

## Ombudsman's Determination

Applicant	Miss U
Scheme	Teachers' Pension Scheme ( <b>TPS</b> )
Respondents	Royal Borough of Greenwich ( <b>the Council</b> ), Teachers' Pensions ( <b>TP</b> )

## Outcome

1. I do not uphold Miss U's complaint and no further action is required by the Council or TP.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Miss U complains that TP has not accurately recorded all of her pensionable employment. She says that she should have around 16 years of pensionable service in the TPS. Miss U also complains that the Council has hindered her ability to prove her pension entitlement by destroying her service record.

## Background information, including submissions from the parties

4. Miss U was employed by the Council as a supply teacher. Her employment started on 1 September 1991. At that time the TPS was subject to the Teachers' Superannuation (Consolidation) Regulations 1988 (**the Regulations**).
5. On 8 March 1993, and until 31 August 1993, Miss U was employed on a temporary contract, on a full time basis. After her full time, temporary contract ended, Miss U reverted to supply teaching.
6. In the 1990's there was no requirement for employers to include non-pensionable, part time service on their annual returns, so it is not possible to detail Miss U's complete employment history. However, it has not been disputed that from 1 January 2000, Miss U had a one month period of full time employment with the London Borough of Brent. Further, in December 2002, Miss U was employed by Barnet College where she remained in employment until 31 March 2004.

7. On 14 December 2002, Miss U signed the form 'Election for membership of the Teachers' Pension Scheme' (**the election form**). The election was effective from 1 January 2003. As a result of completing the election form, Miss U's full and part time employment with Barnet College, from 1 January 2003 onward, counted towards her membership of the TPS.
8. TP has recorded that Miss U has accrued 261 days' pensionable service over a qualifying period of 1 year and 298 days.
9. Miss U says that she worked for the Council between 1991 and 1998 therefore her pensionable service under the TPS should be higher. Miss U's position is that:-
  - The Council destroyed documents relating to Miss U's service and did not pass details of her service to TP as it ought to have done.
  - The Council took five months to contact TP to request that it reinstate Miss U's seven years of pensionable service.
  - Miss U complained in October 2015, both the Council and TP took nine months to respond. She also complains that under the Equality Act she asked the Council and TP to correspond in large print, due to her disability, but neither did.
  - Miss U considers that she is entitled to 12 years' full time service and four years' part time service in the TPS. To resolve her complaint, Miss U wants the pensionable service, she considers she is entitled to, reinstated. She also wants compensation for distress and inconvenience as well as the ancillary costs involved in pursuing the complaint
10. TP's position is that the pensionable service that it has recorded is correct. Further, because Miss U has less than two years' service, TP says that she is not entitled to any benefits from the TPS under the Regulations.
11. The Council's has acknowledged that Miss U did work for the Council as a supply teacher in the early 1990's, but maintains that this was not considered as pensionable employment.
12. The Council's position is that details of Miss U's employment history have been confidentially destroyed in line with data retention policies, as there is no legal requirement to retain this information for more than 7 years. The Council did however accept that it could have responded to Miss U's enquiries in a timelier manner.

### **Adjudicator's Opinion**

13. Miss U's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Council or TP. The Adjudicator's findings are summarised briefly below:-

- It is not disputed that Miss U was employed by the Council as a supply teacher. However, the fact that Miss U was employed as a supply teacher does not necessarily mean that she was a member of the TPS.
- Although being a member of the TPS is conditional on being employed as a teacher, being employed as a supply teacher does not automatically give rights to pension benefits from the TPS, even when employed on a full-time basis.
- In the Schedule 1 (glossary of expressions) of the Regulations, part-time is defined as:-

“Employment is “part-time” if... he is employed in place of a person regularly employed and the contract is a short-term one which entitles him to remuneration expressed as a proportion of the annual rate for a comparable full-time employment.”

- The Regulations make it clear that even if a supply teacher was working the equivalent of full time hours they are, by the nature of their work, which is to cover the role of a “person regularly employed”, deemed to be part-time under the Regulations.
- Regulation B2 goes on to say:-

“Subject to paragraph (2) and regulations B5 to B7, a person who has at any time made an election for the purposes of this regulation is in pensionable employment while he is a part-time employee who—

is employed in a capacity described in paragraphs 1 to 7, 14 or 16 of Schedule 2 and satisfies every condition, and is not within any exception, specified in Schedule 2 in relation to employment in that capacity...”
- Paragraph 1 of Schedule 2 extends to a “Teacher employed by, or in a school.”
- Thus, under the Regulations, supply teachers, whether working part-time hours, or the equivalent hours to a full-time teacher, must make an election in order for their service to be pensionable for the purposes of the TPS.
- The only election form Miss U completed was in December 2002, in respect of her employment with Barnet College.
- There is no evidence to suggest that, while employed by the Council, Miss U elected to have her employment count as pensionable service. Consequently the Adjudicator was unable to conclude that TP’s records are incorrect or incomplete or that Miss U is entitled to greater benefits than those which TP has recorded for her.

- This finding is consistent with HM Revenue and Customs (**HMRC**) which has confirmed that in respect of Miss U's employment with the Council, "there are no benefits held with Teacher's [sic] Pension Scheme."
  - There was no requirement for the Council to notify TP of Miss U's service, since she had not elected that her employment with the Council should count towards membership of the TPS.
  - It is accepted that the Council has now destroyed some of Miss U's employment records, but this is largely irrelevant given that Miss U's service was not pensionable. Further, the Council has said that the records were destroyed in accordance with its document retention policy in order to comply with the Data Protection Act 1998. So the Council's destruction of Miss U's employment records does not amount to maladministration.
  - Correspondence between TP and the Council did refer to Miss U's service as 'missing' so it is accepted that this may have given Miss U false hope that she was entitled to greater benefits from the TPS than is actually the case. But, the reference to 'missing' service is not alone sufficient to indicate that Miss U has actually accrued more than 261 days' pensionable service.
  - Miss U submitted a substantial amount of correspondence in support of her complaint and it is clear that both TP and the Council encountered significant problems communicating with Miss U. For example it is noted that the telephone line Miss U used would only allow for a one way conversation. In view of these difficulties, the length of time TP and the Council took to investigate the status of Miss U's pensionable service was not excessive.
  - Miss U said that she made her complaint in October 2015 but, while she may have been dissatisfied at that time, it was not until her letter dated 8 June 2016, which TP said it received on 28 June 2016 that a formal complaint was made under the internal dispute resolution procedure (**IDRP**).
  - A Scheme's IDRP must ensure that decisions are reached and notified to applicants within a "reasonable period". The Pensions Regulator provides that the relevant decision-maker will be expected to determine disputes within four calendar months of receiving the application. The four-month period applies separately to each determination stage. Miss U received both her Stage One and Stage Two IDRP decisions within the prescribed timescale.
  - When responding to Miss U's complaint TP has corresponded in large print which is in line with the communication preference Miss U expressed.
14. Miss U did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Miss U 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 Miss U for completeness.

**Ombudsman's decision**

15. In response to the Adjudicator's Opinion, Miss U has said that crucial evidence which she submitted to this Office has been ignored.
16. Miss U has made detailed and comprehensive submissions many of which reiterate her earlier complaint points. Having reviewed the file papers I am satisfied that I have sufficient information to be able to properly decide this case.
17. Miss U has also said that she has provided evidence which confirms that she "worked full time" for the Council. I do not dispute that Miss U may well have been working equivalent hours to a full time employee, but the complaint does not turn on this.
18. Miss U was employed as a supply teacher, this is a point that has not been disputed, and the fact of the matter is that under the Regulations, all supply teachers, irrespective of whether they work the equivalent to full time hours, are deemed to be on a part time contract.
19. In the case of an individual employed as a supply teacher, as here, then the individual must make an election in order for their employment to count as pensionable service for the purpose of the TPS.
20. There is no evidence Miss U made such an election in respect of her employment with the Council. Indeed it was not until December 2002, when Miss U was working for Barnet College, that she submitted the election form. Consequently I am bound to find that Miss U's employment with the Council did not qualify as pensionable service under the TPS.
21. Therefore, I do not uphold Miss U's complaint.

**Anthony Arter**

Pensions Ombudsman  
26 May 2017