PO-4567

Ombudsman's Determination

Applicant	Mr Stephen Gaughan
Scheme	Teachers' Pension Scheme (**the Scheme**)
Respondent(s)	Teachers' Pensions

Complaint Summary

Mr Gaughan has complained that Teachers' Pensions, the administrator of the Scheme, provided incorrect information concerning the value of his transfer into the Scheme.

Summary of the Ombudsman's Determination and reasons

The complaint should be partially upheld against Teachers' Pensions because it provided misleading information to Mr Gaughan which resulted in significant distress to him and a loss of expectation.

Detailed Determination

Scheme rules

The applicable Scheme rules are the Teachers' Pensions Regulations 2010 (as amended) (**the Regulations**).

Schedule 6 paragraph 12 says –

> (1) If
>
> (a) The previous scheme is a club scheme service under which is not comparable British service, or
>
> (b) The previous scheme is a registered pension scheme which is not a club scheme and the person has entered pensionable service after 31st December 1985
>
> The person is entitled, unless paragraph 13 applies, to count as reckonable service the period specified in sub-paragraph (2).
>
> (2) The period is one equal to the period of reckonable service that would enable the Secretary of State to pay a transfer value, calculated on an actuarial basis, of the same amount as the one accepted.
>
> (3) In calculating the period specified in sub-paragraph (2)-
>
> …
>
> (b) If sub-paragraph (1)(b) applies and the request for the transfer value to be accepted was made within 12 months after…pensionable employment the calculation is to be made by reference to the age and salary notified by the scheme managers of the previous scheme as those by reference to the transfer value accepted was calculated,
>
> (c) In any other case, the calculation is to be made by reference to the person's age, and the annual rate of the person's contributable salary, on the date on which the transfer value was received…

Material facts

1. Mr Gaughan became a member of the Scheme on 1 September 2010.

2. On 7 June 2011, Mr Gaughan asked for a transfer value should he decide to transfer his benefits from Aviva into the Scheme. On 12 August 2011, Teachers' Pensions wrote to him saying that his transfer-in benefits (of £27,587.30) would buy an "estimated service credit of 7 years 332 days pensionable service" in the Scheme. The letter went on to say –

"The transfer value offered by your previous scheme takes account of the current market conditions. If there are any delays in responding to this offer there may be an effect on the actual service credit that you receive. If you decide to proceed, a further calculation will be undertaken to determine your actual amount of service after we have received the payment from your previous provider".

3. On 2 April 2012, Mr Gaughan called the Teachers' Pensions helpline to check that the estimated service credit had not changed. He was told that the service credit was still the same and he would receive credit of 7 years 332 days. He proceeded with the transfer to Teachers' Pensions.

4. Teachers' Pensions wrote to him on 25 April 2012, to confirm that the transfer payment had been received and it would confirm the amount of service credited when the transfer was finalised. Mr Gaughan says that he checked online and discovered that the service credited to him was 3 years 294 days.

5. Mr Gaughan complained about this and Teachers' Pensions replied on 14 May 2012. It said that his salary increase from £15,850 in August 2011 to £25,168 in April 2012, and the change in pension factors in October 2011, resulted in the reduced service credit. In subsequent letters dated 22 June 2012 and 31 August 2012, Teachers' Pensions admitted providing incorrect information but said that the service credit could not be increased. It quoted the letter of 12 August 2011, and said that the service credit of 7 years 332 days pensionable service was only an estimate. It said that he should have expected this figure to be recalculated. It went on to say that the government had introduced new factors which had increased the cost of providing a year of pension. In addition, his salary had increased significantly and the transfer value from Aviva had reduced by £83.32 to £27,503.98. Mr Gaughan was given the option to transfer back to his former scheme with Aviva and offered £100 compensation.

6. Mr Gaughan remained dissatisfied and escalated his complaint under the Scheme's internal dispute resolution procedure (**IDRP**) Stage 1. Teachers' Pensions responded on 7 December 2012. It reiterated the offer to refund the transfer funds to Aviva but it would not reimburse any loss in investment value that had occurred in the interim. On 26 May 2013, Mr Gaughan told Teachers' Pensions that he would accept the refund to Aviva on the basis that it would be responsible for any loss of investment. He also wanted £400 compensation. This was rejected by Teachers' Pensions.

7. On 1 June 2013, Mr Gaughan took his complaint to the Department for Education (**DfE**) under IDRP Stage 2. DfE replied on 15 July 2013. It said that the estimate of 12 August 2011 was based on his then salary of £15,850 and a transfer value of £27,587.30. In April 2012, Mr Gaughan's salary had increased to £25,168 (due to achieving qualified teacher status from 1 September 2011), and this resulted in a service credit of 3 years 294 days. DfE said that Mr Gaughan was informed of the actual service credit by letter dated 28 April 2012, and the previous estimate was not

guaranteed. Under the Regulations, DfE said that the service credit had been calculated correctly and Mr Gaughan was not entitled to the higher figure.

8. Mr Gaughan was still unhappy and kept writing to DfE who responded on 24 June 2014. DfE acknowledged that Mr Gaughan "was misled into thinking that he would acquire more value in the scheme from [the] transfer" but did not agree that he had suffered an actual loss. DfE said that the transfer into the Scheme could not be reversed and Teachers' Pension should pay compensation which appropriately compensates him for its maladministration. On 7 July 2014, Teachers' Pensions told Mr Gaughan that it would offer £250 to him for the distress and inconvenience caused.

9. Mr Gaughan refused the offer of compensation and brought his complaint to us.

Summary of Mr Gaughan's position

10. Mr Gaughan says that he has no specialist knowledge of pensions and acted prudently in asking Teachers' Pensions to confirm his service credit before proceeding. He says that he was aware that significant time had passed since getting the initial service credit estimate. That is why he checked with Teachers' Pensions before committing to the transfer.

11. Considering the letter of 12 August 2011, there did not appear to be any significant differences in both schemes. So, he decided to proceed to consolidate his pension in one place. However, if he had been told that he would receive the lower service credit, he would not have gone ahead with the transfer.

12. He acted in a responsible and careful way while Teachers' Pensions have accepted their procedural failures.

13. Mr Gaughan has provided an annual statement prepared by Aviva for his pension plan in 2012, which showed an estimated pension of £2,880 a year from the fund.

14. In response to my preliminary decision, Mr Gaughan insists that he would have asked for a recalculation of the estimate before going ahead with the transfer. Accordingly, he would like compensation calculated on the basis of the potential loss of £344 a year (£2,880 - £2,536) over 20 years; compensation of £1,000; and an apology from Teachers' Pensions.

Summary of Teachers' Pensions' position

15. Teachers' Pensions says that it only had Mr Gaughan's salary records up to March 2011 when he called in April 2012. Accordingly, the telephone operator could not have known that Mr Gaughan's salary had significantly increased or that the transfer-in factors would be amended. Teachers' Pensions maintains that it was reasonable to assume that the basis of the estimate still held good. The operator simply confirmed what was stated in the letter of 12 August 2011.

16. The letter of 12 August 2011 did not say that the service estimate was guaranteed. The letter explained that the estimate reflected current market conditions and any delay may have an effect on the amount of actual service credit. The letter also pointed out that another calculation would be required to determine the actual service credit on receipt of the transfer amount.

17. Teachers' Pensions accepts that Mr Gaughan has been given an expectation which proved to be unrealistic. However, it believes that this was due to the unique combination of circumstances and not because of maladministration.

18. Teachers' Pensions estimates that the service credit of 3 years 294 days at Mr Gaughan's current salary would provide a pension of about £2,536 a year.

19. In response to my preliminary decision, Teachers' Pensions says that it simply confirmed the contents of the letter of 12 August 2011 during the call on 2 April 2012. It says that Mr Gaughan was aware a further recalculation would be carried out and there was no need to make this point to him again.

Conclusions

20. Teachers' Pensions say (and Mr Gaughan appears to accept) that the Regulations only allow for him to receive what he is entitled to i.e. a service credit of 3 years and 294 days.

21. However, Teachers' Pensions also admit that in April 2012, Mr Gaughan was led to expect a service credit of 7 years and 322 days. Teachers' Pensions say that it did not have updated information regarding his increased salary and it was unable to inform him that the estimate would change. While this is a fair point, it is my view that this point could have been explained to Mr Gaughan at the time. Teachers' Pensions could have told him that the estimate was not guaranteed and a new calculation would have to be carried out. Rather, Teachers' Pensions confirmed to him that he would receive the estimated service credit. In my view, Teachers' Pensions went beyond simply repeating the information in the letter of 12 August 2011; it led him to believe that the information was still current. This amounts to maladministration.

22. Mr Gaughan is only entitled to receive the correctly calculated service credit. However, he could be entitled to compensation if he relied on the incorrect information and has changed his position irrevocably. This is usually a shield and not a sword – i.e. it is usually used as a defence against recovery, for example, but not to receive increased benefits.

23. Mr Gaughan says that he would not have gone ahead with the transfer had he known the actual service credit he would receive. Teachers' Pensions initially offered him the option of reversing the transfer. Subsequently, it realised that the Regulations did not support a reversal and this also is further evidence of maladministration.

24. In determining what level of compensation, if any, would be due to Mr Gaughan, I would need to consider what he may have done differently if he was presented with the correct information in April 2012. This would be on the basis that he could not have been told at the time what his service credit would be without a new calculation being done on receipt of the transfer funds.

25. There are two main scenarios following this. One, Mr Gaughan could decide to carry on with the transfer on the assumption that the actual service credit would be similar to the estimate. In this case, Mr Gaughan would still be disappointed when he realises that the actual service credit is much lower than he expected. In the other scenario, Mr Gaughan could decide to request another estimate before committing to the transfer. I submit that this would only occur if Mr Gaughan was aware that the new estimate would be based on his new, significantly increased, salary and new factors. As Mr Gaughan says that he was not aware of this fact in April 2012, on a balance of probabilities, it is more likely than not that he would have gone ahead with the transfer under the first scenario.

26. Accordingly, even if Mr Gaughan had been told the estimate would need to be recalculated, the transfer would probably have gone ahead..

27. Even if I were to decide that Mr Gaughan would not have gone ahead with the transfer, it is difficult to determine that Mr Gaughan has experienced any financial loss. Teachers' Pensions estimate that service credit of 3 years and 294 days would result in a pension of £2,536 per annum. This compares with the estimate from Aviva of a pension of £2,880 per annum for the transfer amount. I appreciate that Mr Gaughan says that he has made rough calculations which show a significant difference between both schemes. This is merely academic but goes to show the difficulty inherent in such calculations. This "loss" is purely notional without any regard for the cumulative effect of the more beneficial nature of the Scheme compared to other arrangements. Assessing compensation is not an exact science and I note Mr Gaughan's comments on this point. Moreover, a forced apology from Teachers' Pensions is unlikely to bring much succour.

28. I am not satisfied that Mr Gaughan would have done anything differently, however, I believe that Mr Gaughan has suffered significant distress and inconvenience caused by the two instances of maladministration identified in paragraphs 21 and 23 above. Teachers' Pensions misled Mr Gaughan which resulted in him having an unrealistic expectation of the service credit he would receive. It also failed to handle his complaint properly and offered a remedy which was not within the Regulations governing the Scheme.

Directions

29. Within 30 days of the final determination, Teachers' Pensions should pay £1,000 in compensation to Mr Gaughan. This replaces the earlier offer of Teachers' Pensions of £250 compensation.

Anthony Arter

Pensions Ombudsman
9 March 2016