

Ombudsman's Determination

Applicant	Mr Renganarden Candassamy
Scheme	Teachers' Pension Scheme (the Scheme)
Respondents	(1) Teachers' Pensions (2) The Brit School for Performing Arts and Technology (the School)

Complaint summary

Mr Candassamy has complained that Teachers' Pensions has asked that he repay an overpayment of pension. He says that Teachers' Pensions should waive the overpayment or substantially reduce it. He also complains that the School failed to provide information relating to his re-employment post premature retirement to Teachers' Pensions.

Summary of the Ombudsman's determination and reasons

The complaint is not upheld against Teachers' Pensions because the regulations governing the Scheme provide that the overpayments are recoverable and Mr Candassamy has no valid defence to the recovery of them. In addition, while the School failed to send information to Teachers' Pensions on one occasion, this has not caused Mr Candassamy to suffer financial or non-financial injustice.

Detailed Determination

Relevant statutory provisions

1. The Teachers' Pensions Regulations 1997 (**TPR 1997**), 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. It is the responsibility of the pensioner to notify Teachers' Pensions of their re-employment, providing details of the salary in the employment. Regulation H3(4) says as follows:

"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. The Teachers' Pensions Regulations 2010 (**TPR 2010**), in force from 1 September 2010, also provide that it is the responsibility of the pensioner to notify Teachers' Pensions of their re-employment. Regulation 132(2) and (3) says as follows:

"(2) A person to whom this regulation applies must, within such time as the Secretary of State may require, give the Secretary of State such information and produce such documents as the Secretary of State may require for the purpose of the Secretary of State's functions under these Regulations.

(3) A person who has become entitled to retirement benefits and who takes up employment such as is described in regulation 64 must (as well as complying with paragraph (2))-

- (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 of salary notify the Secretary of State."

Note: Regulation 64 TPR 2010 contains the abatement provisions.

4. Both TPR 1997 and TPR 2010 provide that where an overpayment of pension is made to a member from the Scheme, it is recoverable.
5. 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

6. Mr Candassamy obtained premature retirement benefits with effect from 12 March 1997.
7. In order to obtain premature retirement, he had to complete an application form. The application form, at section 9, warned Mr Candassamy that teaching post premature retirement could result in the reduction or suspension of his pension. Further, when asked in question 33 (also in section 9) whether he would be employed in an educational capacity after his retirement, Mr Candassamy indicated that he wouldn't. The declaration to the application form, signed by Mr Candassamy on 18 December 1996, confirmed that he understood that an “over-issue” of pension benefits would have to be refunded.
8. Mr Candassamy's statement of award was issued on 28 February 1997. It confirmed Mr Candassamy's salary of reference as £26,358. The accompanying letter also confirmed that Mr Candassamy should contact “the Pensioner Services Section” if he subsequently became re-employed.
9. A copy of Leaflet 192, dated October 1996, was also sent to Mr Candassamy at that time. Mr Candassamy was informed in Leaflet 192 that he should complete a Form TP64 if he returned to teaching employment. It also stated that the assessment of re-employment against the earnings limit took place annually.
10. In 1998 Teacher's Pensions replaced the Form TP64 with Certificates of Re-employment. A requirement was introduced that these be submitted to Teachers' Pensions annually.
11. Mr Candassamy was re-employed in a part time teaching post with the School from 6 January 1999.
12. Mr Candassamy informed Teachers' Pensions of his re-employment in a permanent post with the School on 27 September 1999.
13. Teachers' Pensions sent a letter to Mr Candassamy on 19 October 1999, asking him to complete a Certificate of Re-employment (which it enclosed) and return it to it. The letter said as follows:

“...The annual pension will be put back into payment at the beginning of the next tax year, if the re-employed salary plus the annual pension does not exceed the

salary of reference. The process will be repeated each tax year (April to March) for as long as the re-employment continues. Should your circumstances change during the tax year a review will be done.

It is important that you return the certificate [i.e. the enclosed Certificate of Re-employment] via your employer as soon as possible. Failure to do so could result in an overpayment of annual pension which you would have to repay in any event..."

14. Mr Candassamy completed Part A of the Certificate of Re-employment on 9 November 1999, and returned it to the School. Part B, completed by the School on 13 November 1999, set out his part-time earnings in the period 1 April 1999 to 31 August 1999, and from 1 September 1999 (although it provided no end-date to that period). Teachers' Pensions date stamp suggests that the Certificate of Re-employment was received by it on 18 January 2000.
15. Upon receipt of the completed Certificate of Re-employment Teachers' Pensions undertook an assessment for the period from 6 April 1999 to 5 April 2000. Mr Candassamy was subsequently informed by Teachers' Pensions, in its letter to him of 1 March 2000, that his pension would cease from 13 March 2000, as he had exceeded his salary of reference for that period.
16. However, the School faxed Teachers' Pensions on 6 March 2000, informing it that the salary provided for the period from 1 September 1999, of £14,801, was for a year. The School confirmed that "the second line of confirmation of salary for the period 01.09.1999 to 31.03.2000, should read £8,634".
17. On receipt of the fax from the School, Teachers' Pensions reassessed the period from 6 April 1999 to 5 April 2000, and concluded that Mr Candassamy's annual pension was not affected. (Specifically, it said that it was not affected based on earnings of £14,593 for the period 6 April 1999 to 5 April 2000.) It communicated this to Mr Candassamy in its letter of 31 March 2000. That letter enclosed a further blank Certificate of Re-employment and informed Mr Candassamy that he should complete it if his circumstances changed. The letter did not explicitly say that Mr Candassamy was required to complete a Certificate of Re-employment on an annual basis, but only if his "circumstances" changed; this included "55th birthday, change of post, increase in hours or annual salary". The letter was accompanied by a leaflet detailing changes to the Scheme, which has not been provided to my office.
18. Mr Candassamy contacted Teachers' Pensions - specifically, the Membership section - in 2001 to elect for his re-employment to be treated as pensionable with effect from 1 April 2000. This was noted by the Membership section. Teachers' Pensions submit that the Pensioner Services Section within Teachers' Pensions, to whom Certificates of Re-employment would be sent and processed, had not been informed of this further employment by means of Certificates of Re-employment so were unaware of Mr Candassamy's re-employment.

19. Mr Candassamy submits that he spoke, via telephone, to a representative of Teachers' Pensions in 2002. He says that the representative reassured him that his new salary, on increasing from 0.6 to 0.8 (as a proportion of full-time hours) would still be below his salary of reference.
20. In April 2008 Teachers' Pensions updated its processes. A process was introduced whereby Teachers' Pensions would automatically write to a pensioner when service was updated onto their service record. On 15 October 2008, following notification from the School on their annual return of service for the 2007/08 year, a further Certificate of Re-employment was issued to Mr Candassamy. Mr Candassamy telephoned Teachers' Pensions on 22 October 2008, purportedly to query why he had been sent it, but it was subsequently not returned.
21. Further Certificates of Re-employment were issued to Mr Candassamy by Teachers' Pensions on 4 March 2010, 15 September 2010, and 23 August 2011. Teachers' Pensions submit that none of these were returned. However, Mr Candassamy has said that he provided completed Certificates of Re-employment (i.e. completed Part A of those certificates) to the School dated 15 October 2008 (the **2008 Certificate**), 4 March 2010 (the **2010 Certificate**), and 28 November 2011. The School has submitted that there is no complete copy of the 2008 Certificate on its files; but there is a copy of Part A of it, completed by Mr Candassamy. The School has also submitted that it does not hold a copy of the 2010 Certificate.
22. Teachers' Pensions received a fully completed Certificate of Re-employment on 30 November 2011. (Presumably this is the Certificate of Re-employment provided by Mr Candassamy with Part A dated 28 November 2011). Mr Candassamy's re-employment was subsequently assessed by Teachers' Pensions for abatement using the service and salary details provided by the School in its annual returns of service and on the Certificate of Re-employment for the period from 1 April 2010. An assessment of all of Mr Candassamy's re-employment also took place at that time. Following the assessment Teachers' Pensions issued a letter to Mr Candassamy on 20 December 2011. This letter explained that abatement should have been applied and, as a consequence, an overpayment of pension for each part of the tax year in the period from 6 April 2001 to 5 April 2011 had occurred. The total net overpayment to be recovered amounted to £37,967.71.
23. Teachers' Pensions subsequently sent Mr Candassamy a further letter, on 29 May 2013, informing him that his pension should have been abated in the period 6 April 2011 to 5 April 2012. It said that the total overpayment of pension now stood at £41,926.73 and enclosed an invoice for the total amount.
24. Mr Candassamy disputed the invoice and appealed under the Scheme's internal dispute resolution procedure. Teachers' Pensions - and, subsequently, the Department for Education - did not uphold Mr Candassamy's complaint, finding that the overpayment was due.

Summary of Mr Candassamy's position

25. On every occasion that he was sent a Certificate of Re-employment by Teachers' Pensions he completed Part A and sent the certificate to the School (for completion of Part B and onward submission to Teachers' Pensions).
26. Nowhere in any documentation from Teachers' Pensions - Leaflet 192 or any letters received - was there an obligation to complete a Certificate of Re-employment on an annual basis. As he continued to be employed by the School on a permanent basis and as he had received assurances from the School that it would send Teachers' Pensions his salary details each year, he felt that there was no reason to contact Teachers' Pensions as he "was not returning to work every year".
27. In 2002 he was given the "all clear" by a representative at Teachers' Pensions to increase his hours from 0.6 to 0.8 per week. The representative had worked out - over the telephone - that he would still be under his salary of reference if he increased his hours in that way. As he had been informed of this and had informed the representative that he was 55, he thought that he did not have to complete a Certificate of Re-employment. This is the "major defence" in his case against recovery.
28. He believes it is reasonable for any teacher to assume that - if they are paying and contributing into a pension with Teachers' Pensions (or any other organisation) - Teachers' Pensions (or that organisation) would be aware that teacher would indeed be in teaching employment.
29. He would not have accepted a teaching post in a school in the maintained sector (for example, the School) which would provide him with a salary that exceeded his salary of reference believing he could "get away with it". Teachers' Pensions has always made it clear that any pensioner who transgresses would be made to repay the overpayment.
30. It appears that one or more of the Certificates of Re-employment sent by him to the School did not reach Teachers' Pensions.
31. The National Union of Teachers, acting on Mr Candassamy's behalf during the Scheme's IDRPs, said in its stage 2 IDRPs response that Teachers' Pensions is out of time for re-claiming the overpayments because of the "age" of them. (But no further, specific arguments have been made as to limitation.) The National Union of Teachers did, however, make representations about "due diligence" on Mr Candassamy's behalf, arguing that the "swift action" by Teachers' Pensions in March 2000 gave Mr Candassamy "the confidence and reassurance that should he exceed his salary of reference, Teachers' Pensions would inform him straightaway and take necessary action". Further, it submitted that Teachers' Pensions' letters asking Mr Candassamy to complete Certificates of Re-employment suggested that it was "being pro-active and exercising due diligence", which again served to reassure Mr Candassamy in the manner described previously.

32. In any event, the amount of overpayment claimed by Teachers' Pensions is incorrect. The method of calculation adopted by Teachers' Pensions makes the overpayment bigger than it actually is.

Summary of Teachers' Pensions' position

33. Mr Candassamy should have been aware from all the information issued to him at the time of his premature retirement, in 1999/00 and from 2008 onwards, that his teaching employment was subject to the abatement provisions of the Scheme. Mr Candassamy should also have been aware of the need for an annual assessment to be undertaken and of the level of earnings that would affect his pension. Furthermore, he should have been aware, from Teachers' Pensions letter of 31 March 2000, that once an assessment was undertaken, a letter would be issued to him to inform him of the outcome of that assessment.
34. However, Mr Candassamy did not keep Teachers' Pensions informed of his re-employment by completing any Certificates of Re-employment. There is no record that the Certificates of Re-employment issued in 2000, 2008, and 2010, were ever returned. There is also no evidence of Mr Candassamy questioning whether the annual assessments had been undertaken. This should have been apparent in view of the confirmation that such assessments would be undertaken annually and especially after the Certificates of Re-employment Mr Candassamy states he completed and passed to the School, should have been received by Teachers' Pensions.
35. Consequently, as Teachers' Pensions did not receive confirmation from Mr Candassamy at the time of his re-employment for the appropriate years, the position could not be assessed by Teachers' Pensions (specifically, the Pensioner Services Section of Teachers' Pensions) until 2011.
36. With respect to Mr Candassamy's telephone call to Teachers' Pensions in 2002, while there is no record of the call on its file, there was a contact centre operator in the name given by Mr Candassamy working for Teachers' Pensions at that time. The absence of a record on Mr Candassamy's file suggests that his record was not accessed at the time he was advised, so a precise assessment was not undertaken. (Indeed, he had made two other telephone calls to Teachers' Pensions in 2002 and the details of these had been noted.) Further, contact centre operators are not instructed to provide advice over the telephone, but instead ensure written confirmation is issued (as evidenced in Teachers' Pensions' letter to Mr Candassamy of 23 January 2012, confirming his salary of reference for the 2011/12 year following a phone call from Mr Candassamy requesting it). Finally, any information provided in a phone call does not detract from the requirement for a Certificate of Re-employment to be completed each year, regardless of whether the individual thinks they have exceeded the limit or not and especially when their 55th birthday is reached, or their hours and annual salary increase.

37. Teachers' Pensions have correctly applied the provisions of the regulations governing the Scheme in Mr Candassamy's case. The overpayment of pension still stands and Teachers' Pensions is obliged to seek recovery.
38. With respect to the salary information used by Teachers' Pensions to calculate the overpayment, Teachers' Pensions have correctly applied the information supplied by the School in its annual returns. It has advised Mr Candassamy that it cannot accept his P60s and that he should contact the School who should subsequently provide amendments (should these be necessary).

Summary of the School's position

39. It does not hold a copy of the completed 2008 Certificate. It holds a copy of completed Part A of the 2008 Certificate, but it cannot determine how it came to have it - it might be that it is in its possession because Mr Candassamy has sent it in the course of this investigation, or it may have received it in 2008. Even if it had received the form in 2008, the presence or absence of a copy does not prove that it did or did not receive it, complete and send it to Teachers' Pensions, nor that Teachers' Pensions did or did not receive it.
40. It does not hold a copy of the 2010 Certificate, or any part of it. As stated with respect to the 2008 Certificate, it does not believe that the absence of a copy of the 2010 Certificate "proves anything either way".
41. Mr Candassamy submits, in his letter to my office of 12 November 2014, that the School gave him complete reassurance that Teachers' Pensions knew of his permanent re-employment and that the School told him that there "was no need to be concerned" as it sent Teachers' Pensions his annual salary returns. In response the School says that it would have been in a position to confirm that Mr Candassamy was included on the annual returns, but submits that it would not have told him that there was no need to be concerned as it is not within its "responsibility or knowledge" to advise him in such matters.

Conclusions

Introduction

42. Teachers' Pensions must administer the Scheme in accordance with the regulations that govern it. 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 Candassamy received the overpayments in the reasonable belief they were his to spend. Mr Candassamy does not dispute that he has received an overpayment of pension. However, he challenges Teachers' Pensions' right of recovery.

43. In essence, Mr Candassamy's complaint is that the School and Teachers' Pensions failed to action the Certificates of Re-employment he sent to the School in respect of his re-employment and that the time-delay in ascertaining the overpayments means that they should no longer be entitled to recover any overpayments that have been paid to him.

Certificates of Re-employment

44. The first question to consider is whether Mr Candassamy was aware that he was required to complete Certificates of Re-employment on an annual basis. Mr Candassamy submits that he was not aware of this requirement, whereas Teachers' Pensions submit that it had made him aware of it.
45. I do not agree with Teachers' Pensions' view, expressed in its formal response to my office of 18 February 2015, that Mr Candassamy was informed in its letters of 19 October 1999, and 31 March 2000, that he needed to complete a Certificate of Re-employment on an annual basis. The letter of 19 October 1999 did not, in my view, clearly explain to Mr Candassamy that he needed to complete a Certificate of Re-employment on an annual basis if he remained in employment. The letter asked Mr Candassamy to complete the enclosed Certificate of Re-employment at that time, but it did not make it sufficiently clear to him that he was obliged to provide a Certificate of Re-employment on an annual basis should he remain in employment. In my view, the letter simply informed him that the process of assessment would be repeated each year which, while arguably suggestive that he needed to complete a Certificate of Re-employment on an annual basis, did not provide a clear instruction to him that he should. In addition, the letter of 31 March 2000 said that Mr Candassamy needed to complete a Certificate of Re-employment if his circumstances changed. The circumstances, set out in that letter, were his reaching age 55, changing his post or increasing his hours or annual salary. Incidentally, and by way of reminder, the information provided prior to/at Mr Candassamy's premature retirement did not reflect the requirement, as it was not in place at that time. It follows that Teachers' Pensions did not, in my view, clearly inform Mr Candassamy in its letters of 19 October 1999, and 31 March 2000, that a Certificate of Re-employment had to be completed by him on an annual basis if he continued in eligible re-employment.
46. However, Teachers' Pensions did inform Mr Candassamy that he needed to complete a Certificate of Re-employment on the happening of a number of events. One of these was if his annual salary changed (which reflected the requirement in regulation H3(4) of TPR 1997). The copies of the salary information provided to my office in the course of this investigation demonstrate that Mr Candassamy's salary did change on an annual basis during the period. It follows that the information provided in Teachers' Pensions' letter of 31 March 2000, should have prompted Mr Candassamy to provide a Certificate of Re-employment when his annual salary changed. So, while Mr Candassamy was not made aware, in a sufficiently clear manner, of the requirement for completion of a Certificate of Re-employment on an annual basis if his re-annual basis if his employment continued, the information provided to him should have

resulted in him providing Certificates of Re-employment on that basis anyway. I am therefore satisfied that Mr Candassamy was aware from at least 31 March 2000, that he had an obligation to inform Teachers' Pensions of any change in the salary he was paid during his re-employment post premature retirement.

47. Mr Candassamy first notified Teachers' Pensions of his re-employment with the School on 27 September 1999. He subsequently completed the Certificate of Re-employment sent to him by the School and he was initially advised that his pension would cease from 13 March 2000, although this was later reassessed and the abatement disappplied (as recorded in Teachers' Pensions' letter dated 31 March 2000). Teachers' Pensions then sent Mr Candassamy a further Certificate of Re-employment. But despite the information provided to him he did not complete any Certificates of Re-employment until 2008. Mr Candassamy's failure to take the action he ought to have done in the period 2000 to 2008, and in later years when he failed to complete a Certificate of Re-employment, cannot be regarded as a genuine oversight. He had been provided with sufficient transparent information such that he ought reasonably to have known that he was required to provide Teachers' Pensions with information about his salary each tax year following his re-employment (when his salary changed). In light of the outcome of the submission of his Certificate of Re-employment in 2000, Mr Candassamy may not have known that an overpayment was definitely building up. Or, if he was so aware, how much the overpayment amounted to. However, he must have been aware that there was a possibility that an overpayment could occur and yet he still failed to provide the necessary information to Teachers' Pensions. It follows that in the years where Certificates of Re-employment were not submitted Mr Candassamy may not have known that he was definitely being overpaid, but he must have been aware that there was a possibility that he could have been overpaid.

The 2008 Certificate

48. The School has said it cannot be sure whether it received Part A of the 2008 Certificate in 2008, or during the course of Mr Candassamy's complaint. From my perspective, Mr Candassamy has said that he submitted it in 2008 and the School held a copy. As such, I find, on the balance of probabilities, that the 2008 Certificate was sent to the School in 2008. In sending the 2008 Certificate to the School I am satisfied that Mr Candassamy complied with his obligation - pursuant to regulation H3(4) TPR 1997 - to inform Teachers' Pensions of his re-employment in that tax year.
49. The School have said that it doesn't know what happened to the 2008 Certificate subsequently. As such, the School is unable to confirm whether (if it did receive it) it completed Part B and sent it on to Teachers' Pensions. It follows that the School cannot confirm whether it was not actioned by it, or it was and then subsequently lost by Teachers' Pensions. Given I have found that the School received the 2008 Certificate and that Teachers' Pensions has no record of receiving it, the most likely course of events, on the balance of probabilities, is that the School failed to action it and send the completed version to Teachers' Pensions.

50. The School's failure to send the completed 2008 Certificate to Teachers' Pensions was maladministration. I am satisfied that had the maladministration not occurred Teachers' Pensions would have assessed Mr Candassamy's employment in that year and an overpayment would have been identified, which would have resulted in his pension being abated. A remedy can be provided by the Ombudsman for maladministration but only if it can be ascertained that the maladministration caused the wronged party to suffer financial or non-financial injustice. My view is that the School's failure to complete and submit the 2008 Certificate has not caused Mr Candassamy to suffer any financial or non-financial injustice. The School's failure led to Mr Candassamy's pension not being abated for that tax year. As it was not abated, Mr Candassamy has been paid pension to which he was not entitled under the regulations governing the Scheme. The amount paid would not have been paid if his pension was abated, but the fact that the payment was made as a consequence of the School's error rather than his own failure to meet his obligations does not mean that the payment is not recoverable. As I set out previously, there may be defences to recovery but these would only apply if Mr Candassamy received the overpayments in the reasonable belief they were his to spend. I go on to consider these defences. As it appears that Teachers' Pensions have not (and are not intending to) charge interest on the amount overpaid in the period relating to the 2008 Certificate, Mr Candassamy has suffered no financial injustice as a direct consequence of the School's maladministration.
51. In any event, I believe that the School's maladministration could have been uncovered earlier had Mr Candassamy pursued the issue when he had not heard from Teachers' Pensions. When Mr Candassamy submitted a Certificate of Re-employment in 1999 he subsequently received a letter from Teachers' Pensions informing him that his pension would cease (and, incidentally, another reversing that decision). As such, it is my view that having submitted the 2008 Certificate to the School Mr Candassamy should have subsequently expected contact from Teachers' Pensions and the fact that he did not should have prompted him to chase Teachers' Pensions for a response; he should not have simply assumed that silence meant that he had not been overpaid pension in that period.
52. Further, had Mr Candassamy's Certificate of Re-employment reached Teachers' Pensions in 2008 it does not follow that the true extent of the overpayments that had occurred in the period from 2000 would have been discovered at that time. The Certificate of Re-employment contains details for the relevant year. As such, if an overpayment is identified as a consequence of a Certificate of Re-employment this does not demonstrate to Teachers' Pensions that an overpayment has occurred in previous years. Indeed, Teachers' Pensions are entitled to rely on the assumption that the member would complete Certificates of Re-employment for those years had they been re-employed in education.

The 2010 Certificate

53. In respect of the question as to whether Mr Candassamy sent the 2010 Certificate to the School, given the lack of evidence my view is that while Mr Candassamy was aware of his obligation to inform, on this occasion he failed to do so. Mr Candassamy recalls sending the 2010 Certificate to the School, but he cannot establish that he actually did so even on balance of probabilities. He has no evidence of posting and he did not pursue the issue further when he had not heard anything from Teachers' Pensions, despite the fact that he had done so on the previous occasion when he submitted a Certificate of Re-employment in 1999, and he subsequently received a letter - from Teachers' Pensions - informing him that his pension would cease. Further, the School says it did not receive the 2010 Certificate and the evidence shows that it did not act as if it had been received.

Mr Candassamy's telephone call with Teachers' Pensions in 2002

54. As set out previously, Mr Candassamy submits that he spoke with a representative at Teachers' Pensions via telephone in 2002. Mr Candassamy says that the representative reassured him that his new salary, on increasing from 0.6 to 0.8 (as a proportion of full-time hours) would still be below his salary of reference. He therefore submits that he was assured by Teachers' Pensions that his pension would not need to be abated as a consequence of increasing his hours.
55. While no contemporary written record of the call exists, given Mr Candassamy's recollection and Teachers' Pensions confirmation that the contact centre operative with the name given by Mr Candassamy worked for Teachers' Pensions at that time, my view is that it seems more likely than not, on the balance of probabilities, that the call did take place. However, in the absence of a contemporary record of the call and given that Teachers' Pensions policy is to record calls of this nature and issue follow-up advice in writing (which did not happen here but, incidentally, did happen in respect of another telephone call he made to Teachers' Pensions that year), I cannot find, on the balance of probabilities, that Mr Candassamy was reassured on that telephone call that his new salary would be below the salary of reference.
56. In any event, as explained previously, Mr Candassamy was told in the Teachers' Pensions' letter to him of 31 March 2000, that if he increased the hours worked he would need to complete a Certificate of Re-employment. His purported discussion by telephone could not override or circumvent this requirement. It follows that Mr Candassamy ought reasonably to have been aware that his correct course of action on increasing his hours was to complete a Certificate of Re-employment; it was not sufficient for him to simply have relied upon (undocumented) advice.

Teachers' Pensions' right of recovery

57. As stated previously, Teachers' Pensions must ensure that the Scheme is administered in accordance with the regulations that govern it. Both TPR 1997 and TPR 2010 provide that if an overpayment has arisen it is recoverable. So the overpayments that occurred in the period are recoverable. Recovery would only be prohibited if Mr Candassamy was able to demonstrate that he was unaware that the overpayments were not his to spend (and demonstrate that he had made an irreversible financial decision that he would not have made had he been aware of the overpayments), or if the respondents are time-barred by statute from pursuing recovery. In my view, neither reason applies.
58. The overpayments cannot be waived on the basis that Mr Candassamy was unaware that they were not his to spend. This is because it is clear from the course of events that Mr Candassamy did not receive the overpayments in the knowledge that they were his to use as he wished. There are two reasons why I reach this conclusion. Firstly, he maintains that he did send Certificates of Re-employment (in 2008 and 2010) and so he was aware that there was a possibility, however remote, that he may have been overpaid pension in those periods. Secondly, with respect to the overpayments made in the other years, as I have explored previously, Mr Candassamy was aware, or ought reasonably to have been aware, following Teachers' Pensions' letter of 31 March 2000, that he had to inform Teachers' Pensions if his salary changed. So while he may not have known that he was definitely being overpaid in those years, he must have been cognisant that there was a possibility, however remote, that he could have been overpaid.
59. In some circumstances the recovery of an overpayment can be time-barred by statute. 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 Candassamy started to run from the date when it could, with reasonable diligence, have discovered the mistake.
60. Teachers' Pensions first demanded repayment of the overpayments from Mr Candassamy in its letter dated 20 December 2011, after it had conducted further investigations into his periods of re-employment. (They had also received a completed Certificate of Re-employment at that time.). 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 Candassamy in excess of his entitlement. To extend the six years Teachers' Pensions rely on the fact that they had provided Mr Candassamy with information as to his responsibilities and the onus was on him to bring his circumstances to their attention.

61. My view is that “reasonable diligence” extended as far as the requirement to inform the School and Teachers’ Pensions of his re-employment at the appropriate times and an assumption that Mr Candassamy would do so. It does not require exceptional measures to be taken. While it is clear that Mr Candassamy submitted a Certificate of Re-employment in 1999, the information subsequently provided by the School suggested to Teachers’ Pensions that no overpayment had arisen. It would not have been possible at that time for Teachers’ Pensions, acting with reasonable diligence, to have discovered that an overpayment would have arisen in the subsequent tax year (i.e. 2000/01). Further, as has been set out above, the evidence suggests that, on the balance of probabilities, the 2008 Certificate and the 2010 Certificate never reached Teachers’ Pensions. Finally, and as is also set out above, there is insufficient evidence to demonstrate, on the balance of probabilities, that Mr Candassamy was informed by Teachers’ Pensions in 2002 that he would not be overpaid pension if he increased his working hours.
62. So, in my view, Mr Candassamy is not protected from recovery by the Limitation Act 1980.

Calculation of overpayment

63. Mr Candassamy has submitted that the methodology adopted by Teachers’ Pensions to calculate the overpayment is incorrect and he asks that I instruct Teachers’ Pensions to address this concern. Mr Candassamy’s letter to my office of 12 November 2014 is suggestive that he believes that Teachers’ Pensions’ record of his earnings in the period differs from his own and is incorrect.
64. Teachers’ Pensions have explained, in their response to the complaint dated 18 February 2015, that it has informed Mr Candassamy that it cannot accept his P60s as evidence of his earnings and that he must approach the School in the first instance if he wishes to dispute the figures it has used to calculate the overpayment. I understand that Teachers’ Pensions have not received any “amendments” from the School to date. As such, should Mr Candassamy wish to pursue this matter he must first provide information to the School.
65. It follows that I make no finding in respect of this part of Mr Candassamy’s complaint.

Summary of conclusions

66. For the reasons set out above, Mr Candassamy’s complaint is not upheld.
67. Although I am not able to uphold his complaint, I do sympathise with the situation Mr Candassamy has found himself in. As explained above, Mr Candassamy must have been cognisant that there was a possibility that he had been overpaid. Nevertheless, the amount of the overpayment is significant and I fully appreciate that receiving a demand for it was a considerable source of stress and anxiety for him. It follows that sensible discussions should now take place between Teachers’ Pensions and Mr Candassamy as to how the overpayment should be recovered. Such conversations

PO-7007

should recognise the scale of the overpayment as well as the impact of the stress and anxiety discovery has caused to Mr Candassamy.

Anthony Arter

Pensions Ombudsman
22 March 2016