

## Ombudsman's Determination

Applicant	Mrs S
Scheme	Teachers' Pension Scheme (TPS)
Respondents	Teachers' Pensions (TP), The Manchester College

## Outcome

1. Mrs S's complaint against TP and The Manchester College is partly upheld, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld) TP should pay Mrs S £350 and The Manchester College should pay Mrs S £250.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mrs S has complained that she should not be required to repay the overpayments of pension incorrectly made to her by TP, as the problem would not have arisen if TP and The Manchester College had communicated with her and each other more promptly.

## Background information, including submissions from the parties

4. Mrs S was a member of the TPS. She taught full-time at various locations, including Matthew Boulton College from 1 December 1999 to 31 July 2006, by which time she was nearly 66 years old. On 1 August 2006 she started teaching at The Manchester College (formerly City College Manchester), initially under a temporary part-time contract, but by February 2007 she was again working full-time..
5. The Manchester College collected pension contributions from Mrs S's pay from 28 February 2007, but backdated the deductions to August 2006. Because of the way that payments are made in bulk TP say they did not realise it had happened until much later.
6. TP sent Mrs S annual estimates of her expected retirement benefits. The estimate as at 31 March 2008 listed her various employments, including Matthew Boulton College from December 1999 to July 2006 and The Manchester College from January 2007 to

March 2008, with a gap between 2006 and 2007. TP say this record was based on the service details provided by Manchester College.

7. In March 2010 Mrs S completed an “application for retirement benefits” form, stating her “last date of pensionable teaching employment” as 28 February 2010. On Part B of the form The Manchester College gave her service details from April 2008 to February 2010.
8. On 1 June 2010 TP sent Mrs S a “statement of retirement benefits”. The first paragraph said:

“As no contributions have been deducted in respect of your part-time employment between 1 August and 31 December 2006 the payable date of your age benefits under the teachers’ pensions’ regulations is 1 August 2006. Your further service between 1 January 2007 and 28 February 2010 will count towards additional service after retirement benefits, details of which will be sent to you in due course.”
9. The statement said that Mrs S’s annual pension was £20,756.61, based on her pensionable service of 37 years and 129 days. Because the payable date was stated to be 1 August 2006, the statement included as a one off payment an “arrears of pension” of £49,940. The pension arrears and lump sum were put into payment on 3 June 2010.
10. On 21 June 2010 Mrs S queried the payable date, saying that her work was full-time. TP asked her to contact her employer.
11. Mrs S later told TP that she had not retired on 31 July 2006 but had continued working, on a part-time basis, at The Manchester College, and this employment should be pensionable as she had not opted out of the TPS. TP asked The Manchester College for confirmation of her contribution deductions since 2006.
12. TP received this information from The Manchester College on 7 July 2010, with an election form completed by Mrs S which referred to “part-time teacher opting in”. TP told Mrs S on 20 July 2010 that her election had been accepted by TP with effect from 1 August 2006.
13. TP wrote to Mrs S on 15 September 2010 to say that her benefits had been overpaid by £45,372.61 (net) because of the change of payable date from 1 August 2006 to 1 March 2010. TP enclosed a revised statement of benefits payable from 1 March 2010 and a set-off certificate, asking her for repayment.
14. Mrs S complained to TP on 1 October 2010 that she had not received any detailed calculations and an explanation of how the overpayment had arisen, despite making several requests, and that her monthly pension payments had been varied without any explanation.

15. Over the following months TP sent Mrs S several letters apologising for the delay in providing a full response. On 5 April 2011 TP wrote to Mrs S to apologise again for its delay and its poor level of service, and set out its full response to her complaint. TP's letter explained that:

“...the overpayment of your retirement benefits arose as a result of your employer confirming that you ceased pensionable employment on 31 July 2006. If this was your last day of service then your retirement benefits would be due from 1 August 2006. The service undertaken thereafter would have been considered to be additional service after retirement (**ASAR**).

To be eligible for ASAR, there must be at least one day's break in service [the one day rule] between the initial date of leaving and the date pensionable service was resumed. As you did not cease employment but continued in teaching service up to 28 February 2010 without a break in service, there was no entitlement to pension benefits with effect from 1 August 2006.

Had TP received prompt notification of your service with The Manchester College from 1 August 2006, we would not have had reason to believe that you left pensionable employment on 31 July 2006, and would not have therefore put retirement benefits in to effect from that date.

As a result of the change in retirement date, the benefits that were calculated for payment with effect from 1 August 2006 had to be reviewed with a new retirement date of 1 March 2010.”

16. Mrs S complained to TP on 2 May 2010 that its delayed response had caused her considerable distress, and asked for further clarification of the figures that TP had provided.
17. On 9 May 2011 TP wrote to Mrs S, asking her to repay the current overpayment of £45,351.61.
18. TP sent Mrs S a copy of her pension payment history on 14 June 2011, explaining that following an annual pension increase of 3.1% with effect from 11 April 2011 her current annual pension was £25,591.62.
19. On 6 July 2011 TP provided Mrs S with a more detailed calculation of her retirement benefits: based on her increased pensionable service of 40 years and 310 days and her higher salary, her annual pension as at 1 March 2010 was £24,822.14. There was now a net overpayment of £38,487.74.
20. On 18 August 2011 TP sent Mrs S a comparison of the pension paid to her and the pension due in each tax year since 2006/2007.
21. In January 2012 Mrs S asked The Pensions Advisory Service (**TPAS**) to help her. TPAS told Mrs S that she would probably have to repay the money because her

pension was properly payable from 2010, not 2006 as stated in the original award. TPAS pointed out that TP had corrected its mistake within a few months.

22. After further correspondence with Mrs S, TPAS told TP on 25 April 2012 that:

- TP had provided confusing and contradictory information to Mrs S and had subjected her to inordinate delays;
- Mrs S should have been informed about the “one day rule”;
- MBC was in breach of its employer/employee communication obligations because it did not tell Mrs S about her retirement options, and incorrectly assumed that she left service at age 65 in 2006 due to retirement;
- TP should have known that Mrs S was still in pensionable service when she continued to contribute to the TPS, and TP’s estimate of benefits in 2008 had identified her employment at The Manchester College.

TPAS acknowledged that repayment of the overpayment was required, but asked TP for a lengthy repayment plan, and to consider making an award to Mrs S for her distress and inconvenience.

23. Mrs Cross then invoked the TPS internal dispute resolution procedure (**IDRP**). At stage 1, TP’s letter of 15 June 2012 said that:

- before 2007, part-time work could be treated as pensionable under the Regulations only on receipt of a part-time election form;
- such an election would not be retrospective unless the Secretary of State agreed, or contributions were paid at the time of the employment; however, Mrs S did not elect to have her part-time service (from 2006 to 2007) treated as pensionable until 2010;
- on 1 June 2010 TP received copies of Mrs S’s payslips for August and December 2006, which did not show contribution deductions, so at that time her part-time work was not pensionable;
- retirement benefits under the TPS become payable from a normal pension age of 60, or the end of pensionable employment if later. Therefore, when Mrs S’s retirement benefits application was received in May 2010 her payment date appeared to have been in July 2006, when she ceased full-time employment, so pension arrears were generated from that date;
- later in 2010 The Manchester College provided further payslips showing that Mrs S’s contributions had been deducted in arrears in February 2007. The Manchester College had not followed the correct procedure, but in view of the time taken to make TP aware of the position TP exceptionally accepted a retrospective part-time election, from 1 August 2006. As this meant there was now no break in Mrs S’s pensionable service, she was not entitled to retirement benefits until she left The Manchester College in February 2010; hence the overpayment had arisen;
- it had taken TP some time to provide a full response because Mrs S’s position was complicated;

- TP told Mrs S of the overpayment in September 2010, only two months after TP became aware of the issue;
- it is not normal practice for TP to scrutinise TPS member records until a member applies for retirement benefits (in 2010 in Mrs S's case); and
- in summary, TP considered that the problem had been caused by Mrs S and The Manchester College: Mrs S should have made her part-time election in 2006, and The Manchester College should have collected her contributions at the relevant time and informed TP more quickly.

However, TP acknowledged that it had not given Mrs S a sufficient explanation of how the overpayment had arisen, and offered to pay Mrs S £50 in full settlement of her complaint. TP also said that Mrs S could make a further appeal to the Department of Education (**DE**) under stage 2 of the IDRP within six months of TP's letter.

24. Mrs S then had further correspondence with TP regarding her pension payments for March to June 2010. On 17 December 2012 TP told TPAS that Mrs S had not responded on repayment arrangements, and said that if she wished to take her appeal further she should write to the DE at the address provided in its letter of 17 June 2012 (meaning its letter of 15 June 2012).
25. Mrs S sent her appeal to the DE on 25 January 2013. TP later told Mrs S that the DE would not accept her appeal because she had submitted it out of time, more than six months after stage 1 of the IDRP was concluded.
26. When Mrs S contacted us, she explained that since December 2009 she had serious health issues, and had to undergo several operations, the most recent in September 2013, so her dispute had arisen during a stressful and difficult time for her.
27. In March 2015 TP told Mrs S that it proposed to recover £637.03 from her pension each month.

## The Regulations

28. Mrs S's benefits under the TPS are governed by the Teachers' Pensions Regulations 1997 (**the Regulations**).
29. Case A of regulation E4 provides that a member of the TPS is entitled to receive retirement benefits if:

“the person has attained the age of 60 [and] has ceased to be in pensionable employment”.
30. Paragraph 10 of regulation E4 states that:

“In no case shall a person be regarded as having ceased to be in pensionable employment until at least one day has passed without the person being in pensionable employment.”

## **Adjudicator's Opinion**

31. Mrs S's complaint was considered by one of our Adjudicators. The Adjudicator's findings are summarised briefly below:

- Mrs S brought her complaint against TP and The Manchester College. MBC was not made a party to the complaint so a finding could not be made against it.
- As the TPS is a statutory scheme, governed by the Regulations, TP is required to pay Mrs S the benefits stipulated under the Regulations. There is no discretion under the Regulations for TP to pay more generous benefits. Therefore, as TPS benefits are payable from the public purse, TP is entitled to seek recovery of any overpayment it has made.
- Under the Regulations, the pension for a TPS member working beyond normal pension age is payable with effect from normal pension age if at that time there is at least one day's break in service. Otherwise the pension is payable from the later date of retirement. Because of her backdated election, Mrs S had no break in service in 2006, so her pension was not properly payable until she stopped working in 2010. Therefore an overpayment arose in respect of the period from 2006 to 2010, and TP can seek recovery. However, as the sum to be recovered in this case is a substantial amount, recovery should be spread over a reasonable period of time. As Mrs S's overpayment related to a period of about four years a repayment period of not less than four years would seem appropriate.
- TP did not know until July 2010 that The Manchester College had, retrospectively, treated Mrs S's part-time employment as being pensionable. By that time her benefits had already been put into payment, with effect from 2006. If The Manchester College had notified TP more quickly the overpayment arising would have been much smaller, and the repayment request would have been less of a shock for Mrs S. The Manchester College's communication delays constituted maladministration.
- When TP was deciding whether to accept the retrospective election for part-time service to be pensionable, it should have spotted that accepting the election would close a gap in Mrs S's pensionable service, and should have investigated whether this would give rise to any overpayment issues. However, it was only in September 2010, after accepting the election, that TP told Mrs S that an overpayment of £45,372.61 (net) had arisen.
- Although Mrs S complained to TP on 1 October 2010 that it had provided her with conflicting information and not given a clear explanation of the overpayment, it was not until 5 April 2011 that TP gave Mrs S a full explanation. TP acknowledged that its delay was unacceptable and offered to pay Mrs S the sum of £50 in compensation.
- TP incorrectly raised Mrs S's hopes in December 2012 by telling her that she could make a further appeal to the DE, although the deadline for making such an appeal had already passed.

- These acts, omissions and delays constituted maladministration, for which Mrs S should be compensated by both Manchester College and TP.
32. Mrs S and TP did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mrs S, TP and The Manchester College provided their further comments, many of which do not change the outcome. The Manchester College agreed to pay the compensation sum that the Opinion suggested it should pay, without any admission of responsibility. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mrs S and TP for completeness.

### **Ombudsman's decision**

33. TP raised several objections to the Opinion. Firstly, TP said that the TPS members' booklet dated March 2005 and TP's letter of 28 October 2005 to Mrs S made clear that part-time teaching employment could not be pensionable unless the member made an election (using Form 261), and the booklet also explained that old age benefits would be payable if there was any break (even one day) in pensionable employment after age 60. Therefore Mrs S already had the information that she needed. She could have decided not to complete the election form. However, that would probably have resulted in her pension being suspended during her subsequent employment, in accordance with the Regulations.
34. I accept TP's comments on this point. The members' booklet is consistent with the Regulations. Mrs S was clearly expecting all her service to be pensionable. In her response to the Opinion, Mrs S said that there was a total lack of information about the choices available to her, and she felt that she had been misled by TP, but the evidence supplied to me does not support those comments.
35. Secondly, TP considered that Mrs S should have realised that if her payable date was changed from 2006 to 2010 there would be an overpayment of pension in the meantime, and the repayment schedule suggested in the Opinion was too relaxed.
36. I agree that Mrs S should have been aware that delaying her payable date would give rise to an overpayment. However, it took a considerable time for TP to give her an accurate breakdown of the overpayment and the reasons for it and I consider that a repayment period of four years is reasonable in Mrs S's circumstances being in line with the period over which the overpayment was incurred
37. Thirdly, TP said that it had not excessively delayed informing Mrs S of the overpayment: TP received the relevant information from The Manchester College on 7 July 2010 and wrote to Mrs S on 15 September 2010.
38. I consider that it should not have taken over two months to notify Mrs S of the fact that an overpayment had been made, but accept that due to the academic timetable this was a very busy period for TP.

39. Fourthly, TP said that it did not maintain a record of individual members' contributions, it had to rely on information received from the employers, and The Manchester College's decision in 2007 to backdate Mrs S's contributions to 2006 led to the overpayment of pension.
40. I accept that, acting as the central administrator of the TPS, it was necessary for TP to rely on information supplied by the members' employers. The Manchester College should have notified TP before 2010 that it had deducted Mrs S's contributions with retrospective effect. The Manchester College has accepted the view in the Opinion that it should pay compensation to Mrs S for the distress and inconvenience it has caused her.
41. Lastly, TP pointed out that it had apologised to Mrs S for its delay in providing adequate details of the overpayment and had offered her compensation of £50 in June 2012, which it considered to be an appropriate amount at that time.
42. However, I consider that amount to be too small, and take the view that the amount of compensation for distress and inconvenience suggested in the Opinion (£600, of which the larger part, £350, should be paid by TP and £250 should be paid by The Manchester College) is more appropriate, bearing in mind that:
- , When it exercised its discretion to grant pensionable service retrospectively, TP should have acted more quickly to tell Mrs S that she no longer had a gap in her pensionable service and therefore was not entitled to keep the earlier pension payments;
  - Mrs S had to wait until 5 April 2011 to receive a proper response from TP to her letter of 1 October 2010, and also wait until 6 July 2011 to receive its response to her queries of 2 May 2011; TP's correspondence with TPAS in 2012 also took longer than it should have done; and
  - TP should not have told Mrs S after the expiry date had passed in 2012 that she could still appeal to the DE.

As Mrs S mentioned in her letters to TP, she had been seriously ill and the delays in communication were stressful for her.

43. In her comments on the Opinion, Mrs S considered that the amount of compensation should be increased to reflect what she considered to be "shabby treatment" while she was ill. However, the sum of £600 is consistent with the amounts that I award where there has been serious distress and inconvenience, as in this case.
44. Therefore, I partly uphold Mrs S's complaint.

### **Directions** (if applicable)

45. Within 28 days of the date of this determination



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- TP shall pay Mrs S £350 for the distress and inconvenience that it has caused her;  
and
- The Manchester College shall pay Mrs S £250 for the distress and inconvenience  
that it has caused her.

**Karen Johnston**

Deputy Pensions Ombudsman  
4 July 2016