

## Ombudsman's Determination

Applicant	The estate of the late Mrs A (represented by Mr I)
Scheme	Teachers' Pensions Scheme (the <b>Scheme</b> )
Respondent	Teachers' Pensions

## Outcome

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

## Complaint summary

3. Mr I says, following the death of his grandmother, Mrs A, he acted on incorrect information provided by Teachers' Pensions and personally paid back an amount of overpaid pension. The money should instead have been deducted from the short term pension payable to her spouse.

## Background information, including submissions from the parties

4. Mr I is the executor and sole beneficiary of Mrs A's estate (the **Estate**). Mrs A was receiving a pension from the Scheme.
5. Mrs A died on 25 December 2014. She was survived by her spouse, Mr A.
6. The Scheme pension is payable up to and including the date of death. Regulation 95 of the Teachers' Pensions 2010 Regulations (the **Regulations**) provides for the payment of an adult short term pension during the first three months after a member's death. Regulation 96 contains provisions for long term adult pensions.
7. On 6 January 2015, the solicitors dealing with the Estate (the **Solicitors**) notified Teachers' Pensions that Mrs A had passed away.
8. On 15 January 2015, Teachers' Pensions replied enclosing a 'death notification and application for death benefits' form for completion (the **Application**) with explanatory notes.

9. On 16 February 2015, the Solicitors returned the Application which had been completed by Mr I. In 'Part B' of the form, he indicated that the Solicitors were either dealing with the Estate, or acting on his behalf, and instructed Teachers' Pensions to liaise with the Solicitors.
10. On 26 February 2015, Teachers' Pensions notified the Solicitors that Mrs A's pension had been overpaid by £260 (net) from 26 December 2014 to 1 January 2015. Teachers' Pensions advised that it had a duty to recover the overpayment and asked for it to be repaid from the Estate, but gave the option of offsetting it against Mr A's spouse's pension, if he agreed to this in writing and provided his marriage certificate. Teachers' Pensions said if they were currently applying for grant of probate, and were not yet in a position to repay the money, they should contact Teachers' Pensions to prevent any unnecessary chasers.
11. The Solicitors replied back on 27 February 2015, confirming that they were acting for Mr I, the executor of the Estate. They said a copy of the grant of probate was enclosed and that they would arrange for the overpaid pension to be paid back immediately.
12. The same day, Mr I contacted Teachers' Pensions and paid the money to the Scheme. Mr I says, as there were no funds in the Estate at the time, he repaid Teachers' Pensions out of his own personal funds instead.
13. On 17 March 2015, Teachers' Pensions wrote to the Solicitors as no grant of probate was enclosed in their letter of 27 February 2015. On 31 March 2015, Teachers' Pensions received a grant of probate, naming Mr I as the executor of the Estate.
14. Teachers' Pensions says, as the grant of probate confirmed that Mr A was not the executor of the Estate, and the money had already been repaid by Mr I, no further action was required.
15. Where the executor of a deceased member's estate is also entitled to an adult pension from the Scheme on a member's death, Teachers' Pensions may allow any overpaid member's pension to be offset against the adult pension.
16. Teachers' Pensions has explained that the overpayment is due from the estate and is not part of the spouse's pension. It is often the case that the recipient of a spouse's pension is also the executor of the estate and therefore it is convenient to TPS and the [scheme] beneficiary to offset in this way, but such an offset against an adult pension can only be done with the agreement of the recipient.
17. While Teachers' Pensions acknowledges that it could have been clearer on the above point, it says both the Solicitors and Mr I appeared to have aware of the position at the time because he repaid the money to the Scheme.
18. Teachers' Pensions does not accept responsibility for the financial loss Mr I is claiming. It says it has a duty to recover any overpayment, it is satisfied that the

applicable regulations were correctly applied, and that the correct process was followed in this case.

19. Teachers' Pensions says it made it sufficiently clear that the overpaid pension was due from the Estate and confirmed that repayment could be delayed until grant of probate had been obtained. Mr I appears to have accepted this at the time. It was his decision to repay the overpayment personally, in his capacity as the executor of the Estate. It is open to him to request reimbursement directly from the Estate.
20. Mr I does accept that the Estate should be responsible for repaying the money. He says, although the Estate has not yet been distributed, he personally paid the overpayment because of wrong information provided by Teachers' Pensions. The overpayment should be recovered from Mr A's short term spouse's pension, which is a continuation of the member pension. In his view, there has been no actual overpayment, the money taken from him is simply being passed to Mr A in the form of a spouse's pension.
21. Mr I says that as the sole beneficiary of the Estate, he has been financially disadvantaged as a result of the repayment. He considers a refund of the amount of £260 with interest would be reasonable compensation.

### **Adjudicator's Opinion**

22. Mr I's complaint was considered by one of our Adjudicators who concluded that no further action was required. The Adjudicator's findings are summarised briefly below:-
  - The overpayment of pension is recoverable. Teachers' Pensions acted correctly in asking for it to be repaid from the Estate.
  - The spouse's pension is a separate entitlement that Mr A has under the applicable regulations. An offset cannot be made without his prior consent.
23. Mr I did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr I has provided his further comments but these 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 I for completeness.

### **Ombudsman's decision**

24. Mr I says the Application confirmed that he was the grandson and the executor of the Estate. Furthermore, his solicitors unequivocally stated that he was the executor of the Estate. Teachers' Pensions cannot choose which sequence of events it wishes to rely on. It initially claims that it was not aware until it received the grant of probate on 31 March 2015, that he was the executor, and yet acknowledges that he personally settled the overpayment a month earlier in his capacity as the executor.

25. Teachers' Pensions had no reason to write to his solicitors on 26 February 2015, about the option to offset the overpayment against Mr A's short term pension because Teachers' Pensions had already been made aware that Mr A was not the executor of the Estate. Given that Teachers' Pensions made it clear that all that was required was for Mr A to agree the offset, he cannot accept Teachers' Pensions' subsequent view that the money cannot be recovered from his pension.
26. Mr I explains that he made the payment personally solely because Mr A refused to cooperate. Contrary to Teachers' Pensions' assertions, he was not given the option to wait for funds to become available before the money was repaid. Teachers' Pensions was only prepared to allow more time if they were awaiting the grant of probate, which they were not.
27. Mr I says Teachers' Pensions were clearly confused about being able to offset the overpayment against Mr A's pension. Neither he nor his solicitors had any reason to suspect that they had been misinformed by Teachers' Pensions.
28. Mr I questions how Teachers' Pensions had intended to recoup the money from Mr A's pension if, as it now claims, the short term pension is a separate entitlement from Mrs A's pension, and, that an offset is not permitted under the relevant regulations. It is evident that Teachers' Pensions would not have been able to offset the overpayment against Mr A's short term pension even if he had been the executor of the Estate.
29. There are essentially three parts to Mr I's complaint. Firstly, Teachers' Pensions provided misleading information which gave him the reasonable expectation that the overpayment could be offset against the short term pension payable to the deceased's surviving spouse. Secondly, Teachers' Pensions failed to make it clear that the overpayment could be settled when the Estate was being distributed. Thirdly, recovery ought to have been made against the spouse's short term pension, which effectively, was a continuation of his late grandmother's pension. I will consider each in turn.
30. The fact that Mrs A's pension was overpaid from 26 December 2014 to 1 January 2015 and that Mr I was the executor of her estate is not in dispute.
31. In its letter of 26 February 2015, Teachers' Pensions advised the option, with Mr A's consent, for the overpayment to be offset against his pension.
32. I fully accept that Teachers' Pensions ought to have made it clear that any such offset was only an option if Mr A was also the executor of the Estate and wanted it to happen. However, I do not find that the omission is sufficiently serious to justify a finding of maladministration in this case.
33. In making the payment on 27 February 2015, Mr I effectively acknowledged that the money was payable from the Estate and therefore settled it in his role as the executor. If there were no monies available in the Estate at the time, he ought to have informed Teachers' Pensions of this.

34. I find Mr I's assertion that the overpayment should instead be recovered from Mr A's pension to be without basis. The Regulations provides for an annual adult pension to be payable during the first three months after a member's death, at the annual rate of the retirement pension. Mr A's short term pension, and the pension payable to him at the long term rate, form his own personal pension entitlement under the Scheme in respect of his late wife's pension. Receipt of a pension does not make Mr A liable to repay money owed to the scheme by the estate.
35. Ultimately, it was Mr I's decision to repay the overpayment out of his own personal funds, in his capacity as the executor of his grandmother's estate. Therefore, I do not uphold his complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
17 November 2017