

Ombudsman's Determination

Applicant	Mr S
Scheme	Teachers' Pensions Scheme (the Scheme)
Respondent	Teachers' Pensions (TP)

Outcome

1. Mr S' complaint against TP is partly upheld, but there is a part of the complaint I do not agree with.
2. To put matters right (for the part that is upheld), TP shall pay Mr S £500, in recognition of the significant distress and inconvenience caused.
3. My reasons for reaching this decision are explained in more detail below.

Complaint summary

4. Mr S' complaint is that TP has unfairly deprived him of a spouse's pension from the Scheme, under regulations that applied to his late wife, Mrs S, from 6 April 1988.

Background information, including submissions from the parties

5. On 1 September 1971, Mrs S joined the Scheme. She was employed by Kent County Council and worked at Hextable Infant School.
6. On 31 January 1989, at age 56, Mrs S retired due to ill health and left the Scheme with an ill health pension.
7. Mrs S had completed twenty-one years and five days' reckonable pensionable service, and was not absent due to ill health, prior to her retirement.
8. On 1 February 1989, Mrs S began receiving a pension of £3,626 a year. The pension schedule (Form 473) showed there was no family pension.
9. In November 1990, Mrs S' health improved. She then began working as a supply teacher and continued in this role for a further six years. She did not join the Scheme.
10. For the tax year 2017 to 2018, Mrs S' gross pension was £7,026.78 a year.
11. On 27 January 2018, at age 85, Mrs S sadly passed away.

12. On 23 February 2018, TP sent a letter to Mr S, enclosing an application form for a spouse's pension.
13. On 7 March 2018, Mr S returned the form to TP, duly signed and enclosing death and marriage certificates, as requested.
14. On 22 March 2018, TP informed Mr S that:
 - He was not eligible to receive a spouse's pension.
 - Mrs S had not accrued a minimum two years' pensionable service from 6 April 1988 (the **service qualification**), that was required by the Teachers' Pension Scheme Regulations 2010 [SI 2010/990] (the **TP Regulations**) to qualify for family benefits.
15. On 31 March 2018, Mr S asked TP to reconsider its decision because:
 - It was unfair to deprive him of a spouse's pension, considering Mrs S' long teaching career at Hextable Infant School.
 - Mrs S could not fulfil the service qualification because of ill health that had forced her to retire in January 1989.
16. On 4 June 2018, Mr S complained to TP about the delay in replying to his letter of 31 March 2018. TP apologised and agreed to conduct a thorough investigation.
17. On 16 June 2018, TP formally replied to Mr S and:
 - offered its sincere apologies for the way his request for information had been handled and the delays;
 - admitted the service he received had fallen below its usual standards; and
 - said it did not intend to cause any distress by the delay in replying outside the usual timescales at a difficult time.
18. In addition, TP explained the background to the TP Regulations:
 - Male teachers were automatically eligible for family benefits from 1 April 1972.
 - Family benefits for female teachers was introduced by the Teachers' Superannuation Regulation 1988, but only in relation to pensionable service from 6 April 1988, and subject to the service qualification.
 - Pensionable service before 6 April 1988, did not count toward family benefits.
 - Female teachers could purchase family benefits for pre-6 April 1988 service, provided an application was made between 1 October 1988 and 30 June 1989 (the **purchase option**).

- The Department for Education(**DfE**) distributed information to all employers to pass on to schools to provide to female teachers in pensionable employment.
 - The DfE could not distribute information itself directly to employees so it had instructed employers to inform them.
 - As Mrs S was employed between 1 October 1988 and 31 January 1989, she should have been given this information by her employer, Kent County Council.
 - TP assumed her employer had informed her about this.
19. TP also explained that Mr S did not qualify for a spouse's pension because:
- Mrs S did not meet the service qualification for the period after April 1988 as she left the Scheme in January 1989;
 - Mrs S had not purchased any pensionable service to cover the period before April 1988;
 - TP has no discretion to grant family benefits if the service qualification is not met; and
 - Mrs S did not question her retirement award set out in Form 473 that showed no family benefits.
20. On 18 July 2018, Mr S raised a formal complaint with the DfE. He said he did not understand how Mrs S could be expected to complete the service qualification when she was forced to retire on 31 January 1989, through ill health. He had searched Mrs S' files and there is no record of any information about the right to purchase additional pension for service before 1988. Mr S said he is anxious that Mrs S' outstanding teaching service be recognised.
21. On 8 August 2018, the DfE rejected Mr S' appeal and confirmed that the TP Regulations had been correctly applied. It added that information Form 874, was distributed by the DfE to employers to distribute to employees, and there is no evidence this was not given to all employees, like Mrs S, as instructed.
22. On 6 September 2018, Mr S complained to this Office and then, on 4 October 2018, submitted a complaint form. He made the following points:-
- The TP Regulations are flawed as Mrs S was forced to retire from the Scheme due to ill health in January 1989 and could not complete the service qualification.
 - TP assumes she was given information, such as Form 874, about the purchase option, but there is no evidence from her files that she received it.
 - Mrs S was a well-respected teacher who deserved the recognition of a family pension.
23. On 4 February 2019, TP gave the Adjudicator the following information:

- Mrs S was employed until she retired in January 1989 and did not take sick leave prior to her retirement. So, there is no reason to believe she did not receive information about the changes to the Scheme that were to take place from 6 April 1988.
- Employing authorities were requested by letters sent from DfE (TPL 90 and 92) to issue Leaflet 201 to female employees, in September 1998, to explain the changes.
- TP enclosed a copy of a leaflet that very briefly refers to the purchase option as a new facility to purchase additional service, to provide for widowers' benefits. The leaflet does not mention any dates for applying for this option.
- Mr S should raise the issue with Mrs S' former employer, Kent County Council, if he believes that she did not receive any information.
- Mrs S' application for an ill health pension was dated 23 October 1988, after information about the changes had been distributed. She completed a section on family benefits with the words "not applicable". So, she must have known about them and chose not to purchase family benefits. Otherwise, she could have asked her employer or TP for information.
- Many married women did not take up the purchase option, due to its cost.

24. On 7 February 2019, following a telephone call, Mr S told the Adjudicator:

- He was very distressed looking through Mrs S' files and had been required to do this several times, in order to respond to TP and DfE.
- He confirmed that Mrs S had kept information about her pension, including payslips and a further search through her papers had not produced any information from DfE or TP about the April 1988 changes.
- Mrs S received letters from DfE on 19 December 1988 and 24 January 1989, and from Kent County Council on 11 January 1989. These letters presented an opportunity to remind Mrs S that she had an option to purchase a family pension up to 31 March 1989, but they did not do so.

Adjudicator's Opinion

25. Mr S' complaint was considered by one of our Adjudicators who concluded that his complaint should be upheld in part and that further action was required by TP.

26. The Adjudicator's findings are summarised below:-

- In the Adjudicator's view, Mr S was not being unfairly deprived of a spouse's pension under the TP Regulations. Mrs S had not purchased any additional pension benefits, in relation to her pre-April 1988 service, nor completed the

service qualification in relation to post-April 1988 service. Accordingly, Mr S was not entitled to a spouse's pension under the TP Regulations.

- The Adjudicator also did not accept Mr S' claim that he had been deprived of a spouse's pension because the TP Regulations were flawed. Mr S contended that the anomaly arose because Mrs S was unable to complete the service qualification when she was forced to retire through ill health. However, in the Adjudicator's view, Parliament had duly passed the TP Regulations, including the 1988 amendments, and neither the Ombudsman nor TP have any power to correct or remedy any perceived anomalies in the legislation.
- In the Adjudicator's view, there was no evidence that Mrs S would have decided to buy a family pension covering the period before April 1988, as Mr S claims. The Adjudicator considered that the costs might have been prohibitive at a time when Mrs S was retiring from work. The Adjudicator also considered that Mrs S had received the benefit of her ill health pension for nearly 30 years from 1989 to 2018 and, consequently, she did not take pensionable employment when she worked as a teacher from 1990 to 1996.
- In the Adjudicator's view, TP had an obligation under Regulation 5(6) of the Occupational Pension Schemes (Disclosure of Information) Regulations 1986 (**Disclosure Regulations**), to take reasonable steps to inform members about any material alterations to the Scheme, such as the changes to family pensions. However, the Adjudicator considered those steps could be less than communicating directly with all active members of the Scheme.
- In the Adjudicator's view, there was no firm evidence that Mrs S had received Form 775, or any other information from her employer, Kent County Council, about the changes to family pensions and the purchase option. However, the Adjudicator considered the evidence fell short of establishing that there was any fault on the part of TP, or that TP failed to take reasonable steps to ensure that information was provided to employees, like Mrs S, through their employers.
- The Adjudicator also considered that TP did not answer Mr S' enquiries for over two months, in breach of its own timescale, causing him distress and inconvenience. The Adjudicator considered that this was maladministration.
- In the Adjudicator's view, Mr S had not suffered any financial loss. However, he had suffered distress and inconvenience that falls within "significant" in the guidance on non-financial injustice that the Ombudsman issued in September 2018. As a result, the Adjudicator recommended that TP should pay Mr S the sum of £500.

27. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S 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 S for completeness.

28. In response to the Opinion, Mr S said he was “extremely surprised” and “very disappointed” with the outcome. Mr S asserts that TP had treated him unfairly in adhering strictly to anomalous legislation that did not allow for ill health during the qualification period. Mrs S would have continued working at Hextable Infant School, but for ill health and, in fact, resumed teaching in 1990. She was a well-respected teacher with a fine service record. He said he had searched Mrs S’ files thoroughly and there was no information about the purchase option. Mr S maintains that it was wrong for TP to assume that she had received this. Mrs S would also have been able to afford additional pension had she known about the purchase option.

Ombudsman’s decision

29. I have reviewed Mr S’ latest submissions and I do not agree with his assertions that the TP Regulations are flawed and, accordingly, that he has been unfairly deprived of a spouse’s pension.
30. I find that the main reason why Mr S is not entitled to a spouse’s pension is that Mrs S did not purchase additional pension to cover her service before 1988. Had such payments been made, I find that Mr S could have received half of Mrs S’ pension for the purchased period of service, potentially from 1971 to January 1989, under regulation 94 of the TP Regulations.
31. Without such payments, I find that Mr S would only have received half of any pension Mrs S had earned from 6 April 1988 onwards, not from 1971, even if she had satisfied the qualifying period. Accordingly, the legislation is not flawed in this respect.
32. I agree that Mr S’ main complaint is that TP did not inform Mrs S about the option to purchase additional pension cover.
33. Regarding this, I agree that TP had an obligation, under the Disclosure Regulations, to take reasonable steps to inform members about the changes to family pensions. However, I find that sufficient evidence has been provided to show that TP complied with this, by cascading information to employers to issue to its employees. Mrs S was working at Hextable Infant School for Kent County Council, at the time, and so she was available to receive any information provided by DfE, direct from her employer.
34. I also find that, while Mr S may doubt whether Mrs S received the information provided by DfE, the evidence falls short of establishing that any non-receipt was due to any fault on the part of TP.
35. Accordingly, I consider that TP has correctly applied the TP Regulations, and there is no evidence that Mr S has been deprived of a spouse’s pension that he is legally entitled to.
36. I appreciate that Mr S will be disappointed with this outcome and I recognise the valued contribution that Mrs S must have made to the teaching profession. However, neither I nor TP have a discretion to award a spouse’s pension in this case.

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37. Nevertheless, I find Mr S has suffered significant distress and inconvenience, at a sensitive time, as a result of TP's admitted failure to respond to his original inquiry within its own timescales.
38. Accordingly, I uphold Mr S' complaint in part.

Directions

39. Within 21 days of the date of this Determination, TP shall pay Mr S £500 in recognition of the significant distress and inconvenience that its maladministration has caused to Mr S.

Anthony Arter

Pensions Ombudsman
22 March 2019