

Determination by the Pensions Ombudsman

Applicant	Mr Lewis Keable
Scheme	Teachers' Pension Scheme (the Scheme)
Respondent	Teachers' Pensions

Complaint summary

Mr Keable has complained that Teachers' Pensions did not alert him to an overpayment of his pension which accrued following his re-employment after retirement. Mr Keable believes that the overpayment should be waived.

Summary of the Ombudsman's determination and reasons

The complaint is not upheld against Teachers' Pensions. The evidence is that Mr Keable was made aware that it was his responsibility to inform Teachers' Pensions of his re-employment following retirement. Further, the Limitation Act 1980 does not prevent recovery of the overpayment of pension by Teachers' Pensions.

DETAILED DETERMINATION

Relevant Scheme regulations and literature

1. The Teachers' Pensions Regulations 1997 (the **Regulations**) provide that in certain circumstances a member in receipt of a retirement pension from the Scheme will have it abated if they return to teaching employment (Regulation E14). The member's pension may be suspended at any point in a tax year if the combined income from their re-employment and Scheme pension exceeds the salary they would have received if they had not retired (known as the salary of reference).

2. Regulation H3(4) states:

"Without prejudice to paragraph (2) a person who has become entitled to payment of a teacher's pension and who takes up employment such as is described in regulation E14(1) shall-

- (a) within 14 days of taking up such employment notify the Secretary of State giving details of the salary in the employment; and
- (b) within 14 days of any change in salary notify the Secretary of State."

3. Leaflet 192 (April 1993) is a booklet entitled "Re-employment After Retirement: Effects on your Pension". It sets out the type of work that will and will not affect a pension and also covers part-time work, supply work and employment agencies. It describes the salary of reference and the circumstances in which a pension will be reduced or suspended. Under the heading 'Introduction', the leaflet says, in capitals:

"To prevent overpayment of benefit you should notify the appropriate paying authority immediately you undertake re-employment."

4. The leaflet makes it clear that a return to supply work after retirement will be treated in the same way as a return to other teaching work after retirement and that if the supply contract requires the member to be available for work for less than the whole of the working week, they will be regarded as being employed part time. It also states at point 6.1 that:

"If you intend taking up an appointment after you retire, or if you have already done so, you should inform Paymaster General's Office (**PGO**) at once, even

if you think the re-employment is not of a type likely to affect your pension...On obtaining a post you should complete and detach TP64 (substitute) and send it to PGO...without delay.”

5. At point 6.3, it states:

“If you become re-employed but do not advise either the TPA [Teachers’ Pensions Agency – i.e. Teachers’ Pensions] or Paymaster General’s Office then your pension will continue to be paid in full. When notification of your re-employment is received from you or your employer, from HM Inspector of Taxes or from DSS, then Paymaster General’s Office will determine what effect, if any, the re-employment will have on your pension and action will be taken to recover from you any overpayment which may have occurred.”

6. The Limitation Act 1980 provides timescales by which an action must have commenced where a breach of the law has occurred. Ordinary breaches of contract are actionable for six years after the cause of action accrued as are actions to recover sums recoverable by statute. Section 32(1) of the Limitation Act 1980, entitled “Postponement of limitation period in case of fraud, concealment or mistake” states that:

“(1) ..., where in the case of any action for which a period of limitation is prescribed by this Act, either—

(a)...

(b)...or

(c) the action is for relief from the consequences of a mistake;

the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it.”

Material Facts

7. Mr Keable took premature retirement benefits from the Scheme with effect from 1 September 1993.
8. Mr Keable completed an “Application for Teacher’s Age or Premature Retirement Benefits” on 23 May 1993. He signed the declaration on the form. This declaration said that “I will inform the Paymaster General’s Office (TP) [i.e. Teachers’ Pensions] if I begin employment in education at any time during my retirement”.

9. Teachers' Pensions say that Mr Keable was also sent Leaflet 192 (April 1993) on or around his premature retirement, however Mr Keable says he did not receive it.
10. According to information sent from Suffolk County Council to Teachers' Pensions, Mr Keable was re-employed during the periods 1 February 1998 to 31 May 1998, 1 September 1998 to 28 February 1999 and from 12 April 1999 to 31 March 2003. Mr Keable says that he worked in teaching roles in schools during this period, although doesn't go into the specific detail of the timing of each employment.
11. Mr Keable did not inform Teachers' Pensions of any of these periods of re-employment.
12. Teachers' Pensions reviewed their records in 2011. This review showed that Mr Keable had been re-employment after his premature retirement in 1993, but that Teachers' Pensions had not received any TP64's/Certificates of Re-employment in respect of any periods of re-employment.
13. Following the review, Teachers' Pensions wrote to Mr Keable in November 2011. We have not received a copy of that letter but Mr Keable says that in it Teachers' Pensions asked him "to confirm various earnings". Mr Keable says he was unable to do this as his bank didn't keep records that far back. However, it appears that Teachers' Pensions then approached Suffolk County Council, who provided their records of Mr Keable's periods of teaching employment after 1 September 1993 and his earnings in those periods.
14. Teacher's Pensions' revised calculations showed that Mr Keable had been overpaid pension, as it had not been abated when it should have been after his premature retirement in 1993. Mr Keable was made aware of the overpayment in a letter from Teachers' Pensions dated 28 November 2012. An invoice for £15,202 accompanied that letter. (It is my understanding that Teachers' Pensions have not yet made any deductions from Mr Keable's pension.)

Summary of Mr Keable's position

15. He does not dispute that he undertook teaching employment after 1 September 1993, nor does he dispute the periods of service provided to Teachers' Pensions by Suffolk County Council. In addition, he does not dispute that he failed to inform

Teachers' Pensions of his re-employment on those occasions. Further, he does not dispute that he has been overpaid pension. His complaint is about the fact that Teachers' Pensions have sought to recover it.

16. He says he does not recall receiving Leaflet 192 (April 1993) on his premature retirement in 1993. It follows that he was not aware that he needed to inform Teachers' Pensions in the event that he returned to teaching employment.
17. Teachers' Pensions should be time-barred from seeking recovery of the monies under the Limitation Act 1980 as the overpayments date back over six years. He says that Teachers' Pensions delay in discovering the overpayment is unacceptable. He says that Teachers' Pensions received annual returns from Suffolk County Council in each year from 1998 to 2003, and a cursory glance at these would have shown Teachers' Pensions that he was in employment. As such, Teachers' Pensions failed to show reasonable diligence and, as a consequence, the period of limitation should begin to run from 1998 (or, at the very latest, 2003).
18. Teachers' Pensions have no right to recover the overpayments as he contributed in excess of £6,000 each year to the public purse during his periods of re-employment by way of income tax and National Insurance contributions. As such, the public purse benefitted from his re-employment well in excess of £15,000 (allowing for the pension payments).

Summary of Teachers' Pensions' position

19. Mr Keable signed a declaration on 23 May 1993 in which he said that he would inform the Paymaster General's Office/Teachers' Pensions if he began re-employment in education at any time after his premature retirement. Mr Keable was, therefore, aware that he needed to inform Teachers' Pensions if he returned to work after premature retirement. He failed to do this and as such, he was in breach of the declaration.
20. Mr Keable was also issued Leaflet 192 (April 1993) when he took premature retirement in 1993. This leaflet explained the implications of his returning to work, explaining that he should have completed a form "TP64" (subsequently replaced by a Certificate of Re-employment) when he returned to teaching.

21. Teachers' Pensions are not an employer. As such, they rely on information relating to a member's pensionable service from other parties – namely teachers and their employers. Mr Keable was aware of his obligation to provide information of his employment post premature retirement but failed to do so, and thus TP cannot be blamed for the delay in discovering the overpayment (i.e. as it related directly to the employment that Mr Keable should have kept them informed of).
22. Had Mr Keable submitted a form on each occasion where he returned to teaching employment, his pension would have been abated and there would have been no overpayment.
23. Teachers' Pensions submit that section 32 of the Limitation Act 1980 allows for postponement of the limitation period in this case. (Teachers' Pensions have not explained why they believe this section applies but presumably they would say it is because they were not made aware of the mistake until their investigations in 2011/2012.)

Conclusions

24. Teachers' Pensions must administer the Scheme in accordance with the Regulations. As such, if a pension should have been abated but was not, they are, at least in the first instance, entitled to seek recovery of the overpaid amount. There may be defences to recovery and these would only apply if Mr Keable received the overpayments in the reasonable belief they were his to spend. Mr Keable does not dispute that he has received an overpayment of pension. However, he challenges Teachers' Pensions' right of recovery.
25. His case, in essence, is that he was never told by Teachers' Pensions about his responsibilities in respect of the completion of a TP64/Certificate of Re-employment and so he was not aware of what was required of him. He also says that Teachers' Pensions should have known of his situation earlier and that they are not entitled to recover the full amount of the overpayment in any event in light of the provisions of the Limitation Act 1980.

26. Teachers' Pensions provided Mr Keable with information which highlighted his obligations to notify them, not only of his re-employment at any time during his retirement, but also of any changes to his employment. Mr Keable was informed of his obligation to notify Teachers' Pensions of his re-employment in the declaration that he signed when he applied for his pension. It is beyond doubt that Mr Keable saw that declaration as he signed it on 23 May 1993. Leaflet 192 (April 1993) also set out the circumstances in which his annual pension would be affected by his re-employment and that the failure to inform Teachers' Pensions of his re-employment could result in an overpayment of pension which would be recoverable. Mr Keable says that he did not receive this leaflet; however I consider that, on the balance of probabilities, it is likely that he did receive it. This is because Teachers' Pensions' records indicate that it was sent.
27. The onus was on Mr Keable to notify Teachers' Pensions each time he resumed teaching. The information that he had previously received made it clear to him that he was required to inform Teachers' Pensions when his employment changed and the requirement to complete and return a TP64/Certificate of Re-employment. Leaflet 192 (April 1993) stresses the importance that pensioners should let Teachers' Pensions know immediately on returning to work and that any failure to do so could result in an overpayment. (The leaflet also notes that teachers should do this even if they think that it would not affect their pension.)
28. Taking all the above into account, I consider that Mr Keable ought reasonably to have been aware that he was required to complete a TP64/Certificate of Re-employment each time he was re-employed post premature retirement. Consequently, I consider it reasonable to expect Mr Keable to have contacted Teachers' Pensions in the subsequent years of his re-employment.
29. As stated previously, Mr Keable also says that Teachers' Pensions should be prevented from recovering the overpayment as a consequence of the operation of the provisions of the Limitation Act 1980.
30. The Limitation Act 1980 governs time limits for bringing different types of claims in the courts and the basic time limit is six years from the date when the cause of action accrued. However, under section 32(1)(c) of the Act, the limitation period is

extended in the case of an action arising as a result of a mistake. If Teachers' Pensions had issued proceedings in court it would have been able to argue that its time limit for issuing proceedings against Mr Keable started to run from the date when it could, with reasonable diligence, have discovered the mistake.

31. Teachers' Pensions first demanded repayment of the overpayments from Mr Keable in their letter dated 28 November 2012 after they had conducted further investigations into his periods of re-employment in 2011. On the basis of the information they received from Suffolk County Council, Teachers' Pensions undertook a full assessment of his earnings from his periods of re-employment and determined that it had mistakenly made pension payments to Mr Keable in excess of his entitlement. To extend the six years, Teachers' Pensions rely on the fact that they had provided Mr Keable with information as to his responsibilities and the onus was on him to bring his circumstances to their attention.
32. I consider that "reasonable diligence" extended as far as having the requirement for Mr Keable to inform Teachers' Pensions of his re-employment (whether through completion of a certificate or otherwise) and an assumption that Mr Keable would do so. It does not require exceptional measures to be taken. Even if Teachers' Pensions was sent information in the period from 1998 to 2003 which could have suggested that Mr Keable was in teaching employment, it remained Mr Keable's responsibility to inform Teachers' Pensions of that employment. For the purposes of a defence against recovery it does not matter whether Teacher's Pensions could have identified the need for abatement many years earlier, since Mr Keable also ought to have known of it. So I do not find that Mr Keable is protected from recovery by the Limitation Act 1980.
33. Mr Keable has also argued that Teachers' Pensions have no right to recover the overpayments as he contributed in excess of £15,000 (allowing for the pension payments) to the public purse during his periods of re-employment by way of income tax and National Insurance contributions (and Teachers' Pensions are paid from the public purse).

34. Mr Keable will have paid additional tax on the pension that he should not have received. But that is not a reason for it not to be recovered. There is an overall cost to the public purse of Mr Keable having received a pension to which he was not entitled
35. For the reasons set out above, I do not uphold Mr Keable's complaint. My expectation is that Teachers' Pensions and Mr Keable will now enter into sensible discussions about how the money should be repaid.

Tony King
Pensions Ombudsman

19 January 2015