

## Ombudsman's Determination

Applicant	Mr N
Scheme	Teachers' Pension Scheme (TPS)
Respondent	Teachers' Pension

## Outcome

1. Mr N's complaint against Teachers' Pension is partly upheld but I do not consider any further action on the part of Teachers' Pensions to be necessary.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr N complains that Teachers' Pensions have sometimes failed to respond satisfactorily or on a timely basis to his enquiries about how the early retirement benefits available to him in the TPS have been calculated. He also alleges that Teachers' Pensions delayed payment of his early retirement benefits and their poor service has exacerbated his stress related illness.

## Background information, including submissions from the parties

4. Mr N's application for ill health early retirement benefits from the TPS was successful on appeal.
5. His former employer, United Learning, originally notified Teachers' Pensions that Mr N's retirement date was 30 September 2014.
6. Teachers' Pensions calculated Mr N's early retirement benefits using this date and on 17 October 2014, paid Mr N the tax free lump sum available to him of £43,757.40.
7. Mr N asked Teachers' Pensions to explain how they had calculated his benefits and they replied on 6 November 2014 as follows:
  - his total reckonable service was 28 years 144 days and his reckonable average salary was £41,975.30;
  - his "reckonable" benefits were a pension of £14,578.65 pa and a lump sum of £43,735.95;

- as Mr N had an earlier break in reckonable service and had sufficient service to qualify him for an award of benefits at that date, they were required to calculate a “hypothetical award” based on his total reckonable service at retirement and an average salary calculated up to the break in service;
  - a pension increase was then applied from the break in service up to the payable date of the award;
  - his hypothetical average salary was £33,192.35 and his hypothetical benefits were a pension of £11,780.79 pa and a lump sum of £35,342.38;
  - these benefits were subject to the application of a “pension increase” of 1.2381 to maintain their value up to the date they became payable; and
  - his hypothetical pension and lump sum were therefore £14,585.80 pa and £43,757.40 respectively.
8. United Learning subsequently notified Teachers’ Pensions that Mr N’s actual retirement date was 31 December 2014. They apologised for their mistake and provided Teachers’ Pensions with revised service and salary details in order to calculate Mr N’s correct retirement benefits.
9. On 21 November 2014 Mr N returned the benefits paid to him in error as requested by Teachers’ Pensions.
10. During late November 2014, Teachers’ Pensions responded to his enquiries about how they had determined his retirement benefits and also the average salary used to calculate his pension. On 3 December 2014, Mr N sought further clarification on the average salary calculation.
11. Mr N complained to Teachers Pensions in December 2014 alleging that they had (a) delayed his ill health early retirement application, (b) failed to respond to United Learning’s request for help on how to answer one of the questions on the application form and (c) wrongly refused to award him enhanced retirement benefits in the TPS.
12. On 12 December 2014, Teachers’ Pensions answered Mr N’s question on how they had revalued the salaries used to work out his average salary. Mr N replied that he did not understand their response and raised further queries.
13. Teachers Pensions did not uphold Mr N’s complaint on 17 December 2014 because:
- although he had made his ill health early retirement application in February 2014, United Learning did not sign the application form until June 2014;
  - United Learning sent an e-mail on 19 June 2014 to inform them that they were unaware that Mr N was ill but had been providing him with support in order to try improving his performance at work;

- United Learning asked whether they should include details of their support on the application form but before receiving a reply, had returned the completed ill health application form on 26 June 2014 with the question about providing rehabilitation, workplace adjustments, increased support etc. answered, “None related to illness”; and
  - in the opinion of the medical advisers, there was no evidence supporting a conclusion that he was permanently incapable of work and should therefore receive enhanced benefits.
14. On 29 December 2014, Teachers’ Pensions tried again to explain how they had determined his average salary using revalued salaries.
15. Mr N’s pension commenced on 1 January 2015. The lump sum payable was £44,146.65 compared with £43,758.21 previously.
16. On 8 January 2015, Mr N complained to Teachers’ Pensions about how his average salary had been calculated. Teachers’ Pensions replied on 21 January 2015 and Mr N was unhappy with the amount of time which they took to respond.
17. On 18 February 2015, United Learning informed Teachers’ Pensions that they had failed to take into account a 1% increase to Mr N’s salary made on 1 September 2014 in the salary information provided previously. Teachers Pensions therefore had to recalculate Mr N’s benefits and pay him an additional lump sum of £397.32 on 14 April 2015.
18. As the TPR 2010 stipulates that interest must be awarded on benefits paid late by more than one month when they were due, Teachers Pensions paid £0.56 and £0.03 in interest to Mr N on 14 April 2015 on the lump sum and pension respectively.
19. Mr N says that Teachers’ Pensions did not explain to him why they had paid him these three extra amounts at the time.
20. Teachers’ Pensions says that:
- in accordance with the Teachers’ Pensions Regulations 2010 (**TPR 2010**), final average salary is the higher of the two figures obtained using two different calculation methods;
  - Mr N’s lump sum, however, was calculated in accordance with a separate provision of the Pensions (Increase) Act 1971 (**PIA 1971**) which permits benefits to be based on average salary at any break in service, if a member has accrued sufficient service at that point to qualify, and their total pensionable service;
  - the benefits calculated in this way are then revalued from the day after the average salary period to the payable date of the benefits using pension increase factors supplied by HM Treasury;
  - if at retirement, these hypothetical benefits are better than those produced using the final average salary, they are paid out;

- their computer system performs such hypothetical calculations at every service break;
- the hypothetical average salary in Mr N's case was £33,192.35 pa as at 1 May 2007 which was not affected by the late notification of his correct salary payable from 1 September 2015 until 31 December 2015;
- pensionable service as at 31 December 2015 was 28 years 236 days which produced a hypothetical pension of £14,715.55 pa and a lump sum of £35,656.77;
- after applying the relevant pension increase factor, the lump sum payable to Mr N was £44,543.97;
- since Mr N had already received a lump sum of £44,146.65 in January 2014, Teachers' Pension paid him a further £397.32;
- Mr N's pension was determined using normal reckonable calculations because this provided a better figure of £14,837.07 pa;
- the figure of £14,892.36 pa was incorrect because it had been based on his hypothetical pension with pensions increases;
- when the comparison is made at retirement as required by PIA (1971), a pension of £14,837.07 pa is clearly better than one of £14,715.55 pa;
- this pension was increased in April 2015 by 0.3% to the new current level of £14,881.56 pa which cannot now be changed unless further different service and salary information are supplied;
- Mr N has therefore received the more beneficial reckonable pension and hypothetical lump sum;
- the questions which Mr N raised mainly concerned his early retirement benefits calculated using the wrong retirement date;
- Mr N was aware that his benefits had to be recalculated so his request for detailed information was somewhat premature;
- it was Mr N's illness and not their alleged failure to deal with his ill health early retirement properly which has caused the severe distress and anxiety which he says he is now suffering from; and
- they accept that they had failed to recalculate Mr N's retirement benefits within their normal turnaround of 10 working days after receiving revised salary details on 18 February 2015, i.e. by 3 March 2015.

21. Mr N alleges that Teachers' Pensions have still not calculated his retirement benefits correctly. In his letter of 15 June 2015 to my office, Mr N set out his calculations of what he believes his correct entitlement should be. Teachers Pensions, however, have refuted his allegation and explained in their letter of 21 October 2016 to my office why Mr N's calculations are incorrect. Essentially, for the pension calculation, Teachers' Pensions have pointed out that:

- Mr N had taken the wrong starting point for the lump sum calculation on the reckonable basis. He had wrongly applied a 0.3% increase which only came into force on 6 April 2015 to his benefits retrospectively as at 1 January 2015; and

- the alternative calculation based on his hypothetical average salary as at 1 May 2007 and reckonable service at 31 December 2014 used a pension increase factor (PI) for the period 1 May 2007 to 6 April 2014 and a “second bite” PI representing the increase due from 7 April 2014 to 1 January 2015.

## Adjudicator’s Opinion

22. Mr N’s complaint was considered by one of our Adjudicators who concluded that no further action was required by Teachers’ Pension. The Adjudicator’s findings are summarised briefly below:

- It is clear from the evidence that it was United Learning and not Teachers’ Pensions who were predominantly responsible for the delay in the payment of Mr N’s ill health early retirement benefits. United Learning did not send his application form to Teachers’ Pension until June 2014 despite having received it in February 2014. They then subsequently provided Teachers’ Pension with incorrect details of his early retirement date and revised salary as at 1 September 2014.
- It was therefore not until after 18 February 2015 that Teachers’ Pension had received all the necessary data in order to calculate the correct benefits available to Mr N in the TPS. Teachers’ Pensions, however, have conceded that they failed to recalculate and pay Mr N’s correct retirement benefits within their target of 10 working days from 18 February 2015. They were only able to complete this task on 14 April 2015 but they paid Mr N an additional lump sum and pension arrears with interest to allow for late payment.
- Teachers’ Pensions should reasonably have been able to complete this task much earlier though and their failure to do so constitutes maladministration on their part. The approach which Teachers’ Pensions have taken in order put matters right for Mr N is the correct one but they have not taken into account the distress and inconvenience which he would have experienced as a consequence of the delay.
- Teachers’ Pensions did generally try to respond as quickly and with as much detail as possible. A few of their replies could perhaps have been quicker. These tardy responses and their failure to inform Mr N why they had paid him the extra amounts of £397.32, £0.56 and £0.03 in April 2015 represents further maladministration on their part.
- The non-financial injustice which Mr N has suffered is not significant enough to warrant me directing Teachers’ Pensions to pay him the minimum of £500 which I could award in such circumstances.

23. Mr N did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr N provided his further comments which do not change the outcome. I agree with the Adjudicator’s Opinion, summarised above, and I will therefore only respond to the key points made by Mr N for completeness.

**Ombudsman's decision**

24. Mr N remains unconvinced that Teachers' Pensions have calculated the benefits available to him from the TPS on ill health early retirement correctly. The methodology used to calculate his retirement benefits in accordance with the TPR 2010 is clearly complicated.
25. Having examined carefully Teachers Pensions' detailed explanation of how they calculated their figures and why Mr N's proposed alternative calculations are flawed, I am satisfied that Teachers Pensions have applied the more beneficial lump sum calculation basis and he is now in receipt of the correct benefits available to him from the TPS..
26. Mr N has clearly suffered distress and inconvenience as a result of the delay in receiving the pension to which he is entitled. But I agree with the Adjudicator that it was mainly his former employer, United Learning, who was responsible for the delay in the payment of his ill health early retirement benefits and the non-financial injustice which Mr N has suffered as a consequence of the maladministration attributable to Teachers Pensions is not significant enough to warrant me directing Teachers' Pensions to pay him the minimum of £500 which I could award in such circumstances.
27. Therefore I partly uphold Mr N's complaint but consider that no further action on the part of Teachers' Pensions is necessary.

**Karen Johnston**

Deputy Pensions Ombudsman  
31 March 2017