PO-4650

Ombudsman’s Determination

Applicant	Mr Christopher Cowan
Scheme	Teachers' Pension Scheme (**the Scheme**)
Respondent(s)	Sheffield City Council (**the Council**)
	Teachers' Pensions

Complaint summary

Mr Cowan’s complaint against Teachers’ Pensions and the Council is about the errors that were made in the calculation of his pension benefits. He has also complained about the way his enquiries were handled by Teachers’ Pensions.

Summary of the Ombudsman's determination and reasons

The complaint should be upheld against both the Respondents. The Council has failed to provide accurate pay information to Teachers’ Pensions resulting in an incorrect award of benefits. Teachers’ Pensions have made a mistake in one calculation of an award and there were also issues with their handling of the complaint and notifying Mr Cowan of his entitlement.

Detailed Determination

Material facts

1. On 24 March 2010 a letter from his employing school told Mr Cowan that he would be receiving a retention payment of £8,557.35 for the 2010/11 academic year. They said a payment of £1,711.47 would be made in December 2010 with a further payment of £6,845.88 being paid in July 2011. (Later however it appears that the total payment actually made to Mr Cowan amounted to £8,754).

2. Mr Cowan applied for the payment of his benefits in June 2011 for a retirement date of 31 August 2011 and immediately after that date he received his benefits. The application form submitted in June 2011 was in part completed by the Council. The form asked for the full-time annual salary rate, including pensionable allowances. It also said that details for the previous financial year should be given and details for the current year up to the last day of pensionable employment. But no line of service details should span 31 March. The salary information included was as follows:

    - For the period 1 April 2010 to 31 August 2010 a salary of £57,082.
    - For the period 1 September 2010 to 31 March 2011 a salary of £58,362.
    - And for the period 1 April 2011 to 31 August 2011 a salary of £58,395.

    Columns for allowances were provided on the form but left blank. (Mr Cowan's actual basic pay for the period September 2009 to August 2010 was £57,048.96 and for the period September 2010 to August 2011 was £58,362). The form also asked Mr Cowan for his email address, which he gave, for all future correspondence.

3. After a call from Mr Cowan an award letter of 12 October 2011 was sent and gave his actuarially reduced benefits as being a pension of £22,560.43 a year and a lump sum of £67,681.27 (it appears that there was an earlier award letter of 30 July 2011 confirming these figures sent – but this was not received by Mr Cowan). The "average salary" was given as £58,375.83 and the "salary of reference" as £58,395. However Mr Cowan thought that the benefits were too low so he raised a query.

4. On 9 December 2011 the Council sent Teachers' Pensions some salary information but the figures were identical to those they had provided on their annual returns.

5. On 21 December 2011 the Council sent Teachers' Pensions some revised salary information for the period from 1 April 2010 to 31 August 2011:

- For the period 1 April 2010 to 31 August 2010 a salary of £57,082, with no other allowances noted.

- For the period 1 September 2010 to 31 March 2011 a salary of £60,113, with an allowance of £1,751 noted.
- And for the period 1 April 2011 to 31 August 2011 a salary of £65,398, with an allowance of £7,003 noted.

6. A revised statement of benefits was sent to Mr Cowan on 6 January 2012. This gave a pension of £24,087.95 a year plus £72,263.86 lump sum. The "average salary" was given as £62,328.36 and the "salary of reference" as £65,398. An additional lump sum payment of £4,582.59 would be paid to Mr Cowan, being the difference from the earlier payment he received. Teachers' Pensions say that when making payment interest of £7.97 was added to the lump sum and £0.53 on the additional pension.

7. There were further calls from Mr Cowan to Teachers' Pensions on 23 and 25 January and again on 6 February 2012. In a return call of 8 February Teachers' Pensions agreed to send Mr Cowan a copy of service and salary details and asked him to contact his employer if he thought these were wrong.

8. Mr Cowan sent another letter to Teachers' Pensions on 8 May 2012. He said that he believed they had miscalculated his average salary figure. The correct figure he thought should be £62,826.46. The information provided by the Council for the periods 1 September 2010 to 31 March 2011 and 1 April 2011 to 31 August 2011 had salary figures of £60,113 and £65,398 respectively. He thought the approach used by them was to look at his actual salary in each of these periods and then work out what he would have earned if he continued to be paid at that level for the whole year. He had spoken to the Council and they informed him that the reason information was provided in this manner was because that was how Teachers' Pensions had requested it. Teachers' Pensions then proportioned the figures for the actual length of the periods quoted (212 days and 153 days) to give figures of £34,914.95 and £27,413.41, which were then added together to give the "average salary" figure of £62,328.36.

9. However this he said was not in line with the guidance published for the Scheme and so lead to an incorrect figure. He had been paid a retention bonus in two stages, in December 2010 and July 2011, to ensure he stayed in post until the end of the academic year. These boosted his 12 months' salary significantly and he quoted from a Scheme leaflet the following text (the leaflet was titled "Retirement – arrangements and planning" and dated September 2010):

> "Average Salary
>
> Your average salary is the better of the following:

- The pensionable salary received in the last 12 months before retirement; or

- The salaries for the last ten years are index linked to current day values. The average of the best consecutive three years' re-valued salaries in those ten years is used.

…

Possible salary restrictions:

- If the pensionable salary received in the last 12 months before retirement is used to calculate your average salary, and you have received a large salary increase(s) during the 3 years before retirement, your salary (ies) will be restricted.

- If your salary is increased in any of the 3 years by more than £5,000 or 10%, whichever is the greater, your salary will be restricted."

So his view was that the guidance required them to consider the salary for the last 12 months before retirement. In his case that should have been £67,149, which included the two retention payments. However that clearly exceeded his salary for the previous 12 months of £57,114.96 so the average salary should have been restricted to 110% of this amount, which would give an average salary of £62,826.46. The method they employed had "diluted" the effect of his retention payments so they averaged over a 24 month period. But their guidance only required them to ask his former employer for his total salary for each of the last three years of service. Mr Cowan provided some pay advice and asked they look at his letter carefully.

10. Teachers' Pensions acknowledged the letter on 9 May 2012 but Mr Cowan says there was no further response. He therefore wrote to them again on 31 July 2012 asking if they had completed their enquiries.

11. Teachers' Pensions responded on 10 September 2012 to say that they had responded earlier on 3 July 2012 (again Mr Cowan says he did not get this earlier letter). They enclosed again a copy of their earlier response, which was issued under stage one of the dispute procedure. The said that they were bound by the regulations that applied to the Scheme (this being the Teachers' Pensions Regulations 2010 (**the Regulations**)). Regulations 37 to 40 referred to the calculation of average salary and Regulation 40 (2) said that average salary comprised any period spent by the person in pensionable employment. The references in the Regulations to salary referred to the "rate of salary" and not the monthly payment as this could well vary depending on what is due, such as arrears of pay. This was confirmed by Regulation 131 which

said that the "employer of a person (T) in pensionable employment must record for each financial year – the rate of the [*sic*] T's contributable salary". Therefore the calculations had been done in accordance with the Regulations. And as his salary increases were less than £5,200 (this was a change to the earlier limit of £5,000 from 2010/11, as given in the 2010 version of the retirement guide, which is increased each year) or 10%, there was no restriction. They added that the treatment of retention payments were a salary matter and not a pensions matter. They were one-off payments and not consolidated into annual salary rates. The retention payments were added to the salary rate for the period of service relating to the date paid. They had checked and his employer had recorded his salaries correctly. Therefore no amendment was needed to the salary rates used to calculate his benefits.

12. In March 2013 Mr Cowan decided to take the matter up with the Department for Education (**DfE**) under the second stage of the dispute process. He repeated many of the points from his earlier letter and also pointed to the Scheme's Regulations in support of his assertions. His view was that the Regulations supported what he was saying – that the *amount* of his salary for the last 12 months of service should be used to calculate his pension.

13. The DfE response was sent on 21 May 2013 and said that the meaning of relevant salary is a person's contributable salary for the period of pensionable employment to which it relates. Retention payments were pensionable under the Regulations. The calculation of average salary was based upon information provided by his employer. Where there was a change in the full-time salary received in the average salary period, each period is calculated as "full-time salary x days in the period". The Council had recently confirmed that this was a unique situation where a school was closing and experienced members of staff needed to be retained. They had further confirmed that the payments he received related to his final academic year 1 September 2010 to 31 August 2011 and the total amount paid (£8,754) should be added to his actual annual salary for that year. They then pointed to Regulation 39, which related to the restriction of salary and refunds on the restricted portions of salary. His case would be referred back to Teachers' Pensions who should recalculate and pay revised benefits and also refund any contributions paid on the "restricted" portion of his salary.

14. On 9 May 2013 the Council's human resources team sent Teachers' Pensions a memo confirming that Mr Cowan received recruitment and retention payments for his final academic year 1 September 2010 to 31 August 2011 with his salary being £67,116. (Although not said on the memo this consisted of 12 monthly payments of £4,863.50 plus the two retention payments of £1,751 and £7,003. The difference with the figure of £67,149, as put forward by Mr Cowan, related to a "GTC fee reimbursement" payment of £33 – I will comment more on that later).

15. Mr Cowan wrote to Teachers' Pensions on 19 June and 5 July 2013 to ask for an update on the position with the recalculation of his benefits in light of the response from the DfE.

16. It appears that Mr Cowan's benefits were increased in June 2013, although he says he was only aware of this via his payslip of that month. His bank account had a payment of £511.01 made on 10 June.

17. Teachers' Pensions wrote on 8 July 2013 and said that a letter was sent to him previously on 6 June 2013 (again Mr Cowan says that he did not receive this). Another copy of that letter was provided and said his pension was now recalculated as £24,258.29 a year as at September 2011 (but was currently £25,543.17 with annual increases) and a lump sum of £72,774.87. The "average salary" was given as £62,769.12 and the "salary of reference" was also £62,769.12. The shortfall in his lump sum was £511.01 from that paid previously. (Notes provided to our service by Teachers' Pensions show that they recorded a "relevant salary" figure of £57,062.83 for the period 1 September 2009 to 31 August 2010, which has been used to calculate and apply the 110% restriction. I have some doubts over this figure too as it is based on an averaging of figures of £57,049 for the period 1 September 2009 to 31 March 2010 and a pay figure of £57,082 for the period 1 April 2010 to 31 August 2010. But from the pay advice provided to our service by Mr Cowan it appears that his pay for that year was simply £57,082 – the difference again being a GTC payment of £33).

18. Mr Cowan wrote to Teachers' Pensions again on 19 July 2013. He said that he still had not received the refund of contributions to which he was entitled. Also his review of the back payments he had received suggested that he had been underpaid again. Since he had not received an explanation of the various payments made since the DfE decision it was difficult for him to check that he had received the amounts to which he was entitled. He felt obliged to check all figures due to previous issues. He asked for confirmation and also a breakdown of various figures, relating to pension amounts, lump sums, the refund due and interest on monies owed since September 2011.

19. Teachers' Pensions wrote to Mr Cowan on 5 August 2013 detailing a total net refund of contributions of £222.57 for the tax years 2010/11 and 2011/12 for the salary restriction that applied for the period 1 September 2010 to 31 August 2011. A short breakdown was provided of gross and net amounts with the tax paid (the gross amount total was £278.21).

20. A further Teachers' Pensions letter of 10 October 2013, in response to the letter of 19 July 2013, said that the latest revision of benefits had been provided to him in their letter of 8 July. They enclosed again a copy of all three sets of award papers to show

how his benefits had increased. Interest on the lump sum payment of £511.01 was £4.52 and on the arrears of pension was £1.41. These used the Bank of England base rate.

Summary of Mr Cowan's position

21. The way his pension calculation was handled by the Respondents resulted in significant and avoidable errors on their part, together with significant stress and loss of time on his part. He should be compensated for this stress and time, which was equivalent to at least two full working weeks.

22. When he retired his pension and lump sum were less than expected. Neither party would take responsibility for this. The Council told him that they had provided information in the format requested by Teachers' Pensions. And Teachers' Pensions said they made calculations based on the information they were provided. He later deduced that the issue was that the Council had failed to include "retention" payments in his final salary, which were paid in his last 12 months of employment. It appeared the Council thought they were not pensionable, even though they actually deducted pension contributions from these payments.

23. In January 2012 he got a new pension statement taking the retention payments into account. But he felt this was still wrong. He worked out that their averaging of salaries was done incorrectly and did not reflect the actual salary payments he received or what was required by the Scheme's regulations. He raised this a number of times but his concerns were dismissed. Later in September 2012, when he did receive a written response, they failed to address the points he raised.

24. He therefore had to take the matter to the DfE to ask that his benefit calculation be performed in line with the Scheme's 2010 regulations. They agreed with him and asked for a recalculation. But he still had to chase Teachers' Pensions for progress. He started to receive a series of unexplained payments at various times in the coming months. But to date (this being said by Mr Cowan in March 2014) he had not received any explanation of the various payments made to him since July 2013. So he was unable to check whether his payments were correct.

25. Twice he had had to chase for responses which had apparently been filed electronically on Teachers' Pensions' system, but which did not reach his letterbox. Letters from other senders reached him without problem. He had only received two routine emails from the online system. It appears that they posted letters on their online system without sending him a hard copy or informing him of their existence by email – so how was he supposed to know that he needed to look at the system?

26. Initially Mr Cowan said that had the matter been left unchallenged the error on the part of Teachers' Pensions could have left him considerably out of pocket for the rest of his life. He was now prepared to accept that the initial failure to take the retention payments into account lay with the Council. However that issue was resolved in the autumn of 2011. So Teachers' Pensions should have been aware that his retention payments were part of his pay in December 2011. However they seemed to say that they only became aware of this in March 2013 after his second appeal. The heart of his complaint was not accuracy of the information used by Teachers' Pensions but the calculation they used, based on this information. Instead they ignored the points he set out on 8 May 2012. The revision to his benefits was due to a revised calculation, and not new salary information.

27. Also he was now able to see that there was a problem with the salary information given by the Council to Teachers' Pensions. This had been subject to the same bizarre averaging process that he had complained about to Teachers' Pensions. He had no written communications with the Council but had telephoned them twice. In the first call he challenged the way of expressing the salary data to be told that this was how Teachers' Pensions had wanted it. But anyway Teachers' Pensions should have understood the position with retention payments from the letter and pay advice he sent on 8 May 2012. That should have prompted them to at least have contacted the Council.

28. While the circumstances of his job were unusual, as has been referred to by the Respondents, in terms of salary and pension contributions his circumstances were normal. He earned a specific amount of money and paid contributions on a specific amount of money. Throughout his employment payments and contributions varied and this was quite normal.

29. He had not been provided with any details of how his backdated amounts were calculated and so has no way of checking them (this information has now been furnished to Mr Cowan by Teachers' Pensions as part of the investigation).

Summary of Teachers' Pensions' position

30. The administration of the Scheme was a partnership between them and employers. They initially calculated the retirement benefits based on the salary information provided by the Council. They later received revised service details from them and revised Mr Cowan's benefits accordingly. Then, after the appeal to the DfE, they again made contact with the Council and were given further revised service details. His benefits were then revised again and the fact that his salary fell within the restricted salary provision has been taken into account.

31. The calculation of average salary was covered by Regulation 37 of the 2010 regulations. The calculation of retirement benefits was dealt with in Regulations 60 to 62, with reference to average salary. Regulation 131 said that employers performing the calculation of average salary should base this on the annual rate of salary (and not monthly payments).

32. The records that they maintain are based on information provided by employers. An employer is required to provide an annual return of service and salary details at the end of each financial year. Here they confirm the dates of employment, the full-time equivalent annual salary rate and any pensionable allowances paid to the member which are included in the annual salary rate. This was then added to their database and so they were reliant on timely and accurate information being provided. As Teachers' Pensions is not always aware of errors or omissions individuals are asked to check that the details held are correct and if not to contact their employer.

33. In Part B of his retirement application form the Council gave service, annual salary details and pensionable allowances from 1 April 2010 to 31 August 2011 in the same format as the annual return. The pensionable allowances were not included in the full-time annual salary rates and they were not aware of this discrepancy. Therefore the benefits paid were based on lower average salary. After sending the award letter of 12 October 2011, which would have confirmed the service and salary used in the calculations, they again spoke to Mr Cowan on 9 December 2011 and gave further information on the salary information used. They had no reason to review this information until further salary information was received, later that December, resulting in a revised award in January 2012.

34. Teachers' Pensions has confirmed to our service that the salary used to calculate the second award was based on Mr Cowan's last 12 months' pensionable pay, rather than the best three years average from the last ten. Also the GTC reimbursement amounts of £33 (one of which was paid to Mr Cowan in June 2011) was pensionable.

35. Between 8 February 2012 and 8 May 2012 there was no further contact with Mr Cowan. They then responded to his appeal in July 2012 and then heard nothing more until his second stage appeal. At this time his record was scrutinised again and the Council were contacted. They then confirmed the unique situation that Mr Cowan was in and that the retention payments he received related to the period 1 September 2010 to 31 August 2011 and therefore the annual salary should be amended to £67,116. As the contributable salary during the preceding three years was now shown to have increased by more than 10% the salary used to calculate the average salary was restricted to £62,769.12 and a contribution refund became due.

36. Teachers' Pensions were only able to amend contributable salaries when confirmed by the employer or where it was clear that statutory regulations have not been complied with. In this case they at all times based the calculations of average salary on the information provided by the employer. There had been no reason to question the information given.

37. There was no evidence that they had all the required information to correctly calculate Mr Cowan's benefits prior to May 2013.

38. In relation to communications difficulties they say that when any award, or revision of an award, is authorised for payment the member receives an email to the address that they have provided confirming that the notification of award is held in the member's secure area for review. The application form completed by Mr Cowan also confirmed that this would be the case. They do not know why, as it appears to be the case, that Mr Cowan did not access these documents (our service has however been provided with copies of screen shots showing the documents in Mr Cowan's member area). Paper copies were also issued and Mr Cowan received a number of payslips in late 2011 and 2012. Teachers' Pensions does not keep copies of the emails that were sent to members to say documents had been added to their secure area. But this does not mean that they were not sent and there was no evidence that they were not.

Summary of the Council's position

39. They first contacted Teachers' Pensions in relation to Mr Cowan's retirement on 29 June 2011. His annual salaries were quoted for the period 1 April 2010 to 31 August 2011. It did not include the recruitment and retention allowance that was paid to him in July 2011 as this was not recorded on their electronic system at the time. This was an extremely unusual case where this allowance was paid in two parts with the larger part being paid at the end of the academic year.

40. Mr Cowan called on 9 December 2011 to query that the salary quoted did not reflect the retention allowance of £8,754. A submission was made to Teachers' Pensions to amend his service record.

41. Any employee's salary information submitted to Teachers' Pensions is always uploaded as actual salary and has not been subject to any calculations prior to sending.

42. They had taken all appropriate actions to ensure that Mr Cowan's correct salary details had been submitted by 9 December 2011.

Conclusions

43. Mr Cowan's benefits were revised twice afterhis retirement on 31 August 2011. On both occasions his award had been understated and thus underpaid. Clearly mistakes have been made. The question then is who was responsible for them.

44. With the first calculation it is clear that the salary information was incorrect. On Part B of the "application for retirement benefits" the figures given did not include the retention payment details for Mr Cowan. This form was completed on 29 June 2011. But the salaries involved were quoted up to 31 August 2011 (this being Mr Cowan's last date of pensionable employment). Yet for some reason (apparently down to the Council's electronic records) it still failed to include details of his retention payments even though one payment had already been paid in December 2010 and the second was due in the following months' pay. Details of the allowances were not given to Teachers' Pensions until 21 December 2011.

45. While it has been said that the Council thought that Teachers' Pensions asked for the information in this format I do not see that the problem here had anything to do with the way that the information was asked for. In any event Regulation 131 (b) requires employers to provide the amount of a person's salary. The retirement forms also asked for details of allowances, both in the total annual figure and separated in columns. The Council failed to do this and so my view is that was maladministration. I therefore uphold the complaint against the Council. I do not see any fault with the actions of Teachers' Pensions at that time when calculating that first award.

46. There is then the issue of the second revision to benefits. The Council had provided by now some details of the retention allowance (I will come back to this point shortly). The second award resulted in the use of Mr Cowan's final 12 months of pay when calculating his benefits. But this was not done correctly as the actual amount paid was not used. Mr Cowan raised this with Teachers' Pensions in May 2012. His request does not appear to have been considered properly until the matter was referred onto the DfE. They agreed that the full retention allowance of £8,754 had not been added to his actual annual salary for his final year. This in turn triggered the restricted salary provisions and a refund of contributions on the excess amount. So I also uphold the complaint against Teachers' Pensions for failing to come to the correct pay figure when calculating Mr Cowan's benefits the second time.

47. There is an additional question put forward by Mr Cowan and that was whether Teachers' Pensions should have realised in May 2012 that there was a problem and whether they had all the information that they needed at that time to make the correct calculation. In December 2011 they had the new salary figures, including allowances, from the Council. But, as I have said above, they do not appear to have used these

correctly. And the likely reason for this was of the format that Teachers' Pensions ask for the information in.

48. The salaries from the Council at that time were given as a salary of £60,113, with an allowance of £1,751 noted, for the period 1 September 2010 to 31 March 2011. And a salary of £65,398, with an allowance of £7,003 noted, for the period 1 April 2011 to 31 August 2011. Stripping back from these figures would give a basic salary of £58,362 for the first period and £58,395 for the second. The difference of £33 is down to the GTC reimbursement sum. (And much later in 2013 the Council gave a figure of £67,116 for the combined period – a figure that did not include the GTC amount).

49. In my view Teachers' Pensions had enough information at that stage to come to a much more accurate pay figure for Mr Cowan's award, but not the correct figure. They failed to strip out the allowances from the annual salary figure to work out the basic pay for the year and then add the allowances back in such a way as to get to a figure of £67,116. And had they made an enquiry at that point about the apparent change in Mr Cowan's basic pay during the year (when there wasn't one) they would have realised that his pay for the last 12 months is actually £67,149. Instead they tried to work out some type of average salary figure for the last 12 months of service and got it wrong.

50. But the Council also, although partly understandably because of the way they were asked to provide pay information that did not span 31 March, did not give the right pay figure. And indeed even now it does not appear that the correct pay figure for the last 12 months has been recorded as the amount of £67,116 (and not £67,149) is recorded. This will mean that a further (very small) revision to Mr Cowan's benefits is needed. In my opinion this second instance of giving incorrect pay details is also a further instance of maladministration by the Council. But I also have some concern about the pay figures given for the period from 1 September 2009 to 31 August 2010 and would ask the Council to look at this again, as it affects the restricted salary amount – as I said earlier pay advice from Mr Cowan shows that his pay for that year was £57,082. (Since issuing an outline of my likely conclusions I understand that the Council contacted Teachers' Pensions on 11 March 2015 to amend the recorded pay figure for Mr Cowan's last 12 months of service. It is not clear however whether they have yet done so for the second period I have highlighted above, although they do not need to do so until this final determination is issued, and I understand they accepted my likely conclusions).

51. There also appears to have been an issue in communications between Teachers' Pensions and Mr Cowan going missing. On three occasions letters have not reached Mr Cowan, despite being correctly addressed. He has also said that he was not sent

an email notification at these times, despite providing the correct email address. Teachers' Pensions has not provided our service with a copy of any emails to Mr Cowan regarding the award notices. My view is that on the balance of probabilities something went wrong at Teachers' Pensions' end in sending letters to Mr Cowan. It is highly unlikely that he did not receive three letters due to flaws in the postal system and there is no record of emails being sent to him regarding his awards. This has delayed the time taken to resolve the matter.

52. Teachers' Pension further say while there is no evidence that the emails were actually sent, there was also nothing to suggest that they were not. They may have ended up in Mr Cowan's junk folder or his email may have been set up to block such emails, meaning that he did not see them. They add he could have accessed his secure area at any time. While it is clear that the correct email address was logged for Mr Cowan my view is still that something went wrong. While I note that Teachers' Pensions say the email may have ended up in a junk folder this does not sit well with the fact that Mr Cowan did receive two routine emails from Teachers' Pensions. It would seem strange to me if his system only quarantined some emails from the same recipient. And he would have no reason to access the secure area without notification that a communication was awaiting his attention.

53. Of course it should go without saying that Mr Cowan should not have had to chase up the Respondents in order to get his benefit award corrected at all. But his benefits have been revised and on each occasion (and I expect on any future occasion if needed) he received a backdated award plus late payment interest. I therefore restrict my award to the non-financial injustice that he has suffered.

54. I have noted comments from Mr Cowan that the award made is not commensurate with the time he has had to spend on the matter. He says that while he was retired at that time, and so did not suffer a loss of earnings, he still spent time on the matter which he wanted to spend on other activities. The period of two weeks spent dealing with the complaint represented $1/26^{th}$ of his annual pension.

55. Awards for non-financial injustice are typically modest. Sometimes applicants to my office wish to see punitive awards made against respondents. However it is not my function to 'fine' trustees or award punitive amounts of compensation. Similarly I cannot make an award which is calculated in the manner that Mr Cowan suggests (using pension income) or based on salary he could have otherwise earned. The award here is in line with judicial guidance and those awards made for similar cases.

56. For the reasons given I uphold the complaint against both Respondents.

Directions

57. Within 28 days of this determination the Council is to pay Mr Cowan the sum of £300 for the distress and inconvenience caused to him.

58. Within 28 days of this determination the Council is also to review the salary information that they hold for Mr Cowan, including all pensionable allowances paid, for the year ending 31 August 2011 and also the year ending 31 August 2010 and notify that figure to the other parties. On receipt of that information Teachers' Pensions is to consider whether a further revision to Mr Cowan's benefits is needed.

59. Within 28 days of this determination Teachers' Pensions is to pay Mr Cowan the sum of £250 for the distress and inconvenience caused to him.

Jane Irvine
Deputy Pensions Ombudsman

30 March 2015