

Ombudsman's Determination

Applicant	Mr N
Scheme	Teachers' Pension Scheme (the Scheme)
Respondent	Teachers' Pensions (TP)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by TP.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N was overpaid a widower's pension from the Scheme which he was not entitled to, as he remarried. Mr N complains that TP is now seeking recovery of the overpayment.

Background information, including submissions from the parties

4. The late Mrs N took ill health retirement in 31 March 2001. She sadly passed away on 6 May 2001.
5. TP wrote to Mr N on 25 May 2001 stating that he was entitled to a widower's pension and referred him to an enclosed bereavement pack. The bereavement pack included an application form for Mr N's benefits (**Form 22**), a note on how to complete Form 22, and Leaflet 450.
6. Leaflet 450 set out the benefits to which Mr N was entitled. In particular, under section 2.5, it stated that, "a spouse's pension [is] payable for life unless [the] spouse remarries or cohabits".
7. Mr N completed Form 22 and started receiving a widower's pension from 6 May 2001.
8. On 29 September 2001 Mr N remarried. He says that he informed TP and the Department of Works and Pensions (DWP) of this.
9. TP says that it checked its records and there is no evidence of this. TP further states that, if it had known, it would have stopped Mr N's benefits at that time. This is

because, under Teachers' Pension Regulations 1997 (as amended) (**the Regulations**), a spouse's pension ceases to be payable when the spouse remarries. In particular, the Regulations state:

"E22.—(1) Pensions are payable in accordance with regulations E24 to E30 to widows, widowers, children and nominated beneficiaries of persons who die in, or after having been in, pensionable employment.

E30. — (2) Subject to paragraph (3), an adult pension is payable for life.

(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."

10. TP has said that it also sent Scheme members and beneficiaries annual newsletters and updates, which included a reminder to inform it of relevant changes, i.e. if they remarry. Furthermore, TP said this information was available on its website.
11. In 12 December 2014, as part of a wider exercise. TP wrote to Mr N and requested that he complete a remarriage declaration form. On returning it, TP discovered that Mr N had remarried so it stopped his pension.
12. TP calculated that as a result of it not being notified of his remarriage, Mr N had received a net overpayment of £38,419.16.
13. On 18 June 2015, TP wrote to Mr N requesting repayment of the overpaid widower's pension. It sent him an invoice for the full amount, and has since been asking him to arrange its repayment.
14. Mr N responded to TP stating he had informed TP that he was remarrying. He also said he had not received the newsletters or updates, only his P60. He further said that even if he had been reminded to update TP about his remarriage, he would not have contacted it because he had already made it aware of his remarriage in September 2001.

Adjudicator's Opinion

15. Mr N'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 briefly below:-
 - The Limitation Act 1980 (**LA 1980**) does not apply here. In Mr N's case, time started running on 5 January 2015 when TP received the remarriage declaration form from Mr N and it was from that date that TP could, with reasonable diligence, have discovered the mistake.

- The fact that Mr N informed both TP and DWP (in relation to his state pension) that he was getting remarried indicates that Mr N was reasonably aware of his obligation and that it may have an effect on the benefits which he was receiving.
 - Although Mr N says he did not receive any correspondence from TP, aside from an annual P60, TP's correspondence was correctly addressed and it was more than likely that TP posted this letter. Hence, there was no identifiable reason why Mr N would not have received it. In any case the information concerning his obligations should he remarry, which was sent with his P60 was also repeated on the reverse of his P60.
 - Mr N contends that he took steps to notify TP in 2001 that he remarried and therefore, as his circumstances did not subsequently change there was no need for him to take any further action to notify TP. However, Mr N should have questioned why he received no response to the letter which was sent in 2001, especially in light of the fact that his state pension ceased but his TP spouses pension continued. In addition, TP has confirmed that Mr N notified them of his change of address on at least three occasions since Mrs N died, this suggests that Mr N would have received acknowledgement from TP of his address change.
 - The Adjudicator was satisfied TP took reasonable steps to bring the relevant requirement to Mr N's attention and that TP would not have known that Mr N remarried but for receiving notification of this from him. She said, on balance, it was more than likely that TP did not receive the relevant notification which Mr N said he sent in 2001, and was unaware of his remarriage until Mr N informed them when it undertook a wider exercise in relation to widow benefits.
 - Mr N does not have a legal defence to the overpayment, so TP is able to recover the whole overpayment from him.
16. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman's decision

17. Mr N maintains that he told TP of his remarriage and should not be held responsible for TP failing to act on this notification. Unfortunately, neither party has been able to provide a copy of the letter which Mr N says he sent to TP in 2001, notifying it of the change in his circumstances.
18. Mr N has said that he was not aware that his benefits would stop on remarriage. However, for the reasons given by the Adjudicator, I am satisfied that TP took reasonable steps to bring the relevant requirement to Mr N's attention. Further, TP would have been unaware of Mr N's remarriage until it received notification from him, following its wider exercise in relation to widow benefits.

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19. Based on the information provided, I find that on the balance of probabilities, Mr N did not notify TP that he had remarried, as he was required to do, until 5 January 2015.
20. However, irrespective of whether Mr N had given TP sufficient notice or, whether he was aware that remarriage led to the cessation of spouse benefits, Mr N has received Scheme benefits to which he was not entitled.
21. If Mr N were to keep the overpaid widower's pension, he would be in a position where he has been unjustly enriched. There are defences to a claim for unjust enrichment, such as change of position, but it would need to be shown that the overpaid widower's pension was received in good faith; and that repayment would be to the debtor's detriment. I am not satisfied that Mr N received the overpaid widower's pension in good faith, therefore such a defence does not apply here.
22. Accordingly, as Mr N did not have a right to the overpaid widower's pension, the appropriate course of action is for him to now repay the monies owing to TP.
23. Therefore, I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
30 March 2017