

Ombudsman's Determination

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

Outcome

1. Mrs N's complaint against TP is partly upheld. To put matters right for the part that is upheld, TP shall pay Mrs N £500 in recognition of the significant distress and inconvenience it has caused her.

Complaint summary

2. Mrs N complained:-
 - She was not adequately informed about the 30-day break in pensionable employment provision and the potential consequences of this.
 - She was asked to pay her Additional Pension contributions arrears when she was not eligible to make the contributions.
 - About the length of time, it took to be informed she was no longer able to contribute to her original Additional Pension arrangement.

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. On 15 July 2010, TP sent an information letter to Mrs N which included an Additional Pension leaflet. It said:

"Can I stop paying monthly contributions?

You may revoke your monthly contribution election and stop payments at any time. A proportion of the benefits will be credited to you, known as a paid up credit. You may make a further election if you wish.

You will not be able to resume a previous election once it has been revoked or if you cease payment for a month.”

5. The Teachers' Pension Scheme Regulations 2010, under Part 3 said:

“15 Contributable salary...(1) The contributable salary of a person (T) is the total of—... but (in either case) does not include any amounts mentioned in paragraph (4).

(4) The amounts are—...

(f) the amount of any payment in lieu of notice to terminate T's contract of employment;”

6. On 15 August 2010, Mrs N submitted an election to purchase the maximum Additional Pension of £5,400 over a period of 20 years via the My Pension Online facility.

7. The application form confirmed if someone left pensionable employment, they could not continue to make further contributions. The value of Additional Pension would then be calculated based on the contributions that had been paid.

8. On 13 September 2010, TP wrote to Mrs N confirming her election to purchase Additional Pension (**AP1**) had been accepted. TP said:

“If you have a break in service of more than one month or take up non-pensionable employment, you will be credited with the Additional Pension paid up to the last day of pensionable employment. You can pay the outstanding contributions to complete the election, but they must be received within one month of leaving pensionable employment.”

9. On the same day, TP wrote to Mrs N's employer, Rhondda Cynon Taf County Borough Council (**Rhondda CBC**), regarding Mrs N's election AP1. TP detailed the monthly deductions of £436.32 which were required to be taken from 1 November 2010 to 31 October 2030.

10. The Teachers' Pension Scheme Regulations 2014, under clause 36 said:

“Amounts not forming part of pensionable earnings...

(f) any payment in lieu of notice to terminate P's contract of employment”.

11. An extract from the Teachers' Pension Scheme Regulations 2014 can be found in the Appendix.

12. On 1 April 2015, Mrs N became a member of the career average element of the Scheme. This offered three methods for increasing retirement benefits, referred to as 'Additional Pension', 'buy-out' and 'faster accrual'.

13. On 31 July 2015, Mrs N was made redundant by Rhondda CBC.

14. In August 2015, Mrs N received a redundancy payment from Rhondda CBC.
15. On 1 September 2015, Mrs N started new employment with Cardiff County Council (**Cardiff CC**). No contributions were deducted in respect of AP1.
16. On 9 November 2015, Mrs N telephoned TP saying she had started working for a new local authority. She discussed the three options of increasing her pension contributions.
17. On 26 November 2015, Rhondda CBC updated Mrs N's employment record with TP, saying she had left its employment on 31 July 2015.
18. On the same day, Mrs N submitted a new Additional Pension election (**AP2**) after telephoning TP to discuss her options. The new election was for £6,500 Additional Pension payable in instalments over a period of 10 years.
19. On 21 January 2016, Cardiff CC completed the online application for Mrs N's AP2 election.
20. On 25 January 2016, TP wrote to Mrs N and Cardiff CC confirming that her AP2 had been accepted. It was for a purchase of an Additional Pension of £6,500 per year at a cost of £709.80 per month over a period of 10 years.
21. On 23 June 2016, Rhondda CBC submitted its annual submission of service to TP. This confirmed Mrs N's employment had ended on 31 July 2015.
22. On 26 July 2016, Cardiff CC made an electronic submission to Mrs N's record saying that her employment had commenced on 1 September 2015.
23. On 12 July 2017, Cardiff CC contacted TP, to say that Mrs N's contributions for her AP1 were not being deducted.
24. On 19 September 2017, TP requested that Cardiff CC complete a 'Declaration of Liability Form' for the contribution arrears for the period 1 September 2015 to 31 March 2019. It also said Mrs N had two Additional Pension contracts with TP.
25. On the same day, Cardiff CC completed and returned the 'Declaration of Liability Form' to TP. It also confirmed Mrs N started her employment on 1 September 2015 and the Additional Pension contributions had been deducted from 1 March 2016 in respect of AP1.
26. On 14 August 2018, TP wrote to Cardiff CC saying that the information submitted regarding contributions did not reconcile with the amounts due. TP asked for confirmation that the details provided were correct.
27. On 7 September 2018, Cardiff CC responded to TP. It confirmed the previous information it had provided related to the contractual pension contributions. Cardiff CC provided the details for Mrs N's AP2 contributions for the period 1 September 2015 to 31 March 2017.

28. In August 2019, Rhondda CBC wrote to TP and said no contributions had been paid into the AP1 since 2015.
29. On 21 October 2019, TP issued a letter and invoice to Mrs N stating she owed £26,616.76 in pension contributions and accrued interest in respect of AP1.
30. On 15 January 2020, TP issued a letter to Mrs N stating, due to a break in her pensionable service, AP1 had been terminated with effect from 31 July 2015. TP confirmed she no longer owed any contribution arrears in respect of AP1. Mrs N's employer, Rhondda CBC, had been instructed to refund any contributions made since 1 October 2019.
31. On 20 January 2020, Rhondda CBC wrote to Mrs N informing her of the increase in the costs of purchasing the Additional Pension.
32. On the same day, TP messaged Mrs N via the My Pension Online portal saying:

“Your original additional election that was being purchased over 01/11/2010-31/10/2030 and ceased at 31/07/2015 was to purchase £5400 with personal and dependent benefits of which you have actually purchased £1820.20.”
33. On 11 April 2020, Mrs N submitted her first formal complaint letter under the Scheme's two stage Internal Dispute Resolution Procedure (**IDRP**) to TP.
34. On 23 April 2020, TP responded to Mrs N's complaint under stage one of the IDRP upholding her complaint. It apologised for the way her case had been handled. TP said, as there had been a break in service, AP1 had been terminated correctly. TP said a paid-up credit had been added to Mrs N's record.
35. On 27 May 2020, Mrs N issued her response to TP's letter. She asked for clarification regarding what happened to the AP1 election and what a paid-up credit meant. Mrs N also asked what had happened to the AP1 contributions she had paid.
36. On 9 June 2020, TP issued a further letter to Mrs N. This clarified what constituted a break in service and it confirmed that she had a paid-up credit of £1,820.20.
37. On 3 July 2020, Mrs N responded to TP's letter and queried whether she was able to purchase any Additional Pension.
38. On 5 July 2020, Mrs N challenged the complaint outcome and complained under the second stage of the IDRP.
39. On 24 July 2020, the Department for Education (**DfE**) issued its stage two IDRP response. With regard to AP1 it said:-
 - Mrs N had been informed about the impact a break in service would have in TP's letter dated 13 September 2010.
 - It was possible to pay the outstanding contributions, but this had to be done within one month of leaving pensionable employment.

- It was the member's responsibility to inform TP of any break in service, as it was not cost effective to monitor Additional Pension agreements.
- TP had correctly applied the regulations and so it did not uphold Mrs N's appeal.

Adjudicator's Opinion

40. Mrs N's complaint was considered by one of our Adjudicators who concluded that further action was required by TP. The Adjudicator's findings are summarised below:-

- Mrs N was provided with documentation which detailed the 30-day break in pensionable employment provision and the potential consequences of this clause both before and after she made her election for AP1.
- TP requested Mrs N pay outstanding pension contributions of over £26,000 for AP1 in October 2019. The demand was issued even though Mrs N was not eligible to make such contributions, as there had been a break in her pensionable employment. TP should have been aware of this position.
- TP was tardy in responding to information provided by Cardiff CC. This caused delays and it prolonged resolution of the pension contributions arrears issue by approximately two years.
- As TP had caused Mrs N significant distress and inconvenience, it should pay Mrs N a non-financial injustice award of £500.

41. TP agreed with the Adjudicator's Opinion.

42. Mrs N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs N provided her further comments which do not change the outcome.

43. In summary, she said:-

- She accepted "based on the small print" that she was not entitled to continue with her AP1 election, as there had been a 30-day break in her pensionable employment provision.
- The distress and inconvenience award of £500 was insulting and undermined the purpose of a compensatory regime. It did nothing to caution TP to be better, or get close to the sadness, anger, frustration and worry this matter had caused. The effects were not short-term, as the period lasted over two years.
- The Vento guidelines in discrimination law set the minimum injury to feeling for the most innocuous discrimination at £990. The relevance to her case was that it related to the generic judicial guidance on the notion of injury to feelings.

Ombudsman's decision

44. Mrs N has accepted that she is not entitled to continue with her AP1 election due to a break in her pensionable employment provision. So, the issue left for me to consider is the level of non-financial injustice Mrs N suffered as a result of TP' actions.
45. Mrs N considers that the suggested level of award for non-financial injustice did nothing to caution TP to be better, or get close to the sadness, anger, frustration and worry the matter had caused. She said the effects were not short-term, as the period lasted over two years.
46. I acknowledge that the matter will have caused Mrs N some distress and inconvenience, however, I find that Mrs N also holds some responsibility for this issue, as she was provided with details of what constituted a 30-day break in pensionable employment provision. So, she should have been aware that such a break had occurred after her employment with Rhondda CBC had been terminated and, as such, her AP1 would cease.
47. Mrs N should also have been reasonably aware on whether she was still making contributions for AP1. So, I consider Mrs N had some responsibility for which deductions, if any, were being made and what these represented.
48. Rhondda CBC had informed TP on 23 June 2016 that Ms N's employment had ceased on 31 July 2015. However, Rhondda CBC also informed TP, in August 2019, that Mrs N had not paid any AP1 contributions since 2015. Despite being provided with contradictory information, I find that TP had sufficient information to be aware that no contributions were due from Mrs N for AP1.
49. However, TP contacted Mrs N on 21 October 2019 requesting payment of the outstanding contributions and interest for AP1. TP wrote to Mrs N on 15 January 2020 stating that AP1 had been terminated with effect from 31 July 2015 and there were no outstanding contributions due. I consider that the distress, caused by the error of requesting that Mrs N pay the alleged outstanding contributions, were short-term.
50. However, TP did not correspond in a timely manner with Cardiff CC. From September 2017 to October 2019, which contributed to a delay of approximately two years in establishing the true position with regard to AP1. Although the details provided by Cardiff CC related to AP2, the information provided showed that there had been a break in Mrs N's pensionable employment of over 30 days which meant that AP1 should have ceased in 2015. I find that prolonging the true position of AP1 would have caused Mrs N distress and inconvenience.
51. Mrs N has said that the award proposed by the Adjudicator undermined the purpose of a compensatory regime and did nothing to caution TP to be better. Mrs N considers the Vento guidance should be applied. The Vento guidance, issued by the courts, is applicable to awards made for injury to an individual's feelings in cases of employment discrimination. Clearly, this is not a case of employment discrimination,

which is not in any event within my remit to consider, as Mrs N was not an employee of TP. Therefore, the Vento guidance is not relevant.

52. My awards for non-financial injustice are intended as an acknowledgment of the inconvenience and distress that someone has suffered as a result of maladministration. Awards of this nature are not made with the intent to punish the parties responsible for poor behaviour.
53. I find that TP's maladministration has caused Mrs N significant distress and inconvenience and an award of £500 is reasonable in the circumstances.
54. I partly uphold Mrs N's complaint.

Directions

55. Within 28 days of the date of this Determination, TP shall pay Mrs N £500 in recognition of the significant distress and inconvenience she has suffered.

Anthony Arter

Pensions Ombudsman
09 September 2022