PO-10132

The Pensions Ombudsman

Ombudsman's Determination

Applicant	Mr L
Scheme	Teachers' Pension Scheme (**the Scheme**)
Respondent	Teachers' Pensions (**TP**)

Outcome

1. I do not uphold Mr L's complaint and no further action is required by TP.

2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr L has complained that, by applying a salary restriction to his 2010/2011 pension contributions, TP has inflated the value of his pension benefits for the purpose of the 2011/2012 pension input period (**PIP**), resulting in him exceeding the annual allowance.

4. Mr L considers that this is unfair as the change in regulations and annual allowance have resulted in him being disadvantaged retrospectively.

Background information, including submissions from the parties

5. In June 2010, Mr L took up a new role and his salary increased from £67,170 to £90,000. In August 2010 it increased further to £90,360.

6. Regulation 39 of the Teachers Pensions Regulations 2010 (**the Regulations**), came into force in September 2010. This restricted year on year salary increases to the greater of 10% or £5,000. Regulation 39 applied for the 2010-2011 period. As such Mr L's salary increase was caught by the restriction.

7. The Finance Act 2011 came into force in July 2011 and reduced the annual allowance from £255,000 to £50,000.

8. In December 2011, TP entered into discussions with HMRC concerning how the annual allowance calculation and salary restriction interacted. HMRC confirmed that the annual allowance calculation was to be undertaken as if the member was at retirement, even if they were not. So any restricted salary that would be in place as if

the member was taking his benefits at retirement, was relevant. HMRC said that there would be "no objection" to the use of the restricted salary for either the PIP opening or closing value.

9. In August 2013, Mr L received a Pension Savings Statement showing that his pension input for 2011/2012 had exceeded the annual allowance by £27,189.75, resulting in a tax charge of £10,875.90. The reason for this was the 2010 salary increase, in excess of the restriction, had been rolled forward to the 2011/2012 tax year, which was now subject to the reduced annual allowance.

10. The resultant annual allowance charge was paid under the scheme pays election.

11. Having been alerted to this Mr L complained to TP and later the Department for Education, arguing it was unfair and had been applied retrospectively. Mr L's complaints were not upheld on the basis that the Regulations had been correctly applied.

Adjudicator's Opinion

12. Mr L's complaint was considered by one of our Adjudicators who concluded that no further action was required by TP. The Adjudicator's findings are summarised briefly below:-

    - The annual allowance calculation had been undertaken correctly and the charge had been correctly applied.

    - Although HMRC had introduced uncertainty by concluding that it had no objection to TP's approach to calculating the value of Mr L's pension benefits, under Section 277 of the Finance Act 2004 (as amended), TP's approach was the correct approach. In particular, when determining the opening and closing values of the PIP, the legislation required that the value must be taken as if the individual was taking benefits on that date. Had Mr L retired at that time his benefits would have been subject to the salary restriction.

    - The Regulation relating to the restricted salary had been changed, and this impacted on Mr L's pension input for the preceding part of that year. But there already existed a similar salary restriction prior to the change, which would also have given rise to a tax charge. Regardless of the timing of the change there would have been scenarios where previously earned income would be subject to it. The adjudicator considered that the change to the Regulation was legitimate.

    - Additionally, the reduction in annual allowance was not introduced until after the regulatory change and so the specific circumstances applying to Mr L was unforeseeable on the part of TP. Mr L's suggestion that TP ought to have provided him with advice to cap his salary to avoid becoming caught by the salary restriction went beyond the scope of TP's role.

- This was not a form of retrospective taxation. The Government had recognised that some individuals would still exceed the revised annual allowance, and included provision for carry forward, but this was not unlimited. Even with his carry forward allowance Mr L was subject to the annual allowance charge.

- In relation to the annual statements Mr L received, these were not required to refer to the annual allowance tax charge and were automated. The annual allowance tax charge required manual calculation, and it was eventually correctly confirmed to Mr L through the Pension Saving Statement issued within the required timeframe.

13. Mr L did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr L 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 L for completeness.

Ombudsman's decision

14. Mr L maintains that TP acted in maladministration, acted unfairly and acted against his best interests in the approach taken to calculating his pension input. It was not required to undertake the calculation in the way that it had and therefore created a tax liability where there was none.

15. HMRC may have been inconclusive in its correspondence with TP, but I am satisfied that the Finance Act 2004 (as amended), required TP to calculate Mr L's pension input as if he was taking benefits at that time. By applying the rules correctly I do not agree that TP breached its duty of care to Mr L. TP has a duty of care to Mr L, but it is also required to administer the Scheme in line with the relevant legislation, which it did.

16. Mr L considers that he has paid tax on an increase in pension which he will not receive. However, it is worth noting that not all of the excess above the annual allowance has been lost, only 40% of it. Additionally, the majority of excess contribution would have been made by his employer, and had his employee contributions been received as income instead it would have been subject to his marginal rate of tax. So pension benefits accrued due to Mr L's employee contributions will have been retained, and it is only the employer contributions and the tax relief which have been reduced.

17. In order for me to uphold the complaint I must be satisfied that some form of maladministration has occurred. However I can see no evidence of this. Mr L is dissatisfied with the consequences of TP applying the Regulations and legislation, but that does not equate to it having acted in error. Both the Regulations and legislation are set by the Government, and TP's role is to apply them, that is what it has done.

18. That is not to say I do not have sympathy with Mr L's position. The timing of his pay increase prior to a significant reduction in annual allowance was unfortunate, but it is, not any fault on TP's part.

19. Therefore, I do not uphold Mr L's complaint.

Anthony Arter

Pensions Ombudsman
6 June 2017