

## Ombudsman's Determination

Applicant	Mr F
Scheme	Teachers' Pension Scheme ( <b>the Scheme</b> )
Respondent	Teachers' Pensions ( <b>TP</b> )

## Outcome

1. Mr F's complaint against TP is partly upheld, but there is a part of the complaint I do not agree with. To put matters right, for the part that is upheld, TP should pay Mr F £1,000 for the significant distress and inconvenience he has experienced.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr F's complaint against TP is about incorrect information that was provided in a number of telephone calls regarding his second phased retirement. This information contradicted written information, however, he was assured that the information given over the phone was correct and that the website and written information was not.
4. Mr F says that he relied on this information and reduced his hours to take second phased retirement. He calculates his financial loss to be approximately £3,000 a year plus lump sum.

## Background information, including submissions from the parties

5. Mr F reduced his pensionable employment to 60% of full time hours and took his first phased retirement on 10 January 2014. He took 75% of his benefits from the Scheme which was calculated using 75% of his accrued service up to his retirement date.
6. On 28 March 2014, Mr F contacted TP to enquire about taking his second phased retirement on 10 January 2015. Mr F asked if he could take 75% of his remaining 25% within the Scheme and he was informed that he could. He queried this saying that the information on the website says a minimum of 25% must remain in the Scheme, and taking a further 75% of the 25% left would mean that less than 25% of his overall benefit would remain in the Scheme. The call handler said that the

website was incorrect and that he could end up with less than 25% in total remaining. Mr F asked for confirmation in writing.

7. In April 2014, Mr F requested a reduction in his working hours to 40% of full time from 10 January 2015, to enable him to access second phased retirement on the same date.
8. On 23 April 2014, Mr F had not received the written confirmation he had requested and so he called TP. Mr F raised his query again and was told that he could take 75% of the 25% of his benefits that remained in the Scheme. Mr F again said that he has to leave 25% in the Scheme. The call handler said, "You have to leave 25% of the actual amount left in the pot, so that 25% you've got in, you can take 75% of that 25% so you have still got 25% of that amount." The call handler ran through an example which explained that 75% of the service accrued since the first phased retirement could be taken, but then incorrectly said that 75% of what was remaining in the Scheme could be taken. She confirmed on a number of occasions that he could take 75% again and that this would leave 25% in the Scheme. Mr F requested written confirmation of this again.
9. On 25 April 2014, an email was issued confirming how second phased retirement would be calculated. This directly conflicted with the information Mr F had been given on the phone. It said that he could take a maximum of 75% of his total service accrued up to the second phased retirement date, which includes service accrued prior to the first phased retirement date and service accrued between the first and second phased retirement date. The total service is multiplied by the percentage to be taken and then the service taken at the first phased retirement date is deducted. The remaining service is used to calculate the second phased retirement.
10. On 2 May, 5 June and 11 September 2014, Mr F called TP to query which information was correct. In each call he was informed that the written information was incorrect and that he had been informed correctly over the phone. In the call on 2 May 2014, the call handler guaranteed that the information given over the phone was correct. He requested written confirmation in each call and received similar information to that provided on 25 April 2014 in writing on 29 May 2014, and 22 September 2014.
11. On 29 September 2014, Mr F called TP again querying the contradictions between the information given to him on the phone and the information he had received in writing. The call handler listened to Mr F's query and went away to seek clarification. The call handler then confirmed that, as he had already taken the maximum 75% at the first phased retirement, he could now only take 75% of the service he had accrued since the first phase up to the second phase. It was confirmed that he could not take a further 75% of the 25% left in the Scheme. Only 75% of the additional service accrued.

12. On 26 March 2015, TP received Mr F's second phased retirement application. The benefits put into payment with effect from 10 January 2015 were for an additional 37 days service which, when added to his service from his first phase pension, was 75% of his total service.

## **Adjudicator's Opinion**

13. Mr F's complaint was considered by one of our Adjudicators who concluded that TP should pay Mr F £1,000 for the significant distress and inconvenience that he has suffered. The Adjudicator's findings are summarised briefly below:
  - TP has acknowledged that Mr F was given incorrect information on a number of occasions over the telephone. While it has said that Mr F is receiving the correct entitlement under the regulations, TP has offered Mr F £500 compensation. With this in mind, there is no dispute that a problem has occurred or that Mr F is now receiving the correct benefit under the regulations.
  - The Adjudicator listened to the telephone calls and agreed that Mr F was provided with incorrect, misleading, and confusing information on five different occasions. In the first call on 28 March 2014, Mr F seemed to have a fairly good understanding of the way that the second phased retirement benefits would be calculated. He had visited the website and read the information regarding a second phase and had telephoned to confirm his understanding. The call handler erroneously informed him that the information on the website was incorrect, and then provided him with incorrect information.
  - Mr F requested confirmation in writing on multiple occasions. He was issued three explanations in writing which were in line with the information on the website, and the regulations, but which conflicted with the information provided over the phone.
  - Each subsequent telephone call reassured Mr F that the information that he was being given on the phone was correct, and the information provided on the website or in writing was incorrect. Each call handler seemed confused by the second phase process, however regardless of this they assured Mr F that the information in writing was incorrect. In the call on 2 May 2014, the call handler said that she could guarantee that he could take a further 75% of the 25% remaining and that she would arrange for correct information to be provided in writing. It is clear from the calls that, while Mr F initially understood the calculation as explained on the website, his understanding changed as a direct result of the calls.
  - TP has said that it would expect that information given in writing should be relied upon more than that given over the phone, and that the correct information was given in writing on at least three occasions. However, in circumstances where individuals receive information in writing that they feel is not correct, the Ombudsman would expect them to query it. One method to do this would be to

telephone the Scheme helpline. The Ombudsman would view this as an acceptable means of that individual clarifying that information.

- In addition to this, the information given over the phone was consistent over five telephone calls over a period of six months. Mr F was repeatedly reassured that the website was wrong and the written information was incorrect. While Mr F may have been given the correct information in writing, and the correct information when he took his first phased retirement, it is easy to see how Mr F became confused about which was correct. The Adjudicator believes that Mr F took reasonable steps to obtain the correct information to make an informed decision. TP's error amounts to maladministration.
- As a result of this maladministration Mr F has suffered a loss of expectation and experienced a significant level of distress and inconvenience. In this case the Adjudicator does not agree that the £500 compensation TP has offered is adequate to correct this non-financial loss. The Adjudicator suggested that TP award £1,000.
- Mr F has also requested to be put back in the position he would have been in had the incorrect information been correct. He estimates his loss to be an annual pension of approximately £3,000 plus corresponding lump sum. As explained above, in order for a claim for financial loss to succeed there must be maladministration, which has already been agreed, and reliance on that information to the individual's detriment. However, any decisions made by an individual must be irrevocable and the Ombudsman would also expect an individual to attempt mitigate any losses.
- Mr F has said that he relied upon the information and applied for a reduction of hours in April 2014 to enable his second phase retirement. He maintains that while the second phase and his reduction of hours were not going to be until January 2015, he had a reduced teaching schedule in place from September 2014 and a teacher had been hired to take over the teaching duties he would not be able to perform, so not to disrupt classes through the academic year. Therefore, Mr F says that the decision was made, and in effect before he was provided with the correct information on 29 September 2014, and before his teaching hours had actually been reduced. He says it was too late for him to go to his manager to request the decision was reversed.
- TP say that it has seen no evidence that Mr F attempted to mitigate the position by asking his employer to cancel his reduction in hours when he discovered the correct information. Nor anything to suggest that a different decision would have been reached had the correct information been provided initially. No evidence to this effect has been supplied to this office either. Mr F's comments above suggest that he did not attempt to mitigate his position, and while he says he would have made a different decision there is no evidence to support this.

- In addition Mr F's application for the second phased retirement was not received by TP until March 2015, six months after he had been provided with the correct information and almost a year after he said he requested a reduction in hours with his employer to enable the second phase. This suggests that his decision was not fully made until after he had received the correct information. Regardless of this, there is no evidence of financial loss, only loss of expectation, therefore Mr F cannot be compensated for financial loss.
  - The Adjudicator partly upheld the complaint and recommend that TP pay Mr F £1,000, because it is clear that there has been maladministration, which has led to significant distress and inconvenience.
14. TP did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. TP provided its further comments, which are set out below and do not change the outcome. I agree with the Adjudicator's Opinion above and will only respond to the points made by TP's for completeness.

### **Ombudsman's decision**

15. TP has said that it does not feel that more than £500 is warranted and that awards made by the Ombudsman are rarely more in circumstances similar to these. TP does not believe that Mr F had reason to continue calling for clarification after receiving its email of 24 April 2014. In addition the correct information was provided on 29 September 2014 whereas Mr F did not take his second phase retirement benefits until 10 January 2015, more than three months after the correct information had been given, allowing time for him to reverse his decision to retire.
16. The issue outstanding is the level of award to be made for the distress and inconvenience suffered. It is important to clarify that this is in respect of non-financial loss. The Adjudicator has already agreed that Mr F should not be compensated for financial loss as there is nothing to suggest that Mr F would have made a different decision had he been given the correct information sooner, and he has not suffered a financial loss, but a loss of expectation. Therefore, the fact that Mr F still took his second phased retirement after discovering the error has no bearing on the award for non-financial loss.
17. With regard to whether Mr F had reason to continue calling I do not agree with the position that TP has taken. I think it is reasonable for Mr F to call TP again following its email of 24 April 2014, to clarify the correct position when taking second phased retirement. Mr F had already called TP twice before receiving the email and had been informed that the information on the website was incorrect and that he could in fact take 75% of the remaining 25% within the Scheme, which was incorrect. He then received the email which, while correct, contradicted what he had been told on the phone, and was in line with the information on the website which he had been informed was incorrect.

18. If the opposite situation had occurred, for example, if an individual had been given the correct information on the phone and it had been followed up with incorrect information in writing, I am sure that TP would take the position that it would have been reasonable for that individual to query the written information. A valid way to clarify the position was for Mr F to telephone TP. It was not unreasonable for Mr F to continue querying which information was correct.
19. I acknowledge TP's comments that the contact centre operators cannot be expected to have a detailed knowledge of every aspect of the Scheme and I agree. However if there is a lack of knowledge with regard to a particular question they should make this clear to the individual and arrange for a person with the necessary knowledge to provide a response. Instead, the call handlers that Mr F spoke to consistently gave incorrect information. They should have either passed Mr F on to a colleague who had the requisite understanding of the Scheme regulations, or asked him to hold while they checked whether their understanding was correct; or not provided any information and explained that his query would be raised with the appropriate team who would either call him back or provide a response in writing.
20. I consider that there is a serious flaw in the call handlers' training. They should never state that the written information is wrong unless they have been informed that this is the case. It is admitted that they have not got a detailed knowledge of the Scheme, and I would not expect the contact centre operators to have the authority to provide advice of this nature, especially as TP has said that the written information has been provided by a 'knowledgeable team'. It is extremely confusing and should be remedied as soon as possible.
21. I agree with the Adjudicator that an award of £1,000 for significant distress and inconvenience that Mr F has suffered is warranted in this case.
22. Therefore, I partly uphold Mr F's complaint.

## **Directions**

23. To put matters right, for the part that is upheld, TP will pay Mr F £1,000, within 14 days of the date of this determination, in recognition of the significant distress and inconvenience he has experienced.

**Anthony Arter**

Pensions Ombudsman  
2 August 2017