

PENSION SCHEMES ACT 1993, PART X
DETERMINATION BY THE DEPUTY PENSIONS OMBUDSMAN

Applicant	Mr Philip Oliver
Scheme	Teachers' Pension Scheme (the Scheme)
Respondent(s)	Teachers' Pensions (TP)

Subject

Mr Oliver's complaint is that TP have refused his repayment plan request. Mr Oliver wants the amount he owes to be set at £18,245.

The Deputy Pensions Ombudsman's determination and short reasons

The complaint should not be upheld against TP as they are entitled to reclaim the amount Mr Oliver has been overpaid (£54,278).

DETAILED DETERMINATION

Relevant Regulations

1. Regulation E13(2) of 'The Teachers' Superannuation (Consolidation) Regulations 1988' says when a person is no longer incapacitated their ill health pension ceases to be payable. 'Incapacitated' is defined as:

“in the case of a teacher, an organiser or a supervisor, while he is incapable by reason of infirmity of mind or body of serving efficiently as such,…”
2. Regulation E14 of 'The Teachers' Pensions Regulations 1997' provides that in certain circumstances a member in receipt of a retirement pension from the Scheme will have it abated if they return to teaching employment. The member's pension may be suspended at any point in a tax year if the combined income from their re-employment and Scheme pension exceeds the salary they would have received if they had not retired (known as the salary of reference).

Material Facts

3. When Mr Oliver applied for ill health retirement he signed a declaration that he would notify TP if he began “employment in education at any time during my retirement” and understood that in the event of any change in pension entitlement any resultant overpayment of benefits would have to be refunded.
4. Mr Oliver was awarded an ill health pension payable from 1 May 1992. In 1993 he returned to teaching but failed to notify TP.
5. Mr Oliver had four employments over the period concerned. All but one (with Victory Outreach U.K.) in teaching, namely: at Dartington Tech (1993 to January 1999), Strode College (April 2000 to November 2003) and with Caerphilly County Borough Council (June 2006 to February 2011).
6. TP were first informed that Mr Oliver had returned to employment by his then employer (Caerphilly County Borough Council) through the National Fraud Initiative 2010 (which highlighted that Mr Oliver was receiving a pension from TP whilst working).
7. In February 2011 Caerphilly County Borough Council notified Mr Oliver that he was required to send a Certificate of Re-employment (**CoR**) to TP and advised him to contact TP direct, which Mr Oliver did.

8. The same month TP requested Mr Oliver to submit a CoR for each tax year he had been re-employed. Mr Oliver issued a CoR to each of the aforementioned employers for completion and notified TP.
9. In April 2011 Mr Oliver provided basic details of his employments (employers' names and approximate dates for each employment) and a CoR from Strode College.
10. In May 2011 TP received a CoR from Caerphilly County Borough Council for the period 6 April 2010 to 18 February 2011. TP subsequently notified Mr Oliver:
 - based on the information provided his earnings limit had not been exceeded for the period 6 April 2010 to 18 February 2011;
 - if he undertook any re-employment after this period he should submit a CoR to his employer for completion;
 - if he believed there were any periods of re-employment that had not been assessed he should notify TP.
11. Mr Oliver contacted TP querying why they had not referred to his previous years of re-employment and asked for confirmation that these had been considered and his pension would continue to be unaffected. TP notified Mr Oliver that his April 2011 letter and CoR from Strode College had not been assessed, apologised for their error and advised a full investigation of his re-employment had commenced and he would be notified of the outcome as soon as possible.
12. TP respectively wrote to Dartington Tech and Strode College requesting dates and details of his employment with them, but did not contact Caerphilly County Borough Council.
13. In August 2011, TP notified Mr Oliver:
 - they had received confirmation from Strode College of his full-time employment (from 3 April 2000 to 30 November 2003) and therefore an overpayment of his ill health pension would have occurred;
 - if he disagreed with the information provided he should contact Strode College and request they inform TP of any change;
 - they still awaited information from Dartington Tech;

- until this was received the overpayment of his ill health pension would not be calculated.
14. The next month TP notified Mr Oliver that his ill health pension should have stopped when he commenced employment with Strode College and requested a cheque for the repayment of £18,245 (net).
 15. Mr Oliver asked to be allowed to repay the sum over a period of time and provided a statement of income and expenditure with supporting documentary evidence. After consideration TP refused his request on the grounds that the information submitted showed that he had sufficient assets to make a single repayment.
 16. Mr Oliver approached the Pensions Advisory Service (**TPAS**). TPAS wrote to TP enclosing a letter from Mr Oliver (maintaining his inability to make a single repayment following the purchase of shares which had since fallen in value) and asked if TP were willing to reconsider their position.
 17. In February 2012, TP replied that they were prepared to enter into dialogue but advised that the amount owed required adjustment to take account of unpaid Age retirement pension contributions (following Mr Oliver's re-employment), his entitlement to Age retirement benefits from age 60 and a potential award of Additional Service After Retirement (in respect of any pensionable employment after age 60).
 18. Over the next year TP were in regular contact with TPAS and Mr Oliver, obtained from HM Revenue & Customs (**HMRC**) a print of Mr Oliver's employment record with Dartington Tech and communicated several times with both Strode College and Caerphilly County Borough Council to establish with each Mr Oliver's period of service, earnings, status of employment and whether it was pensionable.
 19. TP duly decided:
 - In respect of Mr Oliver's employment at Dartington Tech:
 - the information provided by HMRC showed that Mr Oliver had paid full-rate National Insurance contributions;
 - based on his earnings for tax year 1993/94 his ill health pension should have ceased when he first returned to teaching;

- as the exact date was not known (being sometime in 2003) TP set the cessation date as 1 January 1994;
 - the net overpayment of his ill health pension (from 1 January 1994 to 30 November 2003) was £50,294;
 - Mr Oliver's employment was non-pensionable as he had not made an election to join the TP Scheme (part-time employees were required to do so up to 1 January 2007).
 - In respect of Mr Oliver's employment at Strode College:
 - it was pensionable and no contributions had been paid, so arrears plus interest were due (from both Mr Oliver and the College);
 - Mr Oliver was entitled to Age retirement benefits the day after leaving Strode College (from 1 December 2003), having reached normal pension age (60) in August of that year;
 - the additional lump sum and arrears of pension would be used to offset the total amount Mr Oliver owed.
 - In respect of Mr Oliver's employment with Caerphilly County Borough Council:
 - it was pensionable and no contributions had been paid, so arrears plus interest were due from Mr Oliver and the Council;
 - Mr Oliver's Age retirement pension was subject to possible abatement;
 - Mr Oliver was entitled to Additional Service After Retirement (**ASAR**) benefits for the period 1 April 2009 to 18 February 2011.
20. In December 2012 Mr Oliver submitted separate applications to claim Age retirement benefits and ASAR.
21. In February 2013 Mr Oliver invoked the Scheme's two-stage internal dispute resolution (**IDR**) procedures. At IDR stage one Mr Oliver, amongst other things, said:
- TP's decision to further investigate his case after informing him that the amount owed was £18,245 was unfair;
 - TP's letter of 21 September 2011 gave every indication that it was a final amount and the investigation had been completed;

- the only issue preventing a conclusion to the case was agreeing a fair method of repayment;
- it was unsympathetic of TP to reject his request to repay the sum over a period of time;
- more than 2 years had passed (since the onset of the original investigation) and a conclusion was still not in sight;
- TP had used varied and confusing methods to assess his case;
- he had not received the outcome of his Age retirement benefits application;
- TP's overall handling of the case had impacted significantly on his health and life planning.

22. TP rejected Mr Oliver's appeal. Amongst other things they said:

- the amount of £18,245 was not a final figure, it was based on the information available at that time;
- while Mr Oliver may have been left with the impression that there was more than one investigation, clearly as further information became available his re-employments had been reassessed;
- both Mr Oliver and TPAS were fully aware of the additional work that TP had been undertaking to investigate his circumstances, in particular concerning his period of employment with Dartington Tech;
- due to the complexities of the case a significant amount of work, across a number of departments, had been required to establish the amount Mr Oliver owed;
- obtaining earning details from HMRC had added considerably to the time taken to review Mr Oliver's re-employment with Dartington Tech;
- they had endeavoured to resolve matters as quickly as possible and the time taken to calculate Mr Oliver's revised award of Age retirement benefits and ASAR was not excessive;
- Mr Oliver's proposal to repay £18,425 was noted, but TP were obliged to recover all overpayments of pension and arrears of contributions.

23. Mr Oliver invoked IDR stage two. Amongst other things he said:

- TP were aware of all the dates of his employment and had access to and support to gain any information they required prior to informing him that the amount owed was £18,245;
- any information they did not obtain by that point was a decision taken by TP and any omission again their error;
- he still felt TP's decision to reject his offer of a repayment plan was unfair;
- he disagreed that TP had handled his case in a timely fashion.

24. The Department for Education rejected Mr Oliver's final appeal. Amongst other things they said:

- it was not until April 2011 that TP had any indication of Mr Oliver's re-employments;
- TP did not carry out staged 'investigations';
- TP had acted in accordance with the Scheme's Regulations in connection with the information they held at any given time;
- while TP had been able to use the information Mr Oliver had initially provided (to identify that he had been re-employed and by whom) it was insufficient to assess his entitlement for the relevant periods;
- Mr Oliver's ill health pension should have ceased on 1 January 1994 and was overpaid to the end of November 2003; his employment with Strode College was pensionable and arrears of contributions were due for that period;
- Caerphilly County Borough Council had recently confirmed that Mr Oliver had opted out of the Scheme when his employment with them commenced. Therefore, no pension contributions or ASAR benefits were due for that period of employment.
- Nevertheless, Mr Oliver's Age retirement benefits were subject to abatement. The assessment of his earnings and pension against a salary of reference had been re-calculated following TP's recent receipt of revised earnings details from Caerphilly County Borough Council. This showed

that Mr Oliver's Age Retirement pension should be abated from 26 August 2008 to 5 April 2009 and from 20 July 2009 to 5 April 2010.

25. TP have confirmed the net amount owed by Mr Oliver is £54,278.99:

Overpayment of ill health pension	= £50,294.12
Outstanding pension contributions plus interest	= £ 9,840.24
Abatement of Age retirement pension	= <u>£ 9,001.62</u>
Total	= £69,136.02
Less	
Additional Age retirement benefits plus interest	= (£14,857.03)
Net amount owed	= £54,278.99

Summary of Mr Oliver's position

26. Mr Oliver says:

- he accepts he failed to notify TP of his re-employment from 1993;
- since being made aware of his error he has fully cooperated with TP's investigations;
- TP have conducted three investigations - the first concluded there was no pension overpayment, the second that the overpayment was £18,245 and the third that the overpayment was £54,278;
- if he had not queried the conclusion of TP's first investigation TP would not have identified and reclaimed any pension overpayment;
- he accepts the conclusion of their second investigation;
- he feels the third investigation was inappropriate and only instigated by TP because he had questioned the fairness of their decision to reject his request for a repayment plan;
- he has suffered "psychologically, physically and financially as a result of the continued maladministration of multiple investigations by TP";

Summary of TP's position

27. TP, amongst other things, say:

- they have correctly applied the relevant provisions of the Scheme's Regulations;
- there has only been one evolving investigation to determine the correct position of Mr Oliver's entitlement;
- this has taken an extended period of time because:
 - 18 years had passed before TP were informed of Mr Oliver's re-employment;
 - by then the first employer had ceased to exist and the other employers no longer held full records;
- they are obliged to seek recovery of the full overpayment.

Conclusions

28. At the time Mr Oliver applied for ill health retirement he signed a declaration that he would notify TP if he returned to employment. Mr Oliver accepts that he failed to do so. This is the fundamental reason for the sum now owed.
29. Mr Oliver refers to three separate investigations by TP. I do not think that is quite right. Rather TP recalculated the amount owed as information pertaining to each re-employment (the period, status, earnings and whether pensionable) was obtained /received.
30. I recognise that TP's handling of this matter has not been without fault:
- in May 2011 TP apologised to Mr Oliver for not assessing his years of re-employment prior to 6 April 2010;
 - it was not until March 2012 that TP requested details from Caerphilly County Borough Council pertaining to Mr Oliver's employment with them (the previous year they had requested details from Strode College and unsuccessfully attempted to obtain details from Dartington Tech); and
 - TP requested the immediate repayment of the first amount owed in September 2011 (rather than agreeing its recovery with Mr Oliver over at least the same period it accumulated).

31. However, there has been no resultant financial loss from this and I am not minded to award a sum for distress and inconvenience as Mr Oliver failed to report his earnings. Moreover he has had the benefit of additional cash (from receiving an ill health pension for longer than he was entitled to and the non-payment of Age retirement pension contributions when they fell due) that he would not have had if he had timely reported his earnings during his re-employments as a teacher.
32. Mr Oliver says the amount owed should be set at £18,245 – the sum TP advised in September 2011. But this amount was based on the information TP held at that point in time and their letter clearly only referred to Mr Oliver's employment with Strode College.
33. Consequently, Mr Oliver will need to repay the amount he has been overpaid (£54,278). However, the method of recovery should not cause Mr Oliver undue hardship. Therefore, TP should conduct a means assessment.
34. A rule of thumb is that the overpayment should be recovered over a period not shorter than the period of accumulation (in the round 10 years). But it is for TP and Mr Oliver to come to an agreement on how to repay the sum.
35. Whilst I do not uphold Mr Oliver's complaint, Mr Oliver may be entitled to make a fresh complaint if TP do not agree to recover the sum owed over at least the same period that it accumulated.

Jane Irvine
Deputy Pensions Ombudsman

23 September 2014