

PENSION SCHEMES ACT 1993, PART X
DETERMINATION BY DEPUTY PENSIONS OMBUDSMAN

Applicant	Mrs M Cowdrey
Scheme	Teachers' Pension Scheme (the Scheme)
Respondent(s)	Essex County Council (the Council), Teachers' Pensions

Subject

Mrs Cowdrey complains that, when she applied to purchase Additional Voluntary Contributions (**AVCs**) in 2007, she was informed that she could purchase Past Added Years (**PAY**). After making PAY contributions for 34 months, she was told that she was not eligible for it and her benefits were reduced accordingly.

The Deputy Pensions Ombudsman's determination and short reasons

The complaint should be upheld against both Teachers' Pensions and the Council, as both parties (to varying degrees) led Mrs Cowdrey to believe that she had an entitlement to PAY after September 2005.

DETAILED DETERMINATION

Material Facts

1. On 1 September 2004, Teachers' Pensions wrote to Mrs Cowdrey confirming that they had accepted her application to buy PAY in the Scheme amounting to four years and 166 days. This which would be achieved by the deduction of 9% of her salary from 1 November 2004 to 31 October 2014. The letter stated:

“It is...the teacher's responsibility to ensure that the correct additional contributions are deducted from their salary each month and to contact their employer immediately if an error is suspected. If you take up another appointment in pensionable service after a break in service of less than one month, you should show this letter to your new employer so that the correct contributions can be collected with the minimum of delay. However, if you have a break in service of more than one month or change from pensionable to non-pensionable service your election will be terminated (page 12 of leaflet 374 Pen refers).”
2. At the time, Mrs Cowdrey was employed by South Gloucestershire Local Authority. She left this employment on 1 September 2005. Thereafter, she worked for Capita as a supply teacher during which time the deduction of pension contributions, including PAY contributions, stopped. This break in service was more than one month and, as employment with a supply agency is not covered by the Scheme, the election was effectively terminated. Following the introduction of the Teachers' Pensions etc (Reform Amendments) Regulations 2006, the purchase of PAY was no longer permitted from 1 January 2007.
3. Mrs Cowdrey accepted a teaching post with the Council on 1 March 2007. She elected to re-join the Scheme by completing the relevant form on 28 February 2007 and on that application wrote “I wish to pay AVC's to the value of 15%”. She said that she asked for this as she previously contributed into an AVC in the Scheme in 2000 and she was aware that she could no longer take out a PAY election due to the Scheme changes. However, she says that the Council sent her a PAY election form which she completed and returned to the Council. She

also provided old payslips to the Council from her employment with South Gloucestershire Local Authority. The Council deducted 18% of her salary on 26 April 2007 (for March and April) and 9% of her salary every month thereafter until 31 December 2009. The Council do not have any forms completed by Mrs Cowdrey in respect of this additional election and Teachers' Pensions appear to have been unaware that the contributions were in respect of a new PAY election. Throughout this period, Teachers' Pensions sent her annual retirement estimates which included the previous uncompleted period of PAY of four years and 166 days.

4. Mrs Cowdrey wrote to Teachers' Pensions on 25 July 2009, asking for clarification of her retirement options and PAY period. Teachers' Pensions replied on 31 July 2009, saying that she had elected to purchase four years and 166 days of additional service under the PAY scheme in September 2004 and that "this amount will remain constant on all estimates as the estimate is based on the assumption that you complete the purchase of the full PAY period". Teachers' Pensions said that they were unable to provide estimates based on projected service and salary but Mrs Cowdrey could use the online retirement calculator on their website to "obtain an estimate based on your own assumptions". The letter continued:

"If you leave pensionable employment on 31 December 2009 you have the potential to accrue a total of 25 years 100 days of pensionable service, made up as follows:

Service to 31.03.08 = 21 years 80 days

Potential Service to 31.12.09 = 1 year 275 days

Potential PAY (paid up credit to 31.12.09) = 2 years 110 days

Potential total: 25 years 100 days"

5. Mrs Cowdrey says that Teachers' Pensions nevertheless included the following estimates (also dated 31 July 2009 and printed from the Teachers' Pensions website), based on an early retirement (before age 60):

Retirement age	55 years 11 months	58 years
Salary	£36,245	£36,245
Service	25 years 100 days	25 years 100 days
Reduced basic pension	£9,274	£10,305

Reduced lump sum	£27,823	£30,915
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6. Mrs Cowdrey retired on 31 December 2009 but did not claim her pension at the time. She returned to employment with the Council on 26 April 2010 and worked until the end of that academic year before formally retiring. She applied for her pension and lump sum in September 2010 (aged 56 years and 9 months), to be payable from October 2010.
7. Teachers' Pensions wrote to Mrs Cowdrey on 22 October informing her of her pension of £9,125.74 and lump sum of £27,766.63, based on pensionable service of 24 years and 33 days.
8. The Council sent an email to Teachers' Pensions on 8 November 2010, providing amended service records for Mrs Cowdrey. The email also said – "Please note that the Teacher had also contributed Additional Contribution under the Added Years Election of 9% for the period 1/3/07 to 31/12/09 with this Authority".
9. Teachers' Pensions subsequently wrote to Mrs Cowdrey on 9 November, informing her that they had mistakenly added 304 days as PAY instead of 135 days. This resulted in actual service of 23 years 260 days. Mrs Cowdrey says that the lump sum was almost £3,000 less than what she expected and she immediately complained.
10. In the meantime, Teachers' Pensions calculated that Mrs Cowdrey had incorrectly made PAY contributions from April 2007 to December 2009 of £8,852.78 (gross of tax) and refunded £7,077.10 (net of tax) to her on 21 February 2011.
11. In the Stage One decision dated 7 June 2012, Teachers' Pensions say that because Mrs Cowdrey had a break in service of more than one month from September 2005, the PAY election was terminated. They cannot accept the PAY contributions incorrectly deducted by the Council from April 2007 as the purchase of PAY was removed by legislation from January 2007. The annual benefit estimates provided to Mrs Cowdrey assumed that the original full term of PAY would be completed up to 31 October 2014 but she should have been aware that the election had ceased in 2005. Teachers' Pensions do not deduct pension contributions; that is the responsibility of the employer. Teachers' Pensions would therefore be unaware of any PAY deductions and it is only when

they receive an application for retirement benefits that they check service and salary records. They noted that £250 had been paid to her for the distress and inconvenience caused to her by their handling of the matter. Mrs Cowdrey appealed the decision and denied receiving any compensation so far.

12. In the Stage Two decision by the Department for Education (**DfE**) on 20 March 2013, DfE said that the Council should have been aware that no new PAY elections were allowed from January 2007. DfE said that Teachers' Pensions did not appreciate that the PAY election had been terminated in 2005 and provided an incorrect estimate of PAY credit based on unbroken service up to December 2009. DfE however concluded that Teachers' Pensions had followed the correct process and turned down Mrs Cowdrey's appeal. They asked Teachers' Pensions to ensure that the compensation of £250 was paid to Mrs Cowdrey and she confirmed receipt on 24 July 2013.
13. Mrs Cowdrey made enquiries with the Council, from May to July 2013, about the possibility of paying the refund into her AVC, but nothing came of this.
14. The Council have provided a loss calculation as at June 2013, by Prudential (who administer the Teachers' Pensions AVC), showing that if AVC contributions (of £8,512.04) had been paid over at the correct time into her AVC, the value would have increased to £11,045 (an increase of £2,532.96). The Council also made enquiries to HMRC regarding the possibility of Mrs Cowdrey getting a tax refund. The Council say that HMRC did not respond and they did not follow up their enquiry.
15. Prudential initially said that they would have accepted the lump sum refund made to Mrs Cowdrey by Teachers' Pensions in February 2011. If invested into the With Profits Cash Accumulation Fund, as at 6 August 2014, the refund would have increased to £11,954.37. However, the Council now say that Prudential have informed them that only Teachers' Pensions can decide whether Mrs Cowdrey can still make any payment into her AVC. As Teachers' Pensions have previously said that they have nothing to do with the AVC scheme, it seems that Mrs Cowdrey is unable to make up the missed contributions.

Summary of Mrs Cowdrey's position

16. Mrs Cowdrey says that, having received the letter of 31 July 2009, she decided to retire and sell her house in order to purchase a new one nearer to her daughter and care for her grandchild. She says that she relied on the projections for the cash free lump sum given in July 2009, when doing so. She says that she did not print out the illustrations dated 31 July 2009 but they were provided by Teachers' Pensions with their letter of the same date.
17. She says that because the lump sum she received was less than she had been expecting, she had to withdraw £2,500 from an ISA account and she would like compensation for the loss of tax free interest on this amount.
18. She says that had she been correctly informed in 2007 that she could not pay into the PAY, she would have paid contributions into the AVC as she originally intended to do. Mrs Cowdrey points out that she had held an AVC account with Prudential since February 2000 and that she stopped contributing to this when the opportunity of purchasing PAY was given to her in 2004.
19. Moreover, Teachers' Pensions denied her the opportunity to have arranged to transfer the refunded contributions directly to her AVC gross of tax and not lost the tax benefit amounting to £1,775.68. She says that she also asked Prudential if she could pay the refunded contributions into her AVC but they told her that she could not do so. She sent a cheque for £7,770.10 back to Teachers' Pensions but it was returned. She therefore tried to mitigate her loss but her attempts were rebuffed.

Summary of the Council's position

20. The Council say that it is likely that they received a valid election for Additional Pension Benefit (**APB**) and not PAY from Mrs Cowdrey in April 2007. This would have been sent to Teachers' Pensions and led to the deductions for APB which can be seen from Mrs Cowdrey's payslips (the payslips describe the extra deduction as "Teachers Addl Pension"). Regretfully, the Council do not have a copy of the election form that they say would have been signed in April 2007. If Mrs Cowdrey had completed AVC forms, then that would have been provided to her by Prudential and not the Council.

21. The Council say that even if it is held that PAY was incorrectly deducted by the Council, Teachers' Pensions sent letters and information leaflets to Mrs Cowdrey explaining that she would not be entitled to PAY after she left the employment of South Gloucestershire Local Authority, and the onus would have been on her to manage her pension contributions accordingly.
22. Without prejudice to this, in the event that the Ombudsman finds evidence of maladministration against the Council, they would like to comment on any matter regarding payment of compensation.

Summary of Teachers' Pensions' position

23. Teachers' Pensions say that they did not receive any notification or PAY election form from Mrs Cowdrey or the Council when she re-joined the Scheme in 2007.
24. They also say that the Council confirmed to them in an email dated 8 November 2010 that Mrs Cowdrey had made "Additional Contribution under the Added Years Election of 9% for the period 1/3/07 to 31/12/09 with this Authority". This could not have been an election for APB as that is a set amount and not a percentage as in PAY.
25. Teachers' Pensions say that they have no connection to the Teachers' AVC run by Prudential on behalf of DfE. Therefore, they are unable to advise members on alternative pension provision. They can only administer the Scheme in accordance with its provisions including the refund of contributions deducted in error. They cannot pay refunds directly into a member's AVC.
26. Teachers' Pensions say that they did not provide the illustration of 31 July 2009 and it appears that Mrs Cowdrey did so herself from the retirement calculator on the Teachers' Pensions website.

Conclusions

27. Mrs Cowdrey first ceased pensionable employment under the Scheme on 31 August 2005. Her employment with a supply agency thereafter was not deemed to be pensionable and she did not enter pensionable employment until 1 March 2007. As her break in pensionable employment lasted for more than one month, her PAY election was terminated in accordance with the Regulations.

28. The annual benefits estimates Teachers' Pensions provided to Mrs Cowdrey continued to show the full amount of PAY. However, I do not attach much weight to this as Mrs Cowdrey says that she became aware that she was no longer entitled to PAY as a result of the new Scheme changes which removed PAY.
29. Of more significance are the circumstances resulting in Mrs Cowdrey being misled into the understanding that she could start contributing to PAY again in March 2007. Mrs Cowdrey says that she wanted to contribute into her AVC and the evidence bears this out. On the balance of probability, it appears that the Council sent her a PAY election form instead of information on how she could purchase AVC from Prudential.
30. The Council's email of 8 November 2010 confirms that they were under the impression that Mrs Cowdrey could (and actually did) contribute to PAY for the period March 2007 to December 2009.
31. I am therefore satisfied that the Council did mislead Mrs Cowdrey and incorrectly deducted PAY contributions from 1 March 2007 to December 2009. I am not persuaded that the Council processed an APB application simply because the description on Mrs Cowdrey's payslips says "Teachers Addl Pension". In the Council's email to Teachers' Pensions on 8 November 2010, they said that the deductions were in respect of PAY. Mrs Cowdrey would have known that her original PAY election had terminated soon after she left that employment. The fact that she asked instead to pay AVCs in her application of 28 February 2007 supports this. However, Mrs Cowdrey says that, on receipt of the PAY election form from the Council, she assumed that the rules had changed to allow it again.
32. Knowing what she did though, I would have expected Mrs Cowdrey to query the PAY election with the Council. While there is a possibility that the error may have been discovered, the Council also should have realised, on receipt of the PAY form, that Mrs Cowdrey was ineligible. Therefore, I cannot be certain that a query from her would have resulted in a different outcome as the Council do not appear to have been aware that PAY elections were no longer permitted from 1 January 2007. The Council's email of 8 November 2010 refers.

33. The Council cannot explain why there is no copy of the election form on file and this further compounds the Council's maladministration. Mrs Cowdrey provided details of her previous PAY election to the Council and the Council set up a new PAY election on the same basis i.e. 9% of salary per month. I uphold her complaint of maladministration by the Council.
34. For their part, Teachers' Pensions failed to recognise that Mrs Cowdrey's PAY election had ended in 2005 and continued to write to her, even in July 2009, still quoting the full PAY entitlement. There is a dispute about who produced the estimates dated 31 July 2009. Teachers' Pensions deny providing it, as the accompanying letter says that they do not provide estimates based on projected service and salary. On the one hand, it would be strange to then provide such statements. On the other hand, if Mrs Cowdrey had printed the estimates herself from the online retirement calculator referred to in the letter, I would have expected the estimates to be dated after 31 July.
35. Ultimately, the answer is irrelevant as Teachers' Pensions were operating under the incorrect assumption that Mrs Cowdrey was eligible to receive the full additional service available under her initial PAY election.
36. Teachers' Pensions therefore contributed to misleading Mrs Cowdrey that she still had a valid PAY election. However, Teachers' Pensions could not have been aware of the invalid PAY election set up by the Council. I also do not agree that they could have refunded the PAY contributions gross of tax or made a direct transfer to Mrs Cowdrey's AVC.
37. Mrs Cowdrey is only entitled to receive the correct benefits under the Scheme rules. However, she would be entitled to compensation for inconvenience and financial loss experienced as a result of maladministration by the Council and Teachers' Pensions.
38. Mrs Cowdrey incorrectly assumed that she would receive about £30,000 as a lump sum but, according to the estimates provided, that is only if she retired aged 58 with 25 years 100 days service. Mrs Cowdrey retired aged 56 years 9 months with 23 years 260 days service, so she should have expected to receive somewhat less than £30,000. It is therefore always likely that she would have needed to use some of her savings in the house purchase.

39. Nonetheless, Mrs Cowdrey has lost the opportunity to invest in her AVC as she requested in February 2007. If the Council had followed her instructions correctly, she would have made contributions into her AVC from March 2007 to December 2009. Prudential estimated a loss of £2,532.96 in June 2013 based on contributions of £8,512.40. As Mrs Cowdrey is now unable to make up the missed contributions, it is also unlikely that she can claim back the tax of £1,775.68. I do not take separate account of the tax as the loss calculation by Prudential includes it. I also acknowledge that Mrs Cowdrey has had use of the refunded contributions since February 2011. Although she was refused the option to reinvest in her AVC with Prudential, she could have invested the funds elsewhere to mitigate her ongoing loss. In my view, this offsets the non-financial loss caused to her.
40. Bearing this in mind, I make my recommendations below. In my view, the Council was largely responsible for the error in purporting to set up another PAY election in April 2007 and my directions reflect this.

Directions

41. Within 30 days of the date of this determination, Teachers' Pensions should pay £250 to Mrs Cowdrey (noted as already paid) and the Council should pay £2,250 to her. This reflects the significant effect their maladministration had on her and takes account of the financial loss of approximately £2,500 which she has suffered.

Jane Irvine
Deputy Pensions Ombudsman

30 December 2014