

Ombudsman's Determination

Applicant	Mrs D
Scheme	Teachers' Pension Scheme (the Scheme)
Respondent	Teachers' Pensions (TP)

Outcome

1. I do not uphold Mrs D's complaint and no further action is required by TP.

Complaint summary

2. Mrs D has complained about the level of partner benefits paid to her from the Scheme following the death of her husband, Mr D, and has said that TP has not counted her late husband's service from February 1963 to March 1972 for partner pension purposes.

Background information, including submissions from the parties

3. Mr D was a member of the National Health Services Pension Scheme (**NHSPS**) from 10 February 1963 to 31 March 1995 when his employment was contractually transferred from NHSPS to the Scheme.
4. In 1995, Mr D applied for and agreed to the transfer of his previous pension rights from the NHSPS to the Scheme. At the time, Mr D had accrued 32 years and 50 days of actual pensionable service in the NHSPS. However, as he was employed as a mental health officer, he was entitled, from the day after he achieved 20 years of such employment to double service under the NHSPS. This took place on 10 February 1983. Therefore, on leaving pensionable employment under the NHSPS on 31 March 1995, he had accrued 44 years and 100 days pensionable service.
5. The provisions of the NHSPS at that time, and the Scheme when Mr D's membership was transferred, limited such service to a maximum of 40 years. %The pensionable service which was used to calculate Mr D's benefits in the NHSPS was limited to 40 years and on transferring these benefits, the service credit in the Scheme was also limited to 40 years.

6. On 30 April 1996, TP wrote to Mr D following his application for the transfer of his pension. It confirmed that under the Teachers' Superannuation Regulations, if Mr D transferred his previous pension benefits into the Scheme, he would have more than 40 years reckonable service to his credit at age 60, so his superannuation benefits would be calculated on the maximum 40 years pensionable service.
7. On 20 June 1996, Mr D queried his award statement in relation to the 40 year restriction and the right to retire at age 55.
8. On 7 September 1996, Mr D signed to confirm the transfer of his NHSPS pension to the Scheme.
9. On 13 February 1997, TP confirmed to Mr D that the transfer of accrued pensions from NHSPS had been completed and 40 years 00 days has been added to the total of his reckonable service in the Scheme.
10. On 1 April 1997, Mr D retired from the Scheme. he had accrued a further two years pensionable service in the Scheme, making a total of 42 years which was restricted to 40 years.
11. On 2 June 1997, Mr D was sent an award statement, which included the basic Scheme family benefit service from 1 April 1972 to the date of retirement and his average salary of £32,569.59. The statement also confirmed a potential partner's pension of £5,089.00.
12. On 11 April 2017, Mr D died and subsequently Mrs D was notified by TP of an uprated widows' pension of £8,412.98 gross per annum to be paid from 12 July 2017.
13. On 13 April 2017, TP incorrectly informed Mrs D that the ongoing widow's pension would be 50% of Mr D's pension.
14. On 25 April 2017, TP recognised the error in the information provided to Mrs D and issued a letter explaining the correct position.
15. On 30 October 2017, Mrs D wrote to NHS Pensions requesting that NHS Pensions confirm that all pension contributions made by Mr D dating back to February 1963 should count towards the calculation of her widow's pension.
16. On 14 November 2017, NHS Pension responded to Mrs D and confirmed that had Mr D remained in the NHSPS the contributions he paid during his membership from 10 February 1963 to 31 March 1995 would have qualified Mrs D, as his widow, to receive a widow's pension at the rate of half the pension Mr D would have received. However, as Mr D transferred all of his pension rights to the Scheme, it was unable to confirm if all of Mr D's contributions for his NHS pension membership would count towards a widow's pension from the Scheme.
17. On 13 December 2017, Mrs D raised a complaint with TP stating that she believed she would receive a widow's pension of half her husband's pension.

18. On 19 January 2018, TP responded to Mrs D's complaint confirming that it would not uphold it as under the NHSPS, provision was made for a member to elect to purchase service prior to 25 March 1972, for widow's pension purposes, however Mr D did not make such an election. It confirmed that there was also provision for the NHSPS to make a deduction from the member's lump sum representing 2/80ths of the lump sum due in respect of the service prior to 25 March 1972 to purchase widow's pension provision for that period of service. TP noted that the lump sum paid by the Scheme to Mrs D on retirement was the full 3/80ths, with no reduction.
19. On 22 March 2018, Mrs D appealed TP's decision, confirming that she disagreed with its decision to not include Mr D's service from February 1963 to March 1972 for widow's pension purposes.
20. On 11 April 2018, the Department of Education (**DoE**) responded to Mrs D's complaint. It confirmed that when Mr D transferred into the Scheme from the NHSPS in 1995, this was on the basis that his then current rights would be protected. However, to be entitled to have that earlier service included, for widow's pension purposes, Mr D would have had to have either paid to cover that earlier service or agreed to give up part of his lump sum in exchange for such cover. The decision maker noted that when Mr D transferred into the Scheme, the NHSPS quoted a transfer value that included a full lump sum entitlement and did not indicate any entitlement to a widow's pension for his pre-1972 service. He further added, at the time that Mr D applied for and was awarded his benefits in 1997, he received a full lump sum award and it was made clear to him that the widow's pension only applied for service from 1972 onwards. The decision maker confirmed that Mr D did not query either of these points.
21. The DoE addressed Mrs D's complaint that had Mr D "remained in the NHSPS the contributions he paid during his membership from 10 February 1963 to 31 March 1995 would have qualified her as his widow to receive a widow's pension at the rate of half the pension her husband would have received." However, NHS Pensions had not provided anything to TP that showed that at the point of transfer Mr D had acquired a right for his pre-1972 service to count for widow's pension purposes. Mrs D's appeal was turned down and it was held that TP had calculated and paid her widow's pension correctly.

Adjudicator's Opinion

22. Mr D'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 below:-
 - The Scheme is a statutory scheme and it is bound by the applicable statutory regulations, which in this instance are the Teacher's Superannuation Regulations 1988 (**the Regulations**). In relation to widow's pension benefits, the Regulations confirm that the effective reckonable service is that amount of service accrued since 1 April 1972, which is the date when the Scheme's regulations were

amended to automatically provide for widow's pensions. Prior to this date there was no automatic pension cover for widows. Mr D's service prior to this date does not count in the calculation of the widow's pension.

- At the time of transferring into the Scheme, Mr D would have received details of the benefits under the NHSPS on which the transfer value was based, including the potential widow's pension. Whilst the acceptance of the transfer into the Scheme only referred to the members service credit of 40 years, he should have been aware at that time that as this was the same value as provided in the transfer statement, the other figures in that statement, including the widow's pension would be the same. On 20 June 1996, Mr D queried the 40-year restriction and the right to retire at age 55 but the evidence indicated that he accepted all of the other information provided, including the potential widow's pension. The Adjudicator could see no evidence to suggest that Mr D queried why the widow's pension was not half his pension or to state he had made an election under the NHSPS to select a reduced retirement lump sum in order to purchase a widow's pension for service prior to March 1972.
- NHSPS made provision for a widow's benefit to be purchased for service accrued prior to 25 March 1972 by means of a member's lump sum being reduced on retirement by an amount representing 2/80ths of the lump sum due for service prior to 25 March 1972. This meant that the member could elect under the NHSPS to buy full widows benefits by giving up some of their own retirement lump sum. In this case, the transfer documents TP received from NHSPS confirmed that Mr D had not made such an election. Furthermore, both the lump sum quoted by NHSPS on transfer to TP and the lump sum paid by the Scheme on 1 April 1997 were the full 3/80ths, with no reduction. Therefore, it was the Adjudicator opinion that TP was unable to include any of the service prior to 25 March 1972 in the calculation of widow's pension as no payment was made to cover it, and Mr D has benefited from receiving an unreduced lump sum at retirement.
- Mrs D contends that on 14 November 2017 she was informed by NHS Pensions that the contributions paid by Mr D from 10 February 1963 to 31 March 1972 would have qualified her for a widow's pension of half the pension her husband would have received. However, this assumes that if he had remained a member of the NHSPS his lump sum on retirement would have been reduced to purchase the corresponding widows' pension for that service. As this was allowed for in the transfer value calculation of both Mr D's potential lump sum and widow's pension it was not included in the calculation of Mr D's lump sum when he retired from the Scheme or the widow's pension now due to her.
- TP has accepted that on 13 April 2017 it did state the ongoing widow's pension would be 50% of Mr D's pension. However, TP issued a letter 12 days later alerting Mrs D that this was not the case. As TP corrected the advice within 12 days the Adjudicator was of the view that the possible distress and inconvenience caused would not be such to warrant an award under the Ombudsman's

guidelines. It was her view that TP was correct to not include any period of service prior to 25 March 1972 in the calculation of Mrs D's widow's pension.

23. Mrs D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs D 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 D for completeness.
24. Mrs D mostly reiterated her previous points but also provided the following evidence and comments:-
 - Letter from NHS Pensions dated 17 July 2019, stating:

“in terms of transferring MHO status, the transfer value would have been enhanced to take into account your late husband's MHO status. MHO status is only relevant in the NHSPS which is why we enhance transfer values so that the member received enhanced benefits in their new scheme. I can confirm that spouses benefits were payable on service before 1972 in the NHSPS, however I cannot comment on the Teacher's Pension Scheme regulations regarding this.”
 - NHS Pensions have again confirmed that widow's benefits were payable on service in NHSPS before 1972 despite TP's insistence that the years 1963 to 1972 do not count.

Ombudsman's decision

25. Mrs D contends that NHS confirmed again that “spouses' benefits were payable on service in NHSPS before 1972” and so she is entitled to have the years from 1963 to 1972 included in her pension calculation. I have considered the letter issued by NHS pensions to Mrs D on 17 July 2019, and other information provided. Having done so, I do not consider the letter conclusive and in fact it states it cannot confirm the actual position in Mr D's circumstances.
26. For the period which did not automatically provide a widow's pension, under the NHSPS provision was made for a member to elect to purchase that service. However, NHS Pensions has confirmed that Mr D did not make such an election. There were also provisions for the NHSPS to make a deduction from the members lump sum to purchase the applicable service. However, both the lump sum quoted by NHSPS on transfer to the Scheme and the lump sum paid by the Scheme on Mr D's retirement were the full 3/80ths, with no reduction. Therefore, I agree with the Adjudicator that TP is correct to not include any period of service prior to March 1972 and has applied the Regulations correctly.

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27. I do not uphold Mr D's complaint.

Anthony Arter

Pensions Ombudsman
19 August 2019