

## Ombudsman's Determination

Applicant	Mr E
Scheme	Teachers' Pension Scheme
Respondent	Teachers' Pensions

## Outcome

1. I do not uphold Mr E'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. Mr E has complained that Teacher's Pensions failed to implement a Court Order issued prior to him taking benefits. This has led to him receiving an overpayment that Teacher's Pensions is now trying to recover.

## Background information, including submissions from the parties

4. In September 1999, Teachers' Pensions was notified that Mr E's former spouse had been awarded 35% of the lump sum payable to Mr E when he retired, by way of a Court Order.
5. For the Court Order to be implemented, Teacher's Pensions required its costs, £150, to be paid. Initially it wrote to Mr E's solicitor with an invoice, but the solicitor told Teachers' Pensions to invoice Mr E directly.
6. On 14 October 1999, Teacher's Pensions wrote to Mr E, invoicing him for £150.
7. On 15 March 2000, in the absence of a response, Teacher's Pensions chased the payment. Both letters were sent to an address in Buckinghamshire.
8. On 30 September 2012, Mr E became a deferred member of the Scheme and applied for actuarially reduced benefits. Shortly after, Mr E received a lump sum of £59,594.24.

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9. On 24 October 2012, Teachers' Pensions emailed Mr E informing him that the Court Order had not been implemented because the fee remained unpaid.
10. In April 2016, Teachers' Pensions received correspondence from Mr E's former wife requesting an update on the implementation of the Court Order and asked that the matter be chased.
11. On 11 April 2016, Teachers' Pensions reissued an invoice to Mr E. Further correspondence was exchanged between Mr E, his former spouse and Teachers' Pensions resulting in the fee being paid.
12. In April 2017, Teachers' Pensions informed Mr E that an overpayment, totalling £20,505.80 had occurred.
13. In May 2017, an invoice was issued to Mr E and chasers sent in the following months.
14. In August 2017, Mr E contacted Teachers' Pensions requesting further information about the background to the overpayment and highlighted that he had accepted the money in good faith, had used it to help his children and paid off certain debts. He could not afford to repay the full sum and does not feel he should be made to, as he is not to blame for the circumstances.
15. Mr E sought legal advice and pursued the matter through the Internal Disputes Resolution Procedure. The matter was reviewed by the Department for Education, and it concluded it could not uphold the complaint. Following this, Mr E referred the matter to this Office.
16. In February 2018, Mr E made a without prejudice offer to repay £350 per month, which he is currently doing.

## **Adjudicator's Opinion**

17. Mr E'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 below:-
  - Mr E ought reasonably to have been aware in 1999 or 2000 that the Court Order had not been implemented. Teachers' Pensions had written to Mr E and his solicitor in an attempt to have the fee for implementation paid. The Adjudicator noted that TP had written to an address that Mr E may no longer have lived at, although this was unclear and Mr E had not clarified this point. But in any event, Mr E had not received any confirmation that the Court Order had been implemented. In the absence of that, the Adjudicator was of the view that it was reasonable for Mr E to have thought that the matter was unresolved.
  - TP, at the time Mr E had taken benefits, had contacted him through an agreed method of communication to say that the Court Order had not yet been implemented. Mr E no longer has access to the email address this was sent to, but

TP has satisfactorily demonstrated it was sent and it ought reasonably to have been received.

- The Adjudicator also commented on a possible change of position argument. He explained that as Mr E had used the money to pay off debt, it would be difficult to pursue a successful change of position argument as he would not have suffered any detriment. The debt would need to have been paid off anyway, and he would be paying less interest.
- The Adjudicator noted that Teachers' Pensions had made an offer of £150 in recognition of the distress and inconvenience caused. The Adjudicator acknowledged that this was less than Mr E expected but said that he could not recommend more because he did not think the circumstances justified the Office's minimum award of £500 for significant distress and inconvenience.

18. 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.

### **Ombudsman's decision**

19. Mr E views the offer of £150 as an insult for all the stress caused. I appreciate this is a modest figure, but distress and inconvenience payments are subjective. I make awards of £500 where I consider the distress and inconvenience caused has been significant. Whilst I have no doubt that this situation would have been stressful for Mr E, there was no specific maladministration on the part of Teachers' Pensions. Perhaps Teachers' Pensions could have chased Mr E again in 2012, to remind him of the Court Order, but in not doing so, it has not breached any specific rule for me to make a finding of maladministration.
20. I find that Mr E ought reasonably to have known that the Court Order had not been implemented, given the October 2012 email ought reasonably to have been received by Mr E. On that basis Mr E had a duty to mitigate the risk of an overpayment by acting on that knowledge at the time. In these circumstances I cannot justify increasing the distress and inconvenience award to £500.
21. Therefore, I do not uphold Mr E's complaint. If he wishes to accept the offer of £150, Mr E should contact Teachers' Pensions.

**Anthony Arter**

Pensions Ombudsman  
20 November 2018