

Ombudsman's Determination

Applicant	Mr H
Scheme	Teachers' Pension Scheme (the Scheme)
Respondents	Teachers' Pensions (TP)

Outcome

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

Complaint summary

2. Mr H's complaint concerns the provision of incorrect information which he says he later relied on, in part, when he made the decision to accept a new role.

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. In 1983, Mr H joined the final salary section (the **FS section**) of the Scheme, a defined benefit occupational scheme, administered by TP. Mr H's Normal Retirement Age (**NRA**) under the Scheme is 60, which he reached in May 2017.
5. The Scheme is administered in accordance with the Teachers' Pension Scheme Regulations (the **Regulations**).
6. In 2017, Mr H went through a divorce and a portion of his retirement benefits were transferred to his ex-wife following a Pension Sharing Order (**PSO**). Consequently, Mr H says he made the decision to continue working past his NRA to age 66 to accrue additional retirement benefits because of the reduction made to his benefits.
7. In January 2018, Mr H applied for a role as a lecturer for Liverpool John Moore's University (the **University**).
8. In March 2018, Mr H was offered the role as a lecturer at the University with an increased salary. Before Mr H accepted the role he considered whether his entitlement under the Scheme would be affected.

9. On 9 April 2018, Mr H telephoned TP to query whether his role with the University would be covered by the Scheme (the **Call**). He asked if his pensionable service with his current employer, Newcastle College (the **College**), and the University, would be treated as continuous. In response, the representative told Mr H that, because both the College and University participated in the Scheme, his pensionable service would be treated as continuous, unless his break in service was more than five years.
10. On 18 April 2018, Mr H says he made the decision to accept the role with the University based on the information he was provided during the Call.
11. On 17 August 2018, Mr H left his role with the College and stopped accruing benefits in the FS section of the Scheme.
12. On 1 September 2018, Mr H started his new role with the University, and he was enrolled into the Career Average Revalued Earnings section of the Scheme (the **CARE section**). Under the CARE section Mr Y had an increased NRA of 66, which was equal to his State Pension Age (**SPA**).
13. In November 2019, Mr H contacted the University's Pensions Manager (the **Pensions Manager**) to request an illustration of his FS section benefits. However, the Pensions Manager told Mr H that he had not been a member of the FS section since 17 August 2018. She explained that, after he reached his NRA, any service breaks of more than one day meant that his FS section benefits became payable the day after he left pensionable employment.
14. On 10 December 2019, Mr H telephoned TP and asked it to listen to the recording of the Call. Mr H said that during the Call he was assured that the one-month break, between his College and University roles, would be treated as continuous pensionable service within the FS section.
15. On 21 December 2019, TP wrote to Mr H and said that it had listened to the recording of the Call. It agreed that he was provided with incorrect information about breaks in service. It explained that:-
 - The Regulations state that any breaks in service of more than one day would result in the FS section benefits becoming payable once a member has reached NRA.
 - He had a break in service of more than one day between his employment with the College and the University. So, his FS section benefits became payable from the day after he left the College on 18 August 2018. This was regardless of when he wished to take them.
 - If he had continued in service with the College until 31 August 2018, and joined the University on 1 September 2018, his pensionable service would have been continuous, and he would have continued accruing benefits under the FS section.
 - When he returned to pensionable employment, the pension in payment, or the pension that had become payable, and his current pensionable earnings, were

compared with the highest salary used to calculate his best average salary in the FS section (the **A Salary**). The A Salary is then revalued in line with annual inflation.

- If the sum of Mr H's pension and pensionable earnings exceeded the revalued A Salary, it was unlikely that he would be entitled to have his FS section benefits backdated to the 18 August 2018, as his pension would be withdrawn. This was known as abatement.
- There was no benefit in deferring payment of his FS section benefits, as the lump sum would not increase beyond his NRA. However, the annual pension would increase each April.
- He was entitled to be enrolled into the CARE section and accrue additional benefits through his employment with the University. Under the CARE section, he would accrue a pension of 1/57th of his annual earnings.

16. On 15 January 2020, Mr H wrote to TP as he did not believe that it had adequately addressed his complaint in its response. He said that:-

- To ensure that his change in employment did not affect his continuous pensionable service, he checked the TP website, particularly the section about breaks in service. However, there was nothing on the website that addressed his circumstances.
- During the Call, he was told that a break of one month, between the date he left the University, and the date he would join the College, would not count as a service break. This was because a break in service was considered as a period of more than five years away from pensionable employment.
- It was not until 20 November 2019, when he contacted TP about a retirement illustration, that he was told he was not a member of the FS section. Instead, he had been a member of the CARE section of the Scheme since 1 September 2018. During the Call, he was also told that a break in service was treated as one day because he had reached his NRA in May 2017.
- There was nothing on the Scheme website that explained the position for members who were above their NRA. Nor did the website explain that a single break in service, of more than one day, for a member over their NRA, would result in their removal from the FS section.
- He believed that the difference in the definition of a break in service that had been applied in his case was discriminatory because he chose to work beyond his NRA.
- Having listened to the recording of the Call, he believed that the questions he asked at the time were clear, specific to his circumstances, and unambiguous. The representative provided him with incorrect information, which had influenced his decision to accept the role with the University.

- Due to the misinformation, TP should exercise its discretion and allow him to re-join the FS section.

17. On 29 January 2020, TP responded to Mr H and said that:-

- The Regulations do not make any provisions for his pensionable service within the FS section to be treated as continuous after a break in service of more than one day. He should query with the College whether he was paid any holiday pay from 17 to 31 August 2018. If so, the College would need to amend his last working day to 31 August 2018.
- In 2012 the Government undertook a review of the Scheme. During the review the Government considered changes in the longevity of an individual's working life. So, the CARE section was introduced which had an increased NRA of either 65 or the members' SPA.
- The "Planning for retirement" section of its website said:

"once you reach your [NRA] and provided you're out of service you should claim your benefits. If you continue in pensionable service after you reach your [NRA] your benefits will be paid from the last day of pensionable service."
- He was not eligible to be enrolled back into the FS section.

18. On 4 March 2020, Mr H made a complaint to the Department for Education (**DfE**) under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). He said that:-

- During the Call, it should have been clear to the TP representative that he had already reached his NRA in the FS section. He specifically asked questions about the impact a service break would have on his entitlement under the Scheme.
- He was misinformed that the one-month gap between his employment with the College and the University was not a service break, as it was less than five years. This information, at the time, was consistent with the information on TP's website about service breaks.
- He was not informed that he would no longer be a member of the FS section once he had left the College. It was only when he made a query about a retirement illustration that he was made aware he was provided with incorrect information.
- The Pensions Manager said that her records indicated that he was still paying into the FS section and accruing benefits.
- He did everything that he could to ensure that his change in employment did not impact his membership in the FS section. Based on the Call, he made the decision to accept the role with the University.

- The difference in the definition of break in service for members above, and those below their NRA, was discriminatory.

19. On 25 March 2020, the DfE responded to Mr H's complaint. It did not uphold his complaint and explained that:-

- It was responsible for ensuring the relevant Regulations had been applied correctly and that the process followed by TP to apply the Regulations was appropriate. It apologised that he was provided with incorrect information about breaks in service.
- It was unable to ascertain whether he had been disadvantaged by the misinformation. It is possible that the CARE section's higher accrual rate would be more advantageous to him, as he had intended to work beyond the NRA under the FS section.
- Neither TP nor the DfE held any discretionary powers under the Regulations to reinstate him back into the FS section.

20. TP's position:-

- The Regulations treat pensionable employment as continuous pensionable service for non-disqualifying breaks in service of less than five years. If a FS section member exceeds a break in service of more than five years, on their return to pensionable employment they are enrolled into the CARE section.
- The Regulations are clear that once a member reaches their FS section NRA, any breaks in service result in the FS section benefits becoming payable the day after the break in service started. Mr H's FS benefits became payable from 18 August 2018, and he has been a member of the CARE section since 1 September 2018.
- If Mr H chooses to claim his FS section benefits, he is unlikely to be due any backdated arrears. This was because his current pensionable earnings were higher than the revalued A salary used for his FS section benefits.
- It was difficult to project the benefits under the FS section and compare these with the benefits under the CARE section. This was because assumptions would need to be made about future accrual, future revaluation of the CARE benefits; and the impact of the PSO on his benefits in the FS section.
- It had provided Mr H with an illustration of what his benefits might be when he reached age 66 in May 2023. The illustration was not guaranteed and did not include any increases or revaluation for April 2022 or April 2023. It was based on the assumption that Mr H's current salary would remain the same and that he would remain in pensionable employment until May 2023.
- Under both the FS and CARE sections, when he reached age 66, he might be entitled to:

- a yearly pension of £12,498.02 and a lump sum of £37,494.07 from the FS section, and a yearly pension of £3,183.39 from the CARE section. In total he would receive a yearly pension of £15,681.41 from both sections.
- If he commuted part of his pension from the CARE section, his yearly pension would decrease to £2,616.39 but he would receive a lump sum of £6,804.00. He would then receive a combined yearly pension of £15,114.41 and a combined lump sum of £44,298.07 from both sections.
- If Mr H's service was treated as continuous between the College and the University, and he remained in the FS section, he might have been eligible to claim a yearly pension of £14,765.41 and a lump sum of £44,296.24 from May 2023.
- Based on the retirement illustration, it appeared that Mr H had benefited from joining the CARE section.
- The information regarding breaks in service was included on the Scheme's website via the questions and answers section, which provided details about when retirement benefits were payable from. However, TP had since worked to ensure that the information was clearer.

21. Mr H's position:-

- He contacted TP on four separate occasions and asked to be directed to the section on its website that said that service breaks are treated differently when you reach your NRA. On each occasion, TP was unable to find the information on its own website.
- He was now required to work until he reached age 66 before he could claim the unreduced CARE section benefits. Whereas, if he had remained in the FS section, he would have been able to claim his benefits any time after his NRA in May 2017.
- TP had not provided him with any communications to confirm that he was no longer a member of the FS section, or that he was enrolled into the CARE section.
- He based his decision to accept the role at the University on the understanding that his pensionable service in the FS section would be continuous. In doing so, he had incurred costs relocating to Liverpool which he may otherwise not have incurred. Due to the incorrect information he received from TP concerning service breaks, he was unable to make an informed decision about his employment and pension benefits.

Adjudicator's Opinion

22. Mr H's complaint was considered by one of our Adjudicator's who concluded that no further action was required by TP. The Adjudicator's findings are summarised in paragraphs 23 to 34 below:-
23. In this case, the provision of incorrect information amounted to maladministration. As maladministration had occurred, the normal course of action would be, as far as possible, to put Mr H back into the position he would have been in had the error not occurred. This did not, however, mean that Mr H was eligible to be enrolled back into the FS section.
24. Mr H left his role with the College on 17 August 2018 and started a new role with the University on 1 September 2018, a service break of 10 working days. Consequently, Mr H's FS section benefits became payable on 18 August 2018 as he had already reached his NRA in May 2017.
25. The provision of incorrect information did not override the Regulations that govern the Scheme. Neither TP nor the DfE have any discretionary powers to act in a way that is not stipulated in the Regulations. The Adjudicator concluded that TP and the DfE had acted in accordance with the Regulations. Due to Mr H's break in service, he was no longer eligible to be enrolled back into the FS section.
26. It was reasonable for Mr H to have relied upon what he was told during the Call. However, the Adjudicator did not agree that Mr H has suffered detriment, due to the misinformation. This was because, from 1 September 2018, he was enrolled into the CARE section on a higher salary. As a result of the CARE section's accrual rate, and his increased salary, he accrued additional benefits, at greater rate, than if he had remained in the FS section.
27. The Adjudicator believed that, even if Mr H had not been provided with the misinformation, it was likely he still would have accepted the University role. This was because of the provision of an increased salary in addition to the CARE section's generous accrual rates. So, Mr H had not relied on the misinformation to his detriment.
28. Mr H had previously said that, due to the PSO reducing his FS section benefits, he would continue working until at least age 66. So, it was likely that Mr H would have worked until age 66, even if he was not a member of the FS section. He was also still eligible to claim his CARE section benefits before reaching age 66, albeit with a reduction for each year the benefits were taken early.
29. Mr H was provided with two retirement illustrations. One showed that if he had remained in the FS section, without a service break, his yearly pension would likely have been £14,765.41 when he reached age 66. The second illustration provided that his combined FS and CARE benefits would likely equate to a yearly pension of £15,681.41. It was noted that while the illustrations were not guaranteed, it was likely

that Mr H would benefit from being a member of the CARE section. So, there was no actual financial loss to consider.

30. When a member reaches their NRA, a service break comes into effect the day after they leave pensionable employment, as opposed to where there is a gap of over five years or more in their service. The purpose of the Scheme reform, which led to the establishment of the CARE section and the difference in the definition of a service break, was to ensure the Scheme's NPA was in line with a member's SPA. This was also to take into account an increase in the working lives of members.
31. For Mr H to have a valid age discrimination case, he would need to demonstrate that he was treated less favourably than another member in an identical position to him. The Adjudicator was not persuaded, on the evidence provided, that Mr H had been treated unfairly because of his age.
32. TP explained that Mr H's current pensionable salary was equal to his revalued A Salary. When Mr H claims his FS section benefits, it is likely he will not be due any arrears backdated to 18 August 2018 due to abatement. It was the Adjudicator's view that TP could have informed Mr H about abatement during the Call. However, it was noted that this information was not provided at the time as TP considered that a months gap between Mr H's roles would still have been treated as continuous.
33. It is not yet possible to calculate the full impact of abatement on Mr H's pension until he retires from his role at the University and claims both his FS and CARE section benefits. This is because Mr H is still an active contributing member of the CARE section. The benefits Mr H has accrued under the CARE section may offset any loss of the abated pension under the FS section. At present, Mr H's perceived financial loss is a hypothetical loss rather than an actual loss.
34. Mr H did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. I agree with the Adjudicator's Opinion, and I will respond to Mr H's additional comments which are summarised below:-
 - He had suffered indirect discrimination due to the difference in the definition of a "service break" for members above and below their NRA's. Indirect discrimination was when a practice, policy or rule applies to everyone in the same way, but has a worse effect on some people than others. In this case, the Regulations placed anyone over their NRA at a disadvantage compared to those below their NRA.
 - The decision to relocate and change roles, at age 60, was not taken lightly. The difference between his College and University salary was £1,677.04, which was not sufficient enough reason, on its own, for him to accept the University role. While he had intended to work past his NRA he could easily have remained at the College and could have sought a promotion there.
 - Before relocating to Liverpool, he used his savings to clear the outstanding mortgage on his house and began renting an apartment in Liverpool for £675 a month. Between December 2018 and December 2020, he rented out his house,

through a letting agency, and earned a total of £11,235. However, this amount did not cover the total cost of his apartment in Liverpool, which cost him a total of £16,604, until he moved out in July 2020. In January 2021, he sold his house. In total, he had suffered a financial loss of £5,369, the difference between what he earned from renting out his house, and what he paid in renting an apartment in Liverpool.

- The figures provided within the comparative illustrations did not take into account that his pension would be abated. Further, there was no guarantee that the figures would be borne out in the future. So, it was impossible to know whether he had been negatively impacted by not remaining a member of the FS section.
- He accepted the University role, in part, with understanding that his salary would improve over the years. However, this did not mean that he would have accepted the University role regardless of whether he was misinformed or not. The safest option, if he were not provided with the misinformation, would have been to remain in his College role. If he were provided with the correct information about service breaks and that his benefits would be abated he would have remained with the College.
- He did not agree that TP had acted within a reasonable timeframe to inform him that he was provided with misinformation. It was only after he contacted the Pensions Manager that he was made aware of TP's error during the Call. It took TP three years to provide the comparative illustrations in an attempt to reassure him that he was not adversely affected by not being a member of the FS section. The level of distress and inconvenience he has, and continues to suffer should be recognised with an appropriate level of redress.

Ombudsman's decision

35. There is no dispute that Mr H was provided with incorrect information during the Call. This amounts to maladministration by TP. However, despite TP's error, I am satisfied that TP has acted in accordance with the Regulations. That is, as Mr H is over his NRA, a service break of more than one day, results in his FS section benefits becoming payable. Consequently, he is no longer entitled to be re-enrolled back into the FS section.
36. In cases where incorrect information has been given redress will be provided if it can be shown that financial loss or non-financial injustice has flowed from the reliance on the incorrect information. For example, the member may have taken a decision in reliance on the accuracy of the information, which they would not otherwise have taken. However, they must be able to prove both that they relied on the accuracy of the information provided and that it was reasonable to do so.
37. Having considered the information provided during the Call, it was not unreasonable for Mr H to have accepted this information as correct. However, I do not agree that it was reasonable for him to have relied on it to the extent that he did, that is, accepting

the University role and relocating to Liverpool. Mr H made these decisions based on one telephone call to TP in April 2018. Given the nature of the decisions that Mr H was undertaking, I would have expected him to have followed this up with TP, or at least have asked for written confirmation about what constituted as a service break. I find that had Mr H had queried the matter further with TP between April 2018 and August 2018, he would, more likely than not, have been informed of the correct position.

38. I find that had Mr N been informed of the correct position, in April 2018, regarding service breaks, there is nothing to suggest that he would not have accepted the University role, albeit, possibly without a gap between roles. When looking through the lens of hindsight it is easy to say that possibly a different course of action would have been taken. When taking into consideration the accommodation cost and other expenses the increase in remuneration was marginal, especially as Mr H has said he could have sought promotion at the college but see my comments on promotion prospects in paragraph 39 below. It makes me wonder whether there were also other reasons why Mr H was attracted by the new position.
39. Mr H has inferred that the easiest, and safest, decision he could have made was to remain at the College and pursue any possible promotions there. However, there was no guarantee that a promotion at the College would become available, or that his application for it would be successful. So, it would seem likely that Mr H would have accepted the University role in any event, due to an increased salary and the potential for future salary increases.
40. Mr H has said that he rented his home out and used the income to help pay for his apartment in Liverpool. However, the rental income was not enough to cover the full £675 per month cost of his apartment. He claims to have suffered a financial loss of £5,369. Mr H will have known, and presumably accepted, that the rental income from his home did not fully cover the cost of the apartment before he moved to Liverpool. While I acknowledge Mr H's contention that had he received the correct information he may not have moved perhaps, he could have mitigated that loss by moving to a more reasonable apartment when he was given the correct information in November 2019. Instead, he chose to remain where he was until July 2020.
41. Mr H said that the difference in what constitutes as a service break between members who are above or below their NRA is indirect discrimination.
42. It is not indirect discrimination for a particular category of members to be treated differently from other members provided that all those within a particular category are treated the same. The Regulations provide a clear difference between service breaks for members above and below their NRA. All members who reach their NRA move into another category to which particular Regulations apply. It is likely that the intention of the service breaks reducing for members over their NRA was because, at the time the Regulations were drafted, age 60 was the expected age for an individual to retire.

43. Mr H has argued that TP did not act within a reasonable timeframe to inform him about the provision of misinformation. TP was unaware that Mr H had been provided with incorrect information until November 2019 when he contacted the Pensions Manager. Thereafter, TP provided Mr H with sufficient explanation about service breaks and why he was now a member of the CARE section and not the FS section.
44. However, I recognise that TP did not provide Mr H with the two retirement illustrations until April 2021. While I appreciate the difficulty involved in calculating assumptive illustrations, it would have been beneficial for TP to have provided these to Mr H at an earlier date to help reassure him that being a member of the CARE section was unlikely to have a negative impact on his benefits.
45. Regarding Mr H's comments about abatement, the effect of this will only be known once he ceases employment and claims both the FS and CARE section benefits.
46. While I have every sympathy with the situation that Mr H now finds himself in, I do not believe that he has suffered to his detriment due to the provision of incorrect information. Despite no longer being a member of the FS section, it does not appear that Mr H will see any negative impact on his benefits.
47. I do not uphold Mr H's complaint.

Anthony Arter

Pensions Ombudsman
25 November 2022