

Ombudsman's Determination

Applicant	Ms H
Scheme	Principal Civil Service Pension Scheme (the Scheme)
Respondents	MyCSP Cabinet Office

Outcome

1. I do not uphold Ms H's complaint and no further action is required by MyCSP and Cabinet Office.

Complaint summary

2. Ms H has complained about an overpayment which has arisen in relation to her pension benefits. She does not consider that she should have to pay this back.

Background information, including submissions from the parties

3. Ms H previously worked for the Driver and Vehicle Licensing Agency (**DVLA**).
4. In 2013, Ms H opted to take her retirement benefits following voluntary redundancy.
5. On 1 June 2015 Ms H returned to employment within the Civil Service, this time with HM Revenue & Customs (**HMRC**).
6. In the civil service and other government organisations, there are rules surrounding working and taking pension benefits at the same time. In general a member cannot earn a higher income through their pension plus re-employment income, than they were earning when employed prior to retiring. To prevent this, the pension can be capped, known as abatement.
7. On 3, 4 and 8 June 2015, Ms H contacted MyCSP to discuss abatement. The Adjudicator's summaries of these calls are provided in the Appendix.
8. MyCSP says that on 10 June 2015, it wrote to Ms H referring to her recent abatement enquiries and provided a "salary of reference" figure, this being £16,004.34. This was the amount which Ms H would be able to earn without abatement applying. Ms H has said she did not receive this letter.

9. In August 2017, Ms H took out a mortgage.
10. On 20 May 2019, MyCSP wrote to Ms H, saying that HMRC had sent it new details of her pensionable earnings and from this it was realised that abatement should have applied to her pension. An overpayment of £11,992.53 had accrued.
11. Ms H queried this further on 5 June 2019.
12. On 13 July 2019, MyCSP replied providing an explanation of how the overpayment had occurred. The main points were:-
 - 12.1 As part of its programme of continuous improvement, it had been reviewing pension benefits paid to members whose employers had provided it with updated pay or service history information.
 - 12.2 The main error stemmed from the fact that she had re-joined employment, meaning that some of her pension should have been abated (**the abatement error**). The other error which had caused an overpayment concerned MyCSP holding incorrect pensionable earnings figures (**the PE error**).
 - 12.3 Ms H had called MyCSP on 4 June 2015 about her pension being abated. It wrote to her on 10 June 2015 confirming that if her salary exceeded £16,004.34 then her pension would be abated accordingly.
 - 12.4 The amount which had been overpaid would need to be recovered. MyCSP could only pay Ms H the benefits which she was entitled to under the Scheme's rules.
13. On 4 December 2019, Ms H's representative complained under the Scheme's two stage Internal Dispute Resolution Procedure (**IDRP**). The main points were:-
 - 13.1 Ms H was told that her salary would need to be in excess of £25,000 before abatement applied. Her salary was £18,816, so she believed her pension was being paid correctly, particularly given that no adjustments were made to it.
 - 13.2 Ms H's only source of income was her pension from the Scheme and her salary. She was currently off work as she was undergoing treatment for cancer. The last year had been an exceptionally difficult time for Ms H, so being told that her income had been significantly reduced and that she would need to repay an overpayment was causing a considerable amount of distress.
 - 13.3 Her employer and the Scheme's administrators were at fault for both errors.
 - 13.4 The Pensions Ombudsman (**TPO**) had made a ruling on a similar case (PO-2865) in which it was decided that the overpaid monies did not need to be repaid. This decision should be taken into consideration.
 - 13.5 Ms H's employer did not notify MyCSP that she had been re-employed within the civil service. In its letter of 13 July 2019, MyCSP had stated: "It is your

employer's responsibility to notify us of any re-employment as this affects the amount of pension you are entitled to receive under the scheme rules".

MyCSP went on to state that they had: "never received notification from your employer of your re-employment; therefore, your pension was not assessed for abatement purposes until we conducted a review of your pension benefits."

- 13.6 When Ms H re-commenced employment, she joined the Alpha section of the Scheme. This Scheme was also administered by MyCSP, so it should have had systems in place which would trigger an alert indicating that she was also in receipt of an unabated pension. MyCSP should have alerted her to the issue then, not four years later.
- 13.7 In MyCSP's overpayment notification letter of October 2019, it was stated that its review of pensions commenced in May 2017, however, it seemed to take a further two years for MyCSP to contact Ms H about the error. It was of note that during this time, the overpayment increased from approximately £5,199.03 to £11,992.53. This difference of £6,793.50 could have been prevented.
- 13.8 In MyCSP's letter of 13 July 2019, it said Ms H had called its office on 4 June 2015 to ask about her pension being abated. It also said it had written to Ms H on 10 June 2015 confirming that her pension would be abated if her salary exceeded £16,004.34. MyCSP had said it considered that Ms H should have been aware that her pension was being overpaid from 1 June 2015.
- 13.9 Ms H refuted this and could not recall the details of the conversation which took place on 4 June 2015. She had also never received the letter of 10 June 2015. Had she received this, she would have acted immediately to avoid the overpayment. She also would not have entered into a mortgage contract based on her pension income. Further, from a copy of this letter, this said that if her total earnings, pension and re-employed salary exceeded her salary of reference, her pension would be reduced by the excess. This never happened.
- 13.10 In respect of the PE error, it was understood that this was caused by incorrect information provided by Ms H's former employer. MyCSP had confirmed that it had been notified of the allowance in question on 28 August 2014 but had said that it did not routinely review pension benefits upon receipt of updated pay or service history information at this time.
- 13.11 MyCSP therefore had two opportunities to prevent this overpayment from escalating over a four year period. Ms H felt she should not have to repay an overpayment which had been escalated as a result of MyCSP's inadequate auditing.
- 13.12 Ms H had changed her financial position in a way that could not be undone. She had taken out a mortgage based on her then pension income and was now struggling to meet her existing financial commitments which was causing

her significant financial hardship. Further, she did not have the funds to repay the money being demanded.

13.13 Ms H wished for the overpayment to be written off. She also wished to be compensated for the significant distress and inconvenience that the mistake had caused.

14. MyCSP replied on 14 May 2020 under stage one of the IDRP. It said:-

- 14.1 The overpayment had transpired due to two separate errors. In respect to the PE error, when Ms H left civil service employment on the basis of voluntary redundancy, her pensionable earnings were calculated as £19,471.26. Following further information from the DVLA, her pension was revised on 1 August 2014 and her pensionable earnings were recalculated as £20,153.66, providing her with a pension of £4,116.97 a year. This figure, however, was overstated due to an open allowance holding on Ms H's record at the time of the revision. The allowance, an amount of £500.16, should have ended on 31 July 2012.
- 14.2 DVLA had confirmed the pay award was implemented in March 2014 and backdated to 1 August 2012. The allowance was recorded as being in payment until Ms H's last day of service rather than ending on 31 July 2012, thus causing the overstatement. This meant that Ms H's correct pension was £4,030.50.
- 14.3 This discrepancy was highlighted and corrected during a data cleanse exercise in 2018. The revised data had not been provided in 2014, as previously stated.
- 14.4 As it was the employer's responsibility to provide up to date and accurate data to the pensions administrator, this element of the complaint was upheld against the DVLA.
- 14.5 The vast majority of the overpayment was caused by the abatement error. It was the employer's responsibility to provide notification to the pensions administrator when a member in receipt of a civil service pension was re-employed in order for any abatement to be assessed. The notification was made via a CSP13 form.
- 14.6 Hence, when Ms H was re-employed with effect from 1 June 2015, HMRC should have provided notification to MyCSP in order for Ms H's pension to be assessed for abatement. However, it was unable to locate any such notification.
- 14.7 HMRC had been contacted as part of its investigation. HMRC provided a copy of Ms H's re-joiner documentation which should have consisted of a pension questionnaire, Pension Choices Form, re-joiner calculator and the CSP13 form. Unfortunately, HMRC could only provide a copy of Ms H's pension

questionnaire where part of the process was outsourced (so they did not have a copy of the other documentation).

- 14.8 HMRC therefore referred these queries to the outsourced company which said it would have sent MyCSP a CSP13 form; from there MyCSP would have calculated an estimate and sent this directly to the member. A booklet on abatement would also have been sent.
 - 14.9 The pension questionnaire, however, appeared to be incomplete and some details had been completed incorrectly. Section 5 requested confirmation of whether any payments were being received from the Civil Service Pensions arrangements but this section of the form was incomplete making it unclear whether Ms H's pension in payment was declared when she was re-employed.
 - 14.10 After commencing employment with HMRC, Ms H called MyCSP on 3, 4, and 8 June 2015, respectively. In each of these calls, abatement was discussed. Ms H was trying to gain an understanding of how re-employment may affect her pension in payment. Based on the information provided in each call, it was confirmed that Ms H's pension would be abated. Ms H was directed towards her employer to provide notification of her re-employment to MyCSP. A reduction in salary and hours was mentioned in these calls and Ms H mentioned the possibility of not continuing with the new role as her pension would be abated.
 - 14.11 MyCSP also issued a letter to Ms H's home address on 10 June 2015, which Ms H had said she did not receive. Ms H had also said she was informed by the DVLA that she would have to earn over £25,000 for abatement to apply. However, given the evidence within the telephone conversations referenced, it was reasonable to conclude she was aware abatement would apply.
 - 14.12 Generally, MyCSP would consider a defence against recovery where it was clear that the member accepted the payments in good faith. However, in Ms H's case and given the events leading to the overpayment, it could not be concluded that Ms H accepted these payments in good faith. This element of the complaint could not be upheld.
 - 14.13 A repayment plan of over 72 months had been offered. Standard practice was to allow repayment over the same period of time in which the overpayment occurred. Therefore, the repayment plan offered was reasonable. A Statement of Means form had been provided to Ms H to complete and return to consider a longer repayment plan so that financial hardship could be avoided.
15. On 21 May 2020, Ms H's representative appealed the decision making the following points:-
 - 15.1 MyCSP had said that the complaint concerning the PE error had been upheld against the DVLA. Ms H was therefore seeking a breakdown of the

overpayment corresponding to this error and written confirmation that this amount of overpayment had now been written off.

- 15.2 In respect to the abatement error and the matter of good faith, MyCSP had said that it had been unable to locate any notification of Ms H's re-employment from HMRC and that only a pension questionnaire form had been found. Upon recent sight of the pension questionnaire, Ms H had said that at no time throughout the recruitment process was she asked to complete this pension questionnaire nor was there any mention of a "re-joiner pack." The only form she was asked to complete upon starting employment with HMRC was a starter pack which had only one pension related question. This asked if she was in receipt of an occupational pension, to which she answered yes.
- 15.3 MyCSP itself seemed to agree that, "it is the employer's responsibility to provide notification to the pension administrator when a member in receipt of a Civil Service pension is re-employed." The Civil Service Pensions website also outlined the employer's duties when re-employing Civil Service pensioners.
- 15.4 It was understood that an employer must tell pensioners who are being offered re-employment about the effect of re-employment on their pension, including abatement, before they take up the new post. It had also been stated that before offering a post to someone, the employer needed to "obtain an abatement estimate from the Scheme Administrator, using form CSP13."
- 15.5 At no point in the recruitment process was Ms H ever asked if she was a Civil Service pensioner. If this was the case, she would have answered, "yes." Ms H felt that a great disservice had been done to her as she did not have the opportunity at that point to decide about her new role in an informed way. HMRC had let her down by not completing very basic recruitment processes in relation to her pension.
- 15.6 With respect to the telephone calls she had with MyCSP, these were brought about by a manager at her workplace who mentioned abatement. Ms H did not understand this and at this point contacted MyCSP to understand more.
- 15.7 While Ms H could not fully remember the content of the phone calls, she wished to point out that her employer knew that she was in receipt of a Civil Service pension as this was common knowledge within her team including her manager.
- 15.8 MyCSP also had numerous opportunities to rectify the situation and take matters into its own hands. She felt it should have been apparent to MyCSP that her employer had not followed the correct protocol and that the telephone calls were an ideal time to make a note of the error and take action.
- 15.9 MyCSP was made aware of the error on 3, 4 and 8 June 2015, when she called to ask about abatement. MyCSP said it subsequently sent Ms H a letter calculating abatement figures (which she did not receive). Ms H could not

understand why MyCSP did not follow up on this with another letter or phone call, or why her pension was not abated automatically after this.

15.10 In June 2015, MyCSP received notification of Ms H joining the Alpha Scheme and in September 2017, Ms H telephoned MyCSP to update her address. At this point she was asked if she was still in retirement; she advised that she had re-joined Civil Service employment with HMRC in June 2015. These were further opportunities where MyCSP could have identified the error.

15.11 She had relied on the systems in place and on her employer and the administrators to pay the correct amount in good faith. She did meet the good faith test and asked that the overpayment be written off. Ms H also wished to be compensated for the significant level of distress and inconvenience that this maladministration has caused.

16. On 9 November 2020, Cabinet Office responded under stage two of the IDRP. The main points were:-

16.1 The relevant legal principle was that all overpayments were recoverable regardless of how they occurred or by whom they were caused.

16.2 A defence to recovery could only succeed if the recipient had demonstrated good faith. From the first call Ms H had with MyCSP in June 2015, it was evident that she had little or no understanding of abatement. In the subsequent calls, Ms H acknowledged that she understood abatement would apply. She had stated that she would “go over” the limit.

16.3 It was clear from these calls that Ms H was weighing up whether to take up the new role given the abatement rules. She said several times that she would speak to Human Resources (**HR**) and would have to think about it. In the last call, Ms H showed a sound understanding of the matter, having worked out how much pension she might receive after abatement. Accordingly, it could not be concluded that she accepted her full pension in good faith.

16.4 Ms H had argued that HMRC was the party responsible for telling MyCSP about her re-employment. Having studied the pension questionnaire that Ms H had completed, this was not completed with the accuracy required and from this, it would not have been clear to HMRC that a CSP13 form would need to be completed.

16.5 Although it was acknowledged that Ms H had said she did not receive MyCSP’s 10 June 2015 letter, given the conversations had between them, it could not be concluded that she did not know her correct entitlement. Ms H did not follow this up and did not question that she was paid her full pension.

16.6 MyCSP had offered a repayment plan over 72 months. However, the rate of repayment exceeded the amount of her abated pension. Standard practice was that the amount should not exceed more than 15% of her correct monthly

pension payments. While her pension was subject to abatement, this would be 15% of the abated amount and when abatement no longer applied, the repayment amount would increase to 15% of her unabated pension amount.

17. The complaint was subsequently referred to TPO. On 29 December 2020, Cabinet Office provided its response to the complaint, saying its position was as per the stage one and two IDRPs decisions on the matter.
18. Ms H's representative also confirmed that their main points for consideration had been flagged during the IDRPs.
19. As part of the Adjudicator's investigation, she asked Ms H about how the overpaid monies were spent and the mortgage commitments mentioned. Ms H said:

"The overpayment of the MyCsp [sic] was initially used to pay for my rent when I was in rented accommodation. It was then used to pay towards my monthly mortgage payment when I purchased my current home...

When I enquired about a mortgage, I was restricted to the length of the term due to my age at the time - 54 and was also only allowed it up until my retirement age - 67.

I subsequently took a mortgage for 13 years for £68000 with Nationwide Building Society - please refer to the attached document.

The deposit of £15000 partly included an amount saved from the Lump Sum Payment I had previously received from MyCsp. And also saved from the monthly pension amount I received from them £343.09.

Had I not been in receipt of my MyCsp of £4117.08 p.a., coupled with my HMRC pay of £18593 p.a. I would not have been offered this mortgage. I would have to have looked for a smaller, cheaper house or flat.

Please also see the attached document which shows the Legal Fees I paid... in the purchase of my home."

20. Also, as part of the Adjudicator's investigation, she asked Cabinet Office for further clarification on the overpayment. The relevant points were:-

20.1 The PE error was the cause of the overpayment between 21 October 2013 and 31 May 2015. From 1 June 2015 to 26 May 2019, the overpayment was due to the abatement error.

20.2 The total overpayment for the PE error was £715.98. This was made up of the pension overpayment between 21 October 2013 and 31 May 2015 of £139.58 (with £133.00 being overpaid in tax year 2014 and £15.58 overpaid up to 31

May 2015, there was an underpayment in 2013). The lump sum overpayment corresponding to this error was an amount of £576.40.

20.3 The abatement error overpayment made up the rest of the overpayment, an amount of £11,276.55.

20.4 It intended to recover the overpayment from Ms H's future pension payments.

Adjudicator's Opinion

21. Ms H's complaint was considered by one of our Adjudicators who concluded that no further action was required by MyCSP or Cabinet Office. The Adjudicator's findings are summarised below:-

21.1 There was no dispute that abatement should have applied to Ms H's pension and that she was overpaid as a result. It would be assessed whether Ms H had any defences available to the recovery of these funds.

21.2 Cabinet Office's chosen recovery method involved recovering the overpayment from Ms H by reducing her future pension benefits to recover past overpayments. It was therefore seeking to remedy the overpayment by way of equitable set-off. Equitable set-off operated in a similar way to equitable recoupment. Equitable recoupment however, was a principle that applies to trustees. As the Scheme was a statutory unfunded scheme with no trustees and no trust, recoupment was not available to Cabinet Office.

21.3 Where there had been an overpayment in a statutory scheme, it could be said that there were two cross-claims between the member and manager of the scheme which can be offset. Specifically, Ms H's pension entitlement was a statutory debt owed to her by the Scheme and was liable to be offset against the overpayment, which was a debt owed to the Scheme by Ms H. Therefore, subject to any defences to the claim which Ms H may have, it was inequitable that she could insist on her full entitlement under the Scheme without allowing the claim for the overpayment to be satisfied. It followed that Cabinet Office could rely on equitable set-off as the basis for recovery.

21.4 In the case of *Burgess & Ors v BIC UK Limited* [2018] EWHC 785 (Ch), Mr Justice Arnold held that equitable recoupment was not a restitutionary claim for unjust enrichment (unlike the case of *Webber v Department for Education* [2016] EWHC 2519 (Ch)). Rather it was an equitable self-help remedy which did not involve any claim for repayment of the monies paid in the past but an adjustment of accounts in the future. As such, equitable set-off, like equitable recoupment, was not subject to a six-year limitation period under section 5 of the Limitation Act 1980.

- 21.5 In respect of the other potential defences available, the most common defence against recovery of an overpayment was referred to as “change of position.” This was where the applicant had changed their position such that it would be unjust to require them to repay the overpayment either in whole or in part.
- 21.6 Certain conditions must be satisfied to make out a change of position defence. The applicant must, on the balance of probabilities, show that because of the overpayment, which they received in good faith, they detrimentally changed their position. The money must have been spent on something the applicant would not otherwise have bought; and the expenditure was irreversible. If these elements were satisfied, the Ombudsman may direct that some or all of the overpayment may be kept by the applicant. There were also other defences to the recovery of an overpayment, such as estoppel and contract, which would be considered as appropriate.
- 21.7 Regarding the change of position defence and the matter of good faith specifically, in order for this test to be satisfied, the recipient of the overpaid funds must not have had actual knowledge of the overpayment. The good faith test also cannot have been met if the recipient of the overpaid funds had doubts over the receipt of any funds, so for instance, they were aware that they might not be entitled to the amount of pension paid but then failed to make enquiries of the scheme before spending the money (this was often referred to as having “Nelsonian knowledge”). This included the situation when someone might suspect that there was something amiss and could have taken simple steps to ascertain the correct position but did not do so.
- 21.8 In Ms H’s case, there were two errors which had caused the overall overpayment. In respect of the error causing the larger overpayment, the question was whether Ms H received the overpaid monies corresponding to the abatement error in good faith. Having listened to the June 2015 calls in question, it appeared that Ms H was aware that abatement should apply to her pension. It was clear that she did not understand this concept initially but by 8 June 2015 at the latest, Ms H understood that abatement would apply. Hence, Ms H had actual knowledge that she was erroneously receiving her full pension and could have made enquiries at this point as to why this was happening.
- 21.9 Ms H said she had understood that abatement would not apply unless her salary was an amount of £25,000 or above. Although this was Ms H’s recollection, it did not accord with the telephone calls in question. As Ms H had actual knowledge of the overpayment, the good faith test could not be satisfied in the circumstances so Ms H did not have a change of position defence available to the recovery of the overpayment corresponding to the abatement error.

- 21.10 With regard to the PE error, this appeared to have been a matter of the incorrect information being relayed between Ms H's former employer and MyCSP. On the basis that a "pensionable earnings figure" was a technical term and that it was not vastly different to what the correct figure should have been, there would be no reason for Ms H to have been aware that this figure was incorrect. Ms H therefore met the good faith test in respect of this error.
- 21.11 The next question in relation to this error was whether Ms H changed her position, in receiving the overpaid monies, on expenditure which she would not have otherwise incurred. In terms of overpaid pension, the amounts corresponding to each tax year were an amount of £133.00 in 2014/15 and £15.58 up to 31 May 2015. These amounts were small in comparison to Ms H's annual pension. Such a low proportion of overpaid monies would likely make it difficult for Ms H to establish an improved lifestyle for the purposes of a change of position defence. Further, Ms H had said that the overpaid monies prior to her house purchase were spent towards rent. This was an expense which Ms H would have incurred anyway, so she had likely not changed her position because of it.
- 21.12 In respect of the lump sum overpayment of £576.40, Ms H had put some of the lump sum towards the deposit on her house purchase. Ms H had said she paid a deposit of £15,000. Comparing these figures, it was unlikely that the £576.40 overpayment would have changed her decision in respect to the house purchase. Further, had Ms H contributed a lower deposit, her monthly mortgage would be higher and she would be paying interest for a longer period on this. Therefore, she had not changed her position to her detriment here.
- 21.13 With regard to estoppel, there were three requirements that needed to be satisfied in order to establish estoppel by representation: (1) a clear representation or promise made by the defendant upon which it is reasonably foreseeable that the claimant will act; (2) an act on the part of the claimant which was reasonably taken in reliance upon the representation or promise; and (3) after the act has been taken, the claimant being able to show that he/she will suffer detriment if the defendant is not held to the representation or promise. The requirements for an estoppel by convention defence concerned not a representation but a mutual assumption of facts or law.
- 21.14 For similar reasons as those given to address change of position however, in respect to the abatement error, Ms H's reliance on the pension amount she was being paid was not reasonable, as she had the requisite knowledge to understand that her pension should be abated.

21.15 In respect of the PE error, the elements of the estoppel defence were not met and no detriment could be evidenced regarding the overpaid monies which Ms H received. Ms H did not have a valid estoppel defence.

21.16 In considering contract, the necessary elements for a contract to exist: offer, acceptance, consideration and an intention to enter into legal relations – could not be identified. In particular, it did not appear that there was any intention on the part of MyCSP or Cabinet Office to enter into a legal relationship with Ms H beyond her entitlement under the Scheme's regulations.

21.17 With reference to the previous Pensions Ombudsman decision referred to by Ms H's representative, the facts of this case appeared to be materially different in respect to the applicant's awareness of the error and other matters. This could not be compared with Ms H's case and it did not support her position.

21.18 Ms H had argued that there were errors in MyCSP's processes which caused the abatement. She identified several perceived failings. However, there were also oversights made by Ms H which did not help the matter, or, that compounded these instances. So the Adjudicator believed that, MyCSP ought not to be held responsible for any specific error as Ms H contributed to these and no finding of maladministration could be made.

21.19 Although Ms H's difficult position was appreciated, an award for non-financial injustice was not warranted in the circumstances. In the Adjudicator's view Ms H's complaint could not be upheld.

21.20 As the overpayment was recoverable, the Adjudicator considered that the starting position ought to be that the recovery period should be at least as long as the period over which the overpayment occurred (there were two separate periods here given the two errors). It would also be sensible for Cabinet Office to consider Ms H's claim for financial hardship when agreeing any recovery plan by providing her with a reasonable opportunity to submit evidence of her financial position, and taking due account of this.

22. Cabinet Office and MyCSP accepted the Adjudicator's Opinion but it was not accepted by Ms H and the complaint was passed to me to determine. Ms H has confirmed that there are no additional points which she would like me to consider. I agree with the Adjudicator's Opinion and I will therefore only comment on the main points.

Ombudsman's decision

23. The dispute before me involves an overpayment of benefits. Ms H has said she should not be required to repay the overpaid monies.

24. Cabinet Office is seeking to recover the overpayment from Ms H by reducing her future pension benefits. I understand that Cabinet Office is relying on equitable set-off as the legal basis for recovering the overpayments.
25. Equitable set-off operates in a similar way to equitable recoupment. Equitable recoupment however, is a principle that applies to trustees and the Scheme is a statutory unfunded scheme with no trustees and no trust, so recoupment is not available to Cabinet Office. The position is set out in sub-paragraph 21.3 above.
26. Considering the available defences to recovery, I agree with my Adjudicator that given the content of the June 2015 telephone calls, Ms H was clearly aware that abatement should apply to her pension. For this reason, with regard to the abatement error, Ms H does not satisfy the good faith test as she was aware that her pension would need to be abated and that she should not expect her full pension to be paid. I do not find that the defence of change of position is available to her for this error.
27. Ms H does however satisfy the good faith requirement with regard to the PE error. Nonetheless, I find that the small amounts involved in the pension she was overpaid mean it cannot be established that she had enjoyed an improved lifestyle or any other specific change of position because of the overpaid monies. Further, from Ms H's explanation, these funds were put towards necessary, rather than exceptional, expenditure.
28. In respect of the lump sum overpayment that resulted from the PE error, Ms H has said she put these funds towards her mortgage. Generally speaking, this would not constitute a detrimental change in position; Ms H has benefitted from a lower mortgage value than she might have otherwise had.
29. I am satisfied that there are no defences available to Ms H against the recovery of the overpaid funds.
30. Ms H has made comments on MyCSP's abatement processes and how the overpayment could have been avoided had these been more streamlined. However there are no identifiable failings which are solely the cause of MyCSP and it is clear that Ms H failed to fully comply with some of the processes in place. I therefore make no finding of maladministration.
31. I do not uphold Ms H's complaint. I understand, from its acceptance of my Adjudicator's opinion, that Cabinet Office is open to considering Ms H's circumstances when agreeing a recovery period. I also agree that it would be reasonable to offer Ms H the opportunity to submit evidence of her financial circumstances before deciding on a recoupment schedule.

Anthony Arter

Pensions Ombudsman
31 March 2022

Appendix

Extracts: Adjudicator's notes on June 2015 call recordings between MyCSP and Ms H

3 June 2015

Ms H notifies MyCSP of her re-employment. MyCSP explains that it is the employer that advises it of this – they send a re-employment form and MyCSP processes all the changes.

Ms H asks what these changes are. The MyCSP representative explains that her pension and earnings cannot exceed what she was earning previously. They explain that because of the abatement rules, her pension might decrease or be fully abated.

Ms H asks what she can do to avoid this, can she ask for a reduced wage? MyCSP says she can also reduce her hours.

Ms H says she thinks her new wage will be a figure between £18,000 and £19,000. MyCSP explains that to work out whether abatement applies, her new wage and pension are added together. If this total exceeds Ms H's previous wage, her pension will be fully abated or it can be partially abated, depending on her new salary.

Ms H says: "I'm going to go over." She then says she needs to discuss this matter with HR. MyCSP and Ms H discuss her salary of reference. MyCSP says that Ms H's pension will be fully abated.

4 June 2015

Ms H says that she has taken up a post with HMRC and believes her pension will be abated.

She refers to a salary of reference and asks if that can be checked. She thinks this is a figure of £18,500.

She is told her salary of reference is £20,671.60 and if she earns anything over this amount, then her pension will be abated. She asks what happens when her pension is abated and if the pension is "frozen." She is told that her pension will return to its normal level when she retires and leaves work.

MyCSP says that abatement applies "from the minute you start work."

Ms H says she does not know what to do and is not able to reduce her hours. She says she is unsure if it is "worth carrying on" if she "can't keep her whole pension." She says she will think about it.

8 June 2015

Ms H says she wants to obtain some figures to see if she wants to carry on with her job or not. She says she understands the maximum she can earn is £20,671.60.

She is initially told that her earnings cannot exceed a figure of £22,125.

MyCSP then says it calculated the salary of reference incorrectly and that her salary of reference is the salary she was on previously.

MyCSP says her pension plus new salary cannot be over what she used to earn, so she will have "gone over."

Ms H says: "It looks as if I'm going to lose it."

MyCSP says what she decides is up to her but it would let her know if it was going to abate her pension.

Ms H says her old wage £18,872. Ms H says she would get about £1,000 (in pension).