

Ombudsman's Determination

Applicant	Mr N
Scheme	Teachers' Pension Scheme (the Scheme)
Respondents	Shropshire Council (the Council), Teachers' Pensions (TP)

Outcome

1. I do not uphold Mr N'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. Mr N has made a complaint against the Council and TP for their failure to provide him with his retirement options as he was approaching his normal pension age (**NPA**), which was his 60th birthday.

Background information, including submissions from the parties

4. Mr N had been a member of the Scheme since September 1970 and his normal NPA was 60. In September 2006, at age 57, Mr N began working as a supply teacher through the Council and in September 2009, he took up employment under a fixed term contract with a Primary School.
5. In April 2014, Mr N's wife contacted the Scheme, on his behalf, to query if his pension at that time would be higher than the pension he could have received in 2009. Mrs N was informed that although Mr N's pension would be higher because of the additional monthly contributions he had made over the past five years, he would not be paid all of the pension he had deferred as a lump sum, as he had not taken a one day break in service. Mrs N was also informed that Mr N could take his benefits now, take a one day break in service, return to work, and start contributing to a second pension so that he could accrue further pension benefits.
6. After being informed of this, Mr N complained to TP through its internal dispute resolution procedure (**IDRP**) at stages 1 and 2. He also complained to the Council, as he believed he had incurred a financial loss because they had both failed to inform him of the option to take his benefits and start a second pension. He said when he

was told this information he immediately acted upon it by taking the required break in service and, started contributing to the second pension.

7. TP responded to Mr N but did not uphold his complaint at either stages of its IDRP. In its IDRP 1 response sent to Mr N in May 2014, TP explained the criteria for members to qualify for a second pension and also said that:

“Teachers’ Pensions (TP) act as administrators of the pension scheme, and as such does not directly employ teachers. It is the responsibility of the employer to provide their employees with their options under the Teachers’ Pension Scheme (TPS). It is not our policy to contact members of the TPS as they approach their normal pension age (NPA), inviting them to apply for benefits. This is for several reasons...

Retirement benefits are payable upon application by the member. As you remained in pensionable service until April this year, your retirement benefits are payable from the day immediately following your last day of service.”

In the IDRP 2 response in September 2016, the Department for Education said:

“For the reasons outlined by TP in their letter of 13 May 2014, it is not possible to contact every member of the TPS as they approach their normal pension age (NPA) to advise them of when they can claim their pension. Information is available on the TP website.”

It also said that TP does not employ teachers directly, they work with employers to provide information for their employees about the TPS and reiterated that a vast amount of information is available on the TPS website.

8. The Department for Education also informed Mr N that it was restricted to considering whether the regulations had been applied correctly and it was satisfied that TP had followed the correct process. Consequently, it turned down his appeal.
9. The Council responded to Mr N on 16 May 2016, but did not uphold his complaint. The Council gave brief details of Mr N’s employment history and provided reasons on why the Council does not write to teachers as they approach their NPA. It also said:

“Our normal process when a teacher notifies us or their school of their intention to retire or resign if they are 60 or over, is to write to them with an acknowledgement and send information which directs the member to the Teachers’ Pension website for further information relating to their pension and the Teachers’ Pension Scheme.”

It said that Mr N was not processed as a leaver as he had continued employment as a supply teacher following the ending of his fixed term contract. Therefore, he was not sent an acknowledgment letter when his fixed term contract had ended.

10. Disappointed with the Council’s response, Mr N, with the assistance of The Pension Advisory Service (**TPAS**), asked the Council to reconsider its decision. In his appeal to the Council Mr N referred to previous decisions made by this service in which the

Ombudsman stated that employers should take reasonable steps to inform employees of valuable pension rights under the pension scheme.

11. The Council responded to Mr N on 29 June 2016 and said:

“It is its view that as an employer [it has] taken all reasonable steps to bring to the attention of Mr [N] the existence of valuable rights of which the employee could not be expected to be aware of unless specifically notified.”

It explained why the Council does not consider its failure to inform Mr N of his retirement options as he was approaching age 60, amounts to maladministration. The Council also explained why it does not write to teachers as they are approaching their NPA.

12. Dissatisfied with TP and the Council’s responses, Mr N referred his complaint to this service and named his wife as his representative. Since the referral of his complaint Mr N has said that he did not contact the Scheme prior to turning age 60 because he had decided not to claim his pension benefits at that time, so that he could get higher payments when he did take his benefits around age 65. If he had been aware that he could have taken his benefits at age 60 and then contribute to another pension for a further five years, he would have done so, as this would have increased his monthly pension at age 65 and he would also have been in receipt of a pension for five years, which is a substantial sum.

13. In response to Mr N’s complaint, TP said:-

- It rejected Mr N’s complaint because correspondence and literature previously sent to Mr N, particularly the 17 April 2001 letter, and pages 1-9 of the Guide to Teachers’ Pension Scheme made him aware that the normal retirement age in the Scheme was 60. In addition, it made him aware that to receive his retirement benefits he needed to leave pensionable employment and that an application was required. Therefore, Mr N should have been aware that on reaching age 60, and subject to him leaving pensionable employment, he could apply for payment of his retirement benefits.
- The Scheme does not routinely contact members when they are approaching their NPA since the decision of when to retire is a personal decision and the great majority of teachers are aware they can take their pension benefits at age 60. To a certain extent, members are also expected to keep themselves abreast of these matters. Information about all aspects of the Scheme, including retirement is available on the TP website or by contacting TP directly.

14. If Mr N had retired at age 60, his pension may have been abated in any year if income from his salary and pension had exceeded his best salary before retirement.

15. Mr N responded to TP's formal response and said:-

- He was aware he could take his pension benefits at age 60 and he understands that the decision of when to retire is a personal one. However, he believes that members should be sent a summary of the options available to them at age 60 instead of a 'reminder to retire' letter. In doing so, it would alert members to options of which they would have otherwise been unaware.
- His pension would not have been abated if he had retired at age 60, because he had not done enough supply teaching during the years since April 2009 for that to be the case.

16. In response to Mr N's complaint the Council said:-

- It believes as an employer it took reasonable steps to make Mr N aware of his rights under the Scheme. The Council considers it is accepted practice that employers are not required and have no obligation to automatically notify teachers at the point in which they reach or approach their normal retirement age.
- A retirement decision is an individual choice and not one in which the employer should have any influence. Mr N was a supply teacher for the Council when he was approaching age 60. Supply is ad-hoc and they do not believe the Council had any obligation to formally notify all supply teachers about their individual circumstances under the Scheme and any entitlement they may have to retire and return to work.
- The Council believes that a teacher's entitlement to retire, take a one day break in service and then return to work is a specific element of the Scheme. As it is about the cessation of employment, the teachers themselves must make the decision to cease their employment.
- Employers are only obliged to provide information and not advice. If the Council had advised Mr N in the circumstances of his complaint that would have amounted to financial advice.
- It accepts there is limited guidance for both employers and employees explaining the specific process to retire, take a break in service and then return to work. The guidance from the Scheme refers to 'Where a member is re-employed there must be a break in service of at least one day and a change in contract.' In Mr Robinson's case there was no change in contract as he was working on a supply teaching basis. He was already 60 when he took on a fixed term contract from 1 September 2009.
- The Council believes that there is no requirement to confirm specific retirement options other than to make teachers aware of the Scheme which was done in the contractual documents sent to him.
- The Council can demonstrate that Mr N was sent information about the Scheme in August 2009. It has reviewed Mr N's employment record and noted that he was

aged 60 in April 2009. According to the records, Mr N commenced short term supply work within Shropshire on 1 September 2006 after a significant break from teaching at age 57. At the time he started supply work, he would have received information that would have encouraged him to obtain further information about the Scheme.

- In addition, the Council sent termly HR bulletins to schools which included updates on HR and Payroll matters with pension updates and reminders. This is available to all teachers directly at the school or through the Council's website.
- The Council does not accept that Mr N has incurred a financial loss, he continued to be part of the Scheme until 2014, receive pay for work he undertook, and he accrued a further five years' worth of additional pension contributions.
- The Council believes the steps it takes to communicate the Scheme to its employees is reasonable. It made contact with several other councils and they have all said they do not specifically write to teachers at normal retirement age. There is also no stated Scheme requirement for employers to write to employees at their normal retirement age.

17. In response to the Council's formal response Mr N said:-

- He does not consider the Council took all reasonable steps to inform him of his rights under the Teachers' Pension Scheme. He did not enquire about his options in 2009 as he did not intend to stop teaching at that time.
- There is no way he would have known about the option to take his benefits, continue teaching and start another pension to accrue further benefits as he had never heard of such a possibility.
- He does not believe the act of giving pension options information should be seen as encouragement to retire. When he looked on the website previously he did not see anything about the option to start a second pension and he also cannot find any such information currently.

Adjudicator's Opinion

18. Mr N'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:-

- There is no dispute that Mr N's NPA in the Scheme was 60. TP are the Administrators of the Scheme. Therefore, it is TP's role to ensure the Scheme is administered in line with the Regulations that govern it. The Ombudsman's role when considering such complaints, is to decide whether or not the Administrator's actions were in accordance with the Scheme Regulations.

- As a member of the Scheme Mr N's benefits were governed by the Teachers' Pensions Regulations 1997. Within the said Regulations there is no requirement for TP to inform members, as they are approaching their NPA, of the option to take their benefits from the Scheme, take a one day break in service, return to work and start a second pension to accrue further benefits. In addition, due to the size of the Scheme, the Adjudicator considered it would be unreasonable and impractical to expect TP to write to individual members as they are approaching their NPA, to inform them of this option.
- Mr N has said that there was no information on the TP website of the option to take his benefits from the Scheme, take a one day break in service, return to work and start a second pension to accrue further benefits. However, the Adjudicator reviewed the TP website and found a factsheet dated April 2015, that informs members of the option to return to work after taking their benefits and also informs them that they can accrue further benefits after commencing new employment following their retirement.
- The Adjudicator appreciated that this factsheet was dated after Mr N's NPA, however, TP provided the Adjudicator with copies of factsheets that were available on its website dated January 2007, March 2009 and September 2010. All three factsheets were entitled "Returning to work after receiving pension benefits." The two fact sheets that predated Mr N's NPA also made members aware that they could take their benefits, start new employment and accrue further pension benefits. The Adjudicator appreciated that the factsheets that predated Mr N's NPA did not explicitly inform him that he needed to take a contractual break in service before commencing his re-employment. However, the Adjudicator considered that if Mr N had contacted TP before his 60th birthday, he would have been told what he needed to do, to be able to exercise that option.
- The Adjudicator did not consider that TP's failure to directly inform Mr N of the option to retire, take the benefits of his pension, take a one day break in service, return to teaching and start a second pension amounted to maladministration. Therefore, it was her view that the Ombudsman would uphold Mr N's complaint against TP.
- Prior to his NPA, Mr N was employed by the Council as a supply teacher. Consequently, Mr N believes that the Council had a duty to inform him of valuable Scheme benefits such as the option to take his benefits from the Scheme, take a break in service, return to work and start a second pension in order to accrue further benefits.
- There is no legal requirement for employers to contact members as they are approaching their NPA to inform them of their options. In the Adjudicator's opinion, the decision to retire is a personal one and is dependent on the individual's circumstances. Therefore, the Adjudicator did not consider it was unreasonable for employers to expect that their employees would notify them of their intention to

retire so that the employer could then send the employee relevant information, which would include their options at retirement.

- The Adjudicator appreciates that the Ombudsman had said in a previous decision that “there is generally implied into the contractual relationship between an employer and an employee, an obligation on the employer to take reasonable steps to bring to the attention of the employee the existence of valuable rights which are contingent upon the employee acting in a particular way, of which the employee could not be expected to be aware unless specifically notified.”
- However, the Council has said that, at the time Mr N started employment through the Council in 2006 he would have been provided with a document entitled: Teachers’ Pensions, Your Pension, A Guide to the Teachers’ Pension Scheme, England & Wales, May 2000. Page 21 of that booklet gives information about returning to work after retirement and states:

“If the teacher returned to teaching employment on or after 1 April 2000, having taken premature, age or actuarially reduced retirement benefits, their employment can be pensionable subject to the necessary election.”

- In the Adjudicator’s opinion, the information Mr N received from the Council in 2006 ought to have made him aware that he could have taken his benefits, continued working and accrued further pension benefits. If Mr N was uncertain of the meaning of the information provided in the booklet he could have contacted the Council or the Scheme for clarification. In addition, a few months after Mr N’s 60th birthday he began a fixed term contract with a school and was also provided with information about the Scheme and referred to the TP website.
 - In the Adjudicator’s opinion, although the Council did not specifically notify Mr N of his options, the information was on the TP website. It was the Adjudicator’s view that Mr N could have become aware of that option prior to, or just after his NPA. Therefore, she did not consider there was any maladministration by the Council.
 - Mr N is now in receipt of a higher pension than he would otherwise have received if he had taken the benefits at age 60. In fact, he has confirmed that receiving a higher pension was one of the reasons he did not take his pension at age 60. Therefore, although the Adjudicator appreciated that Mr N is disappointed that he did not know of the option to retire at age 60, take his benefits from the Scheme, take a one day’s break in service then return to work and start a new pension, for the reasons stated above, it was her view that the Ombudsman would not uphold Mr N’s complaint against TP or the Council.
19. Mr N did not accept the Adjudicator’s Opinion and in response he reiterated previous points he had raised when he originally referred his complaint and, he also said he was not given enough information about his pension options to make an informed choice when he reached age 60. In particular he was not informed that:

- he could have taken his pension benefits at age 60, taken a one day break from service, resumed his employment, and start contributing to a new pension plan. This would have increased his pension benefits in the future, by having a second pension, whilst claiming benefits from his first pension at the earliest possible time;
 - if he had continued teaching past his NPA without actually claiming his pension, then the monthly pension benefits he could have claimed from age 60 are simply forfeited and he cannot access them at a later date. Delaying claiming pension benefits past NPA does not in itself, increase future monthly benefits when the member does claim their pension therefore, TP should make members aware of this; and
 - if a member does not choose to take their pension at their NPA but takes a one day break in service and contributes to a separate pension from that point, then this enables the member to claim the benefits from their first pension at any time in the future, backdated to their NPA, instead of losing that money. The one day break in service is crucial but he was never informed of this prior to his NPA. Therefore he could not have known about it. He should have been informed of this in writing by the Council or TP.
 - TP should send members a summary of their pension benefits like the one individuals receive about their state pension when they reach state pension age.
20. The further information provided by Mr N did not change the Adjudicator's Opinion of the complaint and consequently, the complaint was passed to me to consider. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman's decision

21. Mr N's main issue is that he was not informed that he could have taken a one day break in service, at his NPA and the consequences of this. He believes that as a result of the Council's and TP's failure to provide him with the above information, he has lost five years' pension benefits. He considers that if he were informed of the importance of taking the one day break in service at his NPA, he would have acted differently as he would have had sufficient information to make an informed choice of what to do with his benefits at his NPA.
22. It is my view that it is with hindsight that Mr N has said that he would have acted differently, had he been informed of the necessity of the one day break in service. The fact sheet dated March 2009 that was on the TP website informed members that they could take the benefits of their pension, return to teaching and accrue further retirement benefits. Mr N made the assumption that if he deferred taking his benefits past his NPA, his pension benefits would be higher but he did not confirm this with the Council or TP. Therefore, I find that, on the balance of probability, if Mr N had contacted TP prior to his NPA to inform it of why he was considering deferring taking

his pension benefits, he would have been informed of the option to take the one day break in service and start a second pension to achieve his objective.

23. As the Adjudicator said in her Opinion, TP are the administrators of Mr N's pension Scheme. Therefore, it is TP's role to ensure that Mr N's pension is administered in accordance with the Scheme Regulations. There is no requirement in the Scheme Regulations for TP to contact members, as they approach their NPA, to inform them of their options at their NPA. Therefore, I do not find there has been any maladministration by TP or the Council in this regard.
24. Mr N has stated that he had no intention to retire at his NPA and in fact, in September 2009, he started a fixed term contract with a Primary School after his NPA. As Mr N commenced working under a fixed term contract after his NPA, the Council would not necessarily have been aware that he had not yet taken his pension benefits, as any discussion regarding the taking of or deferring his pension benefits would have been between Mr N and TP.
25. Although I sympathise with Mr N's circumstances, I find that it was his own assumptions about the benefits of deferring his pension that led to him taking his pension benefits after his NPA. Consequently, it is my view that his loss of pension benefits has not resulted from maladministration by the Council or TP.
26. Therefore, I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
26 September 2017