

Ombudsman's Determination

Applicant	Dr E
Scheme	Teachers' Pensions Scheme (the Scheme)
Respondent	Kingston University London (the Employer)

Outcome

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

Complaint summary

3. Dr E has complained that the figures she was given by the Employer, when making her decision to leave employment through the Employer's voluntary early pension (**VEP**) scheme, have not been honoured.

Background information, including submissions from the parties

4. In 2013, the Employer undertook a voluntary redundancy process. There were several options available to eligible employees who were invited to apply. The terms provided for VEP said, amongst other things, that the offer of enhancement was subject to the Scheme regulations permitting purchase of additional pension through the Scheme.
5. Dr E has said that she wrote to Teachers' Pensions (**TP**) on 1 June 2013, asking it to cancel a previous election from her for additional pension, as she believed this could affect her entitlement for additional pension purchased by the Employer. TP has said it has no record of receiving such a letter.
6. On 26 June 2013, Dr E signed a VEP Application Form, which contained estimated pension benefit figures. It was the Employer's intention to secure an additional two years' service for Dr E within the Scheme, equivalent to an additional pension of £2,250 per annum.
7. On 26 July 2013, the Employer wrote to Dr E confirming that her VEP application had been approved and her final date of employment would be 30 September 2013. Dr E signed her acceptance of the VEP offer on 31 July 2013.

8. On 7 August 2013, Dr E completed and signed a TP application for additional pension. The application stated that Dr E wished to purchase an additional pension of £2,250 per annum.
9. On 7 August 2013, Dr E also emailed TP with a request to cancel her earlier additional pension election.
10. On 14 August 2013, TP wrote to the Employer to explain that, as Dr E had previously purchased additional pension, the maximum she could now purchase was £1,750 per annum. TP processed this additional pension election amount and informed the Employer that the cost for this would be £30,800.
11. On 20 August 2013, Dr E supplied further security information requested by TP. TP then processed her request to revoke her earlier additional pension election.
12. On 3 September 2013, TP wrote Dr E and the Employer. The letter to Dr E said:

“I can confirm that your election to purchase Additional Pension has been cancelled with effect from 1 September 2013, and your employer has been notified accordingly.

I must explain that as soon as details of your service and salary are received we will contact you again to advise you of the amount of Additional Pension which has been credited to you.”
13. In November 2013, TP wrote to Dr E confirming the final pension figures. Dr E queried the lower additional amount of £1,750 with the Employer and TP. The Employer confirmed that, due to the additional pension Dr E had already purchased, it was unable to secure the additional £2,250 figure on her behalf.
14. In response to Dr E’s complaint concerning this issue, the Employer offered to pay Dr E the difference in the cost of purchasing the higher and lower additional pension amounts. The Employer calculated that the difference in costs was £8,800 and offered to pay this directly to Dr E, on the basis that she sign a settlement agreement. Dr E’s legal adviser has suggested that she does not sign this agreement as it is, “too far reaching”. The Employer has also offered to award £750 to Dr E to recognise the distress and inconvenience caused when it was unable to secure the higher additional pension amount for her. This is also on the basis that Dr E signs its settlement agreement.
15. Dr E has said that she is in receipt of £1,571 additional pension per annum so considers her loss to be the difference between this and £2,250 per annum. However, the Employer has confirmed that, as Dr E had not reached the Scheme’s normal retirement age of 65 when she left employment, the Scheme applies an actuarial reduction. The factor of 0.898 would have applied, to the £2,250 figure, had she been able to secure this amount. Therefore, Dr E would have been in receipt of an additional £1,976 per annum, compared with the actual additional pension of £1,571 per annum.

16. Dr E wants the Employer to purchase an additional pension for her on the open market, equivalent to income she believes she has lost out on.

Adjudicator's Opinion

17. Dr E's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Employer. The Adjudicator's findings are summarised briefly below: -
- The terms of the VEP stated that the offer was subject to the Scheme rules.
 - The Employer cannot be held responsible for restrictions imposed by third parties.
 - Dr E knew that she had already purchased additional pension, and given that the Scheme rules are publicly available, would have been able to verify if there was a cap on the purchase of additional pension.
 - A similar issue was raised in the High Court Appeal case of Police Crime Commissioner for Greater Manchester v Butterworth. This held that the authority could confer only such benefits as were within its lawful power to provide.
 - The provision of any pension benefits element is not within the direct control of the Employer.
 - The Employer had made an offer, both for financial and non-financial injustice, subject to a settlement agreement. This settlement agreement is not a pensions issue so not for this Office to comment on. It is a matter for Dr E on whether to sign this and accept the offer.
18. Dr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Dr E provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Dr E for completeness. Further clarification has been provided by TP, which is also summarised below.

Summary of Dr E's further comments

19. The Employer did not notify her of the letter from TP dated 14 August 2013, which means the Employer allowed her to retire without all the information.
20. The first election for additional pension purchase was passed through the Employer, so it ought to have known of her additional pension in 2013.
21. Taking into account the factor for early retirement, Dr E now considers that she has lost out on an annual income of £449, which the Employer should purchase for her on the open market.
22. At the very least, the Employer should pay the £8,800 previously offered, but without the condition of signing the settlement agreement.

23. The Employer should award a higher amount for distress and inconvenience.

Further information provider by TP

24. The maximum that could have been purchased in 2013/2014 financial year was £6,000

25. When the final additional pension election was made, the previous elections were revalued, in accordance with Section 3 of Schedule 4 to the Teachers' Pensions Regulations 2010.

26. The maximum amount remaining after the revaluation, and as a result the maximum that could be secured by the Employer, was then calculated as £1,750 per annum.

27. When TP cancelled Dr E's initial election, an additional pension was credited based upon the contributions paid.

Ombudsman's decision

28. TP has confirmed that the maximum additional pension, £6,000 before actuarial reduction for the 2013/2014 tax year, was achieved by Dr E.

29. Dr E has said that the Employer, when it did not forward on the TP letter of 14 August 2013, allowed her to retire without the full information. The terms of the VEP stated that the estimated figures were subject to the Scheme rules. Dr E has said that she cancelled her original election for additional pension as she did not want it to affect the VEP offer. This shows that she was aware of the Scheme rules on the purchase of additional pension and that there was a maximum limit.

30. I note that Dr E has said she asked to cancel her previous election in June 2013, but this was not received by TP. Having said this, Dr E proceeded to apply for the VEP with no contact from TP on the cancellation of her previous election. For this reason, I cannot conclude that Dr E would have acted differently.

31. Dr E has said that she does not wish to accept the Employer's offer of £8,800 as she does not want to sign the settlement agreement. The Employer has also offered £750 to recognise the non-financial injustice. It is not for this Office to comment on whether Dr E signs the settlement agreement; this is a matter between Dr E and the Employer.

32. I do not uphold Dr E's complaint.

Anthony Arter

Pensions Ombudsman
23 March 2018