

**PENSION SCHEMES ACT 1993, PART X**  
**DETERMINATION BY THE DEPUTY PENSIONS OMBUDSMAN**

<b>Applicant</b>	Dr Elspeth Blackshaw
<b>Scheme</b>	Principal Civil Service Pension Scheme <b>(the Scheme)</b>
<b>Respondent(s)</b>	Scheme Management Executive - Cabinet Office

**Subject**

Dr Blackshaw has complained that she and her husband were misled as to her entitlement to a widow's pension under the Scheme. She says that she has suffered significant financial loss in her pension provision as a result of decisions taken in reliance of the incorrect information they were given.

**The Deputy Pensions Ombudsman's determination and short reasons**

The complaint should be partially upheld against the Cabinet Office because:

- Misleading information on the level of widow's pension was provided on two separate occasions (1989 and 2011).
- The second occasion was shortly after the death of Dr Blackshaw's husband and would have caused her considerable distress when the error was corrected and notified to her.
- However, I have found that it was not reasonable for Mr and Dr Blackshaw to base their employment and pension decisions upon the 1989 letter given the degree of ambiguity it contained, its proviso that the figures were subject to Section 4 of the Scheme Rules and in the light of the other correspondence which correctly set out the entitlement under the Scheme Rules. Indeed, in all the circumstances, I am not persuaded that the letter was a significant contributing factor to the decisions they took at that time.

## DETAILED DETERMINATION

### Material Facts

1. Dr Blackshaw's husband, Alan, joined the Civil Service and its pension arrangements in December 1956. He had married Jane Elizabeth Blackshaw on 2 April 1956.
2. All married men employed in a pensionable post with the Civil Service after 14 July 1949 had to join the widow's pension scheme, which was introduced into the Civil Service pension arrangements that year by the Superannuation Act 1949.
3. At that time, no pension was payable to a widow of a marriage that took place after the civil servant's retirement.
4. The law changed in 1978 to require contracted-out occupational pension schemes to pay pensions to widows the member married after leaving the scheme (Section 36, Social Security Pensions Act 1975).
5. Mr Blackshaw resigned in 1979 and his last day of service was 10 August 1979. The pension awarding authority (the Paymaster General's office, now Paymaster) prepared an award and told Mr Blackshaw's employer, the Department of Energy, to send him the details. They did so and their correspondence of May 1979 (no specific day quoted on the letter) refers to Mr Blackshaw's annual pension of £4,724.22, lump sum of £14,172.66, and contingent widow's pension of £2,362.11.
6. A further letter of 29 February 1980 (from L Pretty) included the following sections in relation to widow's pension provisions:
 

“To Mrs Jane Elizabeth Blackshaw with effect from the day following your death, should she survive you and still be your wife, a widow's pension under the Principal Civil Service Scheme 1974 at £2501.99 per annum, subject to the conditions of Section 4 of the Principal Civil Service Pension Scheme 1974.

Should you survive your wife, however, under the provisions of the Social Security Pension Act, 1975, your service since 6 April 1978 qualifies for a widow's pension should you re-marry. The figure of £2501.99 therefore includes £145.00 per annum payable to this account.”
7. On 25 May 1982, Mr Blackshaw wrote to Mr Pretty to enquire about the impact on his wife's Civil Service pension position in the event of divorce and whether any

pension rights might be provided for the wife or children of any second marriage which he might enter following divorce.

8. Mr Pretty's reply of 17 June 1982 advised that his present wife would lose all rights to a widow's pension under the Scheme. In relation to any second wife, the changes from 6 April 1978 were explained and it was stated that the contributions Mr Blackshaw paid after 6 April 1978 would, at present, buy a widow's pension of £145.00 per annum. If he returned to the Civil Service and completed another five years' service then this would entitle any second wife to a widow's pension based on the whole of his service.
9. Mr Blackshaw applied for actuarially reduced retirement benefits on 16 April 1989, by a letter addressed to Mr Pretty. He said that he had re-married (Dr E.P Martin) on 1 June 1984 and asked regarding the widow's pension position. The letter from the Department of Energy to HM Treasury on 26 April 1989 passed on the information regarding the post-resignation re-marriage.
10. On 20 July 1989, Department of Energy (signatory D M Davies) wrote to Mr Blackshaw authorising the actuarially reduced superannuation award of £3,868.08 per annum from 1 July 1989 and a net lump sum of £13,427.77.
11. The letter then said:
 

"Should Dr Elspeth Paterson Blackshaw survive you and still be your wife, a widow's pension would be payable to her at your rate of pension for the first 91 days and £2,501.99 per annum thereafter, subject to the conditions of Section 4 of the Scheme."
12. The following paragraph said:
 

"Should you survive your wife, however, under the provisions of the Social Security Pensions Act, 1975, your service since 6 April 1975 qualifies for a widow's pension should you re-marry. The figure of £2,501.99 therefore includes £145.00 per annum payable on this account."
13. The interpretation of the above letter and its significance is the main point of dispute between the Applicant and the Respondent. The reference to 6 April 1975 is outlined above as in the letter but should have read 6 April 1978.
14. Other than a possible telephone conversation between Mr Blackshaw and Mr Davies of which there is no detail (see 40) and the subsequent commencement of pension benefit payments, there appear to have been no further developments until Mr

Blackshaw wrote to the Paymaster General's Office on 22 April 1999 in response to receipt of a P60 and newsletter. He enquired as to:

“any information which you can give me as to the criteria for widow's pension etc? My wife is aged 54 and we have 3 children aged 13, 11 and 8.”

15. The Respondent says that Paymaster replied on 4 May 1999. The copy letter provided says that if Mr Blackshaw was to pre-decease his wife, Mrs Elspeth Blackshaw, she would receive an enhanced pension for the first 91 days at the rate his own pension was in payment at the date of death, followed by a continuing pension currently value at £430.65 per year.
16. The Applicant says that this letter was not within Mr Blackshaw's file of correspondence and questions whether it was sent.
17. Again, there was a long gap between correspondence before Mr Blackshaw's letter of 10 January 2011 - asking for a statement of the potential widow's pension payable to his wife Dr Elspeth Paterson Blackshaw, in the event of his death and her surviving him. It is understood that at this point Mr Blackshaw had become terminally ill and was naturally trying to put his financial affairs in order.
18. The letter also says:
 

“I understand that this has been subject in the past to the provisions of Section 4 of the Scheme and I should be grateful if you would let me know if these, or any other conditions, still apply; and, if so, how they affect the payments.”
19. A chain of correspondence then followed by letter and by e-mail, whereby Capita Hartshead, as Scheme Administrators, outlined the entitlement which by then was £572.27 gross per annum and Mr Blackshaw questioned the difference between this and the figure of £2,501.99 he had been advised on 20 July 1999. The Administrators reiterated the lower figure on a number of occasions up to and including 1 August 2011.
20. Mr Blackshaw died on 4 August 2011. I understand from the Applicant that the above letter arrived the same day. However, on 29 August 2011, a further letter from My Civil Service Pension (seemingly in response to Mr Blackshaw's letter of 10 June 2011) said that in fact £2,501.99 was the correct amount, as advised on 20 July 1989. Subsequent correspondence advised that the figure was £590.02 per annum.

## Summary of Dr Blackshaw's position

21. The letter of 20 July 1989 is unequivocal, naming her as the recipient of a widow's pension of £2,501.89 per annum (1989 values), in the event of her surviving Mr Blackshaw. As a layman, he was entitled to rely on an official letter from a government department on the effect of new legislation. The correspondence in 1980 and 1982 came at a time when he was still fighting with the Public Accounts Committee and sections of the national press on another matter, which would have impacted on his ability to respond to those letters.
22. That year, based upon the 20 July 1989 letter, Dr Blackshaw says that they contacted the British Medical Association to discuss the impact on her NHS Pension before making the decision for her to give up full-time pensionable work (she continued to work on a flexible locum basis) so she could look after their family more easily. She, therefore, missed out on building up a pension in her own scheme (NHS) for a period of time. She expected the Civil Service widow's pension to be around £12,000 per annum in today's figures. She estimates that the pension she gave up would have been worth around £12,873 per annum (together with a lump sum of £38,621).
23. The letter of 4 May 1999 was never received. It is unsigned and it was not in her husband's meticulous and comprehensive records. They would have queried any such letter contradicting their previous understanding of the position.
24. Dr Blackshaw had intended to retire in April 2011 as per the contractual retirement date in the Partnership Agreement she signed with her Medical Practice in 2002. Her retirement has had to be delayed by around 5 years to assist in supporting her daughter through university.
25. The way in which this matter has come to light has been extremely distressing at an already difficult time.
26. As redress for her complaint, Dr Blackshaw seeks to receive the full widow's pension she and her husband had understood she would receive. If this cannot be agreed, she claims compensation for the loss to her NHS pension of £12,873 per annum and the impact the misinformation has had on her financial plans. She would also like an explanation for the mistakes and compensation for the distress caused.

## Summary of the Cabinet Office's position

27. Dr Blackshaw is not entitled to a full widow's pension because she married Mr Blackshaw after he left the Civil Service. She is entitled to a post-retirement widow's pension only. The Scheme Rules are statutory and there are no circumstances in which she can be eligible for a full widow's pension, nor is there any discretion to allow her to be treated as eligible.
28. The Department of Energy letter dated 20 July 1989 was not as clear as it might have been, but it was not incorrect – it explained the post-retirement widow's pension. Other information was clear and correct, notably in June 1982 and May 1999.
29. The letter of 4 May 1999 was in response to a direct enquiry from Mr Blackshaw. Had he not received it, they would have expected to see evidence that he chased a response. The file contains no such evidence or any further correspondence or debate about the level of widow's pension entitlement until 2011. This suggests to the Cabinet Office that he did receive the letter and understood the position.
30. The Scheme Administrator mistakenly told Dr Blackshaw in August 2011 that she was entitled to a full widow's pension. This appears to have happened because they held incorrect data about Mr Blackshaw's marital status. The Cabinet Office says, whilst regrettable, this does not confer any right to the incorrect benefits.

## Conclusions

31. The Scheme Rules (see Appendix) outline eligibility for widow's pension benefits. Rule 4.4 explains that an eligible widow is one to which a civil servant, who retired on or after 6 April 1978, was married at the time of his death, whether or not the marriage took place whilst he was a civil servant. This meant that Dr Blackshaw was an eligible widow. Mr Blackshaw's former wife had lost any entitlement upon divorce.
32. Rule 4.6 says that benefits are paid at 1/60<sup>th</sup> of the civil servant's pensionable earnings multiplied by the reckonable service for which contributions are due under Rule 4.15 or 4.16. The latter applies to a member who is not married upon leaving the Civil Service. 4.15 outlines the contributions required if a married civil servant dies in service or ceases to be a civil servant. These are split into reckonable service prior to 6 April 1978 and after that date.

33. The main Scheme booklet in 1980 was Civil Service Pensions Explained. On page 27:
- “A widow’s pension is payable only to a woman to whom a civil servant was married at the time of his death. The Scheme does not therefore cover divorced wives. If he married after his service in the Civil Service had ended, the widow’s pension is based only on the reckonable service which took place on or after 6 April 1978.”

This booklet is referred to, and said to be enclosed, in the Department of Energy’s letter to Mr Blackshaw of 17 June 1982.

34. Although this more specific wording might have been better placed in the Rules themselves, I am satisfied that the **Rules themselves** did not and do not confer a right on Dr Blackshaw to receive a full widow’s pension. Her entitlement was only to a pension based on reckonable service on or after 6 April 1978.
35. Dr Blackshaw does not necessarily claim otherwise, though given the conflicting information she and her husband have received, she did naturally require clarification of which is the correct statutory entitlement – in addition to pursuing her argument that the misinformation led to a change of position and financial loss.
36. Whilst the Rules themselves are complex as to the position of a second wife, married post-retirement, the letters of 29 February 1980 and 17 June 1982 do explain this fully. The latter is in response to a specific question from Mr Blackshaw and given this, its clarity and the fact that there was no further correspondence until 1989, I find that Mr Blackshaw was fully aware of the position in 1982 – at a time when, from the wording of his letter, divorce was likely even if the probability of re-marriage may have been unknown.
37. In 1989, Mr Blackshaw enquired about the possibility of taking his preserved pension early and, in doing so, gave notification of his 1984 re-marriage whilst enquiring as to the widow’s pension. His letter of 16 April 1989 began a flow of correspondence leading up to the Department of Energy’s letter of 20 July 1989, which has ultimately led to this complaint. The letter is misleading because it specifically refers to Dr Elspeth Blackshaw as if she were Mr Blackshaw’s first wife and quotes a figure based on an entitlement to a full widow’s pension, should she survive Mr Blackshaw (whilst still married). It also explains the effect if he survived her and then re-married. It does not explain the effect of a divorce and re-marriage, with all parties surviving.

38. It is clear that the Department of Energy knew that Mr Blackshaw had re-married because he told them in his letter of 16 April 1989 and it is noted in the internal letter of 26 April 1989. Although Mr Blackshaw's letter refers to re-marriage and not the reason (i.e divorce or death), the internal letter says that he had divorced his first wife. I assume this information may have been passed on by telephone since Mr Blackshaw refers to recently speaking to Les Pretty about taking his pension early.
39. So, the Department of Energy should have recognised in their letter of 20 July 1989 that Dr Elspeth Blackshaw was Mr Blackshaw's second wife, married post-retirement, and only entitled to – at that time - £145 per annum (in respect of service from 6 April 1978).
40. However, whilst misleading, the letter is so poorly written – contradicting all that had gone before, listing a date of 6 April 1975 in error, referring to a situation where Mr Blackshaw survived his wife but not what happened in the event of divorce, and purporting to convey a further widow's pension right (reduced) to a further wife should Mr Blackshaw re-marry again; that I am not persuaded that it was reasonable for Mr Blackshaw to take all his financial and future planning decisions based on this letter without further clarification. This is particularly the case since the letter gives the proviso that the figures are subject to the conditions of Section 4 of the Scheme.
41. The correspondence file indicates that Mr Blackshaw was someone who sought to question and clarify points as and when they arose. His letter of 16 April 1989 indicated he had also been in telephone contact with Mr Pretty who had written to him clearly and correctly on the subject back in 1982. It simply does not make sense that Mr Blackshaw would act in such a significant way in terms of his future planning, without speaking to Mr Pretty or clarifying why the letter was so contrary to the information he had been given on the exact same point previously.
42. There is in fact a written note on the 20 July 1989 letter (as provided to this office), which says "*Spoke PMG's office and Mr Davies 25/7.*" It is not entirely clear who wrote this note and its significance. It seems most likely this was Mr Blackshaw noting that he called the Paymaster General's office about the letter. Dr Blackshaw says it is in his handwriting. Unfortunately, there is no way of knowing whether the incorrect information was repeated verbally or corrected. It seems unlikely that any discussion which included a re-marriage that had already taken place would have led to a repeat. I say this because I am satisfied that the way the 1989 letter was worded implies a failure to pick up on the significance of the marital changes rather than



ignorance of the Scheme Rules as they apply to a post-retirement re-marriage. No *oral* misrepresentation is claimed in the papers by the Applicant, or earlier by Mr Blackshaw.

43. Mr Blackshaw's letters of 30 April 1999 and 10 January 2011 are instructive. They both enquire as to the criteria for widow's pension and the latter identifies that it has been subject in the past to the provisions of Section 4 of the Scheme, whilst enquiring if these conditions still apply. Both letters do not read as if from someone in expectation (since 1989) of a full widow's pension entitlement for Dr Blackshaw but rather as an enquiry as to whether the rules might have changed in his favour.
44. Had Mr Blackshaw been entitled to rely on the July 1989 letter to the extent claimed, and I find that he was not, the Applicant would still have needed to demonstrate causation between the misleading information given to Mr Blackshaw and the loss caused to her now. That would require evidence of the changes they made and that they would otherwise have acted differently, consideration of whether any other factors influenced their decision-making (such as children's ages, current incomes, work-life balance evaluations), and whether at any stage they could have mitigated their losses in full or in part.
45. Mr Blackshaw had applied for his actuarially reduced pension with effect from 16 April 1989, well before the July 1989 letter, , so it seems that the widow's pension was not a decisive factor in whether or not he took his pension early. He did nevertheless by 22 April 1999 want to know the position regarding widow's pension and, to an extent, would have used that information in future planning. Dr Blackshaw says that the work she did between 1989 and 1999 was part-time and intermittent, so that she could be as flexible as possible whilst the children were small and her husband's work took him away a lot. It seems to me that the age of the children, Mr and Dr Blackshaw's existing level of income and their capacity to manage on a reduced income, with Dr Blackshaw working more flexibly, would have been more crucial factors on the decision for her to cease full-time employment in 1989 than the income she would live on had he pre-deceased her at some future point.
46. Given my findings above, it is not crucial to the complaint for me to determine whether the Paymaster's letter of 4 May 1999 was received by Mr Blackshaw. [If he had received it, the main part of this complaint would be timebarred because he would have had 3 years from then to bring a complaint to this Office]. I accept that he appears to have been fairly meticulous in his record-keeping however there are a

number of possible explanations for Dr Blackshaw being unable to locate it – including that it was never sent, went astray in the post, or was mislaid on receipt.

47. The lack of a signature on the copy provided is not strong evidence for the proposition that it was never sent. The letter exists, has all the appearances of being created at that time and specifically responds to Mr Blackshaw's query and the date of his letter. The absence of any evidence that Mr Blackshaw chased a response, as all indications suggest he would typically do, is surprising if one had not been received. So, although I do not consider it would be right to timebar, on balance it is more likely than not that the letter was received.
48. Since the rules and scheme booklets set out the widow's pension entitlement, the correct position was detailed several times by letter to Mr Blackshaw, and his initial correspondence in 1999 and 2011 is not suggestive of relying on the 1989 letter but rather being conscious of the ruling provisions of section 4 of the Scheme, I do not find that the actions claimed by the Applicant to have been made solely in reliance on the 20 July 1989 letter to be reasonable in all the circumstances or a reasonably foreseeable consequence of the provision of the misleading information. As such, I do not uphold the main part of the complaint.
49. With regard to the misleading information given in 2011. This caused distress to Dr Blackshaw when corrected, at an already difficult time, for which I have made an appropriate direction.

### **Directions**

50. I direct that the Cabinet Office shall:
  - within 28 days of this determination, pay to Dr Blackshaw a sum of £300 in recognition of the distress caused by the maladministration identified above.

**Jane Irvine**  
Deputy Pensions Ombudsman

26 January 2015

## APPENDIX

### Relevant regulations

The Scheme is statutory and was made under section 1 of the Superannuation Act 1972.

Prior to 1978, the Scheme only paid a widow's pension to a wife the member had been married to whilst in service. Section 36 of the Social Security Pensions Act 1975 required that from 1978 occupational pension schemes which were contracted-out of the State Second Pension, had to pay pensions to widows the member married after leaving the scheme.

PCSPS Rule 4.3 (iv) provides:

If a civil servant dies after retiring with a preserved pension or an actuarially reduced pension, a widow's pension will be paid if he leaves an eligible widow.

Rule 4.4 (ii) provides:

In the case of a civil servant who retires or is due to retire on or after 6 April 1978, an eligible widow is a woman to whom he was married at the time of his death, whether or not the marriage took place while he was a civil servant.

Rule 4.6 (ii) provides:

Where the pension is payable to the widow of a marriage which took place after the husband ceased to be a civil servant,  $1/160^{\text{th}}$  of her husband's pensionable earnings multiplied by the reckonable service for which full contributions under rule 4.15 or rule 4.16 are due or would have been due if the person had been male before he ceased to be a civil servant in respect of service falling or treated as falling under rule 4.15(ii) or rule 4.16(ii) as the case may be.

Rule 4.15:

When a married civil servant dies in service or ceases to be a civil servant, contributions at the full rate of  $1\frac{1}{2}\%$  of salary (or wages, including statutory adoption pay or statutory paternity pay) will be due in respect of:

- (i) his reckonable service prior to 6 April 1978, except that if rule 4.11(i) or (ii) applies to him no contributions will be due, and if he opted under rule 4.13 to pay reduced contributions for his reckonable service before 1 June 1972 contributions will be due in respect of such service at the reduced rate of  $1\frac{1}{4}\%$  of salary (or wages);
- (ii) his reckonable service on or after 6th April 1978; for this purpose reckonable service includes service before 1st March 2008 in excess of 5 years during re-employment after the pension age for which a payment calculated as in rule 3.2 is made, and service which is disregarded under rules 3.38 or 3.38d, and if his reckonable service

during the period beginning on 6th April 1978 exceeds the limits in rule 2.3, those limits will not apply for the purposes of this rule. No contributions are due in respect of service that reckons under rule 2. 29;

Rule 4.16 relates to members who are not married when they leave the Civil Service.