

Ombudsman's Determination

Applicant	Mr S
Scheme	Teachers' Pensions Scheme (TPS)
Respondents	Teachers' Pensions (TP)

Outcome

1. Mr S' complaint against TP is partly upheld, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld), TP should pay Mr S £1,000 for the significant distress and inconvenience caused by its maladministration.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr S' complaint against TP is that it failed to process his application for a transfer out of the TPS before the April 2015 deadline. As a result of this, he has suffered financially and were he to draw his pension from the TPS, he will be left with a shortfall of approximately £1,600 a month. Mr S would like TP to pay him this difference.

Background information, including submissions from the parties

4. Following the changes in legislation that took effect from 6 April 2015, members of unfunded public sector occupational pension schemes were not allowed to transfer their benefits to a defined contribution or a flexible access pension scheme after this date. However, they could still transfer their benefits to defined benefit schemes.
5. Mr S opted out of the TPS on 31 October 2014. He requested a guaranteed statement of entitlement (**GSE**) from TP on 7 November 2014. This was just before his normal pension age of 60, which he reached on 14 November 2014. TP acknowledged receipt of his application on 12 November 2014.
6. Following receipt of Mr S' application, TP contacted Mr S' employer on 20 November 2014. It requested details of Mr S' salary details from 1 September 2012 to 31 March 2013. Mr S' employer responded on 26 November 2014.

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7. On 19 January 2015, TP requested further information about a number of salary reductions. The employer responded to TP the same day. However, the employer's response was not recorded as received by TP until 26 February 2015.
8. Mr S was notified on 27 April 2015 that TP would not be able to issue him with a GSE as the deadline had passed. Consequently, his transfer out of the TPS could not proceed.
9. Prior to TP's notification, Mr S, his independent financial adviser, and the receiving scheme, had chased TP on a number of occasions to request an update. They were given conflicting details about information that was still outstanding and requests for responses that were due to be sought from the employer.
10. Mr S complained under the TPS internal dispute resolution procedure (**IDRP**). His complaint was not upheld and he brought his complaint to us.
11. Mr S maintains that there was no reason why the GSE could not have been processed before the deadline. He asserts that it was due to TP's maladministration that it was not completed in time. Mr S says TP had all the information it needed to proceed by 19 January 2015, contrary to the frustrating and conflicting information he received. He also made some further points which are summarised below.
 - His decision to opt out of the TPS and transfer his benefits was to enable him to retire on 31 August 2015. The flexibility offered would have allowed him to take his current income during the next five years while his children were still at home, and he could then adjust it later on.
 - He investigated thoroughly and understood the benefits of the transfer both in the short and long term. It was the ability to retire without affecting the current financial position of his family that was the overreaching factor in his decision, without it, he would have continued working until he reached the statutory retirement age of 66.
 - The decision not to proceed with the transfer has been devastating and the uncertainty of his future income has caused a great deal of stress to him and his family. Since his retirement, he has had little to no income, as he has not yet drawn his pension benefits, and is having to supplement his income with his wife's salary and also with savings he had put aside for his children's university education. He said he had been in the process of looking for another teaching job and effectively "starting again" at the age of 61 but his health has since deteriorated.
 - His salary as a Deputy Headteacher was £65,661. If he takes his pension of £30,348, this will leave a shortfall of £35,313 per annum before tax. He says the shortfall over the next five to six years would be in the region of £176,565 to £211,878 not including any annual increases. In real terms, if he took the pension, his monthly income would be approximately £2,200 after tax. When compared to his previous home salary of £3,800 per month, this left a shortfall of £1,600 per

month. This significant difference in his monthly income will affect the quality of life for himself and his family, and he would not have been in this position if the transfer had been completed.

- He would like the transfer to go ahead provided it is not subject to the 55% tax charge and the 15% scheme sanction charge. If it is not possible, he would like TP to compensate him to reflect the difference in his salary and the current pension amount, as though he had carried on working for the next six years.

12. TP provided its formal response to Mr S' complaint on 30 November 2015, and is summarised below.

- A GSE could not be issued "due to reasons beyond its control". As the deadline for transfers approached, it received an unprecedented surge in applications.
- Details were required regarding Mr S' GMP figure, his service and his salary. These were requested from his employer on 20 November 2014 and were not received until 26 February 2015.
- GSEs could not be issued to all applicants despite a series of administrative steps taken to deal with the demand.
- Because of the regulations now in force, TP has no power to apply discretion or flexibility which could enable Mr S to transfer out to a defined contribution scheme, even if it issued a GSE to him.
- If TP were now to make the payment to Mr S, the transfer value would be subject to a 55% tax charge and there would be a 15% Scheme sanction charge which it would seek to recoup from him.
- In any event, the payment of a transfer value is not permitted when an application is received after a member reaches the normal pension age. Mr S turned 60 on 14 November 2014.

Adjudicator's Opinion

13. Mr S' complaint was considered by one of our Adjudicators who concluded that further action was required by TP. The Adjudicator's findings are summarised briefly below.

- Although TP has up to six months to issue a GSE, it does not need to take the full six months to do so.
- Mr S had made his intentions clear to TP on 7 November 2014, that following his opt out on 31 October 2014, he wished to transfer out of the TPS. TP acted on his request and requested information from his employer. Mr S' employer responded promptly to the queries raised by TP and TP had received all the information it required from third parties by 19 January 2015.

- Therefore, TP had nearly 12 weeks from 19 January to the 5 April 2015 deadline to issue the GSE. It did not do so. Six weeks of this time was wasted because on receipt of the information from the employer, TP evidently “lost” the information it had requested.
 - TP did not provide an explanation as to what happened in this six week period and it can only be surmised that the employer’s information was never processed internally or allocated as a piece of work to an administrator. It then seems the piece of work was allocated for processing on 26 February 2015, when presumably, it was found.
 - Given the number of applications TP would have been processing during that time and with the impending deadline, it should have been abundantly clear that time was of the essence. And, given the fact that a key piece of information requested by TP had never even been allocated or logged as a piece of work when it should have been, TP should have prioritised Mr S’ case to make up lost time.
 - Had the information from the employer been acted on without delay, on balance, there would have been sufficient time for the GSE to have been issued, and for the completed discharge forms to have been returned to TP within that 12 week period before the deadline.
 - The redress Mr S is seeking, to be allowed to transfer out without any penalties, is not possible. His benefits in the TPS have not been lost or affected. However, the actions of TP, which for the avoidance of doubt amount to maladministration, have meant he has lost the ability to control his pension flexibly in the way in which he intended. It is evident from his application, in November 2014, that he had been thinking about transferring out for some time. He made decisions based on being able to transfer out of the TPS and the financial and emotional impact to him of not being able to do so cannot be underestimated.
 - As Mr S’ loss appears to be significantly more than a loss of expectation, TP should compensate him with a sufficiently high award in recognition of the fact that his lifestyle choices were affected by its maladministration.
 - The Adjudicator recommended TP pay Mr S £1,000.
14. TP agreed to pay Mr S £1,000 in compensation. TP has restated its position that the regulations governing the TPS do not allow a transfer out of the TPS for a member who had attained the normal retirement age. It says as Mr S’ opt out of the TPS was effective from 1 November 2014, and he became entitled to his pension benefits at age 60 on 14 November 2014, any application to discharge his benefits by way of a transfer out would have been rejected. Reference to “application” is not in respect of Mr S’ application for a GSE but is in relation to the subsequent application that would have been required to discharge his benefits after a GSE had been issued. That subsequent application would have been rejected, irrespective of the 5 April 2015 deadline for transfers out of unfunded public section schemes.

15. However, Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr S for completeness.

Ombudsman's decision

16. Mr S does not agree that he has only suffered a loss of expectation as found by the Adjudicator. To support this position, he made the following additional points:
- the Adjudicator agrees that the fault lies with TP for its poor handling of his application;
 - his case can be distinguished from similar complaints which have been determined because TP had all the information it required on 19 January 2015, and as a result, there was sufficient time to complete everything before the deadline;
 - as TP was struggling with the workload, it could have made representations to the government to try and remedy the situation for members who would be affected by the impending deadline;
 - he has lost the ability to control his pension flexibly, and consequently, ensure financial security for him and his family, this is more than a perceived loss or a loss of expectation;
 - although his entitlement to benefits in the TPS has not been lost, in very real terms, his annual salary was significantly higher than the annual pension he will receive from the TPS;
 - if he draws his pension, his net monthly income will be about £1,500 less than his net monthly income as a Deputy Headteacher;
 - this was not a situation he would have put himself in, if he had known that there was a chance the transfer would not be completed;
 - it was the flexibility of being able to make up the difference over the next five years that persuaded him to seek a transfer out of the TPS in the first place;
 - as it is now apparent that the transfer cannot be made without penalties, he does not accept that he should suffer financially because of what he believes is more than maladministration;
 - TP have a responsibility to address this, and it should now make up the loss he will suffer as a result of its actions.
17. TP's point in relation to Mr S attaining the normal retirement age was first raised in its formal response to us in November 2015. The point had not been made when dealing

with his application, or explained to Mr S during the IDR. Again, it is symptomatic of the poor communication provided at the time by TP.

18. I agree with the Adjudicator that TP's actions in relation to Mr S' application for a GSE amount to maladministration.
19. Essentially, Mr S does not accept the redress recommended by the Adjudicator for the maladministration that occurred.
20. From the facts and from Mr S' submissions, it is evident that he had relied on his ability to transfer out of the TPS when making his financial plans and considering retirement from August 2015.
21. Whilst I am sympathetic to the position Mr S is now in, I am unable to agree with his estimation of loss. In considering whether Mr S has suffered an actual loss, I must have regard to his actual benefit entitlement in the TPS.
22. TP did not recognise that it had received a response to its second query from Mr S' employer on 19 January 2015. In theory, had it done so, it may have been possible to issue Mr S with a GSE, issue the discharge forms and complete the transfer out to his new provider. However, given TP's comments set out above concerning the inability to transfer after reaching normal retirement age, it seems likely in any event that Mr S would have been unable to transfer out of the TPS.
23. In seeking a transfer, Mr S opted out of the TPS and his benefits became deferred. The value of his deferred pension benefits have not been affected because of TP's actions and/or omissions. Mr S remains entitled to the deferred pension he was entitled to before the processing of his GSE application began.
24. I accept Mr S' assertions that he was earning significantly more in his role as a Deputy Headteacher and that his annual pension would leave a monthly deficit of between £1,500 and £1,600. However, I do not find that TP is responsible for making up the shortfall. The decision to opt out of the TPS was one for Mr S to make alone. Further, his decision to retire when he did was also one that TP cannot be held accountable.
25. Consequently, I do not find that Mr S has suffered an actual loss. I agree with the Adjudicator that Mr S has suffered a loss of expectation, as he is now not able to access his pension benefits in the flexible way that he had intended. My usual awards for losses of this type are modest in size and are normally in the £500 range. As there are a number of matters which appear to have compound the maladministration by TP, and given the impact to Mr S, I consider that a higher amount is warranted in this case. In the circumstances, I agree with the Adjudicator's recommendation and I make the relevant direction below.
26. Therefore, I uphold Mr S' complaint in part. TP failed to process his application for a GSE before the statutory deadline for transfers. I do not uphold the part of Mr S' complaint that required TP to pay him the shortfall in his monthly income.

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Directions

27. Within 28 days of the date of this Determination, TP should pay Mr S £1,000 for the significant distress and inconvenience caused by its maladministration.

Anthony Arter

Pensions Ombudsman
5 January 2017