

Ombudsman's Determination

Applicant	Mrs S
Scheme	Teachers' Pension Scheme (the Scheme)
Respondent	Teachers' Pensions (TP)

Outcome

1. I do not uphold Mrs S'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. Mrs S's complaint against TP is that it has stopped the widow's pension it was paying her, and requested repayment of the total of overpayments that it incorrectly paid her.

Background information, including submissions from the parties

4. Mrs S's husband was originally a member of the Scheme and in November 1997, he sadly passed away and therefore Mrs S became entitled to a widow's pension.
5. Payment of these types of benefits was governed by the Teachers Superannuation (Consolidated) Regulations 1988, replaced by the Teachers' Pension Regulations 1997 (as amended) (**the TPR**). The relevant sections of the regulations are reproduced in the Appendix to this Determination. The relevant part states: -

"E30—(1) A pension under regulation E26 payable to a surviving spouse or a nominated beneficiary ("an adult pension") is to be paid—

(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."
6. TP says, in around December 1997, it would have issued a leaflet, Leaflet 450 (**the First Leaflet**), which included details of benefits payable to members' beneficiaries. Under sections 3 & 4 (Widow/Widower without/with dependent children) it states: -

“Unless your widow/widower remarries or cohabits as man and wife, the pension will continue for life.”

7. TP says that it sent another leaflet, in around December 1997, Leaflet TFB 52 (**the Second Leaflet**). This states: -

“Widow’s/Widower’s pension – The claimant must have been married to the deceased at the time of death. The pension is payable from the day after the pensioner’s death; it continues for life, unless the claimant remarries or lives with another person as husband and wife.”

8. TP has provided documentary evidence, in the form of a “Death Case Action Sheet”, that the above paperwork was correctly issued. It states the paperwork would have been returned, because the widow’s pension could not have been set up without it. I understand TP started paying Mrs S the widow’s pension in around December 1997.

9. In around March 2004, Mrs S informed TP that she had changed address. She did not mention that she would be living with another party, and does not dispute this.

10. TP says that from 2004 it sent all members, along with their annual P60 form, a newsletter. The 2006 newsletter, under “Changes we need to know about”, stated that it needed to know: -

“If we pay you a widow or widower’s pension and you remarry or live with another person as husband and wife.”

11. The newsletter it sent in 2007, under “Changes we need to know about”, stated: -

“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.”

12. The 2008, 2009 and 2010 newsletters contained similar if not identical instructions.

13. The 2012 newsletter stated: -

“Please tell us: If you receive a spouse’s pension or civil partner’s pension and you re-marry, enter into a civil partnership or cohabit.”

14. In January 2015, TP sent Mrs S a “Remarriage Declaration Form” which she filled in and returned. It stated: -

“If a surviving adult re-marries/cohabits or enters into a civil partnership they must inform us with full details immediately... A surviving adult’s pension entitlement ceases if he or she remarries or lives with another person as husband and wife. In this event the pensioner must inform us immediately to prevent any overpayment occurring.”

15. Mrs S informed TP, via the above form, that she had been living with another person since March 2004.
16. In April 2015, TP wrote to Mrs S stating that, because it had continued to pay her a widow's pension after she had started cohabiting, it had paid her too much, and so it required her to repay the overpayment, totalling about £24,000.
17. In July 2015, DV Solicitors, acting for Mrs S, wrote to TP. The key points were: -
 - The Re-marriage Declaration Form stated, "... a surviving adult's pension entitlement ceases if he or she remarries or lives with another person as husband and wife." Mrs S had been living with another person, but she had not remarried, nor lived with another person as husband and wife.
 - Mrs S had a reasonable belief her cohabitation would not affect her widow's pension.
 - The April 2015 letter did not describe Mrs S's particular situation, and that had caused her confusion and distress.
 - It invited TP to re-consider its request for Mrs S to repay the overpaid sum.
18. In August 2015, TP responded to DV Solicitors. The key points were: -
 - From time to time, it wrote to beneficiaries who might have forgotten to tell it about changes in their circumstances that would affect their entitlement to benefits.
 - Its annual newsletter and website reminded beneficiaries of the sorts of changes it needed to know about.
 - Since Mrs S resided in a shared household, with shared household spending, she was financially dependent, therefore the overpayment must be recovered.
19. In September 2015, DV Solicitors wrote to the Department for Education (**DfE**), under TP's internal dispute resolution procedure (**IDRP**). The key points were: -
 - Mrs S's adult son relied on her to support him, because he suffered from Asperger's and depression. She was responsible for her own financial upkeep, however.
 - TP had failed to take adequate steps to remind members of the changes it needed to know about, which it had admitted in its letter of April 2015.
20. In October 2015, the DfE responded to DV Solicitors under TP's IDRP. The key points were: -
 - Its role was to ensure that TP had applied the regulations correctly, and in its view, TP had done so in this case.
 - At the time of Mr S's death, TP had sent the first leaflet, which explained that widow's pensions would cease on remarriage or cohabitation.

- Mrs S could not therefore continue to receive a widow's pension, even though she was supporting her son financially.
 - She should contact TP to discuss how to repay the overpayment.
21. In December 2015, dissatisfied with these responses, Mrs S referred her complaint to this Office.
22. In March 2016, TP wrote to this Office with its case. The key points were: -
- The rules stated that a widow's pension ceases "when the person to whom it is 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."
 - Various documents made available at the time the widow's pension was set up, and thereafter, informed Mrs S that she would have to inform TP if she remarried or started cohabiting.
 - Mrs S stated, via the form she completed in April 2015, she had read the conditions of entitlement, and that she had started cohabiting in 2004.

Adjudicator's Opinion

23. Mrs S'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: -
- Although TP had written to members in 2015, after discovering large overpayments, that did not prove it had failed to make them aware of changes it needed to know about; it only proved that members were not letting it know about relevant changes.
 - There was no mention of "cohabit" or "cohabitation" in the leaflets until 2012; however, the rules, which provided that no widow's pension shall be payable "during or after any marriage or period of cohabitation", captured Mrs S's living arrangements after 2004, as she had confirmed via the Remarriage Declaration Form that she had been cohabiting since 2004. She was therefore not entitled to a widow's pension after that.
 - Previous newsletters had referenced similar living arrangements to Mrs S's, so it would have been reasonable for her to have let TP know of her new circumstances after 2004. Had she done so, the overpayment would not have been made.
 - In theory, Mrs S might have a limitation defence, that is, part or all of the overpayment might not have to be repaid, depending on the circumstances. However in this particular case TP had taken reasonable steps to inform Mrs S of the sorts of changes it needed to know about. Therefore, Mrs S had no limitation defence and the whole overpayment would have to be repaid.

- Mrs S might also have a change of position defence. That is, she might not have to repay all or part of the overpayment if: she had received the overpayments in good faith; relied on them when making financial decisions, and recovery of them would cause her financial hardship. However, this defence did not apply, as she ought reasonably to have informed TP of her change in circumstances; and, in any case, no evidence had been provided that she had relied on the overpayment to make financial decisions that irreversibly changed her lifestyle.
 - TP could have provided more information, in 2015, about why it believed that it had overpaid Mrs S. However, overall it had corresponded with her in an appropriate manner, once the overpayment was discovered. So no further action was required.
24. TP accepted the Adjudicator's Opinion, but Mrs S did not and so the complaint was passed to me to consider. Mrs S provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion, and I will therefore only respond to the key points made by Mrs S for completeness.

Ombudsman's decision

25. I have considered the definition Mrs S has provided of a newsletter, but I do not agree with her comments. The newsletters TP sends are not just general mailings; they are key documents that contain important information about members' benefits. Members should therefore read them carefully in case any action is required. Even though, arguably, Mrs S's own living arrangements were not mentioned in the leaflets in specific terms until 2012, nonetheless TP made reasonable efforts, before then, to capture the sorts of changes it needed to know about, and so it would have been reasonable for her to have informed it, in 2004, about her changed circumstances.
26. I have also considered the exercise TP carried out in 2015. I understand Mrs S's position to be: TP's decision to carry out the exercise proves it was not doing enough to make members aware of the sorts of changes that would make them ineligible for widow's pensions. However, I do not agree. Based on the evidence in Mrs S's case, TP made reasonable efforts to bring to her attention, changes such as remarriage; the onus was on Mrs S to inform TP if such a change applied.
27. With the benefit of hindsight, it would have been helpful if TP had clearly stated every change it needed to know about. However, I am satisfied it made reasonable efforts to provide Mrs S with the relevant information.
28. Mrs S states that TP should have written to members directly regarding "Remarriage Communication changes", rather than just putting this information on its website, as a large number of TP's older members do not find looking things up on the internet to be a natural activity. However, I am satisfied that, by sending newsletters in the post to members over several years, TP made reasonable efforts to bring the information to all members' attention.

29. Mrs S has argues that she should not have to repay the overpayment, as she had been financially supporting her adult son, though it is not him she has been living with. However, as Mrs S's son lives in his own flat, and Mrs S has stated he would be unable to afford to live on his own without her help, I consider that, on the balance of probabilities, if she had not received the overpayment, she would nonetheless have helped her son with these expenses. Therefore, there has been no detrimental reliance in this regard, and the overpayment is recoverable.
30. I have considered whether it was appropriate for TP to send members Remarriage Declaration forms on or around their birthdays. However, the questions whether the timing was appropriate, and whether such declaration forms should have been sent sooner, do not override the fact members are under a general obligation to let TP know about relevant changes in their circumstances.
31. Therefore, I do not uphold Mrs S's complaint.

Directions

32. TP and Mrs S shall now enter into sensible discussions about how the overpayment should be repaid.

Anthony Arter
Pensions Ombudsman
20 July 2017

Appendix

Family benefits generally

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.

(2) References in those regulations to a surviving spouse are references to a widow or widower; but—

(a) in the case of a man who has not been in pensionable employment or paying additional contributions for a current period under regulation C9 or C10 at any time after 5th April 1978, such references, and references to a widow, do not include references to a woman married by that man after his last day in pensionable employment or, as the case may be, the end of the period for which such contributions were paid;

(b) subject to paragraph (3), in the case of a woman who has not been in pensionable employment or paying additional contributions for a current period under regulation C9 or C10 at any time after 5th April 1988, such references and references to a widower do not include references to a man married by that woman after her last day in pensionable employment or, as the case may be, the end of the period for which such contributions were paid.

(3) Where a woman who nominated a person under regulation E23 subsequently marries, paragraph 2(b) shall have effect with the substitution of “1978” for “1988”.

(4) Where those regulations provide for a pension to be payable to a widow and there are two or more widows, the widows are jointly entitled to the pension.

(5) References in those regulations to a person’s child are to a person who is—

(a) his legitimate, adopted or illegitimate child, or

(b) accepted by him as a member of the family and wholly or mainly dependent on him,

and who is a child within the meaning given in paragraphs (6) to (8).

(6) Subject to paragraphs (7) and (8) and paragraph 14 of Schedule 15, for the purposes of regulations E23 to E30 a person is a child while he is unmarried and—

(a) he has not attained the age of 17, or

(b) having attained that age, he is receiving full-time education or attending a course of not less than 2 years’ full-time training for a trade, profession or calling and he has been receiving such education or attending such a course of training or both continuously since having attained that age without a break at any one time of longer than a year, or

(c) having ceased while incapacitated to fall within sub-paragraph (a) or (b), he continues to be incapacitated.

(7) For the purposes of paragraph (6)(b)—

(a) a person is to be treated as receiving full-time education up to and including the week which includes the first Monday in January or the first Monday after Easter Monday or the first Monday in September next following the end of the last term in which he received it, and

(b) a person is to be treated as not attending a course of training while he is receiving disqualifying remuneration.

(8) For the purposes of paragraph (7)(b) disqualifying remuneration is remuneration at a rate of not less than the annual rate at which an official pension, within the meaning of section 5(1) of the Pensions (Increase) Act 1971([21](#)), would for the time being be payable if it had begun, and first qualified for increases under that Act, on 1st April 1972 and had then been payable at an annual rate of £250.

(9) References in regulations E24 to E30 to a nominated beneficiary are to a person nominated under regulation E23.

Commencement and duration of long-term family pensions

E30.—(1) A pension under regulation E26 payable to a surviving spouse 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, 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.

(4) A pension under regulation E26 payable to or for the benefit of a child or children (“a children’s pension”) is to be paid—

(a) from the day on which any short-term pension that became so payable, or payable to a surviving spouse or a nominated beneficiary, under regulation E24 ceases to be payable, or

(b) if no short-term pension became payable, from the day after that of the death.

(5) A children’s pension ceases to be payable to a person or for his benefit when he ceases to be a child.