

Ombudsman's Determination

Applicant	Mrs D
Scheme	Teachers' Pension Scheme (the Scheme)
Respondents	Teachers' Pension (TP)

Outcome

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

Complaint Summary

2. Mrs D's complaint is that TP will not reinstate her widow's pension now she is no longer living with her partner unless she can demonstrate that she is suffering financial hardship. Mrs D says that had she been aware of this, she would not have moved in with her partner in 2015.

Background information, including submissions from the parties

3. Mrs D's husband was a member of the Scheme and was receiving a pension at the date of his death. When he passed away in 1995, Mrs D started to receive a widow's pension.
4. On 26 February 2015, Mrs D telephoned TP and explained that her new partner was moving in. TP asked for confirmation, in writing, of her change in circumstances. During the call Mrs D asked how her pension would be affected, and TP explained she would still be entitled to some of the widow's pension
5. On 26 February 2015, Mrs D wrote to TP explaining that she received a widow's pension, but she would be living with her partner from 1 March 2015. She said, "I spoke to a member of your staff today who told me that I will still be entitled to some of that pension (£784.64 p.a.) I would be grateful if you would kindly confirm this figure in writing."

6. On 9 March 2015, TP advised Mrs D that the full amount of widow's Guaranteed Minimum Pension (**GMP**) now payable was £1,697 per annum. TP said: -

"I can confirm that your entitlement to payment of a widow's pension ceases in the event of remarriage or if you enter another civil partnership or live with a person as spouse or a civil partner.

However, there is a part of your widow's pension which continues in payment. This is known as the Guaranteed Minimum pension (GMP). The amount of your GMP is £1,697 per annum. I have adjusted your records accordingly to reflect this reduced ongoing pension."

7. On 11 May 2018, Mrs D wrote to TP saying she now lived alone and hoped it would be possible for her to receive the full payment of her widow's pension again.

8. On 23 May 2018, in response TP said:

- Once the full widow's pension had stopped or been reduced there was no automatic entitlement to reinstatement to the full amount, when a second relationship or marriage ended.
- The Teachers' Pensions Regulations (**the Regulations**) allowed for the consideration of reinstatement on hardship grounds. If Mrs D wanted this considered she would need to complete and return a statement of income and expenditure.

9. On 20 June 2018, Mrs D wrote to TP, and said she was shocked that there was no automatic reinstatement. She did not consider it should be necessary for her to claim financial hardship in order to receive what was rightly hers. She said crucial information had not been included in the letter from March 2015, and it was not right she would lose pension income for the rest of her life.

10. On 2 July 2018, TP replied saying:-

- The Scheme is a Statutory scheme that pays benefits as provided in the Regulations.
- The Regulations state, "Unless the Secretary of State determines otherwise in the particular case, and subject always to regulations E1 (3) and (d) (guaranteed minimum pension for surviving spouse), an adult pension is not payable during or after any marriage or period of cohabitation outside of marriage."
- The entitlement to a widow's pension is determined at the time the member was last in pensionable service. Mr D's service was before changes were made to the Scheme when it was decided that widows' pensions would be payable for life. This improvement applied only to those who had service after the change on 1 January 2007, and who would contribute to the cost of funding the improvement. This improvement was not made retrospective.

11. On 24 July 2018, Mrs D said to TP:-

- Had she known about the Regulations she would not have made the decision to live with her new partner. She was not given the full and relevant information by TP at the appropriate time in 2015.
- She understood the word “ceases” from the March 2015 letter to mean that the pension would not be paid during the period when she was living with her new partner.
- She had acted honestly by declaring her relationship in 2015.
- The shortfall of £140 per month is equivalent to ten percent of her salary and twenty percent of her income. She was retired and financially dependent on her pensions.

12. On 13 August 2018 TP said:-

- The widow’s pension must stop being paid when the member ceases to live as a widow, unless the Secretary of State determines otherwise.
- The reinstatement is conditional on a beneficiary being in financial hardship.
- There was no indication, when Mrs D updated TP about her new partner moving in, that she was not intending to co-habit based on TP’s response, and there was no request for an explanation of what the circumstances would be if the partnership ended.
- There is a standardised test for financial hardship, so Mrs D may now wish to complete and return the statement of income and expenditure.
- The Regulations cannot be overridden, even if there was a misunderstanding over the information provided in the letter of 9 March 2015.

13. On 16 September 2018, Mrs D complained to the Department of Education (**the DoE**).

14. On 28 October 2018, the DoE replied under the Internal Dispute Resolution Procedure (**IDRP**) and repeated the reasons why the full widow’s pension would cease. The DoE was satisfied that TP had applied the Regulations correctly.

15. On 12 December 2018, Mrs D wrote to TP applying for reinstatement of her widow’s pension, on grounds of financial hardship.

16. The request for reinstatement of the full widow’s pension was refused by TP, as Mrs D was deemed to not be suffering financial hardship.

17. When Mrs D referred her complaint to The Pensions Ombudsman (**TPO**), she said that she may not be experiencing actual hardship, but she was still losing ten percent of her income.

18. TP provided further comments to TPO saying:-

- The letter of 9 March 2015 confirmed that the widow's pension "ceases". This meant it stopped.
- Mrs D did not raise the concern of what would happen if she stopped co-habiting. It would be reasonable to assume Mrs D did not expect her relationship to end. If the loss of the full widow's pension was a major concern, it would have expected Mrs D to ask further questions.
- Mrs D was not suffering financial hardship. She contributed over £100 per month to charity, she had savings of £30,000 and her property was valued at £250,000 with no mortgage.

19. Mrs D said she understood that the pension would stop when she was co-habiting, but she was not told it would stop for good. The pension is a loss of income to her, and TP had not considered she contributed to charity instead of spending on herself.

Adjudicator's Opinion

20. Mrs D's complaint was considered by one of our Adjudicators who concluded that no further action was required by the TP. The Adjudicator's findings are summarised below:-

- When Mrs D contacted TP by telephone and in writing, TP provided Mrs D with the correct information. It would have been helpful to explain what would have happened if she stopped co-habiting, but TP had not misled Mrs D as TP told her that she would only be entitled to some of the pension.
- In 2018 when Mrs D informed TP that she was no longer co-habiting, she said she "hoped" it was possible for the pension to be reinstated. This did not indicate she understood it to be an automatic right.
- TP acted in accordance with the Regulations in deciding that Mrs D lost her full widow's pension when she began to live with her partner and there is no automatic right to reinstatement
- Mrs D applied for reinstatement of the widow's pension on the grounds of financial hardship. The Adjudicator considered TP had correctly exercised its discretion when deciding not to reinstate the widow's pension on the grounds of financial hardship.

21. Mrs D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

22. Mrs D provided her further comments which do not change the outcome. Mrs D has argued that:-

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- TP had not been transparent or fair and she was not given the help she needed in 2015. TP said that they should have reminded her of the facts in 2015.
- Both the Adjudicator and TP had acknowledged that TP could have been more helpful.
- She found TP's admission shocking that TP did not volunteer information about the reinstatement of the widow's pension.
- The use of the word "hope" in her request to TP for reinstatement, was just a polite request.
- She had been honest with TP, but honesty had not been the best policy in her case.

Ombudsman's Decision

23. 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 is unhappy that her pension will not be reinstated now she has stopped co-habiting with her new partner. She considers that more information should have been given to her in 2015 about what would happen, if she then stopped co-habiting.
25. In 2015, Mrs D asked how her pension would be affected when she was going to live with her new partner. TP confirmed the correct position and told Mrs D that her widow's pension would stop when she started to co-habit, and it was only the GMP that would continue.
26. I appreciate that Mrs D was being honest with TP by updating them in 2015, and that it would have been helpful for TP to clarify that the full widow's pension would not be reinstated if she stopped living with her new partner. However, I do not take the view that she was misled. Mrs D said she understood the letter of 9 March 2015, to mean that her widow's pension would only stop during the period she was living with her partner. She assumed that the widow's pension would be reinstated, so did not consider it necessary to ask for further information about what would happen in 2015, if she then stopped co-habiting.
27. I have sympathy for Mrs D's position as her income has reduced. However, TP has acted in accordance with the Regulations, when stopping her full widow's pension.
28. TP has said that the widow's pension would only be reinstated if Mrs D was in financial hardship. Mrs D has acknowledged she is not in financial hardship, and whilst I appreciate her income is now less, I do not consider TP acted outside of the Regulations by not reinstating the full widow's pension.
29. I do not uphold the complaint.

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Anthony Arter

Pensions Ombudsman
27 November 2019