

Ombudsman's Determination

Applicant	Mr E
Scheme	Principal Civil Service Pension Scheme (the PCSPS)
Respondents	Cabinet Office

Outcome

1. I do not uphold Mr E's complaint and no further action is required by the Cabinet Office
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr E has complained that when he left the MOD in 1996 he was informed that he could draw his two MOD pensions at age 60. There was no mention of any abatement rule. When he applied for his pensions at age 60 these were wholly abated. Mr E believes the abatement should not be applied and wants his full unabated pension re-instated.
4. Mr E says he has also been receiving a smaller annual pension as a result of incorrect amalgamation advice. The Cabinet Office has admitted this in the second stage Internal Dispute Resolution (IDR) but it is not clear to him where the figures come from.

Background information, including submissions from the parties

5. Mr E was employed by the MOD and a member of the classic section of the PCSPS from 9 September 1966 to 31 August 1973 and again from 27 August 1974 to 17 June 1983. Mr E opted to take two separate awards of pension benefits rather than aggregate both periods of service.
6. Mr E rejoined the Civil Service on 3 August 2009 and joined the Nuvos section of the PCSPS. He reduced his working hours from full-time to part-time from 1 January 2014.

7. Mr E's two pensions in respect of his first two periods of service were due to be paid from age 60 in April 2010 but these were wholly abated as Mr E's salary was higher than the salary of reference.
8. In July 2015 Mr E raised a first stage IDR complaint with MyCSP as he considered that abatement should not have been applied to his earlier pensions. MyCSP issued a first stage IDR decision on 1 December 2015. The decision confirmed that abatement applied and referred to Rule 3.26 of the classic section of the PCSPS. The IDR investigator also found that an incorrect salary of reference had been used when assessing the effect of Mr E's move to part-time working in January 2014. No abatement should have been applied since January 2014 and MyCSP would calculate the arrears due.
9. In January 2016 Mr E asked for a second IDR determination. The Cabinet Office issued this on 30 March 2016 and confirmed that abatement had been correctly applied in accordance with rule 3.26 of the classic section of the PCSPS. During its investigation the Cabinet Office had also identified that a comment made by MOD to Mr E in November 1983, might have led him to decide to take two separate awards of pension. This may not have been to his advantage and thus the Cabinet Office had agreed that, as an exception, he would be allowed to revisit his decision and decide again whether to take two separate awards or aggregate his pension.
10. Mr E was not happy with the Cabinet Office's decision and brought his complaint to this office. Mr E says that at no time was he made aware of 'abatement' until after he requested his pension at age 60. He also says that the use of abatement is unwarranted and not designed for people leaving the civil service at the age of 34 and then to be recruited 26 years later because of their industrial experience.

Adjudicator's Opinion

11. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Cabinet Office. The Adjudicator's findings are summarised briefly below:-
 - Mr E's argument is twofold, firstly that he was not informed of the abatement conditions and, secondly, that its use should not apply in his case given his recruitment was because of his experience.
 - The Cabinet Office has pointed out that when Mr E left the Civil Service for a second time on 10 January 1984 he was sent a statement of his preserved award. The notes on the award statement included the following:

"If a pension is already due for payment or is being paid when a civil service pensioner is re-employed as a civil servant, his pension may have to be reduced under Rule 3.26 of the Principal Civil Service Pension Scheme."

- The Adjudicator recognised that given the length of time that had elapsed since 1984, Mr E may not have realised the significance of the above statement when he received it, or recalled it when he rejoined the Civil Service in 2009. But, nevertheless, the Adjudicator considered that notification of the principle of abatement had been issued to him.
- Mr E also says that abatement should not be applied to him because it was not the intent of the legislation in his particular circumstances. The PCSPS is a statutory scheme made under Section 1 of the Superannuation Act 1972. Rule 3.26 of the PCSPS Rules says:

“If a person receiving a pension under rule 3.1 or a preserved pension under rules 3.11...is re-employed in the Civil Service before his 75th birthday at a salary equal to, or higher than, his old salary, the whole of the pension will be suspended. If he is re-employed at a salary lower than his old salary, the pension in payment to him (including any increase under the Pensions (Increase) Act 1971 as amended) will be reduced to the amount by which his old salary exceeds his salary on his first day of re-employment. While he is re-employed, the pension in payment will attract pensions increase but will not be otherwise adjusted unless a relevant event specified in rule 3.25d occurs. In any of those events, the amount of abatement will be increased (or decreased) by the amount of increase”

- MyCSP are required to administer the PCSPS in accordance with the Rules and have no authority to vary the rules as they see fit. Rule 3.26 is quite specific that abatement is applied if a person is re-employed in the Civil Service on a salary equal to or higher than his old salary. This was the position for Mr E and MyCSP acted correctly in applying the abatement.
 - There are no exceptions listed under Rule 3.26 and although Mr E believes that this Rule should not apply to the personal circumstances of his recruitment, MyCSP cannot act contrary to the Rules. Furthermore it is not within the remit of the Pensions Ombudsman to direct MyCSP or the Cabinet Office to act contrary to the Rules. A change to the Rules could only be achieved by an act of Parliament or a statutory instrument.
 - The Cabinet Office have confirmed that Mr E has reversed his decision to take two separate awards and arrears of pension have been paid. Therefore this element of Mr E's complaint has been satisfactorily resolved.
12. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E provided his 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 Mr E for completeness.

Ombudsman's decision

13. Mr E says he has not been given details of where in the Superannuation Act paragraph 3.26 is derived, where the legal authority to abate his pension can be found and why it should be applied to him retrospectively. Mr E has also said that he was never informed of the principle of abatement and that the only documentation provided to him where this was mentioned was the 2002 booklet. He also did not retire from the MOD but resigned and even if rule 3.26 has a legal basis and can be applied retrospectively it does not apply to him.
14. The Superannuation Act 1972 is an act of Parliament whereby the Minister responsible for the Civil Service has the power to make or amend pension schemes for civil servants. Civil servants in this respect includes those in the various statutory schemes in the public sector such as the NHS Pension Scheme or Teachers Pension scheme.
15. The PCSPS is a statutory scheme and as such its Rules are derived from the Superannuation Act 1972 and Parliament. Thus Rule 3.26 has the legal authority of Parliament and Mr E is subject to the principle of abatement. As the Adjudicator has pointed out there are no exceptions to rule 3.26 and MyCSP cannot act contrary to the Rules.
16. The principle of abatement has been present in the Rules of the PCSPS since at least 1972. Rule 3.26 provides, in effect, for the question of abatement to be decided when a relevant event occurs, that is when Mr Y reached the normal retirement age of 60. At that time he was working for the MOD and receiving a salary higher than his old salary. Therefore, the pension due for his previous two periods of service was abated.
17. Mr E has also made the point that that he did not retire from the MOD but resigned. This distinction does not have any validity as far as abatement is concerned, the principle applies if the new re-employed salary, combined with the pension, is greater than the old salary. There are no exceptions for those people who are recruited and re-employed, like Mr E, for their experience.
18. Therefore, I do not uphold Mr E's complaint.

Anthony Arter

Pensions Ombudsman
15 June 2017