

Ombudsman's Determination

Applicant	Mr N
Scheme	Principal Civil Service Pension Scheme (the Scheme)
Respondent	MyCSP

Outcome

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

Complaint summary

3. Mr N's complaint is that MyCSP delayed the implementation of a pension sharing order on his pension which resulted in its overpayment.

Background information, including submissions from the parties

4. The Scheme is administered by MyCSP and Cabinet Office is the Manager.
5. Mr N retired in November 2014, then age 64. Mr N's pension was subject to a pension sharing order (**the Order**). The effective date of the Order was 13 February 2015, the date of the Decree Absolute.
6. As relevant the Order advised that MyCSP had four months to discharge its liability to implement the order beginning with the later of:

 "the day on which this order takes effect; or
 the first day in which you are in receipt of –
 ...
 e. payment of all outstanding charges requested by the pension scheme."
7. In April 2015 MyCSP separately wrote to Mr N and Mrs N with a breakdown of its fees to proceed with the implementation of the Order.

8. MyCSP subsequently received Mr N's cheque for his portion of the fees on 12 June 2015 and Mrs N payment for her share on 13 July 2015. MyCSP had a maximum of four months to discharge its liability to implement the Order from the date of receipt of Mrs N's payment – its service standard is three months.
9. The next month MyCSP apologised to Mr N for the delay in implementing the Order, advised that it was looking into the matter, and that the Order would be implemented as soon as possible.
10. On 24 November 2015 MyCSP wrote to Mr N to say that :
 - the Order was now complete;
 - his pension had been overpaid to 25 November 2015;
 - payroll would contact him with further details and the options to repay the sum;
 - his new gross monthly pension was £980.69.
11. Two days later Mr N received a request to repay the net overpaid sum of £5,341.57 by cheque or direct payment. Mr N emailed MyCSP to say that he would not repay the amount until he received reasonable repayment options.
12. MyCSP apologised and offered Mr N the option to repay the sum by standing order over 12 months.
13. Mr N replied that the option would cause him severe financial hardship and that he would be seeking an appointment with his MP to discuss the disgraceful way MyCSP had treated him.
14. Mr N received an almost identical letter from MyCSP offering the same repayment terms.
15. Mr N referred to his previous reply and said when he had received a reply from his MP he would contact MyCSP again.
16. On 29 December 2015 Cabinet Office wrote to Mr N's MP to say that MyCSP had written to Mr N about his options for repayment of the overpaid sum and that MyCSP would consider Mr N's request for compensation.
17. On 6 January 2016 MyCSP wrote to Mr N to say that it was willing to make an ex-gratia payment of £250 to him in full and final settlement of his complaint.
18. Mr N replied to MyCSP that its offer did not address the substance of his complaint and had left him more confused. Mr N asked if the payment would end the matter and that the overpayment, resulting from its incompetency in timely implementing the Order, would now be written off.

19. Assuming that this was not the case Mr N invoked the Scheme's two-stage internal dispute resolution (**IDR**) procedure. Mr N summarised his concerns as:
- The significant time (10 months) it had taken MyCSP to implement the Order.
 - MyCSP's complete lack of communication. He had received no communication from MyCSP following its letter of 5 March 2015 until 8 August 2015. Mr N said at no point had MyCSP warned him that the delay of implementing the Order could result in an overpayment of his pension.
 - It was not until approaching the end of November 2015 that MyCSP advised that an overpayment had occurred and requested a single repayment of the sum. Mr N said the demand had caused him extreme distress.
20. My CSP rejected Mr N's appeal. It said:
- After receiving Mrs N's cheque it had a statutory obligation to implement the order by 13 November 2015.
 - The overpayment of pension arose because it had to pay Mr N his full rate pension until the Order was fully implemented.
 - It was obliged to recover the overpayment and Mr N had been offered a reasonable repayment plan.
 - It acknowledged that the Order was implemented 4 working days after the deadline.
 - In the circumstances its ex-gratia offer of £250 was reasonable.
21. Before invoking IDR stage two, Mr N raised a further complaint that he had received a letter from HMRC (dated 23 February 2016) that he had underpaid tax for year 2014/15 and owed it £552.20, as a result of MyCSP not making tax deductions from his pension.
22. In connection with tax queries raised by Mr N, MyCSP wrote to Mr N on 31 March 2016 informing him that the net overpaid sum had changed and was now £6,558.18 – Mr N's pension was initially taxed based on an emergency tax code, 1000L for year 2014/15 and 1060L for year 2015/16, until HMRC advised his amended tax code 442L from 17 May 2015. MyCSP offered a repayment plan over 93 months, comprising an initial payment of £118.18 followed by 92 payments of £70. MyCSP asked Mr N to confirm his acceptance of the repayment plan or if he was unable to accept it to advise how much he was willing to pay back monthly. My CSP chased Mr N for his reply on 21 April 2016.

23. Mr N wrote to MyCSP on 26 April invoking IDR stage 2. He said:-

- Since the IDR stage 1 decision he had been informed by DWP that he had underpaid tax as a result of a mistake by MyCSP and the amount owed to MyCSP was now considerably greater.
- The IDR stage 1 decision had failed to acknowledge, explain and apologise for the substance of his complaint.
- He had agreed to pay the tax arrears to HMRC at £50 per month.
- Without prejudice he proposed a repayment plan to MyCSP of £50 per month, to take effect after completing the repayment to HMRC in approximately 12 months. He said anything above that level would cause him significant hardship.

24. Mr N's appeal was forwarded to the Cabinet Office. Before it was considered the IDR stage 1 decision maker for MyCSP responded to the additional points that Mr N had raised:-

- The increased overpaid sum was correct. The original calculation had been based on the previous tax code 1060L, but from 17 May 2015 it had changed to 442L.
- While the original request for repayment was inappropriate, MyCSP had offered a more suitable recovery plan. Mr N's request to suspend the overpayment recovery for 12 months was noted and he would be separately contacted by MyCSP about this.
- The underpayment of tax occurred because his payslip for 25 May 2015 was generated on 14 May 2015, which was three days before his tax code changed to 442L. Amendments to tax codes were processed electronically by HMRC and MyCSP had no authority to access or amend a pensioner's tax code.
- On Mr N's comment that MyCSP had failed to notify him that his pension was being overpaid whilst the Order was being implemented, located on the Civil Service Pension Scheme website was a brief guide for Classic Scheme members regarding pensions and divorce which confirmed that an overpayment was likely to occur when a new lower rate pension was backdated to the effective date of the Order.

25. Cabinet Office rejected Mr N's IDR stage 2 appeal:-

- Paragraph 20 of the Pensions Act 1995 specifically prevented making any deductions from a member's pension without the statutory authority, for example, a PSO. Consequently, until the Order was implemented MyCSP was bound to pay Mr N his full pension.
- MyCSP was allowed four months to implement the Order. While it exceeded that time by a few days that had little impact on the overpayment that had built up since February 2015.

- While MyCSP might have been able to implement the Order sooner than it did it could not have done so before 13 July 2015, that is before it received Mrs N's share of the fees requested by MyCSP.
 - Given the clear explanatory notes on the Order it was not unreasonable to expect that Mr N should have known that he was being overpaid his pension. Mr N continued to receive his full pension, when he was expecting it to be reduced by half, and consequently had the opportunity to make the provision he said he would have made.
 - The underpayment of tax and the overpayment of pension were unavoidable.
 - MyCSP had apologised to Mr N and its compensation offer of £250 was reasonable for the slight delay it had caused.
 - Mr N did not dispute that the overpayment was recoverable, but disagreed with the suggested repayment plan. While that was a matter for Mr N and MyCSP to agree on, MyCSP's repayment proposal over nearly 8 years was generous in the circumstances and Cabinet Office would not direct it to extend the repayment schedule as suggested by Mr N.
26. MyCSP wrote to Mr N on 15 November 2016. It asked Mr N to confirm his bank details to enable the direct payment of the ex-gratia amount of £250 and restated its suggestion that the overpaid sum be recovered over 93 months.
27. Mr N says he is prepared to pay £3,250 in full and final settlement, on the basis that MyCSP pay the same, "to bring this sorry state of affairs to a conclusion".

Adjudicator's Opinion

28. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by MyCSP. The Adjudicator's findings are summarised briefly below:
- As relevant, section 34 ('Implementation period') of the Welfare Reform and Pensions Act 1999 says:
“

(1)For the purposes of this Chapter, the implementation period for a pension credit is the period of 4 months beginning with the later of—

(a)the day on which the relevant order or provision takes effect, and

(b)the first day on which the person responsible for the pension arrangement to which the relevant order or provision relates is in receipt of—

(i)the relevant documents, and

(ii) such information relating to the transferor and transferee as the Secretary of State may prescribe by regulations.

(2) The reference in subsection (1)(b)(i) to the relevant documents is to copies of—

(a) the relevant order or provision, and

(b) the order, decree or declarator responsible for the divorce, dissolution or annulment to which it relates,...

- The four months implementation window commenced on 13 July 2015. MyCSP overran the period by 7 working days (not 4 working days). While this amounts to maladministration it did not give rise to the overpayment.
- Nevertheless, there may be circumstances in which the overpayment would not be recoverable. Namely, change of position and estoppel.
- Change of position does not apply as Mr N knew, following the Order, that his pension was to be reduced. He could have set money aside while he continued to receive his unreduced pension.
- For an estoppel defence to succeed Mr N would have to be able to show that MyCSP made a clear and unambiguous representation that he was entitled to the unreduced pension, but no such representation was made to him.
- Nevertheless, Mr N has received more pension than he is entitled to. The legal position is that MyCSP may seek to recover the amount overpaid.
- The Ombudsman's standard position is that recovery should occur over the same period as the overpayment occurred, unless this would cause undue financial hardship. In this case MyCSP has been far more generous offering to recover the overpaid sum over 93 months, namely an initial payment of £118.18 followed by 92 monthly payments of £70.
- The tax underpayment is not the result of maladministration by MyCSP. Until HMRC confirmed Mr N's pensioner's tax code it was required to apply the temporary emergency tax code. Amendments to tax codes were processed electronically by HMRC. MyCSP must implement the tax code given by HMRC.
- MyCSP had paid Mr N £250 for distress and inconvenience caused, which was an appropriate sum.

29. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N 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 N for completeness.

Ombudsman's decision

30. Mr N asks why did it take 5 months to implement the Order? He says with the aid of a calculator he could have worked out the figures within one hour and that MyCSP should have notified him that his pension was being overpaid.
31. The Order gave My CSP a maximum of four months to implement the Order, once it was in receipt of the fee payment from Mrs N. It took MyCSP seven working days longer than that maximum deadline. MyCSP and Cabinet Office concede that the Order should have been implemented before then, my CSP's service standard is three months to implement a PSO once in receipt of all outstanding fees. The failure to implement the Order before the deadline amounts to maladministration by MyCSP.
32. However, Mr N knew the effective date of the Order and that his pension had not been reduced since that date; and he says he could easily have calculated his reduced pension. I therefore agree with the Adjudicator that Mr N could have set money aside while he continued to receive his unreduced pension. He is not entitled to the overpayment, but has likely benefited from it.
33. The standard position is that the recovery of an overpayment should occur over the same period as it occurred, unless this would cause undue financial hardship. MyCSP has offered to recover the overpaid sum over 93 months, namely an initial payment of £118.18 followed by 92 monthly payments of £70. Mr N has not said that the suggested repayment plan would cause him undue financial hardship. I consider MyCSP's suggested recovery plan to be more than fair and does not constitute maladministration.
34. On the matter of unpaid tax, Mr N says MyCSP knew for over four months of his impending retirement. Despite this he ended up on an emergency tax code and underpaid tax for year 2014/15.
35. As the Adjudicator said until HMRC confirmed Mr N's pensioner's tax code it was required to apply the temporary emergency tax code. Amendments to tax codes are processed electronically by HMRC. MyCSP were required to implement the emergency tax code given by HMRC.
36. However, My CSP has since confirmed that while correct tax was deducted from Mr N's pension for tax year 2014/15, an Earlier Year Update (**EYU**) submitted by it to HMRC resulted in Mr N's tax position holding incorrectly for that tax year. While this amounts to maladministration by MyCSP, it has advised that it has submitted a correcting EYU to HMRC to correct Mr N's tax position for year 2014/15. Consequently, Mr N has suffered no financial loss over this matter.
37. MyCSP has paid Mr N £250 for distress and inconvenience. I do not consider that MyCSP's maladministration merits a payment of £500, the minimum award that I make for significant non-financial loss.

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38. Therefore, I do not uphold Mr N's complaint.

Karen Johnston

Deputy Pensions Ombudsman

18 August 2017