

Ombudsman's Determination

Applicant	Mr S
Scheme	Teachers' Pension Scheme (the Scheme)
Respondent	Teachers' Pensions

Outcome

1. Mr S' complaint against Teachers' Pensions is partly upheld. To put matters right, Teachers' Pensions shall pay a distress and inconvenience award to Mr S.

Complaint summary

2. Mr S' complaint is that Teachers' Pensions unreasonably delayed the calculation of his final retirement benefits. Mr S said that this has cost him thousands of pounds in potential interest.

Background information, including submissions from the parties

3. Regulation 131, (**Regulation 131**), of the Teachers' Pensions Regulations 2010 (the **2010 Regulations**), states:

"The employer of a person (T) in pensionable employment must record for each financial year—

 - (a) the rate of T's salary;
 - (b) the amount of T's contributable salary;
 - ...
 - (f) the period during which T was in pensionable employment."
4. Regulation 131 places a duty on the employer to make such reports and returns as the Secretary of State may require for the purpose of the Secretary of State's functions under the 2010 Regulations.
5. Regulation 115 of the 2010 Regulations, provides that where a benefit is being paid, the Secretary of State may require evidence to establish the identity of the recipient and his or her continuing entitlement to the benefit. If the evidence requested is not

provided by the date specified, the Secretary of State may withhold the whole or any part of the benefit.

6. In October 2013, Teachers' Pensions identified possible inconsistencies in the salary rates it held for Mr S. In advance of investigating the matter further, Teachers' Pensions made an interim award to Mr S: a retirement lump sum of £72,873 and a pension of £23,041 per annum.
7. On 18 October 2013, Teachers' Pensions queried the significant drop in Mr S' salary on 1 April 2005 with his employer, Luton Borough Council (**LBC**). Mr S was notified of the interim award at the same time. Teachers' Pensions included the following caveat in the retirement statement:

"Please note: This is an 'Interim' award of pension and lump sum only as we are querying your drop in salary at 1.4.2005 with your employer. On receipt of their reply we will contact you. [Original emphasis]"

8. In March 2017, Teachers' Pensions contacted LBC when it identified that it had not received a response from LBC.
9. On 3 April 2017, LBC uploaded revised details in respect of Mr S.
10. On 18 April 2017, Teachers' Pensions notified Mr S of his revised retirement lump sum of £76,434 and pension of £25,228 per annum.
11. In June 2017, Teachers' Pensions rectified a discrepancy in Mr S' pensionable service after receiving further information from LBC. That same month, Teachers' Pensions sent Mr S notification of his final award: a retirement lump sum of £77,941 and pension of £25,730 per annum.
12. The evidence does not indicate that Mr S contacted Teachers' Pensions at any time between October 2013 and April 2017, concerning the information it had requested from LBC.
13. Regulation 6 of The Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996 (No 2475), (the **1996 Regulations**), provides that:

"Payment of interest on late paid benefit

6.—(1) For the purposes of section 151A of the 1993 Act (interest on late payment of benefit), the prescribed rate of interest shall be the base rate for the time being quoted by the reference banks.

(2) In paragraph (1) above—

- (a) "base rate" means the rate for the time being quoted by the reference banks as applicable to sterling deposits or, where there is for the time being more than one such base rate, the rate which, when the base rate quoted by each bank is ranked in a descending sequence of four, is first in the sequence..."

14. Mr S was awarded interest for late payment in line with the Bank of England base rate. Teachers' Pensions subsequently offered Mr S an inconvenience award of £200 (the **Offer**).
15. Broadly, regulation 112 of the 2010 Regulations, (**Regulation 112**), provides that where a benefit is not paid within one month of the due date, the Scheme must pay interest on the amount unpaid. The applicable rate of interest is "the Bank of England base rate compounded with three-monthly rests from the due date to the date of payment."
16. Teachers' Pensions has explained that the administration of the Scheme is a "partnership" between Teachers' Pensions, Scheme members and participating employers. Where Teachers' Pensions has queried information with an employer, Teachers' Pensions expects the employer to either provide updated information or confirm that no changes are required. It is not Teachers' Pensions' standard practice to pursue employers for any missing service or salary information. Members are usually encouraged to raise any discrepancies directly with their employer.
17. The factsheet on awards for non-financial injustice, (the **Factsheet**), provides guidance on the level of award that is likely to be made by the Pensions Ombudsman's Office where applicants have suffered significantly as a result of maladministration.

Mr S' position

18. Mr S' main submissions are summarised below:-
 - His dispute is with Teachers' Pensions not with LBC.
 - His case has been ongoing for over six years. He still has no confidence in Teachers' Pensions' ability "to operate in an organised and structured manner to deliver the correct award to members". The Offer made by Teachers' Pensions leaves him totally "disenchanted".
 - He was not aware that LBC had failed to supply information to Teachers' Pensions until Teachers' Pensions subsequently followed up its enquiry three and a half years later. Rather than wait until April 2017, Teachers' Pensions should have asked him to provide the relevant information.
 - When Teachers' Pensions eventually followed up the enquiry, LBC again provided the wrong information. He had to contact LBC and supply payslips dating back to 2004.
 - He received a series of payments totalling almost £15,000 based on Teachers' Pensions' revised figures.

- He was initially only awarded interest in line with the Bank of England base rate. When he complained, Teachers' Pensions eventually apologised and offered a random figure of £200, without providing any explanation.
- The Offer does not remedy the financial losses he has suffered. He is seeking compensation for the overall financial loss Teachers' Pensions' failure to administer his final award in a timely manner has caused him.
- Due to Teachers' Pensions' delay in reviewing his interim award, he has lost approximately £4,000 in potential interest. "Business to business 'statutory interest' is set at 8% on the www.gov.uk website."
- Teachers' Pensions seems to have assumed that he would have kept the money in a current account and earned interest at 1% or less. His "financial portfolio is markedly different."
- Teachers' Pensions is not aware of his interest in investments, his attitude to risk, or his "industry risk score". His attitude to financial risk is "moderate to adventurous" ; his industry risk score is 64%. His financial adviser can substantiate his claims.
- He acknowledges that the Scheme awards late payment interest in line with the base rate. However, he questions whether this is fair.
- At the very minimum, Teachers' Pensions should have provided him with a full member print, a full explanation, and a "fair compensatory offer".
- Teachers' Pensions failed to provide him with an address for the Scheme's Internal Dispute Resolution Procedure despite him specifically requesting this.
- This matter justifies at least an award that recognises the serious non-financial injustice Teachers' Pensions has caused him. In his view, his case is likely to fall into the "severe" category, described in the Factsheet.
- Teachers' Pensions made numerous and/or repeated or compounded errors over a prolonged period but opportunities to notice and remedy those mistakes were missed. The mistakes made had a lasting effect over a prolonged period.
- Teachers' Pensions did not respond to him or take steps to put the matter right and failed to understand the inconvenience caused to him.
- Teachers' Pensions has caused him annoyance, disappointment, frustration, financial concern, and inconvenience over a period of three years.
- Teachers' Pensions failed to provide an explanation or apology until he requested one. He tends to be patient, "level-headed and strong minded", so he did not suffer any "mental distress".

Teachers' Pensions' position

19. Teachers' Pensions' main submissions are summarised below:-

- Teachers' Pensions does not accept that Mr S' full entitlement was paid late as a direct consequence of inaction on the part of Teachers' Pensions.
- Teachers' Pensions' pre-retirement checks involved reviewing Mr S' service and salary history. It was during this process that potential salary discrepancies were identified.
- Teachers' Pensions does not have access to LBC's HR system. Consequently, it cannot obtain or verify service or salary information without assistance from LBC.
- Teachers' Pensions set up a case expecting a response from LBC. However, members are usually asked to contact their former employer and request that any missing information is sent to Teachers' Pensions. On receipt of the information, Teachers' Pensions calculates the final award and notifies the member accordingly.
- Teachers' Pensions relies on the provision of timely and correct service and salary information from employers to calculate benefits accurately and make payment when due. Teachers' Pensions acted correctly in paying an interim award while awaiting confirmation of Mr S' salary and service information.
- It is the responsibility of the employer to provide Teachers' Pensions with accurate service and salary information. Under Regulation 131, participating employers are required to confirm the dates of employment, the full-time equivalent salary and any pensionable allowances paid to the member which are included in the salary rate.
- Employers have a duty under Regulation 131, to provide Teachers' Pensions with an annual return showing service and salary information in respect of each employee. Employers are required to have the return independently audited.
- Teachers' Pensions would like to know what action was taken by LBC in response to Teachers' Pensions' initial enquiry. LBC should have been asked to comment on Mr S' complaint.
- Regulation 112 applies in this case. Teachers' Pensions has no authority to vary the rate or amount of interest that has been paid to Mr S.

- Teachers' Pensions does not automatically provide retirees with a full member print. It is open to members to request further information if they have concerns about data provided by their employer.
- Teachers' Pensions accepts that its notification of Mr S' revised benefits could have been better managed. Teachers' Pensions did not explain why the amount of pensionable service used to calculate his revised benefits was less than that used to calculate the interim award.
- In recognition of this, Teachers' Pensions made the Offer to Mr S. Teachers' Pensions considered that the matter did not warrant the minimum award of £500 described in the Factsheet.

Adjudicator's Opinion

20. Mr S' complaint was considered by one of our Adjudicators who concluded that there had been maladministration on the part of Teachers' Pensions. The Adjudicator's findings are summarised below:-

- Teachers' Pensions should have had appropriate administrative controls in place to ensure that its enquiry to LBC was followed up within a reasonable timeframe.
- The Adjudicator was not aware of any legal obligation on pension administrators to provide members with a member print automatically. So this aspect of Mr S' complaint should not be upheld.
- The financial loss Mr S described, represented a loss of investment opportunity rather than an actual loss. Notwithstanding this, Mr S reasonably ought to have been aware that an interim award had been made. Consequently, the figures could increase.
- The Adjudicator highlighted that individuals have a general duty to mitigate their financial loss. If Mr S was concerned about loss of investment returns, he should have contacted Teachers' Pensions when it failed to provide an update on the interim award.
- The Adjudicator stated that the "prescribed rate of interest," set out in Regulation 6 of the 1996 Regulations, would usually apply in cases such as these.
- Teachers' Pensions should pay £500 to Mr S in respect of the significant non-financial injustice he had suffered.

21. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S provided his further comments which do not change the outcome. I

agree with the Adjudicator's Opinion except in respect of the distress and inconvenience award.

22. Mr S has explained that he invested £15,000 on 17 August 2017. Mr S said that this sum "directly" equates to the shortfall in pension that was eventually paid to him that same year. The amount represents approximately 6% of his total investments. In the last five years, his investments have generated returns of more than £60,000. Those returns are "essential income to keep pace with inflation and maintain a good quality of life."
23. Mr S questions why Teachers' Pensions did not provide him with a copy of its request to LBC at the time. In his view, Teachers' Pensions has sought to justify its "appalling" administration by attributing its failings to him and LBC. The administration of the Scheme is not a "partnership." Teachers' Pensions is "charged with administering pension awards and as such needs to collate information initially from the employee and the employer." His pensionable service record could not have been more straightforward: he worked for the same school throughout.
24. Mr S has raised the issue of whether it is acceptable to send limited information, rather than a full member print, to members. In his view, the information Teachers' Pensions provides automatically makes little sense to the recipient. He is still waiting for a full member print. He no longer expects Teachers' Pensions to provide this, as it would be an "admission of fault" on the part of Teachers' Pensions.
25. Mr S maintains that he has suffered a financial loss as a result of Teachers' Pensions' maladministration and that the matter justifies a distress and inconvenience award that recognises the extent of the maladministration.

Ombudsman's decision

26. I accept that Teachers' Pensions is the party responsible for the administration of the Scheme. Participating employers do have an obligation to provide salary details to the Scheme, but this does not negate the scope of the duties owed by Teachers' Pensions to Scheme members.
27. Teachers' Pensions' inaction, in failing to follow up its enquiry to LBC, amounts to maladministration and unreasonably delayed payment of Mr S' full entitlement under the Scheme. Nonetheless, an individual who has suffered loss is under a continuing duty to take reasonable steps to reduce the amount of that loss.
28. It is not necessary to reach a conclusion on whether Mr S would have invested the monies he claims he would have invested at the time. Mr S was aware that an interim award had been made pending additional information from LBC. In failing to contact Teachers' Pensions, and make enquiries concerning his final award, he failed to minimise his loss and I find that the loss is not recoverable.

29. The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (the **Disclosure Regulations**), as amended, impose requirements on workplace schemes and personal pension schemes in respect of the provision of information. There is no duty under the Disclosure Regulations to provide members with a full member print automatically. So, I cannot make a direction to that effect. It is open to Mr S to contact Teachers' Pensions if he still requires a full member print.
30. Teachers' Pensions' excessive delay in finalising Mr S' retirement award likely caused him serious inconvenience. Teachers' Pensions shall pay £1,000 to Mr S in recognition of this.
31. The complaint is partly upheld.

Directions

32. Within 14 days of the date of this Determination, Teachers' Pensions shall pay £1,000 to Mr S in respect of the serious non-financial injustice which he has suffered.

Anthony Arter

Pensions Ombudsman
23 November 2020