

Ombudsman's Determination

Applicant	Dr S
Scheme	Teachers' Pension Scheme (the Scheme)
Respondents	Department for Education (DfE) Teachers' Pensions (TP)

Outcome

1. I do not uphold Dr S' complaint and no further action is required by the DfE.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

1. Dr S' complaint is that TP did not properly comply with Regulation 62 (**the Regulation**), of the Scheme rules when calculating the lump sum element of his pension, which he says resulted in an additional and unwarranted deduction from the amount he was entitled to.

Background information, including submissions from the parties

2. Dr S was a member of the Scheme until 1994, at which point he retired on the grounds of ill health. He received an annual pension of £4,222.58 and a lump sum of £12,667.74. In January 2011 he returned to employment and accrued further pensionable service under the Scheme.
3. In January 2015 Dr S reached the age of 55 and began enquiring about taking his retirement benefits early. In November 2015 TP wrote to Dr S explaining the pension benefits he would receive at age 60. These figures had not been actuarially reduced to reflect the pension being taken early.
4. In February 2016 TP sent Dr S the actuarial reduction factors which would be applied to his pension benefits. Dr S subsequently asked to receive his pension benefits, which were calculated and paid to him.
5. Dr S complained to TP as he was concerned about how his lump sum had been calculated. In July 2016 TP responded to Dr S stating his lump sum was correct and had been calculated in accordance with the Scheme rules.

6. Dr S referred his case to The Pensions Advisory Service (**TPAS**), arguing TP had not correctly followed the Scheme rules when calculating his lump sum. To illustrate Dr S' argument, the relevant parts of the Regulation are set out below (see appendix for the Regulation in full):-

“Paragraph 2 - The amount of the lump sum of a person (P) is the amount mentioned in paragraph (4) less the total of the benefits mentioned in paragraph (5) previously payable to P other than any already deducted in the calculation of a lump sum

Paragraph 4 - The amount is $\frac{3}{80} \times P$'s average salary $\times P$'s NPA 60 reckonable service to which a Case applies (in years and fractions of a year)

Paragraph 5 (b) – Any ill-health lump sum

Paragraph 6 - The amount calculated in accordance with paragraph (4) must be multiplied by the appropriate factor for a person with NPA 60 reckonable service -

(a) where the lump sum is a phased retirement lump sum, if P is under 60 on the relevant date”

Dr S says the Regulation unambiguously states that the actuarial reduction from paragraph 6 should be applied after his previously paid lump sum (£12,667.74) has been taken away from his total lump sum entitlement (£20,340.20). This would give him a more favourable figure than if the actuarial reduction were to be applied before his previously paid lump sum is taken away from his total lump sum entitlement. His reasoning is that paragraph 2 precedes paragraph 6 numerically and this is how the Regulation is meant to be applied in sequential order.

7. After looking into the matter, TPAS concluded that Dr S was not interpreting the Regulation correctly.
8. Dr S did not agree with TPAS' conclusion, so he asked for his complaint to be reviewed by the DfE. In December 2016 it wrote to Dr S to confirm it was satisfied that TP had applied the Regulation correctly.
9. Dr S did not agree with the DfE interpretation of the Regulation, so brought his complaint to this Office.
10. In May 2017 the DfE provided its formal response to Dr S' complaint. Amongst other things, it said:

“The regulatory intent of regulation 62 is to ensure that members who have already received benefits previously, are treated neither more nor less favourably than other members when their final award is calculated. To multiply the lump sum by the appropriate factor only after the previous lump sum had been deducted would effectively allow Dr S a lower actuarial adjustment to his benefits than would be applied to a member who had the same service but had not received the

previous lump sum. Clearly, this is not the regulatory intention, and indeed not the outcome when the regulations are correctly applied.

Dr S' preferred calculation is:-

£20,340.20 (lump sum) - £12,667.74 (previously paid lump sum) x 0.808 (actuarial factor for early access) £6,199.35 (second lump sum) which when added to his previously paid lump sum = a combined lump sum payment of £18,867.09.

Whilst a member who receives only one lump sum would receive:-

£20,340.20 (lump sum) x 0.808 (actuarial factor for early access) = £16,434.88 (lump sum in one payment).

Whereas, the regulations stipulate the second lump sum calculation to be:-

£20,340.20 (lump sum) x 0.808 (actuarial factor for early access) - £12,667.74 (previously paid lump sum) = £3,767.14 (second lump sum).

As you will see, the second lump sum calculated in accordance with the regulations, when added to his previously paid lump sum = £16,434.88, meaning that Dr S is neither better nor worse off than a member who had received their lump sum in one payment."

11. The DfE also made the point that, as manager of the Scheme and responsible for the drafting of the regulations, it reserves the right to interpret the regulations when they are disputed.
12. Dr S subsequently wrote to this office commenting on the DfE's formal response. He said:

"If the TP are correct, as they state that they are, a negative lump sum would result from a return to pensionable service whereby the additional lump sum, resulting from that return to service, is less than the amount by which the previously paid lump sum is retrospectively reduced. Why, then, is there no reference within the Regulations stipulating how a negative lump sum is to be managed? I suggest that there is no reference to any such provision because a negative lump sum does not arise if the provisions are applied according to the sequential order in which they are set out in the Regulations. This, then, is clearly the correct application of the provisions and, as such, a reflection of the proper regulatory intent."

Adjudicator's Opinion

13. Dr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by DfE. The Adjudicator's findings are summarised briefly below:-

- Dr S' interpretation of the Regulations is incorrect. The fact that the Regulation had been set out in numerical order did not mean that it is to be applied in this manner when calculating Dr S' remaining lump sum.
 - Nowhere does it state that the actuarial reduction is to be applied after any previously paid lump sum has been taken away.
 - The Adjudicator agreed with the DfE that regardless of whether or not a member has received their lump sum in one or two payments, their overall lump sum entitlement should remain the same. It would not be fair on other Scheme members who receive their lump sum in one payment to receive less than a member who receives their lump sum in two payments.
 - Dr S' argument regarding the Regulations not stipulating how a negative lump sum is dealt with is hypothetical, as the Adjudicator could not see how a negative lump sum would ever arise. The lump sum calculated from paragraph 4 will always be larger than any previous lump sum, because paragraph 4 stipulates how a member's overall entitlement is calculated.
14. Dr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Dr S provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, and I will therefore only respond to the key points made by Dr S for completeness.

Ombudsman's decision

15. Dr S disagrees with the Adjudicator's view that it would not be fair on Scheme members who receive their lump sum in one payment to receive less than other members who receive their lump sum in two payments. Dr S believes he is being penalised by returning to pensionable service. He says that the Regulations provide a "slide back" calculation which ensures that any previously awarded benefit is not adversely affected by any subsequent return to pensionable service. So the regulatory intent is for a member to not be penalised by returning to pensionable service.
16. Dr S says that a negative lump sum would occur when any additional lump sum is less than any previously paid lump sum, which would occur when the additional paid lump sum is calculated in relation to any additional service.
17. I cannot see how Dr S has been penalised. Dr S is receiving the same amount he would have done had he received his overall lump sum entitlement in one payment. The Regulation takes Dr S' overall service into account; the formula in paragraph 4 includes a member's entire reckonable service. The only difference is that he is receiving his overall entitlement in two lump sum payments instead of one.
18. I find DfE's interpretation to be correct. The Regulation clearly sets out that the actuarial reduction mentioned in paragraph 6 is applied to whatever lump sum is

calculated from paragraph 4. Any lump sum that has been previously paid is then taken away from this figure. I agree that if Dr S' interpretation of the Regulation was correct, he would be receiving a larger overall lump sum than other members who receive their lump sum in one payment.

19. I do not agree that the Regulation needs to stipulate how a negative lump sum is dealt with; if interpreted correctly then a negative lump sum can never arise. It is possible that a second lump sum payment will be larger than what has been previously paid. But the purpose of the Regulation is to calculate a members overall lump sum entitlement, not how individual lump sum payments are calculated. This is why any previously paid lump sum will be taken away from a members overall entitlement, not from any members additional lump sum payment.
20. Therefore, I do not uphold Dr S' complaint.

Anthony Arter

Pensions Ombudsman
18 July 2017

Appendix

The Teachers' Pensions Regulations 2010

1. Regulation 62:

“Amount of phased retirement and retirement lump sum

(1) This regulation applies for calculating the amount of phased retirement and retirement lump sums.

(2) The amount of the lump sum of a person (P) is the amount mentioned in paragraph (4) less the total of the benefits mentioned in paragraph (5) previously payable to P other than any already deducted in the calculation of a lump sum (whether under this regulation or regulation 117(5) (person to be treated as electing to receive lump sum in place of pension)

(3) But no lump sum may exceed P's permitted maximum.

(4) The amount is $\frac{3}{80} \times P\text{'s average salary} \times P\text{'s NPA 60 reckonable service to which a Case applies (in years and fractions of a year)}$.

(5) The benefits are-

(a) any phased retirement lump sum in a case where the phased retirement pension payable with the lump sum ceased to be payable under regulation 59 (cessation of phased retirement pension);

(b) any ill-health lump sum.

(c) any total incapacity lump sum;

(d) any lump sum under regulation 116 (election to receive lump sum in place of pension) other than a lump sum attributable to-

(i) a phased retirement pension except where the pension ceased to be payable under regulation 59 (cessation of phased retirement pension), or

(ii) an additional pension;

(e) any short-service incapacity grant, in a case where, after the grant became payable, P re-entered pensionable employment before 1st September 2010.

(6) The amount calculated in accordance with paragraph (4) must be multiplied by the appropriate factor for a person with NPA 60 reckonable service-

(a) where the lump sum is a phased retirement lump sum, if P is under 60 on the relevant date.

(b) where the lump sum is a retirement lump sum, if Case D or Case E applies to P's NPA 60 reckonable service.

(7) In this regulation-

"permitted maximum" must be construed in accordance with paragraph 2 of Schedule 29 to FA 2004;

"relevant date" has the same meaning as in regulation 57(9) (election to receive phased benefits)."