

Ombudsman's Determination

Applicant	Mrs R
Scheme	Teachers' Pension Scheme (the Scheme)
Respondent	Teachers' Pensions (TP)

Outcome

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

Complaint summary

2. Mrs R has complained because TP did not inform her that her pension would not be backdated to her normal pension age (**NPA**) if she did not claim it at that time and continued working. She asserts that she has incurred a financial loss as a result of TP not informing her of this.

Background information, including submissions from the parties

3. On 16 February 2015, Mrs R telephoned TP to ask how she would be affected by proposed changes to the Scheme. She wanted to know which "bracket" of member she fell into. TP confirmed that Mrs R would have "full protection" because she was within 10 years of retirement.
4. During a subsequent conversation, TP confirmed Mrs R's NPA under the Scheme was age 60. In February 2016, having reached age 60, Mrs R decided to continue working past her NPA without claiming her pension.
5. In December 2018, Mrs R obtained advice from a financial adviser (**FA**), who informed her that she was eligible to claim her pension from age 60, and she needed to do this without delay to avoid a reduction in her pension. The FA also informed Mrs R that she could not claim backdated pension payments from her NPA as the Scheme rules did not allow that.

6. On 8 April 2019, Mrs R raised a complaint with TP under the Scheme's two-stage Internal Dispute Resolution Procedure (**IDRP**). In summary she said:-

- She was shocked to learn that she could have claimed her pension at age 60 and now she "may have forfeited the £12,000 [she] would have received during that period."
- She was not aware of any communication from TP advising that she could claim her pension from age 60. By deferring taking her pension past 60, she believed "the accrued benefit of monies not taken, to be rolled up to increase the size of an annuity when it is eventually taken." She understood this to be the case with personal pension schemes and the State Pension.
- Her situation was aggravated by the fact that her employment circumstances had changed, so now she only worked 10 hours per year as a self-employed music teacher.
- Her intention was to work until her state pension age of 66 and not claim her pension until then.
- She had been through a divorce, the attempted suicide of one of her children and her father's terminal illness, so examining her pension was not at the forefront of her mind.
- It was only when she finally sought advice from her FA, in December 2018, that she found out she needed to claim her pension to avoid further reduction.
- TP failed to inform her of her pension options at age 60. She checked all the correspondence received from TP and could not find anything regarding her pension options at age 60.

7. On 24 April 2019, TP responded to Mrs R under stage one of the IDRP and in summary it said:-

- When Mrs R was first employed in 1982, her employer would have provided her with a copy of the Scheme Booklet 'Your Pension: A Guide to the Teachers' Superannuation England and Wales' (**the Booklet**). The Booklet was produced by the Department for Education (**DfE**) and was freely available, like all other Scheme literature, to all participating employers who were responsible for providing a copy to new employees.
- The Booklet explained that the NPA for all members was age 60 and that on leaving the Scheme, a member's pension was deferred until payment at age 60.
- The employer should have advised Mrs R of her options, either by guiding her to TP's website, or providing her with appropriate literature.
- Capita Tracing Services was introduced in 2014 whereby TP emailed deferred members to verify their details and to notify them of their pension entitlement. It

noted such an email was sent to Mrs R on 1 May 2018. This email was sent in bulk and was not connected to the central administration of TP.

- In the telephone call between Mrs R and TP on 16 February 2015, Mrs R enquired what her NPA was. TP was satisfied it was confirmed to Mrs R that her NPA was 60.
 - Mrs R had been sent annual statements which would have notified her that her NPA was age 60. It provided a copy of the annual statement from March 2017 to confirm this was the case.
 - Mrs R was now able to claim her pension which would be payable from 1 September 2018. Any arrears would be paid to her as a one-off payment and will be liable for tax.
8. In June 2019, in response to TP's IDRPs stage one response, Mrs R emailed it saying she had never received the email dated 1 May 2018. She also asked for a telephone call note from February 2015.
9. On 10 July 2019, TP told Mrs R that, as the email dated 1 May 2018 was part of bulk emails sent by Capita Tracing Services, it was not involved in sending it and did not have a copy of it. TP also said it had listened to the call in question and confirmed again that during the call Mrs R was informed that her NPA was age 60.
10. On 18 July 2019, Mrs R appealed TP's IDRPs stage one response under stage two of the IDRPs. She denied receiving the email of 1 May 2018 and maintained TP did not alert her around her NPA, of the implications of not taking her pension at age 60.
11. On 1 August 2019, the DfE sent Mrs R a response under stage two of the IDRPs not upholding her appeal and, in summary, said:-
- TP's website provided members with several retirement options, which included the option of deferring ceasing employment and accruing further service in the Scheme.
 - However, TP's website was intended to provide general guidance and advice to the typical member following the conventional career path; where a member has a more unusual or complex query, they can address this with TP.
 - It was ultimately the member's responsibility to be aware of their own individual circumstances, and to make, and understand the impact of, decisions based on their own situation.
 - It was satisfied that TP had verified that Capita Tracing Services sent an email on 1 May 2018 confirming Mrs R's NPA. It was also satisfied that, during the telephone conversation in February 2015, Mrs R was informed of her NPA. It also offered to provide Mrs R with a telephone recording should she wish to listen to the call.

12. In July 2019, Mrs R raised further issues with TP regarding the email sent by Capita Tracing Services. In response, TP sent Mrs R a letter dated 12 August 2019 in which it provided further detailed points:-

- It had conducted a review of the tracing process to check the sequence of events.
- In 2015, an exercise commenced to contact members whose record indicated that they may have been eligible to claim their pension because they had reached NPA.
- Members who continued to work past their NPA were not contacted, because it was at the discretion of the scheme member as to whether they took this course of action. The exercise ended in 2019.
- Mrs R was included in the bulk emails of 1 May 2018 because, at that time, the aim was to identify eligible members. In her case, the service and salary details had been provided to TP up to 31 December 2016, although there was no indication that she had left her employment on that date.
- As the tracing service could not establish whether Mrs R was in pensionable employment, she was included in the tracing exercise.
- On 17 December 2018, further service and salary details were reported to TP by Mrs R's employer. These confirmed she was in continuous employment on an irregular basis until she left her post in August 2018. Had that information been uploaded contemporaneously, she would not have been included in the tracing service bulk emails.
- Where the tracing service identified an address match, it did not contact the member to verify their address. A file was then sent to TP so TP could write to the member. Unfortunately, there was no evidence that the letter was issued for which it apologised.
- This did not change the fact that information was available to Mrs R regarding her retirement option either on the TP website or through the TP Contact Centre.
- The reason Mrs R was included in the tracing exercise was because of the delay in her service record being updated.
- It provided Mrs R with a copy of the telephone transcript from 16 February 2015, which confirmed that TP had informed her of her NPA.

13. **Summary of TP's position:**

- TP's employees are not registered FAs and therefore are unable to advise members of the actions they should take in connection with their membership in the Scheme. It provided a copy of the extract from its website confirming this, which can be found in Appendix 2.

- Relevant information can be found on TP's website which is generic and does not answer all possible questions. Therefore, it is open to members to ask TP for more information regarding retirement planning.
- TP's website provides a specific retirement planning guide (**the Guide**) to assist members and various factsheets to help members understand their pension and how they can make the most of it. It also includes details regarding average salary.
- It referred to Chapter 2 Part 7 of the 2010 Final Salary Regulations (**the Regulations**), under which Mrs R falls as a "pre 2007 entrant" otherwise known as an NPA 60 member. Schedule 7 of the Regulations explains why Mrs R's pension was payable from 1 September 2018 and not from her NPA of 60. Relevant extracts of the Regulations can be found in Appendix 1.
- It referred to page 10 of the Guide available on TP's website, relevant extracts of which are set out in Appendix 2.
- The Regulations provide that Mrs R needed to satisfy the condition for retirement, upon reaching NPA. Her retirement date is the day after she ceases to be in pensionable employment. Therefore, Mrs R is not eligible to be paid a pension backdated to her NPA.
- It was satisfied that there was sufficient information available to Mrs R to have realised her pension could not be backdated to her NPA as she had not ceased employment.

14. **Summary of Mrs R's position:**

- The fact that TP's employees are not registered FAs is a "red herring". The employee simply confirmed her NPA was 60. This is not the same as "spelling out the detriment of not drawing her pension at that date."
- TP is saying that it is a duty of a non-expert member to understand and take their own action and "scour the website for information and to hire an [FA] at the right moment."
- The information TP referred to was complex and very unhelpful to anybody proceeding without expert advice.
- The information provided by TP does not inform a member of the implications of delaying claiming the pension beyond NPA.
- Expecting members to rely on their retention of Scheme booklets when joining the Scheme, in her case since 1982, does not seem to show much duty of care. "Most teachers are not devoting much time to planning their retirement when they are just embarking on their careers in their twenties."

- Regardless of the outcome of her complaint, she hopes that TP would pro-actively alert its members before their NPA, of the need to take action like all normal private pension providers do.

Adjudicator's Opinion

15. Mrs R'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:-
- As the administrator of the Scheme, TP is bound to administer the Scheme in accordance with the Scheme's governing regulations. The Regulations were clear that Mrs R, as a pre-2007 entrant of the Scheme, with an NPA of 60, was eligible to claim her pension the day after she ceased employment.
 - Mrs R did not cease employment until the end of August 2018. Therefore, she was not eligible to have her pension backdated to age 60. The Adjudicator's view was that TP correctly interpreted and applied the Regulations in Mrs R's case.
 - Mrs R argued that TP should have informed her of her retirement options at the time she reached her NPA of 60. She said that she had gone through a difficult time and was not capable of thinking about her pension at the time of reaching NPA. She also said she had focused on working until her State Pension Age.
 - As the administrator of the Scheme, it was TP's responsibility to ensure that members are provided with accessible information concerning their retirement options. Page 10 of the Guide, which could be found on TP's website clearly stated that a pension was payable on the day after the member's employment ceases. If the member decided to work past their NPA, their pension would be payable "from the day after [they] left pensionable service, which may be earlier than the date of leaving pensionable employment." TP's website also informed members that it was important to seek financial advice before making decisions regarding retirement.
 - The Adjudicator appreciated Mrs R's difficult situation at the time she had reached NPA, but she was satisfied that the information available on TP's website was sufficient to have alerted Mrs R of her pension options. In the Adjudicator's view, TP fulfilled its obligations with regard to providing information and was not required or authorised to advise members as to their best course of action.
 - It was not until December 2018 that Mrs R sought financial advice which prompted her to claim her pension. However, in the Adjudicator's view, it would have been prudent for Mrs R to have sought financial advice when she reached or was approaching NPA, to know exactly what her options were.
 - TP confirmed that when Mrs R joined the Scheme, she would have been provided with the Booklet that would have alerted her to her pension options. The Adjudicator appreciated Mrs R joined the Scheme in 1982 and may not have

retained a copy of the Booklet, but she could have asked her employer for a copy of the Booklet and other Scheme literature when she reached or was approaching NPA. The Adjudicator has not seen any evidence of Mrs R making such enquiries.

- Mrs R telephoned TP in February 2015, to enquire what her NPA was and whether it was same as her State Pension Age. The Adjudicator listened to the telephone recording and was satisfied that TP rightly informed Mrs R that her NPA was 60.
- In the Adjudicator's view, TP was not obligated to provide further information regarding the implications of Mrs R delaying taking her pension beyond her NPA. This was because TP was only expected to provide general information regarding pensions unless Mrs R made specific enquiries about her options if she decided to work past her NPA. Mrs R was only enquiring what her NPA was. So, the Adjudicator disagreed with Mrs R when she said TP should have alerted her of this fact during that telephone call.
- The Adjudicator noted TP said that the tracing service confirmed that it had Mrs R's correct address but that there was no evidence that she had been contacted. The failure to contact Mrs R did not amount to maladministration because there was no legal requirement for TP to send such emails or letters to members. Mrs R had other sources of information available to her at the time of her NPA, that would have informed her of her options. In the Adjudicator's view, the onus was on Mrs R to have read and acted on all available information. Consequently, it was the Adjudicator's Opinion that the complaint should not be upheld.

16. Mrs R did not accept the Adjudicator's Opinion, and in response she reiterated her main points and added:-

- She believes all the onus is put on the member to keep themselves fully informed.
- TP has failed in its duty of care to proactively support its member and fell below the standards expected of private pension providers such as Aviva. She provided a copy of Aviva's letter alerting her to her pension options four months prior to her retirement age.
- TP has retained approximately £11,000 of pension money she would have received had it alerted her to her pension options, so it has profited at her expense.
- She "naively assumed that any benefits not taken would be rolled up with interest."
- She would like TP to consider making an ex-gratia offer to compensate her for the loss of the money she has not received since her NPA.

17. Mrs R's complaint was passed to me to consider. I agree with the Adjudicator's Opinion and note the additional points made by Mrs R.

Ombudsman's decision

18. Mrs R is unhappy that TP did not inform her that her pension would not be backdated to her NPA, if she did not claim it at that time but continued working. She considers that she has incurred a financial loss as a result of TP not informing her of this.
19. TP is bound to administer the Scheme in accordance with the Scheme's governing regulations. The Regulations state that Mrs R, as a pre-2007 entrant of the Scheme, with an NPA of 60, was eligible to claim her pension the day after she ceased employment. Mrs R did not cease employment until the end of August 2018, so she is not eligible to have her pension backdated to age 60. I find that TP correctly interpreted and applied the Regulations in Mrs R's case. TP has no discretionary power to make an ex-gratia payment to Mrs R to compensate her for the pension she did not claim from her NPA.
20. Mrs R telephoned TP in February 2015 to enquire how her pension would be affected by the proposed changes to the Scheme. She also enquired what her NPA was. TP confirmed that her NPA was 60 and she had full protection until age 60. But Mrs R did not enquire about the implications of her deferring claiming her pension and working past her NPA. Had Mrs R queried this with TP, she could have mitigated her loss.
21. TP has a duty of care to provide general information to its members but is not expected to provide specific information unless a member has made specific enquiries. Mrs R admitted that she simply assumed that her pension would increase in value and be rolled up if she decided not to claim it at her NPA. It is important that members check all the information available, read it carefully and if unsure, make specific enquiries with the scheme before making important decisions regarding retirement.
22. I appreciate that TP had not sent Mrs R details of her pension options as she was approaching her NPA and that she believes it should have done so, like Aviva did. However, I find there was sufficient information on TP's website that would have made Mrs R aware of the implications of not claiming her pension and continuing to work past her NPA. Mrs R could have also asked her employer for further information.
23. I have considerable sympathy for Mrs R's position. However, TP has acted in accordance with the Regulations, when paying her pension from the day after she ceased employment and not from the date she reached her NPA. So, I find there was no maladministration by TP in this regard.
24. I do not uphold Mrs R's complaint.

CAS-38499-T5B8

Anthony Arter

Pensions Ombudsman
9 August 2021

Appendix 1

25. The Teachers' Pensions Regulations 2010

Part 7 Benefit for Teachers

Chapter 2

Interpretation of provisions relating to normal pension age

“49 “Pre-2007 entrant”: meaning and normal pension age

(1) A person (P) is a pre-2007 entrant if-

(a) P was in pensionable employment at any time before 1st January 2007, is a UK transferee with NPA 60 rights or is a public sector TUPE transferee with NPA 60 rights, and

(b) P is not a person with mixed service or a 2007 or later entrant.

(2) A pre-2007 entrant has a normal pension age of 60 in relation to all of the person's reckonable service.”

Schedule 7

Retirement Benefits

Regulation 60(2)(b)

1 Case A: retirement on or after reaching normal pension age

...

“2 (1) Where a person (P) satisfies the condition for retirement, the entitlement day for Case A is-

If P is in pensionable employment on the day on which P reaches the normal pension age in relation to the reckonable service, the day after P ceases to be in pensionable employment.”

Appendix 2

26. Extract from the Guide on TP website says:

“Where can I get help?

When making financial decisions that affect your future it’s always best to seek independent financial advice...

Page 10 of the Guide on TP website says:

“Age retirement benefits are payable when you reach Normal Pension Age (NPA) or from the day after you leave pensionable service. If you continue working and remain an active member of the Scheme through to and after reaching your NPA your pension will be payable from the day after you left pensionable service, which may be earlier than the date of leaving pensionable employment.”