

Ombudsman's Determination

Applicant	Mrs Catherine Whelan
Scheme	Teachers' Pension Scheme
Respondent(s)	Teachers' Pensions

Complaint Summary

Mrs Whelan's complaint, which is made on behalf of the estate of Mrs Catherine Whealing, is that Teachers' Pensions overpaid Mrs Whealing's pension and are seeking repayment.

Summary of the Ombudsman's determination and reasons

The complaint should not be upheld because Mrs Whealing ought to have known that the pension would cease on remarriage.

Detailed Determination

Material Facts

1. Annex A4.11.10 of “Managing Public Money” (guidance produced by HM Treasury for government departments on dealing with the management of public funds in a transparent, responsible and consistent way) describes ‘change of position’ as:

“... where the person receiving an overpayment in good faith has changed their lifestyle in reliance on it. The fact that the recipient has spent the money does not in itself mean that the department should not ask them to repay it.”
2. Annex A4.11.2 of “Managing Public Money” says:

“In principle public sector organisations should always pursue recovery of overpayments, irrespective of how they came to be made. In practice, however, there will be both practical and legal limits to how cases should be handled. So each case should be dealt with on its merits.”
3. Mrs Whealing (formerly Mrs Oxley) was in receipt of a spouse's pension following the death of Mr Oxley in January 1994. She also had a pension under the Scheme in her own right.
4. Under the regulations governing the Scheme, where the deceased member was only in pensionable employment before 1 January 2007 payment of a spouse's pension ceases upon remarriage or cohabitation. There is no evidence that Mrs Whealing was told that when Mr Oxley died and her spouse's pension began or subsequently.
5. In 2000 Mrs Whealing moved and told Teachers' Pensions that she had. It seems that the address details relating to the pension she was receiving in her own right were updated, but she did not say, and Teachers' Pensions did not identify, that she also had a spouse's pension. (According to Teachers' Pensions there is a separate record for each pension.) In 2002 when some correspondence from Teachers' Pensions was returned “gone away” the second record was also changed.
6. Mrs Whealing remarried on 20 June 2008 and moved from Lincolnshire to Maidenhead. She was 82 at the time. She retained her property in Lincolnshire, and it seems that she had family living next door and there were arrangements for post to be forwarded. Her husband, Mr Whealing, says he wrote to all relevant parties in 2008 notifying them of the change in her status. Teacher's Pensions say that they received no correspondence in 2008. They say that since 2002 they have sent an annual statement for each pension to the Lincolnshire address.
7. A letter dated 4 August 2008 from Mr Whealing to the Department for Work and Pensions (**DWP**) in Newcastle-upon-Tyne enclosed documents for his wife showing a change of her address and status, and asking them to amend their records. Mr

Whealing said: "Mrs Whealing seems to have two pensions reference numbers 5317373 and 46316091 you can no doubt explain this".

8. The two P60 forms for the year ending 5 April 2008 in respect of her pensions (i.e. her own and her spouse's pension) from the Scheme, show pension reference numbers 5317373 and 46316091. In addition, on the form with reference number 5317373 there is a hand-written note from Mr Whealing which reads: "Notified Cardiff office of [Mrs Whealing's] change of status 4/8/08".
9. A P60 form for the year ending 5 April 2012 for pension reference 5317373 is addressed to Mrs Whealing in her former name of Mrs Oxley.
10. In September 2012 Mr Whealing contacted Teachers' Pensions referring to a letter which had been sent to Mrs Whealing at her previous address in Lincolnshire. His letter, which quoted pension reference 5317373, stated that Teachers' Pensions had previously been informed that Mrs Oxley had remarried in 2008 and was now Mrs Whealing.
11. On 10 September 2012 Teachers' Pensions wrote to Mrs Whealing referring to Mr Whealing's letter informing them of her remarriage in 2008. They asked her for a copy of her marriage certificate and said that payment of her spouse's pension would cease as she was now remarried. They added that her widow's Guaranteed Minimum Pension amounting to £631.28 per annum would continue to be paid. They said that her pension was being suspended with immediate effect to prevent any further overpayment.
12. On 27 September 2012 Teachers' Pensions wrote again to Mrs Whealing, informing her that the overpayment of pension after she remarried was £16,608.91 net. They said: "We are required by government regulations to ask for repayment of any amount incorrectly paid out of public funds whatever the cause of the overpayment. Therefore would you please arrange for this amount to be repaid as soon as possible."
13. Mr Whealing wrote back to Teachers' Pensions stating that he was writing on his wife's behalf and asking them to contact him as his wife was unable to deal with her correspondence. He said that at the time they got married, he wrote on her behalf to all the banks, building societies, pension providers and tax authorities advising them of her change in status. He added that it was strange that his correspondence seemed to have gone astray, and he noted that notification to them about Mrs Whealing's Scheme pension in her own right was accepted and appropriate changes made. He questioned how they could have made payments into her bank account and deducted tax, which was paid to HM Revenue and Customs (**HMRC**) in her name.

14. On 1 October 2012 Mr Whealing wrote again to Teachers' Pensions informing them that his wife did not have £16,608.91 and was therefore not able to repay it. He said that she had small savings but this was earmarked to pay for her funeral and any other expenses that may arise on her death.
15. In November 2012 Mrs Whealing appointed her niece, Mrs Meanwell, to act as her representative.
16. On 20 November 2012 Teachers' Pensions wrote to Mrs Meanwell apologising for the demanding tone of their earlier letter. They explained that they administer the Scheme in accordance with the governing regulations and the regulations stipulate that in the event of remarriage following the death of the spouse, the widow is no longer entitled to receive the survivor benefits. They added that the overpayment had to be recovered in accordance with HMRC regulations. They said they understood that Mr and Mrs Whealing might find it difficult to pay back the sum of £16,608.91 and said that they were prepared to take account of their personal circumstances and assess the ability to repay the overpayment. They said that in cases of severe financial hardship, they were able to allow repayment over a longer period of time. They enclosed a "Means Questionnaire" for Mr or Mrs Whealing to complete so that they could assess their financial situation and asked for documentary evidence such as hire purchase, credit cards and/or loan repayments and copies of the three previous months' bank statements.
17. Mrs Meanwell responded. She said that the dispute amounted to the word of Teachers' Pensions against the word of Mr Whealing. Teachers' Pensions maintained that the letter informing them of the change in Mrs Whealing's marital status did not arrive: Mr Whealing said that the letter was written and posted. She added that she would consult Mr and Mrs Whealing's GP before approaching them about the Means Questionnaire as it was likely to raise their anxiety and stress levels.
18. On 9 January 2013 Teachers' Pensions wrote to Mrs Meanwell giving her a decision under stage one of the Scheme's internal dispute resolution procedures (**IDRP**). They said:
 - They did not contend that Mr Whealing did not write a letter; however, as they had acted appropriately in response to previous correspondence that they received, they would have acted appropriately if they had received his letter.
 - All correspondence they received was scanned to the appropriate member's record and, if a piece of correspondence cannot be matched to a record, because for example a unique reference number is missing, it is returned with a request for further identification details.
 - Having checked all their records for the late Mr Oxley and Mrs Whealing, there was no evidence that any correspondence was received from Mr and Mrs Whealing either on the subject of their remarriage or Mrs Whealing's change of

address from Lincolnshire to Maidenhead. In addition, both her pensions continued to be paid to the same bank account.

- By virtue of having written to Teachers' Pensions at the time of their marriage it would appear that, not unnaturally, Mr and Mrs Whealing must have had an expectation that there may no longer be an entitlement to the spouse's pension and that it may be stopped. It was unfortunate that they did not follow up the lack of response to their letter.
19. Mrs Meanwell responded to Teachers' Pensions on 27 February 2013, stating that the content of their letter of 9 January 2013 was insulting, judgmental and inappropriate. She said that Mr and Mrs Whealing had no expectation of the spouse's pension being stopped and it did not follow that writing the letter in 2008 supported that they did have such an expectation. In fact the Scheme regulations were changed 18 months earlier so that the spouse's pension remains payable when such a spouse remarries. She did not believe that it was appropriate to "means test" Mr and Mrs Whealing at that point in their lives, as they were both 87 years old and had been married for almost five years; their assets were adequate to support their independent existence at the moment, but not substantial enough to cope with a sudden deficit of the amount in question without resorting to the sale of property.
 20. The matter was considered under stage two of the IDRP by the Department of Education (**DoE**) and the decision given under stage one was upheld.
 21. On 19 June 2013 Mrs Meanwell wrote to the DoE saying that she had spoken to Teachers' Pensions in April 2013 and was informed that a note had been attached to Mrs Oxley's file, informing them of a change in circumstances and a change of name from Mrs Oxley to Mrs Whealing. She said that the person she had spoken to was of the opinion that the note had been made following a telephone conversation with Teachers' Pensions in 2008.
 22. Around August 2013 Mrs Whealing agreed with Teachers' Pensions to pay back £150 a month. This was stated to be a gesture of goodwill on the part of Mr and Mrs Whealing and not an admission of responsibility.
 23. In response to our enquiries Mrs Meanwell has said that Mrs Whealing's lifestyle would have been different had there been no overpayment. She said that when Mr and Mrs Whealing decided to get married they had separate estates consisting of their own homes, modest savings and separate pensions. They had children, grandchildren and in Mrs Whealing's case great grandchildren. Their expectation for their estates was that on their death, they should pass on to their respective families. During their lives together they have always shared their expenditure. There was no anticipation of a change in their joint income at the time of their marriage and therefore there was no change in their financial lifestyle. If there was a change in their joint income, such as a cessation of the spouse's pension, this would have been an influential factor in their financial lifestyle.

24. Teachers' Pensions were asked to consider Mrs Meanwell's statement with regard to a change of position for Mrs Whealing. Teachers' Pensions responded:

"With regard to the 'change of position' defence, where the recipient of an overpayment may not be liable to repay the debt if they can show that they have changed their position by spending those monies in good faith in reliance on the mistake. Each case must be considered on its merits. It is insufficient, therefore, to cite this as a defence and expect the liability to be discharged. In terms of Mrs Whealing's particular case, I can only reiterate that there is nothing on any of the files relating this case to indicate that TP was informed of Mrs Whealing's re-marriage in 2008 or at any time prior to September 2012..."

25. Mrs Whealing died in January 2014. Mrs Meanwell has continued to deal with the matter as representative of Mrs Whelan who is an executor of Mrs Whealing's estate.
26. Mrs Meanwell says that Mrs Whealing's total net income was about £18,500 per annum. In addition to the costs of maintaining her property in Lincolnshire, Mrs Whealing's personal expenditure included such expenses as clothing and travelling. Mrs Whealing had modest savings and her estate was valued at £72,000 at probate, which included her property in Lincolnshire.

Summary of Mrs Whelan's position

27. Teachers' Pensions have no record of information in their filing system, therefore they believe they are in the right and are not prepared to accept that an error may have been made.
28. The note of the telephone conversation in 2008 is not available as a recorded telephone conversation and even more strangely the note cannot now be found. She believes that Teachers' Pensions have attempted to deliberately cover up the communication between Mr Whealing and them in 2008, which resulted in a note being attached to one of the files.
29. She says that she had written down the telephone conversation she had on 30 April 2013 with someone from Teachers' Pensions about the note and it was about information that they had received in some form and was on one file but not the other. She was told that the note which had been attached to the file in 2008 concerned remarriage.
30. Mr Whealing has no recollection of making a telephone call to Teachers' Pensions in 2008 to inform them of the change in Mrs Whealing's circumstances. He maintains that he wrote to everyone concerned including Teachers' Pensions.

31. Teachers' Pensions do not appear to have considered the 'change of position' argument. Mrs Whealing did not alter her expenditure to accommodate a reduction in her income because she was not aware of the necessity to do so. Her expenditure included expensive travel to Australia, New Zealand and, on several occasions, to the USA.
32. With regard to Mrs Whealing's bank account, the name on the bank account changed when the bank was informed of the remarriage in 2008; this was at the same time the letters were sent to Teachers' Pensions, HMRC and various other official organisations.
33. She believes that Teachers' Pensions were made aware of the overpayment as a result of Mr Whealing's correspondence with them in 2012. They then began a prolonged and elaborate case to cover up their own error. When the evidence emerged to suggest that they had made an error, they did not use the opportunity to admit their system could be at fault and perhaps offer an apology and attempt to come to some agreement which may be acceptable to both parties.

Summary of Teachers' Pensions' position

34. There is nothing on Mrs Whealing's spouse's pension file between a change of address notified by telephone on 27 September 2002, and the letter from Mr Whealing in September 2012.
35. There has never been a change in the bank account into which Mrs Whealing's pensions were paid.
36. There is nothing on Mrs Whealing's record relating to her own pension from the Scheme between the scanning of her paper file on 31 August 2004 and the notification of her death on 24 January 2014.
37. They confirm that they had indicated to Mrs Meanwell that there was a note on the file about a telephone call in 2008. However, the note cannot be found and, from recollection, it only indicated that contact had been made; it did not contain any detail which would have had an important bearing on the case.

Material that Teachers' Pensions suggest is relevant

38. Teachers' Pensions say that employers were required to provide members with the Scheme's booklet. The 1975 version is some 19 pages long. In paragraph 31 on page 13, in a section dealing with widows' and children's pensions it says that a widow's pension would cease on her remarriage.
39. The Paymaster General's office was responsible for payment of pensions at the time Mrs Whealing's widow's pension came into payment. Form TFB 50(CA) Part 2 contained a declaration of entitlement on behalf of the person applying for payment,

together with personal details and bank account information. Part 1 is marked “to be kept for reference”. It is two sides of A4 and on the second side paragraph 8 is headed “CONDITIONS OF PAYMENT”. Sub-paragraph (2) under “Widows’ pensions says “A Widow’s allowance ceases on the widow commencing to cohabit with a man to whom she is not married and, unless the Secretary of State otherwise decides, on her remarriage.” (Teachers’ Pensions do not have a copy of Part 2 completed by Mrs Whealing.)

40. Teachers’ Pensions have produced copies of various newsletters that they say would have been sent to Mrs Whealing’s Lincolnshire address (in one case the newsletter appears to have been issued with a P60). Some predate Mrs Whealing’s move in 2008. Those newsletters list changes that Teachers’ Pensions needed to be made aware of including, for recipients of a spouse’s pension, whether they had remarried or were cohabiting.

Conclusions

41. There is no dispute as to whether Mrs Whealing was entitled to the spouse’s pension after remarrying. She was not.
42. There has been some focus on whether Teachers’ Pensions received a letter from Mr Whealing (or indeed if there was a phone call) in 2008. I do not think that is central to the case, though. Mrs Whelan may have thought that if Teachers’ Pensions had been informed of the remarriage, but then did not act on it, that would strengthen Mrs Whealing’s position. That is not automatically so, and in this case it makes no difference.
43. I say that, because the law would allow Teachers’ Pensions six years from the time that, with reasonable diligence, they could have been aware that there were overpayments. So even if Mr Whealing had written in 2008, as Teachers’ Pensions first tried to recover the overpayments in 2012 they would have been within the six years. I can understand that Mrs Whelan is frustrated that she clearly recalls a reference to a note that cannot now be found. But it would not affect the outcome if it did exist and could be found. (And I do not find that Teachers’ Pension have deliberately withheld it. It would not affect their right to recover if it exists and they had produced it.)
44. The primary question is whether Mrs Whealing knew, or ought to have known, that the pension would stop on remarriage. If she did or ought to have done, then she would have had no possible defence to the recovery of the overpayments.
45. I do not know exactly what correspondence Mrs Whealing received but I understand from other cases that standard letters sent at the time a spouse’s pension came into payment did not mention remarriage. Indeed it might have thought been insensitive if they had.

46. I have disregarded the Scheme booklet. Mrs Whealing presumably would have had a copy in her own right as a member, but that would have been coincidental. Mr Oxley ought perhaps to have known that a pension payable on his death would cease should his wife remarry, but it is too much of a stretch to say that Mrs Whealing ought to have known from him.
47. There is no evidence that Mrs Whealing completed the Paymaster General's Office's form TFB(50)CA. But on limited evidence, it is likely that she did. It would have been necessary to give the information requested for the pension to start. It is unlikely that it would have been accepted by letter or other informal means. So, even taking into account that she may not have completed the form herself and that it would have been completed at a time of some distress for her, it is likely that Mrs Whealing ought to have known from that document, in 1994, that the pension would cease if she remarried.
48. The newsletters would have been sent to the Lincolnshire address. Those that are dated before 2008, she would have received. And arguably, after moving, Mrs Whealing should have known that Teachers' Pensions did not have her current address – even if Mr Whealing had written in 2008.
49. Teachers' Pensions say that the fact (if it is one) that Mr Whealing wrote to them in 2008 shows that both he and Mrs Whealing had an expectation that the spouse's pension would be stopped. That is not a logical deduction. Mr Whealing wrote to several bodies because they would have needed to update their records with her name and address. His purpose in writing to Teachers' Pensions (assuming that he did) was in my view the same. It is far less likely that Mr Whealing knew or suspected that the pension should have stopped, wrote once, and then sat back on the assumption that no action by Teachers' Pensions meant that the money could safely be spent.
50. I find, therefore, that Mrs Whealing ought to have known that the pension would cease on remarriage. I do not think that she actually did know. There is absolutely no suggestion of dishonesty on her part. It is, unfortunately, irrelevant that Mrs Whealing was of advanced years when she remarried and that having forgotten what she once knew, or not having noticed what the newsletters said, might be understandable in the circumstances.
51. The test is whether a person acting with ordinary prudence would have known that the pension ceased on remarriage, and I find that they would.
52. I find, therefore, that the overpayments are recoverable.
53. However, the initial request for repayment was unnecessarily terse. Mrs Whealing was one of Teachers' Pensions customers, in her late 80s facing a significant payment in the context of the pensions she was receiving and could reasonably have expected a polite letter with at least a reference to the possibility of instalments. The subsequent presumption by Teachers' Pensions that Mr and Mrs Whealing knew that

the pension should have ceased was unfair and led them not to consider the change of position that Mrs Meanwell argued for. (Only at a very late stage of the investigation, when I was minded to find in Mrs Whealing's favour, did Teachers' Pensions produce the documents referred to earlier.) I do not consider that Teachers' Pensions acted within the spirit of "Managing Public Money". Ordinarily I would have considered a payment to compensate Mrs Whealing for distress. Sadly that is no longer appropriate, but I recommend that Teachers' Pensions reconsider their standard approach to such cases to ensure that they would deal more sympathetically with a person in similar circumstances now.

54. For the reasons given above I do not uphold the complaint. It will now be for Teachers' Pensions, having regard to Managing Public Money, to decide whether to pursue the estate for the balance of the overpayments.

Tony King

Pensions Ombudsman
19 May 2015