

Ombudsman's Determination

Applicant	Mr L
Scheme	Teachers' Pension Scheme (TPS)
Respondent	Teachers' Pensions (TP)

Outcome

1. I do not uphold Mr L'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 L is complaining that TP have sought to recover an overpayment of widowers' pension after he informed them of his remarriage, focussing in particular on:
 - whether or not TP are entitled to seek recovery of an overpayment;
 - the timing of TP's contact with him in 2014; and
 - the delay in stopping the pension after TP received the correct information.

Background information, including submissions from the parties

4. Mr L has been in receipt of a widowers' pension from the TPS since the death of his first wife on 26 December 2004.
5. The regulations relevant to the payment of spousal benefits at that time were contained in The Teachers' Pensions Regulations 1997, Regulation E30. These provide that 'an adult pension is not payable during or after any marriage or period of co-habitation outside marriage.'
6. The Teachers' Pensions Regulations 2010 introduced the following provision:“(4) Except as otherwise provided in these Regulations, the pension is payable for life.
(5) D¹ falls within this paragraph if –

(a) D was not in pensionable employment after 31st December 2006,

...

(6) If D falls within paragraph (5), the pension ceases to be payable if D's surviving adult marries, forms a civil partnership, or lives with another person as if they were husband and wife or civil partners."

7. Mr L remarried in May 2010, but did not inform TP of this at the time.
8. In late 2014, TP undertook an exercise to review pensioners in receipt of spousal benefits and check the accuracy of their records. Mr L was sent a letter dated 21 December 2014 asking him to complete and return a "Re-marriage Declaration Form". At the top of the form, under the heading "**Conditions of payment of a Teachers' Widower(er) pension**" it says:

"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."
9. Mr L signed the form on 5 January 2015 and TP received it the next day.
10. On 21 May 2015, TP wrote to Mr L informing him that, as he had remarried, the widowers' pension ceases. TP calculated the overpayment of pension, since Mr L's remarriage in 2010, as £20,172.90.
11. Mr L complained to TP via the formal complaints procedure, then to the Pensions Advisory Service and subsequently to my office.
12. TP say they have applied the Regulations correctly and are bound to recover the overpayment. They provided a copy of Leaflet 450 when the pension was first put into payment. This states in bold on the first page: "Spouse's pension payable for life unless spouse re-marries or co-habits." TP says Pensioner Newsletters were issued annually, between 2005 and 2015, with Mr L's P60s. Each newsletter has a section relating to "Changes we need to know about" and this included the need to inform TP of re-marriage and co-habitation.
13. Mr L says he had an honest belief that he was entitled to his pension for life and was unaware of any clause that stated remarriage would change that. He says he has no specific recollection of claiming his spousal benefit because of the trauma surrounding that time. He says he had the assistance of Mrs L's former employer and that paperwork was not completed by him, although he agrees that he signed the form. He told TP about his remarriage as soon as they asked him to confirm his marital status. He does not consider that notification in a newsletter is sufficient to ensure that such a key term was known and adhered to. He says the pension formed a significant part of his monthly outgoings and he is unable to afford to repay the overpayment. He considered that the date of contact with him, around the anniversary of his late wife's death, was insensitive.

14. In a telephone conversation on 23 June 2016 he said that he could not recall receiving any information from the scheme other than P60s. It was possible that he received something in the first few years but he moved 8 years previously and had no copies of anything.
15. As part of the Adjudicator's investigation of the complaint, it was discovered that TP had incorrectly calculated the tax on part of the overpayment in the 2010/11 tax year. As a result, the overpayment has reduced to £20,000.25.
16. TP have apologised on two counts to Mr L. First, the timing of their contact within him in December 2014 and that this coincided with the 10th anniversary of Mrs L's death. Second, for the incorrect calculation of the overpayment. However, TP conclude that they are entitled, under the relevant regulations, to seek recovery of the overpayment and that all steps were taken to inform Mr L of his obligation to keep them informed of his circumstances (this being Leaflet 450 and the annual newsletters) They explained that the time which elapsed before they stopped payment was due to the scale of the exercise being carried out.
17. Mr L remained unhappy with the responses from TP and the Adjudicator. In his recent submission he says:

"I still disagree to the fact that I received this leaflet and that they send out newsletters, I would suggest that they do a survey of all there [sic] members and I'd say that most would say that they haven't received a newsletter. I'm also very disappointed to now know that teachers pensions now pay out spouses for life, which was in process before my wife's death and came into force shortly after. Also with regards to taking payments from their letter in December it states that I MAY NOT be entitled to receive these payments not that I'm not eligible to receive them."

Adjudicator's Opinion

18. Mr L'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:
 - Under the relevant regulations, TP were entitled to seek recovery of the overpayment as Mr L is only eligible for a widowers' pension up until re-marriage or co-habitation.
 - Mr L did not have an argument against recovery of the overpayment as he ought to have known of his obligation to inform TP of changes to his circumstances. It was noted that TP had provided Mr L with Leaflet 450 in 2005, but the Adjudicator was sympathetic in regards to the circumstances in which this was provided. However, the Adjudicator was also of the view that it was more likely than not that Mr L was provided with the newsletters which TP say were sent with annual P60s.

- The Adjudicator recognised that the timing of TP's contact with Mr L was insensitive, but could not be considered as maladministration.
 - Given the reasons put forward by TP, the Adjudicator felt the delay between Mr L submitting the Re-marriage Declaration Form and TP's contact with him five months later was reasonable.
19. Mr L did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr L has 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 L for completeness.

Ombudsman's decision

20. Under the Regulations, TP are entitled to seek recovery of the overpayment.
21. I understand Mr L's disappointment that after Mrs L died, the TPS regulations changed to allow a benefit to be paid to widow(er)s for life. However, TP must abide by the regulations relevant to Mr L. These clearly state that the widowers' pension ceases on re-marriage or co-habitation, as the late Mrs L was not in service as of 31 December 2006.
22. Mr L has recently argued that, should TP undertake a survey of members, most would say that they had not received a newsletter. This is conjecture on Mr L's part and neither he nor I can assume what other members of the TPS may or may not have received. I can only consider, on the balance of probabilities, whether or not Mr L was sent and should have received the newsletters. Considering that TP say that the newsletters were sent with each P60, over a 10 year period, it would be unlikely that they failed, in each instance, to send him a newsletter with his annual P60 I therefore find that it is more likely than not that Mr L was informed of his obligations to contact TP when his circumstances changed in 2010.
23. Mr L stresses that the letter he received in December 2014 stated he "may not" be entitled to receive payments. The purpose of the letter was to ascertain whether Mr L was still eligible to receive payments. It could not state one way or the other what his entitlement was. However, it went on to say "... Failure to inform us of a change in status could result in an overpayment being made, and subsequently the accrual of debt." The Re-marriage Declaration Form attached was also very clear in informing Mr L that he was not entitled to a benefit following re-marriage. Since the December 2014 letter made the circumstances in which overpayment would arise clear, I find no injustice arose as a result of the time which elapsed before the pension payments were stopped.
24. As there is no justifiable argument against the recovery of the overpayment, it is now up to Mr L and TP to mutually decide how this is to be repaid.

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25. Therefore, I do not uphold Mr L's complaint.

Karen Johnston

Deputy Pensions Ombudsman

4 October 2016