

Ombudsman's Determination

Applicant	Mrs N
Scheme	Teachers' Pension Scheme (the Scheme)
Respondents	Teachers' Pensions (TP) The Department for Education

Outcome

1. I do not uphold Mrs N'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 N's complaint is that TP have not re-instated payment of her spouse's pension from the Scheme following the death of her second husband in August 2016.

Background information, including submissions from the parties

4. Mrs N's first husband was a retired member and in receipt of retirement benefits from the Scheme when he died on 28 July 2005. The regulations in force at that date were the Teachers' Pensions Regulations (1997) (**the 1997 Regulations**).
5. On 1 August 2005, TP sent Mrs N a letter enclosing an application for death benefits form, notes for completing the form and Leaflet 450 explaining the benefits payable and how they are calculated. Leaflet 450 included the following information:

"Spouse's pension payable for life unless spouse re-marries or cohabits.
The pension must then stop. The spouse's pension will be restored following the death of the second husband or cohabitee provided that the widow(er) is not in receipt of a pension from the second marriage or cohabitation which is higher than the first."
6. Mrs N received a supplementary death grant of £20,633.58 from the Scheme and a spouse's pension of £6,779.99 per annum was put into payment.
7. Mrs N remarried on 7 April 2007 and she notified TP of this in a phone call on 8 May 2007. TP wrote to Mrs N on 25 May 2007 confirming that her spouse's pension had been stopped with effect from 7 April 2007.

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8. Mrs N's second husband died on 22 August 2016.
9. Mrs N informed TP of her second husband's death on 25 August 2016 and asked that her original spouse's pension be re-instated. TP sent Mrs N a letter on the same day saying:

"As I stated in our conversation, once a spouse's pension has ceased due to remarriage it cannot restart once the second marriage ends. There are exceptional circumstances in which the pension can restart if you can demonstrate that you are experiencing financial hardship without it.

I have enclosed a Statement of Income and Expenditure. Please complete and return it to us..."

10. Mrs N disagreed with TP's decision and raised a complaint under stage one of the internal dispute resolution procedure (**IDRP**). TP provided its stage one IDRP response on 6 December 2016 as follows:

"Regrettably the version of Leaflet 450 you refer to does not accurately reflect the legislation...The leaflet may have been amended to reflect the provision in the Scheme that where an adult dependant remarries another teacher and a subsequent spouse's pension is lower than the spouse's pension resulting from the first marriage, the pension from the first marriage can be paid instead of the pension from the second marriage.

...The 1997 Regulations provide:

E30 Commencement and duration of long-term family pensions

(3) Unless the secretary of State determines otherwise in the particular case, and subject always to regulation E1(3) c and (d) (guaranteed minimum pension for surviving spouse), an adult pension is not payable during or after any marriage or period of co-habitation outside marriage.

...There is no automatic reinstatement of a spouse's pension, regardless of whether the reason for stopping is remarriage or co-habitation. Teachers' Pensions can, on behalf of the Secretary of State, give consideration to reinstatement on the grounds of hardship.

Hardship is assessed on a case by cases basis but essentially it would be where the level of income is detrimental to you or your family's welfare..."

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11. Mrs N appealed the stage one IDRP decision on 25 May 2017. In her letter she said:
 - She was advised in the documentation, and on the phone, that her pension would stop if she remarried but that if she divorced her new husband or if he died then her previous pension would be re-instated.
 - She made a financial judgement to get married based on the information provided and the advice given.
 - If Leaflet 450 does not accurately reflect the situation why was it issued in May 2005?
 - Her first husband's pension is not subject to the 1997 Regulations as he commenced teaching in 1970. At that time the Regulations were different.
 - TP say that the spouse's pension will only be re-instated if a teacher remarries another teacher. This is a form of discrimination against non-teachers.
 - Her first husband took his benefits in the knowledge that on his death she would be provided for. He knew that as she was 10 years younger than him she would possibly re-marry. If her first husband had been aware that his pension would cease he would have transferred his benefits away from the Scheme.
12. The Department for Education did not uphold Mrs N's complaint at stage two of its IDRP.
13. Mrs N had several meetings with her independent financial adviser in relation to her proposed plans to re-marry, liquidate her assets and move abroad. The relevant attendance notes of the meetings are summarised as follows:
 - 23 September 2005 - "...a document that describes the rules for the pension...I have pointed out to her the section about remarrying that this would cease however would be re-commenced again on death of second husband..."
 - 26 May 2006 - "...he is a taxi driver and works for a company, he rents a property... her investment income would have to provide her with an income until she obtained her permit this could take time as she needs to obtain residency and she can only obtain that if she is married...[R's] pensions would stop under the terms and conditions of the scheme however this would be reinstated as per the terms of the scheme booklet that was supplied...I have asked her to check this with teachers' pension.."
 - 8 February 2008 - "[Mrs N] has returned back to the UK...her husband's business has not taken off and she cannot obtain permit for work and has had her residency application denied – she is living off the last of her savings..."
14. After the investigation into Mrs N's complaint had started she completed the Statement of Income and Expenditure required by TP to assess her financial circumstances. In summary this stated:

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- Mrs N's income exceeded her outgoings by approximately £430 a month.
- She had received a sum of £73,165.25 on the death of her second husband that had been invested and provided an income of £700 per month.
- She owed approximately £10,146.00 to credit card companies. The minimum monthly repayments amounted to £525.
- She would receive retirement benefits of approximately £17,000 per annum from the age of 65.

Mrs N's position

15. Mrs N made additional submissions as follows:

- Before her first husband died she lived in a large three-bedroom bungalow with a large garden. The property was mortgage free and she had a new car. She now lives in a 2-bedroom upper floor flat and has a 10-year old car.
- She met her second husband in Barbados and decided to move there having liquidated her assets and having given up her first husband's pension.
- The proceeds from her first husband's death grants was over £120,000. This was invested to provide an income as she was unable to obtain employment in Barbados due to citizenship. She applied for this in 2007 however citizenship was not granted until July 2016 just 5 weeks before her second husband died.
- She moved back to the UK in March 2008 as she had used the majority of her capital and had to return to the UK to seek employment to avoid financial hardship.
- Her second husband did not have a permanent income in Barbados and so was unable to support her.
- In December 2008 she purchased a small flat using a large proportion of her capital as a deposit to obtain a mortgage.
- She relied on TP's information in 2005 to make informed decisions about her future, knowing she would have access to her first husband's pension should anything happen to her second husband in Barbados.

TP's position

16. TP has made the following submissions:

- TP may exercise its discretion under Regulation 94(7)(ii) to reinstate a spouse's pension. However, in order to do so, it must consider the member's financial circumstances.

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- The requirement for the spouse's pension to stop on re-marriage goes as far back as at least 1976 and Mrs N would always have had to prove financial hardship for the pension to be re-instated.
- It is not possible to know whether Mrs N's first husband would have transferred his benefits away from the Scheme for the benefit of Mrs N. But had he done that he would not have received his own retirement benefits from the Scheme.
- Mrs N's first husband had 33 years' service and he received "premature retirement" benefits at the age of 54 which consisted of an unreduced pension and an unreduced lump sum of 3 x the pension. Following his death Mrs Wilson received a supplementary death grant, a short-term pension and a long-term pension.
- Leaflet 450 stated that the reinstatement of a spouse's pension was contingent upon the financial position of the spouse following the death of the second spouse. The leaflet did not say that there is an automatic right to reinstatement of the pension. The financial position of the spouse could not be known until the relevant event occurred, at which time if the spouse sought reinstatement of the pension the matter would be investigated.
- It is clear that Mrs N's income exceeds her required monthly expenditure. Although she has some loan and card debts the monthly payments required to clear the debts are manageable on her income.
- Mrs N is in gainful employment and has a supplementary monthly income of £700 from her investments. Although she may feel she does not have the same standard of living she has previously enjoyed TP are not able to say she is experiencing financial hardship or that she is unable to support herself financially. She also has the prospect of an occupational pension when she retires followed by a state pension.
- In the circumstances TP are unable to re-instate Mrs N's spouse's pension.

Adjudicator's Opinion

17. Mrs N'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:-

- There is no dispute that the 1997 Regulations provide that a spouse's pension must stop on re-marriage or co-habitation.
- The Regulations that apply are those in force at the time a member or beneficiary becomes entitled to the relevant benefit. In this instance, the relevant date is 28 July 2005, the date of Mrs N's first husband's death. The regulations in force at that time were the 1997 Regulations.

- Regulation E30 of the 1997 Regulations provides that “There is no automatic reinstatement of a spouse’s pension, regardless of whether the reason for stopping is remarriage or co-habitation. Teachers’ Pensions can, on behalf of the Secretary of State, give consideration to reinstatement on the grounds of hardship.”
- The information in Leaflet 450 does not reflect the wording in the Regulation E30 of the 1997 Regulations. Leaflet 450 states that the spouse’s pension will only be re-instated if the widow is not in receipt of a higher pension from the second marriage whereas Regulation E30 states that the spouse’s pension will be re-instated on grounds of financial hardship.
- TP have said that Leaflet 450 may have been amended to reflect the provision in the Scheme where an adult dependant remarries another teacher. If that is so, then it is not clear from the information provided in the leaflet. Leaflet 450 is, at best, misleading and does not accurately reflect that a spouse’s pension will only be re-instated on grounds of financial hardship.
- In a claim for negligent misstatement the applicant must have been in a position where they could not reasonably have known that the information was incorrect, and secondly, the reliance would need to be reasonable. Mrs N could not have known that the information in Leaflet 450 would not apply to her unless she re-married another teacher.
- For Mrs N’s defence to succeed it must have been reasonable for her to have relied on the information in Leaflet 450 to the extent that she did. Leaflet 450 is clear that re-instatement of the spouse’s pension is not automatic but is contingent on whether the widow becomes eligible to receive a pension following the death of her second husband.
- Mrs N was aware of her second husband’s financial position before she left the UK to remarry. The contemporaneous notes of her meetings with her financial adviser state that her second husband worked for a company as a taxi driver. There is no evidence that Mrs N discussed with her financial adviser at that time whether, or not, her second husband had any pension provision or would, in the future, be in a position to provide for her on his death.
- Mrs N’s decision to re-marry was made entirely on the basis that her spouse’s pension from the Scheme would automatically be re-instated should her second husband die regardless of what her financial position might be at that time. Therefore, it was unreasonable for Mrs N to have relied on the information in Leaflet 450.
- It is not possible to know what actions Mrs N’s first husband would have taken had he been aware of his wife’s potential position should she remarry. However, had he transferred out of the Scheme he would not have received his own retirement benefits nor would Mrs N have received her spouse’s pension following his death.

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- TP appropriately considered Mrs N's financial circumstances before concluding she was not entitled to re-instatement of the spouse's pension.

18. TP accepted the Adjudicator's Opinion.

19. Mrs N did not accept the Adjudicator's Opinion and provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs N for completeness. Mrs N says that:

- Mr N understood that on his death his wife would receive a spouse's pension irrespective of affordability.
- She remarried and gave up her pension based on the advice given in the information provided by TP. She would not have remarried had she been given the correct information.
- TP should not have given out the Leaflet 450 and they should not have stated on the phone that her spouse's pension would be re-instated if her second husband died. If the leaflet was inaccurate then her pension should not have been stopped either.
- She is being discriminated against because she has not spent all of her funds. She has gone back to full time work to try and support herself independently and, as a result of this, has made her own pension provision.
- TP have not provided clear guidelines of what they consider constitutes hardship.

Ombudsman's decision

20. Mrs N's complaint is that TP have not re-instated payment of her spouse's pension from the Scheme following the death of her second husband in August 2016.

21. Regulation E30 of the 1997 Regulations provides that "There is no automatic reinstatement of a spouse's pension, regardless of whether the reason for stopping is remarriage or co-habitation. Teachers' Pensions can, on behalf of the Secretary of State, give consideration to reinstatement on the grounds of hardship."

22. Mrs N states that TP have not provided clear guidelines of what it considers might constitute hardship and says that she is being discriminated against. The decision as to whether an individual is suffering financial hardship is a discretionary one and each case must be considered on its own merits. When exercising its discretion, TP should ensure the decision reached is not perverse, that being one no other reasonable decision maker would make. It should take into consideration all relevant information and not consider any irrelevant factors. TP have provided a clear explanation as to how it reached its decision and the factors they have taken into consideration including the relevant funds Mrs N has available to her and her future retirement

income. TP has satisfactorily demonstrated that it considered all the relevant information, and no irrelevant factors when exercising its decision.

23. Mrs N contends that her first husband understood that on his death his wife would receive a spouse's pension irrespective of affordability. That is correct and that is what happened. Mrs N received a spouse's pension following her first husband's death and that continued until she re-married. There is no evidence to suggest that Mrs N's first husband made any enquiry of TP as to future scenarios that might occur after his death that would cause the payment of the spouse's pension to cease or change. Without more evidence it is simply not possible to reach any sort of conclusion as to Mr N's understanding or what actions he might have taken.
24. I agree that Leaflet 450 should have been clearer and have stated that the information about re-instatement of spouse's pension applies only to an individual who has remarried another teacher and so potentially becomes eligible for a second spouse's pension from the Scheme. However, it does not follow that because one element of the leaflet is unclear, or inaccurate, that the rest of the information in the leaflet can be disappplied. As I have stated above, in paragraph 23, TP were correct to have stopped payment of Mrs N's spouse's pension on her re-marriage in accordance with Regulation E30.
25. The issue I have to consider is whether, or not, Mrs N can demonstrate that she reasonably relied on the information in Leaflet 450 when she made her decision to remarry and whether her reliance caused her the loss she claims. I do not consider that she can prove these elements of her claim for the following reason.
26. Leaflet 450 clearly states that the spouse's pension will only be re-instated **provided** the widow is not in receipt of a higher pension from the second marriage. I can see that, during the discussions with her financial adviser, reinstatement of her spouse's pension was a factor that Mrs N took into consideration. But she did not go as far as considering what her future financial position would need to be to ensure reinstatement. Mrs N maintains that she would not have remarried had she been given the correct information. The burden of demonstrating that rests on Mrs N. I have to consider the factors driving her decision at the time she made it without the benefit of hindsight. In addition to the emotional considerations that naturally surround a decision whether to marry, I bear in mind that Mrs N needed to marry in order to obtain residency in Barbados. I note that the financial adviser told her to check the information in Leaflet 450 but she has produced no evidence that she did so. On this evidence I cannot conclude that the information in Leaflet 450 was uppermost in her decision making process at the time. I cannot be satisfied that but for the misinformation contained in the leaflet she would have remained unmarried. I also consider that it would have been unreasonable to base such a life decision on the contents of the leaflet without first carrying out the check recommended by the financial adviser.

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27. Therefore, I do not uphold Mrs N's complaint.

Karen Johnston

Deputy Pensions Ombudsman
26 March 2019