

Ombudsman's Determination

Applicant	Mr R
Scheme	Teachers' Pension Scheme (the Scheme)
Respondents	Teachers' Pensions (TP), Department for Education (DfE)

Outcome

1. I do not uphold Mr R's complaint, and no further action is required by the Respondents.

Complaint summary

2. Mr R has complained that TP has sought to recover an overpayment from him following the implementation of a Pension Sharing Order (**PSO**). He believes that he should not have to repay the overpayment because he was paying maintenance to his ex-spouse between the Pension Share date and implementation, and that TP should seek the overpayment from his ex-spouse.

Background information, including submissions from the parties

3. On 1 May 2015, Mr R took early retirement and claimed benefits from the Scheme.
4. On 16 April 2018, Mr R wrote to TP regarding his divorce proceedings. He requested a Cash Equivalent Transfer Value (**CETV**) for his benefits in the Scheme and enclosed a Pensions on Divorce and Dissolution Form (**the Dissolution Form**). He signed the Dissolution Form in which he agreed to pay any overpayments if he was in receipt of retirement benefits prior to the Pension Sharing Date or if his retirement entitlement reduced because of the PSO. TP received the correspondence letter and the Dissolution Form on 20 April 2018.
5. On 20 September 2018, TP wrote to Mr R to provide a CETV. The correspondence said:

“... where a process results in a Pension Share against your entitlement in our Scheme then an overpayment of your monthly pension will arise. Because benefits are payable from Treasury funds, any overpayment will of course be recovered from you. The overpayment period will run from the Pension Share

Date until the date the Order is fully implemented and action to reduce your benefits (in accordance with the Order) is complete.”

6. On 19 June 2019, Mr R’s divorce was declared absolute by the Family Court (**the Court**). A PSO was issued under section 24B of the Matrimonial Causes Act 1973, and Mr R was required to transfer to his former spouse 55.5% of the CETV.
7. The PSO “effective date” was the latter of:
 - the date of the Decree Absolute of Divorce or Nullity of marriage.
 - 28 days from the date of the PSO or, or if there was an appeal deadline, 7 days after the end of that period.
 - Where an appeal was lodged, the date of the order determining that appeal.
8. An Ancillary Relief Order (**Ancillary Relief**) was also granted. Paragraph 14 of the Ancillary Relief said that the maintenance pending suit, ordered on 10 August 2018, was to continue. Mr R was required to pay his ex-wife periodical payments of £650 per calendar month which was to end on to the first to occur:
 - The death of either the ex-wife or Mr R
 - The ex-wife’s remarriage
 - The implementation of the PSO
9. On 1 August 2019, TP received the PSO and began collating the required information for implementation.
10. On 6 August 2019, TP wrote to Mr R to request further information to implement the PSO. Mr R was advised that TP required the Pension Credit Member Form from his former spouse, a completed form with service and salary, the payment of pension sharing charges and sight of the former spouse’s birth certificate.
11. On 28 August 2019, Mr R returned the completed form with service and salary information. The declaration signed again reiterated that he was agreeing to return any overpaid pension benefits.
12. On 17 November 2019, Mr R wrote to TP. He advised he could not afford the associated implementation charges for the PSO. Further, he raised the maintenance suit, and advised he was still paying his former spouse £650 per calendar month and wanted to know how the money would be accounted for.
13. On 20 November 2019, TP wrote to Mr R and said it would arrange to deduct the fee from his pension and that all the required information was available at that stage. Further, that the maintenance payment was a private matter and so TP could not become involved.

14. On 4 February 2020, Mr R said he received a letter from TP. He said that the letter had informed him that the Pension Sharing 'effective date' was 17 July 2019, and that following the implementation of the PSO, Mr R's annual pension entitlement had decreased. However, since this has not been accounted for previously, an overpayment had arisen, and TP would write to him about this with further information.
15. On 13 February 2020, TP said it wrote to Mr R to advise that the overpayment amounted to £4,605.79.
16. On 6 March 2020, Mr R said he received a further letter from TP in relation to the overpayments claim. The correspondence advised that, Mr R had been overpaid £4,605.79 because of the interaction between the Scheme benefits and the PSO. He was advised that he would have to repay the money to TP via monthly deductions from his pension, from 2 April 2020 to 2 March 2022.
17. On 2 February 2021, Mr R complained to the DfE, under the Internal Dispute Resolution Procedure (**IDRP**), and on 23 February 2021, DfE replied. It said that, on 20 September 2018, Mr R had been informed that an overpayment could arise as a result of the PSO. The Treasury Guidance on managing public money required all overpayments to be reclaimed, regardless of whose fault it was. As Mr R was not entitled to the amount of benefits he had received at the time, the money had to be reclaimed. TP could not get involved in the matter of any maintenance Mr R paid his former spouse after the date of the Pension Sharing Order.
18. Mr R complained to the Pensions Ombudsman (**TPO**). TPO contacted TP and DfE for a response to Mr R's complaint. On 15 September 2021, DfE wrote to the TPO and advised that Mr R's complaint would be responded to by TP as the Scheme Administrator.

TP's position

19. Mr R had been overpaid £4,605.79 because of the interaction between the Scheme benefits and the PSO. He was advised that he would have to repay the money to TP via monthly deductions from his pension, from 2 April 2020 to 2 March 2022.
20. The "effective date" of the PSO was 17 July 2019 and Mr R's annual pension reduced from that date onwards. There is no discretion over the "effective date".
21. TP must recover overpayments of public funds in line with guidance issued by HM Treasury on 'Managing Public Money'. Mr R must therefore repay the overpayment that occurred between 16 July 2019 and 2 February 2020.
22. Mr R was informed that TP would seek to recover any overpayments that may result from the Pension Share. He had also signed the Declaration in which he agreed to repay any overpayments.
23. In accordance with the law, TP had 4 months of receipt of all the information including the charges to complete the implementation. TP received the PSO on 1 August 2019,

and on 20 November 2019, TP told Mr R that it would deduct the administration charges for the PSO from his pension. At that stage all other information was available.

24. The PSO was implemented on 4 February 2020 which was in accordance with the statutory timeframe.

Mr R's position

25. He said that TP had alleged he had been overpaid pension benefits, because of the PSO, between 17 July 2019 and 29 February 2020, and which TP would seek to recover. He explained that he had received letters from TP, dated 4 February 2020 and 6 March 2020, and had requested the overpayment reclaim be put on hold.
26. He had made monthly maintenance payments of £650 to his ex-wife under paragraph 14 of Ancillary Relief and had continued with these payments until, 1 March 2020, just after the implementation of the PSO. This amounted to £4,550 between the period of 2 August 2019 and 3 February 2020. He provided bank statements to evidence the standing order.
27. He alleged that by following the letter of the law he had effectively double paid his ex-wife. Furthermore, his benefits (before agreed deductions), until 31 January 2020, were paid into the Joint Account. As such, him and his ex-spouse, had both had access to any "surplus".
28. He explained that he understood the "effective date" of the PSO. However, he felt that nowhere was he awarded any rights to fair entitlement. As a result, his former spouse's pension share had become greater than her entitlement and a reimbursement should therefore be made to him. He submitted that the application of the applied share should have considered the maintenance payments he had made to his ex-wife between the "effective date" of the PSO and implementation. Any overpayment had occurred due to the implementation period of the PSO being 1 March 2020, which was not his fault. He therefore wanted the Pension Share "effective date" to change to 1 March 2020.
29. In any event, he had not been overpaid, in fact he had paid his ex-wife twice, so he was not the party TP should be seeking the overpayment from. He was required to comply with the Ancillary Relief or risk being fined or found in contempt of court. If Mr R was to seek reimbursement through the courts, then neither him nor his ex-wife would gain from the correct legal outcome due to court and legal fees.
30. Mr R referred to "HM Treasury on 'Managing Public Money'". He questioned the understanding of TP's position of 'Public Money'. He questioned how 'Public Money' has any basis on the total Pension Share of both parties. Further, that appropriately apportioned individual shares of the benefits are no greater than the original share and that redress from his ex-wife would ensure this applies.

31. Mr R said that should his claim be turned down it is not 'Public Money' that is affected, but that of his Personal Share in the Pension Share Agreement initiated by himself.

Adjudicator's Opinion

32. Mr R's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Respondents. The Adjudicator's findings are summarised below:-

- In accordance with the PSO, the Pension Share "effective date" was the date of the Decree Absolute or 28 days from the date of the Sealed Order, whichever the later. The Decree Absolute and the PSO were dated 19 June 2019, and 28 days later was 17 July 2019. TP was therefore correct that the "effective date" for the Pension Share was 17 July 2019.
- The Pension Share "effective date" meant that from 17 July 2019, Mr R was under a legal obligation to share his benefits in the Scheme with his ex-wife, and so his entitlement to the pension was reduced from that date onwards. Any benefits paid between 17 July 2019 and the implementation of the PSO beyond his entitlement were overpayments.
- Mr R was fully aware from TP's correspondence that an overpayment could occur between the "effective date" and the implementation of the PSO, and that TP will seek recovery. He signed the Declaration on the Dissolution Form in which he agreed to repay any benefits paid to him incorrectly. The overpayment was not because of maladministration on the part of TP, but it was expected to occur and all parties had sufficient prior knowledge of this.
- In accordance with Regulation 7 of the Pensions on Divorce (Provision of Information) Regulations 2000, TP wrote to Mr R on 1 August 2019 and on 6 August 2019, to set out the further requirements necessary for implementation. On 17 November 2018, Mr R informed TP that he could not pay the charging fees. TP replied on 20 November 2019 and said it will take the fee from Mr R's pension. Therefore, TP had from 20 November 2019 until 19 March 2020, in accordance with section 34 of the Welfare Reform and Pensions Act (WRPA 1999) to implement the PSO. TP advised the PSO was implemented in February 2020, and so there was no delay on part of TP in implementing the PSO.
- Mr R claimed that he had overpaid his wife because he had complied with the Ancillary Relief under which he was directed by the Court to pay his ex-wife monthly maintenance payments until the implementation of the PSO. This was a drafting matter with the Ancillary Relief and if Mr R was concerned, he ought to seek legal advice. Neither the Pensions Ombudsman (TPO) nor TP could change the PSO "effective date", and TP had acted in accordance with the law.

33. TP accepted the adjudicator's Opinion.

34. Mr R accepted that that there was no maladministration in terms of process and procedure or a delay in implementation of the PSO. He also accepted that the PSO “effective date” could not be changed but he contested further matters. His further comments are summarised below, and so are the adjudicator’s replies.
- Mr R believed that the parties were three, namely Mr R, TP and his ex-spouse.
 - Mr R could not bring a complaint against his ex- spouse to TPO, and this was a private matter.
 - The PSO was made against Mr R’s benefits in the Scheme, and it was his pension benefits that were shared. His ex-spouse was simply the recipient of the pension share, so there was no issue with the PSO correspondence being between Mr R and TP.
 - Mr R accepted that he was not entitled to the overpayments and that TP has the right to seek to recover them. But he sought confirmation on whether it was his ex-spouse who had been overpaid because of the PSO and the maintenance payment paid to her. He said that his ex-spouse was a member of the scheme in her own right now and should only receive the pension benefits she is entitled to receive. He reiterated that “appropriately apportioned individual shares of the benefits are no greater than the original share and that redress from his ex-wife would ensure this applies”.
 - At the time the PSO was implemented it was only Mr R’s pension entitlement that was in payment and hence as the pension holder he was wholly responsible for the repayment of the overpaid part of his pension, not his ex-spouse.
 - Mr R accepted that he had prior knowledge that the overpayment could occur, but he said he had acted in good faith fully believing that the maintenance payments would be considered in any subsequent overpayment.
 - Mr R was advised about the possible overpayment and when he queried this with TP, he was told that the issue with the PSO and the maintenance payment should be discussed with his solicitors and his ex-wife.
 - Mr R questioned where in all the documentation with regards to the PSO was there a reference that only he was responsible for the overpayment. He asked whether the law says that payment under the Ancillary Relief could not be taken into account when calculating overpayments. He said that the maintenance payments were not “ad hoc” but paid under instructions of the legally binding Ancillary Relief Order.
 - TPO could not provide legal advice regarding the wording and the maintenance payment under the Ancillary Relief Order. However, the adjudicator provided some general observations.

- Under section 22 of the Matrimonial Causes Act 1937, maintenance pending suit (**MPS**) is sought between the date of application for divorce and the date of the Decree Absolute. Between date of the Decree Absolute and a future date the court could grant a Periodical Payments Order (**PPO**) under section 23 of the Matrimonial Causes Act 1973, and this is a matter for the court to decide as part of the circumstances of the parties.
- The duration and terms of any periodical payments order is a matter between Mr R, his ex-spouse, and/or respective legal representatives to raise with the Judge in the Court at the time of the hearing. A PPO has no bearing or connection to how a PSO operates or how it must be implemented under s28 to 34 of the WRP 1999.
- The Report by the Pensions Advisory Group (**PAG**) published in July 2019, followed reports and work from 2014 onwards on pensions and divorce. In the Report the President of the Family Division of the High Court endorsed the report and, commended it to practitioners and judges as formal guidance to be applied to issues regarding pensions in financial remedies proceedings.
- In the PAG report, the definition of 'Clawback' is given as 'Repayment requirements for over paid pension income falling on the pension holder due to the delay between a PSO taking effect and the date it is actually implemented'.
- In the PAG report the issue Mr R has raised was identified in paragraph F.16 of the Report which states:-

“F.16 An even greater problem can occur where the pension holder is required to pay interim maintenance to their pension claimant ex-spouse either until a Pension Sharing Order has taken effect or until it has been implemented. It should be noted that there can be a dramatic time difference between these two events, and lawyers drafting consent orders should give careful consideration to which is intended. If interim maintenance is to be paid until the pension sharing has been implemented, then not only is the pension holder likely to suffer a clawback situation (described above), but the pension holder will suffer a clawback from those very payments that are allowing the maintenance to be paid. To avoid or mitigate against this problem where the scheme member is required to pay interim maintenance payments until the Pension Sharing Order has been implemented, consideration could be given to imposing some form of time limit on such payments, say, for 2 or 3 months to allow the pension claimant time to take advice and get the order implemented and with an appropriate incentive to do so.”

- The matters relating to the Ancillary Relief was outside the remit of TPO and not a “pension matter”. The matter was a family law matter between Mr R, his ex-spouse, his legal representatives and the Court.

35. Mr R wrote to the adjudicator and said he wished for his case to be determined by the Ombudsman. He felt that TP should be seeking the overpayment from his ex-wife and that he had been provided with no written evidence that proves his former

spouse's pension share taken together with the Ancillary Relief cannot be considered nor what the legal position is regarding this and the UK law with respect to pensions and Ancillary Relief.

36. Mr R said that whilst the wording of the Ancillary Relief Order may be outside the remit of TPO, it should be part of its remit to seek that TP accept the Family Court provides legal jurisdiction by which all parties agree and that a fair and reasonable attempt to rectify matters is apportioned regarding such 'pensions matters' ensuring they are fair and equitable when the law has been adhered to in order to determine Financial Remedy.
37. Mr R again reiterated that the following, which he felt was key, and had not been addressed:

"The teacher pension paid in the name of Party A was intended to benefit both Party A and Party C. In substance, both Party A and Party C were recipients of the teacher pension under the CETV. The payment from Party A to Party C was, in all respects, the appropriate portion owed to Party C pursuant to the PSO. That sum paid to Party C represented Party C's rightful share under the PSO. Party A acted as the "Payer" rather than Party B, who would typically be the source of payment. However, this does not alter the fact that the payment was made.

Party B should seek to recover overpayments from Party C. In reality, it was Party C, not Party A, who received the overpayment. Evidence has been presented to demonstrate that Party C received these payments in relation to their entitlement to TP. This action aligns with Party B's obligation to rectify overpayments of public funds, as outlined in guidance issued by HM Treasury.

According to the provisions of the PSO, the monthly payment of £650 may or may not correspond to the respective shares of 44.5% and 55.5%. It may be necessary to conduct a recalculation to determine the precise amounts applicable for the period from July 17, 2019, to February 29, 2020, and to seek retrospective adjustments as appropriate."

38. Mr R was asked if he had any comments regarding the repayment plan TP had previously suggested. He had no specific comments about this, and he understood that if his complaint is not upheld monthly pensions deductions will be held back from pension over a period of two years.

Ombudsman's decision

39. The position has been set out at length and in detail by the Adjudicator.
40. TP has the right to recover the overpaid benefits from Mr R. At the time the overpayments occurred, it was Mr R who was a member of TP and whose benefits were subject to the PSO.

41. Mr R was warned that overpayments could occur between the effective date of the PSO, and its implementation and that TP would seek to recover them. When he queried how the maintenance payments would be considered, he was advised it was a private matter, and not an issue for TP. He could have discussed the issue with his legal representatives at the time. For instance, he could have discussed whether it was possible to apply to amend the Ancillary Relief or agree with his ex-wife to reimburse him should TP seek recovery.
42. In any event, I do not have powers to interfere with a court process or a legally binding document presided on by a Court. The matter regarding the maintenance payments is outside of my jurisdiction.
43. For the reasons above, I do not uphold Mr R's complaint, and I find that that the net overpayments are recoverable.
44. Teachers Pensions may, subject to section 91(6) Pensions Act (**PA**) 1995, commence recovery of the net overpayments against future pension payments over a period specified in the directions.
45. The PO is not, at present, a competent court for the purposes of section 91 of the PA 1995. It follows that Teachers Pensions will still need an order of a competent court before starting to recover them from future pension payments. This, however, is a paper-based step and does not involve the County Court revisiting the merits of the Determination. Please see the attached TPO factsheet on this issue.

Directions

46. I determine that the overpayment of £4,605.79 is recoverable.
47. Teachers Pensions may, subject to section 91(6) PA 95, commence recovery of the net overpayments against future pension payments over a two-year period.

Dominic Harris

Pensions Ombudsman
14 February 2025