

## Ombudsman's Determination

Applicant	Mrs P
Scheme	Teachers' Pension Scheme (TPS)
Respondents	Manchester City Council ( <b>the Council</b> ) Teachers' Pensions (TP)

## Outcome

1. Mrs P's complaint against the Council and 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) the Council will pay Mrs P £2,000 to recognise the severe distress and inconvenience caused.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mrs P says she was provided with incorrect information from the Council and TP in relation to the average salary used to calculate her benefits. She says that she relied on this information to make the decision to retire, as well as other financial decisions.

## Background information, including submissions from the parties

4. In mid 2015, Mrs P was informed that her employer was restructuring and her position was open for voluntary redundancy. As Mrs P would turn 55 in January 2016 (and therefore be eligible for reduced early retirement), she contacted TP in September 2015.
5. Following a telephone conversation with her, TP sent Mrs P an estimate of benefits dated 14 September 2015. This gave an average salary of £69,066.38 and calculated an annual pension of £27,274.12 with a tax free cash lump sum of £81,822.37. In the telephone conversation, Mrs P also asked TP to provide details of what the reduction would be for taking early retirement at various ages before age 60, as she was at risk of being made redundant and would not be eligible for unreduced early retirement benefits.
6. Mrs P called twice more in September and October 2015 and raised queries in relation to a break in service and whether voluntary redundancy would affect her

pension. When she called on 9 October 2015, she asked about the average salary being used in the calculations she was seeing on TP's website. She stated that this was above what she had earned. The TP advisor explained this as being the best of three years over the last ten years of service, as it was greater than the last 365 days. In her circumstances, the best three years were 2006 to 2009. The advisor explained that this is the figure that TP would use to calculate her lump sum and pension and mentioned that the increase in average salary was because the amounts were index-linked to the consumer price index over time. The advisor clearly stated that the figures on the website were estimates, but the service and salary used were correct. Mrs P was also told the figures were based on service up to the end of March 2015 and, with additional service, this would then be the minimum she could receive at retirement.

7. Mrs P called TP again on 14 October 2015 as she had received a quote that was £3,000 less than previous estimates. The issue regarding the average salary of £69,066.38 was raised again and Mrs P was informed that the salary used was index-linked and took account of inflation, thus the salary used could be higher than what was actually earned. The advisor also mentioned that Mrs P could convert some of her pension for a higher tax free cash lump sum. Although this is not discussed in the telephone call, Mrs P says that the amounts quoted online were for an annual pension of approximately £18,000 and a tax free cash lump sum of approximately £120,000.
8. Mrs P accepted voluntary redundancy and left employment on 23 October 2015. As part of the redundancy package, she received £30,000, tax free.
9. Mrs P submits that her parents' failing health meant that new accommodation for them had to be found quickly and she had planned to use the tax free cash lump sum to purchase and renovate a property for her parents. On 11 November 2015, Mrs P says solicitors were instructed to purchase a property for this purpose.
10. Mrs P called TP again on 19 November 2015 to try and log into her online TP account and get an estimate of her benefits. Mrs P was again told the salary to use was £69,066.38.
11. In the lead up to her intended retirement at age 55, Mrs P was sent a statement of retirement benefits. This confirmed an average salary of £58,004.66, which gave an annual pension of £15,200.55 and a tax free cash lump sum of £101,355.90. Mrs P called TP on 12 January 2016 to question the reduced amounts and was informed that someone would call her within the next 48 hours. As Mrs P had not received a return call, she called again on 14 January 2016. Mrs P submits that she was later told that the figures provided in the statement were correct. She was referred to the internal dispute resolution procedure (**IDRP**) and she raised her complaint the same day.

12. It is unclear when TP provided Mrs P with a response under the first stage of the IDRPs, as the copy provided is undated. It did not uphold Mrs P's complaint. It found that the error had been caused by the Council incorrectly providing salary details of £127,909 for the period between 1 April and 31 August 2006. It agreed that its advisors should have taken the opportunity to check the salaries on record when Mrs P queried it and apologised for this. However, it stated that salary and service details are only checked at the time of retirement. TP also stated; "I am afraid that under the regulations of the Teachers' Pension Scheme (TPS), only benefits to which the scheme member is entitled must be paid."
13. Mrs P decided to use some of her redundancy money (approximately £16,000) on 21 January 2016 to purchase a new car. She took her retirement benefits from 25 January 2016. On 8 February 2016, Mrs P started a temporary teaching contract and also requested her complaint be considered under the second stage of the IDRPs.
14. On 17 February 2016, the property purchase was completed, in Mrs P's and her husband's name. The property was purchased for £75,000 and, in March and April 2016, renovations and refurbishments were undertaken in respect of the property.
15. The Department for Education replied to Mrs P's appeal under stage two of the IDRPs on 9 August 2016. It agreed with TP's decision that the error lay with the Council. It acknowledged that the error was not discovered when she queried the figures with TP, but concluded the benefits she is receiving are her correct benefits from the TPS.
16. Mrs P subsequently made a complaint to this office. As she had named the Council as a respondent, she was referred back to it, to have her complaint considered. Initially, the Council declined to investigate her complaint on the basis that this office had already received a complaint. Mrs P again emailed the Council on 5 October 2016 with details of her complaint. The Council provided a first stage response on 14 October 2016, rejecting the complaint. It explained the discrepancy in the salary figures was due to a management allowance being recorded as a monthly figure, rather than a yearly one. The error to Mrs P's records had not been identified by the Council or TP until Mrs P's retirement.
17. Mrs P appealed the Council's decision on 24 October 2016. The Council responded on 25 November 2016 and again did not uphold the complaint. However, it said:

"Manchester City Council became aware of the issue with the Annual Service Returns for 2006/7 several years ago and from discussions with employees in the department at the time, it is clear that actions were taken to correct the records. It is now evident that not all the records were corrected at the time and as we no longer hold the update files from that time period I cannot determine why some records were missed. We have now undertaken a further detailed review of all records from that year and have updated other records accordingly and are working closely with TPS to do so."

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18. The Council also stated that Mrs P had not provided any evidence to show that she had relied on the incorrect figures to her detriment and that the TPS regulations do not allow it to pay anything over her actual entitlement from the scheme.
19. Mrs P remained unhappy with the responses she had received and asked to continue her complaint with this office. As part of this, all parties were asked to provide further information.

### **Submissions from Mrs P**

20. Mrs P was informed that the legal position taken by the Courts is that a member is only entitled to their correct benefits from the scheme, regardless of the error. Therefore, she was asked to provide information and evidence as to how she relied on the incorrect figures to her detriment. In summary, Mrs P submitted:
  - she cannot recall receiving regular annual benefit statements from TP;
  - prior to the offer of voluntary redundancy, she had not considered early retirement and had planned to work until normal retirement age;
  - if she had known the correct position, she would have purchased a smaller property for her parents, in better condition, and would have spent less on refurbishment;
  - she has had to return to work earlier, and work more hours, than she had originally planned to; and
  - the reduction in the amounts she was expecting to receive has had a detrimental impact on her health.

### **Further submissions from TP**

21. TP were asked to provide further information regarding annual benefit statements sent to Mrs P. It was unable to provide copies of the majority of statements sent, only confirmation of the dates they were sent.

### **Further submissions from the Council**

22. The Council were asked to consider further Mrs P's claims that she had relied on the incorrect figures to her detriment. It stated that it would only consider irreversible financial decisions relating to financial agreements signed more than 14 days before the actual pension offer was sent to Mrs P. This would then have allowed anything within the 14 days to be cancelled. The Council still felt that Mrs P ought to have reasonably been aware of the error, as her highest salary was never close to the figure of £69,606.38.

## Adjudicator's Opinion

23. Mrs P's complaint was considered by one of our Adjudicators who concluded that further action was required by the Council. The Adjudicator's findings are summarised briefly below:-

- It was agreed by the Council and TP that Mrs P had been provided with incorrect information prior to her retirement and therefore the Adjudicator needed to consider whether Mrs P relied on that information to her detriment.
- The Adjudicator had great empathy for the position Mrs P was in, as it was her view that Mrs P took reasonable steps to question the information she was receiving and that she was receiving the correct benefits before she made the decision to leave service. It was also considered reasonable that, as a lay person regarding pensions, Mrs P relied on the explanations given by TP, especially when she was informed that her service and salary were correct.
- However, it was the Adjudicator's view that, had Mrs P been given the correct information, it was more likely than not that she would have made the same decision to retire early. The Adjudicator based this on the information regarding the urgent need for Mrs P's parents to find new accommodation and that she proceeded with the purchase of this after she had been made aware of the correct position. Mrs P had never argued that she would not have bought the property, only that she would have spent less on it.
- Following the correct information being provided, Mrs P had also continued with the purchase of a new car (although she had used part of her redundancy payment for this). The starting of new employment so soon after being made aware of the correct benefits (between 14 January and 8 February 2016) also implied that Mrs P had already made the decision to return to work following her redundancy. There was also the argument that it was easier to take the voluntary redundancy payment and look for work elsewhere, rather than staying in her previous role when there was a threat of compulsory redundancy. There was no guarantee that she would have found a new position with her employer and the offer of voluntary redundancy and early retirement would have been a more attractive offer.
- The Adjudicator was of the opinion that the Council could have done more to have prevented the situation Mrs P now finds herself in. It had missed the opportunity to put the matter right several years ago and was unable to explain why Mrs P's records had not been correctly updated at the time. The error had therefore caused Mrs P severe distress and inconvenience and therefore it was the Adjudicator's view that the Council pay Mrs P £2,000.
- In relation to TP, it was the Adjudicator's opinion that its apology for the service it had provided to Mrs P was sufficient. However, the Adjudicator highlighted that TP's advisors should not have stated in conversations with Mrs P that the salary

and service details were correct, when it knows that these details are only checked when the final retirement benefits are calculated.

24. Both the Council and TP accepted the Adjudicator's Opinion, but Mrs P did not. Her reasons for not agreeing, in summary, are:

- In relation to the purchasing of the property for her parents, Mrs P agrees that she still would have made the purchase, even with the smaller tax free cash lump sum. However, she also says that if she had known the correct position, she would have bought a smaller, cheaper, property and have spent less on renovations:

"I would definitely not have spent as much on the renovations – going down a notch on the quality of things I ordered would have saved money and not really been noticed. An example of this is with the kitchen which was in a reasonable state of repair but I chose to fit a new one at a cost of £3,000; the new radiators would not have been fitted and the bespoke furniture in the second bedroom would have been cancelled. All these extravagancies would not have been made had I known I would not receive the expected additional £20k lump sum. There are other such examples I could give if requested. The smaller flat and less expensive renovations would have come close to 'recouping' the £20k loss."

- Mrs P contests that it was only recently she was told that "the law stated that TPS are not allowed to pay anything over my actual entitlement that I realised I would not get the money I had been told I would receive." She says that if she had been given this information from the start of the complaint process, she would have acted differently. She argues that at no point during the complaint process with TP and the Council, or by any previous staff in this office, was she informed that she would not "get the money I had been told I would receive."
- Mrs P says that the employment she started in February 2016 came up at the right time and the selection process was quick. The role was initially until July 2016 and then was extended until July 2017. She added that during this time her father's health deteriorated from January 2018 (from which he has recently passed away) and, if she had had received the higher amounts, she would have had extra savings and therefore not taken up in employment in January 2018 to spend more time with him.
- Mrs P disagreed with the amount of £2,000 and does not feel that this fully compensates her for the "huge distress, anxiety and inconvenience I have suffered over the last 32 months that has definitely had a detrimental impact on my physical and mental health."

25. As Mrs P did not accept the Adjudicator's Opinion, the complaint was passed to me to consider and her comments do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs P for completeness.

## Ombudsman's decision

26. As previously stated in the Adjudicator's Opinion, Mrs P is only entitled to her correct benefits from the scheme, but I can consider if Mrs P relied on the misinformation she received to her detriment. In order for a successful argument to be made, certain tests must first be met, one of these being whether or not Mrs P would have acted differently if she had received the correct information.
27. Essentially, Mrs P has confirmed that, if she had received the correct information, she still would have taken voluntary redundancy and early retirement. This is because she would have still purchased a property for her parents and, in order to do so, she would have needed the tax free cash lump sum. Her argument is that, if she had known the correct position, she would have bought a smaller, cheaper, property and have spent less on it.
28. The purchase of the property finalised on 17 February 2016. The copies of receipts and invoices provided by Mrs P show that purchases in relation to the property occurred in March and April 2016. Mrs P had been made aware of the correct position by 14 January 2016. She therefore had the opportunity to either withdraw from the purchase of the property (although this would have been at some cost) and change her budget in relation to additional expenditure on the property. She could have mitigated her losses at this time, but chose not to do so.
29. Mrs P has also argued that, throughout the complaint process, she was never informed that she would only be entitled to her correct benefits from the TPS. However, she was informed under the IDRP and as part of the Council's response to her complaint that this was the case. Information about the general stance taken in relation to mistakes and overpayments is also readily available on our and the Pensions Advisory Service's websites. The Adjudicator also explained the position to Mrs P, so there was a variety of sources making Mrs P aware of how cases of misinformation are considered within the pension industry.
30. I accept Mrs P's submission in relation to the employment she took up in February 2016. I am also sorry to hear of the recent death of Mrs P's father and offer my condolences. I appreciate that this would have added to Mrs P's distress, but this distress is not altogether a consequence of the respondents' maladministration. When directing an amount to recognise distress and inconvenience, it is only in exceptional cases that I would direct an amount higher than £2,000. £2,000 is considered to be a sufficient amount to recognise severe distress in this case and is at the higher end of the awards I make (which are usually £500 to £1,000).
31. I uphold Mrs P's complaint, in part, that she was provided with misinformation, which could have been rectified by the Council at an earlier date, and this is maladministration. I agree with the Adjudicator that Mrs P has suffered severe distress and inconvenience because of this and therefore the Council should pay Mrs P £2,000 to recognise this.

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**Directions**

32. Within 21 days of the date of this Determination, the Council will pay Mrs P £2,000.

**Karen Johnston**

Deputy Pensions Ombudsman  
25 October 2018