

Ombudsman's Determination

Applicant	Mrs N
Scheme	Scottish Housing Association Pension Scheme (the Scheme)
Respondent	TPT Retirement Solutions (TPT)

Outcome

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

Complaint summary

2. Mrs N complained that when she claimed early retirement benefits at age 50 in 2018 TPT failed to tell her that she was required to take all of her benefits from the Scheme at the same time if she chose to claim them before age 55. Mrs N said this caused her financial detriment.

Background information, including submissions from the parties

3. In 1993, Mrs N commenced employment with Blairtummock Housing Association (**Blairtummock**) and joined the Defined Benefit (**DB**) section of the Scheme.
4. With effect from 6 April 2006, the Government implemented new legislation under the Finance Act 2004, (**the 2004 Act**). The provisions of the 2004 Act are such that if a member takes their retirement benefits before reaching the statutory normal minimum pension age, (**the NMPA**), the member and the scheme are liable for an 'unauthorised payment' tax charge unless the retirement claim is in respect of ill-health.
5. On 5 April 2010, the NMPA was increased from age 50 to 55. However, a pension scheme member with entitlement to take retirement benefits before the NMPA as at 6 April 2006 could retire before age 55, without triggering any additional tax liability under the 2004 Act. This was by means of a 'Protected Pension Age', (**PPA**). In order to qualify for, and then retain a PPA, the member had to claim all their retirement benefits in a pension scheme at the same time.
6. In April 2011, Mrs N left the Scheme and qualified for a PPA of 50.

7. In April 2014, Mrs N re-joined the Scheme in its defined contribution (**DC**) section, having been re-employed by Blairtummock.
8. On 7 February 2017, Mrs N emailed TPT to ask for a retirement quotation and said that she intended to leave Blairtummock and claim her benefits at age 50 on 11 December 2018.
9. On 8 February 2017, TPT sent Mrs N a retirement quotation for the DB element of her benefits in the Scheme at age 50.
10. On 14 July 2017, TPT sent Mrs N a further retirement quotation to take her DB benefits at age 50.
11. On 17 September 2018, TPT sent Mrs N an additional retirement quotation to claim her DB benefits at age 50. The covering letter also stated:-

“As you are considering taking your benefits before age 55, you will be required to leave your employment with [Blairtummock] before benefits can be paid.”
12. On 11 December 2018, Mrs N left Blairtummock and took a lump sum of £45,950.21 and a residual pension from the DB section of the Scheme, paid quarterly.
13. On 3 January 2020, Mrs N telephoned TPT and said she was aware of problems at her bank, and she was concerned that her pension might not be paid correctly. In response TPT said that her pension would still be paid as normal on 6 January 2020.
14. On the same day a different department at TPT wrote to Mrs N and said:-
 - A review of all members who retired before reaching age 55 had established that Mrs N's pension should not have been put into payment as she held DC benefits which had not been brought into payment.
 - In order to have qualified for early retirement before age 55 with a PPA, members needed to have joined the scheme before April 2006 and subsequently taken all their benefits, DB and DC, at the same time.
 - Mrs N did not qualify for a PPA on the basis that she had not taken her DC benefits, so her pension had been suspended and the payment due on 6 January 2020 postponed.
 - In recognition of the distress and inconvenience caused to Mrs N by this matter, an award of £1,950 would be paid on 6 January 2020.
 - A further award of £2,000 would also be paid to Mrs N in the week commencing 17 February 2020.
 - A recalculation of Mrs N's pension entitlement at age 55 would be performed and an update provided three months from reaching that age.

15. On 8 January 2020, Mrs N made a complaint to TPT under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**) as follows:-
 - On numerous previous occasions TPT had confirmed that she could retire at age 50, provided that she had resigned from Blairtummock.
 - She telephoned TPT on 3 January 2020, due to problems at her bank, and during the call she was incorrectly told that her pension would be paid on 6 January 2020.
16. On 10 February 2020, TPT wrote to Mrs N and said:-
 - With effect from 6 April 2020, Mrs N's pension would be "terminated" but that she would be eligible to claim retirement benefits from age 55.
 - In order to offset the previous pension overpayments made to Mrs N, it would be necessary for her future payments to be reduced.
17. On 12 March 2020, TPT replied to Mrs N's complaint under stage one of the IDRP and said:-
 - Retirement benefits can only be paid in accordance with pensions legislation and the Scheme Rules.
 - As only the DB element of Mrs N's benefits, accrued during her employment with Blairtummock between 1993 and 2011, was put into payment, TPT has correctly concluded that her pension should be terminated.
 - TPT has always made it clear to Mrs N that she had accrued DB and DC benefits in the Scheme.
 - A suitable award in recognition of the distress and inconvenience caused by ceasing Mrs N's pension payments has been paid.
 - Due to originally claiming benefits earlier than the Scheme's normal retirement age, an early retirement factor was applied to Mrs N's pension.
 - At retirement from age 55, Mrs N's pension will be higher due to the early retirement factor reducing, because the benefits will be paid later.
 - Mrs N's complaint was not upheld.
18. Mrs N did not accept the outcome and on 13 May 2020, she requested that her complaint be further considered under stage two of the IDRP. She said that TPT's decision to terminate her pension had caused her financial hardship.
19. On 13 July 2020, TPT replied to Mrs N and said:-
 - When Mrs N claimed her pension TPT failed to recognise that she was required to take all of her benefits at once in order to retain her PPA entitlement.

- TPT took reasonable steps to rectify this error by taking legal advice, suspending any further payments, and by communicating the issues to Mrs N.
 - TPT correctly informed Mrs N that she had a PPA of 50, and that she was required to resign in order to claim her pension early.
 - TPT has mitigated the impact of terminating Mrs N's pension by awarding her a total of £3,950 in recognition of the distress and inconvenience caused.
 - It would not be possible to offer awards to Mrs N based on the quarterly pension payments that she would have received up to 11 December 2023 as she had requested.
 - HMRC would classify this as making "unauthorised payments", resulting in significant tax penalties for TPT and Mrs N.
 - Mrs N's complaint was not upheld but in view of the financial hardship caused, TPT could "recoup and restart" her pension.
 - Under such an arrangement, TPT would recalculate Mrs N's benefits as though she had retired on 6 January 2020 and recover the overpayments by offsetting them against Mrs N's future pension, including her DC benefits, when it came into payment.
 - This would allow Mrs N to be treated as if she had not retired and enable her pension to be restarted with effect from 6 January 2020.
 - An illustration was provided to Mrs N showing four options available if she decided to pursue this course of action. A copy is set out in the Appendix.
20. After receiving this letter Mrs N contacted TPT to request further information regarding the recoup and restart options that were provided.
21. On 9 September 2020, TPT wrote to Mrs N and provided four further illustrations of recoup and restart options.
22. On 25 February 2021, Mrs N selected Option 3 of TPT's recoup and restart offer in the letter of 13 July 2020. This was for an annual pension with the maximum lump sum, which would be used to pay off Ms N's overpaid lump sum and the remainder put towards refunding the remaining overpayments.

TPT's position

23. TPT said:-

- Mrs N's final payment under her initial incorrect pension was £1,754.18 in October 2019.

- At stage two of the IDRP, Mrs N was offered the option to have the benefits that were paid in error from December 2018 recouped and her pension restarted from the day after her original pension was suspended.
- Four illustrations were provided showing different recovery periods for this overpayment, varying from immediate full recovery to a two year period, dependent on the option chosen.
- TPT has done everything that could reasonably have been expected in order to mitigate the issues that Mrs N raised.

Mrs N's position

24. Mrs N said

- TPT failed to say that she was required to claim all of her benefits from the Scheme at the same time if she chose to take them before age 55.
- She had been earning around £36,000 a year and would not have left Blairtummock in order to retire at age 50 if TPT had provided this information.
- The annual salary of around £20,250 from a new part-time job, in addition to her current pension under the Scheme of £1,931.43 per quarter, does not cover her personal expenses.
- She has been seeking full-time employment in order to mitigate the shortfall in her income but with no success so far.
- She had been forced to claim Option 3 from the illustrations provided by TPT at stage two of the IDRP due to her financial hardship.
- Her pension was then restarted in April 2021 but with effect from January 2020 and the payments were backdated accordingly.
- Copies of her payslips relating to her new part-time job for July 2021 and August 2021 show that she has incurred an additional tax liability.
- Tax deductions of £187.46 in July 2021 followed by £211.45 in August 2021 were taken from her salary in this regard. However, from July 2021, she had increased her working time by two hours per week.
- She anticipates further increases to her tax liability but is awaiting clarification on this point from HMRC.
- The awards that she received from TPT totalling £3,950 were insufficient recognition of the distress and inconvenience she has suffered.

Adjudicator's Opinion

25. Mrs N's complaint was considered by one of our Adjudicators who concluded that no further action was required by TPT. The Adjudicator's findings are summarised below:-

- Between 8 February 2017 and 17 September 2018, TPT sent Mrs N three retirement quotations for taking her pension at age 50 from the DB section of the Scheme only.
- The retirement quotation of 17 September 2018 also stated that Mrs N was required to leave Blairtummock, in order to claim the benefits quoted before age 55. However, TPT failed to say that Mrs N would also need to take her DC benefits at the same time.
- TPT had clearly provided Mrs N with misinformation in this regard, which amounted to maladministration, and Mrs N had reasonably relied on the misinformation.
- It was difficult to say, without the benefit of hindsight, whether Mrs N would, or would not, have left Blairtummock, had she known the correct position. However, at the time she did so, Mrs N accepted that she would receive a quarterly pension of £1,754.18, which is lower than her current pension payments of £1,931.43 per quarter and was presumably sufficient at the time. The Adjudicator formed the opinion that, on the balance of probabilities, Mrs N would still have left Blairtummock, even had she not been misinformed.
- TPT provided Mrs N with four recoup and restart options. These options allowed TPT to recover the overpayments made to Mrs N from December 2018 and to restart her pension correctly with both the DB and DC benefits taken at the same time. This put Mrs N back into the position she would have been in had she been given the correct information.
- The 2004 Act prohibited TPT from allowing Mrs N's incorrect pension to remain in payment, or from offering her an award equivalent to the incorrectly paid pension. Mrs N took until February 2021 to accept Option 3 as an alternative was her personal choice., in the Adjudicator's opinion TPT could not reasonably be held responsible for Mrs N not selecting an option earlier. In any event, the payments were backdated to January 2020.
- There was also no evidence that the situation had triggered additional tax liability for Mrs N, since her tax code did not change during the period covered by the payslips she provided as evidence of financial loss. Further, Mrs N has not provided any evidence that HMRC has advised of future tax liability that can be attributed to TPT's error.
- Consequently, the Adjudicator formed the opinion that it was reasonable to conclude Mrs N had not suffered financial detriment. The maladministration would,

however, have caused Mrs N, a high level of distress and inconvenience but, the Adjudicator was of the opinion that TPT's awards totalling £3,950, were sufficient recognition of this.

26. TPT accepted the Adjudicator's Opinion, Mrs N did not, and the complaint was passed to me to consider. Mrs N provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mrs N.

Mrs N's additional comments

27. She would not have retired early from Blairtummock and given up her full-time employment and its corresponding salary, but for the misinformation that TPT provided. It is not with the benefit of hindsight that she has reached this conclusion.
28. There are long term financial implications related to her financial planning. She had intended to leave Blairtummock at age 50, and take her DB benefits only from the Scheme, while doing part-time work up to age 55, then claim the DC benefits at age 56 in order to minimise her tax liability.
29. Her final quarterly payment of £1,754.18 under the incorrect pension and her current pension of £1,931.43 per quarter are the figures before the deduction of tax. So, these are not the sums actually received.
30. She has incurred additional tax liability as a consequence of the payments relating to the DB element of her pension being reinstated. The increased tax deductions quoted on her pay slips have resulted from this.
31. Based on a tax code of 1250L, it is clear that working an additional two hours per week means that the tax deductions are larger than would be the case if the full tax allowance was being applied.
32. She has not received confirmation from HMRC of any additional tax liability resulting from the DC benefits being in payment in addition to receiving her DB benefits and the salary from her part-time job.
33. TPT has acknowledged the financial hardship she suffered as a consequence of her incorrect pension ceasing in January 2020. The purpose of the awards, totalling £3,950, is unclear as to whether they were in recognition of financial hardship, or the distress and inconvenience caused.
34. Those awards did not mitigate the impact of the incorrect pension ceasing in January 2020. The payments only covered her financial commitments from the date she was informed of TPT's error until the end of June 2020.
35. Since January 2020, she has suffered further distress and inconvenience in seeking a resolution to her complaint that has not been recognised.

Ombudsman's decision

36. Mrs N submits that she would not have retired early from Blairtummock and given up her full-time employment with a corresponding salary but for the misinformation that TPT provided. She said that it is not with the benefit of hindsight that she has reached this conclusion.
37. Mrs N contends that her intention was to leave Blairtummock at age 50, and take her DB benefits only from the Scheme, while doing part-time work up to age 55, then claim the DC benefits at age 56 in order to minimise her tax liability.
38. I note Mrs N's stated intention to leave Blairtummock at age 50 and take her DB benefits only from the Scheme. However, I would have expected Mrs N to have made enquiries to confirm this was possible and that her understanding was correct. Had she done so it is more likely than not that the correct position would have been confirmed to her.
39. The 2004 Act prohibited Mrs N from following through with her intention to claim only the DB element of her pension at age 50 without also taking the DC benefits. TPT was clearly at fault for putting only Mrs N's DB benefits into payment in December 2018. Having recognised its error in 2020, TPT correctly stopped Mrs N's incorrect pension and provided options to put her back into the position she would have been in had the error not been made.
40. Mrs N acknowledges that HMRC has not confirmed any additional tax liability resulting from her selecting Option 3 and taking the DC element of her pension at the same time as her DB benefits, in addition to receiving the salary from her part-time job.
41. Mrs N's suggestion that the application of tax code 1250L is evidence of an additional tax liability is incorrect, the tax code 1250L simply relates to how much tax-free income a person is allowed in the relevant tax year. Mrs N has not provided any evidence that HMRC has increased her tax liability as a result of TPT's error. So, TPT cannot reasonably be held responsible for the amount of tax HMRC deducts from her pension. There is no evidence of any financial detriment to Mrs N that can be attributed to TPT's error.
42. Mrs N also argues that TPT has acknowledged the financial hardship she suffered as a consequence of her incorrect pension ceasing in January 2020. She contends that it is unclear whether the TPT awards, totalling £3,950, were in recognition of her financial hardship, or the distress and inconvenience caused.
43. TPT's, letter of 3 January 2020, explained that the relevant awards were being paid in recognition of the distress and inconvenience caused by ceasing her pension. So, it is clear that the payments were not intended to cover all of Mrs N's financial commitments or replace the pension that had ceased. It was at stage two of the IDRP, in July 2020, that TPT recognised the financial hardship caused to Mrs N and offered the 'recoup and restart' options. This allowed TPT to resume payment of Mrs

N's pension in accordance with the 2004 Act, and alleviate her financial hardship, after she had selected Option 3.

44. I find the awards amounting to £3,950 that TPT has paid to Mrs N are sufficient recognition of the distress and inconvenience caused.

45. I do not uphold Mrs N's complaint.

Anthony Arter

Pensions Ombudsman
13 October 2021

Appendix

TPT's response to Mrs N at stage two of the IDRP included illustrations of the following options to recoup and restart her pension:-

Option 1

- Increased annual pension with smaller lump sum
- Overpaid lump sum is paid off using the new lump sum
- No lump sum payable to [Mrs N]
- Outstanding overpayment balance deducted from the new annual pension

Reduced annual pension from 6 January 2020: £3,872.33

Length of time the pension will be reduced by: one year, 11 months

Estimated date repayments will complete and full
unreduced pension will become payable: 10 December 2021

Option 2

- Annual pension with maximum lump sum
- Overpaid lump sum is paid off using the new lump sum
- Residual lump sum payable to [Mrs N]
- Outstanding overpayment balance deducted from the new annual pension

Reduced annual pension from 6 January 2020: £3,768.16

Reduced lump sum payable to [Mrs N]: £4,291.88

Length of time pension will be reduced by: two years

Estimated date repayments will complete and full
unreduced pension will become payable: 29 December 2021

Appendix

Option 3

- Annual pension with maximum lump sum
- Overpaid lump sum is paid off using the new lump sum
- Residual lump sum put towards overpayments
- Lump sum payable to [Mrs N]
- Outstanding overpayment balance deducted from the new annual pension

Reduced annual pension from 6 January 2020: £4,567.02

Length of time pension will be reduced by: one year and one month

Estimated date repayments will complete and full
unreduced pension will become payable: 31 January 2021

Option 4

- Annual pension with maximum lump sum
- Overpaid lump sum is paid off using the new lump sum
- Residual lump sum put towards overpayments
- No lump sum payable to [Mrs N]

Outstanding overpayment balance deducted from the DC fund resulting
in no reduction of annual pension

Annual pension from 6 January 2020: £7,536.31

DC fund as at 13 July 2020: £29,345.42

DC fund after remaining overpayment
deducted: £26,164.62

Under Option 1 to Option 3, Mrs N's DC fund can be taken entirely separately from her DB benefits but must be taken at the same time. Option 4 uses some of Mrs N's DC fund to pay off the balance of overpayments, leaving a smaller DC fund, which must be taken at the same time.