

Ombudsman's Determination

Applicant	Mr Y
Scheme	Teachers Pensions
Respondents	Teachers' Pensions (TP) North Warwickshire and Hinckley College (the Employer)

Outcome

1. Mr Y's complaint against TP and the Employer 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, TP and the Employer shall each pay Mr Y £250 for significant distress and inconvenience.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr Y's complaint against TP and the Employer is (1) he received incorrect information about the level of his pension benefits, which led him to take early retirement, and (2) no checks were carried out before he retired, to ensure the final figures were correct.

Background information, including submissions from the parties

4. From September 1988 to March 1996, Mr Y worked full-time for Hinckley College and was a member of the Scheme. From April to September 1996, he worked full-time for the Employer. From September 1996 to August 1998, he worked part-time for the Employer. Between April and August 1998, an error was made recording Mr Y's salary, which meant his "total reckonable service" was over-stated by 301 days.
5. From August 1998 to his retirement, Mr Y worked in several part-time jobs. Over the years, he received various Benefit Statements. In 2017, for example, he received a statement which stated: -

"Important: The figures in this statement are for illustration purposes only. Please carefully check the service and salary information as errors will lead to an incorrect statement of benefits. This statement confers no right to the benefits quoted. Please refer to the Notes section..."

Benefit Statement: Notes. Your estimate is based on the service and salary detailed supplied by your employer(s). If you identify any errors please contact the relevant employer and request they check their records and notify us of any changes. This statement is provided for illustrative purposes only and is not a guarantee of benefits, nor does it assume any rights to such benefits... In the event of any dispute over your pension benefits the appropriate legislation will prevail..."

6. On 7 July 2017, Mr Y applied for Actuarially Adjusted Retirement (**AAR**) Benefits to be paid from 1 January 2018. On 31 July 2017, he received a Summary of Benefits statement, calculated to his Normal Pension Age (**NPA**) of 60. It stated that he might receive an Annual Pension of £16,983.31 and Tax-Free Lump Sum of £50,949.31.
7. Mr Y calculated that if he took AAR benefits at age 58, he would receive an Annual Pension of £15,630 and Tax-Free Lump Sum of £46,889. He calculated these figures using an online tool provided by TP. Sometime after that, he contacted TP and asked it to confirm that these figures were correct and it confirmed that they were.
8. Based on these figures, Mr Y handed in his notice to his employer, the University of Northampton. It was agreed that his last day would be 31 December 2017.
9. In October 2017, Mr Y's record was reviewed by TP to determine the correct level of benefits. As a result, the error for the period of service in 1998 was discovered. This was then communicated to Mr Y.
10. Mr Y complained to TP and asked for an explanation. On 21 November 2017, TP sent him a secure message, which stated: -

"...During the calculation process it was identified that the full and part time earnings in respect of the period 1 April 1998 to 31 August 1998 were recorded incorrectly. The annual rate was £9,489 and the part time earnings were also £9,489. This resulted in 301 days of service being worked in a 153 day period... Your record has been amended and... your total pensionable service has reduced from 27 years 140 days to 26 years 204 days... I appreciate that this will be unwelcome news, however we can only pay you the pension benefits to which you are entitled. We do not confirm figures until they have been checked and authorised, however it is estimated that you will receive an [AAR] pension and lump sum of £15,155.23 and £45,465.67..."
11. TP also reminded Mr N, he could complain under the Scheme's Internal Dispute Resolution Procedure (**IDRP**).
12. On 1 December 2017, TP wrote to Mr Y and it confirmed that his AAR pension was £15,155.23 and his Tax-Free Lump Sum was £45,465.67. On 31 December 2017, he retired and started taking benefits. Then, he formally complained to TP on the basis that the retirement figures he had received were incorrect, and this had caused him to make an irreversible decision to retire early.

13. In March 2018, the Department for Education (**DfE**), responded to Mr Y under the Scheme's IDRPs. It said, an error by the Employer in 1998 resulted in a higher number of days service being entered onto his record. Whilst unfortunate, mistakes were inevitable, and TP had explained, in various Benefit Statements, that the figures were only estimates and conferred no right to benefits. Further, the statements made clear that membership would be scrutinised at retirement to ensure that the correct level of benefits would be paid. TP accepted its validation process had failed in this case, but it had applied the regulations correctly, so the DfE did not uphold the complaint.
14. Dissatisfied with the response, Mr Y referred his complaint to this Office.

Adjudicator's Opinion

15. Mr Y's complaint was considered by one of our Adjudicators, who concluded that further action was required by TP and the Employer. The Adjudicator's findings are summarised briefly below: -
 - Under the regulations, the employer was required to provide TP with annual return of service and salary details for each employee at the end of the financial year. The employer confirmed: the dates of employment; the employee's contributable salary for the period (part-time salary paid); and equivalent contributable salary for the whole year (full-time equivalent annual salary rate).
 - The Employer's error was to add £9,489.00 for Mr Y's full-time and part-time salary. This resulted in the amount of days worked during a 153-day period being counted as a full year. TP had provided documentary evidence that this information was recorded incorrectly by the Employer. Because the full-time and part-time salary was recorded as being the same, Mr Y was incorrectly credited with one whole year of service, not the correct 64 days, meaning his service was over-stated by 301 days. Based on this evidence, the Adjudicator was satisfied that the error originated with the Employer.
 - The administration of the Scheme was a partnership between TP and the Employer. The records TP maintained were based on information provided by the Employer. And TP would not record individual members' contributions, as their benefits in the Scheme were based on "total reckonable service" and "final average salary". But every year, employers would be audited to confirm the information they had supplied to TP was correct. TP provided a gross figure and the employer provided an audited breakdown. So, TP relied on employers to provide accurate and up-to-date information. But as this did not always happen, members were requested to ensure the details TP held for them, were correct (and, if not, to contact the relevant employer).
 - However, the Adjudicator considered that Mr Y was entitled to assume the information pertaining to his service was correct. TP has said, as Mr Y was employed in regular part-time employment from April 1996 to August 1998, he ought to have checked the relevant information for that period, and noticed that there was an error. However, the Adjudicator disagreed.

- By the time Mr Y enquired about taking early retirement, it had been 18 years since the period that was recorded incorrectly. Some members would recall what happened that long ago, but most would not. Therefore, while it was possible for Mr Y to have noticed the error, it was not reasonable to have expected him to do so.
- TP said, it would have expected Mr Y to have some idea what his service total was, so he should have queried this. But the Adjudicator said, if Mr Y had made enquiries about early retirement a year or so after an incorrectly recorded period of service, it might have been reasonable for him to have noticed. But by the time he was considering early retirement, he was entitled to assume this period of service had been recorded correctly.
- Therefore, it was reasonable for Mr Y to rely on the July 2017 figures. And, Mr. Y was entitled to assume his final benefits would be more or less as shown in the estimates. So, the Adjudicator went onto consider, whether Y had suffered a loss as a result of relying on the incorrect information.
- The incorrect figures Mr Y relied on were AAR pension at age 58 of £15,630 and Tax-Free Lump Sum at age 58 of £46,889. The original figures to age 60, came from the July 2017 Benefit Statement. Mr Y then used a TP pension tool to actuarially reduce the figures to age 58. The correct figures which he would have written down - if his service had been recorded correctly, and the original figures to age 60 had been correct - were: AAR pension at age 58 of £15,155, and Tax-Free Lump Sum at age 58 of £45,465.
- So, the Adjudicator had to decide whether Mr Y would have decided against retiring early, if he had produced correct estimated figures. In his own words, Mr Y explained his decision to retire early as follows, "I was employed by the University of Northampton and decided to retire at 58 as with the figures originally given by teachers pensions [sic] I felt I was financially able to retire."
- Having considered this, the Adjudicator did not think Mr Y would have acted differently had he received correct figures; in his view, Mr Y would have taken early retirement anyway. Both the AAR pension and Tax-Free Lump Sum were reduced by no more than 3% following discovery of the error. Therefore, on the balance of probabilities, Mr Y would always have taken early retirement in January 2018.
- Additionally, Mr Y's decision to retire early was likely to have taken into account his wider circumstances, e.g. his level of existing savings, his personal and lifestyle circumstances, and his plans for the future.
- Moreover, it would have been possible for Mr Y to cancel his early retirement from the Scheme. It might have caused him some inconvenience and distress. But if Mr Y had felt unable to retire on the correct level of income and lump sum benefits, it would have been possible for him to mitigate this by retracting his resignation and continuing to work, or seeking alternative employment.

- But there was no evidence that Mr Y took such steps. So, it was more likely than not he would have judged the “shortfall” - between what he expected to receive, and what he would actually receive - as lower than the “cost” of abandoning his early retirement plans and continuing to work, or seeking alternative employment.
 - Mr Y had not suffered a financial loss which TP or the Employer had to remedy. But Mr Y had suffered a loss of expectation, and significant distress and inconvenience, as a result of the original error; he expected to receive a certain level of benefits and he would be disappointed that his actual benefits were lower.
 - The error originated with the Employer. And, the evidence indicated that 212 days were excluded from Mr Y’s service, so he was credited with 365 days’ service in a 153-day period. This was the type of error which TP could have discovered by making further enquiries. The DfE’s response stated, “TP accept that their validation processes failed in this instance...”. And TP’s formal response said, “The administration of [the Scheme] is a partnership between TP as... administrators and the employers of teachers”.
 - Therefore, the responsibility being more or less equal, Mr Y should be awarded a total of £500 for significant distress and inconvenience, and loss of expectation, caused by the error; TP and the Employer should therefore each pay him £250.
16. Mr Y accepted the Adjudicator’s Opinion and made no further substantive comments. The Employer also accepted the Opinion, but TP did not and 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

17. TP says, it appreciates there was a long period of time between when Mr Y’s salary was recorded incorrectly, and when he applied for early retirement. However, he was employed in regular part-time employment and therefore must have had some idea of what service he was accruing in the Scheme.
18. Moreover, the disclaimers on the Estimates of Retirement Benefits asked members to carefully check their service and salary information. Had he done so, Mr Y could have identified the error as far back as 1999.
19. In fact, in 1999 Mr Y received a statement of service including his part-time service but confirmed that only 72 days had been excluded; the correct total was 373 days excluded, due to part-time days not worked. In TP’s view, Mr Y ought to have known that the service being credited to him was greater than what he had actually worked.
20. Moreover, TP did not agree with the Adjudicator’s assertion that the incorrect record was the type of error it could have discovered by making further enquires. It receives service details for approximately 700,000 members every year, therefore it would be unrealistic for every record to be checked for possible discrepancies, hence reliance is placed on employers and members to check the relevant details.

21. Finally, while the DfE said, in its IDRP response, that TP accepted that its validation processes had failed in this particular case, TP disagreed with this comment.
22. I have considered TP's further comments. Whilst Mr Y appears to have reviewed the 1999 benefit estimate, the document he received from TP after that was a statement of service, which he requested following transfer into the Scheme; in any case, it did not relate directly to his Scheme benefits. While some members might have realised they had been awarded too many days, and therefore that subsequent statements would be incorrect, I do not find it was reasonable for Mr Y to do so.
23. In addition, as the Adjudicator mentioned in his Opinion, the DfE was of the view that TP's validation process had failed in this particular case. I find the DfE's statement to that effect to be persuasive.
24. In any case, the evidence indicates that, when Mr Y contacted TP, after receiving the July 2017 summary of benefits, he contacted TP asking it to confirm the figures were correct. TP said that they were. I find that TP ought to have reminded Mr Y that the figures TP had produced were only estimates, and so should not be relied upon.
25. Moreover, I find that TP knew, or ought to have known, that Mr Y was not considering early retirement based on the figures that it had produced; rather, he was considering early retirement based on figures he had himself produced, using TP's online tool. Mr Y was basing his decision not just on estimates but estimates upon estimates. In those circumstances, it was incumbent on TP to make it clear when asked that only the final figures could be guaranteed.
26. This is where the level of administration fell short of what Mr Y was entitled to expect from the administrator of his occupational pension scheme. Therefore, I find that TP should make an equal contribution in recognising the loss of expectation and distress and inconvenience Mr Y has suffered in this case.
27. Therefore, I uphold Mr Y's complaint in part against both TP and the Employer.

Directions

28. Within 21 days of the date of this Determination, TP and the Employer shall each pay Mr Y £250 for significant distress and inconvenience.

Karen Johnston

Deputy Pensions Ombudsman
2 November 2018