

Ombudsman's Determination

Applicant	Dr N
Scheme	Teachers' Pensions (the Scheme)
Respondent	Teachers' Pensions (TP)

Outcome

1. I do not uphold Dr N's complaint and no further action is required by TP.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Dr N was in receipt of a spouses' pension which ceased in November 2016, when he informed TP that he was remarried. TP has requested repayment of an overpayment that occurred from 7 July 2010, the date Dr N remarried, up until the pension was stopped in 2016.
4. Dr N has complained that he was not made reasonably aware his spouse's pension would cease upon remarriage, or that he was meant to inform TP when he remarried, and therefore he should not be required to make repayment.

Background information, including submissions from the parties

5. Dr N's previous wife was a member of the Scheme, and started receiving benefits from it in 2004. In June 2007, she passed away and Dr N was provided with an application form for a spouse's pension. The covering letter for the application form also referred to a Certificates Enclosure Form, and said Dr N could contact TP or visit their website for further information.
6. Dr N completed the relevant forms and TP began to pay him a spouse's pension from the Scheme.
7. TP has said that usually the application pack for a spouse's pension includes a leaflet with further information about when the spouse's pension may cease. It has confirmed that a document, referred to as Leaflet 450, contained such information and generally a copy was enclosed with application packs for spouse's pensions up until 2007. After that date, Leaflet 450 was taken out of circulation and later replaced

with the Survivor & Death Benefits leaflet. However, TP cannot find evidence that Dr N was sent this leaflet or any equivalent.

8. On 7 July 2010, Dr N remarried. He was not aware that this would affect his spouse's pension, and as such he did not inform TP.
9. In 2014, TP became aware that spouse's pensions were being paid to individuals who were not eligible. As a result, they started to issue declarations to recipients asking for key information, such as any change in circumstances.
10. In August 2016, TP sent Dr N a declaration to complete. In September 2016, Dr N informed TP that he had remarried over six years ago. In November 2016, TP informed Dr N that he had received an overpayment of £7,000.56, as his spouse's pension should have ceased when he remarried.
11. Dr N highlighted that he had never been told, as part of his application for the spouse's pension, that it might cease. TP has acknowledged that he may not have received such information with the application pack, but said the information would have been available to him on its website. Alternatively, TP said he could have found the information in the guide to the Scheme, dated April 1992, which Dr N has previously referred to as being in his possession.
12. Dr N has argued that he would not have searched for information regarding the cessation of his spouse's pension without a reason. He adds that, as he did not know his spouse's pension may cease, he would not have proactively searched for information about what would trigger a cessation.
13. TP has also highlighted that Dr N was sent a newsletter every year, which included a reminder to let it know if his circumstances changed. In particular, the annual newsletter said that TP ought to be informed "if you receive a pension by virtue of being a dependent of a deceased member and subsequently enter into a new marriage or partnership". From 2012, this wording changed to "Please tell us if you receive a spouse's...pension and you remarry".
14. TP has added that each annual newsletter stated on the front page it contained "important information".
15. TP has also highlighted a recent Determination issued by our Office, reference PO-11441, which it believes supports its position. In particular, the Ombudsman in that case said TP's processes before 2014 did not amount to maladministration. Specifically, the Ombudsman was satisfied that the information issued by TP was a sufficient reminder for recipients of spouse's pensions that they must inform TP of any relevant changes.

16. Dr N highlights that the applicant in PO-11441 had received Leaflet 450, as well as the annual newsletters. He states that this is a significant difference, and does not believe the newsletters alone were sufficient means of ensuring he knew to inform TP when he remarried.
17. Notwithstanding the above, Dr N has been willing to reach a compromise on this matter. In particular, he notes that TP was aware of a large-scale problem in 2014, but that it did not send him a declaration to complete regarding any change of circumstances until 2016. He has therefore suggested that, if TP writes off the overpayments received between 2014 and 2016, he will accept responsibility for not reading the annual newsletters and he will pay the remaining balance.
18. TP has rejected Dr N's offer. It reiterates that PO-11441 finds its processes before 2014 were satisfactory. It has added that the Ombudsman in that case also noted TP was not required to issue the declarations in question. As such, TP argues that the timing of the declaration being issued is irrelevant.

Adjudicator's Opinion

19. Dr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by TP. The Adjudicator's findings are summarised briefly below:-
 - It is not reasonable for TP to suggest that Dr N ought to have found information regarding whether and when his spouse's pension would cease, particularly when he was first applying for it. It is insufficient to say an individual is reasonably aware of information, on the basis that the information in question is available. Instead, it would have been reasonable for TP to have included information about when Dr N's spouse's pension might cease, as part of the application pack.
 - However, Dr N received a newsletter with the relevant information every year that was consistently just two or three pages long. This newsletter also stated in bold on the first page that it included important information.
 - The Ombudsman has previously concluded, in PO-11441, that TP's processes were sufficient before 2014. As such, whilst it is regrettable that Dr N was not issued a declaration before 2016, this does not amount to maladministration.
20. Dr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Dr N provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will only respond to the key points made by Dr N for completeness.

Ombudsman's decision

21. Dr N asserts that TP's failure to draw his attention to the need to notify it of a change of circumstance when his pension was first put into payment was negligent, and any overpayment is a direct consequence. He considers that it is therefore unreasonable and unfair to ask him to pay it back. I disagree with this conclusion. Despite my sympathy for the situation Dr N finds himself in, TP are required to apply the Regulations which establish and govern the Scheme. These state that a spouse's pension is not payable during or after any marriage of that spouse to a new partner. Where an overpayment has occurred TP are entitled to recover it unless, exceptionally, the recipient can make out a defence of change of position or there is some other equitable or legal bar to recovery. I have seen no indication from anything put forward by Dr N that such a defence applies.
22. I accept that Dr N was in fact unaware of the requirement to notify his change of circumstance until 2016. I agree that Dr N should have been informed from the outset that he may not always be eligible for a spouse's pension from the Scheme. TP says that according to the practice of the day the spouse's pension application pack should have included Leaflet 450 or an equivalent. TP cannot prove that this was sent and given the records which Dr N has been able to produce, including the original scheme letters to him and copies of old documentation issued to his late first wife, it seems unlikely that it was sent. I acknowledge the point made by TP that information about the benefit ceasing upon remarriage was available on the website and was also included in the original literature provided to the scheme member, but I agree with Dr N that he could not reasonably be expected to look for a condition if its existence had not been brought to his attention.
23. It is important that recipients of benefit are properly informed about any conditions attaching to it at the time when the benefit is first put into payment and failure to use systems which are there to ensure that recipients of benefit are told about such conditions is maladministration. In this case, there was an initial failure to comply with the usual process for bringing the condition attached to payment of a spouse's pension to Mr N's attention. That was maladministration.
24. However, in this particular case, I cannot see this failing has caused financial loss. In particular, there is nothing within Mr N's submissions to indicate that he relied on the overpayments and spent them in such a way as to irreversibly change his financial position. Rather, there has been a temporary gain which must now be repaid. Therefore I do not agree that TP ought to write off overpayments accrued, after 2014 or otherwise.
25. I note that TP has offered repayment terms. In the circumstances, I would expect those to extend over at least the period that the overpayment occurred. Furthermore, I would expect TP to ensure any repayment plan is affordable for Dr N's and takes into account his current financial circumstances.

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26. Lastly, although I have found maladministration, in this case I do not consider that there is significant outstanding injustice which requires a remedy because Mr N has had use of the overpayment, in effect an interest free loan.
27. Therefore I do not uphold Dr N's complaint.

Karen Johnston

Deputy Pensions Ombudsman
6 December 2017