

Ombudsman's Determination

Applicant	Mrs Janice Roberts
Scheme	Teachers' Pension Scheme (the Scheme)
Respondent(s)	Teachers' Pensions

Complaint summary

Mrs Roberts has complained that Teachers' Pensions caused delays and provided incorrect information with regard to her application for Additional Service after Retirement (**ASAR**) benefits, which resulted in a rejection of her application. She asks that she now be given a backdated award.

Summary of the Ombudsman's determination and reasons

The complaint should be upheld as, while she sent the incorrect forms, Teachers' Pensions failed to respond to Mrs Roberts' initial application. Although that application was invalid they still should have responded to it. Had they done so Mrs Roberts could have submitted another ASAR claim in time to claim her benefits earlier than when she finally did in July 2013.

DETAILED DETERMINATION

Material Facts

1. Mrs Roberts was made redundant from teaching in 2005 and claimed her Scheme benefits at that time, being eligible to draw them. She later returned to supply teaching after a break of service and re-joined the scheme in January 2007.
2. She reached age 60 in January 2013 and wanted to claim the further benefits she had accrued since 2007 but also to continue with supply work and opt-out of the Scheme. Mrs Roberts says she made enquiries with both the human resources team at her employer, Shropshire County Council (**the Council**), and Teachers' Pensions at this time.
3. Mrs Roberts called Teachers' Pensions on 30 January 2013. She queried the process she needed to go through to claim ASAR benefits. She was told about the need to take a break in service and that she should also complete an opt-out form for the day she returned to employment.
4. The Council agreed to a "retirement date" of 12 February 2013 with reinstatement to employment on 1 March 2013.
5. Mrs Roberts received a form from the Council. A note added to the form said that they were enclosing the "TP retirement form" and that Mrs Roberts needed to complete Part A of this form and return it to Teachers' Pensions.
6. Mrs Roberts says that she sent in that form to Teachers Pensions by 12 February 2013. The form was signed on 25 February 2013 and Teachers' Pensions have date stamped receipt of the form on 27 February (this later date of 25 February appears to be correct as detailed in my conclusions). She also submitted her opt-out form and her application for reinstatement effective from 1 March 2013 to her employer and Teachers' Pensions (as appropriate).
7. However the form that Mrs Roberts returned was actually the AGE/APP form, which is for an "Age Retirement application", with the last date of pensionable employment being entered as 15 February 2013. (Part B of this form should have been completed by her employer but it appears that this was never done and Mrs Roberts returned Part A of the form directly to Teachers' Pensions.)

8. The form she had needed to return was the ASAR/ APP form, which also had a Part B that needed to be completed by the employer. The notes to the AGE/APP form said that members should avoid enquiring about the progress of their award. Further notes say that receipt of the form would be acknowledged and members would be notified about their benefits before they are due. Also the form said that the papers would be returned if all the relevant parts were not completed.
9. Our service has a copy of ASAR form. The notes to the form say that to qualify for retirement benefits members will need one year of pensionable employment since a previous retirement. And that if the member was in pensionable or excluded employment at the time of the application then their benefits will be paid from the day after their last day of pensionable or excluded employment, or their 60th birthday, whichever is the later. If they were not in pensionable or excluded employment (and the date entered is less than six weeks after the date in Part A) Teachers' Pensions would assume a payable date of six weeks after the date in Part A (the date asked for in Part A of the form is the last date of pensionable employment relevant to the Scheme). However if the member returned to pensionable employment before the payable date their application will be invalidated.
10. Mrs Roberts sent an email to Teachers' Pensions (the email address used being TPmail@Capita.co.uk) on 3 April 2013 asking for confirmation that her application was being processed. She says she received no reply to this. Teachers' Pensions say that they have no record of this email and the email address is not valid.
11. She later telephoned Teachers' Pensions on 2 May 2013 and was then told that the form she completed was the wrong one and she should have completed the ASAR form. Teachers' Pensions said they would send her the correct form.
12. Mrs Roberts says that on 10 May 2013 she received an opt-out form. She called Teachers' Pensions again on 13 May to be told that the ASAR form would be sent out but she would need to start the process again, including another break in service, but that her application would not be backdated to February. Mrs Roberts posted the forms to her employer on 20 May 2013 along with a complaint letter for Teachers' Pensions.

13. The Council also called Teachers' Pensions on 28 May 2013 to query whether a further break in employment was needed. During this call the operator said that she would check the position with a colleague. After a period on hold she replied to say she believed a further day's break would not be necessary. The Council completed the form, with a last day of pensionable employment of 12 February 2013, and sent these to Teachers' Pensions the same day.
14. On 17 June 2013 a letter from Teachers' Pensions said that in order to claim ASAR benefits Mrs Roberts was required to have left pensionable or excluded employment. Although her ASAR would have been payable on 8 April 2013 her employer confirmed that she was continuing in opted-out employment from 1 March 2013, the effective date of her election to opt-out of the Scheme. They were therefore unable to accept her application and asked that she re-apply for ASAR when a leaving date was known.
15. The stage one dispute response from Teachers' Pensions was sent on 9 July 2013. They said that they were bound by the regulations that applied to the Scheme. They quoted Schedule 7 of the Teachers' Pensions Regulations 2010 as being applicable in this case. Paragraph 2 (2) of the Schedule says:

“(2) Where a person (P) satisfies the condition for retirement following further employment, the entitlement day for Case A is the earliest of the following-

(a) if P is in pensionable or excluded employment on the day on which P makes an application under regulation 107, the day after the cessation of the employment;

(b) if P is not in pensionable or excluded employment on the day on which P makes an application under regulation 107, such day as P specifies in the application, which must be no earlier than 6 weeks after the day on which P's application is made;

(c) the date of P's 75th birthday.”

They said they could not find any evidence that they had sent an incorrect form to Mrs Roberts (this is in reference to her earlier application at the *start* of 2013). They would have been prepared to accept the date that she signed the form as the date of application for her ASAR benefits but she had signed the form on 25 February 2013, at which time she was out of “pensionable or excluded employment” as

required by Schedule 7 the earliest date on which benefits could have been paid was 8 April 2013. As she had returned to excluded employment on 1 March she had invalidated her application by the time of the payable date. It was now necessary for her to have a further break from pensionable or excluded service in order to qualify for payment of ASAR benefits. However, if she made her application while in excluded employment the break could be as short as one day.

16. Mrs Roberts resigned again on 19 July 2013 and another ASAR form was completed at that time with that date as her last date of pensionable employment. She said in a covering letter that she did this in order not to lose any more pension payments. However she intended to pursue payments for the period 12 February 2013 to 19 July 2013 that she missed out on. She resumed supply work in September 2013.
17. Her ASAR benefits were thereafter put into payment the following month but with an effective date of 20 July 2013. The pension came to £1,044.71 a year plus a lump sum of £3,139.76. This was confirmed in a letter of 5 August 2013.
18. Mrs Roberts also made a complaint against the Council around that time. They confirmed that her “retirement date” with the Council was on 12 February 2013 and that this was followed by a break in service and re-employment in supply work on 1 March 2013. They said that they did not have a copy of the original form that was completed and that it was sent by Teachers’ Pensions to her directly. They did not see it and so did not complete their section. Their view was that Teachers’ Pensions should have queried the position with either of the parties upon receipt of the form and to either request the second part of the form be completed or to explain that the wrong form has been submitted. They did complete Part B of the later form in mid-2013. They also took the view that from all the forms submitted by Mrs Roberts, such as the opt-out form, it should have been clear she intended to retire on 12 February 2013, claim her benefits and then return to employment.
19. The Department for Education stage two dispute response was sent on 17 January 2014. They concurred with the earlier view of Teachers’ Pensions. They also said that if Mrs Roberts had not returned to work on 1 March 2013, and Part B of the AGE APP form had been received, it would have been possible, on the subsequent

receipt of the correct application form to exercise discretion and accept the date Mrs Roberts signed the original form as the date of her application. It was the combination of completing the application form while out of service and returning to work before the payable date of her ASAR benefits that invalidated her application. They turned down her appeal on the basis that the Scheme's regulations had been applied correctly.

Comments from the Council

20. Our service contacted the Council, who is not a respondent to the application, in relation to a submission from Teachers' Pensions to ask whether a further application from Mrs Roberts around early March 2013 for another break in service was likely to have been approved.
21. They responded to say that Mrs Roberts was doing supply work both prior to 12 February 2013 and after her return on 1 March 2013 and therefore there was no obligation for Mrs Roberts to accept the work, or be offered any work. Consequently she could have requested a break in service and they could have processed her record as a leaver at any time.

Summary of Mrs Roberts' position

22. She retired on 12 February 2013 and applied for her additional pension on the form provided. This subsequently proved to be an incorrect form. There were delays by and incorrect information from Teachers' Pensions and finally a rejection of her application. The injustice is the loss of approximately five months of additional pension benefits. To put things right she asks for the payment of the lost pension.
23. Mrs Roberts has provided my office with an itemised telephone bill. This shows telephone calls to Teachers' Pensions on 23 and 30 January 2013 as well as to the Council immediately afterwards.
24. She had originally thought that the incorrect form had been provided by Teachers' Pensions. But it now appears that it was given to her by the Council's HR team. She also thought initially that she had sent all the initial paperwork back via her employer but it now appeared she had sent it directly to Teachers' Pensions.

25. She had discussed with Teachers' Pensions the procedure for claiming ASAR. As she was already over 60 she was told that it would not be backdated so she decided to claim it from her last expected day in February. She believes that she had completed all the relevant forms by 12 February 2013 and the date of 25 February with her signature is an error on her part. She adds that in a telephone call of 16 May 2013 she was told that the forms had been scanned onto the Teachers' Pensions system on 27 February 2013 but that they would have been received some time before that. This implied that they had the form in their possession for some time.
26. Teachers' Pensions did not acknowledge receipt of her original application. Had they done so she could have re-applied promptly. They also failed to respond to her email of 3 April 2013 asking for acknowledgment that her pension was being processed. She had waited before contacting them as Teachers' Pensions had said that chasing progress could actually delay matters. They had had the incorrect form since at least 27 February 2013 but had not informed her it was the wrong form until she rang them on 2 May 2013. During this period she was losing her pension entitlement. She questions whether they ever would have contacted her if she had not telephoned them. In addition it should have been clear to Teachers' Pensions from their records that she was already in her receipt of her benefits since 2005 and so must have been trying to claim the benefits accrued since then.
27. In relation to the role of her employer if they did send the wrong form then this was the primary problem. However she did not wish to make them a respondent to her complaint. And there was still a total lack of response from Teachers' Pensions to acknowledge the initial application. She may have lost a small amount of pension while she reapplied but the problem was compounded by Teachers' Pensions' failure to acknowledge and delays. While it may not have been possible to prevent her returning to work by 1 March she could have returned to work and then immediately retired for a single day to meet their requirements. Her employer was extremely accommodating and she was only working on a casual/ supply basis and the arrangement was flexible.

28. It was not right that she had to take another break in service. This was unfair not just on her but her school and HR team.
29. Her employer had been given incorrect information by Teachers' Pensions in the telephone call of 28 May. They relayed that incorrect information onto her verbally after the call. As a result she thought that the retirement date of 12 February 2013 would stand.

Summary of Teachers' Pensions' position

30. They had reviewed the telephone calls made by Mrs Roberts. Nothing was said within these calls that resulted in an application form being sent to her before May 2013, with the first two calls being terminated before she spoke to an operator. It appeared that that the AGE retirement form had been sent to Mrs Roberts by her employer and not them, based on the note that accompanied the form. While a later call made mention of an incorrect form being sent this was in relation to the opt-out form sent in May 2013. Also if an AGE APP form had been sent by them in early 2013 then there would have been a record of the letter sent on their systems. Had it been Teachers' Pensions that sent an incorrect form then they would have accepted it and it would have been possible to apply the date she signed the original form to her later application on the correct form.
31. Much of the problem stemmed from the way the application was made – with Part A of the form being sent to her by her employer who said that they had sent Part B, instead of the application being initiated by the teacher completing Part A and sending the form to the employer for the completion of Part B.
32. They believe that Mrs Roberts did sign the AGE APP form on 25 February 2013. Another form for backdated service (this related to a separate issue over missing service on her record from early 2007) was signed on the same date and both these forms were received on 27 February.
33. In her complaint submission letters Mrs Roberts notes advice from both Teachers' Pensions and the Council on the steps she should take. At the top of both lists she noted to "apply for pension" first before completing any other forms or taking a break in service and requesting reemployment. But despite this she did not take this step until the end.

34. Part A of the AGE APP form was received on 27 February but Part B has never been received. No action was taken on Part A, since an “application” constitutes both parts of the form (except where the teacher has been out of service for more than a year in which case an attestation is needed) and so Part A was invalid without the second part. An acknowledgement would have been issued on receipt of the entire form and so as far as they were concerned no application had been made. The reference to the application being returned if any part of it is incomplete refers to a section of the form, such as the last day of pensionable employment, being left uncompleted. This would be picked up when the entire form was received.
35. Even if the entire form had been received on 27 February 2013 it would not have been possible for them to advise her that she had completed the wrong form in time to prevent her return to work on 1 March 2013. Similarly if the correct form had been received, fully completed, then again there was not enough time to do anything.
36. They have no record of receiving an email from Mrs Roberts on 3 April 2013. Automatic acknowledgements are sent to all incoming emails. The email address “TPmail@Capita.co.uk” was not a valid email address and the correct address was “TPmail@teacherspensions.co.uk”.
37. They accept that an opt-out form was sent in error to Mrs Roberts on 2 May 2013 but this made no difference to her situation.
38. They received Part A and Part B of the ASAR form on 4 June 2013. Her last day of pensionable service was given as 12 February and this application was correctly rejected. Because Mrs Roberts had submitted her application after leaving service on 12 February the payable date of her ASAR benefits would have been six weeks after that date – 8 April 2013 – but her application had been invalidated by returning to employment before that date.
39. In early July 2013 Mrs Roberts’ record showed she had left pensionable teaching service on 12 February 2013. That meant that she was out of pensionable and excluded service at the time she completed her first application form. On her second form she put 15 February 2013. Both pre-date the date that she signed the application form (the first form was signed on 25 February 2013).

40. Mrs Roberts' service record was subsequently amended on 23 July 2013 to show that she continued in pensionable service until 28 February. She therefore had not left teaching employment when she first applied for her ASAR benefits. She opted-out of the Scheme with effect from 1 March 2013, so entered excluded employment on that date. In accordance with the Regulations if she had completed the correct application form on 25 February 2013, and her record had been in its correct state at that time, her ASAR benefits would have become payable from the day she left the excluded employment. That is the date from which her retirement benefits were put into payment, so completion of the correct form in February would have made no difference.
41. As the further ASAR form from July 2013 gave the last day of excluded employment as 19 July 2013, the payable date of the benefits was 20 July.
42. It was accepted that the information given to the Council in the call of 28 May 2013 was incorrect. However the information given to Mrs Roberts in her call of 13 May 2013 was correct. And in any event even if the information in the call of 30 May 2013 had been correct and the last day of pensionable service was accepted as 12 February 2013 ASAR benefits could not be paid as Mrs Roberts had returned to service by 8 April 2013.
43. While Mrs Roberts has said that an early contact from Teachers' Pensions would have enabled her to retire for a single day shortly after 1 March 2013 and then return to teaching this would have required her to resign from her employment, giving very little notice to her employer, with no guarantee that she would have been successful in applying once again to be reinstated.
44. They aimed to process retirement applications by the payable date whenever possible. However if an application is received with less than ten working days before the payable date, they aim to process the application as soon as possible but at least within ten working days from the date of receipt. Retirement benefits are always paid from the payable date in accordance with the Scheme's Regulations. If the payable date has passed then the benefits are backdated with arrears.

Conclusions

45. It appears that Mrs Roberts now accepts that the initial incorrect form (the AGE APP form) was sent to her by the Council. For the avoidance of any doubt I find that this was the case, based on (i) the written notes added to that form, (ii) that Teachers' Pensions have no record of sending any letter to her enclosing that form, (iii) that a form for backdated service was also received by Teachers' Pensions on that same date (27 February and they were likely to have been sent together) and (iv) neither of the January 2013 telephone recordings provided to my office make any reference to their intention to send ASAR forms to Mrs Roberts.
46. It follows from this finding that there is no need for Teachers' Pensions to consider an ASAR retirement date of 12 February 2013 as they did not send Mrs Roberts the incorrect forms. For the sake of completeness Teachers' Pensions also did not give any incorrect information about the ASAR application process at that time.
47. So it appears that the initial fault lay with her employer. But Mrs Roberts does not want them added to her application to our service. She instead wants us to look at the role of Teachers' Pensions once the AGE APP form was received by them, which she says prevented her from immediately making the correct ASAR claim.
48. Teachers' Pensions say that they would not acknowledge receipt of a form where only part of it was received. Further that the application was invalid but again they would not draw this to a member's attention. Mrs Roberts waited patiently for some time due to the AGE APP notes asking members not to chase progress of the application. I think that based on the wording of the notes given with that form she was entitled to both expect and wait for a response from Teachers' Pensions, including a response telling her that there was a problem with the form (if that was indeed the case). I will add here that I accept that Teachers' Pensions did not receive Mrs Roberts' email of 3 April 2013. That was unfortunately sent to an out of date email address. So her first contact with them since sending the form was on 2 May 2013.
49. Mrs Roberts had obviously completed the wrong form. That application was invalid and could not be processed. But I have trouble accepting the reasons that Teachers' Pensions have put forward for not communicating this with her. In my

view it was maladministration for them to simply do nothing on receipt of the forms. At the very least I would have expected them to say that Part B of the form had not been received and the application could not be considered until it was. I therefore uphold the complaint against Teachers' Pensions.

50. Mrs Roberts has also advanced that it would have been clear to Teachers' Pensions what she was trying to do. In my view with all the information that was available to them I accept that it should have been clear what she wanted. She had been in receipt of her first tranche of Scheme benefits since 2005 (hence the need for a retirement application form would be redundant) and they knew that she accrued further benefits from 2007. She also gave details of her last date of pensionable employment and they had her opt-out form with an effective date of 1 March 2013 given. It would have been clear that ASAR was being sought (there were also the two recent January 2013 telephone calls from her querying how to go about this).
51. But while I think it would have been clear to Teachers' Pensions that the wrong forms had been submitted, and they should have contacted Mrs Roberts in relation to this, it does not change the fact that an invalid application had been made by her. The considerations then become (i) when would Teachers' Pensions have responded to her, (ii) would her employer have accepted another break in service had she immediately reapplied for ASAR and (iii) when would her correct application have been submitted?

Redress and Ancillary Issues

52. In relation to the first point my view is that Teachers' Pensions should have acknowledged the form and raised an issue with it within ten working days. So Mrs Roberts could have expected a response by 6 March 2013, which was after she had already returned to employment.
53. Then we turn to the question of whether her employer would have facilitated another break in service. On the face of it Mrs Roberts' employer was very accommodating. Initially they thought in May – on the advice of Teachers' Pensions – that another break was not needed. They permitted another break in July 2013 on the third application attempt. In their response to our service they have said that

they would have allowed another break to Mrs Roberts. Given that she only worked one day a week this would not appear to have been a big inconvenience for them (and only a days' break in service was needed if the application was done correctly).

54. The question of when this could have been done, and when all the appropriate forms would have been returned, is a bit more complicated. It would be impossible to determine the exact timeframe that would have taken place.
55. With the first application Mrs Roberts started enquiries on 23 January 2013, made arrangements with her employer and Teachers' Pensions received the forms on 27 February 2013 (albeit the incorrect forms). That was when she was new to the ASAR process, which I consider would have taken longer than a later application.
56. With her second application this could be deemed to have started on 2 May 2013 when Mrs Roberts was told that she had sent the incorrect forms in and that the correct ASAR forms would be sent to her. Her forms were eventually returned on 28 May the second time. But here the waters are muddied for two reasons. First she was sent an opt-out form by mistake, causing a delay. And second incorrect information was given about the need for a break in service meaning that one was not arranged by her employer. I do not consider this a suitable timeframe for any award.
57. With the third application this took from 17 June 2013 to 19 July 2013, about a month. But here again there is a problem in that Mrs Roberts was at that time awaiting the response to her appeal, which was sent on 9 July. So she may have delayed the third ASAR application until the outcome of her appeal was known.
58. In my view the most appropriate yardstick to use is that for the third application from the point that the appeal response was given, which took from 9 July to 19 July 2013 (a period of ten days). At that point both Mrs Roberts and her employer knew exactly what was needed of them for her to apply and receive ASAR benefits. So I find that Mrs Roberts, if notified of a problem by Teachers' Pensions on 6 March 2013, could have arranged a further break with her employer and submitted the correct forms for ASAR by 18 March 2013 (16 and 17 March being a weekend), and for a break of service on that date, with the Scheme receiving it on 19 March. While

it would have taken some time for Teachers' Pensions to actually process the award it would have been backdated (for example her actual ASAR application was approved in August 2013 but backdated to 20 July).

59. Teachers' Pensions have confirmed to our service that the level of Mrs Roberts' award would have been the same had she received ASAR with an effective date of 19 March 2013. (If it had been lower I would have expected Teachers' Pensions to pay the lower amount that was due at that time, plus any pension increases that would have been awarded since.)
60. They have also said that strictly they could not give Mrs Roberts a revised award from 19 March 2013 as she was in excluded employment at that time and they are bound by the Regulations that govern the Scheme. They have suggested that a straight compensation award is made for the same amount. I agree with their proposal, and in this case compensation only relates to past amounts due.
61. I have also considered the case (as is the case in certain other applications to our service against the Scheme) from the viewpoint of whether the Department for Education could or should have exercised discretion to accept the form from an earlier date (and should be added as a respondent to the application). They said at the stage two response that they could have exercised discretion in some cases to accept the application from an earlier date. While it is correct that they have some discretion under the Regulations for the effective date from which they accept forms I do not think that they would have had any option here but to decline the initial application. The application form was completed while out of service and Mrs Roberts returned to work before the payable date of her ASAR benefits. That second point would have invalidated her application (and it was highly unlikely that another application could have been put in place before 1 March 2013). It would therefore be irrelevant whether they exercised discretion to allow any later ASAR form to be accepted as of 25 February due to the return to work a few days later invalidating the claim.
62. Incorrect information was given by Teachers' Pensions during the telephone call of 28 May 2013 via the Council. That is not in dispute and in my view is maladministration. It is debatable whether this raised Mrs Roberts' expectations that

the earlier retirement date in February would stand or caused her any injustice. First Teachers' Pensions had earlier given the correct information to her directly in the call of 10 May. And the ASAR form notes contained the correct information about when an application would be effective from. I would lean to say that the parties were entitled to believe the information given to the Council in the second call of May 2013 was correct. In any event I have found that the situation could and should have been resolved sooner than May 2013 – so this issue would not ultimately affect her claim for a backdated award and the relevant dates that apply.

63. There was also the issue with an incorrect application form opt-out form on 2 May 2013. Again my view is that this was maladministration on the part of Teachers' Pensions and will have caused Mrs Roberts some further problems, although again not to the extent that it ultimately affects when her award was, or should be via my determination, given.

Directions

64. Within 28 days of this Determination Teachers' Pensions will arrange to calculate the sum of arrears that would have been due to Mrs Roberts if she had had a ASAR retirement date of 19 March 2013. They will then pay her as a compensation sum the arrears that would have been due from 19 March 2013 to the date she was actually paid her ASAR award. This will be with interest on any past instalments of pension or cash sum to the date of payment. The interest referred to shall be calculated at the base rate for the time being quoted by the reference banks.
65. Within 28 days of the Determination Teachers' Pensions will pay Mrs Roberts £250 in respect of the distress and inconvenience caused.

Jane Irvine

Deputy Pensions Ombudsman
20 March 2015