

Ombudsman's Determination

Applicant	Mr T
Scheme	Teachers' Pension Scheme (the Scheme)
Respondent	Teachers' Pensions (TP)

Outcome

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

Complaint summary

2. Mr T's complaint concerns the fact that TP ceased his widower's pension and asked him to repay £31,507.53 (net) in respect of the pension he has received since his remarriage. He says that he was not aware that he needed to notify TP that he had remarried, or that his remarriage would result in his pension ceasing.

Background information, including submissions from the parties and timeline of events

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. Mr T's late wife was an active member of the Scheme. She died in December 2005.
5. The regulations in force at the time of Mrs T's death were the Teachers' Pensions Regulations 1997 as amended (**the Regulations**). Regulation E30 states the conditions under which a widower's pension ceases. An extract from the Regulations can be found in the Appendix.
6. In December 2005, Capita Hartshead (**Capita**), the administrators of the Scheme at the time, wrote to Mr T. TP maintains that it enclosed a bereavement pack which consisted of:
 - a covering letter;
 - an 'Application for Death Benefits' form (**Form 22**);
 - notes for completing Form 22; and

- a copy of leaflet 450: 'Benefits Payable to Members' Beneficiaries' (**the Leaflet**).
7. Under the heading 'Duration of benefits and possible beneficiaries', the Leaflet stated:

“Spouse’s pension payable for life unless spouse re-marries or co-habits. The pension must then stop.”
 8. On 14 December 2005, Mr T completed and signed Form 22, which was then returned to Capita with other documentation that it had requested.
 9. On 19 December 2005, Capita notified Mr T that a short-term pension was payable to him by his late wife’s employer for a period of three months. It said that a long-term annual pension of £4,423.06 would then be payable by the Scheme from 7 March 2006.
 10. On 5 January 2006, Capita notified Mr T that it had the confirmation it needed to be able to release his benefits. It confirmed that his short-term pension would be put into payment and his long-term pension would be paid at the appropriate time.
 11. On 28 March 2006, Mr T received the first instalment of his long-term pension which was backdated to 7 March 2006.
 12. In subsequent years, annual newsletters (**the Newsletters**) were sent to Mr T with his P60s. The Newsletters included information on changes that TP needed to be made aware of. For example, the 'Teachers' Pensions Newsletter 2006', under a section 'Changes we need to know about', said:

“Please inform us: [...]”

If we pay you a widow, widower or civil partner pension and you remarry, enter a civil partnership or live with another person as husband and wife.”
 13. In June 2007, Mr T moved from his address in the Isle of Wight to an address in Kent. He says that he notified TP of his new address.
 14. On 12 April 2008, Mr T remarried.
 15. In July 2014, Mr T moved to a second address in Kent. He says that he also notified TP of that address.
 16. In February 2016, Mr T moved to New Zealand. His second address in Kent remained his UK contact address.
 17. On 13 August and 10 September 2016, TP asked Mr T to complete a 'Dependant's declaration' (**the Declaration**). The Declaration asked for details of any changes in his personal circumstances, such as re-marriage. This correspondence was sent to Mr T's address in the Isle of Wight. Mr T says that he did not receive these letters as they were not sent to his address at the time.
 18. On 21 November 2016, TP suspended payment of Mr T's pension as it had not received the completed Declaration.

19. On 30 November 2016, Mr T telephoned TP to query why his pension payments had stopped. During the call, he was asked to provide the information requested on the Declaration. He confirmed his new address in New Zealand and that he had remarried.
20. On the same day, TP wrote to Mr T to acknowledge his change of address.
21. On 14 December 2016, TP notified Mr T that his entitlement to a widower's pension from the Scheme had ceased due to his remarriage. It said that a net overpayment of £31,507.53 had occurred. It explained that any overpayment of public funds had to be recovered and it asked him to repay this amount. It advised Mr T to contact its Finance Department if he would find it difficult to make the repayment.
22. Mr T says he rang the telephone number TP provided on its letter of 14 December 2016, and explained why he did not believe he should have to repay the overpayment. His reasons were as follows:-
 - He did not know the consequences of his remarriage on his pension.
 - He accepted the money in good faith and had made significant life decisions on that basis.
23. On 28 December 2016, 20 January and 23 March 2017, TP issued reminders to Mr T regarding the overpayment that it was seeking to reclaim. TP said that it had no record of receiving a reply to any of these communications. It then sent a further letter to Mr T on 3 May 2017, using the address he had provided on Form 22: his address in the Isle of Wight. This letter was subsequently returned to TP. A further reminder was sent to Mr T's address in New Zealand on 1 August 2018, which he has confirmed that he received.
24. In September 2018, TP's Finance Department initiated an address trace which provided an address for Mr T in Kent. On 4 September 2018, it sent him a letter by recorded delivery to this address.
25. On 14 September 2018, Mr T raised a complaint with TP. He explained that he had been on an extended visit to the United Kingdom and had just returned to New Zealand to find its letter of 1 August 2018. He informed TP that:-
 - He had not previously been notified that his pension would cease on his remarriage.
 - The change of address notifications, that he had sent to TP, had not been actioned.
 - TP should consider writing off the overpayment.
 - He had changed his position and could demonstrate that he had acted in good faith. When he remarried, he took on financial responsibility for his wife's two children. He also encouraged his wife to give up a well-paid career.

26. On 4 October 2018, TP responded to Mr T's complaint. The main points that it made at the time, and its subsequent submissions, are summarised at paragraph 34 below.
27. On 15 November 2018, TP's Finance Department wrote to Mr T. It advised that it would be prepared to accept repayment of the sum due over a period of eight years and seven months. It also advised that this was the same period over which the overpayment had occurred and would require monthly repayments of approximately £305.90. It was prepared to consider a longer repayment period, if Mr T could provide evidence that the repayment period being proposed would cause him financial hardship.
28. On 21 March 2019, Mr T escalated his complaint to the Department for Education (**DfE**). He said TP's response did not suggest that it had undertaken a thorough investigation of his complaint. Furthermore, TP had not previously drawn his attention to the fact that his pension would cease on his remarriage.
29. On 12 April 2019, the DfE responded to Mr T's complaint, which it did not uphold. In summary, it said:-
 - The Regulations state that payment of a widower's pension must cease if the person receiving it marries, forms a civil partnership, or begins to live with someone as if they were married or as if they were civil partners. TP had acted correctly by following the Regulations and stopping the pension it was paying Mr T.
 - Mr T had been provided with a copy of the Leaflet together with the Newsletters. The receipt of these documents precluded a change of position defence.
 - TP had now adopted a more proactive approach by regularly contacting pensioners for confirmation that their circumstances had not changed. However, this was an enhancement to its service and did not invalidate the previous approach which put the onus on the beneficiary to keep TP informed.
 - Before the telephone call Mr T made to TP on 30 November 2016, TP had no record of receiving a notification of a change of address from Mr T. TP's letter of 3 May 2017, was knowingly sent to his old address in the Isle of Wight. No response had been received to five letters it had sent to his New Zealand address between 13 December 2016 and 23 March 2017.
 - HM Treasury's 'Managing Public Money' (**MPM**) guidance makes it clear that recovery of overpayments should be pursued in full.
30. The DfE mistakenly referred to Mr T's daughter being in receipt of a child's pension from the Scheme. Mr T says that he was not aware that the DfE had responded to his complaint until 30 May 2019.
31. On 16 and 25 October 2019, TP wrote to Mr T concerning possible debt recovery proceedings and warned that he could incur additional costs unless he submitted a complaint to The Pensions Ombudsman (**TPO**). It reiterated that it was willing to

accept a repayment plan over a period of eight years and seven months; this would require him to make monthly instalments of £305.90. It offered to extend the period of recovery if Mr T could show that the repayment plan being proposed would cause him hardship.

32. On 24 January 2020, TPO received TP's formal response to Mr T's complaint.

33. Mr T made the following additional submissions:-

- He supplied his Kent address to TP in 2007. TP has subsequently said that it did not receive this.
- As a result of the change of address notification not being actioned by TP, he did not receive the Newsletters. Furthermore, TP's use of the Newsletters, to advise pensioners of the impact remarrying would have on their pension, was an inadequate method of communicating such a message.
- The sporadic and inconsistent nature of the communications from TP and the DfE amounted to maladministration. This was evidenced by the letter from the DfE that incorrectly referred to a child's pension being paid to his daughter. There was also a delay in him receiving the letter. The DfE had not provided an explanation or an apology for this. Nor had it apologised for any of the errors that resulted in the overpayment. The overpayment had caused him significant distress.
- TP applied undue pressure when asking him to make the repayment. Furthermore, a number of the invoices did not include the option of extending the repayment period.
- Capita's letters of 19 December 2005 and 5 January 2006 confirmed the benefits payable to him. No conditions were attached to the payment of these benefits. Consequently, he accepted the benefits in good faith to his financial detriment. The letters amounted to unequivocal statements, made on behalf of the DfE, giving rise to the defence of estoppel by representation.
- In reliance on the benefits, he changed his lifestyle, made irreversible financial decisions and his wife gave up a well-paid career. As a result, he had a change of position defence to recovery of the overpayment.
- It was unjust for him to be burdened with a lengthy repayment plan given that he was over 70. Also, due to his medical history.
- The cessation of his pension was a breach of his right to marry, his right to family life and the protection of his property under the Human Rights Act 1998.

34. TP made the following additional submissions:-

- It was required to administer the Scheme in accordance with the Regulations.
- It did not accept responsibility for the overpayment.

- The annual Newsletters were sent to all pensioners of the Scheme. TP included a reminder in the Newsletters of the requirement to notify any change in circumstances. The Leaflet was also issued to Mr T in December 2005.
- It had asked Mr T to complete a 'Statement of Income and Expenditure' so that it could gain a better understanding of his financial situation. He had not yet provided this.
- Its records showed that Mr T was residing at an address in the Isle of Wight from December 2005, and then at an address in New Zealand from November 2016.
- The "print file", in respect of Mr T's P60 for the 2006/07 tax year, was produced on 19 April 2007. The P60, together with a copy of the 2007 newsletter, would have been issued to Mr T shortly after this date.
- It was required to issue Mr T with his P60 by 31 May each year. Consequently, the Newsletters, which were sent with the P60s, would have been issued to him prior to 31 May each year.

Adjudicator's Opinion

35. Mr T'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 below:-
- TP continued paying Mr T's widower's pension after the date it should have ceased. So, there was no dispute that a problem had occurred.
 - TP is required to pay benefits from the Scheme in accordance with the Regulations. Regulation E30, applied at the time that Mr T became eligible for his pension. Mrs T was not in pensionable employment after 31 December 2006. So, Mr T's pension ceased to be payable on remarriage.
 - In the Adjudicator's view, TP acted correctly by ceasing Mr T's pension when it became aware, in November 2016, that he had remarried. By this time, Mr T's widower's pension had been overpaid since 12 April 2008. This resulted in a total overpayment of £31,507.53 (net), which TP has asked Mr T to repay to the Scheme.
 - Before considering whether Mr T had any other defences available to the recovery of the overpaid pension, the Adjudicator considered the relevance of the Limitation Act 1980 (**the Act**). The applicable cut-off date for the purposes of the Act was the date when TP brought its claim during the course of TPO's complaints procedure. That date was 24 January 2020, the date TPO received TP's response to Mr T's complaint.
 - For the purposes of the Act, time started running from the date that the overpayment first occurred in April 2008 and subsequently upon each further overpayment occurring (Section 5 of the Act). However, the limitation period can

be postponed where there has been fraud, concealment or mistake (Section 32 of the Act).

- In such cases, the limitation period is six years from the date TP discovered the fraud, concealment or mistake or could do so with reasonable diligence. In Mr T's case, the mistake went unnoticed for over eight years.
- The Adjudicator took the view that, even with reasonable diligence, it would not have been possible for TP to have been able to identify, until November 2016, that overpayments were being made to Mr T. He said this because TP was not made aware of Mr T's remarriage until November 2016. It followed that time started to run later than the date of the first overpayment because TP could not have detected on an earlier date that a mistake had been made. It ran from when TP could have reasonably discovered it.
- It followed that Mr T did not have a limitation defence in respect of any part of the overpayment that he received from the Scheme because TP made its claim within time.

36. The Adjudicator went on to consider the change of position defence. The Adjudicator's findings are summarised below:-

- The most common defence against recovery of an overpayment is referred to as "change of position". That is, the recipient has changed their position such that it would be unjust to require them to repay the overpayment; either in whole or in part. Change of position is a defence to a claim in unjust enrichment. To make out a change of position defence certain conditions must be satisfied. The recipient must be able to show on the balance of probabilities that:
 - their circumstances have changed detrimentally;
 - the change of circumstances was caused by receipt of the overpayment; and
 - they are not disqualified from relying on the defence.
- A change of position defence is not available to an individual who did not act in 'good faith' when changing their position.
- To meet the good faith test, Mr T must not have had actual knowledge of the overpayment. The good faith test would not be considered as having been met if the recipient of the overpaid benefits had doubts over their entitlement to those benefits. In other words, the recipient was aware that they might not be entitled to the pension payments, but then failed to make enquiries of the scheme before spending the money (this is often referred to as having "Nelsonian knowledge"). This includes situations where someone might suspect that there was something amiss and could have taken simple steps to ascertain the correct position but did not do so. In other words, the recipient of an overpayment cannot turn a blind eye. 'Bad faith' does not, however, include acting negligently; so, a careless recipient might still be able to invoke a change of position defence.

- In Mr T's case, the information about the conditions for payment of the widower's pension was included in the Leaflet, which TP said was sent to him in December 2005, shortly after the death of his wife. The Adjudicator took the view that individuals might not read all of the information they were sent at what is usually a very stressful time. So, in the Adjudicator's opinion, Mr T may not have remembered what was in the Leaflet at the time he remarried in 2008.
- Turning now to consider the Newsletters. Having reviewed the contents, the Adjudicator noted that they included wording to alert the reader to a number of changes that TP needed to be made aware of. The Newsletters required individuals in receipt of a spouse's pension to notify TP when they remarried.
- Mr T said that he did not receive the Newsletters from TP because it did not action his change of address notifications in June 2007 and July 2014. TP advised that the only change of address notification that it received from Mr T was in November 2016. No evidence exists of the earlier change of address notifications that Mr T says he sent to TP. So, it was not possible for the Adjudicator to say with any certainty whether TP had been notified of his addresses in Kent.
- However, the Adjudicator noted that TP held the correct address for Mr T before he moved to Kent in June 2007. Prior to this date, Mr T was living in the Isle of Wight and this was the address that TP held for him.
- The first instalment of Mr T's long-term pension was paid to him by TP on 28 March 2006. So, he would have been sent a P60 for the 2005/06 tax year in April or May 2006. Furthermore, TP said that the print file for Mr T's 2006/07 P60 was produced on 19 April 2007, and his P60 was issued shortly after this date.
- In the Adjudicator's opinion, Mr T's P60s for the 2005/06 and 2006/07 tax years, together with a copy of the Newsletter for those years, were sent to the address where he was residing at the time. The Adjudicator's view was that Mr T received at least two of the Newsletters; and on the balance of probabilities, he read one or more of them.
- The Adjudicator acknowledged that the Newsletters did not detail the consequences of Mr T's remarriage on his pension, but they made it clear that this was something which Mr T should notify TP about. This would have put him on notice that his widower's pension might be affected by his remarriage. At that point he should have taken steps to clarify the position with TP. The fact that he did not do so means that the good faith test was not satisfied, and a change of position defence was not available to Mr T.

37. The Adjudicator then considered other possible defences that may be available to Mr T. The Adjudicator's findings are summarised below:-

- There are three requirements that need to be satisfied in order to establish estoppel by representation; namely:

- a clear representation or promise made by the defendant upon which it is reasonably foreseeable that the claimant will act;
 - an act on the part of the claimant which was reasonably taken in reliance on the representation or promise; and
 - after the act has been taken, the claimant must be able to show that he/she will suffer detriment if the defendant is not held to the representation or promise.
- The Adjudicator did not consider that Mr T's reliance on the continued payment of his pension was reasonable in the circumstances. Mr T had the requisite information to know that a review of his pension may be required when he remarried. Also, that there might have been an error when his pension continued to be paid after he had remarried.
 - Similarly, because of the knowledge Mr T had, the Adjudicator said that it cannot be argued that there was a common assumption between the parties that Mr T had an entitlement to the pension he was receiving in error. This is necessary to establish a defence of estoppel by convention. Consequently, the Adjudicator did not consider that Mr T had a valid estoppel defence.
 - The Adjudicator was not able to identify the necessary elements for a contract to exist. That is, offer, acceptance, consideration and an intention to enter into legal relations. In particular, the Adjudicator could not see that there was any intention on the part of TP to enter into a legal relationship with Mr T beyond any entitlement that it considered he may have under the Regulations.

38. The Adjudicator also considered whether Mr T had suffered any non-financial injustice as a consequence of any alleged maladministration on the part of TP. The Adjudicator's findings are summarised below:-

- Although Mr T did not have any defences available to the recovery of the overpayment, the fact that TP did not cease his pension in a timely manner was nonetheless very unfortunate.
- Paying a pension beyond the date it is due to cease would be considered maladministration if the scheme is responsible for the error. The Adjudicator noted that TP was unaware that Mr T had remarried until he notified it in November 2016. Consequently, the overpayment was not as a result of maladministration on the part of TP.
- Mr T had highlighted that the DfE's letter of 12 April 2019, erroneously referred to a child's pension being paid to his daughter. In the Adjudicator's view, this was a genuine error and would not have caused Mr T significant distress.
- Mr T maintained that TP applied undue pressure when asking him to make the repayment and that a number of invoices were sent to him which did not include

extended repayment options. The Adjudicator acknowledged that Mr T would likely have been upset that TP was asking him to repay the overpayment of his pension. However, in the Adjudicator's view, it was reasonable for TP to have sought repayment in the way that it did as it had a duty to protect public money.

- In relation to offering extended payment options, the Adjudicator highlighted that TP's letter of 14 December 2016 advised Mr T to contact its Finance Department if he would find it difficult to make the repayment. The letter was sent to Mr T's address in New Zealand shortly after he notified TP that this was his new address.
- The Adjudicator said that it was unfortunate that there were periods when TP did not hold a correct address for Mr T, which would likely have negatively impacted the effectiveness of its communications. However, there was no documentary evidence that Mr T notified TP of all of his changes of address. So, the Adjudicator could not hold TP responsible in this respect.
- Mr T said that the cessation of his pension was a breach of the Human Rights Act 1998. The Adjudicator took the view that this was not the case. TP was required to pay Mr T benefits in accordance with the Regulations and it sought recovery of the overpayment, in line with the MPM guidance. The actions on the part of TP did not prevent Mr T from remarrying, affect his right to family life or the protection of his property. In the Adjudicator's view, the money TP was recovering did not belong to Mr T but represented public funds, which TP, as the administrators of the Scheme, had a duty to protect.

39. Mr T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr T has provided further comments in response to the Opinion, which are summarised in paragraphs 40 to 48 below.
40. Mr T said that several of the Adjudicator's findings were unfairly balanced in favour of TP. There was no evidence that the bereavement pack was sent to him in December 2005. He did receive a copy of Form 22 but this could have been provided by a colleague, who was helping him arrange payment of his pension at the time.
41. Mr T has confirmed that he received TP's letters of 28 December 2016 and 23 March 2017. Due to his poor health at the time, and his inability to pay the sum requested, he did not respond to these communications.
42. Between 23 March 2017 and 1 August 2018, Mr T said he received no contact from TP. So, he concluded that the explanation he had provided to TP, which is summarised in paragraph 22 above, had been accepted, and that TP would not make any further attempts to recover the overpayment.
43. Mr T reiterated that TP sent a letter to his second Kent address by recorded delivery in September 2018. However, there is no evidence that TP had been questioned on this point.

44. Mr T said that the Adjudicator's view that a change of position defence was not available to him was inconsistent with the former Ombudsman's findings in his Determination of Mrs S' complaint [PO-23848 (August 2021)]. Mr T highlighted that the applicant had received newsletters from TP over a period of at least 12 years. The former Ombudsman stated that the applicant's first response, when notified of the overpayments, formed some "near contemporaneous indirect evidence" of her state of knowledge. The applicant had maintained consistently, as he had, that she had no knowledge of the overpayments. The former Ombudsman also found that the applicant's open disclosure of her relationship status was further evidence of her lack of knowledge. When asked, he informed TP of his remarriage without hesitation, which demonstrated that he was not aware of the consequences of his remarriage.
45. In the same case, Mr T said that the former Ombudsman was critical of TP's starting point of viewing members as dishonest. He considers that he has been unfairly viewed in this way; this has been reinforced by the Adjudicator's findings that he does not meet the good faith test.
46. Mr T submits that unsubstantiated evidence from TP, such as him having been sent a bereavement pack, had been accepted as fact, whereas some of his evidence, particularly on the issue of notifications of change of address, had been referred to as hearsay. He has provided evidence that other pension providers held his updated UK postal address, having been notified of it at the same time as TP.
47. Mr T has pointed out that hardship, as defined in the MPM guidance, is not limited to financial considerations; it may also include where recovery would be detrimental to the mental welfare of the debtor or the debtor's family. He has made submissions attesting to his history of anxiety and depression, for which he continues to receive medical oversight, and included copies of his medical records regarding his cancer treatment and treatment for anxiety. TP's aggressive and insensitive messages after he submitted his medical records caused him further anxiety. The medical evidence should have been given serious consideration when deciding whether the overpayment should be waived on hardship grounds. The failure of TP to consider the evidence amounts to maladministration.
48. Regarding financial hardship, Mr T said he had already declared that he was totally reliant on his pension to support a family of four adults, one of whom was still at university. A pension he believed was payable for life has ceased. He is living overseas in a country where he is required to have health insurance, which is expensive. Furthermore, his State pension is not subject to increases because he is living overseas.
49. Mr T has also provided a breakdown of his family's monthly income and expenditure together with details of their assets and debts. As he resides overseas, he has converted the figures to pound sterling. He has advised that:-
 - Their main assets consist of the family home, a car, and £5,000 in savings. Their home is held in his wife's name.

- They have total debts amounting to £16,744.
- Their joint monthly income amounts to £5,513. Their total monthly expenditure on essential items amounts to £3,873; this includes £750 on credit cards. The excess of income over expenditure amounts to £1,640.
- The essential monthly expenditure does not include visits to the doctor and dentist, vet's bills, the cost of servicing the car, house maintenance, haircuts, clothing, travel, gifts and social outings.
- His family would suffer financial hardship if he is required to make monthly repayments of £305.90 to the Scheme. He is also concerned about his wife's ability to make the repayments should he pre-decease her.

50. TP also provided some further comments. In summary, it said:-

- Following TP's attempt to trace Mr T's address, its Finance Department sent a letter to Mr T's second address in Kent on 4 September 2018 by recorded delivery. In the letter, the Finance Department advised that it had received no response to several reminders that had been sent to the New Zealand address that TP held on its records. The letter was returned to the Finance Department on 17 September 2018, marked "return to sender".
- During the period between 23 March 2017 and 1 August 2018, TP did not hold an email address or alternative telephone number for Mr T. TP prevented any further overpayment from accruing by stopping his pension on 21 November 2016. However, TP acknowledges that there was a delay in issuing Mr T with a further reminder after its letter of 3 May 2017 was returned.

51. I have considered the additional points raised by Mr T and TP; however, they do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

52. Mr T's widower's pension should have ceased when he remarried; this is not in dispute. Mr T's complaint concerns TP's decision to seek recovery of the overpayment which has arisen because his pension continued in payment. Unlike other overpayment cases, as his pension has now ceased, Mr T has no future pension from which TP might seek to recover the overpayment from by way of set-off.
53. As explained by the Adjudicator, the most common defence against recovery of an overpayment on grounds that Mr T has been unjustly enriched by virtue of money paid by mistake is referred to as "change of position". For this defence to be open to Mr T he would need to meet the good faith test.
54. I wish to make it clear that 'bad faith' is not synonymous with dishonesty. It can simply mean that, if the recipient knew or had grounds for believing that the payment had been made in error, but could not be sure, the defence would not be open to them. In

making a judgment as to Mr T's knowledge of the circumstances in which his pension should cease, it is not a question of deciding what he should have known; rather, it is a question of what he did know.

55. The burden of proof is on Mr T to show that he acted in good faith in continuing to accept the widower's pension after his remarriage. It is for him to demonstrate, on the balance of probabilities, that he was unaware that his pension should have ceased on his remarriage or that he needed to check the position with TP. I recognise that only Mr T can know what his knowledge of the conditions for payment of his pension were at the relevant time.
56. Mr T is providing evidence of what he read (or did not read) several years ago in circumstances that he may not now recall, given the passage of time. The evidence supports the view that he was sent 11 Newsletters during the period from 2006 to 2016, but that not all of these were sent to his then current address. TP's standard procedure was to issue the Newsletters on an annual basis with the members' P60s. I have to come to a decision, on the balance of probabilities, whether Mr T had actual, or "Nelsonian Knowledge," that payments were being made in error but failed to take reasonable steps to ascertain the position. In other words, he had doubts concerning his entitlement to those payments.
57. It is in essence a judgement call based on the available evidence; in most cases concerning an overpayment of pension benefits it is a finely balanced judgement.
58. The information about the conditions for payment of a widower's pension was contained in the Leaflet, which was included in the bereavement pack that TP maintains was sent to Mr T in December 2005. Mr T received a copy of Form 22, that TP said was included in the bereavement pack. However, I also note Mr T's point that there is no corroborating evidence that the bereavement pack was sent to him. I also note that Mr T said he may possibly have received Form 22 from a colleague who was helping him arrange payment of his pension. On reviewing the evidence, I accept that there is a possibility that Mr T may not have read a copy of the Leaflet at the time.
59. Turning now to consider the Newsletters. Recipients of a widower's pension from the Scheme were asked to notify TP in the event of their remarriage. I note that TP did not hold a correct current address for Mr T for part of the period during which he was sent the Newsletters. On reviewing the evidence, I am satisfied that, on the balance of probabilities, Mr T would have received at least two of the Newsletters. I say this because TP held a record of Mr T's address in the Isle of Wight which was correct until he moved to Kent in June 2007. So, the Newsletters that TP issued at the start of the 2006/07 and 2007/08 tax years would have been addressed correctly.
60. I acknowledge that, when asked about his marital status during the telephone call with TP on 30 November 2016, Mr T disclosed that he had remarried. I am sure that had he been asked to divulge this information in 2008, when he re-married, he would have done so with the same measure of honesty.

61. That said, I do not find it credible that Mr T disposed of the Newsletters relating to his pension without reading any of them. While I acknowledge that the Newsletters did not go into detail concerning the possible consequences of his remarriage on his entitlement to the widower's pension, they made it sufficiently clear that TP should be notified of any change in his marital status. On the balance of probabilities, I find that Mr T did read one or more of the Newsletters. This would have put him on notice that his widower's pension might be affected by his remarriage. At that point in time, he should have taken steps to clarify the position with TP. The fact that he did not do so means that a change of position defence is not now available to him.
62. Similarly, the other defences against the recovery of the overpayment do not apply in this case for the reasons explained by the Adjudicator. In particular, if Mr T was told that he should contact TP if he remarried (but did not do so after having read the annual Newsletter) it was then not reasonable for him to rely on any representation or implied representation from payslips or otherwise that he was entitled to the money in relation to any estoppel defence.
63. I note that Mr T has made reference to an earlier Determination [PO-23848]. Previous Determinations are always very fact specific, and the courts have confirmed that I have to determine all cases involving a dispute of law or maladministration (involving an infringement of a legal right) in accordance with established legal principles. In coming to my conclusions on Mr T's complaint, I have considered the evidence presented to me and have determined the complaint in line with established legal principles.
64. Mr T submits that it was reasonable for him to conclude that TP had agreed to waive the overpayment. I do not agree that the lack of communication from TP over the period in question could be considered as confirmation that it was no longer seeking repayment of the overpayment. If Mr T considered that this may have been the case, he should have contacted TP to confirm the position. I also note that, prior to the start of this period, TP sent letters to Mr T on 28 December 2016 and 23 March 2017 which he acknowledges he received but did not respond to. In the circumstances, it was not unreasonable for TP to consider that the contact details it held for Mr T were not correct.
65. The MPM guidance states that hardship is one of the defences which may be claimed against the recovery of an overpayment. Annex 4.11: overpayments, states:

“...Public sector organisations may waive recovery of overpayments where it is demonstrated that recovery would cause hardship. But hardship should not be confused with inconvenience. Where the recipient has no entitlement, repayment does not in itself amount to hardship, especially if the overpayment was discovered quickly. Acceptable pleas of hardship should be supported by reasonable evidence that the recovery action proposed by the paying organisation would be detrimental to the welfare of the debtor or the debtor's family. Hardship is not necessarily limited to financial hardship; public sector organisations may waive recovery of overpayments where recovery would be

detrimental to the mental welfare of the debtor or the debtor's family. Again, such hardship must be demonstrated by evidence."

66. In overpayment cases, the administrators of the scheme would be expected to ensure that they consider any defences that may arise, in accordance with Annex 4.11 of the MPM guidance, including whether the amount should not be recovered on grounds of hardship. Failure to do so may amount to maladministration.
67. TP is currently proposing that the overpayment totalling £31,507.53 should be recovered over a period of about 8 years and 7 months at the rate of £305.90 per calendar month. The proposed recovery period is consistent with a 'rule of thumb' which I and my predecessors have often applied in the past, that the period of recovery of overpayments should be at least as long as the period over which the overpayments arose. This is not a hard and fast rule I apply as there can be circumstances when a shorter or longer period of recovery may be appropriate.
68. The evidence Mr T has supplied indicates that:-
- Their main assets consist of the family home, a car, and £5,000 in savings. Their home is held in his wife's name.
 - They have total debts amounting to £16,744.
 - Their joint monthly income amounts to £5,513. Their total monthly expenditure on essential items amounts to £3,873; this includes £750 on credit cards. The excess of income over expenditure amounts to £1,640.
 - The essential monthly expenditure does not include visits to the doctor and dentist, vet's bills, the cost of servicing the car, house maintenance, haircuts, clothing, travel, gifts and social outings.
 - His family would suffer financial hardship if he is required to make monthly repayments of £305.90 to the Scheme. He is also concerned about his wife's ability to make the repayments should he pre-decease her.
69. I am satisfied that TP's proposals to recover the overpayment of £31,507.53 (net), at the rate of £305.90 per month is reasonable and appropriate given the excess of income over expenditure of £1,640 and will not cause Mr T undue hardship even having regard to the fact he is in ill-health.
70. There may be circumstances in the future that Mr T's and his wife's financial or personal circumstances could change in which case it would be open to Mr T to approach TP again to reconsider whether recovery of the overpayment at this rate is still appropriate having regard to the hardship (if any) it will or may cause.
71. Mr T is concerned what will happen on his death if he predeceases his wife. In those circumstances TP would not have any right of recovery of the overpayment against Mr T's wife if the overpayment was paid to Mr T. The right of recovery would be against Mr T's estate, if it has assets to meet any residual liability in relation to

unrecovered overpayments. TP would need to take a view at the time about whether it is cost effective to seek recovery in those circumstances from the estate.

Determination and Directions

72. I determine that the overpayment of £31,507.53 (net) is recoverable and Mr T does not have any legal defences to recovery.
73. I direct it is open to TP to seek recovery of the overpayment from Mr T on grounds of unjust enrichment at the rate of £305.90 per calendar month.
74. I direct that, if at a future date Mr T can demonstrate to the satisfaction of TP that his financial circumstances have deteriorated (from those described above) and recovery of the overpayment at that rate will cause hardship, TP should consider whether it is still appropriate to recover the overpayment at that rate.
75. I direct that, if the full amount is not recovered from Mr T at the date of death, TP should consider whether to seek recovery of any outstanding amount from Mr T's estate or whether this amount should be written off in accordance with the MPM guidelines on grounds of hardship or otherwise.

Dominic Harris

Pensions Ombudsman
2 January 2024

Appendix

Extract from the Teachers' Pensions Regulations 1997 as amended

PART E BENEFITS

Commencement and duration of long-term family pensions

- “E30. (1) A pension under regulation E26 payable to a surviving spouse, surviving civil partner, surviving nominated partner or a nominated beneficiary (“an adult pension”) is to be paid -
- (a) from the day on which any short-term pension that became so payable under regulation E24 ceases to be payable, or
 - (b) if no short-term pension became payable, from the day after that of the death.
- (2) Subject to paragraph (3), an adult pension is payable for life.
- (3) Unless the Secretary of State determines otherwise in the particular case, an adult pension – [...]
- (b) ceases to be payable when the person to whom it was payable marries, forms a civil partnership or begins to live with someone as if they were husband and wife or as if they were civil partners.
- (3A) But paragraph (3) does not apply to any pension payable following the death of a person who was in pensionable employment after 31st December 2006 [...]