

Ombudsman's Determination

Applicant	Mr T
Scheme	Teachers' Pension Scheme (the Scheme)
Respondents	Teachers Pensions (TP), the University of Hertfordshire (UoH)

Outcome

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

Complaint summary

3. Mr T's complains that TP and UoH refused to refund his Scheme contributions, made after 1 June 2015, in accordance with the Scheme Rules.

Background information, including submissions from the parties

4. Between 1983 and April 2014, Mr T worked for a major UK bank and accrued a substantial pension entitlement. Mr T applied for Lifetime Allowance (**LTA**) Fixed Protection 2012 (**FP12**), up to £1,500,000, from Her Majesty's Revenue and Customs (**HMRC**).
5. On 1 May 2014, Mr T received a certificate confirming FP12 from HMRC.
6. On 1 June 2015, UoH sent Mr T a Letter of Appointment (**the Letter**) for his new role as a Visiting Lecturer (**VL**). The letter stated Mr T would automatically be enrolled into the Scheme and advised that he had the right to opt out. The letter provided details of how to do so. The Letter also had the contact details for TP and a link to the Scheme Guide (**the Guide**) it produced.
7. In October 2015, Mr T commenced employment as a VL at UoH.
8. In April 2018, after discussions with his Independent Financial Adviser (**IFA**), Mr T discovered he had invalidated his FP12 by contributing to the Scheme.
9. On 9 April 2018, Mr T wrote to UoH requesting it refund his pension contributions of £816.83. Mr T said UoH had not advised him about the consequences of not opting

out of the Scheme. He also said that “I appreciate that had I looked at my payslips properly in the past, I would have realised the problem a lot earlier”.

10. On 9 April 2018, a representative of UoH wrote to Mr T. The representative said all staff were automatically enrolled into the Scheme after returning the Contract of Employment. The representative stated this was communicated to Mr T in the Letter. The representative also said neither UoH nor TP could refund Mr T's contributions because he had over 2 years' membership in the Scheme.
11. On 26 July 2018, Mr T complained to UoH. He said the potential risks associated with him being auto-enrolled into the Scheme were never explained, he had invalidated his FP12 and faced a substantial tax liability.
12. On 30 July 2018, a representative of UoH responded to Mr T's complaint. The representative said information provided to new joiners was a combination of “legally required and informative material” and was not intended to be exhaustive. The representative also said pension taxation was a personal matter and UoH could not be held responsible for Mr T's tax liability.
13. On 31 July 2018, Mr T made the same complaint to TP via the Scheme's Internal Dispute Resolution Procedure (**IDRP**).
14. On 24 August 2018, TP provided its Stage 1 IDRP response. It enclosed a copy of the Scheme Booklet (which Mr T says he had not previously seen). TP's representative said it was not Mr T's employer and had no obligation to assist him with managing his tax affairs. TP's representative argued it had no way of knowing Mr T had substantial benefits elsewhere, Mr T should reasonably have been aware of the restrictions of FP12 and taken note of the right to opt out given to him by UoH.
15. On 28 October 2018, Mr T asked for his complaint to be considered by the Department for Education (**DfE**) under IDRP Stage 2. He argued TP had taken a 'ridiculous and draconian' approach to enforcing the Scheme Rules and it would be much 'simpler' if TP refunded his contributions and extinguished his Scheme entitlement. Mr T argued that his contributions to the Scheme were minimal and did not represent anything like 2 years' continuous service.
16. On 18 September 2018, DfE responded to Mr T's complaint. DfE's representative said there were no provisions in the Rules that allowed for a retrospective opt out. The Representative maintained Mr T had received information pertaining to opting out, UoH had fulfilled its disclosure obligations and TP could not provide Mr T with financial advice.

Adjudicator's Opinion

17. Mr T's complaint was considered by one of our Adjudicators who concluded that no further action was required by TP or UoH. The Adjudicator's findings are summarised below:-

- There is no requirement in the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (2013) (**the Disclosure Regulations**) to provide new Scheme members with guidance about Lifetime Allowance protections. Mr T says UoH revised the 2018/9 edition of its VL Handbook to include additional information to VL's about considering appropriate financial advice on joining the Scheme. He argues the warnings provided to him by TP and UoH were 'far from clear' and that auto-enrolment has had significant consequences for him.
 - It was not unreasonable for UoH to improve the information it provides to new joiners after Mr T's complaint. However, this does not automatically lead to the conclusion that the information UoH provided previously was deficient. The Letter included details of how to access the Guide on TP's website, together with information of how to contact TP directly. Having reviewed the information provided in the Letter, the Adjudicator said UoH met its obligation to give Mr T the information that it should provide in accordance with the Disclosure Regulations.
 - It is rare for members to be auto-enrolled into a new pension scheme after being granted FP12. Mr T could not reasonably expect TP or UoH to provide exhaustive guidance about technical aspects of pension legislation in the Letter or member communications in general. Furthermore, neither organisation is qualified to provide Mr T with financial advice.
 - Ultimately, tax is a personal responsibility. Mr T should reasonably have been aware of the basic provisions of FP12 when applying for it. However, Mr T discovered his FP12 was invalidated only after discussing the matter with his financial adviser nearly 3 years after joining the Scheme.
 - The Adjudicator did not expect Mr T to be an expert on FP12, or pensions in general and appreciated that Mr T breached the terms of his FP12 unwittingly. However, he should reasonably have ascertained the correct position with regard to the terms of his FP12 much sooner than he did.
 - Mr T's contributions to the Scheme are small compared to his other pension benefits and he will likely be liable for a significant tax bill due to his Scheme entitlement. However, his entitlement can only be calculated in accordance with the Trust Deed and Rules. DfE has not taken a 'draconian' approach to applying the Rules. It has taken the only decision it can reasonably make in its capacity as a competent Scheme Manager. In the Adjudicator's view, it is impossible for DfE to assist Mr T in mitigating a tax bill determined under primary legislation by extinguishing his Scheme entitlement.
18. Mr T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr T 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 T for completeness.

Ombudsman's decision

19. In his comments, Mr T maintains that the Guide and all the other Scheme information provided to him does not explain the risk to a member with FP12 being auto-enrolled into the Scheme. However, I agree with the Adjudicator's view that TP and UoH are not required to provide this information under the Disclosure Regulations. I do not find that TP or UoH should be expected to provide Scheme members with detailed information about LTA protection routinely in new member enrolment information. A requirement to do so would represent a significant and unwarranted administrative burden. UoH has quite reasonably amended the general guidance it provides to new VL's in light of Mr T's complaint and, having reviewed the papers, I do not find its previous guidance to be in breach of the statutory requirements.
20. TP and UoH could not have known Mr T had substantial benefits in another pension scheme unless he had informed them. I have seen no evidence that Mr T queried the impact of auto-enrolment on his FP12 before April 2018. Consequently, I do not agree with Mr T's assertion that his failure to act was a 'genuine error' in the way he argues. Mr T was a Scheme member for nearly three years before he discussed the position with his financial adviser. I find that he should reasonably have queried and ascertained the correct position much sooner than he did.
21. Mr T argues that he was not given 'balanced' information about the merits of Scheme membership and warnings about considering financial advice should have been stated clearly. However, there are few instances in which Scheme membership could be expected to result in negative consequences. Scheme membership is not mandatory. Mr T could have opted out and received a refund at any point before the deadline set by the Scheme Rules and legislation. UoH correctly informed Mr T of his right to opt out and provided him with the details to do so. I appreciate Mr T may well now be liable for a significant tax liability. However, under the Regulations, I agree with the Adjudicator's view that UoH or TP cannot now refund Mr T's membership in order to mitigate this liability.
22. Following the recent tax tribunal case of Mr Hymanson in November 2018, where the tribunal ruled that an accidental breach of the rule would not necessarily mean that an individual would lose LTA protection, it maybe that Mr T can argue his particular circumstances with HMRC, but that is a matter for Mr T and HMRC.
23. I do not uphold Mr T's complaint.

Anthony Arter

Pensions Ombudsman
11 June 2019