

## Ombudsman's Determination

Applicant	Mrs Y
Scheme	Teachers' Pension Scheme ( <b>the Scheme</b> )
Respondents	Manchester City Council ( <b>the Council</b> ), Teachers' Pensions ( <b>TP</b> )

## Outcome

1. Mrs Y's complaint against the Council and TP is partly upheld, but there is a part of the complaint I do not agree with. To put matters right, for the part that is upheld, the Council and TP shall each pay Mrs Y £500 for the significant distress and inconvenience they have caused.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mrs Y has complained that the Council caused an error which has led to an overpayment of her pension which TP failed to identify, despite her contacting it and questioning the figures it had provided. Mrs Y is seeking compensation for the errors that led to the overpayment.

## Background information, including submissions from the parties

4. On 12 July 2012, Mrs Y retired from the Scheme with a lump sum of £78,449.74 and an annual pension of £17,819.92. She had commuted some of her pension to increase her lump sum.
5. On 25 November 2016, TP issued two letters to Mrs Y. One letter enclosed a recalculation of Mrs Y's benefits which mentioned that any additional amounts due would be paid as soon as possible. The second letter stated that an error had occurred, due to her employer providing incorrect salary information which overinflated Mrs Y's average pensionable salary to £50,179.80, when it should have been £44,360.55. This resulted in an overpayment of Mrs Y's lump sum and pension. The overpayment of lump sum was quoted as £6,779.22 with the overpaid pension amounting to £8,251.23 making the total overpayment £15,030.45.

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6. Mrs Y raised complaints with TP and the Council. TP said that it reasonably relied on information supplied to it by the Council, and it was not to know that this was incorrect. TP accepts that Mrs Y queried the figures twice in March 2012. It said that it confirmed the figures were correct to Mrs Y in March 2012 on the understanding that the Council had supplied the correct information.
7. Mrs Y escalated her complaint against TP to the Department of Education (**DoE**). The DoE said that it had considered the complaint, but that TP had administered the Scheme in accordance with the Regulations and it was not able to uphold the complaint.
8. The Council acknowledged that it caused the error. It said that the payroll system incorrectly treated an annual management allowance as a monthly amount, hence inflating it by 12, which caused the over inflated salary for 2006/2007. The Council pointed out that Mrs Y received a benefit statement each year and that there was a very significant increase in the 2006/2007 statement, which showed a pension of £18,036 per annum when compared to the 2004/2005 and 2005/2006 statements which showed £11,070 and £11,968 per annum respectively. It has said it offered its apologies for the error and the distress and inconvenience it has caused Mrs Y, but notes that Mrs Y accepts TP has a responsibility to recover the overpayment. The Council does not believe that Mrs Y took reasonable steps to highlight the errors as she did not contact the Council. The Council also disagrees with Mrs Y's request for compensation to serve as a deterrent to future behaviour. The Council states that this is not the Pension Ombudsman's function as explained in an earlier Determination PO-4650.
9. Mrs Y feels she should be compensated for the error as she did what was expected of her in querying the figures in March 2012. She has also said that a number of the staff at her school had over inflated figures in 2006/2007 and they jointly asked the school secretary to contact the Council. Following this, Mrs Y says she was told that the Council were aware that a large-scale error had occurred but that it would be corrected by the time the staff had reached retirement. She does not know what more she could have done.

## **Adjudicator's Opinion**

10. Mrs Y's complaint was considered by one of our Adjudicators who concluded that further action was required by the Council and TP. The Adjudicator's findings are summarised briefly below: -
  - The Council accepts that the error arose as a result of a fault in its payroll system, this led it to provide TP with a salary for that year of approximately £72,000, rather than £35,940.00. TP used this information to calculate Mrs Y's average pensionable salary, on which her retirement quotations and pension calculation were based, resulting in the overpayment.

- Mrs Y does not dispute that TP have a duty to seek recovery the overpayment, however there are legal defences against recovery of an overpayment which this Office must consider.
- The most common defence is referred to as “change of position”, that the applicant has changed her position such that it would be unjust to require her to repay the overpayment either in whole or in part.
- In order for a change of position defence to succeed the applicant must have acted in good faith, she must not have been aware of the error, and the applicant must show that it was reasonable for her to have relied on the error. This includes cases where the applicant could have discovered the error by making enquiries, if it was reasonable to expect her to do so. For example, if the benefit being paid was significantly more than she might have expected.
- The Adjudicator was of the view that Mrs Y does not meet the requirements for good faith. The retirement benefit statements provided show a higher pensionable salary than that Mrs Y should have expected. It is acknowledged that Mrs Y did query these figures in March 2012 and was incorrectly informed by TP that they were correct, however this supports the view that she should have been aware something was wrong. Mrs Y did not query the later retirement statements such as the quotation provided on 12 July 2012. This quotes Mrs Y’s “Salary of Reference” as £72,372.00, the notes explain that this is the highest salary in the salary average period. This is substantially different to the salary Mrs Y actually earned over the last 10 years of employment, which ranged between approximately £32,000 and £41,500. The Adjudicator said it was reasonable to expect Mrs Y to have questioned this, or for her to have been aware that this was an error.
- The Adjudicator did not agree with Mrs Y’s comments that the confirmation from TP that her average salary was correct in March 2012 dilutes the significance of the later quotation on 12 July 2012 and the vastly over-inflated salary figures it contained. Especially the £72,372.00 which Mrs Y has said she had not previously seen. As the good faith requirement has not been met, Mrs Y is disqualified from relying on a change of position defence.
- There are other defences to the recovery of an overpayment; for example, estoppel and contract. These arise less often in pension cases but will be considered if the circumstances of the case suggest that this is appropriate. For similar reasons as with change of position, the Adjudicator did not believe that estoppel or contract applied as a defence against recovery of the overpayment.
- Mrs Y has requested for compensation to serve as a deterrent but, as the Council has stated, this is not within the Ombudsman’s remit. The Ombudsman can make an award for non-financial loss such as significant distress and inconvenience if appropriate. Awards are usually modest and are not intended to punish the party

directed to make them, but instead are intended to provide redress to the complainant for the non-financial loss they have suffered.

- The Adjudicator felt that an award is warranted in this case. The Council has a responsibility to provide TP with accurate information on which it can calculate members benefits. The Council's error amounts to maladministration and the delay in identifying and rectifying it has caused Mrs Y significant distress and inconvenience. Therefore, the Adjudicator said that the Council should pay Mrs Y £500 for the significant distress and inconvenience that it has caused.
- In addition, the Adjudicator also felt that an award is warranted from TP in this case. It is accepted that TP was not aware that the information the Council provided was incorrect, and that it was entitled to rely on it to calculate Mrs Y's benefits. However, the Ombudsman would expect members to bring discrepancies or errors of this nature to the attention of the scheme administrator or employer, which Mrs Y did in this case by raising it with TP. Similarly, the Ombudsman would expect the scheme administrator to take appropriate action upon a query of accuracy from a member, yet there is no evidence that TP did so.
- It would have been prudent for TP to have contacted the Council upon receipt of Mrs Y's enquiry to ascertain the accuracy of the information. At the very least, if TP did not intend to contact the Council to confirm Mrs Y's pay figures itself, it should have directed Mrs Y to raise the query with the Council directly. Had it done so the error would likely have been corrected prior to Mrs Y's benefits being put into payment. The Adjudicator considered that this has caused Mrs Y significant distress and inconvenience, and that an award of £500 from TP in this respect is appropriate.

11. Mrs Y and the Council accepted the Adjudicator's Opinion, but TP did not. As such, the case was passed to me to consider. TP provided its 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 TP for completeness.

### **Ombudsman's decision**

12. TP has pointed to Regulation 131 of the Teachers' Pensions Regulations 2010 which sets out the information that employers must provide to it for each financial year. TP does not employ the teachers directly and does not have access to the employer records to obtain or verify information, therefore TP must rely on information supplied to it as being accurate. Employer data returns are required to be independently audited with audit certificates being supplied. In this case, the independent audit did not identify the error in Mrs Y's salary.

13. Further TP says that in the first instance, it would expect members to raise queries regarding service and salary data with their employer. The estimate of retirement benefits requests that members contact their employer if they think their service record is incorrect.
14. There is no dispute that the incorrect information was supplied to TP by the Council in this case, or that TP was entitled to rely upon that information to produce an estimate of Mrs Y's retirement benefits. I agree that the Council should pay £500 to Mrs Y for the distress and inconvenience that it has caused her by providing incorrect information to TP. The Council accepted the Adjudicator's recommendation in this respect. The issue that remains is whether TP did enough when Mrs Y contacted it querying the figures within her retirement estimate.
15. I acknowledge that the estimate itself contains a line asking the member to contact the employer in the event of any errors. However, this can easily be overlooked and I do not consider it unreasonable for a member to contact the party that provided the estimate to raise any queries. If a member does contact TP with queries it is TP's responsibility to provide accurate information to that member.
16. TP is aware that it cannot verify the information provided by the employer which it relies upon to provide estimates, but I would not expect a member to be aware of this unless TP had expressly informed them. A member is unlikely to have the same knowledge of the Scheme as TP does. For these reasons I find that TP informing Mrs Y that the estimate was correct, simply because it is relying on the employer providing accurate information, is not sufficient in an instance such as this.
17. I consider that, where the member has queried the accuracy of an estimate, as Mrs Y had done, TP needs to do more than it did. More does not need to be as much as TP contacting the employer directly, although this would not be unreasonable. It would be adequate for TP to direct the member to their employer for any queries regarding the pay and service information shown in estimates, and to explain that if the employer agrees that the information is incorrect a new quotation will be issued once the employer has provided updated information to TP. Instead TP assured Mrs Y that her estimate was correct without directing her to the Council or confirming the figures with the Council itself.
18. I find that the overpayment could have been prevented if TP had done more when Mrs Y raised her query. As a result, TP have caused Mrs Y significant distress and inconvenience by incorrectly informing her that her estimate was correct, and failing to direct her to her employer. I agree that TP should pay Mrs Y £500 in recognition of the significant distress and inconvenience Mrs Y has suffered.
19. Therefore, I partly uphold Mrs Y's complaint.

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**Directions**

20. Within 21 days of the date of this Determination, TP and the Council shall each pay £500 to Mrs Y for the significant distress and inconvenience which they have caused.

**Anthony Arter**

Pensions Ombudsman  
16 May 2018