

Ombudsman's Determination

Applicant	Mrs S
Scheme	Teachers' Pensions Scheme (the Scheme)
Respondents	Teachers' Pensions (TP)

Outcome

1. I do not uphold Mrs 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 has complained because she disagrees with the amount of overpaid pension TP says she received and should repay.

Background information, including submissions from the parties

4. Mrs S' husband was in receipt of his benefits from the Scheme when he passed away on 1 November 2009. TP were not informed of Mr S' death until June 2011, and consequently, between 2 November 2009 and June 2011 Mrs S continued to receive Mr S' full pension from the Scheme.
5. Following notification of Mr S' death, TP wrote to Mrs S and informed her that Mr S' pension payments will cease and, it asked Mrs S to provide it with further information to ensure that the benefits that are payable are paid. In January 2012, TP sent a further letter to Mrs S and informed her that she needed to repay the overpaid pension she had received following her husband's death. In addition, TP provided her with details of the amount of overpaid pension as well as the amount of widow's pension she was entitled to. In the same letter, TP informed Mrs S of the amount of overpaid pension that was outstanding after it deducted the arrears she was owed.
6. Between January 2012 and January 2016, there was an exchange of correspondence between TP and Mrs S regarding the amount of overpaid pension as Mrs S disagreed with TP's calculation of the overpaid sum. This resulted in Mrs S making a formal complaint to the Scheme through both stages of its Internal Dispute Resolution Procedure (**IDRP**).

7. In its IDR stage 1 response to Mrs S in April 2016, TP reiterated why the overpayment occurred and, it provided a breakdown of the payments that had been paid to Mr S' bank account following his death. It also informed Mrs S that none of the payments, following Mr S' death were returned. TP explained to Mrs S that it is legally obliged to try to recover the overpayments in full.
8. In the IDR stage 2 response, the Department for Education (**DfE**) said that:

“TP has a duty under the [Teachers' Pensions Regulations] to ensure that pension benefits are correctly calculated and paid and that they only remain in payment while the recipient remains entitled to them. Your late husband's pension should have ceased on his death and on notification of the death, TP would have provided you with information on how to apply for the widow's pension. As TP were only notified of the death following receipt of a declaration of continuing entitlement form, TP are in the unusual position of having to seek repayment of the pension payments made to your husband as well as paying the widow's pension that you are entitled to.”
9. Unhappy with the IDR stage 1 and 2 responses, Mrs S referred her complaint to this office and said, she does not disagree that she should repay the overpayments, but she disagrees with the figures that TP has quoted.
10. In response to Mrs S' complaint TP said:
 - The overpayment of Mr S' pension occurred because Mrs S did not inform TP of Mr S' death in a timely manner.
 - The calculation of the overpayment as well as the calculation of Mrs S' widow's pension is correct and has been explained to her in great detail. The amount cannot be recalculated simply because Mrs S disagrees with the calculations.
 - TP does not deduct the full pension arrears from the overpaid sum because it has to leave enough pension in payment so that tax can be deducted.
 - TP provided a breakdown of how Mrs S' pension arrears were used to offset the outstanding overpayment and also said that Mrs S is due to complete the repayments at the end of December 2017.
11. Mrs 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:-

Adjudicator's Opinion

12. There was no dispute that Mrs S received an overpayment of benefits from the Scheme following her husband's death in 2009. What is in dispute is the amount of overpaid pension Mrs S received.

13. The Adjudicator appreciated that Mrs S' calculation of the overpaid pension produces a lower figure than that of TP's. However, although Mrs S' calculations produced a lower figure than TP's, it did not mean that TP's calculations were incorrect.
14. TP provided a detailed explanation as well as the calculations on how Mrs S' overpayment had been determined. After reviewing the information TP provided, the Adjudicator did not consider that its calculation of the overpayment was incorrect. Mrs S correctly states that she did not receive a pension between July 2011 and January 2012, however, her pension for the said period was added to the pension arrears she was owed and then offset against the overpayment. This has been evidenced in the calculations that TP sent to this office and previously to Mrs S.
15. As the Administrator of the Scheme, TP has a duty ensure that members and if applicable, their dependents are paid the correct pension to which they are entitled. Consequently, the Adjudicator did not consider that the Ombudsman would uphold Mrs S' complaint.
16. It was therefore the Adjudicator's opinion that this complaint should not be upheld.
17. TP accepted the Adjudicator's Opinion but Mrs S did not. In response to the Adjudicator's Opinion Mrs S made the following points:-
 - In a letter TP sent her in June 2016 it said that there was no entitlement to payment of any pension until a valid written application was made. She queried whether that meant she was not entitled to payment of any pension between November 2009 and May 2011, and whether or not that was the reason for the difference between her overpayment calculations and TP's.
 - She had sent her husband's death certificate to TP immediately after his death. TP not receiving it might have been due to the unreliable postal system because she resides outside of the UK.
 - She agrees that she should have realised that the full pension was still in payment but she was in a bad state of health and mind following her husband's death and did not check her account.
18. The complaint was passed to me to consider. 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

19. TP has previously provided a breakdown to Mrs S of the pension arrears she was owed between November 2009 and May 2011 and it also explained that it had off-set the arrears she was owed against the overpayments she had received. TP has also accounted for Mrs S' dependents pension payable for the period between November 2009 and May 2011. I understand Mrs S' disappointment that TP has asked her to

PO-15794

repay a higher sum than she considers she owes. However, I have not seen any evidence to suggest that TP's calculation of the overpayment is incorrect.

20. Therefore, I do not uphold Mrs S' complaint.

Anthony Arter

Pensions Ombudsman
20 December 2017