

Ombudsman's Determination

Applicant	Mr I
Scheme	Principal Civil Service Pension Scheme (PCSPS)
Respondents	Civil Service Pensions (MyCSP) HM Revenue & Customs (HMRC)

Outcome

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

Complaint summary

3. Mr I's complaint, against MyCSP and HMRC, is that they have decided he is not eligible for full payment of his preserved pension benefits at 55.

Background information, including submissions from the parties

4. Originally, Mr I was employed by HMRC and a member of PCSPC. In December 2007, his employment was terminated. At the time, HMRC said: -

"Having considered all the information I have obtained from you I have concluded that you are in breach of an implied term within your contract with the Department to maintain trust and confidence in you. That breach is, in my view, irretrievable, the Department has accepted the breach and your contract has been terminated with immediate effect."
5. Mr I says his employment was terminated "for raising concerns under the Public Interest Disclosure Act 1998" (**the Act**). He subsequently appealed this decision.
6. HMRC eventually settled the case out of court. Details of the settlement are outlined in "Agreement in respect of an Actual or Potential Claim to the Employment Tribunal" (**the Agreement**). Among other things, it stated: -

"This agreement does not affect any rights the Claimant may have in relation to personal injury claims or accrued pension rights."

7. In September 2016, after making enquiries and taking legal advice, Mr I complained to this Office about his employer, HMRC. In summary, his complaint was he would suffer a loss if he were not permitted to take his benefits in full at age 55.
8. This Office informed Mr I he should complain under PCSPS's internal dispute resolution procedure (**IDRP**) and he then did so.
9. On 25 January 2017, MyCSP responded to Mr I under stage one IDR. It did not uphold the complaint. In summary the points were: -
 - Its understanding of Mr I's complaint was: he believed his dismissal from HMRC had prevented his being able to draw his pension in full at age 55; he believed that, under the Act, he was entitled to protection from financial detriment; and, in his view MyCSP had a legal duty to pay his pension in full at age 55.
 - PCSPC was a statutory scheme made under the Superannuation Act 1972 (**the 1972 Act**). The rules of PCSPC governed payment of benefits; and, no benefits could be paid except in accordance with the PCSPC rules.
 - MyCSP must calculate members' benefits in accordance with PCSPC rules, as laid down by Parliament and HMRC Regulations. Section 3.10(a)(ii) of the rules¹ provided that, if a member is over the minimum pension age for PCSPC (50 in Mr I's case), then he could apply to take benefits early on one of three bases (1) Early Payment of Preserved Award (**EPPA**) due to medical reasons, (2) Actuarial Reduced Retirement (**ARR**) or (3) compelling personal grounds.
 - So, Mr I was able to access his pension benefits from age 50; however, they could be reduced by factors determined by the Government Actuaries Department. This was a PCSPC ruling, not due to any events that may have occurred during his employment, or the reason for his leaving service.
 - However, if Mr I accessed his benefits under ARR before age 55, then he would not be entitled to increases until his 55th birthday (though increases could be paid before 55 in the event of EPPA due to ill health). This was governed by the Pension (Increase) Act 1971; it did not arise out of any dispute between Mr I and his employer.
 - There was no evidence that a court order had been made, in favour of Mr I, guaranteeing him the right to take an unreduced pension at age 55. But MyCSP could consider any further evidence from Mr I in relation to this point.
10. From May to October 2017, there was further correspondence, between Mr I and this Office, as Mr I attempted to appeal under the Scheme's IDR. On 23 January 2018, the Cabinet Office responded under stage two IDR. It did not uphold the complaint, a brief summary is set out below: -

¹ Principal Civil Service Pension Scheme; Section II; the 1972 Section

- His complaint was that HMRC had dismissed him in 2007 as a result of whistle blowing and, in those circumstances, the Act protected him from suffering any loss of pension benefits. Also, as a result of his dismissal, HMRC had denied him access to benefits that might be payable to existing staff who left the Civil Service due to redundancy.
- Mr I, and other members, could only be paid benefits in accordance with PCSPC rules.
- Mr I's employment with HMRC did not end with dismissal. Rather, he was dismissed but subsequently reinstated following mediation. After that, he resigned.
- So, PCSPC must pay him benefits based on his leaving before pension age; and, it must ensure his accrued pension rights were not affected. His accrued benefits were the benefits he had built up at the date of the "court order". Mr I's benefits, as a classic member leaving PCSPC before normal pension age, and having more than two years' service, were as follows:

"(1) An entitlement to the preserved benefits they have accrued to the point of leaving the Scheme, payable at age 60; (2) the right to apply for actuarially reduced payment of preserved benefits early under Rule 3.10(c); (3) the right to apply for preserved benefits before age 60 in the event of illness or inability to continue in employment."

- MyCSP had provided Mr I with options in accordance with these rights. Whether Mr he was dismissed by HMRC, or whether he resigned voluntarily, he was in the same position to other members leaving the same section of PCSPC with preserved benefits.
11. The circumstances of Mr I's original dismissal, and any detriment suffered under the Act, were outside the Cabinet Office's jurisdiction. However, in the Cabinet Office's view, HMRC had met its responsibilities to Mr I under PCSPC, by providing him with benefits based on his leaving service before pension age. So, he was being provided with benefits, and the option to take benefits, in accordance with PCSPC rules.

Adjudicator's Opinion

12. Mr I's complaint was considered by one of our Adjudicators who concluded that no further action was required by My CSP or HMRC. The Adjudicator's findings are summarised briefly below: -
- This Office could not determine if Mr I was unfairly dismissed by HMRC, as this was an employment matter. Nor could this Office decide if Mr I had suffered detriment under the Act, as this was similarly related to his employment.
 - MyCSP and the Cabinet Office outlined three ways Mr I could potentially take benefits under the PCSPC before the normal pension age of 60, as follows: -
 - He was entitled to preserved benefits accrued up to the point of leaving PCSPC, payable at age 60 (normal pension age for most Classic PCSPC members).

- He also had the right to apply at any time after age 50 for payment of actuarially reduced preserved benefits early under Rule 3.10(c) (**ARR**).
 - He had the right to apply for preserved benefits before age 60 if he became ill or was unable to continue in employment (under Rule 3.4) (**EPPA**).
 - The Agreement stated “This agreement does not affect any rights the Claimant may have in relation to personal injury claims or accrued pension rights”. However, Mr I’s accrued rights had not changed as a result of the Agreement; they are the same as if he had been dismissed, that is based on his leaving service before normal pension age. So, neither MyCSP nor HMRC had made any administrative errors in declining to pay Mr I unreduced benefits from age 55.
13. MyCSP and HRMC accepted the Adjudicator’s Opinion and confirmed that they had nothing to add. Mr I did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr I provided his further comments, which do not change the outcome. I agree with the Adjudicator’s Opinion and I will therefore only respond to the key point made by Mr I for completeness.

Ombudsman’s decision

14. In his response to the Adjudicator’s Opinion, Mr I stated: -

“...Your findings fail to take into account that under [the Act], a worker must not be subjected to a detriment, even if they have left an employer’s employment and even if they have signed an agreement to wave aside any future claims. Indeed, under the [the Act] it is illegal to subject current and past workers from suffering a detriment for raising a concern under [the Act] including when it comes to pension rights. Thus, your claim that this an employment matter and outside the scope of your jurisdiction is a nonsense. Please look at the matter again.”

15. I have considered Mr I’s further comments in relation to the Act. However, the Act protects “workers” making disclosures in the public interest and potentially allows them to claim compensation for victimisation following disclosures, there is no evidence of victimisation or other detriment in relation to Mr I’s pension.
16. Mr I agreed to resign from HMRC under the Agreement. But, the Agreement cannot protect him from the fact that he left service before his pension age. So, his current pension benefits, which are based on that fact, are correct.
17. There is no evidence that, as Mr I asserts, he is entitled as of right to an unreduced pension at age 55. So, I find that he has not suffered any financial loss, as a result of the Agreement; and, neither MyCSP nor HMRC has made administrative errors with regard to this issue.

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18. Therefore, I do not uphold Mr I's complaint.

Anthony Arter

Pensions Ombudsman
23 March 2018