

Ombudsman's Determination

Applicant	Dr S
Scheme	Principal Civil Service Pension Scheme (the Scheme)
Respondents	MyCSP

Outcome

1. I do not uphold Dr S' complaint.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Dr S is complaining that she has incurred a significant tax liability of around £8,000 due to Xafinity Paymaster (XP), the previous Scheme administrator's mistake in not aggregating her two civil service pensions. Dr S also states that she is aggrieved that XP offered her a belated option of aggregation. In view of the mistake, Dr S would like her pensions re-aggregated and her tax paid by MyCSP. Dr S is also unhappy that the disaggregation of her pension would mean a personal loss of around £100,000. Dr S believes that MyCSP and the Cabinet Office mishandled her case.

Background information, including submissions from the parties

4. Dr S has been a member of the Scheme since 1989. In October 1991, she transferred her previous pension benefits into the Scheme.
5. Dr S took a career break from September 1991 to July 1993 and subsequently resigned from her post on 9 August 1993.
6. From October 2002 the Scheme had two final salary arrangements for members: premium, for members who joined the civil service on or after 1 October 2002; and classic, for those who joined before 1 October 2002.
7. On 13 January 2003, Dr S joined the National Assembly for Wales (NAW) and re-joined the Scheme. She completed the Pension Choice form and asked to join the premium section of the Scheme.

8. In January 2008, Dr S received an Annual Benefit Statement, (ABS) that asked her to indicate whether or not she was happy with the details of her pension benefits. XP stated it never received a response from Dr S on this matter.
9. On 28 July 2010, NAW realised that Dr S' pensions had never been aggregated. Dr S received a letter from XP in October 2010 with an aggregation quote. Dr S was offered to either aggregate her previous and current periods of service, or leave her preserved benefits as they were and build up further benefits in her current period service. Dr S had 12 months to make a decision. Following this, Dr S requested to aggregate her two periods of service on 18 February 2011. Her request was subsequently acknowledged by the Scheme on 14 March 2011.
10. On 2 October 2013, Dr S received a pension statement showing that she had breached the Annual Allowance (AA) limit for year 2011/2012. This is in reference to the 2006 'Tax simplification'. HMRC introduced changes to the taxation rules that applied to pensions by introducing new controls in the form of Lifetime Allowance (LTA) and Annual Allowance (AA) which replaced limits on tax free contributions and benefits from pensions. The amount of an individual's pension savings that can benefit from tax relief is limited to an annual allowance, in the tax year 2014/2015 £40,000. For the tax years 2011/2012, 2012/2013 and 2013/14 the annual allowance was £50,000. If an individual saves more in pension contributions than the annual allowance, they may be liable for a tax charge on the excess.
11. On 17 October 2013, Dr S contacted Shared Service Centre (SSC) about her breach. The response was as follows:

“...due to aggregation which the member requested in 2003 originally but some sort of error caused delay and was only completed in 2011. SSC is querying where responsibility lies with this [sic] as member requested in 2003”.
12. On 24 October 2013, following the Pension Schemes Executive's (TPSE) investigation, Dr S was told she can change her aggregation option due to her exceptional circumstances. TPSE then presented Dr S with two options: either pay the tax charge outright or use the Scheme facility to pay as explained below:

“When an individual's pension savings in a scheme year exceed the annual allowance resulting in a tax charge of £2,000 or more, HMRC rules allow a Scheme Pays facility. Under the Civil Service Pension arrangements, the Scheme pays the individual's tax charge direct to HMRC on their behalf in exchange for a permanent reduction to their pension benefits in line with factors supplied by the Scheme actuary to cover the cost”.
13. In its IDRPs stage 2 response letter, Cabinet Office stated that information about tax changes would have been available to members. It referred to the fact that Employer Pension Notice (EPN) 286 and EPN 310 would have been issued to employees by the employers following the changes. These forms would have explained the tax changes and possible triggers for the AA tax charge including:

“Aggregation or linking of previous service in the Civil Service”

14. Cabinet Office also said that upon Dr S joining the Scheme in 2003, she would have received the, “Your Pension Your Choice booklet”, (YPYC booklet), that would have explained basic information about her pension options and the aggregation option. It states,
15. “If you worked for the Civil Service before, you may have chosen to freeze or preserve your pension when you left. In this case, if you choose premium, you will have an option to join up your earlier period of service with your new period of service. This is called aggregation...If you re-join on or after 1 October 2002 and want to aggregate your service, you must choose to do so within 12 months of being eligible to join the premium scheme. Talk to your pension administrator to find out more”.

Dr S’ position:

16. Dr S contends that the Pension Choice form she received in January 2003 was confusing hence she thought she requested for more information about aggregation and not requested to process the aggregation itself. As she heard nothing back from XP, she assumed that it was unable to implement the aggregation option for her.
17. She stated that she may have received EPN 286, however she would have received it nearly 12 months after her aggregation option and not prior.
18. Dr S says that she accepts some responsibility for checking whether or not her pension was correct; however she does not agree the onus was entirely on her to do so.
19. Dr S has been planning her retirement based on the information she has been receiving since 2010. She says that she would be worse off if she retires at age 60.

Adjudicator’s Opinion

20. Dr S’ complaint was considered by one of our Adjudicators who concluded that no further action was required by MyCSP. The Adjudicator’s findings are summarised briefly below.
 - The Adjudicator has considered evidence provided by Dr S. The Pension Choice form that she received in January 2003 shows that she elected to re-join the Scheme. She also elected to receive more information about aggregating her previous civil service pension benefits with her current service. It is clear that she did not request aggregation. Based on this evidence the Adjudicator believed Dr S should have followed up on this information request, especially as she never heard back from the Scheme. It was the Adjudicator’s view that the onus was entirely on Dr S to contact the Scheme in this regard. The Adjudicator has seen no evidence of her contacting the Scheme until 2010.

- Cabinet Office provided this Office with a copy of the ABS that would have been sent to Dr S in 2007. Under section, 'Reckonable service', it shows that there were no previous benefits transferred in. If Dr S had aggregated her benefits, it would have been reflected under this section. Therefore the Adjudicator believed that Dr S ought to have taken a proactive role in querying her pension benefits. The Adjudicator also believed that MyCSP would have sent an ABS between 2003 and 2010. So the Adjudicator believed she would have had sufficient information about her pension status for her to have realised that the aggregation in question had not taken place.
 - TPSE offered Dr S two options: to reverse the aggregation and put her back into her original position had she not chosen the belated option to aggregate. By not taking this option, her tax charge would not have stood. However Dr S rejected this option. The second option is for Dr S to pay the tax charge using the Scheme Pays facility. For the reasons the Adjudicator has given above, she thought that both options were reasonable under the circumstances. The Adjudicator therefore did not agree that Dr S has been treated unjustly by either MyCSP or the Cabinet Office, as they tried to reasonably resolve the issue.
 - It was therefore the Adjudicator's opinion that this complaint should not be upheld.
21. Dr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Dr S provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Dr S for completeness.

Ombudsman's decision

22. Dr S agreed that she had not approached the Scheme until 2010 and that she had received an ABS which shows that her pensions had not been aggregated. However, she believes, as she had not been contacted by the Scheme in 2003, her pension could not be aggregated. As previously mentioned by the Adjudicator, several ABS would have been sent to Dr S between 2003 and 2010 that showed there were no benefits transferred in. I consider this information to be sufficient for Dr S to have queried her pension status with MyCSP.
23. Dr S maintains that she did not request for her pensions to be aggregated in 2010. However, by signing and returning the Aggregation Form, Dr S agreed for her pensions to be aggregated.
24. Dr S feels that she is now being penalised for MyCSP's errors. However, I disagree with Dr S, as I find that TPSE offered her reasonable options regarding the aggregation issue which she subsequently rejected.

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25. Therefore, I do not uphold Dr S' complaint.

Anthony Arter

Pensions Ombudsman

21 February 2017