

Determination by the Pensions Ombudsman

Applicant	Mr Kevin Morris
Scheme	Teachers' Pension Scheme (TPS)
Respondent	Teachers' Pensions

Complaint summary

Mr Morris complains that Teachers' Pensions incorrectly decided not to allow him to re-join the TPS and transfer his accrued pension rights from the Local Government Pension Scheme (**LGPS**) into it.

Summary of the Ombudsman's determination and reasons

The complaint should not be upheld. Mr Morris was not eligible to be an active member of the TPS. He was only very briefly misled to think that he could re-join.

DETAILED DETERMINATION

Eligibility for the TPS

1. Parts 1, 2 and 3 of Schedule 2 to the 2010 Regulations set out who may be in pensionable employment under TPS. They are reproduced in Appendix 1 to this document.

Material Facts

2. Mr Morris is a deferred pensioner in the TPS with 23 years 221 days of pensionable service which was accrued whilst working for several establishments in the maintained, independent and higher education sectors between 1 September 1987 and 31 August 2012.
3. In September 2012, Mr Morris accepted a post that was pensionable in the University Superannuation Scheme (**USS**). He applied to transfer his accrued TPS rights to the USS but decided not to proceed with it.
4. In January 2014, the London Borough of Camden (**the Borough**) employed Mr Morris as Head of Secondary School Improvement. Details of the role are reproduced in Appendix 2 to this document. In this post (which was pensionable in LGPS), Mr Morris worked in an advisory capacity in schools across the Borough.
5. On 20 January 2014, Mr Morris sent an e-mail to Teachers' Pensions to inform them that he was now working for the Borough. He also asked them if they would let him re-join the TPS instead of having to become a member of the LGPS.
6. During a telephone conversation on the following day, Teachers' Pensions informed Mr Morris that it was the Borough's responsibility to establish eligibility for TPS membership. Mr Morris replied that the Borough had no problems with him re-joining the TPS but said that the final decision rested with Teachers' Pensions.
7. On 22 January, the Borough informed Capita (their "Employment Relationship Manager" (**ERM**) for Teachers' Pensions) that Mr Morris had put forward that he was eligible to re-join the TPS. It was their understanding, however, that as Mr Morris had been recruited on "Soulbury" terms and conditions of employment that he was only eligible for membership of the LGPS. Their ERM replied that:

- if Mr Morris was working for the Borough, there was no reason why he should be in the TPS; and
- if he did not teach, he was ineligible to re-join the TPS because the only members who did not have to teach were those who have had a natural progression via teaching into school management.

8. On 23 January, the Borough sought confirmation from the ERM that their reply was applicable to Mr Morris and received a positive response.
9. Mr Morris made further calls to Teachers' Pensions on 23 January. During them a Contact Centre Manager (**CCM**) told him that there had been a change to the 2010 Regulations which would allow him to become a member of the TPS and transfer his accrued LGPS pension rights into it. Whilst the call was taking place, the CCM had sought the advice of the Teachers' Pensions Employer Group (**the Group**) on this matter and passed their response to Mr Morris.
10. The Group had unfortunately misconstrued changes in the 2013 School Teachers' Pay and Conditions Document (**STPCD**) as being relevant. These changes were described as "Regulatory Changes in September 2013" in an Association of Teachers and Lecturers (**ATL**) newsletter and did not apply to Mr Morris. According to this newsletter:

"From September all advanced skills teacher (**AST**) and excellent teacher (**ET**) post will be abolished. Schools will be able to replace them with a leading practitioner (**LP**) post. All ASTs and ETs who are not given LP posts should be placed on the upper pay scale and received a safeguarded sum for the next three years.

If your school decides to create a LP post, existing ASTs or ETs may be appointed to this post. The primary purpose of the LP post is to "model and lead improvement in teaching skills". LPs must be an exemplar of teaching skills and take a leadership role in developing, implementing and evaluating policies and practice that contribute to school improvement. Their role may include: coaching or mentoring; sharing material or advising on practice, research or CPD; demonstration lessons, classroom observation; or helping teachers experiencing difficulties. LPs will be paid on a range identical to that of the current AST pay scale."

11. Mr Morris received an e-mail dated 23 January from the Borough subsequent to the calls informing him that Capita had told them he was only eligible to join the LGPS. He forwarded a copy of this e-mail to the CCM who had spoken with him to seek clarification on the conflicting information provided.
12. Teachers' Pensions replied on 5 February that:
 - there were no changes made to the 2010 Regulations on 1 September 2013;
 - some changes were made to the salary structure for teachers in England and Wales (see paragraph 10 above for details);
 - as Mr Morris was not currently employed as an AST or ET in a particular school, the changes to the salary structure did not apply to him; and
 - membership of the TPS was therefore not appropriate to his current employment.
13. Mr Morris was dissatisfied with this response and made a complaint under the Internal Dispute Resolution Procedure (**IDRP**) to Teachers' Pensions.
14. Teachers' Pensions apologised to Mr Morris for their mistake but did not uphold his complaint.

Summary of Mr Morris's position

15. The decision made not to allow him to re-join the TPS is an arbitrary one relying heavily on the interpretation of his role against the eligibility criteria specified in the 2013 STPCD document.
16. He managed a team of "secondary advisory" teachers who were paid under Teachers' Pensions conditions of service and they were members of the TPS. They had a similar role to his and, like him, were not designated LPs. This point raises questions about "equality and equity" when his assistants were eligible to join the TPS (which he considers a better scheme than LGPS) whilst he was not.
17. His position was a senior one which included an element of teaching. His responsibilities were similar to those of a headmaster's and a significant part of his

job was to “model and lead the improvement of teaching skills” across schools in the Borough. This responsibility was also part of the LP role.

18. Teacher’s Pension should not be allowed to inform him that he could re-join the TPS and then to retract the offer on the basis that this option was not available to him. The fact that he was given incorrect information by the CCM, in his opinion, suggests that there had been an implied breach of contract.
19. In some of his previous higher education positions, which were pensionable in the TPS, the focus of the role was not teaching but on other activities. It is inconsistent of Teachers’ Pensions to allow higher education staff membership of the TPS but not a local authority employee like him who is still involved in teaching.

Summary of the position of Teachers' Pensions

20. The TPS exists primarily for teachers and lecturers in maintained schools and the further education sector. If the post holder is a teacher, he/she may contribute to the TPS. Where a post combines both administrative and teaching duties, it is the main duties that should determine whether TPS or LGPS is the appropriate scheme.
21. In Mr Morris’ case, the Borough was responsibility for deciding whether his post was pensionable in LGPS or TPS. The decision had to be taken in accordance with the provisions of 2010 Regulations, specifically Part Two and Schedule Two.
22. It is not possible for those employed in advisory roles by a local authority (such as Mr Morris) to be a member of the TPS or to choose between LGPS and TPS membership.
23. As Mr Morris was not employed as an AST or ET in a particular school, the changes made in September 2013 to the salary structure for teachers in England and Wales did not apply to him and membership of the TPS was therefore not appropriate.
24. The Borough was correct to place Mr Morris to the LGPS and to query his suggestion with their ERM that it was possible for him to re-join the TPS.
25. It is generally accepted that the provisions of the TPS and LGPS are broadly similar.

26. Head teachers who have no designated teaching role are eligible to remain in the TPS because they are essentially employed on teaching contracts. Becoming a head teacher is a natural career progression for a classroom teacher. Although advisers require the same “grounding” in teaching, the role is not part of the natural career progression in the profession. It is possible for a head teacher to “step down” to a teaching role within the school in which he/she is employed. If Mr Morris wished to step down to a post of less responsibility, it would be within the Education department of the Borough and he would not automatically become a classroom teacher again.
27. If, as Mr Morris asserts, there are some Borough employees with non-teaching contracts who are members of the TPS, he should provide them with details so that corrective action can be taken to enrol them in LGPS and inter-fund adjustments made to correct their pension positions.

Conclusions

28. Eligibility for membership of the TPS is covered in the 2010 Regulations and there was no change to these on 1 September 2013. There is no category of employment in the 2010 Regulations that would apply to Mr Morris so as to qualify him for membership, taking into account the description of his job. (The references to “teacher” in the 2010 Regulations, do not simply apply to qualifications, but to duties.)
29. Mr Morris suggests that there may be anomalies. But the critical issue is whether he is eligible to join the TPS and I find he is not.
30. Teachers’ Pensions provided Mr Morris with incorrect information during the telephone conversations on 23 January 2014. He should have been given the correct information and the failure to do so is clearly maladministration on the part of Teachers’ Pensions.
31. Although Mr Morris was incorrectly told that he was eligible to re-join the TPS on the basis of his new role and that it would be possible to transfer across any monies already paid into LGPS, it does not confer on him a right to choose this option which was not available to him.

32. If he had acted to his detriment based on a reasonable belief that he was entitled to re-join the TPS might he then be compensated for the harm. But Mr Morris did not make a decision based on the flawed information. He had already taken up the post with the Borough when he was given it. His acceptance of the post was therefore clearly not influenced by membership of the TPS.
33. I do not therefore consider that Mr Morris has suffered any financial loss as a consequence of the error.
34. I have considered whether the disappointment that Mr Morris presumably suffered on finding out that he was not eligible justifies compensation. Given that it was only from 23 January to 5 February that he could have thought that he had succeeded in his efforts to re-join, I find that no compensation is due.
35. I do not uphold the complaint.

Tony King

Pensions Ombudsman

30 January 2015

APPENDIX 1

Part 1

Employments pensionable without election

- 1 Teacher employed by:
 - (a) a local authority in connection with its education functions,
 - (b) a local authority in a school which the authority maintains,
 - (c) the governing body of a school maintained by a local authority, or
 - (d) an institution providing further or higher education (or both) maintained by a local authority.

- 2 Teacher employed:
 - (a) in an Academy school, alternative provision Academy, city technology college or a city college for the technology of the arts by the proprietor of such a school,
 - (aa) in a 16 to 19 Academy by the proprietor of the Academy, or
 - (b) by the sponsor of a proposed Academy, and in this paragraph "sponsor of a proposed Academy" means any person who approaches the Secretary of State expressing an interest in establishing and maintaining an Academy with a view to creating a charitable company limited by guarantee and which company it is proposed will then enter into an Academy agreement as defined in section 1 of the Academies Act 2010.

- 3 Teacher employed by the proprietor of, or anyone else concerned in the management of, an accepted school (other than a teacher employed at an accepted school which is a member of COBISEC and is located in a member State other than the United Kingdom).

4 Teacher employed by a function provider in connection with the performance of a function or service in respect of which the function provider is accepted in accordance with regulation 14 (accepted function providers).

5 Teacher employed by the proprietor of, or anyone else concerned in the management of, a special school that is not maintained by a local authority.

6 Teacher employed by the governing body (as defined in section 90 of the Further and Higher Education Act 1992) of an institution^{3/4}

(a) which is within the further or the higher education sector (as defined in section 91 of that Act), and

(b) to which grants are made by the Secretary of State or the Welsh Ministers, a body to which grants are made by the Secretary of State or the Welsh Ministers,

other than:

(i) a university or a college of a university,

(ii) the Royal College of Art, and

(iii) the establishment which, when teachers were employed there for the purposes of the Ministry of Defence, was known as Welbeck, the Defence Sixth Form College.

7 Teacher employed by a university established on or after 6th May 1992 which, immediately before it became such fell within paragraph 6(a) or (b).

8 Teacher employed by the proprietor of:

(a) a community home as defined in section 53 of the Children Act 1989,

(b) a voluntary home as defined in section 60 of that Act, or

(c) a home provided in pursuance of arrangements under section 82(5) of that Act.

9 Teacher employed by a local authority or by a voluntary organisation in an establishment which provides facilities under arrangements approved under section 66 of the Powers of Criminal Courts (Sentencing) Act 2000.

10 Teacher employed by the Secretary of State or the Welsh Ministers in a special hospital provided by the Secretary of State or the Welsh Ministers under section 4 of NHSA 2006 or section 4 of NHSWA 2006.

11 Teacher employed for the purpose of instructing, training or superintending the occupation of persons suffering from mental impairment, severe mental impairment, psychopathic disorder or mental illness:

(a) by the Secretary of State or the Welsh Ministers in a hospital provided by the Secretary of State or the Welsh Ministers under NHSA 2006 or NHSWA 2006,

(b) by a voluntary organisation to which financial assistance is given by a local authority or facilities are made available under section 12 of NHSA 2006 or section 10 of NHSWA 2006, or

(c) by a local authority in the exercise of its functions under paragraph 2 of Schedule 20 to NHSA 2006 or paragraph 2 of Schedule 16 to NHSWA 2006.

12 Teacher employed by the Secretary of State in a European School (that is to say an establishment such as is described in article 2 of the European Communities (European Schools) Order 1972).

13 Organiser employed as a youth and community worker by a local authority in the exercise of its functions under sections 15, 507A, 507B or 508 of EA 1996.

14 Teacher employed by the Field Studies Council.

14A An accepted member employed by an accepted employer.

Part 2

Employments pensionable on election

15 Teacher employed by the proprietor of an institution for the further education and training of disabled persons.

16 Teacher, supervisor or youth worker employed for the purposes of the Ministry of Defence in service with, or for purposes connected with, the armed forces of the Crown unless:

(a) the employment is pensionable under the Principal Civil Service Pension Scheme, or

(b) the teacher, supervisor or youth worker was engaged outside the United Kingdom and was not previously in pensionable employment.

17 Organiser employed by:

(a) a diocesan board of education established under the Diocesan Boards of Education Measure 1991;

(b) a body affiliated to the National Open College Network;

(c) a Roman Catholic diocesan schools commission.

(d) the Inspiring Futures Foundation;

(e) the Royal National College for the Blind;

(f) the Stapleford Centre.

Part 3

Employments pensionable on election with employer consent

18 Teacher employed in, or in connection with, an establishment for providing social or physical training for which grants are made by the Secretary of State, the United Kingdom

Sports Council, the English Sports Council or the Sports Council of Wales whose principal duty is to attend the establishment and provide the training or supervise its provision.

19 Teacher employed by a person to whom grants are made by either the Secretary of State or a local authority in exercise of education functions in respect of expenditure incurred for the purpose for which the teacher is employed.

20 Organiser employed by:

(a) the United Kingdom Sports Council,

(b) the English Sports Council,

(c) the Sports Council for Wales, or

(d) any other person, other than a local authority, to whom grants:

(i) are made by any of those Councils or by a local authority in exercise of education functions, or

(ii) are or have been made by the Secretary of State or the Welsh Ministers,

in respect of expenditure incurred for the purpose for which the organiser is employed.

21 Organiser employed as a youth and community worker by a body to which grants are made by a local authority in the exercise of its functions under sections 15 or 508 of EA 1996.

22 Organiser employed by:

(a) Action for Blind People;

(b) the Association of Christian Teachers;

(c) the Association of Business Schools;

(d) the Assessment and Qualification Alliance;

- (e) the City and Guilds of London Institute;
- (f) the Catholic Education Service;
- (g) EMFEC;
- (h) the Field Studies Council;
- (i) Macmillan Cancer Support;
- (j) the North East Religious Learning Resources Centre Limited;
- (k) the North of England Institute for Christian Education;
- (l) SCOPE.

23 Teacher employed by a university who was employed by an institution mentioned in paragraph 1(d) or 6 immediately before the institution became part of the university.

24 Teacher or organiser employed by a body formerly falling within paragraph 19, 20 or 21 which is a non-profit-making body whose principal source of funding is fees paid by a local authority.

25 Teacher employed by the proprietor of, or anyone else concerned in the management of, an accepted school which is a member of COBISec and located in a member State other than the United Kingdom.

APPENDIX 2

Job Summary

Head of Secondary School Improvement

One year fixed term contract from January 2014

We are looking for an outstanding candidate to join Camden's leadership team to work within a highly successful school system...to help us to collectively design a learning community that will transform existing strengths to a new level of excellence in pupil outcomes.

As a professional with a highly successful career in headship or as a leader in a successful school improvement organisation you will have raised standards and quality whilst engaging and motivating delivering the changes and improvements. You will be able to contribute to a system design for school to school improvement in Camden while also working with schools and your team to drive up standards so that all schools are good or outstanding...

You will join an impressive team of leaders in the Council and in schools and a school system who are united in striving to have the best schools in the country as soon as possible.

Requirements

- Qualified teacher status
- Experience as a secondary head or equivalent and delivering through others
- Expert knowledge of learning, teaching and curriculum and school leadership development and being on top of recent developments
- Ability to provide strategic leadership, line management and robust performance management to individuals and teams
- Expert knowledge of learning, teaching and curriculum and school leadership development and being on top of up and coming developments
- Track record of raising standards and supporting schools to close the gap.

