

Ombudsman's Determination

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| Applicant | Mr E |
| Scheme | Principal Civil Service Pension Scheme (the Scheme), and the Civil Service Compensation Scheme |
| Respondent | MyCSP |

Outcome

1. Mr E's complaint against MyCSP is partly upheld, but there is a part of the complaint I do not agree with. To put matters right, for the part that is upheld, MyCSP shall pay Mr E £500 for the significant distress and inconvenience that he has suffered.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr E's complaint concerns a number of points, however there are two main issues. The first being that MyCSP has incorrectly calculated his benefits within the Scheme by using his average pensionable salary from the three years ending 31 March 2006, instead of the three years ending 31 March 2003, resulting in a lower pensionable salary. He feels the errors regarding his salary resulted in delays in putting his pension into payment, and he believes that the pension he is now receiving is not correct, as he says his salary information is still not correct.
4. The second issue is that Mr E's Voluntary Redundancy Compensation payment (**compensation payment**) was paid on 1 April 2016, in the 2015/2016 tax year, rather than four to six weeks after his leaving date which would fall in the 2016/2017 tax year. This caused a 40% income tax charge to be applied to the payment in excess of the first £30,000, whereas had it been paid in the 2016/2017 tax year, the taxable part of it would have only been taxed at 20%. Mr E says this has resulted in him being liable for £5,061 additional tax than would otherwise have been the case.

Background information, including submissions from the parties

5. This complaint has a long and complex background which has been summarised as concisely as possible.

6. In February 1977, Mr E joined the Classic section of the Scheme which is governed by the Classic section Regulations. With effect from 1 October 2002 he opted to move into the 2002 Premium section of the PCSPS, and became a Classic Plus member; the regulations applicable to his benefits became the Premium section Regulations.
7. On 20 November 2013, Mr E telephoned MyCSP enquiring about how his pensionable service would be calculated. He asked if he could preserve his best three years' salary by opting out of the Scheme and then opting back in at a later date. The average of the best three consecutive years salaries within a period of 13 years prior to date of leaving, or retiring, can be used as pensionable salary, if most beneficial to the member. He was informed that to preserve his best years he would have to opt out and wait 28 days before opting back in. Mr E opted out on 1 April 2014, and back in on 1 May 2014.
8. Between September 2014 and July 2016, Mr E raised a number of queries with MyCSP mainly regarding the pensionable salary shown on his 2014 benefit statement; his voluntary redundancy quotations for a leaving date of 31 March 2016; and the early retirement quotation he requested on 11 April 2016 for retirement on 9 May 2016.
9. MyCSP is reliant on pensionable salary and pay information provided by the employer, and it requested updated pay information from the employer when Mr E raised his queries. Mr E was informed that, as he had opted out, his best three years pensionable service were the three years ending on 31 March 2003, and his periods of service would be kept separate. He had also completed a form confirming that he did not want his two periods of service combined.
10. Mr E was provided with a series of voluntary early redundancy statements between November 2015 and December 2015. The first two statements were based on service from the date he opted back into the Scheme, whereas the third included Mr E's entire service from 1977 onwards. All were based on a pensionable salary of the average of the three years ending 31 March 2006.
11. On 9 January 2016, MyCSP received Mr E's completed option form, signed on 14 December 2015, selecting to take the full redundancy compensation payment and preserve his pension benefits until his normal retirement age. MyCSP issued a finalisation statement showing Mr E's preserved benefits within the Scheme, this was based on his entire service from February 1997 to March 2016. The covering letter stated, "We will pay you the lump sum compensation payment shown on your finalisation statement. This will be paid into the account you have specified within 21 days after you leave the Civil Service."
12. On 10 March 2016, Mr E called MyCSP and asked when he would receive the compensation payment. The call handler confirmed that MyCSP would aim to pay it between four and six weeks from his date of leaving of 31 March 2016. The compensation payment was paid on 1 April 2016.

13. On 11 April 2016, Mr E called MyCSP and requested early retirement for 9 May 2016. As Mr E had queried his pensionable salary and disagreed with the figures that MyCSP held, MyCSP made further enquires with Mr E's then employer on 13 April 2016. Mr E had been employed by HMRC up to 31 March 2010. From 1 April 2010 onwards Mr E worked for the Home Office. On 28 April 2016, the Home Office provided full pay information in respect of his service with the Home Office.
14. On 4 May 2016, MyCSP requested further information going back 13 years. The Home Office responded on 15 June 2016 stating that the HMRC Pay Audit Team had conducted a full review of Mr E's pay previously, and found that Mr E had received the correct pay. The response went on to say that HMRC was not prepared to commit further resource to auditing Mr E's pay and the Home Office confirmed the pay figures held.
15. On 10 June 2016, an actuarially adjusted retirement quotation was issued using Mr E's entire service. This was based on an average pensionable salary, as confirmed by the Home Office, for the three years ending 31 March 2006 with a pension increase factor of 1.3021 applied. This resulted in an actuarially adjusted pension of £20,005.53 per annum, and an actuarially adjusted lump sum of £36,323.17.
16. Before this was put into payment MyCSP sent Mr E a series of emails asking whether or not his two periods should be combined. MyCSP subsequently informed him that they should and had been combined, and that the payment had now been set up.
17. Mr E raised a complaint as he was not satisfied that his benefits had been calculated using his correct pensionable pay, and that his compensation payment was paid in the 2015/16 tax year. The complaint was not upheld by MyCSP and Mr E passed his complaint to this office.

Adjudicator's Opinion

18. Mr E's complaint was considered by one of our Adjudicators who concluded that it should be partly upheld and MyCSP should pay Mr E £500 for the distress and inconvenience caused due to the confusion around amalgamation of his two periods of service. The Adjudicator's findings are summarised briefly below:-
 - Mr E has raised a number of concerns regarding his salary details held by MyCSP. MyCSP is reliant on information supplied by the employer and it has taken reasonable steps to verify this information where Mr E has questioned it. The Home Office has informed MyCSP that HMRC carried out a full audit and is satisfied that Mr E has received the correct pay. HMRC will not put any further resources into auditing Mr E's pay, therefore it is reasonable for MyCSP to accept the information supplied by the Home Office as correct.
 - Due to Mr S' queries regarding his salary details there was a delay in putting his benefits into payment while MyCSP contacted Mr E's employer to confirm the

figures it held. However, Mr S' pension was backdated to the date on which he had requested to retire, so he has not suffered any financial loss due to this delay.

- The 'best years' pensionable earnings issue will turn on whether the two periods of service should be aggregated, or if they should remain separate periods. If they are to be combined then the three years ending 31 March 2003 cannot be used as these fall outside of the 13 year period for calculating pensionable earnings.
- MyCSP has said that the Regulations applicable to Mr S require that, where a break in service is less than 6 months, the periods before and after are treated as a single period of service. MyCSP can only administer the Scheme in accordance with the Regulations. However, it appears that Mr E was given incorrect information about this on a number of occasions. He was told during a telephone call that as long as the break was more than 28 days his 'best years' would be preserved. He was also informed in subsequent calls that his periods would be kept separate. In addition, he was issued with, and completed, a form giving him the option to aggregate his service but he opted to keep the periods separate.
- The Adjudicator asked MyCSP why Mr E was given incorrect information, and why he was asked to complete the form. MyCSP said it appears that the Classic section Regulations, rather than the Premium section Regulations, were being referred to when he was given the incorrect information. The Classic section Regulations state that if a member opts out and re-joins after a break of more than 28 days they are unable to aggregate the member's previous and current service. However, MyCSP is unable to confirm why Mr E was issued with the form, as it was not applicable to him, nor was it applicable under the Regulations for either section.
- There was a delay in recognising this error and Mr E's service was not aggregated until December 2015. There was then further confusion on MyCSP's part in July 2016, prior to payment of Mr E's retirement award, over whether the two periods should have been aggregated or not. It was then decided that the periods must be aggregated, and his benefits were put into payment.
- The Adjudicator is satisfied that MyCSP has calculated Mr E's current benefits using the correct Regulations, and that Mr E is receiving the pension benefits that he is entitled to under those Regulations. However, MyCSP's errors amount to maladministration, and have caused Mr S a significant amount of distress and inconvenience. The Adjudicator said MyCSP should pay Mr E £500 for this.
- Regarding the redundancy compensation payment and the fact that it was paid before 6 April 2016, the covering letter of the finalisation statement clearly says that the compensation payment would be paid within 21 days of leaving Civil Service employment. Mr E left on 31 March 2016 and the compensation payment was paid the following day on 1 April 2016.

- It is acknowledged that Mr E was informed differently on the telephone. It is also recognised that the date of the payment has resulted in a tax liability for Mr E, as it caused his earnings for the 2015/2016 tax year to exceed the 20% income tax threshold and enter the higher 40% tax band. However, the Adjudicator does not agree that MyCSP should be liable for the additional tax that Mr E has paid.
 - Mr E has said that, had he known the compensation payment would be paid in the 2015/2016 tax year, he would have made a different decision and only taken a £30,000 compensation payment, which is the tax free amount, with the remainder used to purchase additional pension. However, Mr E had returned the completed paperwork in December 2015, before he enquired in March 2016 about when the compensation payment would be made. For this reason, there is nothing to suggest that he would have made a different decision. It does not appear that Mr E made his decision based on when the compensation payment would be made, and therefore MyCSP should not cover his tax liability or offer him the opportunity to amend his voluntary retirement options.
19. 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

20. Mr E says that errors in his pay and pension have been ongoing since 2003. These issues affected the quotations he was provided with when considering his voluntary redundancy. He also reiterated that, had he been correctly informed about when the compensation payment would be paid, he would have taken a £30,000 compensation payment with the remainder used to purchase additional pension.
21. I acknowledge that Mr E has queried his pay and pensionable pay on many occasions with both his employer/s and MyCSP. This led his employer, HMRC, to carry out a full audit of his pay, which is reasonable, and it concluded that Mr E has received the correct pay. MyCSP has taken sensible steps to clarify Mr E's pensionable pay where he has raised concerns. As has been explained, MyCSP is reliant on information provided by the employer/s.
22. With regard to the compensation payment, I agree with the comments that the Adjudicator has made. Mr E returned his completed paperwork in December 2015, prior to enquiring as to when the compensation payment would be paid. This suggests that the date at which the compensation payment would be paid was not a material factor in Mr E's decision. If it had been, I would expect Mr E to have enquired when it would be paid before returning his completed paperwork.

23. In fact, Mr E did not enquire until after he had been issued the finalisation statement which was enclosed with a letter that clearly stated the payment would be made within 21 days of his last day of service. This letter would have been received prior to Mr E's telephone call in which he was informed it would be four to six weeks, therefore it would have been reasonable for him to query the information he was given over the telephone, or ask for it in writing, but he did not. Following this there is no evidence to suggest that Mr E would have made a different decision had he been correctly informed on 10 March 2016.
24. Mr E has also supplied payslips for the period 1 April 2004 to 31 March 2006. He says that the pensionable amounts shown on his payslips do not match the pensionable pay figures that MyCSP has based his pension upon. MyCSP does not use payslips when calculating benefits. The employer supplies MyCSP with pensionable pay figures directly. It is not uncommon for pensionable pay to differ from information shown on payslips as not all pay is necessarily pensionable. In addition, the audit carried out by HMRC did confirm that an overpayment was made and then corrected and the Home Office has said that this may be why the figures that MyCSP hold are different to those shown on Mr E's payslips. As stated above, MyCSP has taken reasonable steps to clarify Mr E's pensionable pay with his employer. If Mr E is still not satisfied I suggest that he raises the issue with his employer/s directly. The employer is not a party to this complaint, therefore I am not able to investigate or comment on its role.
25. I agree that MyCSP should pay Mr E £500 for the significant distress, confusion and inconvenience that the matter of amalgamation of his periods of service has caused.
26. Therefore, I uphold Mr E's complaint in part.

Directions

27. Within 28 days of this determination MyCSP will pay Mr E £500 for the significant distress, confusion and inconvenience caused.

Anthony Arter

Pensions Ombudsman
18 September 2017