

Ombudsman's Determination

Applicant	Mrs M
Scheme	Teachers' Pension Scheme (the Scheme)
Respondents	Teachers' Pensions (TP)

Outcome

1. Mrs M's complaint is upheld and to put matters right TP shall pay Mrs M the maximum lump sum she would have received if she had been allowed to make that choice in January 2016; plus £500 for distress and inconvenience caused.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs M's complaint is that she has not been paid maximum tax free cash.

Background information, including submissions from the parties

4. The applicable Scheme Regulations are provided in Appendix 1.
5. On 18 December 2015 TP wrote two letters to Mrs M.
6. The first letter informed Mrs M that her application for ill health retirement had been approved on the grounds that she was permanently incapacitated (unable to continue in teaching and unable to undertake any other form of employment). The letter among other things, said:
 - She now needed to complete the 'Ill-Health Payment' form (**the Form**) on the TP website.
 - She had the option to convert part of her pension for a tax free lump sum.
 - When completing the Form she would be required to specify the amount she wanted to convert from her accrued pension benefit and or enhanced pension benefit.
 - Further information and a calculator could be found on the TP website.

- If she was unable to complete the Form online she could request a paper version.
 - The progress of her application could be monitored online via the 'Task Tracker' facility.
7. The second letter said when completing the Form she would be asked to provide her bank details, decide the conversion of her pension and confirm that she understood and would not be in breach of the HM Revenue & Customs rule on 'Recycling of Retirement Lump Sums'. The letter provided further details about the recycling rule, the conversion of pension and how to obtain an estimate of retirement benefits using TP's online calculator. On the latter the letter said as TP were waiting to receive final service and salary details from her employer they were currently unable to provide an up-to-date estimate of her ill health benefits "on which to base your conversion decision", but she could use the calculator to obtain an enhanced ill health estimate of her pension and lump sum. The letter said that her application could not proceed until the Form had been completed and gave a number for TP's Contact Centre to use if she had any queries or was unable to complete the Form online and said that a paper version of the Form could be sent to her.
 8. The letters were sent to an incorrect email address. It is not disputed that Mrs M did not receive either letter at that time
 9. On 23 December 2015 Mrs M called TP, by then she had left her employer, and was informed that her ill health application had been approved and was informed that she was required to complete the Form on-line.
 10. The next day Mrs M called again. She said her email address was incorrect on the TP website (Mrs M provided the correct details) and that she could not complete the Form until she knew the amounts involved to enable her to make her conversion decision. The TP operator agreed and informed Mrs M that she could send the Form back once she knew what the situation was.
 11. On 29 December 2015, Mrs M completed the Form online. A screen print provided by TP (who have been unable to retrieve the payment form itself) says under 'Notes':

"***Ill Health Payment Details for...***
Repay Contrs: no
Commutation?: no
Exceed LTA: no
Std Pen Amt: 0
Add Pen Amt: 0
Enh Pen Amt: 0
Std Pen Max?: no
Add Pen Max?: no
Enh Pen Max?: no"

12. Mrs M next spoke with TP on 4 January 2016. She said she had received a letter pertaining to her ill health retirement and repeated that she could not complete the Form without pension figures. The TP operator agreed and explained that service and salary details up to her last day of employment had been requested from her employer. The TP Operator said once the information was received they could “update the information for you on the system, and then you can see what the pension is worth to you, which will help you make that decision.” The operator added that once the information had been received “we can help guide you better with making that decision.”
13. Mrs M says she telephoned TP on several occasions after 4 January 2016: around 11 January 2016, the end of that week and around 18 January 2016 chasing the matter. She says she repeated that she was awaiting figures to enable her to complete the Form and was informed that calculations would be sent to her.
14. TP authorised Mrs M’s application for payment on 22 January 2016 and processed her retirement benefits on the basis of the Form completed on 29 December 2015.
15. Mrs M unsuccessfully complained via the Scheme’s two-stage internal dispute resolution (IDR) procedures. At IDR stage 1 TP informed Mrs M that her choice was irrevocable. At IDR stage 2 the Department of Education (DoE) said:
 - At best what Mrs M was told by TP on 4 January 2016 was confusing since TP could only provide Mrs M with her full service and salary history to input in TP’s online commutation calculator. At worst TP gave Mrs M an expectation that they would provide her with more information before she needed to make a decision about commutation.
 - There was nothing to indicate that Mrs M was given such an expectation before 4 January 2016 and she had, or should have read, on the TP website that it was for her to undertake calculations before indicating her commutation choice.
 - Nevertheless, Mrs M had completed the Form before the 4 January 2016 conversation. As stated on the TP website, once the Form had been received and authorised a commutation decision cannot be changed. TP should have made it clear to Mrs M when she contacted TP in January that she had already made her commutation choice.
 - The Regulations had been correctly applied and the correct process in respect of Mrs M’s commutation decision had been followed by TP.
16. Mrs M says she did not realise she had completed the Form on 29 December 2015 and was waiting for pension figures from TP. She says she wanted to take a larger lump sum to pay off debts.

17. Mrs M's calls with TP on 24 December 2015 and 4 January 2016 are summarised in Appendix 2.

Adjudicator's Opinion

18. Mrs M'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:
- Mrs M's assertion that she did not realise that she had completed the Form on-line on 29 December 2015 was supported by her call to TP on 4 January 2016 when she said she could not make a decision on commutation because she did not have final figures relating to her pension.
 - The Form was authorised by TP after Mrs M had repeatedly notified TP that she was unable to complete it until she knew her final pension figures.
 - Given what Mrs M had said and TP had agreed with her at that time, TP should have queried with Mrs M her completion of the Form on 29 December 2015 before authorising it and putting her benefits into payment. If TP had done that it is likely that Mrs M would have opted to take maximum tax free cash and a reduced pension.
19. TP did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. TP provided their 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 TP for completeness.

Ombudsman's decision

20. TP point out that Mrs M said in a call to TP on 24 December 2015 that she could not complete the Form because she did not have all service details, but nevertheless completed the Form on 29 December. TP say no effort has been made to explain why Mrs M made the decision or why she apparently ignored the Forms caveat that once made it was irrevocable.
21. That is not right. Mrs M has said she did not realise she had completed the Form on 29 December, which is supported by what she next did. Mrs M contacted TP on 4 January 2016, and several other times that month, and said she was unable to complete the Form without final pension figures.
22. TP say Mrs M must bear some responsibility, along with themselves, for the confusion caused first by her completing the election and then forgetting about it. However, this presupposes that Mrs M was aware that she had completed the Form. Clearly that was not the case.

PO-12022

23. TP say when Mrs M's benefits were calculated the relevant administrators were not aware of what she had said and only had a record of her 29 December 2015 election not to commute. TP say if they had known that there was some doubt about it they would have checked. But this boils down to failed internal communication at TP.
24. TP point out that the regulations require an election to commute to be made at the same time as the retirement application. Nevertheless, Mrs M is entitled to be put in the position she would have been in if TP's maladministration had not occurred.
25. TP say they fully appreciate that this may well have been a particularly stressful period for Mrs M because of her ill health, impending retirement and financial difficulties; and believe this may have contributed to Mrs M's evident confusion around the commutation election. TP say this should be taken into account in considering the question of compensation for distress and inconvenience.
26. I am satisfied that this matter has caused Mrs M significant distress and inconvenience and that a payment of £500 by TP to Mrs M is warranted.
27. Therefore, I uphold Mrs M's complaint.

Directions

28. To put matters right within 21 days of the finalised Opinion TP shall pay Mrs M:
 - Maximum tax free cash less the sum of any tax free cash she has been paid and the difference between the pension she has received to date and her revised (reduced) pension entitlement if it had been in payment from the inception of her pension; plus
 - £500 for the inevitable distress and inconvenience she has been caused over this matter.

Karen Johnston

Deputy Pensions Ombudsman
7 December 2016

Appendix 1

The Teachers' Pensions Regulations 2010

29. As relevant regulation 116 ('Election to receive lump sum in place of part of pension') says:

"(1) A person who was in pensionable employment on or after 1st January 2007 may elect to receive a lump sum in place of-

(a) part of any phased retirement pension, or

(b) part of one or more of-

(i) any retirement pension,

(ii) any additional pension, or

(iii) any total incapacity pension

by giving written notice to the Secretary of State.

(2) But paragraph (1) only applies where the person complies with regulation 107 (payment of benefits on application to Secretary of State) relating to the pension.

(3) For the purpose of paragraph (1), a person is to be treated as being in pensionable employment on or after 1st January 2007 if the person has paid contributions under regulation C9 of TPR 1997 or regulation 19 (election to pay contributions by a person serving in a reserve force) for a period which ends on or after that date.

...

(7) The notice under paragraph (1)...must-

(a) be given at the same time as the person makes an application under regulation 107 for the pension, and

(b) specify the amount of the lump sum which the person wishes to receive and, where appropriate, the pension in place of which the lump sum is to be received."

Appendix 2

Telephone call - 24 December 2015

30. Mrs M telephoned TP. She said she had telephoned the previous day about her ill health application and had been told it had been approved.
31. Mrs M said her email address was wrong on the TP website.
32. She said during the previous day's call she had asked to fill in an ill health payment form on-line, but as she did not know the pension she was getting she did not know how much she wanted to convert to a lump sum.
33. TP operator said she understood what Mrs M meant.
34. The TP operator updated and confirmed Mrs M's amended email address.
35. The TP operator then agreed that no totals were currently shown for Mrs M's ill health pension and confirmed that Mrs M could complete the repayment form as soon as she knew the situation and then send it back to TP. The TP operator said once the information was received from the Council it shouldn't take long to calculate the final figures.

Call ended.

Telephone call - 4 January 2016.

36. Mrs M telephoned TP. She said she had received a letter about applying for ill health retirement which said she needed to fill out a repayment form. She said she couldn't complete the form as she did not know how much she was getting. She said the letter also said that TP needed to know when she was finishing with her employer. Mrs M said she thought this information had been previously provided.
37. The TP operator said the original form completed by her employer was only up to the date Mrs M went on sick leave or when the form was completed. TP said the service form they were waiting to receive back from her employer would contain, details of her sick pay since then. TP said they had sent the service form to the Council on 18 December 2015.
38. Mrs M said that meant she could not complete the repayment form? The TP operator agreed and then said while she could complete the form she would not know the correct information to help her complete it. The TP operator said once the service form was returned by her employer TP would update her records and she could then see what her pension was worth, which would help her make the repayment decision.
39. The TP operator notified Mrs M that she had been granted full ill health retirement. Mrs M asked what that meant. The TP operator explained that she had been deemed

unfit for any form of employment, which gave her an enhancement on top of her pension and explained what that meant.

40. The TP operator said at the moment they only had salary information for her up to 31 March 2015 and consequently first required the aforementioned outstanding information from the Council and then they could help guide her in making her decision.
41. Mrs M said she was worried about the time as she was living on her own and had direct debits coming out of her bank account.
42. The TP operator asked Mrs M if she could chase the Council to return the completed form and gave Mrs M the contact details that the service form had been sent to. Mrs M said she would contact the Council.

Call ended.