

## Ombudsman's Determination

Applicant	Mr E
Scheme	Teachers' Pension Scheme ( <b>TPS</b> )
Respondents	Teachers' Pensions ( <b>TP</b> ), Southampton City College ( <b>Southampton</b> )

## Outcome

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

## Complaint summary

3. Mr E has complained that:-
  - In 2001, Southampton's Human Resources department (**Southampton HR**) provided him with incorrect information that TP did not usually accept transfers into TPS.
  - In 2016, TP refused a request he submitted to transfer pension benefits he had built up in the Local Government Pension Scheme (**LGPS**) between 1999 and 2001 into TPS.

## Background information, including submissions from the parties

4. Mr E began his teaching career in 1979. Both he and his wife were employed by Matthew Boulton College (**the College**) in Birmingham from 1984 to 1998. The College made both of them redundant in 1998.
5. Mr E's wife secured a post on the Isle of Wight and began renting a flat there in September 1998. Mr E also secured part time employment on the Isle of Wight; he commuted weekly between there and Birmingham, in order to handle the sale of their house there. After the sale was completed, they put most of their belongings into storage in the homes of family and friends in Birmingham, because they expected to return to the mainland eventually. During 1998 and 1999, they applied for a number of jobs on the UK mainland.

6. Mr E was employed by Southampton between 1999 and 2001, as a Tutorial Team Leader. He was placed on a non-teaching contract, and as a result of this, he was not permitted to continue making contributions into TPS. As such, he became a preserved member of TPS and joined LGPS.
7. There was a legal dispute about whether Southampton was allowed to employ tutorial staff on non-teaching contracts, and it was eventually determined that Mr E, along with a number of other employees, would be offered teaching contracts. As a result of this, Mr E re-joined TPS in October 2000 and has remained a member of that Scheme since then. At this point, he had accrued 324 days of qualifying service in LGPS.
8. Mr E submitted a transfer application to TP on 10 April 2001, requesting it to arrange a transfer of the benefits he had accrued in LGPS into TPS.
9. A few weeks later, Mr E had not heard back from TP, and so he spoke with Southampton HR concerning the transfer application. His testimony is that they told him that TP does not usually allow transfers from other pension schemes, and so he took it that TP had rejected his transfer request.
10. In September 2001, Mr E left Southampton, having secured a teaching post at Sandown High School (now Sandown Bay Academy), where he has remained employed since.
11. In 2016, it emerged that there was a possibility that Mr E could be made redundant from Sandown Bay Academy and, due to this, he reviewed his pension portfolio. This led to a decision to contact LGPS about transferring the benefits built up in that scheme into TPS.
12. LGPS wrote to Mr E in August 2016 to tell him that, since he had less than two years of qualifying service in LGPS, he was not entitled to a preserved pension from that Scheme. His only entitlement was to a refund of the employee contributions paid into LGPS.
13. Disappointed with this news, Mr E made a fresh request to TP to transfer the benefits he had accrued in LGPS into TPS.
14. TP noted that Mr E's transfer application was submitted well beyond 12 months of re-joining TPS, during which TPS Regulations 2010 (please see Appendix) permit such applications to be accepted. Accordingly, it refused Mr E's application.
15. Unhappy with this decision, Mr E wrote to TP on 8 October 2016, complaining that it did not respond to the transfer request he submitted in 2001. He also said he was never informed there was a 12 month deadline for making a request to transfer pension benefits accrued in LGPS into TPS.

16. Mr E's complaint was considered under the internal dispute resolution procedure (**IDRP**) of TPS. The complaint was considered first by TP and then by the Department for Education.
17. On 22 November 2016, the Department for Education sent Mr E the stage 2 IDRP decision. It explained that TP had written to Mr E on 5 May 2001 to tell him that his transfer request had been accepted and to offer him a service credit of 324 days in TPS. However, Mr E had not replied. Since he had been re-enrolled into TPS more than 12 months ago, he no longer met the eligibility criteria to transfer the benefits he accrued in LGPS into TPS.
18. Mr E wrote to Southampton on 4 May 2017, complaining that in 2001, Southampton HR had advised him that it is unusual for TP to accept transfers into TPS, and that is why he did not follow up the first transfer request.
19. Southampton had not replied by early July 2017, and so we accepted the complaint for investigation, on the basis that Southampton did not respond to Mr E's complaint within a reasonable timeframe.

### **Adjudicator's Opinion**

20. Mr E's complaint was considered by one of our Adjudicators, who concluded that no further action was required by TP or Southampton. The Adjudicator's findings are summarised briefly below:-
  - In 1984, Birmingham City Council provided Mr E with a booklet entitled "A guide to Teachers' Superannuation for England and Wales 1980" (**the 1980 guide**), which detailed the process for applying to transfer benefits built up in other schemes to TPS. This document included an explanation that TP would contact members making such an application to tell them the amount of credit they would receive, so that they could make an informed decision before going ahead with the transfer. As such, it is reasonable to expect that Mr E would have known TP would contact him before processing any transfer, and therefore that he would follow up the transfer application he submitted in 2001. Further that, bearing in mind Mr E was seeking to transfer the benefits he had accrued in LGPS to TPS, it is not unreasonable to assume that he would have reviewed the booklet at the time of his application.
  - The fact that Mr E applied to transfer the benefits accrued in LGPS to TPS in the first place suggests he knew TPS sometimes accepts such transfers. In these circumstances, it is reasonable to expect that he would follow up the request with TP.
  - If Mr E thought a transfer would not be possible in 2001, it is unclear why he believed TP would accept a transfer request in 2016.

- In May 2001, TP wrote to Mr E to offer him 324 days of qualifying service in TPS, which was equivalent to the number of days of qualifying service he had built up in LGPS. Pension schemes do not generally contact members to confirm they have received letters (and to do so would be onerous). It was reasonable in the circumstances for TP to take it that Mr E had decided not to proceed with the transfer.

21. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E provided his 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 Mr E for completeness. In summary, these are:-

- He did not have a copy of the 1980 guide to hand in April 2001, when he submitted the application to transfer the benefits built up in LGPS to TPS, because most of his belongings were in storage in the Midlands at that time; he was living on the Isle of Wight and commuting to his job at Southampton. This was because his employment at Southampton (as well as his wife's employment) was short term and precarious, and so it was considered likely they would have to move back to the UK mainland eventually. It was not until he secured employment at Sandown High School, in September 2001, that they decided to remain on the Isle of Wight and transferred their remaining belongings, including the 1980 guide, to their property there.
- The TP website did not exist in 2001 and he therefore relied solely on the guidance of Southampton HR. He asked them if he could apply; they said he could, and he did so.
- When he followed up the progress of his application with Southampton HR, they told him TP did not usually accept transfers into TPS and that LGPS was a better scheme. Further, they did not inform him that he had made insufficient contributions to LGPS to qualify for a preserved pension from that Scheme.

## **Ombudsman's decision**

22. I accept Mr E's explanation that he did not have the 1980 guide to hand in April 2001, when he submitted the application to transfer his LGPS benefits to TPS. However, it was his decision to leave it in storage. The fact it was not in his possession at the time of the transfer application did not result from maladministration by TP or Southampton.
23. In 2001 Mr E completed forms requesting information about a transfer credit. Clearly he knew then that there was a possibility TP would accept a transfer into TPS.
24. Mr E has said that, when he asked Southampton HR for an update concerning his transfer application, they said TP does not usually authorise transfers into TPS. But

this is not the same as saying that they never accept transfers. Bearing in mind Southampton HR had previously informed him that he could submit a transfer application to TP, I consider it would have been prudent for Mr E to follow up the request with TP. After all, he had taken the time to submit a transfer application to them. However, he did not do so. Accordingly, I conclude that he did not take sufficient steps to confirm that the transfer was completed..

25. A further complaint made by Mr E is that Southampton HR told him that they considered LGPS is a better scheme than TPS. However, even accepting that Southampton HR provided this information (and Mr E has not submitted any supporting evidence), it was for him to weigh up the benefits of the respective schemes. Mr E had not received any correspondence from TP notifying him of the credits he would receive in TPS, and so he was not in a position to make an informed judgment as to whether to proceed with the transfer. Despite this, he took no action in 2001 to follow up the transfer request with TP. Given the circumstances, I do not consider it is unreasonable to expect that he would have done so.
26. Mr E has also complained that Southampton HR did not tell him that he needed to have two years of qualifying service in LGPS in order to have the right to a preserved pension in that Scheme. However, it appears he did not make any enquiries of Southampton HR about this issue. In the circumstances, I do not consider Southampton HR could reasonably have been expected to highlight this matter to him.
27. Moreover, it is not for Southampton HR to advise Mr E on how to maximise his pension benefits; that is his responsibility. Mr E could have discovered the position by reading the relevant LGPS Regulations, or by contacting LGPS directly.
28. I find no evidence of maladministration by TP or Southampton resulting in financial loss to Mr E.
29. Therefore, I do not uphold Mr E's complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
18 September 2017

## Appendix

### Teachers' Pension Scheme Regulations 2010

30. Section 3 ("Transfers in") provides:-

"33D Application of this Section

(1) This Section applies to-

(a) a person who ceases to be in another club scheme and enters pensionable employment in this scheme, and

(b) a person who-

(i) ceases to be in a public service scheme for teachers established and maintained in the Channel Islands or the Isle of Man on or before 31st March 2015,

(ii) enters pensionable employment in this scheme on or before 31st March 2015, and

(iii) makes an application for a transfer value payment on or before 31st March 2017.

(2) A person in respect of whom a club transfer value is accepted is entitled to count reckonable service in accordance with paragraph 11A of Part 2 of Schedule 6.

33E Receipt under this Section

(1) A club transfer value may be accepted under this Section in respect of a person (P) if P satisfies the conditions in either paragraph (2) or (3).

(2) P-

(a) enters pensionable employment,

(b) makes a written application to the Secretary of State within 12 months from the date on which P enters pensionable employment,

(c) makes the application before P attains the age of 75, and

(d) before P ceased to be subject to the previous scheme, retirement benefits have not come into payment to P either-

(i) under regulation 60 (retirement benefits), or

(ii) under a provision of a statutory scheme corresponding to regulation 60.

(3)(a) P enters pensionable employment on or before 31st March 2015, after leaving a public service scheme for teachers established and maintained in the Channel Islands or the Isle of Man, and either-

(i) makes a written application to the Secretary of State on or before the day on which P reaches the normal pension age, or

(ii) makes the application after the day on which P reaches the normal pension age, having entered pensionable employment-

(aa) on or before the day on which P reaches the normal pension age, and

(bb) immediately after the end of P's employment in the previous scheme service, and

(b) P makes the application on or before 31st March 2017."