

PENSION SCHEMES ACT 1993, PART X
DETERMINATION BY THE PENSIONS OMBUDSMAN

Applicant	Mr Paul Yearsley
Scheme	Principal Civil Service Pension Scheme (the Scheme)
Respondent	My Civil Service Pension (MyCSP) The Cabinet Office

Subject

Mr Yearsley complains that he was given an incorrect statement of his benefits which he relied upon when making his decision whether to take early retirement. Mr Yearsley says that had he known the true position in respect of his benefits he would have remained in his job and not taken early retirement.

The Pensions Ombudsman's determination and short reasons

The complaint is not upheld. I find that Mr Yearsley could reasonably have been aware of the error in the statement of his benefits and is likely to have still retired regardless.

DETAILED DETERMINATION

Material Facts

1. Mr Yearsley was employed by HM Prison Service. He joined the Scheme on 8 September 1985.
2. Mr Yearsley was originally employed as a prison officer at a time when the normal retirement age was 55 and, because officers retiring at 55 could not build up a full pension, service over 20 years counted double. Mr Yearsley also had a right (no longer generally available) to retire and be re-employed the next day in the same grade and hours. This was known as “formal retirement”. A pension and cash sum was payable at the time of formal retirement, although the pension would be abated so that the total of the pension plus pay after formal retirement did not exceed the pay before formal retirement. Additional pension and cash sum rights were earned on re-employment, with the pension being added to the formal retirement pension on actual retirement.
3. Mr Yearsley took formal retirement on 1 October 2009 when he was age 57.
4. MyCSP calculated Mr Yearsley’s “formal award” as a yearly pension of £13,180.75 and a lump sum of £41,432.25. Mr Yearsley took an option to commute some of his pension into an additional lump sum, which provided him with a reduced pension of £11,097.93 and an increased lump sum of £73,986.09. His pay before and after formal retirement was the same, so the whole of his pension was abated. He received the lump sum, however.
5. Mr Yearsley continued working until he took early retirement on 31 March 2011 under a voluntary early redundancy scheme.
6. When Mr Yearsley enquired about the voluntary early redundancy scheme (initially, I understand, around January/February 2011) he asked what his pension would be if he chose to retire early.
7. Ministry of Justice Shared Services sent Mr Yearsley a benefit statement by email on 1 March 2011 (**the Statement**). The covering letter said:

“Actions for you

1) Please check your Compensation Quote and Pension Benefits Estimate and let us know immediately if anything looks wrong”

8. The Statement said that Mr Yearsley's yearly pension, payable from 1 April 2011, would be £15,968.00. The Statement also said that if Mr Yearsley wanted to commute part of his pension (i.e. in addition to that part already commuted on his formal retirement in 2009) then his yearly pension would be reduced from £15,968.00 to £15,544.32.
9. Mr Yearsley chose to take the larger lump sum and a reduced pension of £15,544.32. His last day of service was 31 March 2011.
10. On 18 May 2011 Capita Hartshead - a former administrator of the Scheme - sent Mr Yearsley a summary of his final benefits, showing his annual pension was £12,831.50.
11. Mr Yearsley queried why his benefit entitlement was lower than that set out in the Statement. The National Offender Management Service (**NOMS**) responded on 13 June 2011, telling Mr Yearsley that the figures in the Statement did not take into account the figure he elected to commute at formal retirement.

Summary of Mr Yearsley's position

12. He received details of the lower annual pension of £12,831.50 on 18 May 2011, after he had left the prison service on 31 March. He could not therefore have known that the higher figure shown on the Statement of £15,968 pa was incorrect at the time he made the decision to voluntarily retire early by signing the acceptance offer.
13. If he had known the Statement was inaccurate he would not have taken voluntary early redundancy and put his pension into payment on 31 March 2011 but continued to work until his 65th birthday.
14. He has, therefore, lost the opportunity to continue to earn £34,000 a year in his role and also the opportunity of accruing further final salary benefits in the Scheme at a rate of 1/40th of his final pensionable salary from 1 April 2011 until 1 April 2012 and 1/80th of his final pensionable salary for the 5 years thereafter.
15. To put matters right, the terms of the Statement should be honoured.
16. Alternatively, to put matters right damages should be paid to put him in the position he would have been had he not retired not retired until age 65. (Specifically, damages for negligent misstatement.) The amount payable is the difference between the value of his pension benefits in the period since 1 April

2011 and the sum of the salary he would have earned in the period from 1 April 2011 until he reached age 65 and the pension that he would have continued to accrue in the Scheme had he not retired (and become a pensioner under the Scheme) until he reached age 65.

Summary of MyCSP's and the Cabinet Office's position

17. Both MyCSP and the Cabinet Office acknowledge that the Statement was incorrect. The Statement was incorrect because it failed to take account of the amount Mr Yearsley commuted at formal retirement.
18. MyCSP - in their response to Mr Yearsley under stage 1 of the internal dispute resolution procedure (**IDRP**) for the Scheme - said that their computer systems failed to pick up the figure Mr Yearsley had commuted at formal retirement. They argue that the provision of the incorrect information in the Statement was out of their control.
19. The Cabinet Office - in their response to Mr Yearsley under stage 2 of the IDRP for the Scheme - said that the Scheme cannot pay Mr Yearsley the amount set out in the Statement as it is only permitted to pay Mr Yearsley the amount that the regulations governing the Scheme permit. As Mr Yearsley is currently receiving his correct entitlement under the regulations governing the Scheme he has suffered no loss of entitlement.
20. The Cabinet Office argue that Mr Yearsley should reasonably have spotted that the Statement was incorrect. They say that, in their view, even someone with the most basic understanding of their pension benefits could reasonably have been expected to spot that the Statement was incorrect. Mr Yearsley, they say, had a sound understanding of how a pension from the Scheme is calculated (which was exemplified in the manner in which he has subsequently calculated his purported loss). They say, therefore, that Mr Yearsley should have spotted that the pension figures in the Statement had been overstated.
21. The Cabinet Office also argue that Mr Yearsley has made no attempt to mitigate his loss. Mr Yearsley was made redundant with effect from 31 March 2011. It was clear to Mr Yearsley by 18 May 2011 that his actual pension was lower than that shown in the Statement. Had Mr Yearsley not accepted voluntary early redundancy and therefore not retired had he known the true position (as he asserts), he should have done something to mitigate his loss such as ask NOMS

to see if they could reverse the decision in respect of his voluntary early redundancy. The fact that Mr Yearsley did not do this shortly after 18 May 2011 demonstrates that he would have accepted voluntary early redundancy and taken his pension early even if he had been aware of the true position.

Conclusions

22. Mr Yearsley says that his pension is less than he “signed for”. However, I cannot see anything that would make the arrangement contractual (so that MyCSP would be bound to pay the pension). And in fact the covering letter asked Mr Yearsley to check the figures and say if anything looked wrong.
23. Mr Yearsley says that had he been given the correct information he would not have taken voluntary early redundancy but continued to work. If Mr Yearsley can demonstrate that he reasonably relied on the incorrect information provided to him by MyCSP, then he may be entitled to compensation.
24. The implication of the figures in the Statement was that between formal retirement and actual retirement, a period of about 18 months, Mr Yearsley had earned about £4,870 additional pension - more than a third of the pension that he had earned in his career before formal retirement. Even allowing for doubling of service that would have looked improbable if Mr Yearsley had given it much thought. On formal retirement in 2009 he was told that, based on reckonable service of 32 years and 333 days, he was entitled to an annual pension of £13,810.75 (reducing to £11,097.83 upon his taking formal retirement)).
25. Mr Yearsley was not an expert and his reasonable starting point would have been that he could trust the figures to be right. But even allowing for that, I find that he should not have taken them to be correct, in view of the discrepancy.
26. Even if he had reasonably believed the Statement to be correct, I am not satisfied that he would not have retired on the true figure. Mr Yearsley says that when he made the decision to accept voluntary early redundancy it was based on the fact that his personal finances would have to be managed very carefully on the pension set out in the Statement. Accordingly, he argues that the payment of a lower pension has resulted in him suffering financial hardship, but that is not the test. The test is whether he would have done something different.

27. Mr Yearsley took voluntary early redundancy on 31 March 2011 and became aware of the true position in respect of his pension on 18 May 2011. If his finances were tight Mr Yearsley might have been expected to have approached his employer/NOMS shortly after receiving the statement on 18 May 2011 to enquire as to whether anything might be done to reverse his taking of voluntary early redundancy, so that he could return to work. He says he did not because he knew that his job no longer existed. But I think his decision not to is an indicator that his financial situation was not so serious as to mean that he would not have taken redundancy if he had had the correct figure beforehand.
28. So it is my view that first, Mr Yearsley could reasonably have identified that the figure might be wrong and second, he would anyway have taken voluntary redundancy with the correct figure.
29. I do not uphold the complaint.

Tony King
Pensions Ombudsman

5 September 2014