

Ombudsman's Determination

Applicant	Mr N
Scheme	Teachers' Pension Scheme (the Scheme)
Respondent	Teachers' Pensions

Outcome

1. I do not uphold Mr N'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 N has complained about an overpayment made by Teachers' Pensions and its subsequent request for repayment. He considers that its administrative systems have failed, and that Teachers' Pensions ought to have had more robust systems in place to prevent pensioners from being disadvantaged in the way that he has been.

Background information, including submissions from the parties

4. In August 2005, Mr N's wife passed away, leaving him with a widower's pension payable from the Scheme.
5. On 9 August 2005, Mr N informed her employer, Warwickshire College, of Mrs N's passing. It then wrote to Mr N about his pension entitlement and provided a Teachers' Pensions Bereavement Pack. In the covering letter from Warwickshire College, it said:

"Having spoken with our Payroll Department, who have in turn discussed with Warwickshire County Council who administer the Pension Scheme..."
6. On 16 August 2005, Teachers' Pensions wrote to Mr N with details of the benefits payable from the Scheme. Included was an application form and Leaflet 450. Leaflet 450 included the following:

"Duration of benefits and possible beneficiaries

Spouse only

Spouse's pension payable for life unless spouse re-marries or co-habits.

The pension must then stop....” [original emphasis]

7. Shortly after, the pension was put into payment.
8. In September 2007, Mr N wrote to Warwickshire County Council (**WCC**) to inform it that he had remarried and provided his new address. This was under the heading “Local Government Pension Scheme”. At this point, Mr N believed all his records had been updated correctly.
9. Also, in 2007, Mr N moved to a new address, whilst frequently staying at the old address two nights a week.
10. In February 2010, Mr N moved permanently to the new address having fully retired. His sons continued to live in the house until June 2011. Mr N did not keep Teachers’ Pensions informed of his address.
11. In March 2016, Teachers’ Pensions wrote to Mr N at the address it had retained for him since 2005. This letter required that he sign and return a declaration confirming he had not remarried.
12. In October 2016, Mr N’s son went to the property to collect mail, and the March 2016 letter was discovered.
13. On 1 November 2016, Mr N wrote to Teachers’ Pensions to question the situation, and said “On opening your letter, the first that I had received from you since 2010..”.
14. On establishing Mr N had remarried Teachers’ Pensions sought recovery of the overpayment.

Adjudicator’s Opinion

15. Mr 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 below:-
 - The Ombudsman’s approach to overpayment cases such as this is to establish whether there is a defence from recovery, such as, a limitation, change of position, or estoppel argument. The Adjudicator referred Mr N to two similar cases which had been determined, these being PO-14310 and PO-11429.
 - Considering the limitation argument, the Adjudicator explained that the starting point for a limitation defence is the date on which the claimant, Teachers’ Pensions, became aware or ought, with reasonable due diligence, to have become aware that the overpayment had occurred. The claimant would need to bring its claim for repayment within six years of that date.

- Having considered the circumstances, the Adjudicator's view was that Teachers' Pensions could only reasonably have been aware of Mr N's remarriage in 2016, when he informed it that he had remarried.
- The Adjudicator considered Mr N's argument that the remarriage exercise in 2016 ought reasonably to have been a regular exercise prior to this date, and the failure to do so was maladministration, but did not agree. The Adjudicator pointed to the above mentioned determinations to demonstrate that The Pension Ombudsman's position on this issue is that Teachers' Pensions' actions prior to the remarriage exercise had been sufficient.
- On that basis, the Adjudicator did not think a limitation defence could be successful as Teachers' Pensions was only made aware of the overpayment in October 2016, and it brought its claim before this Office within six years of that date.
- The Adjudicator also considered a possible change of position or estoppel defence. To be successful, these arguments required Mr N to not be aware of the necessity of updating Teachers' Pensions and the possible repercussions of that in the context of remarriage.
- However, the Adjudicator noted that Mr N was provided with specific information about the discontinuation of the pension in the event of remarriage or co-habitation when the pension was initially set up, by way of Leaflet 450, quoted in paragraph 6 above.
- Further, Mr N received P60s in relation to the Scheme which included the Scheme's annual Newsletter; this requested that the individual inform Teachers' Pensions of any change of address or remarriage. The Adjudicator noted that between 2007 and 2009, the years when Mr N attended the address Teachers' Pensions had on record, the Newsletter said:

"If you receive a pension by virtue of being a dependant of a deceased member and subsequently enter into a new partnership.

...

Failure to notify Teachers' Pensions of such changes may result in an overpayment of pension which must be recovered." [original emphasis]

- The Adjudicator concluded that Mr N was given sufficient information, on several occasions that he needed to inform Teachers' Pensions of such changes in circumstance. Therefore, a change of position or estoppel defence could not be sustained as he ought reasonably to have known what he needed to do.
- Mr N had informed WCC of his remarriage, on the basis of what Warwickshire College had told him as to which body was the Scheme administrator. But the

Adjudicator thought it was relevant that Mr N's letter updating WCC only referred to the Local Government Pension Scheme, as opposed to the Teachers' Pensions Scheme. Additionally, the incorrect information provided by Warwickshire College could not be attributable to Teachers' Pensions. The Adjudicator took the view that regardless of the incorrect information, Mr N ought to have known the correct party to inform.

- On the basis of the above, there was no maladministration on the part of Teachers' Pensions, no defence from repayment and the complaint should not be upheld.

16. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his 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 Mr N for completeness.

Ombudsman's decision

17. Mr N has stressed that the loss of his wife in 2005 was an appalling shock, it occurred suddenly and had left him unconcerned about where the pension was coming from. He was operating on "automatic pilot". I have no doubt that the loss of his wife will have been extremely distressing for Mr N, and I can understand that he may not have taken in the detail of the pension arrangement when Teachers' Pensions wrote to him at the time.

18. On its own, I can see an argument that Leaflet 450, the leaflet provided to Mr N when the pension was established, might be insufficient to adequately inform recently bereaved beneficiaries of the information that Teachers' Pensions required to be updated about. However, Teachers' Pensions subsequently provided annual reminders of the importance of keeping it up to date with details, such as co-habitation or remarriage, by way of its annual newsletters, included with an individual's P60. I consider this approach proportionate and it reduces the risk of a misunderstanding shortly after the death of a spouse.

19. Mr N has said he did not receive any correspondence from Teachers' Pensions until the letter was collected in October 2016 and thought it was a department within WCC, implying that the P60s and Newsletters were never received. However, the evidence shows that he received correspondence until at least 2010, as he says he did in his exchanges with Teachers' Pensions in November 2016. The correspondence he received was on Teachers' Pensions headed letters and made no reference to WCC. The cover letter refers specifically to the newsletter, saying:-

"A newsletter is also enclosed; please read this carefully as this should answer any related questions."

20. Mr N reiterates that the 2014 remarriage exercise is evidence that the process prior to that constituted mismanagement on the part of Teachers' Pensions, however I do not

agree. Teachers' Pensions operated a proportionate and reasonable approach of reminding members or beneficiaries of their responsibilities. That the Newsletters were not read by members, despite the recommendation that it be read carefully, is not Teachers' Pensions' fault.

21. I appreciate Mr N received information from Warwickshire College that WCC was administering the pension, but given the contradictory information he subsequently received, I consider there was a responsibility on his part to establish the correct position. In any event, the information from Warwickshire College was not an error on the part of Teachers' Pensions.
22. I understand Mr N now finds himself in a distressing situation due to his new wife's health, and this is made worse by his inability to fund repayment of this overpayment. Further, his future is in doubt because of financial circumstances surrounding his new wife. I am sympathetic to these circumstances, but I can only uphold the complaint where there is an error on the part of Teachers' Pensions or a legitimate defence to recovery. In this case I cannot see that these criteria are met.
23. I would however expect Teachers' Pensions to enter into discussions with Mr N about agreeing an affordable repayment plan over an appropriate period of time if it has not already done so.
24. Therefore, I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
28 February 2019