

Ombudsman's Determination

Applicant	Ms S
Scheme	Teachers' Pension Scheme (the Scheme)
Respondents	The London Borough of Merton (LBM), Teachers' Pensions (TP)

Outcome

1. I do not uphold Ms S' complaint and no further action is required by LBM or TP.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Ms S' complaint is that LBM, your employer, and TP, the Scheme administrator, failed to correctly administer your election to purchase Additional Pension (**AP**).

Background information, including submissions from the parties

4. On 14 August 2017, Ms S rang TP to query the process for purchasing AP. Ms S says she was told that she could elect to purchase AP at any date prior to her leaving pensionable employment. However, TP's representative also said it was unlikely an election could be completed in the time available as this would be dependent upon receiving information from LBM before 31 August 2017.
5. On 25 August 2017, Ms S submitted an election to LBM to purchase £1,000 per year of AP, via a lump sum payment.
6. On 31 August 2017, Ms S left pensionable employment with LBM.
7. On 9 September 2017, Ms S received a message from TP saying that LBM had not filled out the employer section of her AP election form and as it had not confirmed her employment position, TP could not yet decide if the application was valid.
8. On 12 September 2017, LBM confirmed Ms S had left pensionable employment on 31 August 2017. TP has acknowledged that it did not send an online message to Ms S to confirm that her election could not be accepted.
9. On 27 September 2017, Ms S telephoned TP and its representative wrongly informed her that her AP election was being processed by its Calculations Team.

10. At the beginning of November 2017, after further telephone calls with TP, Ms S discovered that her AP election had been rejected because she was no longer contributing to the Scheme.
11. On 3 November 2017, Ms S complained under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). Ms S said that she had been told by TP that she could make an election at any point prior to leaving pensionable employment and that she still wanted to purchase the AP.
12. On 13 December 2017, The Department for Education responded under Stage 2 of the IDRP. It said that an AP election from a member could only be accepted if both the employee and employer sections were completed and received before Ms S left pensionable employment. Consequently, it said that as the form was only completed by LBM after Ms S left pensionable employment, it had applied the regulations correctly by refusing her election.
13. On 16 January 2018, Ms S emailed a complaint to the Human Relations (**HR**) department at LBM about her AP application.
14. On 19 February 2018, a representative of LBM's HR team responded and said that it had amended Ms S' details on its HR system in advance of her leaving employment to ensure her final salary payment and P45 were issued promptly. It also said it had correctly confirmed to TP that Ms S was no longer an employee when prompted.

Adjudicator's Opinion

15. Ms S' complaint was considered by one of our Adjudicators who concluded that no further action was required by LBM or TP. The Adjudicator's findings are summarised below:-
 - The Adjudicator referenced Schedule 4.2.8 of the Scheme rules, which state:

“An election is accepted by the Secretary of State if the Secretary of State gives written notice to the person making it that it is accepted.”
 - As Ms S had not received written notice from TP prior to leaving pensionable employment, her election was not accepted. In the Adjudicator's view it was not sufficient that TP had merely received an election from Ms S.
 - It was reasonable for TP and LBM not to have processed Ms S' election to purchase AP. The Adjudicator said that 6 days was insufficient time to reasonably expect LBM to complete its section of the form and for TP to then process the election, all before 31 August 2017.
 - Ms S was misinformed about the success of her election when she telephoned TP in September 2017. Following the involvement of this Office, TP has subsequently offered Ms S £250 in acknowledgement of the distress and inconvenience caused

by being misinformed about the success of her election. The Adjudicator believed TP's misinformation did not cause significant distress and inconvenience. He considered the £250 offer was reasonable, based on the facts.

16. Ms S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms S 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 Ms S for completeness.

Ombudsman's decision

17. Ms S has argued that she has suffered a significant loss of opportunity in not being able to purchase £1,000 of AP. She considers more compensation is due for TP misinforming her about her eligibility to purchase AP when she first queried this in August 2017. TP has acknowledged that a misunderstanding developed during Ms S' telephone call of 14 August 2017, in its IDRPs responses. However, having reviewed the contents of that call, I do not find that TP misled Ms S on 14 August 2017. TP's representative stated it could not guarantee an AP election would be approved before 31 August 2017, which Ms S accepted.
18. The correct position is that an election must be made and accepted before a member leaves pensionable employment in order to be considered valid. I appreciate that Ms S was disappointed when she ascertained this. However, there was very little time between Ms S telephoning TP and leaving LBM's employment. I find that she should reasonably have left a longer period for an AP election to be processed and approved before leaving employment.
19. TP told Ms S that LBM had to provide salary information, as part of the AP election, before it could be processed. This section was evident on the form. TP's representative stated this in the 14 August 2017 telephone call. However, Ms S submitted her AP election no more than 4 working days before her date of leaving. Under the circumstances, this was an unachievable timeframe for LBM to complete the form, send it to TP and for TP to approve it. Consequently, I find it was reasonable that LBM and TP were not able to process Ms S' election in the time left available to them.
20. TP has offered Ms S £250 in acknowledgement of the misinformation it gave her about the progress of her election. Awards for non-financial injustice are modest. Considering the particular circumstances in this case, I do not find £250 to be an unreasonable award. If Ms S would like to take up this offer she should contact TP directly.

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21. I do not uphold Ms S' complaint.

Anthony Arter

Pensions Ombudsman

8 April 2019