

## Ombudsman's Determination

<b>Applicant</b>	Ms Victoria Barton
<b>Scheme</b>	Teachers' Pension Scheme (the <b>Scheme</b> )
<b>Respondent</b>	Teachers' Pensions

### Complaint Summary

Ms Barton has complained that Teachers' Pensions did not alert her to an overpayment of her pension which accrued following her re-employment after premature retirement. Ms Barton says that Teachers' Pensions should be barred from recovering the overpayment on grounds of limitation.

### Summary of the Ombudsman's determination and reasons

The complaint is not upheld against Teachers' Pensions. The evidence is that Ms Barton was made aware that it was her responsibility to inform Teachers' Pensions of her re-employment following retirement. Further, the Limitation Act 1980 does not prevent recovery of the overpayment of pension by Teachers' Pensions.

## DETAILED DETERMINATION

### Relevant Scheme regulations and literature

1. The Teachers' Pensions Regulations 1997 (the **Regulations**) provide 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 (Regulation E14). 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).
2. Regulation H3(4) states:

"Without prejudice to paragraph (2) a person who has become entitled to payment of a teacher's pension and who takes up employment such as is described in regulation E14(1) shall-

  - (a) within 14 days of taking up such employment notify the Secretary of State giving details of the salary in the employment; and
  - (b) within 14 days of any change in salary notify the Secretary of State."
3. Leaflet 192 (November 1998) is a booklet entitled "Returning to work after age or premature retirement". It sets out the type of work that will and will not affect a pension and also covers part-time work and supply work. It describes the salary of reference and - via worked examples - demonstrates the circumstances in which a pension will be reduced or suspended. Under the heading 'Introduction' the leaflet says:

"A teacher must inform Pensioner Call Centre immediately upon a return to work. Failure to do so could result in the annual pension being overpaid and the teacher will then be required to repay that sum. If any amount remains unpaid at the end of the tax year, the annual pension for the following tax year will be reduced accordingly....**We cannot emphasise too strongly the importance of this action.**"

4. Further, under the heading 'The Certificate of Re-Employment', the leaflet says:

“A certificate is sent to all teachers with the retirement award papers...On commencement of re-employment, part A of the Certificate [of Re-Employment] should be completed by the teacher and forwarded to the employer for completion and submission to Pensioner Services...”
5. The Limitation Act 1980 provides timescales by which an action must have commenced where a breach of the law has occurred. Ordinary breaches of contract are actionable for six years after the cause of action accrued as are actions to recover sums recoverable by statute. Section 32(1) of the Limitation Act 1980, entitled “Postponement of limitation period in case of fraud, concealment or mistake” states that:

“(1) ..., where in the case of any action for which a period of limitation is prescribed by this Act, either—

  - (a)...
  - (b)...or
  - (c) the action is for relief from the consequences of a mistake;

the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it.”

## **Material Facts**

6. Ms Barton retired from teaching with Norfolk County Council (the **Council**) on 31 August 2000 at the age of 58.
7. Before she retired, Ms Barton completed an application for premature retirement benefits, which she signed on 31 May 2000. The application form was accompanied by Leaflet 192 (November 1998). Her premature retirement benefits under the Scheme came into payment on or around 31 August 2000.
8. Ms Barton returned to teaching with the Council on 18 January 2001 as a supply teacher. The Council contacted Teachers' Pensions on 17 January 2001 to inform them that Ms Barton had undertaken temporary teaching duties that could affect her pension. Teachers' Pensions wrote to Ms Barton on 2 February 2001 saying that, if her earnings from teaching exceeded the limit set out in the letter, Ms Barton should complete a Certificate of Re-employment and send it to them.

9. Ms Barton then returned to full-time teaching with the Council from March 2002 to April 2005. Ms Barton's salary during the period of full-time teaching exceeded the salary of reference and a period of overpayment of pension accrued.
10. Since August 2005 Mrs Barton has worked in part-time teaching employment.
11. Teachers' Pensions became aware of the possibility that Ms Barton had returned to teaching employment with the Council in January 2009. In the subsequent five years Teachers' Pensions sent Ms Barton a number of letters asking her to complete Certificates of Re-employment. The only response I can see is a hand-written note from October 2013 where Ms Barton says she has been unable to login to the internet portal and so she asks Teachers' Pensions to send a copy in the post (which was duly done on 25 October 2013).
12. Ms Barton did not inform Teachers' Pensions of any of her re-employment with the Council from March 2002 to April 2005. It follows that she did not complete any Certificates of Re-employment in respect of that period of re-employment..
13. Teachers' Pensions say that because they received no response from Ms Barton by early 2014, they acted on the basis of the data they had received from the Council and ascertained that Ms Barton had been overpaid pension. Teachers' Pensions informed Ms Barton of the level of these overpayments in their letter of 17 January 2014. Teachers' Pensions have pursued recovery of the overpayments since then.
14. Shortly before recovery of the overpayments began, Teachers' Pensions agreed to reduce Ms Barton's monthly payments from approximately £350 to £147. This agreement was subject to the completion of a Means Questionnaire by Ms Barton. Ms Barton sent Teachers' Pensions a Means Questionnaire in early September 2014. The evidence provided by Ms Barton in the Means Questionnaire was rejected by Teachers' Pensions in their letter dated 18 September 2014, where they said that Ms Barton would have to pay the higher rate monthly payment (unless she made a lump sum payment up front, in which case she could continue to make the lower payment).
15. Ms Barton made a complaint to our service on 23 August 2014. We approached Teachers' Pensions for a formal response to Ms Barton's complaint, which they provided by letter dated 23 November 2014. In that letter Teachers' Pensions

defended their right of recovery of the overpayments. Teachers' Pensions also said in that letter that their investigations had revealed a further period of overpayment of pension in the tax year 2005/06, amounting to £3,401.21 (gross). Teachers' Pensions have - on 28 January 2015 - written to Ms Barton with further details about this period of overpayment of pension.

### **Summary of Ms Barton's position**

16. Teachers' Pensions' took nearly nine years to notify her that she had been overpaid pension in the period from March 2002 to April 2005 and, as such, Teachers' Pensions should be barred from recovering the overpayment on grounds of limitation.
17. She raised her concerns about being paid pension and being in full-time employment with the head teacher of her school in March 2002 and he said that he would sort it out. She therefore argues that she did not think that she needed to inform Teachers' Pensions of her re-employment/complete Certificates of Re-employment.
18. Teachers' Pensions have, in their formal response to her complaint of 13 November 2014, said that during their review of her case they conducted further investigations and discovered a further overpayment of pension in the tax year 2005/2006, amounting to £3,401.21 (gross) (Teachers' Pensions subsequently provided the calculations of the overpayment of pension in this period in their letter of 28 January 2015 and have concluded that it is £3,389.27 (gross)) She says - in her letter of 9 February 2015 - that she should be given "extra time" to repay this overpayment.
19. Teachers' Pensions agreed to recover around £147 per month from her pension (to clear the overpayment) and are now demanding £349.55 per month.
20. Teachers' Pensions' correspondence with her has been "abrasive and stressful" and "very threatening".

## **Summary of Teachers' Pensions' position**

21. Ms Barton signed a declaration on 31 May 2000 in which she said that she would inform Teachers' Pensions if she began re-employment in teaching at any time after her premature retirement. Ms Barton was, therefore, aware that she needed to inform Teachers' Pensions if she returned to work after premature retirement. She failed to do this and as such, she was in breach of the declaration.
22. Mrs Barton was also sent a copy of Leaflet 192 (November 1998) at the time of her premature retirement, so she should have been aware from considering that leaflet that she needed to complete a Certificate of Re-employment if she returned to teaching employment. Indeed, between July 2000 and January 2014, Ms Barton was provided with, or reminded of, the need to complete a Certificate of Re-employment on 18 occasions.
23. Teachers' Pensions are not an employer. As such, they rely on information relating to a member's pensionable service from other parties - namely teachers and their employers. Ms Barton was aware of her obligation to provide information of her employment post premature retirement but failed to do so, and thus Teachers' Pensions cannot be blamed for the delay in discovering the overpayment (i.e. as it related directly to the employment that Ms Barton should have kept them informed of). Had Ms Barton submitted a form on each occasion she returned to teaching employment, her pension would have been abated and there would have been no overpayment.
24. Teachers' Pensions, in setting up separate administrative arrangements to monitor abatement, had shown "reasonable diligence" as required by section 32 of the Limitation Act 1980 and, as such, the limitation period should be postponed in this case.

## **Conclusions**

25. Teachers' Pensions must administer the Scheme in accordance with the Regulations. If a pension should have been abated but was not, they are, at least in principle, entitled to seek recovery of the overpaid amount. There may be defences to recovery, but these would only apply if Ms Barton received the overpayments in

the reasonable belief they were hers to spend. Ms Barton does not dispute that she has received an overpayment of pension. However, she challenges Teachers' Pensions' right of recovery.

26. It is unclear from Ms Barton's submissions whether she was aware what was required of her in respect of the completion of a Certificate of Re-employment when she returned to teaching employment after premature retirement. Ms Barton has said that she was told by the head teacher of the school when she took the full-time teaching role in March 2002 that he would sort everything out in respect of her pension. Given the information provided to her, I take this to mean that she was probably aware of the requirement to inform Teachers' Pensions of her re-employment by completing Certificates of Re-employment, but that she thought that her head teacher had assumed responsibility for this. If that was so then it was not Teachers' Pensions' fault.
27. The onus was on Ms Barton to notify Teachers' Pensions each time she resumed teaching. The information that she had received from Teachers' Pensions at the time of her premature retirement and in the years thereafter made it clear to her that she was required to inform Teachers' Pensions when her employment changed and the requirement to complete and return a Certificate of Re-employment. Leaflet 192 (November 1998) stresses the importance that pensioners should let Teachers' Pensions know immediately on returning to work and that any failure to do so could result in an overpayment.
28. In all correspondence from Teachers' Pensions the obligation is expressed to be the pensioner's. So, although I understand that Ms Barton may have thought her head teacher in the period March 2002 to April 2005 was going to complete Certificates of Re-employment on her behalf, she ought reasonably to have been aware that it was her obligation to ensure that it was done. It follows that Ms Barton should not have relied on her head teacher's assurances alone; she should have checked that Certificates of Re-employment had been completed and, if they hadn't (as it seems was the case), she should have assumed responsibility for completing the Certificates of Re-employment herself.

29. The Limitation Act 1980 governs time limits for bringing different types of claims in the courts and the basic time limit is six years from the date when the cause of action accrued. However, under section 32(1)(c) of the Act, the limitation period is extended in the case of an action arising as a result of a mistake. If Teachers' Pensions had issued proceedings in court it would have been able to argue that its time limit for issuing proceedings against Ms Barton started to run from the date when it could, with reasonable diligence, have discovered the mistake.
30. Teachers' Pensions first demanded repayment of the overpayments from Ms Barton in their letter dated 17 January 2014. Teachers' Pensions have said that the investigations into Ms Barton's periods of re-employment took place in early 2014 when they had not received any responses to their numerous requests for completion of Certificates of Re-employment from Ms Barton, which began in 2009 (when Teachers' Pensions were provided with information from the Council in respect of her re-employment). At this time - having been unable to confirm the salary and service information with Ms Barton (as she had not completed any Certificates of Re-employment in respect of the period) - Teachers' Pensions conducted their investigations into possible overpayments on the basis of the information they had been provided by the Council. These investigations showed Teachers' Pensions that they had mistakenly made pension payments to Ms Barton in excess of her entitlement. To extend the six years, Teachers' Pensions rely on the fact that they had provided Ms Barton with information as to her responsibilities and the onus was on her to bring her circumstances to their attention.
31. I consider that "reasonable diligence" extended as far as having the requirement for Ms Barton to inform Teachers' Pensions of her re-employment and an assumption that Ms Barton would do so. In fact, they did more than that, they specifically asked her to complete certificates. "Reasonable diligence" does not require exceptional measures to be taken. I have no evidence that Teachers' Pensions knew of a probable overpayment more than six years before they informed her of it.
32. Ms Barton has also complained that Teachers' Pensions, have recently revealed a further overpayment (for the tax year 2005/06, amounting to £3,389.27 (gross)). It seems possible that this could have been identified earlier – at the same time as the



original discovery of overpayments. But as with the original discovery., it would still have been pursued within a six year period from when it could have been discovered.

33. Ms Barton has also complained that Teachers' Pensions agreed to recover the overpayment at the rate of £147 per month and are now demanding £349.55 per month. I cannot see that Teachers' Pensions firmly agreed to repayments of £147 per month. Teachers' Pensions said, in their email to Ms Barton of 16 May 2014, that they would only agree to keep the level of £147 per month in place if Ms Barton completed a Means Questionnaire (and, presumably, the Department for Education subsequently accepted Ms Barton's evidence of hardship set out in it). Teachers' Pensions received a Means Questionnaire from Ms Barton and responded on 18 September 2014. (I don't know why, in their response of 13 November 2014, Teachers' Pensions say they had not received this.) The response rejects Ms Barton's hardship application; it gives her the option to repay the overpayments by paying £351.38 per month over the next 36 months or continue to pay £147.27 per month for the next 30 months and pay a lump sum now of £6,123.12. In light of the fact that another overpayment (of £3,389.27) has now been identified, Teachers' Pensions should reconsider the evidence provided by Ms Barton in that Means Questionnaire on the basis of the new total overpayment figure.
34. Finally, Ms Barton has also said that she has been dealt with badly by Teachers' Pensions. She has said that their correspondence has been "abrasive and stressful" and "very threatening". I do not find this to be the case. In the years prior to 2014 Teachers' Pensions sent Ms Barton a number of letters about her re-employment, requesting completion of Certificates of Re-employment. These letters were sufficiently polite and gave Ms Barton all the necessary information she needed to act on their request. In the period after communication of the overpayment in 2014, Teachers' Pensions communicated with Ms Barton by both email and letter. In both methods of communication Teachers' Pensions made it clear that they would act to recover the overpayments - as they are entitled to do - but did so in a manner that could not be described as abrasive or threatening. Indeed, they have - on a number of occasions - clearly signposted where Ms Barton can seek further

information/support and what measures she can take to try and reduce her overpayments.

35. For the reasons set out above, I do not uphold Ms Barton's complaint.

**Tony King**

Pensions Ombudsman

18 February 2015