

## Ombudsman's Determination

Applicant: Mrs R  
Scheme: Teachers' Pension Scheme (TPS)  
Respondent: Leicester City Council (LCC)

## Outcome

1. Mrs R's complaint is upheld and, to put matters right, LCC shall pay Mrs R £1,000 for the serious non-financial injustice she sustained as a result of its maladministration of her TPS records.

## Complaint summary

2. Mrs R has complained that LCC provided incorrect salary data to Teachers' Pensions which resulted in her being overpaid retirement benefits.

## Background information, including submissions from the parties

### Background

3. Mrs R retired in August 2016.
4. On 9 August 2016, Teachers' Pensions wrote to Mrs R confirming that her retirement benefits had been calculated and made ready for payment. It enclosed a statement and said the benefits had been calculated using service and salary information supplied by Mrs R's employer. The statement quoted an annual pension of £13,860.80 and a lump sum of £41,582.39, based on an average salary of £53,642.85 and service of 20 years and 245 days.
5. In April 2017, Teachers' Pensions wrote to LCC querying Mrs R's service and salary record. It said, at the time Mrs R's retirement award had been processed, her service had included the period January to August 2002, but this had since been removed. Teachers' Pensions asked if the removal was correct and, if not, for LCC to provide Mrs R's annual salary for this period. It also asked LCC to check Mrs R's salary for the periods April to August 2008 and September 2008 to March 2009. Teachers'

Pensions said the salary rates had been changed from £33,060 and £35,121 to £58,581 and £61,504 respectively.

6. On 11 July 2017, Teachers' Pensions wrote to Mrs R informing her that there had been an overpayment of her retirement benefits amounting to £8,042.60. It said, since the original benefits had been calculated, Mrs R's employer had notified it of changes to her salary information for the period April 2008 to March 2009. Teachers' Pensions said the annual salary rates it had originally used were:

01/04/2008 to 31/08/2008 £58,581.00

01/09/2008 to 31/03/2009 £61,504.00

And the amended rates were:

01/04/2008 to 31/08/2008 £33,060.00

01/09/2008 to 31/03/2009 £35,121.00

Mrs R's average salary had been changed from £53,642.85 to £44,454.88.

7. Teachers' Pensions provided Mrs R with a revised statement of retirement benefits which quoted an annual pension of £11,486.72 and a lump sum of £34,460.14.
8. Mrs R contacted LCC to query the salary information. LCC said Teachers' Pensions would normally query a difference in salary before releasing the benefits. It said it had only received a query from Teachers' Pensions in April 2017. LCC also informed Mrs R that the revised salary information it had provided to Teachers' Pensions was also incorrect because it had not included an allowance. It said the correct figures were:

01/04/2008 to 31/08/2008 £38,204.00

01/09/2008 to 31/03/2009 £39,455.00

9. Mrs R wrote to Teachers' Pensions informing it about the information from LCC. She also suggested that she could repay £2,000, followed by £2,000 per year for another three years to clear the overpayment by 2020. Mrs R had previously explained to Teachers' Pensions that she had given money to her children and she now explained that her repayment plan depended upon what arrangement she could come to with her children. I understand that Mrs R has since repaid the overpayment.

10. On 22 March 2018, Teachers' Pensions wrote to Mrs R explaining that:

"1.4.2008 £58581 – this was added to your record via the annual return on 22/3/11 (provided by your employer) and changed from £33,060 which had been added to your record on 8/10/10 by your employer using the Employer Portal. Your employer then updated your record using the Employer Portal on 7/8/17 to £38204.

1.9.2008 £61504 – this was added to your record via the annual return on 22/3/11 (provided by your employer) and changed from £35,121 which had

been added to your record on 8/10/10 by your employer using the Employer Portal. Your employer then updated your record using the Employer Portal on 7/8/17 to £39455.”

11. On 11 June 2018, Teachers’ Pensions wrote to Mrs R saying her employer had amended her record on 23 March 2011 to show her salary as:

01/04/2008 to 31/08/2008    £58,581

01/09/2008 to 31/03/2009    £61,504

Teachers’ Pensions reiterated that the record had previously shown Mrs R’s salary as £33,060 and £35,121 respectively. It said Mrs R had been sent an estimate of retirement benefits, in October 2010, quoting an annual pension of £5,560.53 and a lump sum of £16,681.59 based on an average salary of £38,114.42. Teachers’ Pensions said, after her record had been amended, a further estimate of retirement benefits had been sent to her. This had quoted an annual pension of £8,794.09 and a lump sum of £26,382.27 based on an average salary of £60,278.74.

12. Mrs R submitted a complaint to LCC on 7 August 2018. Among other things, Mrs R suggested that LCC should pay Teachers’ Pensions the £8,042.60 owed and that this should be covered by its insurance.

13. LCC responded on 10 September 2018. It said:-

- It had contacted Teachers’ Pensions to ask for a copy of the annual return for 2008/09 and had been told it was unable to locate the original spreadsheet.
- Teachers’ Pensions had provided a print-out of Mrs R’s record and stated that this had been updated in January 2011. This did not establish who sent the information. Nor did it agree with the letter sent to Mrs R by Teachers’ Pensions which stated that her record was updated in March 2011.
- It had no record of performing an annual return in March 2011 for the year 2008/09. The deadline for the 2008/09 return had been July 2009 and it had nothing to indicate that it had been late.
- It would expect Teachers’ Pensions to provide a copy of the annual return to prove beyond any doubt that LCC was responsible for the update and it had been unable to do so.
- It had been able to establish that LCC had updated Mrs R’s record with the correct details in 2010. After this, it had no records of any further updates for 2008/09.
- It had asked Teachers’ Pensions to confirm whether it was standard procedure to clarify large increases in salary over a single year before paying a pension. This would have identified the error much sooner. Teachers’ Pensions had not clarified its process but past experience indicated that Teachers’ Pensions had queried such fluctuations in salary previously.

- Mrs R had highlighted other errors by LCC in updating her service dating back to 2004. It understood these had been rectified and had not contributed to the overpayment.
  - It could not attribute the error to LCC and, therefore, could not enter into discussion about liability.
14. In subsequent correspondence with Mrs R, Teachers' Pensions explained that it did carry out checks on the annual service returns it received from employers. It said a significant number of errors were detected automatically but these were mainly typographical errors or omissions. Teachers' Pensions said an erroneous salary figure would not be detected by these checks.
  15. Teachers' Pensions said LCC had sent it an annual return for April 2009 to March 2010 which included an update for Mrs R's April 2008 to March 2009 salaries. It provided a redacted print-out. Teachers' Pensions said it could not say when the return had been received but it had been processed in January 2011 and updated to Mrs R's record in March 2011.
  16. Mrs R wrote to LCC on 30 October 2018. She pointed out that it had been sending correspondence to the wrong address. Mrs R said she had had another job with LCC in the library system. She said LCC had ignored her notice and had continued to pay her in this role, resulting in her having to repay an overpayment of salary. In response, LCC acknowledged the error in Mrs R's address and said this had been rectified. It explained that it had not been notified by Mrs R's employer that she had left, which had resulted in the overpayment. With regard to the print-out provided by Teachers' Pensions, LCC said this did not enable it to attribute the error and it had no evidence that the information was provided by it. LCC said it did not accept liability for the error.
  17. Mrs R approached Teachers' Pensions again. It confirmed that the submission detailed in the screen shot it had provided had been received from LCC. Teachers' Pensions said the data had been submitted electronically and had included details of other employees at LCC.
  18. As part of the investigation of Mrs R's case, Teachers' Pensions was asked to explain how employers submitted data to it. Teachers' Pensions explained that, historically, employers submitted their annual returns via a CD or disk which it sent to them to populate and send back. It would then upload the data from the CD or disk onto the member's record. Teachers' Pensions explained that an "Employer Portal" became available in February 2009. This allows employers to submit data without the need for any intervention from Teachers' Pensions; the information automatically interfaces with the member's record, unless an error is detected, such as an incorrect date of birth.
  19. In addition, Teachers' Pensions said Mrs R had contacted it in 2009 concerning some missing service. It said it had contacted LCC in 2009 and again in 2010. Teachers' Pensions explained that the missing service, which included the period April 2008 to

March 2009, was uploaded via the Employer Portal in October 2010 and automatically added to Mrs R's record.

### **Mrs R's position**

20. Mrs R submits:-

- LCC sent correspondence to an incorrect address on more than one occasion.
- Her service record was changed so that gaps appeared when there were none.
- LCC has been uncooperative. She has been told both to email for a quick response and to write letters. She has not received responses to either.
- She knew her pension needed to be a certain amount because she does not receive a pension in respect of her late husband. She worked past her normal retirement age in order to ensure she would have enough pension to cover her living expenses. Now she is receiving £200 per month less than she was expecting and has been required to repay £8,042.60. She is finding it difficult to make ends meet.
- She has spent money on telephone calls to expensive numbers and had to send letters by 'signed for' route to ensure a reply.
- She suggests that LCC should cover the amount of £8,042.60 because it will be insured for staff errors. Alternatively, she suggests that the person responsible for the error could be removed, thereby freeing up money to cover the error.

### **LCC's position**

21. LCC submits:-

- It does not disagree that Mrs R has been overpaid because Teachers' Pensions held incorrect information. It does dispute that the information was reported to Teachers' Pensions by itself incorrectly.
- No evidence has been submitted which shows that it has ever submitted inflated salary information for the year in question; 2008/09. Therefore, the only conclusion is that the error occurred with Teachers' Pensions duplicating information submitted to it.
- Where an employee's salary has drastically changed between periods, Teachers' Pensions query this with the payroll provider before releasing benefits. Mrs R's benefits were released in September 2016, but it did not receive a query from Teachers' Pensions until April 2017.
- Mrs R received a statement of retirement benefits from Teachers' Pensions in August 2016; prior to retiring. This clearly showed an incorrect salary of £53,642.85. This error could have been picked up by Mrs R at that time.

## Adjudicator's Opinion

22. Mrs R's complaint was considered by one of our Adjudicators who concluded that further action was required by LCC. The Adjudicator's findings are summarised below:-

- There was no dispute that Mrs R's retirement benefits had been initially calculated by reference to an incorrect average salary of £53,642.85. The result of this had been that she had been paid more than she was strictly entitled to under the TPS regulations and she had been required to repay £8,042.60.
- Although Teachers' Pensions was responsible for calculating members' retirement benefits, it did so by reference to salary and service information provided by employers. It had no direct access to the members' salary and service data. In Mrs R's case, Teachers' Pensions had used salary information supplied by LCC. It had provided copies of information submitted by LCC at various times, including a screen shot of the incorrect salary information. Teachers' Pensions had confirmed that the screen shot related to information supplied by LCC and included information for other LCC employees.
- LCC had argued that there was no evidence to support a finding that it had been the source of the incorrect salary data. It had suggested that Teachers' Pensions had duplicated information submitted to it. However, the evidence provided by Teachers' Pensions did not support this. In addition, the incorrect salary was not simply a duplication. For the period April to August 2008, the incorrect salary was £58,581 and the correct salary was £38,204; a difference of £20,377. For the period September 2008 to March 2009, the incorrect salary was £61,504 and the correct salary was £39,455; a difference of £22,049.
- On the balance of probabilities, it was more likely than not that LCC had been the source of the incorrect salary information.
- LCC was required, under the TPS regulations<sup>1</sup>, to provide Teachers' Pensions with salary and service data for those of its employees who were members of the TPS. It had a responsibility to ensure that the information it supplied was correct. The evidence indicated that LCC had failed to ensure that it provided the correct information to Teachers' Pensions in Mrs R's case. In the Adjudicator's view, this amounted to maladministration on LCC's part.
- The Adjudicator noted that LCC had argued that Mrs R had had the opportunity to detect the error when she had received her statement of benefits in 2016. LCC had also argued that Teachers' Pensions had failed to query Mrs R's salary details until after it had put her retirement benefits into payment. Both of these things may be true, but they did not allow LCC to abrogate its responsibility to provide the correct information.

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<sup>1</sup> Regulation 219, The Teachers' Pensions Regulations 2014 (SI2014/512) (as amended)

- Mrs R had sustained injustice as a consequence of the maladministration by LCC because she had been required to repay the overpaid benefits. Whilst repayment of the £8,042.60 did not represent a financial loss to Mrs R, because she was not entitled to this amount, she had sustained non-financial injustice in the form of distress and inconvenience. The Adjudicator was of the opinion that Mrs R's complaint could be upheld against LCC for this reason.
- The Adjudicator suggested that, in order to put matters right, LCC should pay Mrs R £1,000 for the serious distress and inconvenience she had experienced as a consequence of its maladministration of her TPS records.
- The Adjudicator noted Mrs R's suggestion that LCC should have paid the £8,042.60 to the TPS, rather than her. However, this would have meant allowing Mrs R to retain the £8,042.60 to which she was not entitled. In the Adjudicator's view, this would not have been proportionate redress for LCC's maladministration.

23. LCC and Mrs R did not accept the Adjudicator's Opinion and the complaint has been passed to me to consider. LCC and Mrs R provided further comments which are summarised below. I have considered these comments, but I find they do not change the outcome. I agree with the Adjudicator's Opinion.

#### **Mrs R's further comments**

24. Mrs R submits:-

- She would expect LCC to receive a more severe reprimand because it has been making mistakes in her case over many years. For example, adding gaps in her service record when there were none.
- Her level of distress and inconvenience was severe and adverse initially. However, so many years have elapsed that she has almost become used to the situation.
- Because she received less than she had been told she would, she has had to juggle her finances to make her life work.
- It has taken her a long time to come to terms with the mistake, which was only found a year after her decision to retire. If she had known about the mistake, she would have worked extra years.
- LCC did not respond with regard to the gaps in her service for years. This was only put right at the last moment.
- Communicating with LCC has always been challenging. The answers she received to her questions were not clear and she was given contradictory information.

## LCC's further comments

### 25. LCC submits:-

- It has found no evidence that it submitted an update for the period April 2008 to March 2009 in March 2011. It would not have sent an annual return at this time for this period. It has found nothing on Mrs R's file to indicate that it sent Teachers' Pensions a service update (TR28).
- It has located updates sent in October 2010, April 2017 and August 2017 for the period April 2008 to March 2009. The figures sent in April 2017 match those sent in October 2010 except for the omission of allowances. The update sent in August 2017 included the allowances.
- The figures in the August 2017 update are slightly higher than those in the October 2010 update. It is not sure why there is a difference, but suggests the higher figures are left as they are because they appear to be correct when compared to previous and later annual figures and would account for pay awards.
- It has tried adding different combinations of the amounts provided in each update to see if it can replicate the incorrect amounts used by Teachers' Pensions. This would have indicated that Teachers' Pensions had, perhaps, combined submissions in error. However, it has been unable to reproduce the incorrect figures in this way.
- It has provided screen shots of Mrs R's record taken when it was undertaking a missing service update. These screen shots show the inflated salary figures. It has been unable to identify the date of the service update<sup>2</sup>. However, because Mrs R had not queried these dates, it did not check them at the time; otherwise it might have been able to update her record before she retired. There was a drastic decrease in salary after the April 2008 to March 2009 period, which Teachers' Pensions would normally have queried, but did not in this case.
- In reviewing Mrs R's record, it noticed that an incorrect code had been entered for her place of employment. It does not know why the incorrect code was provided, but this has now been updated.
- It has concluded that Teachers' Pensions apparently deleting previously submitted information, which resulted in several missing service queries being carried out, caused confusion and misinformation due to the difficulty of sourcing data years later. It definitely has no indication that it provided the incorrect salary figures of £58,581 or £61,504. Since information on Mrs R's record appeared to be continually altering and disappearing, which resulted in her querying this, it would appear that something was occurring with Teachers' Pensions' systems; not with its submissions.

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<sup>2</sup> The screen shot covers the period up to 31 March 2012.



## **Ombudsman's decision**

26. I note Mrs R's comment that LCC had been making mistakes in her service record over a number of years. However, she acknowledges that this had been put right prior to her retirement. The complaint which Mrs R brought to me concerned the provision of incorrect salary information by LCC to Teachers' Pensions and the consequences of this.
27. LCC remains of the view that it was not the source of the incorrect salary information. It states that it has found no evidence that it submitted an update for the period April 2008 to March 2009 in March 2011. It submits that it would not have sent an annual return for this period at this time. It also states that it has found nothing on Mrs R's file to indicate that it sent Teachers' Pensions a service update at this time.
28. Teachers' Pensions has explained that LCC sent it an annual return for April 2009 to March 2010, which included an update for Mrs R's April 2008 to March 2009 salaries. It provided a redacted print-out of the return. Teachers' Pensions explained that the return had been processed in January 2011 and updated to Mrs R's record in March 2011; not that it had been submitted in March 2011. Teachers' Pensions also confirmed that the data had been submitted electronically and had included details of other employees at LCC.
29. LCC has had reason to update Mrs R's record on a number of occasions. Since February 2009, it has been able to do so via the Employers' Portal. Teachers' Pensions has explained that the Portal allows the information to automatically interface with a member's record, unless certain errors, such as an incorrect date of birth, are detected. Teachers' Pensions do not intervene unless an error is brought to its attention and, in most instances, it will then direct the member to the relevant employer for an update to be actioned.
30. If, as LCC has suggested, there had been an issue within Teachers' Pensions' system, it would be unlikely to affect just one member's record. LCC has, itself, acknowledged that it has been unable to replicate the incorrect salary figures by combining other salary data it had submitted to Teachers' Pensions. A far more likely explanation is that the incorrect salary figures were entered onto Mrs R's record simply through human error at the submission stage, rather than being picked up from elsewhere or duplicated by Teachers' Pensions' system. The evidence indicates that, on the balance of probabilities, LCC was the source of the incorrect salary information.
31. My concern now is to ensure that Mrs R receives appropriate redress for any injustice she sustained as a result of LCC's maladministration in submitting incorrect salary information. Injustice can take the form of actual financial loss or non-financial loss; commonly referred to as distress and inconvenience.
32. As my Adjudicator explained, the £8,042.60 which Mrs R has had to repay to the TPS does not represent a financial loss to Mrs R because she was never entitled to receive this amount. I note that Mrs R has now suggested that, had she been aware

of the correct retirement benefit figures, she would have worked some extra years. However, I note also that Mrs R had already worked past her normal retirement age. Whilst the difference in the correct benefits and the benefits initially paid to Mrs R is not insignificant, I find that, on the balance of probabilities, Mrs R would have retired in 2016. It is important to bear in mind that, had the error not occurred, she would not have seen the higher, incorrect figures and would have made her decision to retire on the basis of the lower, correct figures only. In other words, it is important not to apply the benefit of hindsight. I have not, therefore, identified any actual financial loss to Mrs R consequent upon LCC's maladministration.

33. I do, however, find that Mrs R sustained non-financial injustice in the form of serious distress and inconvenience. Therefore, I uphold Mrs R's complaint against LCC.
34. I agree with my Adjudicator's assessment of the appropriate redress for this and I have made the necessary direction below. I note Mrs R's comment concerning a reprimand for LCC. However, my awards for non-financial injustice are not intended to be punitive. They are intended to recognise the non-financial consequences of the maladministration which has been identified.

### **Direction**

35. Within 28 days of the date of my Determination, LCC shall pay Mrs R £1,000 for the serious distress and inconvenience she has sustained.

**Anthony Arter**  
Pensions Ombudsman

7 March 2022