

Ombudsman's Determination

Applicant	Mr T
Scheme	Teachers' Pension Scheme (TPS)
Respondents	Teachers' Pensions (TP) Department for Education (DfE)

Outcome

1. Mr T's complaint is upheld, but only in respect of the significant distress and inconvenience caused to him by TP's admitted failings in this case. To put matters right TP should pay Mr T £750 compensation.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr T was the unmarried partner of Ms C, a TPS member and the father of their two daughters. Mr T's complaint against TP is that they incorrectly stated in their letter to him of 8 January 2014 that he would be entitled to a surviving nominated partner's pension, following the death of Ms C.
4. Mr T says that TP again incorrectly confirmed in their letter to him of 13 August 2014, that he would receive a surviving nominated partner's pension of £4,166 per annum, as well as a long term children's pension amounting to £4,166.37, (£2,083.19 each), per annum .
5. Mr T claims that on the basis of these letters from TP, he applied to reduce his working week to 24 hours, worked over three days, with his employer London Metropolitan University.
6. Mr T contends that Ms C was still contributing to the TPS whilst she was employed at Grieg City Academy until 2010. He says there was a lack of adequate records held by TP of Ms C's TPS contributions whilst she was employed by Grieg City Academy.
7. Mr T asserts that the gross inefficiency and insensitivity shown by TP in their handling of his case has caused him a great deal of distress and inconvenience.

Background information, including submissions from the parties

8. Mr T has submitted a letter he received from London Metropolitan University, dated 3 December 2014, concerning the proposed reduction in his working hours. The writer of the letter said,

“As soon as a signed copy...has been returned...the above changes will be implemented in the next available Payroll...”
9. TP wrote to Mr T on 16 December 2014, saying they could not pay him a surviving nominated partner's pension, because Ms C had not completed 2 years' service from 1 January 2007.
10. In a letter to this office of 8 July 2015, TP acknowledged that they incorrectly told Mr T that he would be entitled to a surviving nominated partner's pension in their letters to him of 8 January 2014 and 13 August 2014, and that they had apologised to him for the distress and inconvenience caused.
11. In their letter to this office of 17 May 2016, TP say that:
 - Grieg City Academy have confirmed that Ms C was employed by them in a part time capacity from 29 January to 31 August 2010. This provides qualifying service of 1 year 239 days. However, even with this service included, Ms C's qualifying service from 1 January 2007 is 1 year 361 days, which is less than the two years required in order to pay Mr T a surviving nominated partner's pension.
 - Even if Ms C had completed sufficient qualifying service to pay Mr T a surviving nominated partner's pension, the service used in the calculation would only amount to 1 year 312 days. This would provide a surviving nominated partner's pension commencing at the initial rate of approximately £488 per annum.
 - As there is no adult family pension payable, the amount of children's pensions payable to Mr T's children are payable at a higher rate of $1/240^{\text{th}}$ each. If TP were to pay a surviving nominated partner's pension to Mr T, as calculated above, the children's pensions would be based on a lower rate of $1/320^{\text{th}}$ each i.e. a reduction from the initial amount of £4,100 per annum to £3,075 per annum. The amount of the reduction in the children's pension would have been considerably higher than the amount of surviving nominated partner's pension payable to Mr T.
12. As part of the investigation into the complaint, one of the Adjudicators asked London Metropolitan University on 11 July 2016, various questions regarding the letter Mr T received from them of 3 December 2014.
13. London Metropolitan University responded on 27 July 2016, confirming :

- The December payroll was processed on 19 December 2014, and payment was made on 22 December 2014.
- After the reduction in hours' letter there was no further correspondence about hours changing nor is there any request from Mr T asking to revert back to his 28 hours.

14. In an email to this office of 22 July 2016, Mr T says,

“...I did not contact HR when I heard that I had been mislead[sic] about my TP pension entitlement to ask if I could revert to 28 hours per week. This was because I knew that the financial problems at the University and the need to reduce staff numbers in my department would mean that the request would never have been agreed. I was also reasonably confident that when the case was investigated independently the unreasonableness of the Teachers' Pension position would be clear and the decision would be reversed.”

Adjudicator's Opinion

15. Mr T's complaint was considered by one the Adjudicators who concluded that further action was required by TP. The Adjudicator's findings are summarised briefly below:

- The Adjudicator sympathised with Mr T's predicament. However, it is not disputed that TP have applied the relevant provisions of the TPS regulations correctly in deciding that he was not entitled to a surviving nominated partner's pension. This is because; he was not married to Ms C when she died and she did not have the required 2 years relevant service after 1 January 2007. It is a well-established principle that the error itself does not create an entitlement. So, the Adjudicator did not think his claim for a surviving nominated partner's pension, as stated in TP's letters to him of 8 January and 13 August 2014, was justified.
- In any event, as explained by TP in their email to this Service of 17 May 2016, even if they were to pay a surviving nominated partner's pension to Mr T, based on Ms C's actual pensionable service, the children's pensions would have been significantly reduced. The amount of the reduction would have been considerably greater than the amount of surviving nominated partner's pension payable to Mr T.
- The Adjudicator did not believe on balance, that Mr T would have changed his decision to reduce his working hours, had he received the correct information about his TPS entitlement. This is because Mr T made no attempt to mitigate his perceived loss by exploring with London Metropolitan University whether he could reverse his decision concerning a reduction in hours. It was noted that he was made aware of the correct position by TP on 16 December 2014. He therefore had a small window of opportunity between the payroll process date, 19 December 2014, and the payment date, 22 December 2014, to contact

London Metropolitan University to see whether he could revert back to his original hours, but he failed to do so. Mr T's comment was also noted that he did not contact HR when he found out that he was misled by TP about his entitlement because of the financial problems at the University. However, it was the Adjudicator's view that he should have at least explored the possibility of reversing his decision to reduce his hours, if it was important to him.

- Mr T submits that Ms C was still contributing to the TPS whilst she was employed at Grieg City Academy until 2010. However, TP in their letter of 17 May 2016, had, in the Adjudicator's view, adequately confirmed that Ms C's pensionable service whilst working for her previous employer was properly taken into account in the process of determining his TPS entitlement.
- The Adjudicator thought that Mr T had most likely suffered a loss of expectation and typically this is redressed with compensation for distress and inconvenience. TP were at fault in providing incorrect information to Mr T about his TPS entitlement on a number of occasions. The provision of incorrect figures is unacceptable. In addition, TP were at fault for their poor handling of his TPS benefits. This was a particularly sensitive time for Mr T, so the impact of TP's failings was greater than it may otherwise have been.
- It was the Adjudicator's opinion that the complaint should be partly upheld. To put matters right TP should pay Mr T, £750, for the distress and inconvenience caused by their maladministration.

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

Ombudsman's decision

17. Mr T contends that he had not made any decision about reducing his working hours before he received TP's letter of 8 January 2014. However, as mentioned by the Adjudicator, Mr T failed to mitigate his perceived loss by contacting London Metropolitan University to see whether he could reverse his decision to reduce his hours. His failure to do so weakens his case.
18. Mr T maintains that it is unjust that as an unmarried partner of Ms C for 37 years that he will receive virtually nothing from Ms C's contributions to the TPS for over 30 years. However, as TP have applied the relevant TPS regulations correctly in determining his entitlement, I do not make a finding of wrong doing by TP in this regard.
19. Mr T claims that the suggested compensation offer of £750 is insufficient. I acknowledge that this was a particularly sensitive time for Mr T. However, having considered the circumstances of this case, I find that £750 compensation is adequate

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redress for the significant distress and inconvenience caused to Mr T by TP's maladministration.

20. Therefore, I partly uphold Mr T's complaint.

Directions

21. I direct that within 28 days of this determination TP shall pay Mr T £750 to reflect the distress and inconvenience caused to him.

Anthony Arter

Pensions Ombudsman
27 September 2016