

Determination by the Pensions Ombudsman

Applicant	Mr Arthur Morris
Scheme	Teachers' Pension Scheme (the Scheme)
Respondents	(1) Bolton Council (2) Teachers' Pensions

Complaint summary

Mr Morris' complaint about Bolton Council and Teachers' Pensions is that both organisations say he did not complete two Certificates of Re-employment (in respect of his period of re-employment from 31 March 2002 to 29 February 2004) which has led to an overpayment of pension being paid to him. Mr Morris maintains that he did complete Certificates of Re-employment in respect of his re-employment in that period.

Mr Morris wants both Bolton Council and Teachers' Pensions to acknowledge that he did send Bolton Council Certificates of Re-employment in respect of his period of re-employment from 31 March 2002 to 29 February 2004, to waive the overpayment and repay the overpayments that have already been taken.

Summary of the Deputy Ombudsman's determination and reasons

The complaint is not upheld against Bolton Council and Teachers' Pensions because the Teachers' Pensions Regulations 1997 provide that the overpayments are recoverable and Mr Morris has no valid defence to the recovery of them.

DETAILED DETERMINATION

Relevant statutory provisions

1. The Teachers' Pensions Regulations 1997 (the **Regulations**) provide that in certain circumstances a member in receipt of a retirement pension from the Scheme will have it abated if they return to teaching employment (Regulation E14). The member's pension may be suspended at any point in a tax year if the combined income from their re-employment and Scheme pension exceeds the salary they would have received if they had not retired (known as the salary of reference).
2. It is the responsibility of the pensioner to notify Teachers' Pensions of their re-employment, providing details of the salary in the employment. Regulation H3(4) says as follows:

“Without prejudice to paragraph (2) a person who has become entitled to payment of a teacher's pension and who takes up employment such as is described in regulation E14(1) shall-

 - (a) within 14 days of taking up such employment notify the Secretary of State giving details of the salary in the employment; and
 - (b) within 14 days of any change in salary notify the Secretary of State.”
3. The Limitation Act 1980 provides timescales by which an action must have commenced where a breach of the law has occurred. Ordinary breaches of contract are actionable for six years after the cause of action accrued as are actions to recover sums recoverable by statute. Section 32(1) of the Limitation Act 1980, entitled “Postponement of limitation period in case of fraud, concealment or mistake” states that:

“(1) ..., where in the case of any action for which a period of limitation is prescribed by this Act, either—

 - (a) ...
 - (b) ... or
 - (c) the action is for relief from the consequences of a mistake; the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it.”

Material Facts

4. Mr Morris completed and signed the premature retirement application form for the Scheme at some point prior to July 1995.
5. Mr Morris was sent a statement of award and accompanying documents on 4 July 1995. At this time he was sent a letter SL16 and a copy of Leaflet 192 (May 1995). Mr Morris was informed in Leaflet 192 (May 1995) that he should complete a form TP64 if he returned to teaching employment.
6. In 1998 Teacher's Pensions replaced the TP64 with Certificates of Re-employment. The requirement was introduced that these be submitted to Teachers' Pensions annually.
7. On 13 August 2001 Bolton Council sent Teachers' Pensions an appointment notification and election form in respect of Mr Morris' re-employment from 1 August 2001. A further copy of this form was sent to Teachers' Pensions (and received by them on 17 September 2001). This notification confirmed that Mr Morris' supply teaching employment had ceased in July 2001 but he was commencing a full-time contract from 1 September 2001.
8. As a consequence of the notification, a Certificate of Re-employment was issued to Mr Morris on 5 September 2001. Teachers' Pensions say that the cover letter requested completion of the Certificate of Re-employment and explained the abatement process. Teachers' Pensions also say that they also enclosed a further copy of Leaflet 192 at that time, which explained that an assessment was required each year and that a completed Certificate of Re-employment was required to facilitate this assessment (my office has not received a copy of the version of Leaflet 192 enclosed with this letter).
9. Mr Morris sent Bolton Council a completed Certificate of Re-employment, which he had signed on 8 September 2001. The Certificate of Re-employment was completed in respect of Mr Morris' period of employment from 1 March 2001 to 31 July 2001 and 1 September 2001 to 31 March 2002. Teachers' Pensions say they received the signed Certificate of Re-employment on 22 March 2002.

10. Teachers' Pensions sent Mr Morris a letter on 7 May 2002 which said that his pension had been affected by his re-employment and that he had been overpaid pension. The overpayment was subsequently recovered from Mr Morris.
11. Teachers' Pensions' letter to Mr Morris of 7 May 2002 enclosed a blank Certificate of Re-employment for completion if his re-employment continued. According to Teachers' Pensions' records, Mr Morris was re-employed in teaching with Bolton Council from 31 March 2002 to 29 February 2004.
12. Mr Morris says that he sent Bolton Council two Certificates of Re-employment in respect of his continued re-employment in the period from 31 March 2002 to 29 February 2004. One was in respect of his re-employment in the 2002/2003 tax year and the other in respect of his re-employment in the 2003/2004 tax year. Bolton Council (and Teachers' Pensions) say, to the contrary, that they did not receive these two Certificates of Re-employment from Mr Morris.
13. In 2011 Teachers' Pensions say that they "instigated a project to ascertain the instances where it appeared that pensioners had returned to work but their pension had not been assessed for possible abatement". As a consequence they issued Mr Morris a letter on 19 September 2011 asking him to confirm that the salary and service information they held for him (to 29 February 2004) was accurate. On 25 September 2011 Mr Morris confirmed that it was accurate.
14. Teachers' Pensions then assessed Mr Morris' re-employment in detail. They issued a letter to Mr Morris on 8 November 2011 confirming that as abatement had not taken place at the appropriate time, an overpayment for the tax year from 6 April 2002 to 5 April 2003 amounting to £9,021.53 and 9 May 2003 to 5 April 2004 amounting to £9,127.62 had been made. Less total tax adjustments (of £1,772.86) a total net overpayment of £16,376.52 was recoverable.
15. Mr Morris has begun making overpayments and, as at 10 July 2014, the amount of overpaid pension to be recovered was £11,376.52.

Summary of Mr Morris' position

16. He sent Bolton Council Certificates of Re-employment in respect of his re-employment in the 2002/2003 and 2003/2004 tax years. He wants Bolton Council to acknowledge that he sent the Certificates of Re-employment and that they received them and failed to action them.
17. He wants Bolton Council and/or Teachers' Pensions to reimburse the money taken from him (i.e. the overpayments recovered to date) and to agree to waive all overpayments going forward.
18. He also wants Bolton Council to apologise for the distress and inconvenience he has suffered as a consequence of their "ineptitude".

Summary of Bolton Council's position

19. They did not receive Certificates of Re-employment from Mr Morris in respect of his re-employment in the 2002/2003 and 2003/2004 tax years.
20. They are required by law to recover the overpayment and, as such, must take reasonable action to do so.

Summary of Teachers' Pensions' position

21. Mr Morris should have been aware from the information that was issued to him in 1995 (at the time of his premature retirement), in 2001 and in 2002 that his re-employment was subject to abatement. Mr Morris should also have been aware from the information sent to him after the changes in 1998 that there was a requirement for an annual assessment to be undertaken of his level of earnings in re-employment post premature retirement, as this might affect his pension.
22. Mr Morris did not keep Teachers' Pensions informed of his re-employment by ensuring that the blank Certificate of Re-employment they sent to him in their letter of 7 May 2002 had been completed and returned to them.
23. As Teachers' Pensions did not receive confirmation of any of Mr Morris' post-31 March 2002 re-employment from Mr Morris, the position could not be assessed until 2011.

24. Teachers' Pensions have correctly applied the abatement regulations. Therefore the overpayment stands and Teachers' Pensions is obliged to seek recovery.
25. With respect to the time-lapse in respect of discovery of the re-employment, Teachers' Pensions did not receive confirmation of re-employment and therefore could not have been expected to know of the re-employment until they later conducted investigations. As such, there is no defence to recovery available to Mr Morris under the Limitation Act 1980. Teachers' Pensions are protected by the provisions of section 32(1) of the Limitation Act 1980 as the overpayment was only discovered in 2011.

Conclusions

26. Teachers' Pensions must administer the Scheme in accordance with the Regulations. As such, if a pension should have been abated but was not, they are, at least in the first instance, entitled to seek recovery of the overpaid amount. There may be defences to recovery and these would only apply if Mr Morris received the overpayments in the reasonable belief they were his to spend. Mr Morris does not dispute that he has received an overpayment of pension. However, he challenges Bolton Council and Teachers' Pensions' right of recovery.
27. Mr Morris' complaint, in essence, is that Bolton Council and Teachers' Pensions failed to action the Certificates of Re-employment he sent to Bolton Council in respect of his re-employment in the 2002/2003 and 2003/2004 tax years and that the time-delay in ascertaining the overpayments means that they should no longer be entitled to recover any overpayments that have been paid to him.
28. It is clear from Mr Morris' submissions that he was aware of the requirement to complete a Certificate of Re-employment on an annual basis, as he claims to have completed one in respect of his re-employment in the 2002/2003 tax year and another in respect of his re-employment in the 2003/2004 tax year. He also completed one for the previous tax year. I am therefore satisfied that Mr Morris was aware that, pursuant to regulation H3(4) of the Regulations, it was his duty to inform Teachers' Pensions (and/or Bolton Council) of any re-employment he undertook post-premature retirement.

29. In respect of the question as to whether Mr Morris sent Certificates of Re-employment to Bolton Council in respect of his re-employment in the 2002/2003 and 2003/2004 tax years - and the question as to whether Bolton Council received them - I must consider the position set out in the Regulations. Mr Morris had an obligation to inform Teachers' Pensions (and/or Bolton Council) of his re-employment in the 2002/2003 and 2003/2004 tax years (pursuant to regulation H3(4)). I am satisfied that Mr Morris was aware of his obligation to inform, but that he failed to do so. I reach this conclusion because there is insufficient evidence that he did so. Whilst Mr Morris recalls sending the notices, he cannot establish he did so even on balance of probabilities. He has no evidence of posting and he did not pursue the issue further when he had not heard anything despite the fact that on the previous occasion when he submitted a Certificate of Re-employment he received a letter - from Teachers' Pensions (7 May 2002) - informing him of the amount of pension he had been overpaid. Further, Bolton Council say they did not receive them and importantly they did not act as if they had received them.
30. As stated previously, Teachers' Pensions must ensure that the Scheme is administered in accordance with the Regulations. The Regulations provide that if an overpayment has arisen it is recoverable. So the overpayments that occurred in the period in respect of which Mr Morris claims to have submitted two Certificates of Re-employment are recoverable. Recovery would only be prohibited if Mr Morris was able to demonstrate that he was not aware that the overpayments were not his to spend (and demonstrate that he had made an irreversible financial decision that he would not have made had he been aware of the overpayments) or if the respondents are time-barred by statute from pursuing recovery. Neither reason applies.
31. The overpayments cannot be waived on the basis that Mr Morris was unaware that they were not his to spend. This is because it is clear from his account that Mr Morris did not receive the overpayments in the knowledge that they were his to spend, as he maintains that he did send Certificates of Re-employment and so he was aware that he may have been overpaid pension in that period. This view is strengthened by the fact that Mr Morris was also aware that he had been overpaid pension in his first year of re-employment post premature retirement (as the

overpayments had been recovered from him), so he would probably have thought that it was likely that overpayments had occurred in subsequent years of re-employment.

32. In some circumstances the recovery of an overpayment can be time-barred by statute. The Limitation Act 1980 governs time limits for bringing different types of claims in the courts and the basic time limit is six years from the date when the cause of action accrued. However, under section 32(1)(c) of the Act, the limitation period is extended in the case of an action arising as a result of a mistake. If Teachers' Pensions had issued proceedings in court it would have been able to argue that its time limit for issuing proceedings against Mr Morris started to run from the date when it could, with reasonable diligence, have discovered the mistake.
33. Teachers' Pensions first demanded repayment of the overpayments from Mr Morris in their letter dated 8 November 2011 after they had conducted further investigations into his periods of re-employment in 2011. At that time Teachers' Pensions undertook a full assessment of his earnings from his periods of re-employment and determined that it had mistakenly made pension payments to Mr Morris in excess of his entitlement. To extend the six years Teachers' Pensions rely on the fact that they had provided Mr Morris with information as to his responsibilities and the onus was on him to bring his circumstances to their attention. I am not satisfied that evidence shows that Mr Morris sent the Certificates of Re-employment to Bolton Council at the relevant times, and I am satisfied that neither Bolton Council or Teachers' Pensions ever saw them.

34. I consider that “reasonable diligence” extended as far as the requirement to inform Bolton Council and Teachers’ Pensions of his re-employment (whether through completion of a certificate or otherwise) and an assumption that Mr Morris would do so. It does not require exceptional measures to be taken. So I do not find that Mr Morris is protected from recovery by the Limitation Act 1980. For the reasons set out above, I do not uphold Mr Morris’ complaint.

Jane Irvine

Deputy Pensions Ombudsman

26 January 2015