

CASE PARTLY SUSTAINED

CS/584

COMPLAINT AGAINST THE TREASURY DEPARTMENT FOR FAILING TO PROPERLY CALCULATE THE COMPLAINANT'S PENSION

The Complainant, a widowed mother of two, was in receipt of a Widows and Orphans Pension ('WOP'), as per the Pensions (Widows and Orphans) Ordinance. She felt aggrieved with the Treasury Department (the 'Department') when she was informed that her pension had been miscalculated, and she would have to pay back £235.36.

During December 1993 the Complainant contacted the Department to inform them that her daughter had reached eighteen years, as she believed she would no longer be entitled to receive the orphan's pension on her behalf (and this would affect the amount she was entitled to receive from her WOP). She was allegedly informed, however, that her pension would not be affected by her children's age, and that it would only be affected if she were to re-marry or co-habit with another man.

On 19th May 2004 the Complainant received a telephone call from the Department, who informed her that she had been in receipt of overpayments in respect of her WOP. This was due to the fact that her daughter had finished attending University during July 1999, but her WOP had not reflected this and it had been calculated as if her daughter had been in full-time education for the period of August 1999 to July 2001.

The Ombudsman thought it pertinent at this juncture to highlight the fact that the Complainant had already been the subject of an overpayment in relation to her son. She had been informed of this some time between late 1997 and early 1998, and had had £5.00 deducted from her pension until the overpayment had been repaid.

On 21st May 2004 the Complainant went to the Department, explaining that she thought she had already repaid them all owed monies as £5.00 had been deducted from her WOP every month. She also stated that if this was not in relation to the same overpayment, she should have been notified at an earlier date, instead of allowing the overpayments to accumulate.

The Complainant decided that she would not pay the 'arrears', and informed the Department that she would be seeking advice from the Office of the Ombudsman. On 24th May 2004 she again went to the Department and asked for their request for repayment to be made to her in writing, on 28th May 2004 she received a letter to that effect.

The letter in question stated that there were arrears amounting to £235.36 covering the period August 1999 – July 2001, and advising her to contact the Department at her earliest convenience so as to arrange repayment. The

Ombudsman pointed out that the request for repayment had only been put in writing at the Complainant's insistence, and had originally only been made verbally.

On 5th July 2004 the Complainant again contacted the Department and requested a breakdown of the payments she had already made, in order to compare them with the payments she was now being asked to make – this was to assure herself that she had, in fact, been overpaid a second time as stated by the Department. She was told, however, that the records were kept in a storeroom outside the Treasury Building, and no one would be able to retrieve them at that time as the Department was understaffed.

The Ombudsman met with the Department on 27th September 2004. The Department explained that, as they had already informed the Complainant (although the Complainant denied this), the first overpayment had been in respect of the Complainant's son, who no longer attended school as from 1996, but this had not been noticed until late 1997. The second overpayment had been in respect of the daughter, who had finished her University degree in 1999, this having been noticed in July 2001. The Department claimed that it had verbally explained all of the above to the Complainant, it follows, there was no documentary evidence of the Department having informed her.

The Department explained that the Complainant had known that the original overpayments had come about as a result of her failure to inform the Department that her son was no longer attending full-time education. Consequently the Department was only able to amend her WOP once it realised the discrepancy between the Department of Education's records and their own. This was in pursuance of the Pensions (Widows and Orphans) Ordinance, which states as follows:

Section 10 (2) *“Subject to the provisions of this section...the persons for whose benefit a children's pension can enure are the children of the deceased or of any wife of his who are for the time being in their period of childhood and full-time education”.*

Similarly, the second overpayment had been as a result of the Complainant's failure to inform the Department that her daughter had finished her University degree during July 1999. As a result her WOP had been calculated at a more favourable rate than she was entitled to from August 1999 to July 2001, when the Department noticed the Complainant's daughter was no longer in full time education.

The Department further explained that at no time had it refused to provide the Complainant with the information she had requested. At the time, however, the Department had been understaffed and was unable to go to the storeroom and retrieve the said information. The Complainant, however, had allegedly insisted that she wanted the said information immediately, and when she was told that it was not possible, she explained to the Department that she would be informing the Ombudsman.

Subsequently, the Department decided to wait for the Ombudsman to request the said information, as she knew he was involved and wanted to follow the correct procedure. In fact, this was apparently the reason as to why the Department made the request for the repayment of the £235.36 in writing, as she knew that it would facilitate the Complainant's complaint.

At the request of the Ombudsman, the Department supplied him with all of the Complainant's pension details which he checked and were in order, and his questions also received replies to his full satisfaction.

The Ombudsman highlighted, however, that the Department had adopted the stance that all recipients were aware of their obligation to inform the Department when their children ceased to be in full-time education. He noted, nevertheless, that the Department itself did not directly inform recipients of this need, and the only reference to this was found in the aforementioned legislation, which simply stated that the orphans pension would only enure if, "*...the children of the deceased...are...in their period of childhood and full-time education*". The Ombudsman noted that it was not reasonable to expect people to read an Ordinance because they were due to receive a pension entitlement.

The Ombudsman noted that in a previous case (Case No 412) the Department had proceeded to recover funds directly from a Complainant's gratuity, without written notification. This point had also been noted by the Chief Secretary, who had been concerned by this practice.

The Department, the Ombudsman conceded, had followed the correct administrative procedure for the recovery of the overpayment, nevertheless, they did not initially make this request in writing. The Department wrote to the Complainant on 28th May 2004 (only as a result of the Complainant's insistence that they do so), explaining that there had been an overpayment totalling £235.36, for the period August 1999 to July 2001, and that she should contact the Department at her earliest convenience so as to arrange repayment.

The Ombudsman noted that the Department believed that the Complainant was fully aware of the reasons for the overpayment, namely the fact that she had not informed them when her children stopped receiving full-time education, which had a direct effect on her pension.

The Department informed the Ombudsman that the onus of informing them when children had ceased to be in full-time education fell squarely on the individual concerned, as the Department of Education did not automatically inform the Department. The Ombudsman asked whether there was any informative pamphlet which explained this practice to individuals, but the Department explained that there was not.

The Ombudsman could not reconcile the Complainants version, stating she had not been told of the need to inform the Department once her children ceased to be in full-time education, with the Departments contradictory statement. He did note, however, that there was no standard written form of notification, and the presumption was that the recipients were aware of this practice.

The Ombudsman also highlighted the fact that the WOP was rarely utilised, but had been more popular in the past, notwithstanding, he stressed the point that the Department should not presume that recipients will automatically know what procedures should be followed when their status has been altered (i.e. when their children cease to be in full-time education). The Ombudsman recommended that in situations where an overpayment had been detected, the recipient of that payment should be informed in writing of the overpayment and the intended deductions. This should be accompanied by a full substantive explanation as to the reasons for the overpayment.

The Ombudsman did not find maladministration in respect of the Department's decision to recover the Complainant's overpayments, the fact was that the Complainant had been overpaid and she needed to make arrangements to repay the £235.36.

In respect of the Departments' decision to inform the Complainant of the overpayment verbally (as opposed to in written form), and not providing a written explanation as to why there had been overpayments in the first place, the Ombudsman concluded that the Department had committed maladministration.