

## Ombudsman's Determination

Applicant	Mr E
Scheme	Teachers' Pension Scheme ( <b>the Scheme</b> )
Respondent	Teachers' Pensions ( <b>TP</b> )

## Outcome

1. Mr E's complaint is upheld and to put matters right TP shall follow the steps detailed in the "Directions" section of this Determination.

## Complaint summary

2. Mr E's complaint concerns overpayments of his widower's pension totalling £32,724.68 (net), which TP is seeking to recover using the repayment method (as Mr E has inadequate future pension from which the overpayments can be recovered by way of set-off).
3. Mr E accepts that TP was correct to stop paying his pension apart from his widower's guaranteed minimum pension (**the GMP**). However, he considers that the overpayments should be waived as TP had incorrectly advised him that his widower's pension would continue to be paid in the event of his remarriage.

## Background information, including submissions from the parties

4. 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.
5. As with many pension schemes, the Scheme provides for a spouse's pension to be payable on the death of a member. However, historically, that pension came to an end in certain circumstances – notably the remarriage of the surviving spouse.
6. In this case, Mr E's late wife, Mrs E, was a member of the Scheme. Her last day of pensionable employment was on 31 August 2006. At that time, the regulations that governed Mrs E's pension benefits in the Scheme were the Teachers' Pensions

Regulations 1997 (SI1997/3001) (**the 1997 Regulations**) (as amended)<sup>1</sup>. These stated:

**“E30 Commencement and duration of long-term family pensions**

...

(3) Unless the Secretary of State determines otherwise in the particular case, and subject always to regulation E1(3)(c) and (d) (guaranteed minimum pension for surviving spouse), an adult pension is not payable during or after any marriage or period of cohabitation outside marriage.”

7. However, these provisions were to shortly change. With effect from 2007, a widower's pension was payable for life, regardless of any subsequent remarriage (**the 2007 Change**). This change applied where the late member had completed pensionable service after 31 December 2006 – and so did not apply to Mrs E.
8. In 2008, Mrs E died.
9. On 6 April 2009, TP wrote to Mr E to advise the amount of the death grant he would receive from the Scheme. It also said that he was entitled to an annual widower's pension of approximately £7,529.45. In the letter, TP did not mention what would happen to the widower's pension should he remarry.
10. The Pensions Ombudsman (**TPO**) has now seen a number of similar complaints of this nature. In previous complaints, TP has pointed me to leaflets and documentation sent to the surviving spouse at the time the pension came into payment. This included a “Leaflet 450”, that provided information about the duration of the benefits, such as the spouse's pension being “*payable for life unless spouse remarries or co-habits*”. The letter sent to Mr E does not seem to refer to Leaflet 450, and TP has not sought to argue that it was sent to him. Instead, TP has simply referred me to “*information available in the leaflets and website produced by TP which explicitly states to widowers ... that their pension is dependent on them not remarrying*”.
11. Clearly, in order to bring a spouse's pension to an end in appropriate circumstances, TP needs to know if a spouse has remarried or entered into a “period of cohabitation outside marriage.” As it is not information that TP holds, TP relies on pensioners in receipt of a spouse's pension to notify TP of their remarriage or co-habitation in a timely manner to reduce the risk of overpayments occurring.
12. Since 2004, TP has sent an annual newsletter (**the Newsletters**) to pensioners with their end of year tax certificate (**the P60**). It includes a reminder that TP should be

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<sup>1</sup> The 1997 Regulations were later revoked by the Teachers' Pensions Regulations 2010 (**the 2010 Regulations**) with effect from 1 September 2010. There are however saving provisions under the 2010 Regulations in Schedule 13 Part 2. The saving provisions mean that anything done, or having effect as if done under or for the purposes of a provision of the 1997 Regulations, has effect if it could be done under, or for the purposes of the corresponding provision of the 2010 Regulations, as if done for the purposes of that corresponding provision.

notified of a change in their circumstances. For example, on remarriage. The 2007 Newsletter contained the following warning:

*“Please inform us:*

*...If you receive a pension by virtue of being the dependant of a deceased member and subsequently enter into a new partnership*

*...*

***Failure to notify Teachers’ Pensions of such changes may result in an overpayment of pension which must be recovered*** [original emphasis in bold]”.

13. TPO is also aware from past cases that more recent Newsletters emphasise the importance of TP having up to date information. The April 2016 Newsletter contained the following warning:

**“Important:**

To ensure the correct pension is paid to you, it’s vital that we have your most up to date information on our records”.

**“Please tell us:**

If you remarry, enter a civil partnership or cohabit and you are in receipt of a spouse’s, civil partner’s or nominated financial dependant’s pension, provided by a person who retired or ceased pensionable service before 1 January 2007... [original emphasis].”

14. On 25 January 2011, Mr E emailed TP and asked:

*“If I remarry, does payment of my widowers teachers pension continue, and if it does continue, how long for, until my death?”*

15. On 31 January 2011, TP responded as follows:

*“... as you fall under the “new regulations”, in the event of remarriage, or if you enter into another civil partnership or live with a person as a spouse or a civil partner, your widower’s pension would continue in payment until your death.”*

16. On 9 May 2015, Mr E remarried. However, the widower’s pension continued in payment.

17. On 4 July 2019, TP asked Mr E to complete a Teacher’s Pensions Adult Declaration (TPAD) form to verify his continued entitlement to the widower’s pension.

18. On 12 August 2019, Mr E telephoned TP to notify it that he had remarried. So, TP stopped paying his widower’s pension.

19. On 17 October 2019, TP notified Mr E that his entitlement to the widower's pension ceased on remarriage. However, the GMP of £128.44 per annum would continue to be paid. It included an invoice for the overpayments totalling £32,724.68 (net).
20. On 28 October 2019, Mr E raised a complaint with TP. He provided evidence of the email exchange in January 2011; and said had he been given the correct information, he would have notified it of his remarriage in 2015.
21. On 14 November 2019, TP responded to Mr E's complaint. In summary, it said:-
  - It had incorrectly informed him that his widower's pension would continue to be paid on his remarriage.
  - The information in the Scheme leaflets, and on its website, confirmed that payment of his widower's pension would cease on remarriage.
  - Mr E was sent a Newsletter each year with his P60. It included a section on changes that TP needed to be informed of, including when a pensioner in receipt of a widower's pension remarries. The section ended with the wording: "any overpayment of pension as a result of you failing to notify TP of such changes will be recovered." This should have alerted Mr E to the possibility that his remarriage may have an impact on his pension.
22. Following the complaint being referred to TPO, Mr E and TP made further submissions that have been summarised below.
23. **Mr E's further submissions:-**
  - He and his current wife made financial decisions based on information provided by TP that confirmed his widower's pension from the Scheme would continue for life. Based on that information, they decided that his wife could stop working in early January 2016.
  - They considered that his widower's pension from the Scheme would allow them to maintain a reasonable standard of living. His wife wanted to stop working to help support their elderly parents. While his parents are now deceased, their care had involved a lot of travelling.
  - The termination of his monthly widower's pension of £669.75 had impacted them both financially.
  - Repayment of the sum that TP was seeking to recover would cause them serious hardship. It would also adversely impact their ability to continue to support his wife's parents.
  - They did not save any of the overpayments of the widower's pension. It was treated as their joint income. They lived within their means, and they did not have expensive foreign holidays or buy new cars. They shopped at budget supermarkets.

- He acknowledged that the 2007 Change applied where the late member had completed pensionable service after 31 December 2006, and Mrs E's pensionable service ended on 31 August 2006. However, he considered that TP and/or the Department for Education (**DfE**) should agree a compromise and allow him to benefit from the improvement to the Scheme spouse's provisions.

**24. TP's further submissions:-**

- Mr E would have received four Newsletters between the date of his enquiry in 2011 and the date he remarried. However, he did not make any further enquiries to TP.
- It had offered Mr E a repayment plan. This would involve him making 50 monthly payments of £654.50. The proposed repayment plan would be over the same period that the overpayments accrued. When TP asked for his comments, Mr E did not suggest an alternative plan.
- HM Treasury's Managing Public Money Guidelines<sup>2</sup> (**the Guidelines**) made it clear that any overpayment of public money should be recovered. However, if the cessation of the widower's pension and/or the recovery of the overpayments would cause Mr E hardship, it could consider reinstating the widower's pension or an alternative recovery plan. This would require Mr E to submit a 'Statement of Income and Expenditure' (**SoIE**) with supporting evidence. Mr E had been provided with a blank SoIE, but had not completed and returned it.
- The DfE had offered Mr E a distress and inconvenience payment of £500, which could be offset against the sum that TP was seeking to recover from him.

25. On 24 March 2020, TPO received TP's formal response to Mr E's complaint.

## **Adjudicator's Opinion**

26. Mr E's complaint was considered by one of our Adjudicators who concluded that further action was required by TP. The Adjudicator's findings are summarised in paragraphs 27 to 68 below.

### **Legal Issues arising in this particular case**

27. In this particular overpayment case:

- Mr E accepted that his widower's pension should cease going forward, in line with the 1997 Regulations;

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<sup>2</sup> [https://assets.publishing.service.gov.uk/media/65c4a3773f634b001242c6b7/Managing\\_Public\\_Money\\_-\\_May\\_2023\\_2.pdf](https://assets.publishing.service.gov.uk/media/65c4a3773f634b001242c6b7/Managing_Public_Money_-_May_2023_2.pdf).

- Mr E disputed whether the past overpayments should be recovered, and to the extent that Mr E had to repay the overpayments, considered that a longer period of recovery was appropriate; and
  - Mr E argued that, as a consequence of the negligent misstatement by TP on which he had relied on, he had sustained a financial loss.
28. TP was seeking to recover the overpayments by repayment on grounds of unjust enrichment. Consequently, it had been necessary to consider TP's right of recovery under those grounds.
29. Mr E had not set out any particular legal defences to recovery. However, in the Adjudicator's view, the following defences needed to be considered to form an opinion on the complaint:
- change of position;
  - estoppel;
  - limitation or laches where limitation is not available as a defence;
  - contract; and
  - hardship.

### **Future pension payments**

30. Mr E accepted that, with the exception of the GMP, TP was obliged to cease his pension going forward, as provided for in the 1997 Regulations, on discovery of the overpayments. So, there was no dispute about this issue.

### **Negligent misstatement claim**

31. Mr E had argued that, as a consequence of being given inaccurate information about his pension entitlement, his current wife ceased employment, and they had sustained loss as a result.
32. To succeed in a claim for negligent misstatement, broadly it was necessary to show that:
- the trustees or manager owed the person to whom the negligent misstatement was allegedly made a 'duty of care' (generally trustees of trust based schemes and managers of Public Sector Schemes owe a duty of care to beneficiaries);
  - there was a breach of the duty of care (that is the information provided was not correct and could not be made by someone exercising reasonable care);
  - the person to whom the information was provided reasonably relied on the representation and had suffered loss (the "but for" test is satisfied); and

- the loss suffered was not too remote (it was of the kind falling within the scope of the duty of care).<sup>3</sup>
33. In terms of reliance, the courts had said that the judge had to ask three questions:
- did the appellant rely on the statements;
  - was the reliance reasonable; and
  - would the appellant have acted differently if they had been told the correct position.<sup>4</sup>
34. The aim of any damages for negligent misstatement was to put the applicant in the position they would have been in if the negligent misstatement had not been made. It did not give an applicant an entitlement to the overstated benefit.
35. The applicant would also be under a duty to take reasonable steps to mitigate their loss.
36. In the Adjudicator's opinion, TP owed a duty of care to Mr E in relation to the information provided to him about his widower's pension.
37. It was also the Adjudicator's opinion that there had been a breach of the duty of care, as the information TP provided on 31 January 2011 was not correct and would not have been made by someone exercising reasonable care.
38. In the Adjudicator's view, it was reasonable for Mr E to rely on the information. TP said that his widower's pension would continue in payment until his death, regardless of whether he remarried. This statement was made as a direct response to his email of 25 January 2011, in which he specifically asked if payment of his widower's pension would continue if he remarried. There was no ambiguity in that question; nor in the response that TP provided at the time.
39. For the reasons stated in paragraphs 55 and 56 below, the information available on TP's website and in its publications<sup>5</sup>, did not materially change the Adjudicator's view on this point.
40. However, Mr E had not provided evidence to substantiate his claim that his current wife's decision to cease employment in early 2016 was a direct consequence of the incorrect information he received from TP. In the Adjudicator's view, the evidence indicated that her decision would have been largely driven by the health and personal circumstances of their parents at the time. So, it was the Adjudicator's opinion that Mr E had not sustained loss as a result.

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<sup>3</sup> See *Hagen v ICI Chemicals* [2001] 64 PBLR for a useful discussion of how the principles apply in negligent misstatement cases from [77] to [140].

<sup>4</sup> *Corsham v Police Commissioners for Essex* [2019] 074 PBLR (042); [p2019] EWHC 1776 (Ch), *Morgan J* at paragraph 173.

<sup>5</sup> including the leaflets and Newsletters.

41. Accordingly, this element of the complaint should not be upheld.

### **Past overpayments**

42. Mr E had been overpaid his widower's pension since May 2015, when he remarried.

#### *Repayment claim*

43. Under principles of unjust enrichment if someone is overpaid, generally, they have to repay the overpayments. However, it has been recognised by the courts that in some circumstances the member's position may have changed and it would be inequitable (unfair) for the member to repay the overpayments.<sup>6</sup>

44. In relation to any claim to recover the overpayments on grounds of unjust enrichment, the Adjudicator needed to consider the following possible defences:

- change of position;
- estoppel;
- limitation;
- contract; and
- hardship.

#### *Change of position*

45. To succeed in a change of position defence, it was generally considered necessary to show:

- good faith - the recipient of the overpayment must be acting in good faith;
- detriment - their circumstances must have changed detrimentally as a result of the overpayment or in anticipation of receiving it. Generally, this meant that the money must have been spent and the expenditure could not be legally or practically reversed, or any asset bought with the overpayment could not be easily sold; and
- causation - there must be a causal link between the change of position and receipt of the overpayment (as a minimum it is necessary to show at least that "but for" the mistake the applicant would not have acted as they did).

46. If the above tests were met, it would generally be inequitable for the manager of the scheme to recover the money.

47. Unlike the position in relation to an estoppel defence, it was not necessary for the member to receive an unequivocal representation of entitlement to the overstated

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<sup>6</sup> *Lipkin Gorman (a firm) v Karpale* [1991] 2 AC 548 as per Lord Goff at paragraph [580C]. Lord Goff set out this principle in general terms and the courts have subsequently developed principles about where such a defence applies.



benefit for a change of position defence to be available. It was easier to demonstrate a change of position defence than an estoppel defence.

### *Good faith*

48. For the recipient of the overpayment to show that they acted in good faith, it was generally necessary for them to demonstrate that they did not have actual or “Nelsonian knowledge” that they were being overpaid. If the recipient had good reason to believe that they were being overpaid but did not check the position with the manager this would amount to bad faith.<sup>7</sup> However, just because a reasonable person might have realised that they were being overpaid, does not mean that the recipient of the overpayment was acting in bad faith if they did not realise.<sup>8</sup> Mere carelessness or negligence is not enough to establish bad faith.
49. 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 and failed to make reasonable enquiries, the defence would not be open to them. In making a judgment as to the recipient’s knowledge of the circumstances in which their pension should cease, it was not a question of deciding what they should have known; rather, it was a question of what they knew at the time.

### *Detriment*

50. Detriment can normally be demonstrated by the fact that the recipient has spent the money on items they would not otherwise have bought but for the overpayment. However, it was also possible to demonstrate detriment in other ways. For example, by making gifts in some circumstances.
51. It was not always necessary to show on the balance of probabilities that the overpayment had been spent on particular items which the member would not otherwise have bought, or to precisely match the expenditure to particular items.
52. The courts have established in a number of cases that a rise in a defendant’s general standard of living can demonstrate detriment in a change of position or estoppel defence. It had also been confirmed that general household expenditure could give rise to an estoppel where the overpayment enabled the defendant to improve the lifestyle of their family in very modest ways.<sup>9</sup> This was the case even if the defendant was not able to point to a particular item of expenditure which they bought as a result of the overpayments.<sup>10</sup> However, the defendant was able to demonstrate that their

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<sup>7</sup> See *Webber v Department for Education, Teacher's Pensions* [2012] EWHC 4225 (Ch) and *Webber v Department of Education* which applied the earlier test in *Niru Battery Manufacturing Co v Milestone Trading Ltd* [2002] EWHC 1425 (Comm) in a pensions context.

<sup>8</sup> See for example *Abouh Ramah v Abacha* [2006] EWHC Civ 1492 *Armstrong DLW GmbH v Winningham Networks Ltd* [2012] EWHC 10 (Ch) at [110].

<sup>9</sup> See *Scottish Equitable v Derby* [2000] PLR 1 (CA) at [33].

<sup>10</sup> *Philip Collins Ltd v Davis* [2000] 3 All ER case (cited with approval in *Scottish Equitable v Derby*).

general pattern of expenditure was higher than it would otherwise have been but for the overpayments.

53. As a change of position defence is not limited to cases where funds have been spent on specific identifiable items of expenditure, it may not be right for the court (or for that matter the Pensions Ombudsman (**the PO**)) to apply too demanding a standard of proof when an honest defendant says they have spent an overpayment on improving their lifestyle but cannot produce too detailed accounting.<sup>11</sup>

### *Causation*

54. There also needs to be a causal link between the overpayment and the change of position relied on. The member generally needs to at least show that “but for” the overpayment they would not have spent the money, or increased their standard of living or their circumstances would not have changed in some other way<sup>12</sup>.
55. In this case, Mr E received explicit confirmation from TP in January 2011 that his widower’s pension from the Scheme would continue for life, regardless of whether he remarried. The Adjudicator’s view was that Mr E had no reason to question the information that he had been given. In particular, while the Adjudicator noted that the correct information was available on TP’s website and in its leaflets, the Adjudicator could see no reason for Mr E to have sought out this information. He would have been of the view that the position had already been confirmed to him personally by TP.
56. TP had referred to the Newsletters that Mr E received on an annual basis. The Adjudicator’s view was that Mr E would have read at least some of these Newsletters. So, he would have been aware that his remarriage was something that TP advised that it needed to be informed of. The Newsletters did not state the reason that it needed this information. In the Adjudicator’s view, it would have been prudent for Mr E to have notified TP accordingly. However, because of the information Mr E had previously been given by TP in January 2011, the Adjudicator’s opinion was that it was reasonable for Mr E to have assumed he was still entitled to receive the widower’s pension.
57. So, it was the Adjudicator’s opinion that Mr E acted in good faith as he did not, on the balance of probabilities, have actual or Nelsonian knowledge of the fact he was being overpaid.
58. Next, the Adjudicator needed to consider whether, on the basis that Mr E acted in good faith, he had suffered material detriment as a result of receiving the overpayments. The easiest way for Mr E to demonstrate material detriment was to show that he had incurred irreversible expenditure, which he would not have incurred, had he not been overpaid.

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<sup>11</sup> *National Westminster Bank plc v Somer International UK Limited* [2002].

<sup>12</sup> *Scottish Equitable v Derby* [2001] 3 All ER 818, *Harrison J* at paragraphs [37]-[41].

59. Demonstrating a higher level of regular expenditure, than would otherwise have been the case “but for” the overpayments, was sufficient to demonstrate material detriment. Although the case law indicated that it was for the applicant to demonstrate this, the PO should not require too demanding a standard of proof.
60. Mr E had provided TPO with copies of his bank and building society statements. These statements covered a three month period before the date he was notified that he had been overpaid. He had also provided statements in respect of a three month period shortly after the date that he was notified.
61. Having reviewed these statements to gauge their general pattern of expenditure, the Adjudicator was comfortable that Mr E and his wife lived within their means. During the period that the overpayments accrued, they did not spend over their monthly income. They were able to save a very small amount, on average £5 per calendar month, for each of four younger relatives in separate building society accounts. However, due to the very modest sums involved and the nature of these savings, the Adjudicator did not consider them any further in his Opinion. During the periods for which Mr E provided the financial information, he and his wife kept a positive balance in their bank accounts of at least £9,900.
62. The Adjudicator had not been able to examine Mr and Mrs E’s bank statements over the total period of the overpayments. During the period in question, overpayments amounting to £32,724.68 had built up. However, the Adjudicator was satisfied that a prudent pensioner, like Mr E, would not have built up a debt of £32,724.68. In other words, if he had not been overpaid, he would not have spent at the level he did.
63. Generally, if an applicant has applied the money that they have been overpaid towards their savings this cannot give rise to a change of position defence, because the applicant still has access to that money.
64. Mr E had confirmed that, over the period in question, he made no other savings apart from those relatively modest amounts indicated in the bank and building society statements he has provided to TPO that the Adjudicator referred to in paragraph 60 above.
65. Consequently, it was the Adjudicator’s view that Mr E had a change of position defence in relation to recovery of all of the overpayments. For this reason, the Adjudicator did not find it necessary to consider the other possible defences of estoppel, limitation, contract and hardship.

### **Distress and inconvenience**

66. The PO has power to make reasonable awards for non-financial injustice arising because of maladministration.
67. The Adjudicator’s view was that the overpayments had arisen as a consequence of maladministration by TP, as it misinformed Mr E that his widower’s pension would

continue in payment if he remarried. As a result of the maladministration, Mr E had sustained non-financial injustice.

68. The Adjudicator noted that the DfE had offered Mr E a distress and inconvenience payment of £500, which it was proposing to offset against the sum it was seeking to recover. In the Adjudicator's opinion, this level of award was appropriate for the significant non-financial injustice Mr E had sustained as a consequence of the maladministration by TP. However, Mr E should have this sum paid to him directly.
69. TP did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. In response to the Opinion, TP provided its further comments which are summarised in paragraphs 70 to 74 below.
70. TP acknowledged that Mr E was incorrectly informed in the email of 31 January 2011 that his widower's pension would remain in payment were he to remarry.
71. TP referred to the Determination for an earlier complaint (CAS-42089-N4Y0). In that Determination I stated that:

*"I do not find it credible that Mr T disposed of the Newsletters relating to his pension without reading any of them... 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."*

72. TP also referred to a Preliminary Decision that I issued for a similar case. However, this case did not go to Determination, and it is not in the public domain. So, I shall not quote from it in detail here. My conclusions in that case were similar to those in CAS-42089-N4Y0. I also said that I was satisfied that TP exercised reasonable diligence by informing pensioners, via the Newsletters, to notify it if they cohabit with a partner, or remarry.
73. In conclusion, TP said that:
- the Newsletters sent to Mr E were an adequate form of notification;
  - Mr E was expected to read the Newsletters and keep TP updated of any change of status;
  - Mr E was put on notice that his entitlement to his widower's pension might be affected by remarriage (despite the 2011 email communication);
  - Mr E failed to act in good faith when he did not notify TP of his remarriage. So, he was unable to avail himself of the change of position defence; and

- accordingly, Mr E's complaint should not be upheld, and TP should be entitled to pursue repayment from Mr E in full.

74. If the cessation of Mr E's pension, or the recovery of the overpayment would cause him financial hardship, it can contact the DfE to request that the pension either be reinstated, or the overpayment written off. However, this would require Mr E to complete a SoIE, which he has chosen not to do.
75. I have considered the additional points raised by TP. However, they do not change the outcome, and I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

76. Mr E has complained that TP is seeking recovery of overpayments of his widower's pension. He considered that the overpayments should be 'waived' as TP had incorrectly advised him that his widower's pension would continue to be paid in the event of his remarriage.
77. TP has referred to two cases that I previously investigated, with particular relevance to the significance of the Newsletters. In common with those cases, I find that, on the balance of probabilities, Mr E did read one or more of the Newsletters, even under circumstances that he cannot now recall.
78. I agree with the Adjudicator that, having read one or more of the Newsletters, it would have been prudent for Mr E to have taken steps to clarify the position with TP. However, I do not accept that the fact that he did not do so means that a change of position defence is not now available to him for the reasons stated below.
79. The Newsletters did not explain the conditions of entitlement to a widower's pension or explicitly state that a consequence of Mr E's remarriage was that his widower's pension would cease. I find that Mr E's case is different from the two cases referred to by TP, as Mr E had explicitly sought confirmation from TP, in January 2011, of the impact of remarriage on his widower's pension. In its response, TP told him that his widower's pension would continue in payment until his death.
80. In the normal course of events, I would agree that the Newsletters put members on notice that their entitlement to a spouse's pension might cease on remarriage. However, Mr E had already checked this point with TP. So, I do not agree that he had any reason to be concerned that his widower's pension would cease as a result of the content of the Newsletters.
81. Essentially, when looking at 'good faith' in the change of position defence, I am of the view that the specific question asked by Mr E trumps the more general statements made by TP. He asked what the outcome of remarriage would be, and was told in writing that his spouse's pension would continue. As is set out in paragraph 48 above, *"if the recipient had good reason to believe that they were being overpaid but did not check the position with the manager this would amount to bad faith"*. However, Mr E

did exactly that – he checked the position. Accordingly, I find that Mr E acted in good faith.

82. I have reviewed the Adjudicator's opinion on whether Mr E suffered material detriment as a result of receiving the overpayments and I agree with his view on this matter for the reasons he stated. Therefore, I find that Mr E has a change of position defence in relation to the recovery of all the overpayments.
83. I agree with the Adjudicator's view that the incorrect information TP gave Mr E amounted to maladministration, and that a payment of £500 is appropriate for the significant distress and inconvenience it caused Mr E.
84. I uphold Mr E's complaint.

## **Directions**

85. Within 28 days of the date of this Determination, TP shall:
- notify Mr E that it will not be seeking to recover any of the overpayments; and
  - pay Mr E £500, in respect of the significant non-financial injustice he has sustained as a consequence of the maladministration on the part of TP. This sum includes the offer of £500 already made by the DfE.

**Dominic Harris**

Pensions Ombudsman  
5 December 2025