

Ombudsman's Determination

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| Applicant | Mrs N |
| Scheme | Principal Civil Service Pension Scheme (NI) (the Scheme) |
| Respondent | Civil Service Pensions (CSP) |

Outcome

1. Mrs N's complaint against CSP is partly upheld, but there is a part of the complaint I do not agree with. To put matters right CSP should write off any outstanding overpayment and refund the amount it has already recouped, with interest. CSP should also pay Mrs N compensation. However, I do not believe that CSP should pay Mrs N the incorrect – and higher – pension benefits going forward.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs N is unhappy because CSP incorrectly calculated her pension benefits. As a result, it overpaid her £6,598.32 between 1 September 2009 and 30 April 2012. CSP is now looking to recover the full overpayment, but Mrs N believes this is unfair as she has relied on the additional income in good faith.

Background information, including submissions from the parties

4. Mrs N partially retired in 2009, and began receiving a Partial Retirement award. However, on 15 May 2012, CSP informed Mrs N that it had been overpaying her because it had incorrectly calculated the abatement on her pension. After a series of correspondence between Mrs N and CSP, it was agreed that the matter could be deferred until she had fully retired.
5. In September 2015, Mrs N retired on ill-health grounds. At this time, CSP took £2,598.32 from her lump sum and offset it against her overpayment balance, which was £6,598.32 in total. CSP has been recovering the remaining £4,000 by reducing her monthly pension accordingly since. CSP has stated that Mrs N was due to repay £67 a month; however, after she cited financial hardship, it reduced this to £40.
6. Mrs N raised a complaint and ultimately it was escalated to our Office. Mrs N has told our Office that she relied on the overpayments and spent the additional income in

good faith. In particular, she has provided evidence that she spent money on the following:

- Home improvements – including bathroom and kitchen refurbishments.
- A new car – Mrs N states she originally borrowed the money for a better car, and repaid her creditor back with the money from her pension income. She has provided a receipt for a car dated 2008.
- Repayment of her daughter's credit card debts, amounting to £3,500. Mrs N has provided bank statements from September 2009 and a signed statement from her daughter in relation to this.
- Financial assistance – Mrs N has provided evidence that she gave her brother £2,000. She states he was in financial difficulty at the time and she has provided a cheque dated 18 June 2010 made out to him for the amount of £2,000.
- A stair trek loft ladder – Mrs N has provided a receipt for this item, evidencing she paid £370 for it on 27 November 2009.
- Funeral expenses – sadly, Mrs N's husband passed away in 2013. She has provided receipts for the money she paid towards funeral expenses.
- A new television - Mrs N has provided a receipt dated 1 July 2011 showing she paid £269.10 for a television.
- Various items – Mrs N has highlighted other items on her bank statements from September 2009. However, whilst she has written notes alongside these, it is not clear from the statements themselves if the references correspond with the items she says they are for.

7. Mrs N has said she would not have spent money on the above items, had she known there had been an overpayment. That said, she described the home improvements as "essential repairs" in a letter forwarded to us on 5 January 2017.
8. Mrs N has said that she does not feel it is fair for CSP to ask for the money back. She also feels that CSP should continue to pay her the higher pension – i.e. the level of income she was receiving before CSP realised it had been overpaying her. She says this is because, if CSP only pays her the level of benefits she has accrued under the Scheme, she will be in financial difficulty.

Adjudicator's Opinion

9. Mrs N's complaint was considered by one of our Adjudicators, who concluded that further action was required by CSP. The Adjudicator's findings are summarised briefly below:
- CSP has admitted that the overpayment was its error. However, it may still be entitled to recover the money, as Mrs N is only entitled to benefits she has accrued under the Scheme.
 - Mrs N cannot ask CSP to pay her a higher pension, purely based on the fact she will be in financial difficulty otherwise. CSP is only obliged to pay Scheme members the benefits they have accrued.
 - However, CSP can be prevented from recovering the overpayment it has already paid to Mrs N, if she raises a successful defence; such as estoppel or change of position.
 - In this case, the Adjudicator felt the criteria of the above defences were satisfied. Mrs N had relied on the overpayments in good faith, and she had spent the money in such a way as to irreversibly change her position. As such, it would be inequitable for CSP to ask for any of the money back.
 - The Adjudicator did not believe it was reasonable for Mrs N to say she had spent the overpayments on home improvements or a new car, as these costs were either essential (and so she would have spent the money in any event) or were incurred before she received the overpayments. The Adjudicator also noted that Mrs N had incurred the funeral expenses referred to some time after she found out CSP had been overpaying her. She had therefore not relied on the overpayments for these costs.
 - However, the Adjudicator was satisfied Mrs N had evidenced that the vast majority of the overpayments had been spent in such a way that she could not now reasonably retrieve the money eg on gifts to indebted family members. The Adjudicator was also persuaded that Mrs N had spent the remainder of the unaccounted for overpayment on her daily standard of living.
 - Lastly, the Adjudicator noted that this matter had caused Mrs N a considerable amount of stress, not least because she has had to reconsider her future plans since finding out her pension income will be lower going forward.
10. Mrs N has accepted the Adjudicator's Opinion; however, CSP has not. As such, the complaint has been passed to me to consider.
11. CSP provided their further comments, following receipt of the Adjudicator's Opinion. In particular, CSP argues that it has taken Mrs N's financial position into account. It has highlighted that, when allowing her to repay just £40 a month, it considered her

recent bereavement and general financial circumstances. CSP states it has not been made aware of any other change to her financial position since her repayment proposal made on 22 September 2015.

12. CSP has not provided any new evidence and its comments 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 CSP for completeness.

Ombudsman's decision

13. For a successful defence of change of position, Mrs N needs to show that she has so changed her position in good faith such that it would be inequitable for CSP to require her to repay money paid to her in error.
14. For a successful defence of estoppel by representation, Mrs N needs to show there has been an unambiguous representation on which she has reasonably relied in good faith to her detriment. Unlike change of position, this is an "all or nothing" defence. In this instance, that can be taken to mean that it must be applicable to the full £6,598.32 Mrs N has been overpaid.
15. I believe that both defences are satisfied here. Mrs N had no reason to believe her pension income between 1 September 2009 and 30 April 2012 was incorrect, and as such she spent the money in good faith. She has provided evidence to show that the money has been spent on items of expenditure which would not ordinarily have been incurred in such a way that she cannot retrieve it. She has therefore changed her position irreversibly and suffered a detriment. In those circumstances, I consider it would be inequitable for CSP to recover the overpayment from her.
16. CSP has argued that it has taken Mrs N's current financial position into account in the manner in which it has sought recoupment. Whilst I can see this, that is not the same as acknowledging her overall change of position or defence of estoppel. In particular, CSP ought to have considered how Mrs N spent the overpayments and whether it is equitable for it to now ask for them back.
17. CSP has argued that it has not been made aware of any change in Mrs N's position since the date on which Mrs N last made a proposal for repayment. However the relevant time period is that prior to which the overpayment was notified to Mrs N. The Adjudicator quite clearly outlined the evidence Mrs N has provided of this. At no stage has CSP itself asked Mrs N to evidence what she spent the money on, as the Adjudicator did. It could have done this in May 2012, but it did not.
18. As I have found that Mrs N has a change of position defence I have not gone on to consider further defences to recovery such as the Limitation Act 1980 (the Limitation Act). However, it would appear likely that Mrs N does have a Limitation Act defence for the part of the overpayment which occurred prior to 2010 (applying section 5 and section 32 of the Limitation Act and the recent decision in *Webber v Department for*

Education and another [2016] EWHC 2519 (Ch)). But given my findings above it is not necessary for me to explore this any further.

19. However, no defence of change of position or estoppel can apply in respect of expenditure incurred since Mrs N was informed of the correct level of her benefits. From that date forward Mrs N can only be entitled to the level of benefit which the scheme provides. Mrs N ought to receive the correct level of benefit from the date that she was first notified of the overpayment. I do appreciate Mrs N's financial difficulties however, CSP is not responsible for her wider financial circumstances. I accept that Mrs N has suffered distress and inconvenience associated with the request for overpayment. I also bear in mind that she has had use of the overpayment and in those circumstances I do not consider it appropriate to make a further award for distress and inconvenience.
20. Therefore, I uphold Mrs N's complaint in part and make the direction below aimed at remedying the injustice.

Directions

21. CSP should not attempt to recover any more money from Mrs N – either by reducing her pension or otherwise.
22. CSP should repay Mrs N the overpayments it has already recovered, with interest added.
23. Interest shall be paid at the base rate for the time being quoted by the reference banks, calculated from the dates Mrs N made repayments up to the date CSP refunds the payments to her.
24. CSP should then continue to pay Mrs N a pension income based on the benefits she has accrued under the Scheme.

Karen Johnston

Deputy Pensions Ombudsman
30 March 2017