

## Ombudsman's Determination

Applicant	Mrs R
Scheme	Teachers' Pension Scheme (the <b>Scheme</b> )
Respondents	Teachers' Pensions ( <b>TP</b> )

## 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 that:
  - She was not informed that her pension would be subject to a salary restriction before she made the decision to retire.
  - She has had to return to work as she received a lower pension than had been estimated.
  - Her pension has been calculated based on incorrect service dates, meaning her pension is lower than it should be.
  - That, as a "transition member", having moved from the final salary section to the career average section of the Scheme, she should benefit from the salary link, which should have enabled her to benefit from any growth in her salary up to retirement.
  - TP misled her regarding the possibility of the employer buying extra benefits where the member's pension was to be restricted, thus falsely raising her hopes of being able to increase her pension to compensate for the salary restriction.
  - Mrs R also complains of a general poor service and errors made by TP during the retirement process which caused her distress and inconvenience.

## Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.

4. While employed as a teacher Mrs R was a member of the Scheme.
5. Mrs R's Scheme membership in was categorised as "mixed service" because it included a period of membership in the final salary section of the Scheme followed by a period of membership in the career average section of the Scheme.
6. Mrs R's Scheme service was subject to a "salary link" (the **salary link**), meaning that the final salary portion of her retirement benefits had continued to benefit from any career progression and salary increases after her transition to the career average section of the Scheme.
7. The Scheme permits actuarially reduced early retirement from age 55.
8. The Teachers' Pensions Regulations 2010, Part 5, Average Salary, 39 Restriction on average salary (**the Scheme Regulations**) give it the power to impose a salary restriction on average salary. This restriction can only be applied when benefits are taken, and where the salary increase during the period used for the final average salary calculation for the final salary section of the Scheme has exceeded the threshold. This means that, if, during the preceding 3 years, Mrs R received a year-on-year increase in contributable salary exceeding the greater of 10% or £6,136.00, the salary used to calculate her pension must be restricted.
9. Mrs R wanted to retire on 1 September 2019 and following retirement, she planned to work on an informal basis, as and when she wanted to do so.
10. On 30 November 2018, Mrs R contacted TP, via the online chat service, to ask for an estimate of the retirement benefits she would receive if she were to retire at age 55, or alternatively, take a lump sum, leaving the balance until retirement at age 67.
11. TP responded via the chat service to explain that it was unable to forecast the value of her retirement for a date so far in the future. It said that, to do so, it would need the following:
  - The salaries received by Mrs R up to the point of her retirement.
  - The total amount of pensionable service accrued by Mrs R at the time of retirement.
  - The current consumer price inflation (**CPI**) factors applicable at the time of her retirement.
12. TP directed Mrs R to TP's range of online calculators where she could obtain a current illustration of her retirement benefits, and also obtain further illustrations based on retirement at various ages and based on different salaries.
13. Mrs R subsequently telephoned TP several times prior to retirement for help on how to use the online calculators and how to calculate her pension benefits. Mrs R says she used the online calculators to work out her potential retirement benefits in order to ensure that her benefits would be enough to live on in retirement.

14. During 2019, Mrs R received several “My Benefits Statements” (**MBS**) from TP which quoted the current value of her pension benefits at the following dates:

- 22 February 2019;
- 5 April 2019;
- 3 July 2019;
- 8 August 2019;
- 14 August 2019.

15. Each of the MBS’ stated on the first page:

“The figures in this statement are for illustration purposes only. Please check the service and salary information as errors will lead to an incorrect estimate of benefits. This statement confers no right to the benefits quoted. Please refer to the Notes section...”

- The first note in the Notes section stated:

“Your estimate is based on the service and salary details supplied by your employer(s)...This statement is provided for illustrative purposes only and is not a guarantee of benefits, nor does it assume any rights to such benefits.”

- Also in the Notes section, the following statements were to be found under the “Average Salary” section:

“restricted salaries: Salaries that increase by more than 10% of the fixed amount year-on-year will be restricted to the previous year’s salary plus either 10% of the increase or the fixed amount, whichever is the highest. For further information about this please check the FAQs online.”

“salary link: For transition members who moved from the Final Salary to the Career Average arrangement without a disqualifying break in service, the Average Salary will be calculated using salaries from your most recent service. This means that salary increases, and career progression are taken into account for your Final Salary arrangement pension benefits, even after you have transitioned to the Career Average arrangement.”

- In the summary of benefits – Final Salary 80<sup>th</sup> Scheme Arrangements section of each of the above MBS’, the average salary and average salary method were set out, which included the statement “Restricted Salary Used”. For the 22 February 2019 and 5 April 2019 MBS’, the box next to this statement said “no”. However, for the MBS’ dated 3 July 2019, 8 August 2019 and 14 August 2019, the box next to the statement said “yes”.
- Each MBS also contained a detailed service history, including dates of employment, annual salary, and reckonable days worked each year.

16. On 20 August 2019, Mrs R received a statement of benefits (the **Statement**) showing the pension and lump sum due to be paid on 2 September 2019 as follows:

• Type of retirement	actuarially reduced
• Salary of reference	£50,389.00
• Average salary	£46,504.00
• Final salary annual pension	£4,806.83
• Career average annual pension	<u>£321.72</u>
• Total annual pension	<u>£5,128.55</u>
• Lump sum	£17,945.44
• Converted lump sum final salary section	<u>£14,099.74</u>
• Total lump sum payable final salary section	<u>£32,045.18</u>
• Converted lump sum career average section	£2,144.77

17. Mrs R believed the Statement contained several errors so, as her last day of service was 31 August 2019, she telephoned TP to ask for clarification and corrected information.

18. Mrs R retired on 1 September 2019, having accrued 12 years and 129 days' membership in the final salary section and 335 days' membership in the career average section. The combined service total used in calculating her retirement benefits was therefore 13 years and 99 days.

19. On 2 September 2019, Mrs R telephoned TP several times to ensure she would receive a new statement of benefits and that the correct pension would be paid. However, despite assurances, no new statement was received.

20. On 2 September 2019, Mrs R received three payments into her bank account, but no pay advice was received that showed the breakdown of how her pension had been paid. Mrs R has said that this made it harder to check to see if the amounts paid were correct.

21. On 4 September 2019, Mrs R raised a complaint using the online chat service as follows:

- The Statement was incorrect, containing several errors including:
  - Incorrect total service information, which stated that final salary service was based on 12 years and 129 days with career average service stated at 265 days, making a total of 13 years and 29 days;
  - Incorrect average salary for the career average section;
  - The basic lump sum was stated rather than the maximum lump sum she had requested;

- No average salary calculation.

22. On 4 September 2019, TP responded to Mrs R's online complaint as follows:

- She had been classed as a mixed service member, having accrued benefits in both the final salary and the career average sections of the Scheme.
- Her final salary service totalled 12 years and 129 days with a normal retirement age of 60.
- Her career average service totalled 335 days with a normal retirement age linked to the State Pension scheme.
- Her combined total service which was used to calculate her benefits was 13 years and 99 days.
- Her benefits were actuarially reduced due to taking early retirement.
- She had also commuted some of her pension in order to receive the maximum lump sum available.
- Any estimates previously supplied were for illustration purposes only.
- Mrs R's pension record could only be fully scrutinised once she had applied for her pension. It was only at that stage that any anomalies could be identified and addressed.

23. On 17 September 2019, Mrs R complained again via the online chat service as follows:

- She had received no response to her earlier request for an updated statement showing the correct calculations.
- She had received a payslip in respect of her first pension payment, but she believed the monthly pension amount of £427.38 was incorrect.
- She questioned how TP could have made so many errors.
- She had been led to understand the average of her salary would be used to calculate her benefits, but contended that this was wrong, based on various calculations carried out using the online calculator.
- It would be more beneficial to her if her final year's salary were to be used to calculate her benefits.
- TP had not included the actual extra lump sum in its calculations shown on the Statement.
- She wanted information on the formal complaint procedure, as she had received no reply to her earlier complaint.

24. On 17 September 2019, TP wrote to Mrs R as follows:

- It apologised for any errors that the Statement had contained and acknowledged the distress and the inconvenience which had been caused.
- It confirmed the lump sum payments that had been made on 2 September 2019 as follows:-
  - Standard lump sum £17,945.44
  - Converted lump sum via final salary commutation £14,099.74
  - Converted lump sum via career average commutation £2,144.77
- It confirmed her gross annual pension was £5,128.55.
- It confirmed that Mrs R could escalate her complaint to the Department for Education (**DfE**) if she remained unhappy with TP's response to her complaints.

25. TP also provided an amended statement (the **Amended Statement**) that day, as per Mrs R's request.

26. On 26 September 2019, Mrs R complained again using the online chat service as follows:

- Before retiring she had spoken to TP by telephone and was informed that her pension would be calculated either on the average of the last three years' salary, or on the last 365 days of salary, whichever was the most beneficial to her.
- Having been unable to identify the better method of calculation with TP during that telephone call, she had put the relevant information into the online calculator, arriving at the following:-
  - Annual pension (combined final salary and career average) £5,491
  - Lump sum (combined final salary and career average) £36,655
- Accordingly, TP's calculation of her benefits remained incorrect.

27. On 16 October 2019, TP responded to Mrs R's online chat service complaint of 26 September 2019 as follows:

- It apologised that it had not responded to Mrs R's complaints in a more timely manner.
- It noted that a further Statement of her benefits (the **Further Statement**) had been issued by post that day, 16 October 2019.
- The covering letter to the Further Statement had explained that, where a salary has increased in excess of a certain amount, it must be restricted.

- It apologised that the covering letter did not explain how the average salary had been calculated. It provided a comprehensive explanation of the methodology used for calculating average salary.
- It set out the average salaries between 2015 and 2019, explaining that:
  - Salaries for 2016/17 and 2017/18 were unrestricted because they did not exceed the previous salary plus the fixed amount.
  - The average salary for 2018/19 is £50,495.26, which meant it had increased year on year above the salary restriction threshold and had to be restricted to the previous year's salary, plus a fixed amount of £6,136, restricting it to £46,504.
- It apologised for any distress and inconvenience this information may have caused Mrs R.
- It confirmed this was its final response, and if Mrs R remained dissatisfied, she could raise a formal complaint with the DfE, using the Internal Dispute Resolution Procedure (**IDRP**).

28. Also on 16 October 2019, TP's benefits team wrote to Mrs R, enclosing a copy of the Further Statement showing her pension benefits from both sections of the Scheme. The letter included the following information:

"This is to notify you that the salary used in the calculation of retirement benefits has been restricted. The restriction of salary is in accordance with Regulation 39 of the Teachers' Pensions Regulations 2010."

...

"The restricted salary provision applies where your average salary calculated on the basis of the last 365 days' pensionable employment is the highest. The increase in your salary cannot exceed the greater of 10% of £6,136 in any of the 3 years prior to your retirement. This has occurred in your case and therefore the average salary and the ensuing benefits have been restricted."

...

"In accordance with Schedule 4, paragraph 2 (3) and (4) of the Teachers' Pensions Regulations 2010, your employer can, with your consent, decide to purchase Additional Pension up to the maximum allowed (£6,600 per annum for 2019/20), taking account of any Additional Pension elections you have previously purchased. The election must be made within 6 months of your leaving pensionable employment."

29. The Further Statement showed the following:

- Salary of reference: £50,389.00

- Average salary: £46,504.00
- Annual pension: £4,806.83 final salary and £321.72 career average totalling £5,128.55 per year
- Lump sum: £17,945.44
- Converted lump sum: £14,099.74 final salary and £2,144.77 career average
- Lump sums paid: £32,045.18 plus £2,144.77 paid on 01/09/2019

30. On 11 December 2019, Mrs R raised a complaint with the DfE under the IDRPs saying:

- Her service dates had been wrongly calculated based on fewer days worked than she had actually worked, meaning her pension was wrong.
- the pension paid differed “significantly” from the estimates she had obtained prior to retirement, both those sent in the post from TP dated 20 August 2019 and 4 September 2019, and those from the online calculator.

31. On 6 January 2020, DfE issued its IDRPs response to Mrs R as follows:

- It had a responsibility to ensure that the Scheme Regulations had been applied correctly and that Mrs R’s pension had been calculated correctly. It also had to ensure that the correct process had been followed by TP.
- It noted that TP accepted its service to Mrs R had been of a lower standard than it would have liked to deliver and that the MBS’ provided to Mrs R had not shown the effects of the restriction on her estimated pension.
- TP had explained that the application of an average salary restriction can only be applied at the time benefits are taken by the member. At that time, it would be clear whether the final average salary for the final salary section of the Scheme had exceeded the restriction threshold. If so, the salary used for calculating benefits was subject to the restriction.
- Mrs R’s situation was further complicated by the fact that she had mixed service and was taking her benefits on an actuarially adjusted basis.
- TP’s mention in its letter of 16 October 2019 of employers who buy additional pension cover on behalf of members had further confused matters. It apologised if this had caused Mrs R any additional confusion.
- It noted Mrs R’s contention, contained in her complaint of 4 September 2019, that her benefits had been calculated based on fewer days service than she had actually worked. It explained that, although fewer days were mentioned in the Statement than were actually worked, her pension had been calculated correctly, based on 12 years and 129 days in the final salary section and 335 days in the career average section. This meant she had been credited with 13 years and 99 days service in total.



- It confirmed that Mrs R was in receipt of the correct level of benefits from TP and that these had been calculated in accordance with the relevant regulations.

Mrs R's position:

- She was misled on several occasions which resulted in her taking early retirement without the benefit of full information. If she had been informed of the likelihood of the restriction being applied prior to making her decision to retire, she would likely not have retired when she did.
- She had to return to work following retirement due to TP's errors.
- TP misled her regarding the possibility of the employer buying extra benefits where the member's pension was to be restricted, thus falsely raising her hopes of being able to increase her pension to compensate for the restriction.
- She remains of the view that her benefits have been incorrectly calculated in respect of service days worked, resulting in loss of pension benefits that are due to her.
- The matter has caused her a great deal of distress and inconvenience.

## **Adjudicator's Opinion**

32. 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:

- The Adjudicator acknowledged that there had been some errors in the information provided, noting that TP had apologised to Mrs R, and had provided correct figures to her.
- However, during 2019 TP had issued five MBS' and two retirement statements by post. All of these documents had warned that the retirement figures provided were only for illustration purposes and should not be considered to be guarantees of specific retirement benefits.
- Each of the MBS' had contained information about the salary restriction and three of them had confirmed it applied in Mrs R's case. The Adjudicator therefore considered that Mrs R had been informed about the salary restriction before she retired. Further, it was reasonable to expect Mrs R would have read the MBS' and the material available online which would have provided her with sufficient information to ensure she understood the impact of salary restriction.
- The Adjudicator noted that in late 2018 Mrs R had been warned, in writing, that accurate pension calculations could not be provided until closer to, or after, her retirement, due to the requirement to calculate benefits based on actual service accrued, salary and the prevailing rate of inflation at retirement. In the Adjudicator's view, this should have alerted her to the fact that the Scheme could

only provide approximate calculations until retirement, when accurate figures could be obtained for an up-to-date and correct calculation.

- Mrs R should have also been aware that the online calculators could only provide approximate figures and should also have realised that the information supplied in the various letters and the online calculator was for illustration purposes only and the figures shown were not certain or guaranteed.
- TP had checked Mrs R's total service, salary and other relevant information, and confirmed her final pension calculation was correct, based on 13 years and 99 days' service. Further, Mrs R had been provided with a correct benefits calculation on 20 August 2019, which was prior to her retirement. At that point, she could have withdrawn her retirement application, but she did not do so.
- Mrs R was only entitled to a pension calculated correctly according to the Scheme Regulations.
- The Adjudicator understood Mrs R's dissatisfaction regarding the possibility of employer-purchased extra benefits, but this was something Mrs R could have taken up with her employer.
- The Adjudicator concluded that, overall, the information supplied to Mrs R was sufficiently clear and correct.

33. TP accepted the Adjudicator's Opinion and had nothing to add to its stance on the matter.

34. Mrs R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs R provided her further comments, which do not change the outcome. I agree with the Adjudicator's Opinion and note the points raised by Mrs R which are summarised below:

- The telephone conversations in which TP had given misinformation had not been considered. These proved she was wrongly advised.
- She had believed the online calculators supplied estimates that were close to the final figure.
- TP's errors were not corrected until after she had retired so she was not able to withdraw her pension application, having received the correct information.
- The MBS' were all sent after receiving the first incorrect benefits statement in August 2019. A correct statement was not provided until October 2019.
- Despite what was stated about the salary restriction on the MBS' she had not been informed at any point by TP about the possibility of a salary restriction being applied.

- TP did not inform her at the outset that an accurate pension calculation could not be provided until retirement. Even so, they did not produce an accurate statement until a month after she had retired.
- TP made errors in the Further statement.
- The salary link statements did not say that the revaluations would be to a certain amount, nor that they would be subject to restriction.
- She did not accept that most of the misinformation had arisen via her own misunderstandings, or that she should not have relied on estimates.
- The main point was that she had not been provided with accurate calculations of benefits before her retirement date.

## **Ombudsman's decision**

35. Mrs R complained that she was provided with inaccurate calculations of her retirement benefits before her retirement date. TP has acknowledged that there were errors in the Statement that Mrs R received on 20 August 2019, including incorrect service dates and omission of the maximum lump sum figures Mrs R had requested. Further, it acknowledged that it had not provided a breakdown of her first pension payment on her pension payslip. TP has apologised to Mrs R for its errors and omissions and has provided corrected figures in an amended statement.
36. However, each MBS provided a full breakdown of the service and salary TP held on its records. The MBS' all included the warning that it was Mrs's R's responsibility to check that her service details were correct, as errors could result in delays and under-payment of pension benefits. TP also stated that errors could only be rectified by employers as it could not directly alter service records without employer authorisation. Mrs R was therefore made aware at all stages that she should check and correct any service information so that incorrect quotes could be avoided.
37. In all the written statements before retirement, Mrs R was provided with warnings that the figures were illustrations and not guarantees of future benefits. Mrs R was also informed, in writing, that accurate pension calculations could not be provided until nearer to, or after her retirement date. Similarly, the online calculators were not designed to provide guaranteed figures and were only designed to give estimated benefits based on the variable figures input into them. Mrs R should not have relied on these illustrations in reaching decisions about her retirement. I also note that Mrs R was provided with correct information before her retirement date and, while I understand it might have been problematic for her, she could have attempted to rescind her retirement request had she wished to. Mrs R has not provided any evidence that she took any such action.

38. Regarding the salary link, each MBS provided to Mrs R stated that the final salary accrued benefits would be revalued annually in line with “salary and growth factors”, and that Mrs R would not lose out on continued growth as a result of moving to the career average section of the Scheme. It is for TP to decide how detailed this information needs to be, but Mrs R could have asked for more detailed information at any time if anything was unclear. In any event, it is not correct to say she was not informed on this point, when the evidence indicates it was contained in statements sent to her on a regular basis.
39. Mrs R contended that she had not been informed about the salary restriction. I find that the information provided on each of the MBS should have been sufficient to alert Mrs R to the likelihood that her pension would be subject to reduction as a result of her increased salary in the later years of her service. If Mrs R was unclear about the salary restriction, she could consult the information online or sought further clarification either from TP or her employer which would have clarified matters for her.
40. In respect of the telephone calls to which Mrs R refers, TP supplied call summaries of the various calls it had with Mrs R. The summaries, in addition to the detailed on-line chat exchanges, many of which took place following the telephone calls, make sufficiently clear what Mrs R was querying and also that the explanations provided answered those queries. I have seen nothing that could have misled Mrs R in the way she suggests.
41. I find that, despite any illustrations that indicated otherwise, Mrs R was told her salary would be subject to restriction, resulting in lower benefits. This restriction has been a feature of the Scheme since 2010. I am satisfied that TP has correctly applied the restriction in accordance with the relevant Scheme Regulation.
42. Despite any misinformation contained within any illustrations supplied to Mrs R, she is only entitled to the benefits her service has enabled her to accrue. Mistakes do not confer on Mrs R any entitlement to more than that.
43. I do not uphold Mrs R’s complaint.

**Anthony Arter**  
Pensions Ombudsman

23 September 2021