

Ombudsman's Determination

Applicant	Mr R
Scheme	Principal Civil Service Pension Scheme (the Scheme)
Respondents	Cabinet Office (CO) MyCSP

Outcome

1. I do not uphold Mr R's complaint and no further action is required by CO or MyCSP.

Complaint summary

2. Mr R's complaint is twofold. First, he says that his pension benefits have been incorrectly calculated. In particular, he believes that an incorrect pensionable earnings figure has been used in the calculation.
3. Second, Mr R believes that he is owed an ill health enhancement from the classic section of the Scheme (**the classic section**).

Background information, including submissions from the parties

4. On 24 August 1994, Mr R joined the classic section.
5. During his membership in the classic section, Mr R was full time employed from 24 August 1994 until 2 April 2000, and part time from 3 April 2000 until 31 January 2016.
6. In October 2014, Mr R received an annual benefit statement (**ABS**) which stated that he could expect a pension of £6,012 from the classic section.
7. On 31 March 2015, the classic section closed to future accrual for members who were not within ten years of their normal pension age as at 1 April 2012. Mr R was not within 10 years of his normal pension age, so he was transitioned into the alpha section of the Scheme (**the alpha section**) and became an alpha member with preserved classic benefits. For this reason, his ill health retirement benefits are determined by The Public Service (Civil Servants and Others) Pension Regulations 2014 (**the Regulations**). The relevant section of the Regulations is quoted in Appendix 1.

8. On 27 April 2017, Mr R retired on the grounds of ill health and was awarded lower tier ill health retirement benefits from the alpha section. Mr R believed he would also receive an enhancement to his benefits as a result of his ill health retirement.
9. On 7 June 2017, MyCSP sent Mr R a “benefit estimate” and “pension claim form”. The benefit estimate confirmed that the figures quoted were based on a last day of service of 31 August 2017.
10. On 30 June 2017, Mr R filled in the pension claim form and returned it to MyCSP.
11. On 23 August 2017, MyCSP sent Mr R a “benefits finalisation statement” which set out Mr R’s entitlement as follows:-
 - Classic annual pension £4,540.74
 - Classic lump sum £13,622.22
 - Alpha annual pension £495.96
12. The classic element was based on reckonable service of 15 years and 80 days.
13. On 31 August 2017, Mr R raised a complaint under stage one of the Scheme’s two-stage Internal Dispute Resolution Procedure (**IDRP**). Mr R said he expected his ill health retirement benefits to be increased and paid at the rate they would have been at his normal pension age of 60.
14. He further said that he was not receiving the enhancement to the classic part of his pension and was not told that he would lose the enhancement benefits when he was “forced” to change pension schemes. Mr R also said that the last statement he received in 2014, showed his classic benefit to be £6,012 per annum however his ill health award had quoted his classic benefit to be £4,540.74.
15. On 22 March 2018, MyCSP issued its IDRP stage one response to Mr R. It confirmed that as Mr R was granted a “lower tier medical certificate”, under Paragraph 29 of the Regulations no enhancement was applicable to either his classic or alpha benefits. MyCSP confirmed that it did not hold copies of historical ABS on its systems and therefore it was unable to comment on the figures produced in his 2014 statement.
16. On 10 July 2018, Mr R appealed under stage two of the IDRP. He complained that the reckonable service (for his classic service) should be “21 or 22” years and not 15 years and 80 days as shown on his annual benefit statement.
17. On 21 February 2019, CO issued its stage two IDRP response to Mr R. It maintained the same position MyCSP had taken in the IDRP stage one. It held that MyCSP had applied the Regulations correctly when calculating Mr R’s entitlement and it had no discretion to vary how it applied the Regulations.

Adjudicator's Opinion

18. Mr R's complaint was considered by one of our Adjudicators who concluded that no further action was required by CO or MyCSP. The Adjudicator's findings are summarised below:-

- Mr R believes he is entitled to an enhanced pension from the classic section. However, the Regulations show that this is not the case. He is entitled to the equivalent of an unreduced pension from the Scheme as a result of retiring on ill health grounds. In the Adjudicator's opinion, Mr R's benefits have been calculated in accordance with the relevant Regulations for each portion of his membership.
- Mr R complains that he has lost the enhanced reckonable service that applied in the classic section of the Scheme. He has said that his ill health retirement benefits should be as shown in his 2014 ABS which stated that at age 60, he would get a classic pension of £6,012 and a lump sum of £18,037. He also complains that the reckonable service (for classic service) should be "21 or 22 years" and that he has suffered a loss of around 30% of his pension.
- From 1 February 2016, Mr R was an alpha member with preserved classic benefits. He was no longer an active member of the classic section and the classic ill health retirement provisions no longer applied to him. Paragraph 29 of Schedule 2 of the Regulations confirmed Mr R as a transition member of alpha with continuity of service who was eligible for lower tier ill health retirement benefits. Therefore, Mr R is entitled to the pension he had earned in alpha plus an amount equal to the classic pension he would get had he already reached age 60 when he retired on ill health grounds.
- Mr R has said that the last statement he received in 2014 showed a higher classic section benefit compared to his ill health award quote. The projected classic pension showed in the 2014 ABS was the amount he would have had if he had claimed his benefits on reaching age 60. Normally, classic section benefits would be reduced if a member received early payment however in Mr R's case this reduction did not apply as he was retiring on the grounds of ill health. Therefore, Mr R had the benefit of early payment of his full classic pension and lump sum that he had earned up to the point of leaving but not an enhancement to his classic service.
- In April 2017, when Mr R was awarded lower tier ill health retirement, he had not reached his normal pension age in the classic section, which was 60. Paragraph 29, Section 3 of the Regulations confirms the ill health pension payable to a member at a lower tier rate is the earned pension in alpha, and the earned pension that would be payable to Mr R in classic under ill health terms. Therefore, Mr R's classic benefit entitlement was made up of earned pension and lump sum as appropriate to a deferred member. Based on the Regulations, no enhancement is applicable to either Mr R's classic or alpha benefits due to him being granted a lower tier medical certificate.

- The Adjudicator appreciated that Mr R's transition into the alpha section has resulted in him receiving a pension lower than he was expecting. Under the alpha section where a Scheme's medical advisor has issued a lower tier certificate confirming that a member is permanently incapable of performing their duties or roles of a similar nature, but the member's condition is unlikely to prevent them from getting further employment in a different capacity, lower tier benefits do not qualify for an enhancement. The Scheme's medical adviser only issues an upper tier certificate if he is satisfied that the member's condition is such that they are likely to be permanently incapable of any type of employment. Only in those cases do alpha benefits include an enhancement.
- It was the Adjudicator's opinion that MyCSP has applied the Regulations correctly when working out Mr R's entitlement. Consequently, the Adjudicator was not of the opinion that the complaint could be upheld.

19. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr R and the respondents provided their further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the main points made by Mr R and the respondents for completeness.

20. Mr R's further comments:-

- Changes to his pension in 2015 have had a detrimental effect. Without notification or his written consent these changes are "unlawful under the Pensions Act."
- He would like to know why he did not receive an ABS between 2014 and 2017.
- Since receiving his ABS in 2014, he had no communication from MyCSP until 2017. He would like to know why it refused to explain how his pension was calculated.
- He would like to know his position and who to contact regarding the McCloud¹ judgment which related to the Government having introduced reforms to public sector pension schemes in 2015. For civil servants, this scheme was alpha. In December 2018, the Court of Appeal held the transitional protection offered to members who were closer to retirement age gave rise to unlawful discrimination, as younger members were not eligible to receive it. Mr R would like to know how the McCloud judgment affected changes to his membership.
- In the absence of historical data, he should be entitled to the figures contained in the 2014 ABS.
- If he had known his pension benefits would be lower than the 2014 ABS, he would have taken appropriate action.

¹ *Lord Chancellor v McCloud & Ors* [2018] EWCA Civ 2844

21. CO and MyCSP's further comments:-

- The changes in 2015 came about following the Government's announcement in the 2011 budget. CO published regular notices for members during the lead up to the introduction of the alpha section. CO is satisfied that the introduction of the changes was "entirely lawful."
- MyCSP's records indicate that ABS were produced for Mr R between 2015 and 2017. Mr R confirmed he had received statements in 2014 and in 2015.
- MyCSP is unable to comment on how the pension in historical ABS was calculated as this would have been based on the "data holding at the time the statement was produced."
- MyCSP had made no reference to records being lost in its IDR stage one response. Again, the statement issued in 2017 would have been based on the information available at the time.
- Mr R's pension record did not hold details of a transfer into the Scheme. However, in light of this query, MyCSP has located the transfer from Prudential in July 1998. The transfer has given Mr R an additional "2y 184d service". MyCSP will contact Mr R separately to discuss this matter further.
- Regarding the McCloud Judgment, CO will continue to publish updates for members on the Civil Service Pensions website if/when there are new developments. CO has provided a link for Mr R to find this information.

Ombudsman's decision

22. Mr R seeks to rely on the information provided to him in the 2014 ABS. However, this information assumed he would stay in the classic section until age 60. In 2015, the classic section closed to further accrual and he became a preserved member, transitioning to an alpha member in February 2016. From that point, Mr R started accruing alpha benefits.
23. When Mr R accepted ill health retirement benefits in April 2017, he accepted them from the alpha section. There is no provision under the Regulations to allow an enhancement to Mr R's lower tier ill health retirement benefits. Mr R's classic benefit entitlement was made up of earned pension and lump sum as appropriate to a deferred member. Mr R therefore received alpha benefits and the preserved classic benefits which were calculated without reduction, as if he had reached age 60. I find that Mr R's pension entitlement was in line with the Regulations.
24. Mr R complains about the closure of the classic section and says the implications of the closure were a detrimental modification. CO said that such information would have been available to him through his employer's intranet and this approach had been accepted by the previous Pensions Ombudsman. I am not bound by previous

Ombudsman Determinations but I am also satisfied that such an approach is acceptable.

25. Mr R argues that in the absence of historical data, he should be entitled to the figures in the 2014 ABS. However, the absence of historical data does not change his pension entitlement under the Scheme. CO has followed the Regulations correctly and I am unable to make a finding of maladministration on its part.
26. Mr R argues that had he known his correct pension position at the time, he would have taken appropriate action. I find that Mr R is applying the benefit of hindsight of now knowing that he is retiring early. He had no choice in transitioning and, since he has retired on ill health grounds, he has not made a 'choice' to retire early. It is difficult to see what he means by appropriate action, since any action would appear to rely on hindsight.
27. Mr R has referred to the McCloud judgment and asked where he could find further information regarding this matter. As it is an ongoing issue, CO has explained that the information can be found on the Civil Service website which is regularly updated with new developments regarding the McCloud judgment. I consider that any impact this matter may have on Mr R's case will be addressed by CO in due course.
28. I do not uphold Mr R's complaint.

Anthony Arter

Pensions Ombudsman
15 July 2020

Appendix 1

The Public Service (Civil Servants and Others) Pension Regulations 2014

Schedule 2

Part 5 – Payment of Ill-health Benefits to Transition members with Continuity of Service

Transition member who has not reached normal pension age under the PCSPS

“29 (1) This paragraph applies in relation to a transition member with continuity of service who-

becomes entitled to an ill-health pension under this scheme; and

has not reached normal pension age under the PCSPS.

(2) If this paragraph applies-

(a) an ill-health pension and lump sum are not payable under the PCSPS;

(b) an ill-health pension is payable under this scheme in accordance with this paragraph; and

(c) the member becomes a deferred member of the PCSPS.

...

(3) If the member meets the lower tier payment threshold only-

the annual rate of ill-health pension payable under this scheme is the sum of-

(i) the annual rate of a lower tier earned pension payable under this scheme; and

(ii) the annual rate of full retirement earned pension that would, if the member was entitled to payment of an ill-health pension under the PCSPS, be payable to the member at normal pension age under the PCSPS; and

the member (“M”) is entitled to payment of a lump sum of the amount of the lump sum that would, had M been entitled to payment of an ill-health pension under the PCSPS, been payable to M under the rules of the PCSPS applicable to M.”

