

Ombudsman's Determination

Applicant	Mrs Sheila Mather
Scheme	Teachers' Pension Scheme (TPS)
Respondent	Teachers' Pensions (TP)

Complaint Summary

1. Mrs Mather has complained that TP provided her with incorrect benefit quotations, due to wrongly including a period of service for which she had previously received a refund of contributions. She is seeking either substantial compensation for the decisions she made in reliance upon the incorrect information, or the level of benefits originally quoted to her.
2. Mrs Mather is also dissatisfied with the way in which she was notified of the error. She believes that TP should have notified her of the mistake, prior to processing her retirement application, so she could make an informed decision about whether to go ahead.

Summary of the Ombudsman's Determination and reasons

3. The complaint should be upheld, because TP provided Mrs Mather with incorrect benefit quotations and in the circumstances it was reasonable for Mrs Mather to rely upon them.

Detailed Determination

Material facts

4. Mrs Mather started working as a teacher in Manchester in September 1974. In August 1978 she wrote to the Department of Education and Science (**DES**) to ask whether she would be able to receive a refund of her contributions to TPS, as she was expecting to stop work later that year. DES said that if she wanted to apply for a refund she would need to complete "Form 151 PEN", and enclosed a copy.
5. Mrs Mather stopped working on 16 December 1978. In March 1979 Mrs Mather completed and returned Form 151 PEN, part of which stated "I understand that if I receive payment the periods for which the contributions were paid will not count as reckonable service." This meant they would not count for pension purposes.
6. A payment slip later provided by TP showed that Mrs Mather's contributions (£747.48) were refunded to her on 30 August 1979. Upon issuing the refund, DES should have coded Mrs Mather's previous service record to indicate that it was no longer reckonable for pension purposes. Unfortunately this did not happen.
7. Mrs Mather returned to teaching in Lancashire in 1986 and resumed membership of TPS. She later taught in several other counties. Her marriage ended in 1990.
8. When TP was subsequently established it inherited Mrs Mather's incorrect service record from DES. TP issued annual estimates of retirement benefits to Mrs Mather. The statement as at 31 March 2009 stated that her total reckonable service was 27 years and 197 days and itemised her reckonable service for each location, including 4 years and 108 days in Manchester between September 1974 and December 1978.
9. The annual estimate as at 31 March 2012 stated that Mrs Mather had accrued an annual pension of £18,253.08 and a lump sum of £54,759.24, based on pensionable service of 30 years and 197 days.
10. On 21 April 2013 Mrs Mather completed an application for retirement at her normal pension age (1 August 2013). Within the application Mrs Mather chose to commute part of her annual pension for additional lump sum. The application was initially rejected because part of the form had not been completed. TP received the missing part of the form on 4 June 2013 and the application was considered by TP on 9 July 2013.
11. It was at this point that TP realised that Mrs Mather's service record contained an error. TP corrected its record to show that Mrs Mather's service from 1974 to 1978 was non-reckonable for pension purposes.
12. On 13 July 2013 TP sent Mrs Mather a notification of the benefits to be paid to her from 1 August 2013. This included the following details:

"Pensionable Service: 27 years 211 days

Annual Pension £13,536.70

Lump Sum £50,536.79

Converted Lump Sum £39,706.84

Lump Sum payable on 01/08/13: £90,243.63".

13. Mrs Mather telephoned TP on 23 July 2013 to complain that her benefits were much lower than those set out in previous retirement estimates. The call handler could not explain the reason for this, so Mrs Mather sent a letter to TP, saying:

"The difference between the two is just over 4 years of entitlement and this will have a very serious impact on my future. Indeed, it is true to say that had I known these figures, rather than the supposedly erroneous ones sent to me every year, I would not have retired this year nor sold my house which I had to do in order to port my mortgage to a cheaper property before retirement. In other words ALL my plans have been based on your estimates which have proved to be far from the declared statement that "Every effort has been made to ensure accuracy" on the front cover of each Estimate. It seems, in fact, that they could not be much more inaccurate and they have been absolutely misleading to me...I had to take a loss on my house in order to sell it before I retired and so be able to port my mortgage."

14. TP phoned Mrs Mather on 25 July 2013 to explain that the previous estimates of benefits had been incorrect as they wrongly included the period of service from 1974 to 1978 for which Mrs Mather had received a refund of contributions. Mrs Mather then submitted a formal complaint, saying:

"I have no recollection of withdrawing my pension in 1979...It is not just that this was a long time ago but it was also after the birth of my son in January 1979 after which I suffered from serious post-natal depression."

15. Mrs Mather's benefits came into payment on 1 August 2013.

16. On 6 August 2013 TP apologised to Mrs Mather for the way in which her case had been handled. It sent her a copy of the repayment form issued in 1979 in respect of her service between 1974 and 1978, and explained:

"Unfortunately the above period of service was not noted as having been repaid and incorrectly remained to your credit, which was used in all previous estimates of benefits. When processing your retirement application, it was recognised that the period of service between 1 September 1974 and 17 December 1978 was erroneously recorded as pensionable, and was therefore corrected. I must apologise that you were not informed of the difference this made prior to your retirement application being processed. Whilst of little comfort to you, I confirm that we must pay a member their benefits in

accordance with the Teachers' Pensions Regulations (TPR) and can only pay them the sums to which they are entitled."

TP added that there was a provision to reinstate previously refunded contributions, but this only applied in those cases where the repayment was taken before June 1973, so this provision did not help Mrs Mather.

17. In its letter of 17 June 2014, rejecting Mrs Mather's complaint, TP said:

"I appreciate that your decision to retire was based on information provided by TP, and had you been aware of the situation regarding your service, that you would have perhaps taken an alternative choice. However, under the Teachers' Pensions Regulations (TPR) a member can only receive the benefits to which they are entitled. Retirement benefits are based on service and salaries to which the member has paid contributions on."

18. When Mrs Mather contacted us, after failing to resolve her dispute with TP, one of my investigators issued an opinion that in her view Mrs Mather's complaint should not be upheld.
19. Mrs Mather did not agree with that opinion and produced more information to support her claim that she had relied on the incorrect figures. She included evidence that her house sale and purchase took place on 8 March 2013. She explained that she had 12 years left on her 15 year mortgage; her mortgage repayments were £1,300 per month and there would be a large penalty if she ended the mortgage early, and therefore she had needed to transfer it to a cheaper house before she stopped working in 2013. As a result of her TPS pension being smaller than previously expected, and as she did not qualify for her State pension until September 2014, she was unable to pay off her loans from National Westminster Bank and Sainsbury's Bank.

Summary of Mrs Mather's position

20. She had no recollection of obtaining a refund of her 1974-1978 contributions in 1979 as she was suffering with severe post natal depression at that time.
21. Form 151 PEN and the other documentation required for the refund of contributions was completed in her ex-husband's handwriting, not hers, so she could not be expected to have remembered this.
22. TP had sent her annual estimates of retirement benefits, all of which included a statement that:

"Every effort has been made to ensure accuracy".

Therefore, on reading this she was entitled to expect that the correct figures were the same, or at least very close to, those quoted.

23. TP had a responsibility to give her correct information. The data error was spotted by TP when it processed her retirement application; therefore the correct information was already on TP's record system. The error should have been recognised sooner and notified to her.
24. She retired in 2013 on the basis of the incorrect figures supplied to her. Had she been aware then of her true entitlement under TPS she would not have chosen to retire early. As part of her retirement planning she had sold her home (incurring a loss), in order to buy a cheaper property and transfer her existing mortgage to it, so that in retirement, on a reduced income, she would still be able to afford her mortgage repayments.
25. When she received notification of her retirement benefits in 2013 it was a shock to find out that these were lower than she had previously been led to believe. Because the benefits were smaller than expected she was unable to clear her existing bank loans, she had overused her credit cards and had to borrow money from several members of her family to meet her mortgage repayments, so she would not lose her new home.
26. She had tried to increase her working hours and obtain a full-time job to mitigate her financial position, but her applications were unsuccessful. She was now unable to work as a teacher because she was a full-time carer for her elderly parents, both of whom were in poor health.

Summary of TP's position

27. TP was required to pay the benefits calculated in accordance with the statutory regulations governing the TPS. These provided for service not to be reckonable where a refund of contributions was paid. Under the statutory regulations TP had no discretion to pay more generous benefits. The statutory regulations did not allow for reinstatement where the refund was taken on or after 1 June 1973.
28. The data error was made about 17 years before TP took over responsibility for administering the TPS, and TP was entitled to assume that the membership data that it inherited from the Department for Education and Science was correct.
29. Although Mrs Mather may have been suffering from post natal depression in 1979, she had made enquiries in August 1978, about taking a future refund, so she should have had some awareness of the position.
30. Mrs Mather had quoted selectively from her estimates of retirement benefits. The full wording said:

“The figures in this Statement are for illustration only. Every effort has been made to ensure accuracy, however this Statement confers no right to the benefits quoted.”

Therefore, she should not have relied upon the estimates.

31. Prior to retirement, Mrs Mather's records would have been scrutinised for error only if a query on her benefits or service period had arisen and there had then been a reason to check the file. This had not happened in her case. Ordinarily, member records are examined in detail by TP near to the expected date of retirement, due to the high volume of retirement applications that TP has to process. It was not TP's normal procedure to provide accurate figures of future retirement benefits until an application had been calculated and authorised.
32. On 22 January 2013, when Mrs Mather phoned TP to say that she could not use TP's website pension calculator, she was told that the figures quoted to her over the telephone were estimates and were not set in stone.
33. Between 13 July and 1 August 2013, when the benefits came into payment, Mrs Mather could have cancelled her application and returned to work.
34. She has suffered a loss of expectation, but there is no actual loss of benefits.

Conclusions

35. Mrs Mather's main complaint is that TP should honour the overstated figures that it sent to her in several annual benefit statements, because she relied on those figures when she made the decision to move house and take early retirement, changing her position irreversibly, so it would be unfair for TP to provide her with the reduced benefits. For the reasons set out below I uphold that part of Mrs Mather's complaint.
36. TP admitted that the benefit estimates it issued to Mrs Mather in 2005 and later years were incorrect, but said that she should not have relied on them because the wording each year made clear that they were for illustration purposes only. I agree that the relevant wording (quoted in paragraph 30 above) did not guarantee the level of benefits quoted.
37. However, although this wording included the words "Every effort has been made to ensure accuracy", in practice, unfortunately, very little effort was made by TP to ensure accuracy. TP told us on 6 October 2015, that "TP is entitled to expect that the service details inherited from the Department for Education had been checked at the time they were recorded and that if they needed to be amended, as in this instance because of a repayment, they had been amended accurately." I accept TP's explanation that it is not feasible for TP to verify the membership record of every member each year, but there was a repeated assurance that "Every effort has been made to ensure accuracy", which was untrue. These words should not have been included. In the light of this I consider that Mrs Mather is similarly entitled to expect that her details held by TP were recorded accurately (or, at worst, contained only trivial errors).

38. Mrs Mather said she did not remember obtaining a refund of contributions in 1979. TP have pointed out that Mrs Mather enquired about the possibility of taking a refund of her contributions in a letter dated 3 August 1978, so she should have remembered. However, as those events happened over 35 years ago it is not totally surprising that Mrs Mather cannot remember them. Post natal depression can be a seriously debilitating condition and Mrs Mather's correspondence shows that she was badly affected. I therefore accept Mrs Mather's explanation that her post natal depression in 1979 affected her memory.
39. Furthermore, it is clear from comparing the writing on the forms completed at that time and in Mrs Mather's more recent correspondence that the application for a refund of contributions was completed by another person, presumably Mrs Mather's husband at that time. That gives credence to her comment that she could not recall receiving a refund of contributions. TP have pointed out that Mrs Mather's signatures on the forms completed in 1978 and 1979 looked very similar. However, there is a significant difference in handwriting style between those communications and Mrs Mather's later correspondence.
40. Generally, it is not permissible for members of a pension scheme to receive larger benefits than those to which they are entitled. This is especially true for public sector schemes like the TPS, in which the level of benefits is prescribed by statutory regulations. However, in some circumstances it is possible for members to be awarded compensation where they have received incorrect benefit estimates. There are strict criteria in place for awarding compensation. The member affected must have relied on the misinformation to his or her detriment, and there must be no suggestion that the member knew, or should have known, that a mistake had been made.
41. In the present case I am satisfied that Mrs Mather relied on TP's incorrect benefit illustrations, which wrongly accredited her with an additional 4 years and 108 days' pensionable service that should have been extinguished by the refund of contributions. Mrs Mather's decisions to sell her existing home (at a loss) while she was working full-time and buy a cheaper house to fund her future mortgage payments and to repay various loans formed a logical part of her early retirement planning, which was based on the benefit illustrations she had received. Having changed her position, she could not reverse her decisions when TP told her in July 2013 that its benefit illustrations were incorrect.
42. It is clear from the correspondence that Mrs Mather was unaware of the problem when she elected for retirement, and for the reasons set out above I consider that she should not have been expected to recall the refund of contributions made many years before. However, in remedying the position it is necessary to take account of the fact that Mrs Mather has had the benefit of the contribution refund for many years.

43. Mrs Mather also complained about how TP had handled the problem when it found out that her earlier benefit illustrations were incorrect. I agree that TP could have handled the matter better. TP admitted that its covering letter of 13 July 2013 was produced in standard form, provided automatically whenever a retirement application is authorised for payment. Therefore, it did not refer to the significant error that had recently been discovered. It was not accompanied by any other letter of explanation. Mrs Mather had to contact TP several times to get a full explanation.
44. I consider that TP's inadequate communications constituted maladministration. I accept that it would have made little difference financially if TP had given Mrs Mather an earlier explanation, because Mrs Mather had already changed her position irreversibly in 2013, by selling her home at a loss in order to buy a cheaper house, but an earlier notification of the issue by TP would have represented good practice
45. In conclusion, I consider that Mrs Mather should be entitled to rely upon the incorrect figures that TP sent to her, and that she should be compensated by TP for the significant distress and inconvenience that TP has caused her.

Directions

46. Within 28 days of the date of this determination TP shall:
- (1) calculate the additional amount of pension that would have been payable to Mrs Mather in respect of her period of service from 1974 to 1978 had she not received a refund of contributions for that period;
 - (2) increase Mrs Mather's pension by that amount;
 - (3) pay Mrs Mather the arrears of pension backdated to 1 August 2013 with interest calculated in accordance with the reference banks, after subtracting an amount equal to the refund of contributions that was paid to Mrs Mather in 1979 with interest on that amount calculated also in accordance with the reference banks, and
 - (4) pay Mrs Mather £500 for the significant distress and inconvenience that she has been caused.

Karen Johnston

Deputy Pensions Ombudsman
16 February 2016