

Ombudsman's Determination

Applicant	Miss L
Scheme	Teachers' Pension Scheme (the Scheme)
Respondent	Teachers' Pensions

Outcome

1. I do not uphold Miss L's complaint and no further action is required by Teachers' Pensions.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Miss L's complaint against Teachers' Pensions is about its decision not to refund contributions for a period of service that has caused her to exceed 365 days of pensionable service in a year.

Background information, including submissions from the parties

4. From 1995 to 1999, Miss L was in concurrent, multiple, part-time employment. From 1999 to 2005, Miss L had concurrent part-time and full-time employment. For both periods, Miss L was a member of the Scheme and she made contributions into the Scheme. In 2005, Miss L was subsequently informed by Teachers' Pensions that the contributions she had paid into the Scheme, during her part-time employment from 1999 to 2005, would not count towards her reckonable service.
5. On 9 September 2005, Teachers' Pensions explained that "service in excess of 365 days in one financial year cannot count in the calculation of retirement benefits". It agreed exceptionally to refund the contributions paid on Miss L's part-time employment which overlapped full-time service i.e. 1999 - 2005, and treat the part-time service as non-pensionable.
6. In April 2015, Teachers' Pensions informed Miss L that it was investigating her pensionable service for the period 1 June 1995 - 5 September 1999.
7. In June and August 2015, Miss L asked for her pension records to be adjusted as she had been informed that she had worked 450 days in excess of full-time equivalent

service from June 1995 – September 1999. She asked Teachers' Pensions for a refund of contributions for the period of excess service, just as it agreed in 2005.

8. On 6 November 2015, Teachers' Pensions wrote to Miss L and said that there was no provision for a refund of excess contributions in the regulations governing the Scheme.
9. Miss L asked for the decision to be reviewed.
10. On 29 April 2016, the Department for Education replied under the Scheme's internal dispute resolution procedure. DfE said that the regulations applicable to Miss L for the period 1995-1999 were the Teachers' Superannuation (Consolidation) Regulation 1988 – later superseded by the Teachers' Pensions Regulations 1997 (as amended) (the **TPR 1997**). Regulation D1 (3) (d) of the TPR 1997 limits the number of days' service that can be accrued in a year to 365. It said that the previous refund was allowed because the whole of her part-time service from 1999, which ran concurrently with full-time service, was rescinded. In the current case, she is seeking a refund of a portion of her part-time service, which the TPR 1997 does not allow for.

Adjudicator's Opinion

11. Miss L'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:-
 - Miss L's contributions were paid in accordance with her membership of the Scheme and Teachers' Pensions is entitled to refuse a refund under the regulations governing the Scheme.
 - In 2005, Teachers' Pensions made a discretionary decision to refund all of Miss L's contributions for part-time service that overlapped with her full-time service, but the current circumstances are different. The TPR 1997 does not provide for a refund of validly deducted contributions on excess service. Moreover, Teachers' Pensions is unable to determine what part of the part-time service contributions should be refunded.
 - Miss L was in the best position to identify whether she had exceeded 365 days' service, as Teachers' Pensions does not carry out an annual reconciliation of her different employments.
 - Although Miss L will not derive additional pension from contributions she has made, she has earned additional income and retained eligibility for other Scheme benefits.
12. Miss L did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Miss L 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 Miss L for completeness.

Ombudsman's decision

13. Miss L says that she was unaware that she could not exceed 365 days' pensionable service in any year. If she had known this, she would have opted out of the Scheme each year when she reached the limit, and then opted back in at the beginning of the following Scheme year.
14. We considered this point when Miss L initially brought her complaint to us. From the information she provided, Miss L found out that excess service would not count towards the calculation of her retirement benefits in 2005. Accordingly, this office informed Miss L that, under The Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996, we would not be able to consider this part of her complaint because we did not receive her complaint within three years of the first time she became aware of the issue. This part of her complaint was outside of our jurisdiction and was not accepted for investigation.
15. In any event, there are practical obstacles to Miss L saying that she would have opted out of the Scheme on a yearly basis once she had reached the limit of 365 days' service. This assumes that she would have been prepared to lose her entitlement to other benefits in the Scheme, such as death benefits and ill health benefits, if she had elected to opt out of the Scheme, and then back in, every year. While this would have been a matter for Miss L to decide, on balance, I am not persuaded that this would have been a realistic option for her.
16. Overall, having considered Miss L's comments, I do not uphold her complaint.

Karen Johnston

Deputy Pensions Ombudsman
28 November 2017

Appendix

The Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996 (Statutory Instrument 1996 No. 2475)

Regulation 5

5.- (1) Subject to paragraphs (2) and (3) below, the Pensions Ombudsman shall not investigate a complaint or dispute if the act or omission which is the subject thereof occurred more than 3 years before the date on which the complaint or dispute was received by him in writing.

(2) Where, at the date of its occurrence, the person by or in respect of whom the complaint is made or the dispute is referred was, in the opinion of the Pensions Ombudsman, unaware of the act or omission referred to in paragraph (1) above, the period of 3 years shall begin on the earliest date on which that person knew or ought reasonably to have known of its occurrence.

(3) Where, in the opinion of the Pensions Ombudsman, it was reasonable for a complaint not to be made or a dispute not to be referred before the end of the period allowed under paragraphs (1) and (2) above, the Pensions Ombudsman may investigate and determine that complaint or dispute if it is received by him in writing within such further period as he considers reasonable.