

## Ombudsman's Determination

Applicant	Dr E
Scheme	Principal Civil Service Pension Scheme ( <b>the Scheme</b> )
Respondents	The Cabinet Office MyCSP Health and Safety Executive ( <b>the Employer</b> )

## Outcome

1. I do not uphold Dr E's complaint and no further action is required by the Cabinet Office, MyCSP or the Employer.

## Complaint summary

2. Dr E has complained that he was provided with his annual pension saving statements (**PSSs**) by MyCSP significantly later than expected. He believes that had he received these earlier, he would have known that he had exceeded his Annual Allowance (**AA**).
3. He also complained about the following issues:-
  - Underpayment of his Additional Voluntary Contributions (**AVCs**).
  - Incorrect data provided to MyCSP by the Employer.
  - Incorrect Annual Benefit Statements (**ABSs**).
  - Delay in sending an alpha option pack.
  - Delay in the Cabinet Office dealing with his complaint.
  - Loss of interest from savings he had to use to pay a tax charge in 2017.

## Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.

5. On 1 November 2010, the Cabinet Office issued a circular, Employer Pension Notice (**EPN**) 286, detailing changes to the tax regime for the tax years 2011/2012, specifically changes to the AA, which was being reduced from £250,000 to £50,000. It attached a briefing for HR managers and staff with Q&As.
6. On 22 November 2010, the Employer posted on its intranet website, available to all employees, an article regarding upcoming changes to the AA and the Lifetime Allowance. The article provided what the new limits would be and enclosed links to HMRC's website and the Civil Service website for more information.
7. On the same day, the Employer also sent a weekly email notification to all employees 'e-express', highlighting the changes titled 'Changes to tax relief in pensions'. This information was also available on the Civil Service website. It explained that if members had not yet taken their pension, and the tax charge was £2,000 or more, they could request the Scheme Pays facility. Extracts from this information is set out in the Appendix.
8. From 6 April 2011, MyCSP was legally obliged to provide a PSS to all Scheme members who exceeded the AA. For the tax years 2011/2012, this information had to be issued before 6 October 2013. In subsequent years the deadline was 6 October following the end of the tax year, for instance for tax years 2013/2014 the deadline for issuing a PSS to a member who exceeded the AA for Pensions Input Period (**PIP**) 1 January 2013 to 31 December 2013, was 6 October 2014.
9. In September 2014, the Employer provided employees, including Dr E, information regarding the Alpha section of the Scheme. In October 2014, Dr E contacted MyCSP for further information regarding this. In November 2014, Dr E contacted the Employer to request information regarding joining the Alpha section of the Scheme. Having heard nothing from the Employer, Dr E contacted MyCSP on 25 November 2014, requesting the same information.
10. The deadline for Dr E to decide whether he wanted to stay in his current scheme or move to the Alpha section, was 31 December 2014. On 13 February 2015, the Employer requested the information from MyCSP and the Alpha option pack was sent to Dr E in May 2015.
11. The pack gave options to join the Alpha section either on 1 April 2015 or on a tapered enrolment date of 1 December 2020. The deadline for Dr E to inform MyCSP of his selection was 15 July 2015. Dr E returned the pack, requesting to join the Alpha section on 1 December 2020.
12. On 1 March 2016, Dr E contacted MyCSP to request details of his previous Pension Input Amounts (**PIAs**). He requested this information as he suspected he may have been close to exceeding the AA due to an increase in salary, and he had not yet received a PSS.

13. In response, MyCSP emailed Dr E on 5 April 2016, and provided him with the details of his PIA for tax years 2011/2012 and 2013/2014. It also told Dr E that he had exceeded the AA for the tax years 2011/2012 and 2013/2014 PIPs.
14. There was further correspondence between Dr E and MyCSP from September to October 2016 regarding the salary used in the PSS. Dr E specifically said that his pensionable salary should have been higher than the one used in the calculations.
15. On 12 October 2016, MyCSP emailed Dr E providing him with his PIAs for the years 2008-2012, which included his AVCs. It said PSSs for those tax years had not been produced but it had produced PIAs, which had been calculated using the post 2011 method of calculation.
16. On 30 September 2016, the Employer emailed Dr E saying MyCSP was in the process of issuing PSSs to certain members including him. It provided Dr E with a link to the section of the Civil Service website regarding information about tax, and said the deadline to return a form to accept the 'Scheme Pays' Quote was 14 December 2016.
17. On 17 October 2016, Dr E responded to MyCSP saying the PIAs did not give him the usual information such as the number of years of pensionable service or the percentage of his lifetime allowance used.
18. On 19 October 2016, MyCSP emailed Dr E providing him with a link to information about the AA on the Scheme's website. It said that the information he had requested would be provided in his ABS which was due to be issued from October 2016 onwards. In response, Dr E said he was not happy that he had not been notified about the tax charge he had incurred and requested a pension statement for the tax years 2015/2016 in order to validate any tax charge.
19. On 7 November 2016, dissatisfied with the time it was taking MyCSP to provide the requested statement, Dr E raised his concerns with MyCSP. In summary he said:-
  - MyCSP had not provided him with the requested PSS for tax year 2015/2016 in order to validate his tax charge, despite it knowing of the urgency of the situation.
  - He had not been notified about exceeding his AA and he may have exceeded his Lifetime Allowance too.
  - The ABS did not notify him of the tax charge being due.
  - MyCSP expected him to work out his tax charge without having notified him about exceeding the AA previously.
  - MyCSP had also failed to identify that he was in a "taper group" as part of the Alpha section of the Scheme. Only when he insisted to be in this taper group did MyCSP include him in it.

20. On 8 November 2016, MyCSP sent Dr E a Scheme Pays Quote for the Classic section of the Scheme. It said that his tax charge for the tax year 2015/2016 was £32,854, as provided by Dr E. The letter provided two options: (i) to either use the Scheme to pay the tax charge, (using this option would have reduced his annual pension by £1,731.89 and his lump sum by £5,195.68); or (ii) not to use the Scheme to pay the tax charge and be wholly liable to pay the charge himself.
21. On 14 November 2016, MyCSP emailed Dr E. It said that if he only had pension input in a single scheme, he had a longer deadline to use mandatory Scheme Pays in respect of his tax year 2014/2015 breach which was 31 July 2016. However, he was still able to use voluntary Scheme Pays in respect of his tax charge. Dr E subsequently decided to pay the tax charge using his savings due to daily interest being charged by HMRC.
22. On 16 November 2016, MyCSP sent Dr E the requested ABS showing his Classic pension benefits. He subsequently raised concerns with MyCSP regarding higher pensionable pay figures used in the ABS to those used in the PSS. He also said the Scheme Pays Quote should have referred to the Classic Plus and not the Classic section of the Scheme.
23. On 23 November 2016, MyCSP replied to Dr E and agreed that the Scheme Pays Quote should have said Classic Plus. It confirmed it would liaise with the relevant team to provide him with clarification regarding the difference in pay figures.
24. On 15 December 2016, MyCSP emailed Dr E saying:

“This year, we’ve made a number of changes to [ABS], including the way we use pensionable earnings to calculate benefits. This change means that the figure quoted on your 2016 statement is less than in previous years.

In classic, premium and classic plus this year, the pensionable earnings used to calculate your benefits are based on your basic pay as at 31 March 2016 and any pensionable allowances and bonuses that may be applicable to you. For more information about which parts of your pay are pensionable please contact your employer directly.

I can therefore confirm your current [ABS] has calculated your benefits using your current earnings of £94,454. I can confirm that we do hold you in the classic plus scheme, this is also reflected on your benefit statement.”
25. Between November 2016 and February 2017, there were further email exchanges between Dr E and MyCSP regarding his pay figure and additional allowances. Dr E expressed his dissatisfaction as he did not feel confident using the Scheme Pays option not knowing what his correct pensionable pay figure was. MyCSP informed Dr E that it would liaise with the Employer regarding this matter.
26. Having subsequently received corrected pay figures from the Employer, on 1 February 2017, MyCSP sent Dr E a revised PSS which showed his basic pay of

£67,216 as at 31 March 2016. This PSS still indicated that Dr E had breached his AA. The information included a breakdown of the additional allowance in Dr E's pay since the start of his employment in 1993. The PSS also provided 'Important Notes' on the member's responsibility regarding AA, PSS and factors affecting a breach in AA.

27. On 2 February 2017, the Employer sent Dr E a breakdown of allowance codes regarding additional pay allowances between the period from 1997 to 2005. In early March 2017, there were further email exchanges between Dr E and the Employer regarding his PIAs for the years 2008 to 2012. Dr E needed this information to use the enhanced pension savings annual allowance calculator on HMRC's website.
28. On 18 April 2017, MyCSP provided a response to the concerns Dr E had raised on 7 November 2016. In summary it said:-
  - It offered its apology for the delay in providing its response and thanked Dr E for his patience while his concerns were being investigated and guidance sought.
  - It confirmed that ABSs were issued to his registered home address on 25 November 2015 and 14 November 2016.
  - As the administration of the Scheme changed in September 2014 from Capita Hartshead, it was regrettably unable to comment on Dr E not receiving ABSs for the tax years 2012/2013, 2013/2014 or 2014/2015.
  - While PSSs were available on request, its process was to send a PSS to Dr E's registered home address whenever his PIA breached the notional AA. He should have received a PSS automatically in tax year 2014/2015 and it apologised that it was not sent.
  - It initially received information from the Employer that he had been enrolled into the Alpha section of the Scheme from 1 April 2015. Following his advice that he had not received the Alpha option pack, a pack was issued to him and his record updated to reflect he would enrol on 1 December 2020. It apologised for not issuing the pack earlier.
  - An ABS provided an estimate of the pension benefits currently accrued and did not contain information regarding his AA or any potential tax charges.
  - Following queries with the Employer, his records were updated to reflect his pensionable allowances accurately, and the changes were reflected in the 2017 ABS.
  - The PSS issued on 19 April 2016 was inaccurate due to his record reflecting inaccurate pensionable allowances. It rectified this issue on 2 February 2017 prior to issuing a revised PSS on 3 February 2017.
  - The PSS was calculated based on data supplied by the Employer. It usually relied on the data supplied to be accurate and up to date. However, in the event that the

information did not accurately reflect the correct details, it used established channels to contact the Employer to clarify the correct information.

- It had issued a revised PSS to him on 3 February 2017 and confirmed the correct PIA on 7 March 2017.

29. On 13 October 2017, Dr E complained to the Employer.

30. In January 2018, there was further communication between Dr E and the Employer regarding his complaint. In an email dated 4 January 2018, the Employer said that it felt it had already resolved his concerns regarding pay figures back in February 2017, when it escalated the issue to MyCSP. Its understanding was that the issues had been resolved and the complaint was closed.

31. Dissatisfied with MyCSP's response to his complaint, Dr E further complained on 2 February 2018, under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). In his submission, he said MyCSP had failed to adequately investigate his concerns and offer a proper remedy, which had caused him considerable injustice, distress, financial loss and loss of opportunity. He further said:-

- He would have ceased paying AVCs had he been provided with a correct PSS. The late provision of the PSS affected his pension planning for the following years. This resulted in him unnecessarily paying AVCs for a further 36 months.
- He claimed financial loss in respect of the tax charge and financial penalties he had been required to pay to HMRC. He believed MyCSP and the Employer were responsible for these charges due to delays in issuing his PSS.
- He incurred late payment charges in respect of the 2014 PIP to the amount of £4,818.00.

32. On 4 April 2018, MyCSP sent a response to Dr E under stage one of the IDRP that partly upheld his complaint. In summary it said:-

- It confirmed the principles for sending out PSSs. For the tax year 2013/2014, the deadline for issuing a PSS was 6 October 2014, and it provided a link to HMRC's website to find more information.
- Although it was required to provide a PSS, the determination of any tax charge was still wholly the responsibility of the member. This was because the scheme administrator did not have complete details of all the information required to make such a determination.
- Scheme Pays was introduced on 6 April 2011, to assist those members who could not afford to pay their tax charge. It referred to the same HMRC link for more information.

- The Cabinet Office issued EPN286 notification to employers covered by the Scheme. “EPN286 Changes to pensions tax relief: Annual Allowance and Lifetime Allowance Questions and Answers” was issued on 1 November 2010.
- It was unable to indicate the reason for not sending a PSS in respect of his AA breaches.
- Errors resulted from inaccurate information provided to it by the Employer. It was completely reliant on such information. It was the Employer’s responsibility to ensure all data provided to MyCSP was accurate and up to date.
- By providing inaccurate data, the Employer did not fulfil its responsibility and it therefore must uphold this aspect of Dr E’s appeal.
- It had seen no evidence of Dr E’s argument that had he been provided with a correct PSS, he would have stopped paying AVCs.
- It was clear that AVCs were underpaid for a period of time. It was the Employer’s responsibility to make sure correct deductions were taken from a member’s salary.
- Part-time employees paid a higher percentage rate as added pension contracts were calculated on a full-time basis. Therefore, when Dr E’s hours reduced, the amount of contributions should have increased.
- The Employer’s Pension Guide (**EPG**) told employers what they needed to know regarding their responsibility in delivering arrangements to their employees. The EPG should be read in conjunction with EPNs.
- Dr E’s records indicated that he reduced his working hours and as such he was required to pay contributions at an increased rate. However, there was no evidence that the Employer provided formal notification to the previous Scheme administrator (Capita Hartshead) in order for it to recalculate the percentage rate in respect of the contributions deductible from his salary.
- This resulted in Dr E underpaying his AVCs from July 2013 to July 2017. It noted that the Employer had taken responsibility for this and that Dr E had since paid the shortfall of contributions. These errors by the Employer amounted to maladministration therefore it upheld this aspect of Dr E’s appeal.
- It appreciated that it took a considerable amount of time to provide the Alpha option pack. However, it was satisfied that it had rectified this issue and provided suitable remedial action in respect of this. Dr E was given an option to join Alpha on 1 December 2020.
- The argument that Dr E would have stopped paying his AVCs had he known his correct pension position was hypothetical. The tax charge he had acquired was in respect of the pension he would receive at retirement. So, the tax charge he was

required to pay was calculated solely on the basis of the growth of his actual pension.

- MyCSP was required to inform members that they have exceeded the AA but it could not be held responsible for the actual growth of his pension or any tax charges that arose as a result of this.
- In addition, MyCSP had informed Dr E that he was able to utilise the voluntary Scheme Pays option in order for MyCSP to pay any tax charge on his behalf. While he would have been required to surrender part of his pension in order to do this, the immediate tax payment to HRMC would have been reduced accordingly.
- It could be argued that MyCSP could be liable for any late payment charges he had incurred as a result of the delay in paying any tax charge owed to HMRC. However, tax was still an individual matter and members should still be proactive in monitoring their financial arrangements. While Dr E was not provided with a PSS, it was reasonable to suggest he should have contacted MyCSP to request a statement if he believed the growth of his pension, the payment of AVCs or a significant increase in his pay could have resulted in him exceeding the AA.
- EPN286 was issued prior to the 2012 PIP. The information provided in this EPN detailed the number of factors which could have resulted in a member breaching the AA, including a significant pay rise or AVC payments. Having received this information, Dr E could have contacted MyCSP to enquire as to whether he was close to breaching the AA.
- However, it recognised that the actions of MyCSP would have caused considerable distress and inconvenience and for this it apologised on behalf of MyCSP. In light of this, it offered Dr E an ex gratia payment of £1,000.
- It also recognised that the Employer had provided incorrect information to MyCSP. This resulted in MyCSP providing Dr E with pension figures based on incorrect earnings. The Employer also did not provide formal notification to the previous Scheme Administrator of the reduction in his working hours, resulting in a shortfall of his AVCs. In light of this, it instructed the Employer to make an ex-gratia payment of £500 to Dr E.

33. On 6 July 2018, Dr E further appealed under stage two of the IDRP. In his submissions he said:-

- HMRC had agreed to waive the late payment charge of £4,818 but had not agreed to waive the daily interest charge of £1,911.
- How was he supposed to monitor his pension situation when MyCSP did not send him basic information in ABSs or PSSs.



- Compensation offered in stage one of the IDRP was not sufficient. He was threatened with debt collectors as his tax charge had to be paid within three months and he could not afford it.
- The matter had caused him a severe level of distress, with the numerous errors compounded over a number of years. Several opportunities to notice and remedy mistakes were missed.
- He missed the opportunity to use Scheme Pays for the tax year 2011/2012.
- He had to use savings to pay the tax charge and incurred the loss of interest on the savings for which he would like to be compensated. The reason he used his savings was because HMRC was charging him daily interest.

34. On 24 July 2019, the Cabinet Office sent Dr E its stage two IDRP decision. In summary it said:-

- It offered sincere apologies for the delay in completing its investigation.
- It was clear that it had taken considerable time and effort in dealing with MyCSP to try to get answers to Dr E's questions, and make sure his pension record was correct.
- MyCSP had adequately addressed the issues around the incorrect ABSs, the delays in sending information and the Alpha option pack, and the underpayment of AVCs. It agreed with the £1,000 offered by MyCSP as well as directing the Employer to pay £500 for its mistakes. It did not believe any further redress was appropriate for the non-financial injustice.
- It did not uphold his appeal for compensation for the loss of interest on the savings he had used to pay the tax charge. He had exceeded the AA in 2012 and 2014, therefore, as a matter of fact, he would have been subject to a tax charge.
- It could not agree that MyCSP's failure prevented him from stopping the AVCs sooner. Although a PSS confirmed the breach, it did not forewarn members of a potential breach. He would already have breached the AA by the time MyCSP ought to have issued a PSS.
- However, it agreed that Dr E had suffered some financial loss as a result of MyCSP's failure to send a PSS advising him of the AA breach. This resulted in HMRC applying a daily interest charge. It agreed that the interest charge of £1,911 was an actual loss, which MyCSP should reimburse.
- Finally, in recognition of the further distress and inconvenience the delay in investigating this appeal had caused, it offered him an additional £250.

35. In his complaint to my Office, Dr E maintained his arguments and added:-

- The Cabinet Office took over a year to respond to his stage two appeal when it should have taken three months. This had caused additional distress and inconvenience to him.
  - Since 2018 he had not had any updates from the Cabinet Office or an explanation for the delays.
  - He suggested an award of £3,000: £2,000 from MyCSP and £1,000 from the Employer as more appropriate remedy for the injustice he had suffered.
  - He would like to be reimbursed for the underpayment of AVCs of £3,938.
  - He would like to be reimbursed for 20% of the total tax charge of £32,189, which is £6,438.
  - He would like to be reimbursed for the loss of interest from savings for £1,237 he had to use to pay the tax charge in 2017.
  - The Employer never informed employees, including him, regarding the changes to the AA.
36. During the course of my Office's investigation, the Employer provided copies of the article and 'e-express' posted on its internal intranet website regarding changes to the AA and tax relief. In summary it said:-
- This information would have been sent to all employees including Dr E.
  - It accepted that it did not fulfil its responsibility as an employer and failed to provide MyCSP with accurate and up to date information regarding Dr E's pay.
  - However, it believed the matter was taken into account and dealt with by the IDRPs resulting in it making an ex-gratia payment of £500 to Dr E.
  - It had continued to support Dr E in other queries that he had raised with MyCSP regarding his ABS and PSS and it believed it could not be held responsible or made liable for any further issues that arose thereafter.

## **Adjudicator's Opinion**

37. Dr E's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Cabinet Office, MyCSP or the Employer. The Adjudicator's findings are summarised below:-
- The Cabinet Office had agreed that MyCSP provided Dr E with incorrect ABSs and did not send a PSS on some occasions when it should have done. It had also agreed that the Employer did not provide correct and accurate information regarding Dr E's pay to MyCSP, and the Employer had accepted responsibility for this. So, there was no dispute that maladministration had occurred. Dr E had raised further issues which the Adjudicator addressed in turn.

- The Adjudicator noted that the Employer would have been responsible to disseminate information to Dr E and other employees regarding changes to the AA. The Employer confirmed this took place on 22 November 2010, by email and a posting to its intranet. Dr E said he did not receive this information. Nonetheless, the Adjudicator was satisfied that the information was available to him on the Employer's intranet and on the Civil Service website. While it was not clear that the information would have affected Dr E's pension planning going forward, in the Adjudicator's view, the information should have prompted Dr E to contact MyCSP to enquire about his AA. It would also have been prudent for Dr E to have sought financial advice.
- The main documents for Dr E's pension purposes were the PSSs for the tax years 2011/2012 and 2014/2015 as they contained information specific to him. Although, MyCSP was required to provide a PSS, the determination of any tax charge was still wholly the responsibility of Dr E. This was because MyCSP did not have complete details of all the information required to make such a determination. Further, the deadline for sending the PSS for the tax year 2011/2012 was before 6 October 2013. For the following years the deadline was 6 October following the end of the tax year. So, in the Adjudicator's view if MyCSP had sent Dr E a PSS before 6 October following the end of the given tax year, Dr E would have already breached his AA. In the Adjudicator's view, Dr E could have easily mitigated this breach by contacting MyCSP, checking the Civil Service website or by seeking financial advice, especially as his pay fluctuated.
- Dr E argued that had he been provided with the PSS sooner, he would have stopped his AVCs. The Adjudicator had seen no evidence that Dr E would have stopped his AVCs. The fact that he reduced his hours caused his AVCs to be underpaid. In the Adjudicator's view, the underpayment of AVCs was not a result of any maladministration by the Employer or MyCSP. At the time when Dr E reduced his hours, the Adjudicator would have expected Dr E to have queried with the Employer or MyCSP if the reduction of hours would affect his AVCs or not. The Adjudicator had seen no evidence that Dr E made such enquiries. Nonetheless, the Adjudicator noted that Dr E was happy to pay the shortfall of his AVCs, so this part of his complaint has been resolved.
- MyCSP relied on the information provided by the Employer in order to calculate Dr E's pension. The Employer also did not provide formal notification to the previous Scheme Administrator of the reduction in Dr E's working hours, resulting in a shortfall in his AVCs. The Employer has accepted responsibility for these failures and has made an ex-gratia payment of £500 to Dr E, which he has not accepted. In the Adjudicator's view, this award was reasonable and in line with the Ombudsman's guidance on redress for non-financial injustice.
- The Adjudicator noted that MyCSP took a considerable amount of time to send Dr E his Alpha option pack. He requested this in October 2014 and had to chase MyCSP on 25 November 2014. The Employer requested the same information on

13 February 2015. However, the information was not sent until 30 April 2015, which was after the potential deadline of 1 April 2015, by which Dr E could have chosen to join. It was unclear why it took such an unreasonable amount of time for MyCSP to send this information to Dr E. MyCSP subsequently rectified this by offering Dr E the option to join the Alpha section of the Scheme on 1 December 2020. In the Adjudicator's view, the delay in sending the Alpha pack to Dr E would have caused him distress and inconvenience.

- Dr E would like to be reimbursed for the loss of interest on savings he had used to pay the tax charge in 2017. However, the Adjudicator noted that MyCSP, on 8 November 2016, offered Dr E Scheme Pays for the tax year 2015/2016. Dr E decided not to use Scheme Pays to pay the tax charge and decided to clear the debt himself, due to the daily interest charged by HMRC. While the Adjudicator appreciated Dr E wanted to act promptly to clear the tax charge and avoid being charged daily interest, he was still offered the option to use Scheme Pays. This would have allowed Dr E to use his pension to clear the tax charge by reducing his pension at retirement. In the Adjudicator's view, the loss of interest on savings was not caused by any maladministration by MyCSP.
- The Cabinet Office has accepted that Dr E suffered a financial loss of £1,911, because of MyCSP's failure to send a PSS warning him of the AA breach, which MyCSP duly paid to Dr E. In the Adjudicator's view, MyCSP reimbursing Dr E for this loss is what the Ombudsman would have expected it to do in the circumstances.
- My CSP has additionally paid Dr E £1,000 for non-financial injustice for its errors. In the Adjudicator's view this was reasonable, as the sum was in line with the Ombudsman's award for serious distress and inconvenience.
- Dr E was unhappy that the Cabinet Office took an unreasonable amount of time to respond to his stage two IDRP appeal. The Adjudicator noted it took the Cabinet Office almost a year to provide its stage two response. In the Adjudicator's view this delay was unreasonable and would have caused Dr E additional distress and inconvenience. The Cabinet Office had apologised and offered Dr E £250 for the delay in sending out its stage two response. In the Adjudicator's view, this offer was not unreasonable and did not merit the Ombudsman's minimum award of £500 for non-financial injustice.
- Consequently, it was the Adjudicator's opinion that this complaint should not be upheld.

38. Dr E did not accept the Adjudicator's Opinion, and, in summary, he said:-

- The deadline to respond to the Scheme Pays Quote was 14 December 2016. Before that, a member should have attended Tax Awareness Sessions (**Sessions**) provided by a tax adviser. He could not attend those Sessions since

he had not been provided with any PSS. He disagreed with the Adjudicator who expected him to make serious pension decisions based on inadequate information

- He is not asserting that these Sessions provided financial advice. However, they would prompt a review of decisions that would contribute to pension growth, and prompt members to receive financial advice.
- MyCSP failed to send him a PSS for tax year 2015/2016 in October 2016. The Adjudicator failed to consider this issue.
- He contends that MyCSP was not notified by the Employer of a change in his working hours as of 12 March 2012. He said the Employer confirmed to him on 23 March 2012 that it had told MyCSP of the change, and the same also happened in 2004 and 2006.
- He never contended that the tax charge is not his responsibility. The breach post the 2012 PIP was marginal and completely irrelevant. The liability arose post the 2014 PIP.
- He provided correspondence showing he contacted MyCSP in February and March 2014 via emails, regarding his AVCs, which were ignored by MyCSP.
- MyCSP was struggling from 2013, which was why he believed the Capita Hartshead contract was terminated and awarded to the current Scheme administrators. The change of providers exacerbated a deteriorating situation and partly explains why MyCSP stopped answering calls, emails and letters in 2014.
- The issues with the Scheme administration was so severe that the National Audit Office subsequently investigated it.
- A PSS is akin to a possession whose peaceful enjoyment he was denied. All his work colleagues received their PSS'.
- He had number of concurrent AVCs. There were different types of AVC: (i) in the form of additional voluntary contributions; (ii) added years; or (iii) added pension contributions. The Adjudicator made no distinction between them. However, the AVCs are very flexible and could have easily been amended had he known his true position. The fact that he cancelled AVCs at a later stage demonstrates he would have cancelled them sooner.
- He disagrees that he could use Scheme Pays in November 2016. As far as HMRC was concerned tax was due at least by January 2015. He has incurred a loss of interest on savings as he could not use Scheme Pays.
- MyCSP failed to address all of the issues raised in his complaint in 25 April 2017, regarding two misleading inaccurate statements issued to him in November 2014. One of the two statements of November 2014 showed his classic pension of £5,204 up to 31 August 2014. He could not work out from this figure any amount of AA breach, in order to seek financial advice.

- He is unhappy with the Cabinet Office's offer of £250 in recognition of its delays when dealing with the stage two IDRP. He believes a higher amount should be awarded to him.
- Dr E submitted a request for me to hold an oral hearing.

39. Dr E has referred the matter to me for consideration. I agree with the Adjudicator's Opinion and note the additional points raised by Dr E.

### **Ombudsman's decision**

40. Dr E contends that had he been provided with a PSS earlier he would have taken appropriate action to mitigate his tax charge. It appears that Dr E puts the onus entirely on MyCSP for not sending him a PSS more quickly. But PSSs do not forewarn members of the potential AA breaches.
41. Dr E says he could have attended Sessions and sought financial advice. However, although MyCSP was required to provide Dr E with a PSS, Dr E would have already breached his AA. I find that Dr E could have mitigated his loss much earlier than waiting to receive the PSS. He could have mitigated his breach by contacting MyCSP, checking the Civil Service website or by seeking financial advice, especially since his pay fluctuated. Had Dr E taken action in November 2010, when he would have been informed of the AA changes, he would have avoided his later issues.
42. I acknowledge that the correspondence Dr E sent to support his case shows he contacted MyCSP on a number of occasions in 2004, 2014 and 2016, regarding his AVCs but this was a request to increase his AVCs. I have seen no evidence that Dr E made specific enquiries on how the changes in his hours would affect his AVCs. As Dr E paid the shortfall of AVCs, it suggests he was happy to do so. I am not persuaded that Dr E would have cancelled his AVCs, had he known his true pension position.
43. The other issues raised by Dr E concern a change of Scheme administrator and receiving incorrect ABSs. I appreciate these would have caused additional distress and inconvenience, but the Adjudicator has already considered these issues in her Opinion. I am satisfied that the Cabinet Office's offer of £1,911, in recognition of financial loss incurred in the form of HMRC's daily interest penalty was reasonable and appropriate.
44. I note MyCSP offered £1,000 in recognition of not sending Dr E his PSS sooner and for the errors with his ABSs. The Cabinet Office further offered £250 in recognition of the delay in sending its stage two IDRP response. I find that the total of £1,250 for distress and inconvenience suffered plus £1,911 in recognition of the financial loss incurred, is sufficient redress and broadly in line with what I would direct. I find that no further award is warranted in this case.

45. The Employer has offered Dr E £500 in respect of its failure to provide formal notification to the previous Scheme Administrator of the reduction in Dr E's working hours, resulting in a shortfall in his AVCs. I find that the offer is a reasonable one and if Dr E has not already received this sum he should contact the Employer if he now wishes to accept the award.
46. Dr E submitted a request for me to hold an oral hearing. The purpose of an oral hearing is to assist me in reaching my Determination. Circumstances in which a hearing may be appropriate include where there are differing accounts of a particular material event and the credibility of witnesses needs to be tested; where the honesty and integrity of a party has been questioned and the party concerned has requested a hearing; or where there is disputed material and primary facts which cannot be properly determined from the papers.
47. I do not consider that any of these circumstances apply here so I do not find it necessary to hold an oral hearing in this case. There is sufficient documentary evidence for the complaint to be decided without an oral hearing. I can properly determine the case on the basis of the detailed written representations and the documentation which has already been submitted by the parties.
48. I do not uphold Dr E's complaint.

**Anthony Arter**

Pensions Ombudsman  
2 March 2022

## Appendix

### 49. Information posted on the Employer's intranet

#### **"Changes to tax relief for pensions**

##### *Annual Allowance and Lifetime Allowance to be reduced*

A new approach to the current pension tax regime will be introduced from tax year 2011-12.

The Annual Allowance (AA) for tax-privileged saving will be reduced from its current level of £255,000 to £50,000 (and the basis of calculation will change).

From 6 April 2012, the Lifetime Allowance (LTA) will be reduced from its current level of £1.8m to £1.5m.

Individuals will be able to carry forward three years' of unused AA.

The current pensions tax regime has been in place since April 2006 and gives tax relief on all pension saving up to the level of the Annual Allowance. On retirement, the total of an individual's pension benefits (other than state pension) is then assessed against the Lifetime Allowance. Where pension saving exceeds the LTA, a "recovery charge" is payable. This is intended to recoup excess tax relief granted during the period of saving. The LTA is currently £1.8m and the AA is £255,000. These levels are such that they have had very little impact on the vast majority of civil servants. While some senior retirees have paid LTA tax, no civil servants have been caught by the AA.

The changes in detail are:

i) The **Annual Allowance is to be set at a new level of £50,000** and calculated in a slightly different way. The Annual Allowance could potentially now be an issue for a far wider population including senior civil servants and others who receive one-off significant increases in pension (for instance, because of a promotion or early retirement (after 31 December 2010) under the current CER or FER terms). This is not to say that AA tax charges will necessarily arise, but these groups of staff will need to be aware of the AA and how it could affect them. The new AA will apply from tax year 2011-12 and will include some carry-forward provisions to mitigate the effect of "spikes" where people have one-off increases in benefits.

ii) The **Lifetime Allowance is to be reduced from £1.8m to £1.5m** from 6 April 2012. The current level of LTA means that it bites on someone with a pension in **premium** of £90,000 or more (or someone in **classic** with a pension in excess of £78,261 plus the associated lump sum). The new LTA would affect someone in **premium** with a pension in excess of £75,000 (and someone in **classic** with a pension in excess of £65,217 plus associated lump sum). Where individuals have other pension arrangements as well, these



figures would of course be lower. Further information on the Lifetime Allowance is available on the HMRC website. The Treasury has indicated that transitional protection measures will be introduced to protect those who have already built up pension pots between £1.5m and £1.8m and that elections made for Primary and Enhanced Protection at 5 April 2006 will be honoured. Details of the new transitional protection measures are not yet available.

Further information, including a Cabinet Office Q&A document is available on the Civil Service website.” (original emphasis)

50. Information provided in weekly email on the Employer’s intranet

“e-express

Items for e-express should be sent to the e-express account

Monday 22 November 2010

...

#### **Changes to tax relief in pensions**

<http://intranet/news/archive/10nov/hse1100.htm?ebul=eexp/22-nov-10&cr=3>

A new approach to the current pension tax regime will be introduced from tax year 2011-12. The Annual Allowance for tax-privileged saving will be reduced from its current level of £255,000 to £50,000. From 6 April 2012, the Lifetime Allowance will be reduced from its current level of £1.8m to £1.5m. Click on the link to see how this could affect you.” (original emphasis)