

Ombudsman's Determination

Applicant	Dr S
Scheme	Teachers' Pension Scheme (the Scheme)
Respondents	Teachers' Pensions, Department for Education

Outcome

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

Complaint summary

3. Dr S says Teachers' Pensions provided wrong, inadequate, and misleading information. She planned her retirement on the expectation that her average salary would be calculated over the last 365 days service. Teachers' Pensions did not notify her - in advance, that her salary would be restricted, and used an incorrect restricted salary to calculate her award.

Background information, including submissions from the parties

4. Regulation 37 of the Teachers' Pensions Regulations 2010 (the **2010 Regulations**), provides for the salary of a teacher in pensionable service on or January 2007, to be restricted for pension purposes in certain cases.
5. Under regulation 39 of the 2010 Regulations, where a member's annual salary, during their last 365 days of pensionable service, is greater than their annual salary in the preceding 365 days (year 2) - plus the greater of 10% of that salary, and a fixed amount (the 'Standard Rate'), he is treated as receiving a salary equal to the annual salary in year 2 - plus the maximum increase described above (the **Calculation**).
6. Between May 2013 and February 2014, Dr S says she met with a pension adviser at the university where she was employed at the time, to discuss her retirement options. She was told her pension would be based on an average of her best three years' salaries in the last ten years, or her salary for the final year (whichever was higher) plus an 'uplift' for inflation.

7. In January 2015, Dr S was appointed as Director at the University. The same month, Dr S says she met with a pension advisor at the University and was told her 'average salary' for pension purposes would be around £71,000.
8. Later in January 2015, after consulting Teachers' Pensions' website, Dr S says she decided to retire the following January, on the reasonable expectation that her final average salary would be based on the previous 365 days - when she was receiving the Director salary.
9. Teachers' Pensions' 'working out average salary' factsheet dated August 2015 (the **Factsheet**), says that the average salary will usually be the higher of the average of the best three years' revalued salaries, in the last 10 years, or the last 12 months' pensionable salary.
10. The Factsheet states that, if the pension calculation uses a pensionable salary in the last 12 months, and there has been a salary increase of more than 10% or £5,800, whichever is greater, in any year in the 3 years prior to leaving service, then the salary will be restricted.
11. Dr S says she consulted her online benefit statements and, in August 2015, she decided to postpone her retirement until May 2016, in the belief her average salary would be based on her final 365 days' of pensionable service.
12. On 26 November 2015, a pension adviser at the University provided Dr S with a member record obtained from Teachers' Pensions (the **Member Print**). The adviser said that it detailed all the information the university had provided to Teachers' Pensions. The adviser confirmed an average salary of £59,342, based on Dr S' last 365 days' service.
13. The Member Print says 'average salary method of calculation last 365 days (A)'. It records an average salary consistent with that stated by the pension adviser. The note directly below says if the member left service before 1 January 2007, 'average salary' will be the highest salary in the last 3 years of service. In any other case, it is the average of the best 3 years revalued salaries, in the last 10 years method (B), or the last recorded 365 days' pensionable salary (whichever is higher).
14. Dr S says she contacted Teachers' Pensions when she received the Member Print because the service shown differed from that shown in her online benefit statements.
15. Dr S' annual benefit statement as at 11 January 2016 says:

"Important Note: ...The salary used to calculate your retirement benefits may be restricted if your salary is increased by more than 10% in any of the last three years before retirement or £5,400 if this is higher" (the **Note**).
16. Dr S says the Note states salary may be restricted; this is misleading because it does not say that a reduction will actually apply.

17. In February 2016, Dr S applied to claim her pension benefits from age 62 (13 May 2016).
18. On 7 March 2016, in response to a request for service details recorded, Teachers' Pensions provided Dr S with a copy of her employment record. The printout enclosed with the letter, contains wording consistent with that in the Member Print. Dr S says Teachers' Pensions did not mention restricted salary in the correspondence.
19. An online estimate of Dr S' benefits, generated on 12 April 2016, shows an annual pension of £12,790 and a lump sum of £38,369 based on final salary of £71,353, and service completed to date.
20. On 26 April 2016, in response to a request from Dr S for details of her service, Teachers' Pensions provided a breakdown of her service, and the annual salary and pensionable service corresponding to each period.
21. A member print, which Dr S says she received following a request made in early May 2016, records an average salary of £69,965 under 'method A', and contains the same note as the Member Print.
22. On 6 May 2016, Dr S obtained an estimate of her benefits online as at age 62. The estimate shows a total pension of £12,844 and a lump sum of £38,531, based on final salary of £71,353.
23. On 6 May and 10 May 2016, Teachers' Pensions provided a breakdown of Dr S' employment record, and confirmed the salaries held.
24. On 10 May 2016, Teachers' Pensions confirmed Dr S' pension benefits payable from 14 May 2016. Teachers' Pensions quoted an annual pension of £11,724, a lump of £35,172; and average salary of £65,396 (the **May 2016 Statement**). In the notes section, it says:

"Average Salary – This is the salary rate on which your retirement benefits have been calculated. The scheme regulations define a number of methods that can be used to determine your average salary and these are fully detailed on [our website]."
25. Dr S says when she received the May 2016 Statement, she noticed the average salary was wrong, so she contacted Teachers' Pensions and pointed out the mistake. When she called again on 17 May 2016, to query her service record, Teachers' Pensions advised that her average salary would be restricted - this was the first time Teachers' Pensions had said this.
26. On 17 May 2016, Teachers' Pensions issued a revised pension statement based on Dr S' corrected service, showing an annual pension of £12,006 and a lump sum of £36,019 – less than the pension of £12,800 and a lump sum of £38,500 Dr S says she had anticipated.

27. Teachers' Pensions said the average salary used in her award was the higher of the best 3 salaries in 10 years (Method A) or the salary in the last 365 days, which can be restricted. Teachers' Pensions said her salary in the final 365 days had been restricted to £65,396. As this was higher than the salary of £61,908 under 'Method A', the restricted salary was used to calculate her award.
28. Dr S says the calculators and associated pages on Teachers' Pensions' website do not refer to restricted final salary. She has only found reference to restricted salary on the employers' section of the website and in a 'FAQ'. Dr S has provided a copy of the note on salary restriction located in the 'employer portal' on Teachers' Pensions' website. The note says if pensionable salary in the final three years of pensionable service increased by more than £5,800, or 10%, the increase in that salary (or salaries), will be restricted to the higher of £5,800 or 10%.
29. On 14 June 2016, Teachers' Pensions provided a detailed explanation of how the restricted salary of £65,396 was worked out.
30. During the investigation, Teachers' Pensions provided a copy of the standard template it says it used for the annual benefit statements as at March 2014, and the template used as at March 2015 (the **Templates**). The Templates state 'Average Salary' is the higher of: the pensionable salary received in the last 365 days of service, and the average of the best three years' of consecutive salaries during the 10 years prior to leaving service. The Templates say the figures are for illustration purposes, confer no rights to the benefits quoted, and should be read in conjunction with the 'guidance notes' (the **Guidance Notes**).
31. The note on 'average salary' contained in the Guidance Notes says the 'average salary' is the salary used to calculate benefits on retirement. For further information visit Teachers' Pensions' website.
32. Further comments from Dr S are set out below.
 - The member prints provided by Teachers' Pensions indicated that her pension would be based on her salary over her last 365 days of service.
 - Teachers' Pensions failed to provide any details about salary restrictions either on its website or in any of its written communication. Consequently, she did not become aware of the position until after she retired.
 - In 2014 - 2015 her average salary was £61,209. If this figure is increased by 10% it would amount to £67,330. According to the calculators on Teachers' Pensions' website an average salary of £67,330 would generate a pension of £12,361, and a lump of £37,084 based on her corrected service.
33. Further comments from Teachers' Pensions and the Department for Education are set out below.

- The details on the website and Scheme information is a simplified representation of the regulations. The regulations can be accessed on the website, and enquiries can be made to Teachers' Pensions if further clarification is needed.
- The Factsheet was available to members. Like all Teachers' Pensions' fact sheets, it is intended to be read by members.
- The initial retirement figures were based on the service held at that time. Discrepancies in Dr S' service were resolved with the employer, and the benefits were recalculated using the additional service details received.
- Dr S' salary in the last 365 days was not used because the pay rise she received was greater than 10%.

Adjudicator's Opinion

34. Dr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by Teachers' Pensions. The Adjudicator's findings are summarised briefly below:

- There is no good reason to suspect that the Factsheet was not made available to Dr S at the time.
- The restricted salary calculation carried out by Teachers' Pensions, is consistent with that described in the 2010 Regulations.
- While Teachers' Pensions did not raise the possibility that her salary might be restricted, when she made enquiries about her service record, she did not ask about salary restriction.

35. Dr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Dr S has provided her further comments but these 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 Dr S for completeness.

Ombudsman's decision

36. Dr S says Teachers' Pensions advised that her pension would be based on her average salary over the previous 365 days, and did not alert her to the Calculation, or to the Factsheet before she retired. Consequently, she had no reason to search for either the Factsheet, or the Regulations. Dr S says, in any case, there was no obvious link to the Factsheet, so it is unlikely that members would be able to find it when browsing the website.
37. Dr S says, if Teachers' Pensions planned to restrict her salary, she should have been notified in advance. But at no time before her retirement date was the salary restriction mentioned. The screen prints Teachers' Pensions provided, as late as in

May 2016, also indicated that her pension would be based on her 'average salary'. Based on her payslips, her average salary for her last 365 days of service should have been in the region of £70,000.

38. Dr S says it was Teachers' Pensions' responsibility to make clear any calculations used to work out an individual's pension entitlement. She questions how a lay person would understand the "incomprehensible" Calculation.
39. Dr S says while her benefit statement as at January 2016, indicated that her retirement benefits may be restricted - it does not state that it would be. And, given that Teachers' Pensions consistently advised her pension would be based on the average of the previous 365 days salary, it was not unreasonable for her to have assumed this would be the case when she retired.
40. The crux of Dr S' complaint is that Teachers' Pensions failed to provide details about salary restriction either on its website (or in any of its written pre-retirement communication) and she postponed her retirement to ensure that her final average salary would be based on the final 365 days when she was receiving a higher salary.
41. The starting point is that the calculation of a salary for pension purposes is determined by the Regulations that govern the Scheme. Teachers Pensions have to apply them and I am satisfied that it has done so.
42. Teachers' Pensions has acknowledged that the member section of its website does not currently cover salary restriction. It would be clearer to members how to find that particular piece of information if it was listed under the member section, however, I am satisfied that sufficient information was available on the website; the Factsheet outlined the position and members had access to the applicable regulations. It was open to Dr S to access the information, and to contact Teachers' Pensions for an explanation if she needed it.
43. I fully acknowledge that the Calculation required by the Regulations is not straightforward.
44. I accept that Teachers' Pensions provided pensions illustrations based on Dr S' last 365 days salary, and that the printouts of her service record made reference to her salary under 'Method A'. However, the Note in her annual statement as at January 2016, was accurate when it said that a salary restriction be may be applied, and explained the circumstances under which this may occur. I sympathise with Dr S's desire to have the application of the calculation fully personalised in the information which is provided in annual statements. However, on balance I am not persuaded that it was maladministration on the part of Teachers' Pensions not to take that approach. This is because the need to restrict a salary will only become apparent once Teacher's Pensions have been able to obtain exact salary figures for the final years from an employer. I can also see no loss flowing from the decision which Dr S made to delay her retirement. She received the benefit of a higher salary while

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continuing to work and the pension which she received was no lower as a consequence of that decision.

45. Dr S is only entitled to the benefits provided for by the applicable regulations governing the Scheme. I find no evidence to support the assertion that her benefits have not been calculated in accordance with those regulations.
46. Therefore, I do not uphold Dr S's complaint.

Karen Johnston

Deputy Pensions Ombudsman
27 June 2017