

Ombudsman's Determination

Applicant	Mr K
Scheme	Teachers' Pension Scheme (the Scheme)
Respondent	Teachers' Pensions

Outcome

1. I do not uphold Mr K's complaint and no further action is required by Teachers' Pensions
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr K's complaint is about how Teachers' Pensions handled his request to transfer his entitlement from the Scheme. He says that he started the transfer out process in 2014 and owing to the problems he experienced, he will not now be able to transfer without an unauthorised payment charge being levied.

Background information, including submissions from the parties

4. The following changes in pensions legislation took effect from 6 April 2015:
 - Members of unfunded occupational pension scheme were only allowed to transfer to defined benefit schemes after that date.
 - A Pension-Age Test was introduced in relation to overseas schemes. Overseas schemes had to confirm that benefits would not be paid to members prior to age 55 (except in cases of ill-health early retirement). HM Revenue & Customs (**HMRC**) wrote to all of the schemes on the Qualified Recognised Overseas Pension Scheme (**QROPS**) list, as of 6 April 2015, asking them to confirm by 17 June 2015 if they met the Pension-Age Test. Those that did not were no longer included on the newly published Recognised Overseas Pension Schemes (**ROPS**) list from July 2015 (the QROPS list continued to be published between April and 17 June before being suspended and renamed on 1 July 2015). Payments made to overseas schemes that did not meet the new Pension-Age Test would be at risk of being classed as an unauthorised payment with

subsequent tax charges being levied on the member and the transferring scheme.

5. Mr K who has deferred benefits under the Scheme lives in the Philippines.
6. On 29 November 2014, Mr K wrote to Teachers' Pensions informing them that he wished to transfer out his benefits from the Scheme to an Australian superannuation scheme called Non-Government Schools (**NGS**). He said that he had visited HMRC website to verify that NGS is a QROPS.
7. On 23 December 2014, Teachers' Pensions wrote to Mr K saying that in order to begin the transfer process he must complete a transfer application which he could download from their website. They added that the application must be accompanied by a covering letter from his new pension scheme to verify his application.
8. On 4 February 2015, NGS wrote to Teachers' Pensions saying that Mr K had requested a transfer of his benefits from the Scheme. A copy of the member's authority and a letter from HMRC confirming that NGS was a QROPS were enclosed. The letter from HMRC was dated 13 July 2006.
9. On 24 February 2015, Teachers' Pensions wrote to NGS saying that a completed transfer application was required and that one could be downloaded from their website. They also pointed out that once they had provide a guaranteed transfer value (**GTV**), they must receive a signed and dated Form 350 by 5 April 2015 for a transfer to a 'flexible benefits' scheme to proceed.
10. On 4 March 2015, NGS wrote to Mr K referring to its letter of 4 February 2015 to which it had not received a reply. It said that in order to proceed, he needed to follow up with Teachers' Pensions and request the required documentation by 25 March 2015.
11. Teachers' Pensions received a completed transfer application, dated 12 March 2015, for Mr K on 13 March 2015.
12. On 18 March 2015, Teachers' Pensions wrote to NGS saying that they had received a request from Mr K for a transfer value statement. They said:
 - From 6 April 2015 changes under the Pensions Schemes Act will stop transfers from unfunded public service pension schemes, such as the Scheme, to pension schemes, whether in the UK or abroad, based on defined contributions or flexible access arrangements.
 - If Mr K wishes to transfer his benefits from the Scheme before 6 April 2015, he needed to make a request for and receive a GTV from them and submit a completed Form 350 before that date.
 - There is a significant amount of work involved in providing a GTV and they were experiencing a high volume of new applications.

- Where the information is not already on their records, they have to: request details of the member's Guaranteed Minimum Pension (**GMP**) record from HMRC; confirm service details with the former employer(s) if there are gaps in the member's service records; and verify the date of birth.
13. On 26 March 2015, Teachers' Pensions requested information from Mr K's former employer in relation to the period 1 April to 31 August 2005.
 14. On 27 March 2015, Teachers' Pensions posted to Mr K and NGS the Guaranteed Statement of Entitlement in respect of his transfer value from the Scheme. The transfer value was guaranteed until 26 June 2015. Teachers' Pensions said that if NGS wished to accept the transfer from the Scheme, a declaration form and a Form 350 duly completed must be received by them no later than 5 April 2015.
 15. Due to the high number of applications received in the run-up to the 5 April 2015 deadline, Teachers' Pensions offered a temporary facility whereby members could set up 'My Pension Online' accounts to which the Guaranteed Statement of Entitlement and associated paperwork could be uploaded. Mr K did set up such an account, but Teachers' Pensions were unsuccessful in uploading the documents.
 16. Teachers' Pensions did not receive the appropriate documents from Mr K before 6 April 2015. They say that they could not comply with his request to transfer his benefits to NGS because it would be an unauthorised payment, which can only be made if directed by the Scheme manager - the Department of Education.
 17. NGS was not on HMRC's ROPS list as at 1 July 2015. Therefore any transfer payments made to it would be classed as an unauthorised payment with subsequent tax charges being levied.
 18. Mr K says:
 - For the best part of two years he has been struggling on his own against the British government and its functionaries. It has been a time consuming and costly process. When the British government introduced draconian laws prohibiting transfer out of public sector pension schemes, it did so in the knowledge that some people like him would exercise their democratic right to opt out. To the best of his ability this is what he has attempted to do. His intention has been deliberately thwarted by incompetent, dishonest bureaucrats using defective technology and failed politicians who rushed through legislation which has left him trapped in a pension scheme they now describe as an 'unfunded liability'.
 - He has been denied the right to transfer before an arbitrary deadline which is a betrayal of him and his family.

Adjudicator's Opinion

19. Mr K's complaint was considered by one of our Adjudicators who concluded that no further action was required by Teachers' Pensions. The Adjudicator's findings are summarised briefly below:

- Mr K knew, because Teachers' Pensions told him in December 2014, that the transfer process could not begin until he had submitted a completed transfer application form. As Teachers' Pensions did not receive this form until 13 March 2015 they could not start the process before then.
- Teachers' Pensions issued the Guaranteed Statement of Entitlement on 27 March 2015, two weeks after they had received the transfer application form. If Mr K had submitted the application form sooner, the Guaranteed Statement of Entitlement would have been issued earlier which would have given him and NGS ample time to send to Teachers' Pensions the necessary documents, i.e. the completed discharge form and Form 350, by 5 April 2015 deadline.
- If Teachers' Pensions had successfully uploaded the Guaranteed Statement of Entitlement on to Mr K's 'My Pension Online' account, he would have received this document earlier than he did and may have been able to arrange for the necessary documents to be sent to them in time. However, even if Teachers' Pensions had received the necessary documents before 6 April 2015 deadline, because NGS was not on the ROPS list as at 1 July 2015, the transfer could not be made without a tax charge.
- Even if it was found that there was a delay on the part of Teachers' Pensions in dealing with Mr K's transfer request, he has suffered no actual financial loss as a result of this. He is still a deferred member of the Scheme and will be entitled to his benefits at retirement. His only perceived loss is that he cannot transfer his benefits without a tax charge. However, there is no evidence to show that his benefits under NGS would be higher than his benefits under the Scheme even without the tax charge.

Ombudsman's decision

20. Teachers' Pensions have acted in accordance with the change in legislation which imposed a deadline of 5 April 2015 for transfers from the Scheme to defined contribution schemes. They issued the Guaranteed Statement of Entitlement on 27 March 2015, two weeks after they had received Mr K's application to transfer, which is reasonable given the volume of applications they needed to process.

21. It is unfortunate that Teachers' Pensions uploading of the Guaranteed Statement of Entitlement on to Mr K's 'My Pension Online' account was not successful. However even if they had managed to upload the Guaranteed Statement of Entitlement, NGS

was not on the ROPS list as at 1 July 2015 and therefore the transfer could not have been made without a tax charge.

22. There is no evidence that if Mr K had transferred his benefits to NGS the benefits would have been higher than his deferred benefits under the Scheme. Therefore, I am unable to find that he has suffered a financial loss as a consequence of anything done or not done by Teachers Pensions.
23. For these reasons, I do not uphold Mr K's complaint.

Karen Johnston

Deputy Pensions Ombudsman
23 August 2016