

## Ombudsman's Determination

Applicant	Mr T
Scheme	Teachers' Pension Scheme ( <b>the Scheme</b> )
Respondent	Teachers' Pensions ( <b>TP</b> )

## Outcome

1. I do not uphold Mr T'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 T was in receipt of a spouses' pension which ceased from 1 November 2014 due to Mr T informing TP that he was cohabiting. TP has requested repayment of an overpayment that occurred from 18 October 2006, the date that Mr T began cohabiting, up until the pension was ceased in 2014.
4. Mr T has complained that it was not reasonable for him to have been aware that his pension would cease, or that he was required to inform TP if he cohabited. He says that, with reasonable diligence, TP should have been aware of his cohabitation as early as 2006, and therefore he has a defence under the Limitation Act 1980, (**the Limitation Act**), to prevent the overpayment being recovered from him.

## Background information, including submissions from the parties

5. Mr T's late wife was a member of the Scheme and she retired early on 15 September 2003 with an actuarially adjusted pension. Mrs T passed away on 23 May 2005.
6. From August 2005 Mr T received a spouses' pension, of £2,074.35 per annum, paid monthly. Mr T was provided with leaflet 450 which states: "Spouse's pension payable for life unless spouse re-marries or co-habits". The leaflet also states that the pension will be restored in the event of the death of the cohabitee or second spouse, as long as there is not a pension payable in respect of the second cohabitation or marriage that is greater than the first. There is a statement at the end of the leaflet that says that where differences occur between this leaflet and the legislation, the legislation will apply.

7. Mr T began cohabiting on 18 October 2006, he updated his address with the Scheme on 5 November 2006, by letter. The letter does not mention cohabitation.
8. TP state that Mr T should have been aware of the need to notify it of any changes in his circumstances, such as cohabitation. As well as being issued with leaflet 450 when the pension became payable, Mr T was also provided with his P60 each year which enclosed an annual newsletter from TP. TP say that the newsletters provided enough information for members to be aware of the need to contact them in the event of remarriage or cohabitation.
9. Under the heading, "Changes we need to know about", the 2006 newsletter states "if we pay a widow, widower or civil partner pension and you remarry, enter a civil partnership or live with another person as husband and wife". Whereas the newsletters from 2007 to 2011 state, under the same heading, "if you receive a pension by virtue of being the dependant of a deceased member and subsequently enter into a new marriage or partnership".
10. Mr T maintains that he was not aware that the term "dependant", used in the newsletters from 2007 to 2011, applied to him. He said that he was never dependant on his late wife and there was no definition provided to make him think that this term meant more than the dictionary definition. Therefore, he disagrees that it was reasonable for him to be aware prior to the 2012 newsletter when the wording changed under the section, "Keep us up to date", to say "If you receive a spouse's or civil partner's pension and you remarry, enter a civil partnership or cohabit".
11. TP said that it became aware, following the discovery of some large overpayments, that members were not updating it with their current circumstances. TP decided to start issuing declarations to establish members' current circumstances in an attempt to avoid future overpayments. Mr T was issued with a declaration on 5 September 2014, and TP received his response on 18 September 2014, which confirmed that he had cohabited since 18 October 2006.
12. TP ceased Mr T's pension from 1 November 2014, and in January 2015 TP requested repayment of the overpayment which was calculated to be £16,110.06. Mr T queried the overpayment figure, and in August 2015 TP apologised amending the figure to £15,444.30.
13. Mr T believes that recovery of the overpayment should be time barred by the Limitation Act which states that recovery of overpayments must be initiated within six years of discovery of the mistake, or the time that the claimant could have discovered it with reasonable diligence. Following this, Mr T believes that TP could, and should have, issued a remarriage declaration with his P60 from 2006. As the P60's are issued in May had this been issued with the 2006 newsletter he says it would have prompted him to provide TP with an update of his circumstances, or even consider not cohabiting. Therefore, Mr T believes that with, reasonable diligence, TP could have been aware in 2006, and that recovery of the overpayment should be time barred from 2012.

14. TP maintain that it is reliant on adult beneficiaries notifying it of changes in their circumstances and that Mr T reasonably should have been aware of the need for him to notify TP of his cohabitation.
15. Mr T also states that leaflet 450 is misleading in that, when he returned the remarriage declaration he was aware that it would lead to cessation of his pension due to the information it contained, however he understood from leaflet 450 that the pension would be reinstated if his current partner passed away before him. TP have now informed him that this only takes place in the event that the second partner is also a teacher, and that the only provision for reinstatement is on grounds of hardship.

### **Adjudicator's Opinion**

16. Mr T's complaint was considered by one of our Adjudicators who concluded that no further action was required by Teachers' Pensions. The Adjudicator's findings are summarised briefly below:-
  - The Teachers' Pensions Regulations 1997 are clear that an adult pension is not payable "during or after any marriage or period of cohabitation outside marriage." TP does not have any discretion over application of the Regulations and it is required to administer the Scheme in accordance with the relevant Regulations and legislation.
  - Regarding Mr T's comments on the misleading nature of leaflet 450, the Adjudicator agreed that the leaflet reads as though the pension would be reinstated in the event of the second partner's death so long as any pension payable in relation to the second partner is not larger than the pension payable in respect of the first. However, the Regulations override the information provided in the leaflet and TP must administer the Scheme in line with the Regulations rather than the leaflet. This is also not relevant to the issue at hand as it does not change the requirement for Mr T to notify TP of changes such as cohabiting.
  - There is no dispute that an overpayment has occurred under the Regulations, however Mr T has said that TP ought reasonably to have discovered the overpayment earlier than it did. The Adjudicator said that it is reasonable for TP to require adult beneficiaries to keep it updated about their personal circumstances. To this end TP issue adult beneficiaries with leaflet 450 which outlines the benefit payable and the conditions of that payment. TP require that adult beneficiaries keep it updated of a number of issues that may affect entitlement to the pension including marriage or cohabitation.
  - In addition to this, TP issue a newsletter with the annual P60's to keep members updated and remind them of the issues that they need to keep TP informed about. There is no requirement either in the Teachers' Pensions Regulations 1997 or over-riding legislation that requires TP to issue a remarriage or cohabitation

declaration to adult beneficiaries. The Adjudicator found that TP had provided enough information for Mr T to have reasonably been aware that he was required to contact TP in the event that he cohabited.

- The Adjudicator acknowledged that the newsletters between 2007 and 2012 were less clear, however believed that there was sufficient information to cause Mr T to question whether the statement applied to him.
- Mr T has said that, had the 2006 P60 enclosed a remarriage or cohabitation declaration, he would have been aware that he needed to declare his cohabitation and that this would affect his pension. However, TP had provided a newsletter with the 2006 P60, before Mr T began cohabiting, which contained a clear statement of the need to inform TP.
- Reasonable diligence extends as far as informing members of the requirement to notify TP of any change in circumstances and reasonably expecting that they would do so, it does not require exceptional or excessive measures to be taken by TP. Therefore, the Adjudicator found that, in the absence of being notified by Mr T at an earlier date, TP could not have discovered the cohabitation with reasonable diligence earlier than it did.
- In the recent High Court case of *Webber v Department for Education* and another [2016] EWHC 2519 (Ch), the Judge held that the cut-off date for limitation purposes, in overpayment cases before the Ombudsman, was the date when TP brought its claim during the course of The Pensions Ombudsman's complaints procedure. That date was identified as being the receipt by The Pensions Ombudsman of TP's response to Mr Webber's complaint.
- Applying this to Mr T's case, TP's response to Mr T's complaint was received by The Pensions Ombudsman on 11 February 2016. For the purposes of the Limitation Act this is the date at which time ceased to run. The question is, therefore, whether TP made its claim for repayment within the applicable limitation period.
- Having considered the sequence of events and the information provided the Adjudicator was satisfied that TP took reasonable steps to bring the relevant requirement to Mr T's attention and that TP would not have known Mr T cohabited but for receiving notification of this from him in September 2014. So, it follows that time did not start to run until 18 September 2014 when TP received the remarriage declaration form.
- Therefore, as time did not start to run until 18 September 2014 when TP could with reasonable diligence have discovered the mistake, TP has until 18 September 2020 to make its claim for recovery of the overpayment. In fact, TP made its claim on 7 January 2015 and so, TP is able to recover the whole overpayment from Mr T.

17. Mr T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr T provided his further comments which are summarised below:-
- Mr T maintains that leaflet 450 makes no reference to adult beneficiaries being responsible for keeping TP updated of issues that may affect entitlement to pension benefits. It was also provided one week after his wife's death when cohabiting was not considered, and TP have apologised for the erroneous wording in the leaflet.
  - Mr T states that a newsletter is not an adequate means of requesting information that may lead to cessation of a pension. It is good business practice to ask recipients to complete a declaration annually to ensure that they are still entitled to benefits. Mr T has to complete such a declaration for his children, in respect of a child Railway pension to confirm that they are in full time education. Mr T says the lack of a declaration is negligent on TP's part.
  - In addition, the 2006 newsletter says "if you receive a pension by virtue of being the dependant of a deceased member and subsequently enter into a new marriage or partnership" and Mr T maintains that he was never dependent upon his late wife.
  - TP, in issuing declarations in 2014, shows that its procedures were inadequate. It was at this point that Mr T realised the spouses' pension was not for life and he completed the form promptly and honestly, showing that had a similar declaration been issued in 2006 Mr T would have completed it in the same manner.
  - Mr T says that although the Webber judgment applies to a different set of circumstances than his, he does not consider the cut-off date, as calculated by the Adjudicator, to be correct, TP, with reasonable diligence, should have discovered the mistake earlier.
  - Further, Webber was aware that his pension would be reduced if his combined earnings exceeded the earnings limit. Mr T says that it did not occur to him that his spouses' pension would be affected by cohabiting, he has a spouses' Railway pension which is not subject to cessation in the event of cohabiting or remarriage.
  - Mr T highlights a previous Determination by the Deputy Pensions Ombudsman (**DPO**) of Mr D Cliff v Coal Pension Trustees Services Limited (3 June 2014), PO-2066. In this case it was found that the Trustees would have discovered the discrepancy earlier with reasonable diligence.
18. Mr T's comments 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 T for completeness.

## **Ombudsman's decision**

19. While leaflet 450 may not state that recipients of a spouses' pension are responsible for informing TP in the event of marriage or cohabitation this is not something that TP could be expected to be aware of unless it was informed by the recipient directly. Leaflet 450 does say clearly in bold font "Spouse's pension payable for life unless spouse re-marries or co-habits." It is provided when spouses' benefits become payable for information, therefore while I understand that Mr T was unlikely to have been considering cohabiting at this time, he was provided with the information regarding cessation of his benefit.
20. Further, Mr T was provided with the newsletter in 2006 which states, under the heading "Changes we need to know about", "if we pay a widow, widower or civil partner pension and you remarry, enter a civil partnership or live with another person as husband and wife". This makes clear that TP need to be made aware of changes such as cohabiting. Both this newsletter and leaflet 450 were provided before Mr T cohabited.
21. Mr T has also commented that TP have apologised for erroneous wording in leaflet 450. The apology was regarding the information in relation to future payment of the benefit after the death of the cohabitee, not the cessation of the benefit due to cohabiting, therefore, this is not relevant to the complaint at hand.
22. While TP may have now decided to approach those who receive a spouses' pension with a request to complete a declaration, it is not required to do so by the Regulations or legislation. Mr T says that he would have completed a declaration honestly had one been provided in 2006, however the newsletter was provided in 2006 and Mr T did not inform TP of his cohabitation. I consider the newsletter an adequate annual reminder of the information that TP require, following the information provided in leaflet 450. I do not agree that the lack of a declaration is negligent on the part of TP. I do not find that TP's decision to introduce a declaration means that its procedure before this point was negligent.
23. The wording that Mr T quotes is from the newsletters provided from 2007 to 2011, the correct wording from the 2006 newsletter is quoted above. However, I note the use of "dependant" rather than "spouse" during this period and Mr T's comments that he did not believe that dependant applied to him as he was not dependent on his late wife.
24. I acknowledge that Mr T may have other benefits that operate differently to his entitlement of a spouses' pension under the Scheme. However, leaflet 450 is clear that the pension is not payable in the event of remarriage or cohabitation. Mr T was issued with a copy of this leaflet and it provides enough information for him to have been aware that his entitlement would change if he cohabited.

25. I agree with the Adjudicator that TP cannot be expected to have discovered the mistake sooner with reasonable diligence. TP are not required to send a declaration by the Scheme Regulations or legislation. I consider that it would be unnecessary and excessive for TP to send a declaration annually, especially where information relating to entitlement was provided when the pension came into payment, and newsletters issued annually which refer to the requirement to notify TP in such circumstances. The cut-off date as calculated by the Adjudicator is correct..
26. I do not agree that the determination of Mr Clift's complaint by the DPO, that Mr T has highlighted, has any relevance to his complaint.
27. Mr Clift said that his overpayment could not be recovered due to the Limitation Act. The DPO agreed that the Trustees, with reasonable diligence could have discovered the mistake earlier. This finding was made because the Trustees defence was based on a "strict interpretation of the Rules" when reviewing the calculation in 2010. The DPO considered that reasonably diligent Trustees should have been aware of the Rules and have discovered the error in 1999, when reviewing Mr Clift's benefits. She decided that the Trustees could only recover the payments made in the six years before Mr Clift was notified of the error in August 2011. Mr Clift had made a further change of position defence for the second overpayment, but this was not upheld as there was insufficient evidence to support it.
28. Mr T's complaint differs in many respects. Mr T was not provided with incorrect information in relation to his entitlement of his spouses' pension or its cessation. I believe that Mr T should have reasonably been aware that his pension would cease should he cohabit, In Mr Clift's Determination the DPO found that the Trustees could have discovered the mistake earlier with reasonable diligence as they should have applied a "strict reading of the Rules" governing the scheme at its commencement. TP always has been, aware of the Regulations governing the Scheme, and no mistake was made by TP. The Limitation Act does not apply in Mr T's case.
29. Therefore, I do not uphold Mr T's complaint.

**Anthony Arter**

Pensions Ombudsman  
27 June 2017