

Ombudsman's Determination

Applicant	Mrs D
Scheme	Teachers' Pension Scheme (the Scheme)
Respondents	Kent County Council (the Council), Teachers' Pensions

Outcome

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

Complaint summary

3. Mrs D's complaint concerns her missing Scheme benefits. Mrs D considers that they should have been preserved in the Scheme, as she completed the minimum five years' qualifying service. Mrs D says that Teachers' Pensions has a responsibility to establish the day she allegedly was not in pensionable service.

Background information, including submissions from the parties

4. Mrs D joined the Scheme on 1 September 1975, which was then administered centrally by the Department for Education. Mrs D left pensionable employment on 31 August 1980, aged 26. According to the service record inherited by Teachers' Pensions, Mrs D had one-day non-pensionable service sometime between 31 August 1978 and 1 April 1979, reducing her service for pension purposes from five years to 4 years and 364 days.
5. Mrs D's salary was £3,534 on 1 April 1978. This increased to £3,666 with effect from 1 September 1978.
6. Under the Social Security Act 1973, (**SSA 1973**), where a member leaves service before normal pension age (**NPA**), and he/she has attained age 26, the scheme must provide a deferred pension, if he/she has completed a minimum of five years' qualifying service. Qualifying service is defined as a single period, or two or more periods, continuous or discontinuous, totalling five years, during which the member was at all times employed either in pensionable service or pensionable employment, or in 'linked qualifying service' under a different scheme.

7. The Teachers' Pensions Regulations 2010 (the **2010 Regulations**), specifies six conditions that must be satisfied to qualify for retirement benefits. Under condition 3(ii) it says:

“...the sum of [the individual's] retirement benefits qualification service attributable to a period of employment after 5th April 1988 and of the periods mentioned in Schedule 9 of [the Teachers' Superannuation (Consolidation) Regulations 1988] attributable to a period of [his/her] employment before 6th April 1988 amounts to at least 5 years.”
8. Schedule 9 of the Teachers' Superannuation (Consolidation) Regulations 1988 (the **1988 Regulations**) refers to pensionable employment. In respect of service before 1st November 1988, the term means employment in reckonable service for the purposes of the Teachers' Superannuation Regulations 1976 (the **1976 Regulations**), or earlier provisions. The 1976 Regulations defines reckonable service as any period a teacher is employed in reckonable service. It states that a teacher shall be treated as being in full-time employment during the periods of absences specified therein. These include an absence for sickness of less than twelve months. And any absence, for any reason not related to sickness, not exceeding 30 working days in any financial year.
9. The 2010 Regulations says that a member who does not qualify for retirement benefits, is entitled to a refund of contributions subject to certain conditions specified within those regulations. The right to take a refund takes effect from one month after the member ceased to be in pensionable employment.
10. The administration of the Scheme was transferred to the Teachers' Pensions Agency in 1992, and then outsourced to Teachers' Pensions in October 1996.
11. As Mrs D's employer at the time, the Council would have been expected to provide Mrs D with information about the Scheme, including her options on leaving service. The records inherited by Teachers' Pensions do not indicate whether the Council provided Mrs D with details of her leaving service options. As it only held manual records at the time, which have since been destroyed, the Council is unable to confirm the position.
12. The Teachers' Superannuation – A Guide to Preservation and Transfer leaflet (the **Leaflet**), that should have been issued to Mrs D at the time, explains that she would have qualified for eventual payment of pension benefits if she had been employed in 'reckonable service' for at least five years. The Leaflet states:

“Preservation of Reckonable Service

... Even if your reckonable service on leaving teaching is insufficient to qualify you for benefits, you might therefore still qualify if that service is preserved in the teachers’ scheme and you subsequently add to it by returning to teaching...”

Withdrawal of contributions

“...The amount repaid would include compound interest on the contributions at 3% per annum...subject also to a 10% tax deduction... before deciding to withdraw your contributions, you ought carefully to consider the effect on your pension prospects... particularly if there is any possibility that you may return to teaching later on.”

PAYMENT OF COMBINED CONTRIBUTIONS DURING AN ABSENCE FROM RECKONABLE SERVICE

...If your credit for reckonable service is not transferred ... or cancelled by the withdrawal of contributions it will be preserved in the teachers’ scheme... It may be possible for you to add to that credit... during an absence not exceeding three or six years...”

13. Teachers’ Pensions has clarified that the purpose of the “combined contributions” provisions, outlined in the Leaflet, is to cover an absence from pensionable employment of a minimum of 30 days, where the member was expected to return to the Scheme. Consequently, Mrs D would not have had the option to pay additional contributions to cover the one-day absence.
14. Mrs D reached age 60, her NPA under the Scheme, in September 2013. In January 2017, in advance of attaining her State pension age (**SPA**) in early November 2017, Mrs D contacted Teachers’ Pensions about her benefits. Mrs D was told that she was entitled to a refund, as she had only completed 4 years and 364 days’ pensionable service in the Scheme. Mrs D then contacted the Council and was informed that its records had since been destroyed.
15. The Scheme’s participating employers were required to confirm to the Scheme administrators, pension contributions deducted in respect of each financial year. Using the service of 4 years and 364 days, and salary details that were provided in the data inherited by Teachers’ Pensions, Teachers’ Pensions has calculated that Mrs D would have paid pension contributions of £213.64, in respect of year ending 31 March 1979, after allowing for a deduction of national insurance contributions of £2.39. The amount of contributions Mrs D is shown in the inherited records as having paid during that same year, is £213.05.

16. Teachers' Pensions says it relies on employers to provide accurate service and salary details for their employees, in accordance with their duty under the Scheme regulations. Teachers' Pensions' default position is to assume that the information submitted by employers is correct; Teachers' Pensions' is not duty bound to investigate the data provided. Teachers' Pensions has noted that the Council no longer holds records for the period in question. Unless there is evidence to support Mrs D's assertion that the information provided was wrong, Teachers' Pensions will assume otherwise, as, on balance, it is more likely that the details provided at the time were correct.
17. Teachers' Pensions has explained that it is bound by the regulations that govern the Scheme. Those regulations required Mrs D to have completed a minimum qualifying period of five years. Based on the records inherited by Teachers' Pensions, Mrs D completed insufficient service for a deferred pension.
18. The Council has pointed out that it is only required to keep records of employees who have left its service for a period of seven years.
19. Mrs D says she did not enquire about her pension at any time before January 2017, as she always knew that she had to complete at least five years to get a pension, which she believed she had completed. Her husband had also been a member of the Scheme, but he completed three years' service and was offered a refund. As she was not offered a refund at the time, this reinforced her understanding that she had been awarded a pension in the Scheme. Also, in the back of her mind, she had linked her NPA with her SPA, hence her reason for contacting Teachers' Pensions when she did.
20. Mrs D is adamant that she was employed by the School for five years. Mrs D says she did not take a day out of service during the period in question, although she did go on maternity leave at a different time. Mrs D says she can only assume that the information relating to the absence was attached to her record by mistake. Mrs D has pointed out that it is now not possible to confirm the validity of the information as there are no available records.
21. Mrs D says Teachers' Pensions has placed blind faith in information provided by employers. However, at the time of her employment, the information would have been provided manually. She finds it odd, and hard to accept, that neither the Council nor Teachers' Pensions has confirmed which day she took out of service, nor the reason for the absence. For the sake of one day, which they claim she took out of service, she will lose her entire pension, when pension scheme members are now only required to complete two years' qualifying service for a deferred pension.
22. To claim her net contributions, Mrs D would need to submit a repayment of pension contributions form to Teachers' Pensions. Once Teachers' Pensions has received the form it will repay her contributions with interest at a rate of 3% compound.

23. Mrs D considers an award of pension, or the opportunity to make up any shortfall in her pension contributions to qualify for a pension, would resolve her complaint.

Adjudicator's Opinion

24. Mrs D's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Council, or Teachers' Pensions. The Adjudicator's findings are summarised briefly below:-
- Mrs D is only entitled to the options permitted under the regulations governing the Scheme. Those regulations only allow her the option of a deferred pension if she has completed at least five years' reckonable service.
 - The records inherited by Teachers' Pensions, indicates that Mrs D had one-day non-pensionable service during the 1978/79 financial year. As Teachers' Pensions took over the administration of the Scheme more than fifteen years after Mrs D had left the Scheme it cannot reasonably be held responsible for the lack of available information concerning that absence.
 - It is now not possible to know whether any information was issued to Mrs D about her benefits at the time. Given that the repayment of her contributions was prompted by her enquiry to the Scheme in early 2017, it is more likely that details of her options on leaving the Scheme were not provided. That said, there was nothing preventing Mrs D from requesting that information when she did not receive it.
 - Unfortunately, given the passage of time, it is unlikely that any further information will come to light concerning the period of absence. Without valid evidence to support that the pension records inherited by Teachers' Pensions for Mrs D were incorrect, it can only reasonably be concluded that they are more likely to be correct, based on the contributions that were recorded for Mrs D at the time.
 - Given the lack of documentary evidence available to support her assertion that she completed the minimum required service, and the amount of contributions in respect of year ending 31 March 1979, which was likely notified to the Scheme by the Council at the time, I do not think an Ombudsman would provide Mrs D with the outcome she is seeking.
25. Mrs D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs D has provided her further comments but these do not change the outcome. I agree with the Adjudicator's Opinion, except that I acknowledge Mrs D's contributions have yet to be refunded. I will therefore only respond to the other key points made by Mrs D for completeness.

Ombudsman's decision

26. Mrs D is certain that she did not receive any statements regarding her pension, or contributions towards it, from any of the bodies that have been responsible for the Scheme. Mrs D says she was not aware at the time of any adjustments to her monthly salary due to an alleged day out of service: "the missing pension contribution amounts to just 59 pence." Mrs D also asserts that Teachers' Pensions did not contact her at any time about her pension.
27. Mrs D says she feels cheated of her pension entitlement, particularly as she made financial sacrifices at the time she left teaching by deciding not to take a repayment of contributions "but to have the long wait for a pension." She is disappointed and shocked by the "vigorous defence" from Teachers' Pensions and lack of records held by the Council.
28. Mrs D has pointed out that the Council has no record of the day in question. In her view, it ought to have maintained records in line with its obligations under the 2010 Regulations. Mrs D contends that it is a primary requirement of any pension provider to have complete information covering an individual's entire period of employment, and retirement thereafter. She therefore does not accept the fact that Teachers' Pensions inherited her pension records negates its duty to maintain such records.
29. Mrs D has reiterated that she did not take a day out of service. She says she did not strike, she was not on maternity leave, she did not take any additional holiday, she did not apply for any other employment or attend any interviews in the period in question. That aside, Mrs D says the definition of "reckonable service" in the 1976 Regulations includes "any absence for any reason in any financial year". In her view, "any absence for any reason" would mean that she should have full reckonable service in the Scheme, and therefore deferred benefits.
30. The fact that Mrs D enquired about her benefits in early 2017 is not in dispute. The evidence is also clear that Mrs D's pension contributions were not refunded on her leaving the Scheme, more than thirty years earlier. What is unclear, is the reason for the one day's absence noted on Mrs D's service record.
31. The reason for the lack of documentary evidence held by the Scheme, is that the data Teachers' Pensions inherited does not include full details of the period of absence. As the Council has since destroyed its records, it is now not possible to know the specific reason for the absence recorded for Mrs D. However, I am not aware of any legal obligation that would have required the Council to maintain records in respect of an employee who had left its service over three decades earlier. I have noted that the Council did not administer the Scheme at the time, that was done by the Department for Education.

32. In 1980, Teachers Pensions were not required to provide leavers statements. However, they have explained that the practice at the time was for the employers to issue leaflets setting out options. The evidence does point to a failure on the part of the Council to provide Mrs D with details of her options on leaving the Scheme. Mrs D is adamant that she did not receive details of her options at that time and I do not disbelieve her. However, I cannot see any evidence that provision of the options information would have changed the outcome for Mrs D. The leaflet which should have been sent explained transfers, deferment and return of contributions, but was not specific about which options Mrs D was or was not entitled to at that point. Critically, it would not have alerted her to the missing day's service or told her whether she could remedy that gap.
33. The 1976 Regulations stipulates that any absence, for any reason unrelated to illness, of less than 30 working days in any financial year, should be treated as "reckonable service". Unfortunately, due to the lack of records, it is now not possible to establish whether the day's absence recorded by the Council is in respect of a period of absence not exceeding 30 working days. While it is possible that this is the case, the burden of proving that there has been maladministration rests with Mrs D. Without documentary evidence that the record is wrong I do not consider she can discharge that burden of proof.
34. I have also considered whether the scheme record held is likely to be the result of a data error, rather than a deliberate declaration by the employer, but I can see no evidence to that effect. The problematic one day is recorded in a column headed 'days off'. It is the only entry in that column over the 11 rows of data held for the undisputed period of Mrs D's continuous employment. There is no evidence to suggest it has been changed since it was derived from the original information provided by Mrs D's employer. I am satisfied on the balance of probabilities that the entry reflects the Council's contemporaneous calculation that she had one day's leave which did not count towards her reckonable service for the purpose of the Regulations as they then stood.
35. The number of days in the periods 1 April 1978 to 31 August 1978, (**Period 1**); and 1 September 1978 to 31 March 1979, (**Period 2**), is 153 days and 212 days respectively. Based on the Scheme's employee contribution rate of 6%, and Mrs D's salary history, I would have expected Mrs D to have paid contributions of £88.88 during Period 1, and contributions of £127.76 in respect of Period 2, a total of £216.64 for year ending 31 March 1979. The evidence indicates that Mrs D's actual contributions were £88.88 for Period 1 and £127.15 for Period 2. The contributions for Period 2 are equivalent to 211 days' worth of contributions, based on the contribution rate of 6%, and Mrs D's salary of £3,666. Therefore the contribution history matches the service record.
36. While I appreciate that the shortfall in Mrs D's pension contributions is minimal, the weight of evidence does support that she completed 364 days, rather than 365 days, pensionable service during year ending 31 March 1979. And that, overall, she

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completed four years and 364 days' pensionable service in the Scheme, one day short of the five years required for a preserved pension.

37. I therefore find that Mrs D is only entitled to a refund of her net contributions, with interest. While I empathise with her position, there is insufficient evidence on which to reach a finding that she qualified for a preservation of benefit on leaving the Scheme.

38. Therefore, I do not uphold Mrs D's complaint.

Karen Johnston

Deputy Pensions Ombudsman
30 January 2019