

Ombudsman's Determination

Applicant	Mrs N
Scheme	Teachers' Pension Scheme (the Scheme)
Respondents	Carshalton College (the College), Girls' Day School Trust (the School), Teachers' Pensions (TP)

Complaint Summary

Mrs N's complaint, against the College, the School and TP is that she is unable to access her pension benefits from the Scheme which were accrued between 2001 and 2002 because there is no record of her 2001 election to join the Scheme.

Summary of the Ombudsman's Determination and reasons

The complaint should be upheld against the College but not against the School or TP because:

- a. the College sent, and TP received, pension contributions for Mrs N for the period in question;
- b. on balance, it appears that the College did not send TP the election form for Mrs N or provided the member data in a timely manner; and
- c. the School was not involved in or responsible for sending the election form in 2001.

Detailed Determination

Material facts

1. From September 2001 to August 2002 Mrs N worked for the College on a part-time basis. Shortly after she joined, she completed an election form (**Form 261**) to opt into the Scheme. The College has confirmed that Form 261 would have been issued and processed as standard. The College deducted contributions from Mrs N's salary during this period and she has payslips confirming this.
2. The College does not have a copy of the Form 261 Mrs N completed as the College destroys personal files after seven years. However, a copy of a blank Form 261 was provided by TP. The first line of section A of Form 261, which is completed by the employee wishing to join the Scheme, says: "Before completing, please read the attached notes".
3. The first paragraph and the penultimate paragraph of the notes accompanying Form 261 state:

"This form should be completed if you are electing to join the Teachers' Pension Scheme (TPS) having taken up part-time employment or are electing to re-join the TPS having previously opted-out. Further information about the scheme is contained in the main guide, 'Your Pension'.

...

Please note that:

Once your election has been processed it will be certified by Teachers' Pensions and returned to you. Teachers' Pensions will not issue a letter confirming the acceptance of your election to join the Teachers' Pension Scheme. Should you take up part-time employment with another employer you should provide them with a copy of the certified election form."

4. At the end of section B of Form 261, which is completed by the employer, it states: "You should start deducting pension contributions with immediate effect. It is not necessary to wait for confirmation of acceptance from Teachers' Pensions".
5. A guide to the Scheme dated July 2001 (the **2001 Guide**), under the section headed "Part-time teaching" states:

"The election normally takes effect from the first day of the month following its receipt at Teachers' Pensions, and remains valid for all subsequent part-time appointments covered by the teachers' pension regulations unless you exercise your right to opt out of the Teachers' Pension Scheme."

6. A copy of a schedule headed 'TP End of Year Return (Service History) For 1 April 2001 To 31 March 2002', shows that pension contributions were deducted for Mrs N. The College says that this document was submitted to TP on 1 August 2002.
7. Mrs N left employment with the College and, in September 2002, she commenced working on a part-time basis for the School. She indicated on her new starter form that she wished to join the Scheme.
8. On 27 September 2002, the School's payroll department wrote to Mrs N saying:

"I note from your new starter form you wish to contribute to the Teachers Superannuation Scheme, however a copy of your election was not attached.

Part-time and supply teachers are required to elect to join the pension scheme before deductions can be made from their salary. If you have already elected to join the scheme please supply me with a copy of your election letter. Alternatively if you have yet to opt-in to the Teachers Superannuation Scheme please complete the enclosed election form and return it to me.

The rules of the scheme do not allow me to deduct contributions until I receive a copy of your election."
9. The School says that it received no response from Mrs N to its letter of 27 September 2002.
10. In September 2009, Mrs N started working full-time hours with the School and joined the Scheme but this later membership is not in dispute.
11. In October 2014, Mrs N sought to draw her pension benefits accrued from the time she started to work with the College in 2001. TP informed her that she had not made an election to join the Scheme in 2001. Mrs N queried this with TP and the College. She sent evidence of her employment in the form of payslips, which showed that pension contributions had been deducted from her salary.
12. On 14 November 2014, TP wrote to Mrs N explaining that part-time employment prior to 1 January 2007, was not automatically treated as pensionable. A formal election had to be made by part-time employees to join the Scheme and it had no record of her ever having made an election. As it does not directly employ teachers, it is the employer's responsibility to make members aware of the provisions of the Scheme. If contributions had been deducted in respect of non-pensionable part-time employment, then they had been deducted in error. If she wished to consider a retrospective part-time election, she and her employer should complete an election form and her employer should confirm on the form that contributions had been deducted from the retrospective date.
13. On 19 December 2014, the College wrote to Mrs N confirming that its payroll department had been asked to provide TP with her missing data for the period 1 April to 31 August 2002. The College said that its procedure is to complete the appropriate

documentation for starters and leavers to the Scheme which includes the election forms to 'opt in' to the Scheme. However, due to the time that has elapsed since she left the College, it does not have a copy of the election form she had completed.

14. Mrs N was offered the opportunity to make a retrospective election to have her part-time service prior to January 2007 made pensionable. TP informed her that she would need to back date all of her part-time service which would also include all her service with the School. TP said that as Mrs N did not begin to pay contributions until 2009, and she did not wish to include her part-time service with the School from 2002 to 2009, the College should give her a refund of her contributions.
15. She complained formally to the College and TP but was unable to resolve the matter, so she brought her complaint to us.
16. During the course of our investigation, TP was asked whether it had received pension contributions for Mrs N - TP did not confirm or deny this.
17. The relevant regulations are B1 and B5 of the Teachers' Pensions Regulations 1997 (the **1997 Regulations**) and extracts from these regulations are set out in the Appendix.

Summary of Mrs N's position

18. Mrs N says it is clear to her that the error lies between the College and TP.
19. In 2001 the administration was more often completed by paper submission and by post. Therefore, she questions whether: (a) the College failed to send Form 261 which she had completed; (b) TP received the form and failed to act on it; or (c) the form was lost in the post.
20. If she had been allocated a TP reference number in 2001, she would have been provided with regular updates of her service and would have been able to draw the pension which she had clearly paid for.
21. TP is very keen to keep stating that it is bound by statutory regulations, but surely it has a responsibility to members to administer the Scheme correctly.
22. TP say that it experiences many occasions where employers deduct pension contributions in error which have to be rectified when it becomes aware of these. However, it also says that it does not do bulk statistical alignment between total contributions and contributors, that is, it only takes samples and does not check every individual such as Mrs N.
23. In September 2002, when she joined the School, she did try to join the Scheme but was told that she needed a special number and, after a couple of attempts by phone, she physically went to the College to try and get this information. The

personnel/administration staff at the College suggested that she spoke to TP. She was informed by TP that it could not provide her with this information. When she explained the situation to the School, after some enquiries, TP reiterated that she could not pursue joining the Scheme without a special number. She decided not to join at that time because she was only part-time and it was proving extremely time consuming.

24. She would like TP to accept that she was enrolled into the Scheme in 2001, and she would like her pension put into payment and backdated. She has calculated her loss to be in excess of £8,000, if the pension is not paid, and is also seeking compensation of £1,000 for the time she has spent trying to resolve the issue.

Summary of the College's position

25. All new staff participate in an induction programme which requires them to complete pension documentation. Once completed, the paperwork is sent to TP and the associated deductions are processed through payroll.
26. In the absence of the copy forms, the College asserts that there is no reason to believe that the usual process was not followed.
27. The College does not accept that it failed to take proper care of the relevant paperwork. The College maintains that the relevant forms were issued to TP and had Mrs N contacted the College about the missing service earlier, it would have been possible to provide the necessary evidence.
28. A copy of the annual return of service for the period 1 April 2001 to March 2002 was submitted to TP on 1 August 2002.
29. The College was never informed by TP that deductions were being made for an individual who was not a member of the Scheme.
30. The College confirms that it paid TP the contributions deducted from Mrs N's salary during her employment. These payments have been retained by TP and the College had received no contact from TP to indicate that the contributions would not be recognised against Mrs N's pensionable service history. The College also provided TP with an annual return of service that identified all of the periods of service for the individuals in the Scheme, and this would have been reconciled against the contributions paid.
31. The missing service details for Mrs N for the period, 1 April 2001 to 31 August 2001, were submitted in error. These details should have been submitted for the period, 1 April 2002 to 31 August 2002.
32. In the College's view, TP should accept the contributions Mrs N paid during 2001 – 2002, and consider her service during this period as pensionable.

Summary of the School's position

33. At the time of her appointment, Mrs N confirmed that she wished to contribute to the Scheme. A letter was sent to her by the School's payroll department informing her of what she needed to do next to enrol into the Scheme. The letter would have enclosed the election form, which she would need to complete and return to its payroll department, allowing the School to start making deductions. Following this letter its payroll department received nothing further from Mrs N.
34. With regard to Mrs N's claim that she needed a special number to join the Scheme, it is not clear what special number she is referring to or who told her it was needed. If the number was her DFE number then she should have known this, but this number would not have been required for joining the Scheme. In any event, it is clear that she knew that her service with the School could be pensionable but she decided not to follow up the matter.

Summary of TP's position

35. The Scheme is a statutory scheme and as such TP can only administer it within the remit of statutory regulations.
36. It is a fundamental part of the regulations that, prior to 2007, part-time employment could not be treated as pensionable until an election had been made. Once an election for part-time employment was made, all part-time employment must be treated as pensionable. In short, once an employment becomes pensionable it cannot cease to be so until or unless the member opts out of the Scheme.
37. There is no provision within the statutory regulations for a retrospective election to opt out to be accepted.
38. TP cannot accept a part-time election for Mrs N from 1 September 2001 to cover the period up to 31 August 2002, because pension contributions were not deducted during her subsequent period of part-time employment from 1 September 2002 to 31 August 2009.
39. TP has no record of any contact from either the College or Mrs N herself in 2001.
40. With regard to Mrs N's part-time election, the College states that all staff undergo induction training during which they are given pension documentation which is completed by both parties and in 2001 would then be posted to TP. However, there are examples of other part-time members, employed by the College at that time, for whom pension contributions were deducted but a part-time election was not made. It would appear that these individuals were not provided with an election form as there is evidence that the form had to be requested by the individuals direct from TP.
41. The College did not provide any details of Mrs N's service, either in an appointment statement, which should have been sent to TP, or on the College's annual return of service for the period from 1 September 2001 to 31 March 2002. Details of this period

of service were not received from the College until after Mrs N had made enquiries about it in 2015.

42. The College provided details of part-time employment for Mrs N from 1 April 2001 to 31 August 2001, for which it did not deduct pension contributions. Mrs N states that she was not employed by the College during this period, but the College provided employment information for her. If it is correct that she was not employed by the College for the above period, it would suggest that the College did not initially ask her whether she wanted her part-time employment to be treated as pensionable. This is at odds with the College's statement that all new staff participate in an induction programme which requires them to complete pension documentation.
43. Unless a member has previously been allocated a TP reference number, they are allocated one the first time TP receives notification of potential membership. Under such circumstances, the next available number is allocated, which will start with the year in which it was allocated. Mrs N's TP reference number starts with '04' which confirms that the first time TP were informed that she may potentially be eligible for membership of the Scheme was in 2004. Although, TP is unable to state the precise reason, the period of service from 1 April 2002 to 31 August 2002, was updated to 1 July 2004, which was the first notification TP had received of her teaching employment. If she had contacted TP in 2001 when she took up employment with the College she would have been allocated a reference number starting with '01'.
44. TP did not receive the service details from the College for the period, 1 April 2002 to 31 July 2002, until July 2004, and therefore was unaware until that time of Mrs N's employment with the College. The first notification of her part-time employment was when she was allocated her TP reference number, but, by that time, it was too late for TP to take any action as she had already left the College.
45. With regard to the annual return of service which the College say was submitted to TP on 1 August 2002, TP would not have been able to accept the submission in this format as no identifying details have been provided by the College for any of the individuals shown.
46. TP did not receive any annual returns for the financial years ending: 2000; 2001; 2002; and 2003.
47. TP has scrutinised the records of individuals employed by the College between 1999 and 2003, which show that the College had to submit missing service for these periods. In addition, some employees of the College had written in indicating missing service from their records during 1999 and 2003.
48. With regard to the pension contributions paid against the service details TP received, the only breakdown the employer is obliged to provide is the gross amount for employer, employee and additional contributions. The employer does not provide information on an individual basis, and therefore TP would not be able to identify

whether an individual has had contributions deducted. On an annual basis, employers are subject to an audit of the contributions submitted to the Scheme. TP provides a gross figure of contributions submitted and the employer is required to provide an audited breakdown. One of the audit tests is to sample the membership and to test that the sample members are correctly admitted in the Scheme and are paying the correct level of contributions. As the period in question is over 14 years ago, there is no documentary evidence available from the 2002 and 2003 audits. However, it would have been for the College to confirm that the pension contributions it had deducted reconciled with pensionable employment for each of its employees. As the College did not provide service details for Mrs N on the 2001/02 annual return of service, and not until 2004, for the period from 1 April 2002 to 31 August 2002, TP was unaware until that time that she had been employed at all.

49. Form 261 makes it clear that all future employment which meets the requirements laid down in the Scheme will be treated as pensionable. Therefore, if Mrs N had completed it she would have known that all her subsequent part-time employment would have been treated as pensionable.
50. The notes accompanying Form 261 state that once the election has been processed, it would be certified by TP and returned to the member and, should the member take up employment with another employer, the member should provide the new employer with a copy of the certified form. There is no documentary evidence that a Form 261 was completed by Mrs N or processed by the College. TP did not receive a completed Form 261 for Mrs N at any time, and therefore a part-time election was not accepted. If Mrs N had completed Form 261 she would have known that TP would return the certified form to her, and therefore she should have contacted TP when she did not receive it.
51. From the 2001 Guide, a copy of which Mrs N says she received in 2001, she was clearly aware that an election was required in order for her part-time employment to be treated as pensionable. She was also aware that once an election was accepted by TP, she would receive a copy of the election form and this would cover all subsequent part-time employment, unless she opted out of the Scheme.
52. Mrs N would also have known that the certified form was required in order that her employer could also deduct the appropriate pension contributions. There is no evidence that she queried, at the time of her appointment to part-time employment with the School, why she did not have a copy of the certified form when she was clearly told to expect it.
53. Mrs N refers to a telephone conversation with Mr E in TP's Contact Centre on 29 October 2014. According to the recording of the call, Mr E confirmed that TP had records of her service from April 2002 to 2006 but nothing prior to that date. Mr E also referred to a part-time election being required and informed her that her employer should have told her about this, to which Mrs N's response was that she was unaware of this.

Conclusions

54. The complaint against the School cannot be upheld because Mrs N was not employed by it until 2002. The School was not involved in processing the Form 261 which Mrs N completed in 2001. Consequently, I am unable to find maladministration on the School's part.
55. With regard to the complaint against the College, I find that there is, on the balance of probabilities, sufficient evidence to show that there were flaws in the College's administrative procedures at the time which are likely to have caused the issue. TP has pointed out that there is evidence to show that the College had deducted pension contributions for other part-time staff it employed, but for whom no part-time election was made. Irrespective of this, the College failed to provide correct service details for Mrs N until 2015, which is tantamount to maladministration.
56. There is no conclusive evidence, however, to show that the College either sent or failed to send the completed Form 261 for Mrs N to TP in 2001. Neither is there any evidence to show that a completed Form 261 was received by TP. The College does not have a copy of the Form 261 but this may be due to the time that has elapsed. While it is understandable for old records to be destroyed over time, the responsibility remains on the party doing so to ensure it can still provide evidence that it carried out its role properly; it has failed to provide such evidence. The College says it had a training plan and procedure in place for new entrants and has no reason to doubt it was followed in this case, but I find that the evidence indicates otherwise.
57. It is evident from Mrs N's pay slips that the College deducted pension contributions for Mrs N. The College says that it paid those pension contributions to TP. There is a copy of an annual return of service for the period 1 September 2001 to 31 March 2002, which the College says was submitted to TP on 1 August 2002. But TP say that it would not have been possible to accept the 1 August 2002 submission as no identifying details had been provided for any of the individuals shown. TP also say that TP did not receive any annual returns for the financial years 2000 to 2003 inclusive.
58. The College say that it paid TP the pension contributions deducted from Mrs N's salary. TP has not denied receiving pension contributions for Mrs N. The College also say that it provided TP with an annual return of service that identified all of the periods of service for the individuals in its employment who were members of the Scheme. TP says that the only breakdown an employer is obliged to provide, is the gross contributions for employer and employees, and any additional contributions.
59. While I accept that TP did not receive the Form 261 for Mrs N, or the annual return of service for 1 September 2001 to 31 March 2002, there is nothing to show that it did not receive the pension contributions for Mrs N. On balance, I find that TP did receive pension contributions for Mrs N for the period she was employed by the College, from 2001 to 2002. Ideally, TP would have a system in place whereby any such

contributions could be easily identified, attributed and returned if they did not match a received election form. However, TP has huge numbers of members and sponsoring employers and so it places responsibility on the employers and employees to provide the required documentation with regard to eligibility, work patterns and contributions. I am unable to conclude that this amounts to maladministration by TP.

60. TP says that a reference number was not allocated to Mrs N until 2004, which proves that it was not informed that she would potentially be eligible for membership of the Scheme. I accept that a reference number was not allocated to Mrs N until 2004, but all this proves is that, on the balance of probabilities, TP did not receive a Form 261 for Mrs N in 2001. It is not evidence that TP did not receive pension contributions for her at that time.
61. TP says that once an election for part-time employment to be treated as pensionable is made, all part-time employment must be treated as pensionable. I would agree with this. Pursuant to regulation B1(4) of the 1997 Regulations, a person who is in part-time employment must elect for their employment to be treated as pensionable employment under the Scheme, it does not happen automatically.
62. TP says that Form 261 makes it clear that all future employment will be treated as pensionable, and therefore if Mrs N had completed it she would have known this. Form 261 states it should be completed by an employee working part-time hours, who wishes to join the Scheme, or someone who elects to re-join the Scheme having previously opted out.
63. I agree that Form 261 states that once it is processed it is certified and returned to the member, and that the member should provide the certified copy to their new employer should they take up part-time employment. However, no explanation is given as to why the certified copy needs to be provided to the new employer. Even though it could possibly be inferred that the certified copy was needed to show the new employer that the employee's part-time employment was pensionable, there is nothing in Form 261 which states that once it is completed by a member all future employment will be pensionable.
64. Mrs N indicated that she wished to contribute to the Scheme when she joined the School in September 2002. The School wrote to Mrs N and requested that she provide a copy of her election form or that she complete a new election form which they had enclosed. Mrs N did neither and did not respond. But I find that if Mrs N had been serious about joining the Scheme at this time she could have simply completed the enclosed election form and returned it. Even though she may have thought that

she had already completed such a form there would not have been any harm in sending this again and it would have possibly allowed TP to query the position.

65. Mrs N says she decided not to pursue her membership of the Scheme because she was only working on a part-time basis and her enquiries about obtaining a reference number were proving to be extremely time consuming.
66. TP have offered to accept a retrospective election from Mrs N in respect of her part-time service prior to January 2007, which does seem to be a reasonable compromise. However, if Mrs N does not wish to pay contributions in respect of her service with the School between 2002 and 2009, then TP say that the only option available under the Regulations is for the contributions she paid, between 2001 and 2002, to be refunded.
67. I find that it was not unreasonable for Mrs N to believe that she had joined the Scheme in 2001 because pension contributions were deducted from her salary between 2001 and 2002. In addition, she was not aware that once she had completed Form 261 all her future employment was pensionable. She had an option to continue her pensionable employment in 2002, when she was employed by the School, and could have completed another election form. However, she did not do this and it is possible that even if she had joined the Scheme again at that time she may have decided to opt-out. Therefore, I cannot fault Mrs N for not wishing to pay the additional contributions suggested by TP, for the period from 2002 to 2009.
68. I find, on the balance of probabilities, that the College has failed to discharge its responsibility to enrol Mrs N into the Scheme. It failed to provide the appropriate form to TP to register her enrolment, while leading Mrs N to believe that she was in the Scheme. Mrs N should be entitled to a pension for the period she paid pension contributions between 2001 and 2002. I accept that the Regulations prevent the pension being paid through the Scheme but that does not prevent the College funding the purchase of a pension through the open market on a similar basis to that which could be provided through the Scheme and have made such a direction below.
69. I therefore uphold the complaint against the College.
70. The College, on receipt of the preliminary decision, asked whether Mrs N would be prepared to enter discussions regarding paying the benefits as a lump sum. Mrs N has agreed to this and therefore I have taken this into account in my directions.
71. I recognise that Mrs N has suffered both financial and significant non-financial injustice and, therefore, I have made the appropriate directions below.

Directions

72. I direct that:
 - Within 28 days from the date of this determination, TP are to inform the College and Mrs N of the benefits to which she would have been entitled if her

service between 1 September 2001 and 31 August 2002 had been pensionable in the Scheme.

- Once Mrs N and the College have been informed of the Scheme benefits to which Mrs N would have been entitled, Mrs N has agreed to enter discussions with the College as to how these benefits are paid and the possibility of these being paid as a lump sum. Interest should also be added to the backdated payments of pension due from the date Mrs N decided to take her post 2009 benefits. Interest is simple interest, at the rate for the time being declared by the reference banks, on the arrears from each due date to the date of payment.
- If no agreement can be reached on the amount of lump sum payment to be made within 56 days of receiving details of the benefits from TP then the College shall purchase an annuity for Mrs N to pay the benefits backdated to the date she decided to take her post 2009 benefits, plus interest. Interest is simple interest, at the rate for the time being declared by the reference banks, on the arrears from each due date to the date of payment.

73. I also direct that within 14 days of the date of this determination the College shall pay Mrs N £500 for the significant non-financial injustice she has suffered.

Anthony Arter

Pensions Ombudsman
15 November 2017

Appendix

Regulation B1 of the 1997 Regulations states:

“(1) Subject to paragraphs (2) to (5), regulations B3 and B3A and regulations B4 to B7, a person is in pensionable employment while he is in employment-

(a)

(i) in a capacity described in Schedule 2...

(4) A person who is in part-time employment is not in pensionable employment unless he has at some time made an election for the purposes of this paragraph.

...

(6) An election for the purpose of this regulation may be made at any time by giving written notice to the Secretary of State and, unless paragraph (7) applies, has effect from the first day of the month after that in which the notice was given.

(7) If however the Secretary of State so specifies, the election shall have effect from a date earlier than that referred to in paragraph (6) provided that the contributions payable under regulations C3A and G8(7) are paid to the Secretary of State by the date 6 weeks after the date of the demand under regulation

C18 (4A) or regulation G8 (8) as the case may be.”

Regulation B5 of the 1997 Regulations states:

“Election for employment not to be pensionable

B5. - 1) A person who-

(a) is in pensionable employment, or

(b) is not in pensionable employment but expects to enter an employment which would otherwise be pensionable employment, may, at any time, by giving written notice to the Secretary of State, make an election under this regulation.

(2) As from the date from which the election has effect-

(a) where paragraph (1) (a) applies, the person ceases to be in pensionable employment for all purposes of these Regulations, and

(b) in any case, subject to regulation B6, no subsequent employment of his is pensionable employment.

(3) Where paragraph (1) (a) applies, an election under this regulation-

(a) if the notice is given within 3 months after the start of the person's pensionable employment, has effect as from the first day of his pensionable employment, and

(b) in any other case, has effect from the first day of the month after that in which the notice was given.

(4) Where paragraph (1) (b) applies, the election has effect as from the day before that on which the person first enters any such employment as is there mentioned.”