, Ms E contacted TP about purchasing PAY in the Scheme.
6. Shortly after this, TP issued Ms E with a PAY leaflet and an election form.
7. On 10 July 2003, TP received Ms E's election form. She elected to purchase "as much PAY as possible over 17 years at nine percent" (the **election**). At the time, Ms E was employed full-time.
8. On 29 July 2003, TP accepted the election, and calculated that Ms E could purchase seven years and 205 days of PAY to be paid over 17 years. The election was accepted on the basis that she was employed full-time and would continue to work the same working pattern between 1 September 2003 and 31 August 2020 (**the Payment Period**). The correspondence that Ms E received from TP said:

“A teacher who leaves pensionable service other than [at their retirement age or death] can elect within 3 months of leaving such service to pay, subject to Inland Revenue requirements, a lump sum in respect of Method A [PAY] contributions outstanding. Payment must be made within the same 3 months period. If a teacher does not pay a lump sum, they will be credited with the added years paid for at the time of leaving reckonable service.”

And

“You may make a Method A election whilst employed in part-time pensionable service. However, you will be credited with the same percentage of the added years for which you elect, as the percentage of a full-time contract in which you are employed: (ie if you are employed on a 50% contract you will be credited, at the end of the chosen payment period, with 50% of the additional service that a full-time member could buy. If the proportion of full-time contract fluctuates throughout the payment period, the amount of added service with which you will be credited, changes accordingly...

If you have not finished paying for your election under Method A and you leave pensionable employment and do not return within one month we will give you paid-up credit, ie the amount of extra years paid for up to the date of leaving.

You will have the option to pay for the remaining extra years in a single sum. To do this, you must write to us within three months of leaving pensionable employment. You can make a second Method A election if you return to pensionable employment and still want to increase your pension benefits.”

9. In September 2005, Ms E reduced her working hours to part-time. She continued to pay nine percent additional contributions on her lower rate of pay.
10. In March 2006, March 2007 and October 2007, TP sent Ms E Estimate of Retirement Benefits statements (**EORBs**), which showed PAY of seven years and 205 days “not concluded until 31 August 2020.” Each EORB carried a caveat that the figures provided were for illustration purposes only and, at retirement, membership history would be scrutinised to calculate the correct level of benefits.
11. On 3 October 2007, Ms E telephoned TP. According to TP’s telephone note, Ms E “wanted to know PAY election stop date and how much she is paying back in total”.
12. Around March 2008, TP sent Ms E an EORB which showed PAY of seven years and 205 days.
13. In September 2008, Ms E telephoned TP. According to TP’s telephone note, TP helped Ms E to locate the PAY on her EORB.
14. In early 2017, Ms E’s employer began to offer voluntary redundancy. Ms E has said that she applied for voluntary redundancy, based on the value of her pension, and her application was accepted.

15. On 22 June 2017, TP sent Ms E an EORB which showed PAY of seven years and 205 days “not concluded until 31 August 2020”. The EORB included the following statement (**the Caveat**):
- “If at retirement it is found that any [PAY] payments that you were paying by instalments), have not been made in full the amount of benefits quoted in this estimate may be less.”
16. On the same day, Ms E telephoned TP. Ms E has said that:-
- She asked TP to find out if she could pay a lump sum, to make up the contributions that she would not pay between July 2017 and August 2020.
  - TP told her that she could make up the payments on her retirement in August 2020; and she asked for written confirmation of this.
17. According to a telephone note on TP’s system, Ms E explained that she was being made redundant so she would be unable to complete the full term of the election. She asked for the rules on PAY elections and whether she could either finish payment or get “paid up credit”.
18. On 11 July 2017, TP sent Ms E a secure message and said:-
- The election was accepted on the basis that she was employed full-time and would pay an additional nine percent of her salary between 1 September 2003 and 31 August 2020.
  - According to its records, she worked part-time for a period during the Payment Period. So, this would be reflected in the amount of PAY that she would be credited with.
  - Its records also showed that 171 days, between 1 August 2004 and 31 July 2005, did not count towards her pension calculation. It would contact her former employer for further information.
  - Ms E should confirm the date she left employment, details of her full-time equivalent salary at her leaving date and that she worked 70% of the full-time hours for her post between 1 July 2017 and her date of leaving.
19. On 12 and 20 July 2017, TP sent Ms E an EORB which included the Caveat and showed the PAY as seven years and 205 days “not concluded until 31 August 2020”.
20. On 21 July 2017, Ms E responded to TP’s secure message of 11 July 2017 and said:-
- She was on maternity leave between 1 August 2004 and 31 July 2005.
  - She did not plan to take her pension until she reached age 60. So, TP should confirm that she could make up the outstanding PAY that she was buying. Also, how much was outstanding.

- TP had suggested that she was not buying seven years and 205 days of PAY despite her EORBs stating that she was.
- She took voluntary redundancy based on TP's most recent EORB so she hoped that it was correct.

21. On 9 October 2017, Ms E sent TP an online message and asked for an urgent update on the message that she had sent on 21 July 2017.

22. In November 2017, TP told Ms E that:-

- The election was accepted on the basis that she was employed as a full-time teacher and that she would contribute an additional nine percent of her salary to the Scheme between 1 September 2003 and 31 August 2020.
- During her maternity leave, 171 days were not pensionable and therefore did not count towards the calculation of her retirement benefits. This was considered as a break in service and should have caused the PAY election to terminate.
- While 171 days related to non-pensionable employment, the additional nine percent contributions continued to be deducted from her pay when she returned to pensionable employment up until she left on 14 July 2017. Consequently, it had contacted its technical department to establish how the Regulations should be applied in her case.
- It agreed to honour the election, but the additional service would be reduced to reflect the 171 days when contributions were not paid to the Scheme.
- Had Ms E worked full-time between 1 September 2003 and 31 August 2020, the additional PAY would reduce to seven years and 129 days. However, as she also worked part-time during this period, the additional PAY would be reduced again, accordingly.
- As she had left pensionable employment, and not returned within one month, she could choose one of the following options:-
  - The amount of additional service she had paid for at her date of leaving, which amounted to four years and 132 days, could be credited to her and no further payment made to the Scheme.
  - Purchase an additional one year and 218 days, to make up the difference between what she had actually purchased, compared to what she would have purchased, had she remained full-time. This would cost Ms E an additional £19,762.06.
  - Pay the outstanding PAY contributions due for the period between 15 July 2017 and 31 August 2020, calculated based on her final full time salary. This would cost Ms E an additional £13,211.45 and would increase her PAY to five years and 276 days.

- Pay £32,973.51 to increase her PAY to seven years and 129 days. The payment would have to be made by 13 January 2018.

23. Ms E questioned the response and said:-

- TP had not confirmed whether her EORBs were correct.
- It was unclear why 171 days, which related to her maternity leave, was classed as non-pensionable employment.
- She accepted the offer to “ignore” the break in service, but it should not have been considered a break as she was still employed. Furthermore, she believed that this amounted to sex discrimination.
- TP’s calculation appeared to be too high, so it should provide details of how it had calculated the amounts and what interest rate it had used.
- She was told that she could pay any additional contributions at any point before she took her pension. However, in its most recent correspondence, TP had provided a deadline of 13 January 2018 which was not reasonable.
- TP continued to quote seven years and 205 days of PAY in her EORB statements when she changed her working hours to part-time.
- TP implied that she should have noticed that she should have been paying more. But she had acted in good faith, based on the information that she had received, which she now believed had been incorrect for 12 years.
- She would have paid more into her pension had she been made aware she was not buying seven years and 205 days of PAY.
- She should have been given the option to make up the contributions she did not pay while on unpaid maternity leave.

24. On 16 January 2018, TP responded to Ms E’s complaint and said:-

- Ms E’s employment had changed from full-time to part-time and she had a break in pensionable service. However, she had not notified TP so no action was taken regarding the election.
- It was difficult for TP to provide an accurate figure of the final amount of PAY purchased while Ms E was employed part-time because the days purchased could fluctuate. So, the final amount of PAY purchased was not confirmed until the Payment Period ceased.
- The election form that Ms E completed in 2003, and a leaflet she received at the time, explained that a break in service would cancel the election and a change to part-time employment would affect the PAY that a member could purchase.

- TP used the details that her employer provided. Consequently, Ms E should direct any queries about her maternity leave or employment to the employer.
- Maternity leave is only pensionable if the member was receiving contractual or statutory maternity pay. In Ms E's case, 171 days were excluded from her pensionable employment and, as this was over one month, it was considered a break in service. It therefore should have terminated the election.
- It had included a copy of the calculations for the payments that Ms E would have to make to purchase additional PAY, calculated in accordance with the Teachers' Pensions Regulations 2010 (**The 2010 Regulations**).
- The PAY provisions allowed a member to elect to pay the remaining extra years as a lump sum, within three months of leaving pensionable employment. The information that Ms E received during the telephone conversation on 22 June 2017 was on the basis that she would remain in pensionable employment until retirement. As she left pensionable employment before retirement, the 2010 Regulations stated that she had to make the additional payment within a month of receiving the calculations. In Ms E's case, it had agreed to extend the deadline to 16 February 2018, as an exception.
- The EORB explained that the PAY credited would be adjusted if a member worked part-time or had days of service without pay. It would have, therefore, been reasonable for Ms E to have been aware that the PAY on her EORBs would need to be adjusted when she changed to part-time employment.
- From 1 January 2007, the PAY provision, and the provision to vary an election, was removed from the regulations that governed the Scheme. As Ms E elected to pay nine percent, the maximum permitted, she would not have been able to increase the amount.

25. On 15 February 2018, Ms E raised a complaint with TP. In addition to the points raised in paragraph 23, she also said:-

- She assumed that TP acknowledged that the EORBs it issued to her between 2004 and 2017 were incorrect.
- TP had not explained why she had been given incorrect information during a telephone conversation on 22 June 2017. It had also not explained why she had not been offered an apology or compensation.
- She had logged into her online account and discovered that TP had retrospectively changed her EORBs to remove the PAY, without telling her.
- Maternity leave should not constitute a break in service because she was still employed.
- The calculations it had provided appeared to be incomplete and were not transparent.

- It was not reasonable to expect her to pay the outstanding contributions by 13 January or 16 February 2018.
- When the “law” changed in 2011, she would have been able to put more than 15% of her salary into her pension. Had she been made aware that she was not purchasing seven years and 205 days of PAY, she could have paid in more to make up the shortfall. Alternatively, she could have paid into a different pension arrangement.
- TP should send her a copy of her file and treat the request as a Subject Access Request (**SAR**).
- TP should acknowledge that the EORBs and information she received, during various telephone conversations with TP, was incorrect. It should compensate her for the financial loss that she has suffered.

26. On 8 March 2018, TP responded to Ms E’s complaint and said:-

- The PAY election on the EORBs reflected her original election. However, the accompanying notes made it clear that the figure would be adjusted once the Payment Period had concluded.
- It did not agree that Ms E had been provided with incorrect EORBs or that an award for distress and inconvenience was warranted.
- The EORBs did not provide the value of the PAY election until the Payment Period had ended.
- It had not amended its records to remove evidence of the PAY election from the EORBs.
- Members on “family leave” pay contributions at the usual percentage rate, but only on their pensionable earnings. They accrue a pension in the same way as if they were in “normal” employment and earning their “pensionable” earnings. A member no longer accrued pension benefits when they ceased to receive pay while on family leave. However, they remained in pensionable employment, rather than pensionable service, and were still treated as being “in service”.
- It did not consider that it was discriminatory towards members who were on family leave.
- Without the call recording from 22 June 2017, it could not comment on what Ms E said she was told about the time she could take to repay the outstanding contributions. However, the Regulations said that outstanding contributions had to be paid within three months of leaving pensionable employment. In Ms E’s case, it had agreed to extend the deadline as her complaint was ongoing.
- Ms E was provided with information on how part-time employment would affect the PAY amount when she made the election.

- Each EORB also included information about PAY.
- It would respond to Ms E's SAR separately.

27. On 14 August 2018, Ms E raised a complaint with the Department for Education. She provided details of the issues that she had already raised with TP and copies of the relevant correspondence. She also complained that:-

- It was unreasonable for TP to expect her to rely on the original election form and the information that was provided in "small print".
- She had telephoned TP numerous times to query how much PAY she was buying. She believed that TP should have specifically told her that the PAY value was lower because she had moved to part-time employment.
- She believed that the EORBs were incorrect because they said that she was purchasing seven years and 205 days of PAY. Furthermore, they were incorrect for part-time members.
- TP had discriminated against part-time teachers.
- TP's response to her complaint was "inadequate" and did not address her complaint about the inaccurate EORBs.

28. The Department for Education did not uphold Ms E's complaint and said, in summary:-

- It accepted that Ms E may have found the EORBs misleading, but the notes clearly stated it was likely that the PAY shown in each EORB would need to be adjusted if the member had worked part-time during the PAY payment period.
- The EORBs were accurate because they showed the benefits that would be payable when the PAY Payment Period ended, assuming the original election terms were met.
- In early 2018, TP changed the EORBs so that they only showed the benefits from the PAY after the payment period had ended.
- Paid maternity leave was considered pensionable. It was only when a member received no pay and, therefore, paid no contributions, that they were classed as having non-pensionable service. The same applied to other periods of unpaid leave.
- While TP's wording may have been slightly ambiguous, Ms E was required to make up the outstanding payment for the PAY election at the date of leaving pensionable employment. In her case, this was when she took voluntary redundancy.



- It had asked TP to telephone Ms E by 14 September 2018 and explain how it had calculated the PAY shortfall. If she agreed to make the payment, she would have to do so within two months of that call. No further extension would be granted.
  - It was satisfied that TP had applied the Regulations correctly.
29. TP did not telephone Ms E by 14 September 2018, so she contacted TP in November 2018.
30. In response, TP apologised for not telephoning Ms E. It provided a copy of the calculation, that it had issued in November 2017, and asked Ms E to get in contact if she had any queries about the calculation.
31. Ms E remained dissatisfied and referred her complaint to the Pensions Ombudsman's Office (**TPO's Office**).
32. Ms E's position:-
- She has lost out on approximately three years and 73 days of PAY. This is equivalent to a loss of £1,500 in annual pension and £4,500 in lump sum.
  - Following her telephone conversation with TP on 22 June 2017, she took voluntary redundancy because she was told that she could make the repayments up to her retirement date in 2020.
  - She was not in a financial position to make up the shortfall of payments between 2003 and 2017. However, she would like the opportunity to buy back the additional 3 years and 73 days of PAY, on retirement, with no interest applied.
  - She would also like confirmation that, on retirement, she could make the payments due between July 2017 and March 2020, her NRA.
  - TP should award her financial compensation in respect of the incorrect EORBs.
33. TP's position:-
- It had acted in accordance with the relevant Regulations.
  - Ms E had a 171 day "break in service" which should have cancelled the election because no contributions were paid during this period. However, it had continued to take contributions after she returned to work, so it agreed to honour the election.
  - When Ms E changed her working hours to part-time in 2005, the PAY she was buying reduced, proportionate to the hours that she worked.
  - The EORB included a note which said that they were for illustrative purposes only.
  - TP did not calculate the actual PAY until a member left pensionable employment unless it was specifically asked to. Ms E had made no such request.

- It had provided Ms E with information about PAY and part-time employment before she left pensionable employment.
- Ms E said that she was told she could pay any outstanding amounts up to retirement during a telephone conversation on 22 June 2017. This was based on her remaining in pensionable employment to her NRA. However, she left pensionable employment early, so, the Regulations stated that she had to make the payments within one month of leaving.
- TP had made an exception and extended the deadline. However, Ms E did not make any additional payments.

34. On 21 February 2020, Ms E contacted TP and enquired about taking her retirement benefits. Her pension subsequently came into payment when she reached her normal retirement age (**NRA**) in March 2020. The PAY value was four years and 132 days.

### **Adjudicator's Opinion**

35. Ms E's complaint was considered by one of our Adjudicators who concluded that no further action was required by TP. The Adjudicator's findings are summarised below:-
- Ms E made the election in 2003 and agreed to pay an additional nine percent of her full-time salary to the Scheme. The election was accepted and the PAY was calculated by TP on the basis that Ms E would remain in full-time employment throughout the Payment Period.
  - When Ms E moved to part-time employment, she paid nine percent contributions on her lower salary, which would have resulted in her purchasing less PAY. In the Adjudicator's view, Ms E ought to have been reasonably aware of this based on the original information that she received in 2003 and the Caveat detailed in each EORB.
  - Ms E has not suffered a loss of PAY or a financial loss because she is only entitled to receive the PAY that she actually purchased. Instead, she has suffered a loss of expectation because she believed that she was purchasing seven years and 205 days of PAY. However, this was not a result of maladministration by TP.
  - The available evidence did not support Ms E's claim that she was told that she could pay the outstanding PAY contributions on retirement. So, the Adjudicator could not reasonably conclude that Ms E was misinformed, or that she would have remained in employment rather than taking voluntary redundancy.
  - The 2010 Regulations state that when a member leaves employment, the outstanding contributions must be paid within one month of leaving. In this case, TP had exercised its discretion and allowed Ms E more time to make up the shortfall in PAY, but she had not taken advantage of the offers.

- Ms E did not receive incorrect EORBs: they were based on information available at the time.
- The EORBs carried a warning that the figures were for illustrative purposes only and, if it was found that some PAY payments had not been made when the member retired, the figures would be adjusted accordingly.
- Ms E's period of unpaid maternity leave caused a break in service, which should have meant that the PAY election terminated. TP had agreed to honour the election which allowed Ms E to purchase a higher level of benefits in the Scheme than she might have had TP not made the concession.

36. Ms E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms E provided her further comments which do not change the outcome. In summary, she said:-

- The purpose of an EORB was to provide members with an estimate of their benefits at retirement.
- Each EORB she received said that she was purchasing seven years and 205 days of PAY. It was unrealistic to expect women returning to work to read the small print on the EORBs, and the failure to provide clear figures constituted indirect discrimination against women.
- She was given incorrect information in the telephone conversation on 22 June 2017. The onus should have been on TP to provide evidence of the advice it gave her.
- While she was grateful that her membership was not terminated, she believed that maternity leave should constitute pensionable service. Had her membership been terminated, this would have been direct discrimination on the grounds of pregnancy and maternity and indirect discrimination on the grounds of sex.

37. I agree with the Adjudicator's Opinion and note the additional points raised by Ms E.

### **Ombudsman's decision**

38. The EORBs that Ms E received said that she was purchasing seven years and 205 days of PAY because that was the agreed amount she opted for when she made the election.
39. Ms E believes that it was unrealistic of TP to expect females returning to work after maternity leave to read the small print on EORBs. TP relies on both members and employers to make it aware of any errors in the records it holds. It is therefore a member's responsibility to check their EORB, and contact TP if any of the information is incorrect. This is a responsibility places on all employees, not only women returning to employment after maternity leave.

40. Ms E believes that the Regulations are indirectly discriminatory on the grounds of sex. This is on the grounds that females with young children, returning to work part-time, are less likely to be able to read the small print on the EORBs than a male.
41. Section 67 of Equality Act 2010, provides that, if an occupational pension scheme does not include a sex equality rule, it is to be treated as including one. A sex equality rule is a provision which has the effect of a modifying term which is less favourable to an individual of one sex than to another individual of the opposite sex so that it is not less favourable. A relevant term includes any which affect the way in which members of a scheme are treated.
42. In Ms E's case, it is necessary to consider the Regulations compared to its application to a male working part-time. Males and females working part-time are both expected to contact TP if there are any inaccuracies in their EORBs, so there is no direct sex discrimination. The question is then whether the Regulations indirectly discriminates against Ms E.
43. Under Section 19 of the Equality Act 2010, indirect sex discrimination occurs where A applies to B, a provision, criterion or practice (**PCP**) which is discriminatory in relation to B's sex. A PCP is discriminatory if:
  - A applies, or would apply, it to persons not of the same sex as B;
  - it puts, or would put, persons of B's sex at a particular disadvantage when compared with persons not of the same sex as B;
  - it puts, or would put, B at that disadvantage; and
  - A cannot show it to be a proportionate means of achieving a legitimate aim.
44. Ms E would have to be able to show that the format of the EORBs puts females working part-time at a disadvantage when compared to males working part-time. In addition to the PCP putting, or potentially putting, persons of the same sex as Ms E at a disadvantage, it must also put, or potentially put, her at a disadvantage. In Ms E's case, she has not been put at a disadvantage. I, therefore, do not consider that there has been any indirect sex discrimination.
45. Ms E has also complained that she was given incorrect information during her telephone conversation with TP on 22 June 2017. She has said that TP should provide evidence of the advice that it gave. TP has confirmed that the call recording is not available. It has, however, provided a screen shot of the telephone note left on its internal system which does not support Ms E's version of the telephone conversation. Ms E has no firm evidence of what was discussed, and the only available evidence is a contemporary telephone note. I find that, on the balance of probabilities, Ms E was not provided with conflicting information.
46. Ms E believes that maternity leave should constitute pensionable service. The Regulations state that if a member is not receiving any pay, they are no longer considered a member of the Scheme. The period where a member is receiving no

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pay is recorded as “Days Excluded” and applies to any unpaid leave. I am unable to agree that unpaid maternity leave should be treated as pensionable service.

47. I do not uphold Ms E’s complaint.

**Anthony Arter**

Pensions Ombudsman  
13 December 2021