

Ombudsman's Determination

Applicant	Mr S
Scheme	Teachers' Pensions Scheme (The Scheme)
Respondent	Teachers' Pensions (TP)

Outcome

1. Mr S' complaint against 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) TP shall pay Mr S £1,000 in recognition of the serious distress and inconvenience he has suffered.

Complaint summary

2. Mr S' complaint against TP is that the ill health pension he is receiving is incorrect.

Background information, including submissions from the parties

3. Mr S retired early on ill health grounds in 1989. In January 2015, after visiting TP's website, Mr S discovered some of his employment records were missing. He sought a correction, which resulted in a recalculation of his benefits.
4. Following the recalculation in May 2015, TP said that Mr S had been overpaid by £6,934, which it intended to recover over the following 11 months in instalments of £577.84.
5. Mr S asked TP to halt the recovery of overpayments pending further investigation. TP agreed, although it subsequently deducted £646.21 in March 2016 and £53.86 in September and October 2016.
6. In October 2016, after further exchanges of correspondence, TP said that there had been no overpayment as the original salaries upon which benefits had been calculated were correct. However, Mr S remained unhappy, and was still confused about the recalculations. He required clarification.
7. Further correspondence ensued and in April 2017, the September and October 2016 deductions were reimbursed, while the March 2016 deduction was reimbursed in August 2017. TP did not apologise for these errors and no interest was paid on the deducted money.

8. On 1 May 2018, after a long exchange of correspondence, Mr S complained to TP that:-

- This matter had begun nearly three years earlier when Mr S had requested that his service record be corrected on TP's Website. It was recorded there that his headship of Offerton High School had started on 1 September 1987 whereas it had started on 27 April 1987.
- Despite the correct start date being confirmed by the employer, Mr S received a demand for return of an overpayment calculated at £6,934. This was then followed by three further demands for £6,232, £4,062 and £3,362.
- Finally, in October 2016 TP said that there was no overpayment and that the original salary and benefits calculation was correct.
- Four months' salary figures were omitted from the original retirement calculation and his pensionable salary was understated which, had it been correct, would have given him a higher lump sum and pension at retirement.
- Mr S sought a revised benefit statement as at 1 May 1987 using the correct salary, allowances, ill health additional years and the full calculation, which he believed would demonstrate that he been underpaid both for the lump sum and for the residual pension.
- He also sought figures for the cumulative payment due for the entire period of his retirement to date and a figure for the correct monthly payment due to him from July 2018 onwards.
- There were discrepancies in the amounts of tax deducted which differed from information on HMRC's website.

9. TP wrote to Mr S in July 2018 and its response was, in summary:-

- Although Mr S' previous employer had been unable to confirm the annual salary rate, TP decided to honour an annual salary rate of £31,355 for the period 1 April 1988 to 30 April 1989. TP considered this element of the complaint resolved.
- TP acknowledged that Mr S' calculations showed an additional six days' salary at the higher rate. These extra days made no difference because the methodology of calculating benefits involved using the best consecutive 365 days during the last three years of employment. In Mr S' case, the best 365 days of earnings fell between 1 May 1987 and 30 April 1988, meaning the six days in question were before the relevant date range.
- The start date would not be amended to 21 April 1987 as this had no impact on Mr S' pension benefits.

- TP apologised for the deductions which had been taken in error following the recalculation of Mr S' benefits. TP expressed dismay that the administrator had not read the email correspondence with Mr S' union agreeing to its request on behalf of Mr S to put the recovery of the overpayments on hold pending investigation.
 - Mr S' retirement benefits were revised on 13 June 1989 and TP enclosed a calculation sheet from the time which showed the increased annual pension and the lump sum credit balance of £491.73, based on a salary of £31,335.
 - As more than 30 years had elapsed since Mr S' retirement start date, TP's investigations were thoroughly exhausted and there was nothing further that it, or the previous employer, could do [to illuminate matters].
10. Correspondence between the parties continued and Mr S again sought figures to demonstrate how his correct benefits had been calculated. He also continued to seek answers to his tax queries, which had not been resolved.
11. TP wrote to Mr S on 20 July 2018 to explain the discrepancies regarding tax deductions, accounting for each one and confirming that the relevant notices would be issued to HMRC to ensure Mr S' P60 would be correct.
12. Mr S maintained that the basis for his benefits had been incorrect from the outset and his allowances had not been taken into account. Accordingly, he asked for the complaint to be raised with the Senior Complaints Manager. This request was acknowledged, and TP apologised for not acknowledging either the distress caused to Mr S, or the time taken to resolve his complaint.
13. On 2 August 2018 TP responded:-
- A further review had been carried out on Mr S' records which demonstrated that he was being paid the correct amount of pension and had been slightly overpaid.
 - A record of his service was provided showing the salary rates used in the calculation of his retirement benefits.
 - The start date of his employment was reconfirmed as 27 April 1987, with his salary up to 26 April 1987 being confirmed as £25,304.
 - Salary from 27 April 1987 to 31 August 1987 was recorded as being £27,993 which TP said was considerably more than any headteachers' salaries from January 1987, and equated to the "spot salary" for a headteacher from October 1987, when there had been a reconstruction of salary scales.
 - This salary was likely to be incorrect. As it fell outside the period used to calculate Mr S' pension, it could be ignored aside from its effect on the contributions Mr S paid for that year, which equated to earnings of £27,225. TP

enclosed details of service and earnings during 1987/88 based on contemporaneous salary scales.

- Contributions were a valid method of establishing correct pensionable earnings and agreeing the calculations of the pension and lump sum payable to Mr S on his retirement. TP pointed out these were the same as those on the award papers dated 14 June 1989 when details of a salary increase had resulted in a recalculation of benefits.
- The rates of annual pension for each year since inception were provided, as were the amounts actually paid to Mr S. This demonstrated an overpayment of £236.60, which TP confirmed was being written off.

14. In August 2018, Mr S complained to the Department for Education (**DfE**), saying he still believed the original calculations for his ill health pension were incorrect, and that the information TP provided did nothing to dispel that belief. He said the volume of correspondence and the many hours expended on attempting to obtain correct information, together with the extensive maladministration meted out by TP, had caused him and his wife considerable distress and inconvenience.
15. DfE responded to say it had arranged for a senior manager to review all of the calculations made on Mr S' pension and it was satisfied that Mr S was receiving the correct pension. DfE was also of the view that the Scheme's Regulations had been applied correctly.
16. DfE apologised for the length of time it had taken to resolve matters. Since its remit did not include consideration of distress and inconvenience, it suggested Mr S revert to TP in respect of any redress he might seek for the trouble and upset he had experienced in pursuit of his complaint.

Adjudicator's Opinion

17. Mr S' complaint was considered by one of our Adjudicators who concluded that part of the complaint should be upheld. The Adjudicator's findings are summarised below:-
 - TP carried out exhaustive research into Mr S' situation and there was likely nothing further to be discovered. In the absence of definitive salary information, TP decided to adopt the salary of £31,335 as the basis for calculating Mr S' entitlement.
 - TP had written off an overpayment of £236.60. The Adjudicator was of the opinion that Mr S must now accept that the best compromise had been reached and no additional benefits were due to him.
 - TP accepted the employer's salary information without question, only testing the veracity of the figures when Mr S urged it to do so.

- Fact-checking was time-consuming, and delays were caused as a result. However, TP should have done more to keep Mr S informed that it was working on his case. As it stood, the case had begun more than three years before it reached this Office.
 - The continual revision of benefit calculations, the lack of accuracy and the demands for the return of substantial sums of money had been very stressful for Mr S and had produced the resultant suspicion he now held that TP could not be trusted to provide the correct information.
 - Having agreed to suspend recoupment while the investigation was ongoing, TP took a payment of £646 from Mr S' account without notifying him.
 - TP assured Mr S that it would not make any further deductions pending the outcome of his complaint. However, it made two further deductions.
 - After learning that there were no overpayments, TP took more than a year to return the recouped payments to Mr S.
 - TP's actions caused Mr S serious distress and inconvenience and it should award him £1,000 in acknowledgement of this.
18. Mr S accepted the Adjudicator's findings. TP said it accepted the Adjudicator's Opinion that Mr S' Scheme entitlement was correct. However, it did not accept that it should award Mr S £1,000 and said that:-
- It must calculate benefits on the service and salary provided to it by employers unless there was incontrovertible proof of error. In this case, all of the revised information was provided by the employer at Mr S' behest.
 - Ultimately it had proved that Mr S' entitlement was correct at retirement.
 - TP had not sought to reduce Mr S' entitlement or collect the arrears of contributions and interest (had such action been appropriate).
 - While TP accepted that there had been delays, the complaint was delayed beyond 2016 due to Mr S continuing to dispute the matter, while providing no evidence that the figures were incorrect.
19. The complaint was passed to me to consider. I note the further comments provided by TP set out above. But these 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

20. I appreciate that obtaining historical records going back more than 30 years, covering various employments, was difficult for TP. It is therefore understandable that ascertaining the correct position of Mr S' salary and pensionable allowances was difficult to achieve. In this case, TP decided to adopt the previously used salary of £31,335 as this achieved the best compromise. I also note that this strategy meant no financial losses would be created for Mr S over the history of his pension in payment.
21. However, Mr S noticed that his service record was incomplete when he studied TP's records online. When he notified TP of this he was given conflicting information, kept waiting for a considerable period of time and then subjected to recoupment without prior notice. It took TP more than a year to reimburse him, having discovered that no overpayments had occurred. I consider this delay to have been unreasonable and can see no good reason why Mr S was not reimbursed immediately rather than having to wait for an extended period of time.
22. I note TP's assertion that much of the time taken in resolving the complaint overall was as a result of Mr S' continued pursuit of the matter even after he had been provided with what TP considered to be definitive information.
23. However, there was a substantial amount of misinformation provided to Mr S by TP. It is evident that Mr S, who grew increasingly suspicious as figures and demands for repayment were issued then amended, suffered significant distress and inconvenience as a result.
24. I agree with the Adjudicator's view that TP caused Mr S serious distress and inconvenience as a result of its errors and the recommended award of £1,000 is appropriate in the circumstances.
25. I uphold Mr S' complaint in part.

Directions

26. Within 14 days of the date of this Determination, TP shall pay £1,000 to Mr S in recognition of the serious distress and inconvenience he has experienced.

Karen Johnston

Deputy Pensions Ombudsman
21 January 2020