

Ombudsman's Determination

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

Outcome

1. I do not uphold Mr G'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 G is unhappy because TP is attempting to recover an overpayment of £7,327.20 from him. Mr G received this overpayment as part of his benefits from the Scheme between February and December 2014.

Background information, including submissions from the parties

4. Mr G's former wife was a member of the Scheme and began receiving a pension from it in September 2005. On 6 April 2012, she sadly passed away.
5. On 12 April 2012, TP was informed of the death and an application pack for death benefits was to be sent to Mr G following this. The evidence indicates that it may not have been issued, and so another pack was sent on 25 April 2012.
6. TP says the pack would have contained an application form for a spouse's pension, as well as a leaflet entitled "Survivor and Death Benefits" with further information about eligibility for the spouse's pension.
7. On 1 May 2012, Mr G signed the application for his benefits, and began to receive a spouse's pension from the Scheme the following month. TP has provided a copy of his signed application form.
8. On 14 February 2014, Mr G remarried.
9. Under regulation 94 of The Teachers' Pension Regulations (2010) (**the Regulations**), which governed the Scheme at the time, Mr G ceased to be eligible for a spouse's pension as a result of remarrying. In particular, regulation 94 applies to recipients of

spouse's pension where the member was not in pensionable employment on or after 1 January 2007, and says the benefits will cease upon remarriage or cohabitation.

10. Mr G says he was not aware that his eligibility for the pension could cease, so he did not inform TP when he remarried.
11. In 2014, TP initiated a Remarriage Exercise whereby it began to send relevant recipients of spouse's pensions an annual declaration to complete detailing their circumstances. In particular, this declaration asked the recipients to confirm whether they had remarried or begun cohabiting with a new partner.
12. On 31 December 2014, TP issued Mr G's declaration form to him. Mr G telephoned a week later to confirm he had remarried. TP stopped his spouse's pension and calculated the overpayment which had accrued since his remarriage. It then requested that Mr G repay the £7,327.20 he had been overpaid.
13. Mr G complained that he had not been aware remarriage would affect his spouse's pension, and as such, he had received and spent the money in good faith.
14. In response, TP highlighted that Mr G had received the Survivor and Death Benefits leaflet, which explained the spouse's pension would cease upon remarriage. TP also said that the annual newsletters sent to Mr G included reminders to inform it of any changes to his circumstances, such as remarriage.
15. Mr G says he did not receive any documents when his former wife passed away, except for a letter explaining what benefits he would receive. He does not recall receiving an application form or a leaflet.
16. Mr G says he may have received the annual newsletters, but argues that he did not read them as he would not have reasonably expected them to contain such important information.
17. TP has argued that, whilst it may have amended or improved its processes in 2014, this does not mean they were insufficient beforehand. TP has highlighted that our Office has previously considered the relevant processes it had in place before 2014, and determined that they were sufficient. In support of this claim, TP has pointed to Determinations previously issued by our Office on similar cases (e.g. reference PO-11441).
18. Mr G says that the government will save money now it does not need to pay his former wife a pension. At the very least, he feels he should therefore not be required to repay the overpayment. Lastly, Mr G has highlighted that his former wife never informed him the spouse's pension may cease, and he believes she was under the impression it would continue indefinitely.

Adjudicator's Opinion

19. Mr G'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 Adjudicator was of the view that Mr G's former wife's understanding of the spouse's pension was not a relevant factor in this dispute. There was evidence she was provided with documentation explaining how the spouse's pension worked. However, in any event, Mr G does consider that it is relevant. In particular, the Adjudicator believed the key issue is whether TP provided Mr G with sufficient information, such that he was reasonably aware of the eligibility criteria for the spouse's pension.
 - The Adjudicator noted that this Office has previously issued Determinations confirming that the relevant processes TP had in place before 2014 were sufficient. With these Determinations in mind, the Adjudicator did not believe Mr G could rely on a limitation defence, a change of position defence, or an estoppel defence.
 - The Adjudicator acknowledged that Mr G says he did not receive the Survivor and Death Benefits leaflet. However, Mr G also did not recall receiving an application form for the spouse's pension. TP has evidenced that Mr G completed an application for the spouse's pension and so, on balance, the Adjudicator believed he would have received the Bereavement Pack containing the relevant leaflet.
 - Furthermore, if the Bereavement Pack did not contain the Survivor and Death Benefits leaflet, the Adjudicator believed that, the remaining contents would have indicated it was missing.
 - Lastly, the Adjudicator understood Mr G's comments that the government will save money now it does not need to provide a pension to his former wife. However, the Adjudicator noted that TP is only able to pay benefits from the Scheme in accordance with the Regulations. From the date Mr G remarried, the Regulations state he was no longer eligible for a spouse's pension. The Adjudicator concluded that TP has therefore acted correctly in stopping Mr G's spouse's pension, and requesting he repay the overpayment.
20. Mr G did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr G provided his further comments, which included the following points:-
- Mr G did not receive the Survivor and Death Benefits leaflet and he had no reason to believe he was missing any documentation from TP. He questions how many times TP believes it sent this to him, and says that if he had received it he would not have remarried.
 - Mr G says he never felt the need to read the annual newsletters from TP and he would not have reasonably thought they would contain such important information.

- Overall, Mr G iterates that he acted in good faith.
 - Mr G acknowledges that our Office deemed TP's processes before 2014 sufficient, but he says that does not mean its processes were fair.
 - Mr G highlights that his wife was misled in relation to how the spouse's pension worked, and she may have paid additional contributions on the basis it would not cease, even if he remarried.
 - Mr G acknowledges that TP must act in accordance with the Regulations. However, he believes that the Regulations should be changed or interpreted differently on this occasion.
 - Lastly, Mr G is upset that our Office appears to believe everything TP says and nothing he says.
21. Mr G's further comments do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr G for completeness.

Ombudsman's decision

22. It is understandable that Mr G is unhappy an overpayment has arisen, particularly if he did not receive information about when his eligibility for the spouse's pension may cease. However, I have to reach a decision by weighing up all the available evidence and deciding on balance what has happened in this case.
23. The evidence indicates that TP provided sufficient information, such that Mr G ought reasonably to have been aware of the eligibility criteria for the benefits he was receiving. In particular, there is evidence to indicate that Mr G was sent a Bereavement Pack at least once. It is also clear that he received some documentation, as he signed and returned the application form for the spouse's pension.
24. Based on the evidence provided, I cannot definitively state that the Survivor and Death Benefits leaflet was or was not received by Mr G. But, TP has evidenced that the documents for the Bereavement Pack were all printed automatically together at the time. As such, it is more likely than not that the Survivor and Death Benefits leaflet was included in the Bereavement Pack sent to Mr G.
25. Mr G has emphasised that he never received the Survivor and Death Benefits leaflet. However, initially, he also did not recall receiving any documentation from TP. However, he obviously received the application form, so, it is quite likely that Mr G may have forgotten what documentation he received at the time.
26. Mr G has indicated that he also received the annual newsletters, but that he did not read them as he did not reasonably believe they contained important information. However, I note that the newsletters only consisted of a few pages. As a recipient of

valuable benefits from the Scheme, I would have expected Mr G to read these documents to ensure he did not miss any information relevant to him.

27. I am satisfied that TP's processes, before 2014, for ensuring that recipients of spouse's pensions were reasonably aware of the eligibility criteria for their benefits, were sufficient. Mr G may not agree with this, but that is my view. In particular, I do not find that TP's actions have amounted to maladministration.
28. For completeness, I do not believe that Mr G's former wife's understanding of the eligibility criteria for spouse's pensions is relevant in the context of this complaint. This complaint relates to an overpayment of benefits to Mr G. I am therefore only interested in whether TP ensured that Mr G was reasonably aware an overpayment may occur. If Mr G believes his former wife was misled regarding the benefits she was accruing under the Scheme, then that is a separate matter.
29. Lastly, I do not have the power to amend the Regulations. These are laid out in statute and can only be amended by Parliament. The relevant wording of the Regulations is also unambiguous, and TP has given them their plain and ordinary meaning in applying them to Mr G's case. As such, TP has not made an administrative error and I do not uphold Mr G's complaint.

Anthony Arter

Pensions Ombudsman
27 February 2018