

Ombudsman's Determination

Applicant	Ms N
Scheme	Teachers' Pension Scheme (the Scheme)
Respondents	Teachers' Pensions

Outcome

1. I do not uphold Mrs N's complaint and no further action is required by Teachers' Pensions.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Ms N complains that Teachers' Pensions are able to reclaim an overpayment that occurred between 2009 and 2013, after she returned to work following retirement. Teachers' Pensions have withheld her additional lump sum of £12,890.15 as part of the recovery process and the net overpayment is £37,830.19.

Background information, including submissions from the parties

4. Ms N took retirement on 31 March 2009 as she required access to her cash lump sum. She completed an "Application for Retirement Benefits" from Teachers' Pensions. This is a standard form which includes the following notes:

"I agree to inform Teachers' Pensions immediately if I begin employment in teaching within the British Islands at any time during my retirement.

I understand that any overpayment of benefits will be recovered".

5. On 21 August 2009, Teachers' Pensions wrote to Ms N. In that letter they said:

"To enable us to determine if there is any impact on your pension please arrange with your employer to submit a completed Certificate of Re-employment to Teachers' Pensions..."

"...You need to be aware that if you do not submit a completed Certificate of Re-employment detailing your earnings during each tax year in which you are re-

employed then your pension could be overpaid and you will be required to repay that money promptly”.

6. However, Ms N says that she did not receive this letter despite the fact it was correctly addressed. Ms N acknowledges that other letters sent to her around the same time were received safely and I can think of no reason this letter would not have been delivered.
7. Ms N argues that she could have retired at age 60 and received more than £35,000 in pension payments that she has missed.
8. Ms N says that Teachers’ Pensions are culpable as they were advising her and at no point did they suggest she take independent advice.

Adjudicator’s Opinion

9. Ms N’s complaint was considered by one of our Adjudicators who concluded that no further action was required by Teachers’ Pensions. The Adjudicator’s findings are summarised briefly below:
 - Even if Ms N did not receive the 21 August letter, the application she completed made clear that it was her responsibility to inform Teachers’ Pensions if she recommenced employment and that overpayments of pension would be recovered.
 - She should therefore have been aware of the fact that she needed to contact Teachers’ Pensions and that there was a distinct possibility that she was being overpaid. However, she failed to raise this at any point during the period in question.
 - Ms N’s argument that she has missed out on some of her pension because she did not retire at age 60 is misconceived. Her pension is not held in a separate account and there is no direct saving to the Scheme from her not having claimed her pension any earlier. Furthermore, had she claimed her pension earlier it is likely this would have led to a higher level of overpayment. The position cannot be simply unwound in the manner suggested by Ms N.
 - It is Teachers’ Pensions’ role to administer the Teachers’ Pension Scheme; they do not provide individual advice. The Adjudicator was not persuaded by Ms N’s argument that Teachers’ Pensions are responsible because they were advising her.
 - Teachers’ Pensions must administer the Scheme in accordance with the regulations that govern it. As Ms N’s pension should have been abated but was not, they are, at least in principle, entitled to seek recovery of the overpaid amount.
 - In accordance with Regulation H3(4) the onus was clearly on Ms N to inform Teachers’ Pensions of re-employment and it was not Teachers’ Pensions’ responsibility to check the returns of active members against pensioner members.

- The Adjudicator did not find it was maladministration for Teachers' Pensions to reclaim the overpayment, given the regulations place the burden on the teacher to notify.
10. Ms N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms N provided her 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 Ms N for completeness.

Ombudsman's decision

11. The relevant regulations are attached as an appendix to this Determination.
12. Ms N has provided recordings of various telephone conversations she had with Teachers' Pensions. She refers in particular to one of these conversations in which the practice of abatement was explained to her. She says that this conversation established a verbal contract. I disagree. A basic binding contract must comprise four key elements: offer, acceptance, consideration and intent to create legal relations. I have listened to the conversation that Ms N refers to and I am satisfied that those elements were not in place. The Teachers' Pensions representative merely explained to Ms N how abatement worked in practice. The need for the appropriate forms to be completed and submitted remained.
13. Ms N also refers to her employer having completed documentation relating to her return to work and also re-joining the Scheme. She argues that, as Teachers' Pensions were aware of her re-employment and additional pension, they are responsible for the fact that her pension was overpaid. Whilst I acknowledge that her employer clearly told Teachers' Pensions about her status, crucially this does not appear to have included the Certificate of Re-employment to Teachers' Pensions referred to in Teachers' Pensions' letter of 21 August 2009, which Ms N says she did not receive.
14. Ms N says that she had no reason to disregard the letter of 21 August 2009, because she had not wanted to collect her pension, only her tax free cash lump sum. Whilst it is not possible to say for certain whether this letter was received, I am satisfied that the way in which abatement worked was clearly explained to Ms N in her telephone conversation with Teachers' Pensions, referred to above. Therefore, she would have been in no doubt that at some point when her pension and her new salary exceeded her previous salary (the salary of reference) her pension would cease. However, at no point did she question the fact that this had not happened with Teachers' Pensions.
15. As a result, Ms N has received an overpayment of pension, contrary to the regulations, and Teachers' Pensions is entitled to seek repayment.

16. Therefore, I do not uphold Ms N's complaint.

Anthony Arter

Pensions Ombudsman

15 July 2016

Appendix

Relevant legislation

Teachers' Pensions Regulations 1997 (TPR 1997)

Regulation E14 TPR 1997 – entitled “Abatement of retirement pension during further employment” - says:

- (1) This regulation applies while a person who has become entitled to payment of a teacher's pension is employed-
 - (a) in pensionable employment, comparable British service, or employment which would have been pensionable employment but for-
 - (i) his having made an election under regulation B5 (election for employment not to be pensionable),
 - (ii) his having attained the age of 70, or
 - (iii) regulation B4(2) (a) (employment not pensionable).
 - (b) in part-time employment in a capacity described in paragraphs 1 to 9 of Schedule 2.
- (2) If the person is concurrently both in employment falling within paragraph (1)(a) and in employment falling within paragraph (1)(b), this regulation applies only in respect of the former.
- (3) Where this regulation applies, the annual rate of the pension is reduced-
 - (a) If A equals or exceeds $(C + D - E)$, to zero, and
 - (b) in any other case, and subject to paragraph (4), by the amount (if any) which is necessary to secure that $(A + B)$ does not exceed $(C + D - E)$, where-
 A is the initial annual rate of the person's salary in the employment,
 B is the reduced annual rate of the pension as increased under the Pensions (Increase) Act 1971 disregarding any actuarial reduction required by regulation E5(3),
 C is, or where his previous pensionable employment was part-time is the full-time equivalent of, the highest annual rate of contributable salary that was payable to him during the 3 years ending immediately before he became entitled to payment of the pension, or, if applicable, the highest annual rate of contributable salary that was payable to him during the 3 years ending immediately before he ceased to be employed in any pensionable employment entered into by him after he became entitled to payment of the pension, whichever is the greater.
 D is the amount (if any) by which, immediately before the first day of the employment, C would have been increased if it had been the annual rate of an official pension, within the meaning of section 5(1) of the Pensions (Increase) Act 1971 beginning, and first qualifying for increases under that Act, on the same date as the pension, and
 E is any part of the pension allocated under regulation E11.

- (4) Where regulation E5(3) applies the amount (if any) by which the annual rate of the pension is to be reduced under paragraph (3)(b) shall be the amount (if any) referred to in that sub-paragraph multiplied by the appropriate factor."

Regulation H3(4) TPR 1997 says:

"Without prejudice to paragraph (2) a person who has become entitled to payment of a teacher's pension and who takes up employment such as is described in regulation E14(1) shall-

(a) within 14 days of taking up such employment notify the Secretary of State giving details of the salary in the employment; and

(b) within 14 days of any change in salary notify the Secretary of State."