

Ombudsman's Determination

Applicant	Mrs D
Scheme	Teachers' Pension Scheme
Respondents	Teachers' Pensions (TP)

Outcome

1. Mrs D's complaint is upheld and to put matters right TP should pay her £500 in compensation for the distress and inconvenience they have caused her.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs D complains that TP gave her incorrect information about phased retirement benefits and as a result she became a part time employee earlier than she intended. Further Mrs D claims that she has suffered a loss of £5,000 as a result because she did not receive a phased retirement pension.

Background information, including submissions from the parties

4. Mrs D telephoned TP on 10 April 2012. She said she was in full time employment and would reach age 55 on 8 January 2013. She said that she wanted to take phased retirement from her 55th birthday. TP told her that this would be acceptable as long as there was a reduction of 20 per cent in her working hours. Mrs D quoted the phased retirement leaflet in which it stated that the reduction in hours could be an aggregate of the last six months and said she was intending to go part time from September 2012. TP said that would be fine to meet the requirements for phased retirement.
5. The leaflet, "Phased Retirement" dated November 2011, stated:

"Phased retirement is available to those aged 55 and over who, with the agreement of their employer, change the capacity in which they are working so that their pensionable salary is reduced by at least 20% compared to the average of the salary they have received during the preceding six months. The reduction in salary, which must last for at least 12 months, could be as a result of moving to part time work or taking up a post with less responsibility."

6. TP say that it was their understanding that when Mrs D took phased retirement in January 2013, her salary would be 20 per cent lower compared to average salary during the last six months. TP say that the operator did not realise that the move to part time hours was the only reduction Mrs D had intended to make.
7. On 1 May 2012, Mrs D applied for phased retirement, on the form she stated that the last date at the "higher paid post" was 31 December 2012, which was neither her 55th birthday nor the day on which Mrs D went part time. TP declined her application as she was more than six months away from her retirement.
8. Mrs D reduced her hours from full time to 40 per cent of her previous full time hours, on 1 September 2012.
9. Mrs D applied for phased retirement again on 12 November 2012, and again she stated 31 December 2012 as the date she was last paid at the higher paid post. TP rejected the application again, stating that her intended retirement date was not her 55th birthday.
10. Mrs D made a further application on 3 December 2012, but this time she stated 8 January 2013 as her retirement date. Her employer confirmed on the application form that Mrs D's last date in the higher paid post was 31 August 2012 and her reduced hours started from 1 September 2012.
11. On 20 December 2012, TP told Mrs D that she could not receive a phased retirement pension. TP said that her reduction in working hours should have occurred on or after her 55th birthday, so Mrs D would need to reduce her hours by a further 20% after her 55th birthday.
12. Mrs D appealed the decision and complained through the internal dispute resolution procedure. TP and Department for Education recognised that the information given to Mrs D in April 2012 was unclear and offered her £250 in compensation. Mrs D declined the offer.
13. Mrs D applied for an actuarially reduced pension on 11 July 2013, payable from 1 September 2013. The pension has been paid from 1 September 2013 and Mrs D returned to service on 1 October 2013.

Adjudicator's Opinion

14. Mrs D complaint was considered by one of our Adjudicators who concluded that no further action was required by Teachers' Pensions except for the payment of compensation. The Adjudicator's findings are summarised briefly below
 - TP agreed that they gave unclear information over the phone to Mrs D. While the information led Mrs D to reduce her hours from September 2012, it was the adjudicator's view that Mrs D should have realised that her understanding was incorrect as early as May 2012. Further Mrs D made three applications for phased

retirement, which were declined and at no point during the first and second application did Mrs D contact TP to clarify whether her understanding was correct;

- the guidance within the phased retirement leaflet was clear and Mrs D's interpretation of it was wrong;
- although TP gave unclear information, they cannot solely be responsible for Mrs D's own misunderstanding in how phased retirement worked; and
- TP in recognition of the unclear information should pay Mrs D compensation of £500.

15. TP accepted the Opinion, whereas Mrs D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
16. Mrs D has provided her 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 Mrs D for completeness.

Ombudsman's decision

17. Mrs D says she is happy to accept £500 compensation for the distress and inconvenience she has suffered but she believes that she was not paid phased retirement from her 55th birthday until September 2013 – when she received an actuarially reduced pension. Mrs D wants £5,000 as compensation. This represents the pension she believes she would have received from her 55th birthday to September 2013.
18. Mrs D cannot receive a benefit that she did not qualify for. Mrs D therefore cannot receive £5,000 compensation, representing the phased retirement from her 55th birthday to September 2013, as Mrs D did not qualify for phased retirement. If I believed that she did qualify for it, I would not direct TP to pay £5,000 but pay her a pension on a phased retirement basis rather than an actuarially reduced pension.
19. Mrs D reduced her hours based on her misunderstanding of how phased retirement worked. I accept TP should have given clearer information to Mrs D in April 2012, but after her first application in May 2012 and subsequent applications, it should have been obvious to Mrs D that she did not understand the process. Mrs D needs to accept some responsibility for not contacting TP earlier to ascertain whether her understanding of phased retirement was correct or not.
20. However, TP bear a responsibility to ensure that their guidance was clear. Accordingly, TP should pay compensation of £500 to Mrs D for the significant distress and inconvenience she has suffered.
21. Therefore, I uphold Mrs D's complaint in respect of the significant distress and inconvenience. I do not agree with Mrs D that she should receive £5,000 in additional compensation.

PO-8857

Directions

22. Within 21 days of this Determination, TP will pay Mrs D £500 in compensation for the distress and inconvenience to which she was put.

Anthony Arter

Pensions Ombudsman
31 October 2016