

Ombudsman's Determination

Applicant	Mr Y
Scheme	Local Government Pension Scheme (LGPS)
Respondents	Brooklands College (the College)

Outcome

1. I do not uphold Mr Y's complaint and no further action is required by the College.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr Y has complained that the College failed to enrol him in the LGPS between 2 May 1995 and his 60th birthday on 30 August 2013, which is the date he re-joined the Teachers' Pension Scheme (**TPS**).
4. Mr Y believes the College was under a statutory duty to enrol him into the Scheme under the Local Government Pension Scheme (Administration) Regulations 2008 (**the Regulations**), which came into force on 1 April 2008.

Background information, including submissions from the parties

5. Mr Y was a pre-1997 ill health retiree from the TPS. He had been awarded ill health retirement by TPS in 1992 and was allowed to work a maximum of 40% of full time hours which he did from 1992 to 2015. Scheme Rules prevented him from re-joining the TPS after ill health retirement. Once he reached normal retirement age at age 60, he re-joined the TPS in September 2013.
6. Mr Y's contract of employment states he is entitled to join the TPS subject to its terms and conditions.
7. Following the introduction of auto enrolment, in March 2015, the TPS website stated that employers would need to make alternative provision for employees who could not join the TPS. This included members such as Mr Y who retired on grounds of ill health prior to April 1997, were under 60 at the time and in receipt of their pension. The TPS website stated "To comply with their responsibilities under Auto Enrolment,

employers will need to consider offering an alternative pension scheme. We understand you may enrol them into the LGPS.”

8. The College says that in 2007, all teachers who were teaching but not in the TPS were sent a letter advising them that they were not in the TPS and could elect to join the LGPS. It says there is no evidence that Mr Y elected to join at the time.
9. The College confirms that in 1995, all part time members of staff had to elect to join a pension scheme; either the TPS or the LGPS. Only when the ruling on Preston & Ors v Wolverhampton Healthcare NHS Trust was made in 2001, did the situation change to allow new entrants to be automatically enrolled, irrespective of whether their contract was full time or part time. However, as a teacher, Mr Y was not eligible to join the LGPS.
10. Mr Y believes that the College should have enrolled him into the LGPS as he was not eligible to join the TPS due to being an ill health retiree. He says he found information on the TPS website when reading about auto enrolment. In turn, Mr Y researched the LGPS and read the Regulations.
11. Mr Y says that after 2008, it was clear that LGPS could have been a default scheme for a teacher with a disability, as all employees who were not disabled were clearly enrolled in one or other of the two schemes operating at the college unless they opted out. However he was excluded from the pension scheme because of the College's failure to enrol him in the LGPS and inform him of his rights.
12. Mr Y wants the Pensions Ombudsman to consider his submission that a UK statutory instrument – the 2008 Regulations - can confer a legal right to be enrolled in the LGPS.
13. The College says that Mr Y did not have a right to join the LGPS as his contract said that TPS was the relevant scheme. However, as he was receiving an ill health pension, he was not eligible to re-join the TPS until his 60th birthday or when auto enrolment came into force.
14. The College says it determines eligibility to join the TPS or the LGPS by contract. Teachers automatically join the TPS and non-teaching staff automatically join the LGPS. As Mr Y had automatic entitlement to join the TPS (but for his drawing ill health benefits), he was not eligible to join the LGPS.
15. Had Mr Y not been in a pension scheme in January 2014, he may have been offered LGPS as an auto enrolment option. However, he had already re-joined TPS and so was not eligible.

Adjudicator's Opinion

16. Mr Y's complaint was considered by one of our Adjudicators who concluded that no action was required by the College. The Adjudicator's findings are summarised briefly below:-

- Although, Mr Y's contract of employment refers to membership of the TPS, hMr Ye was receiving an ill health pension which precluded him from re-joining the TPS when he took up part time employment.
 - Mr Y was informed of the option to join the LGPS by letter in 2007 but there is no evidence that he made any enquiries about this at the time.
 - Prior to the introduction of auto enrolment the College was not under a duty to automatically enrol Mr Y into the LGPS whilst he was an ill health retiree, and subsequently , Mr Y had re-joined TPS.
 - An individual's eligibility to join a pension scheme is usually set out in their contract of employment. It would be up to the College to specify which employees would be entitled to join which Scheme.
 - There was no statutory obligation on the College to enrol Mr Y into the LGPS at the time he took up part time employment. Mr Y's contract of employment is clear regarding which pension scheme he would be entitled to join. The Adjudicator did not consider any maladministration had taken place.
17. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y 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 Y for completeness.

Ombudsman's decision

18. Mr Y says that he believes that as the rules of the LGPS are contained in statutory instruments, these formulate rights in addition to his contract of employment. He says that he did not have to elect to join the LGPS and the employer had to enrol all entitled employees unless they opted out in writing. He therefore submits that the College is incorrect in claiming that he would have had to elect to join the LGPS.
19. Mr Y has discovered that in 1999, Regulations were brought in to stop the enrolment of ill-health retired teachers in the LGPS but this was revoked in the 2008 Regulations. He would therefore like to withdraw any part of his claim relating to LGPS membership before 1 April 2008.
20. Mr Y does not recall receiving a letter from the College in 2007 regarding the LGPS. Had he received such a letter, he would have taken the opportunity to join the LGPS. He says this is demonstrated by his submission for this claim and the value he attaches to his public service pension rights throughout his career. The College says a copy of the 2007 letter is not available.
21. As the letter is not available, I will discount it for the purposes of my decision. I note what Mr Y says and that had he received such a letter, he would have taken the opportunity of joining the LGPS.

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22. Mr Y was ineligible to re-join the TPS because he was an ill health retiree.
23. Mr Y claims that the College had a statutory obligation to enrol him in the LGPS.
However, Mr Y was not eligible to join the LGPS and so the College did not have any obligation to enrol him into that scheme.
24. Therefore, I do not uphold Mr Y's complaint.

Anthony Arter

Pensions Ombudsman
6 April 2017