

Ombudsman's Determination

Applicant	Mr Pravinchandra Raja
Scheme	Teachers' Pension Scheme
Respondent(s)	Teachers' Pensions, Northamptonshire County Council

Complaint summary

Mr Raja has complained that Teachers' Pensions did not alert him to an overpayment of his pension which accrued due to his further employment after retirement. He considers Northamptonshire County Council contributed to the situation by paying him late. Mr Raja believes that the overpayment should be waived.

Summary of the Ombudsman's determination and reasons

The complaint should not be upheld against Teachers' Pensions or Northamptonshire County Council. The evidence suggests that Mr Raja was re-employed, subject to abatement, and was made aware that it was his responsibility to inform Teachers' Pensions of his re-employment earnings following retirement. Since he did not do so, Northamptonshire County Council can no longer provide detailed hours and payments information. Further, the Limitation Act 1980 does not prevent recovery of the overpayment of pension by Teachers' Pensions.

Detailed Determination

Relevant Scheme regulations and literature

1. The Teachers' Pensions Regulations 1997 (the Regulations) provided that in certain circumstances a member in receipt of a retirement pension from the Scheme will have it abated if they return to teaching employment (Regulation E14). The member's pension may be suspended at any point in a tax year if the combined income from their re-employment and Scheme pension exceeds the salary they would have received if they had not retired (known as the salary of reference). These regulations were replaced in September 2010 but were in force throughout the period relevant to this complaint.
2. Regulation H3(4) states:

"Without prejudice to paragraph (2) a person who has become entitled to payment of a teacher's pension and who takes up employment such as is described in regulation E14(1) shall-

 - (a) within 14 days of taking up such employment notify the Secretary of State giving details of the salary in the employment; and
 - (b) within 14 days of any change in salary notify the Secretary of State."
3. Leaflet 192 (November 1998) is a booklet entitled "Returning to work after age or premature retirement". It sets out the type of work that will and will not affect a pension and also covers part-time work and supply work. It describes the salary of reference and - via worked examples - demonstrates the circumstances in which a pension will be reduced or suspended. Under the heading 'Introduction' the leaflet says:

"A teacher must inform Pensioner Call Centre immediately upon a return to work. Failure to do so could result in the annual pension being overpaid and the teacher will then be required to repay that sum. If any amount remains unpaid at the end of the tax year, the annual pension for the following tax year will be reduced accordingly....We cannot emphasise too strongly the importance of this action."
4. Further, under the heading 'The Certificate of Re-Employment', the leaflet says:

"A certificate is sent to all teachers with the retirement award papers...On commencement of re-employment, part A of the Certificate [of Re-Employment] should be completed by the teacher and forwarded to the employer for completion and submission to Pensioner Services..."

5. The Limitation Act 1980 provides timescales by which an action must have commenced where a breach of the law has occurred. Ordinary breaches of contract are actionable for six years after the cause of action accrued as are actions to recover sums recoverable by statute. Section 32(1) of the Limitation Act 1980, entitled "Postponement of limitation period in case of fraud, concealment or mistake" states that:

"(1) ..., where in the case of any action for which a period of limitation is prescribed by this Act, either—

(a)...

(b)...or

(c) the action is for relief from the consequences of a mistake;

the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it."

Material Facts

6. Mr Raja took premature retirement benefits from the Scheme with effect from 1 May 2000. He was sent an award letter, together with Leaflet 192 and a re-employment certificate.
7. On 6 June 2000, Teachers' Pensions wrote to Mr Raja to tell him that it was possible to return to pensionable teaching after retirement – but it might cause abatement of his pension.
8. Mr Raja returned to part-time teaching employment on 1 September 2000. On 22 November 2000, he elected for his employment to be pensionable (from 1 December 2000) but did not forward a re-employment certificate.
9. Teachers' Pensions issued a reminder regarding the certificate on 22 February 2001. The letter said that if Mr Raja was working on a supply basis, he should monitor his earnings and only complete and return the form if his retirement income was likely to exceed the index linked salary of reference. No response was received.
10. A further similarly-worded reminder was sent on 28 November 2001. Mr Raja replied that he was aware of the abatement regulation but had not exceeded the salary of reference as a part-time teacher between 1 September 2000 and 31 August 2001. He had since begun supply teaching but would revert to part-time in January 2002 and would complete the certificate then – although he would remain far below the salary of reference. Teachers' Pensions' response was that if he was employed as a supply teacher, he need only complete the form if he was going to exceed his annual earnings limit.

11. According to information supplied by Northamptonshire County Council to Teachers' Pensions, Mr Raja was re-employed on a part-time regular basis between 1 September 2000 and 31 August 2001; on a part-time supply basis between 28 January 2002 and 30 June 2002; and on a part-time regular basis between 1 September 2002 and 31 August 2005. Between 1 September 2005 and 13 May 2006, he was employed on a part-time regular basis (3 days per week) but also on a supply basis on the other weekdays.
12. Mr Raja applied for his elected further employment pension on his 60th birthday (13 May 2006). On 30 August 2006, he made a further election in respect of further employment to be pensionable, from 1 September 2006. He continued to work on a part-time basis. He resigned on 31 March 2009.
13. Teachers' Pensions reviewed their records in 2011/12. This review showed that Mr Raja had been in employment for most of the time since his premature retirement in 2000, mainly on a part-time basis, but that Teachers' Pensions had not received any Certificates of Re-employment in respect of any periods of re-employment.
14. Following the review, Teachers' Pensions wrote to Mr Raja in August 2012. Their calculations showed that Mr Raja had been overpaid pension, as it had not been abated when it should have been after his premature retirement in 2000.
15. In 2012, Mr Raja's most recent further employment pension benefits were brought into payment, with the lump sum he was awarded being offset against the overpayment. However, this still left a residual overpayment amount of around £1,200.

Summary of Mr Raja's position

16. Mr Raja does not dispute that he undertook teaching employment after 1 May 2000, nor does he dispute the periods of service provided to Teachers' Pensions by Northamptonshire County Council. However, he challenges the earnings figures and overpayment calculations because the Council often paid his supply earnings late, thus tipping into the next tax year at times. He says that if this had not been the case, he would have remained within the salary of reference in those years.
17. Mr Raja has not disputed that he failed to return certificates of employment throughout his part-time re-employment but says he did not need to do so because he was not re-employed but remained in continuous service from 1 September 2000 to 31 March 2009. He considers that his employer has failed in not maintaining sufficient records of his hours and earnings, and providing incorrect information to Teachers' Pensions. He also suggests that the Council admitted providing incorrect information.
18. Mr Raja refers to the Limitation Act 1980 and argues that Teachers' Pensions should not be able to recover the overpayment after such a long period.

19. He also says that the overpayments received have been spent on better quality clothes, restaurants and holidays. Due to the nature of this expenditure he cannot supply receipts but considers that they amount to a change of position defence, which should prevent recovery of the overpayments.

Summary of Teachers' Pensions' position

20. Mr Raja was issued Leaflet 192 (November 1998) when he took premature retirement in 2000. This leaflet explained the implications of his returning to work, explaining that he should have completed a certificate of re-employment) when he returned to teaching. He received numerous reminders and his correspondence of 13 December 2001 indicated that he would return a certificate – but he did not do so. He was re-employed from 1 September 2000 so was subject to abatement.
21. Teachers' Pensions are not an employer. As such, they rely on information relating to a member's pensionable service from other parties – namely teachers and their employers. Mr Raja was aware of his obligation to provide information of his employment post-retirement but failed to do so, and thus Teachers' Pensions cannot be blamed for the delay in discovering the overpayment (i.e. as it related directly to the employment that Mr Raja should have kept them informed of).
22. From the employment information provided by Northamptonshire County Council and Mr Raja, it is clear that he was employed mainly on a part-time regular basis. When he was employed as a supply teacher, he was essentially working close to full time hours. As such, he should have completed certificates each year. He completed none.
23. Had Mr Raja done so, his pension would have been abated and there would have been no overpayment.
24. It is a matter for Mr Raja and his employer as to how and when his salary is paid, and whether some earnings were not paid in the period they related to. They have said to Mr Raja that revised calculations would be made if his employer confirmed the service information to be incorrect. However, since his pension was abated in 2001/1, 2003/4 and 2004/5 but not in 2002/3; if payments were recorded against the wrong period, it is likely that the net effect on the overpayments would be minimal because the problem would just move from one year to the next.
25. Teachers' Pensions have not specifically commented on section 32 of the Limitation Act 1980 other than to say that since they rely on the information provided by the member and the employer, and Mr Raja failed to comply with his obligations, they could not have discovered the overpayment earlier.

Summary of Northamptonshire County Council's position

26. Their computer system at the relevant time was decommissioned in 2010/11 so Mr Raja's individual dates of work are no longer available. They have no reason or

evidence to believe that the data submitted to Teachers' Pensions was incorrect and have not, as Mr Raja claims, agreed that it was.

Conclusions

27. Teachers' Pensions must administer the Scheme in accordance with the Regulations. As such, if a pension should have been abated but was not, they are, at least in the first instance, entitled to seek recovery of the overpaid amount. There may be defences to recovery and these would only apply if Mr Raja received the overpayments in the reasonable belief they were his to spend.
28. Mr Raja's case, in essence, is that in the circumstances he had no obligation to provide earnings information and he reasonably believed he remained within his earnings limit every year. If he did not, that is due to a failure by his employer to pay him in the correct time period. He also says that Teachers' Pensions should have known of his situation earlier and that they are not entitled to recover the full amount of the overpayment in any event in light of the provisions of the Limitation Act 1980. It is also not reasonable for him to have to repay money which he has spent, not knowing of the problem, and now cannot get back.
29. Teachers' Pensions provided Mr Raja with information which highlighted his obligations to notify them, not only of his re-employment at any time during his retirement, but also of any changes to his employment. Leaflet 192 (November 1998) also set out the circumstances in which his annual pension would be affected by his re-employment and that the failure to inform Teachers' Pensions of his re-employment and his earnings could result in an overpayment of pension which would be recoverable (The leaflet also notes that teachers should do this even if they think that it would not affect their pension).
30. The correspondence exchanged between Mr Raja and Teachers' Pensions in 2000-1 clearly indicates that Mr Raja was regarded as re-employed and aware of the abatement principle, and that he was only entitled to refrain from providing earnings certificates when he was carrying out supply work and remaining within the earnings limit. I understand this is because some supply teachers work relatively few hours and never approach the earnings limit so there is no need for yearly figures and checks. But Mr Raja worked predominately on a part-time rather than supply basis, so he should have provided the certificate every year.
31. The onus was on Mr Raja to notify Teachers' Pensions each time he resumed teaching, changed his teaching position or had an increase in salary and/or working hours. Given the nature of his employment throughout the relevant period, this essentially meant that notification would need to be frequent. But all he had to do was to complete part of the certificate (which was sent to him on a number of occasions) and arrange for his employer to complete the remainder and forward to Teachers' Pensions.

32. Given the importance of the matter, it was for Mr Raja to check the position with Teachers' Pensions to resolve any uncertainty he may have had regarding his obligations, rather than assume that there was no requirement for him to provide information. This could have included discussion about the timing of his pay and any impact this might have on the yearly salary of reference. His correspondence of 13 December 2001 indicated he understood the need to provide the certificate when working part-time.
33. Taking all the above into account, I consider that Mr Raja ought reasonably to have been aware that he was required to complete a certificate for his earnings and varied employment basis. Consequently, I consider it reasonable to expect Mr Raja to have contacted Teachers' Pensions in the years of his employment after taking his pension to enable the calculations to have been made, which would have prevented the current overpayment.
34. As stated previously, Mr Raja also says that Teachers' Pensions should be prevented from recovering the overpayment as a consequence of the operation of the provisions of the Limitation Act 1980.
35. The Limitation Act 1980 governs time limits for bringing different types of claims in the courts and the basic time limit is six years from the date when the cause of action accrued. However, under section 32(1)(c) of the Act, the limitation period is extended in the case of an action arising as a result of a mistake. If Teachers' Pensions had issued proceedings in court it would have been able to argue that its time limit for issuing proceedings against Mr Raja started to run from the date when it could, with reasonable diligence, have discovered the mistake.
36. Teachers' Pensions demanded repayment of the overpayments from Mr Raja in their letter dated August 2012 after they had conducted investigations into his periods of re-employment. On the basis of the information they received from Northamptonshire County Council, Teachers' Pensions undertook a full assessment of his earnings from his periods of re-employment and determined that they had mistakenly made pension payments to Mr Raja in excess of his entitlement. To extend the six years Teachers' Pensions will essentially rely on the fact that they had provided Mr Raja with information as to his responsibilities and the onus was on him to bring his circumstances to their attention.
37. I consider that reasonable diligence extended as far as notifying Mr Raja of the requirement to return the certificate (via his employer) to inform Teachers' Pensions of his re-employment, its basis (i.e. part-time etc) and any changes. Had Mr Raja complied with the requirement, this would have led to Teachers' Pensions assessing the situation and liaising with Northamptonshire County Council on earnings, where necessary, to carry out the abatement calculations. This might have also prevented the problem now facing Mr Raja in retrospectively establishing the hours he worked in particular periods. Reasonable diligence does not require exceptional measures to be taken. I do not find that Mr Raja is protected from recovery by the Limitation Act 1980.

38. Mr Raja has also argued that Teachers' Pensions have no right to recover the overpayments as he changed his position in reliance on the additional money received. However, he is unable to provide receipts to show this. The money itself was a relatively small amount each year and although that meant the error was less likely to be noticed, it was equally unlikely to lead to a significant change of position or spending pattern. And even if it did, it would be inequitable for Mr Raja to benefit from the additional money when he was informed of his obligations, appeared to accept them but then did not comply with them – even after confirming in January 2002 that he would do so.
39. As a result, the matter did not come to light until recently and because Northamptonshire County Council changed its computer systems it is now unable to provide all the information Mr Raja would like to see to establish the hours he worked in particular years and the late payments he says occurred in connection with these. In the circumstances, I do not find this to be maladministration by the Council. And even if it had been, it would not prevent Teachers Pensions', as a separate entity, from recovery.
40. For the reasons set out above, I do not uphold Mr Raja's complaint. My expectation is that Teachers' Pensions and Mr Raja will enter into sensible discussions about how the money should be repaid.

Jane Irvine
Deputy Pensions Ombudsman

5 May 2015