

Ombudsman's Determination

Applicant	Ms N
Scheme	Civil Service Pension Scheme (the Scheme)
Respondent	MyCSP

Outcome

1. I do not uphold Ms 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. Ms N complains that MyCSP provided her with incorrect information, over a number of years, by issuing inaccurate Annual Benefit Statements (**ABS**) that overstated her additional service and pension benefits, which only came to light during a Voluntary Exit exercise after she queried the amount of service on her quote.
4. Ms N has also said that the £1,000 she has been awarded does not adequately compensate her for her loss or provide sufficient redress for the distress and inconvenience she has suffered.

Background information, including submissions from the parties

5. In 1990, Ms N joined the Civil Service (her first period of service) and left the Registrars of Scotland on 5 January 2001 with a preserved classic section pension within the Scheme of £2,241.94 per annum and lump sum of £6,661.71.
6. On 15 January 2007, Ms N re-joined the Civil Service (her second period of service), employed by the London Skills and Employment Board, and joined the premium section of the Scheme and opted to aggregate her classic section benefits with her premium section benefits resulting in her classic section pension being cancelled.
7. On 24 August 2007, Ms N left service and her premium section benefits became preserved.

8. On 5 July 2008, Ms N completed a Pensions Questionnaire prior to re-joining the Civil Service with effect from 1 October 2008 (her third period of service) at the Office of the Parliamentary Commissioner. She had completed the Pensions Questionnaire and selected that her only period of Civil Service employment under the Scheme was with Registers of Scotland and that she left employment in December 2000. Based on this information Ms N was given the option of joining the Nuvos or the partnership sections of the Scheme. She opted to join the Nuvos section and requested to transfer in two periods of service from previous employments.
9. On 9 January 2009, Xafinity Paymaster the Authorised Pension Administration Centre for Ms N's employer, wrote to Ms N providing her with the choice of linking her preserved classic benefits to her current service. This letter only detailed her preserved classic award from her first period of service and did not mention her premium award from her second period of service.
10. On 12 January 2009, Ms N replied confirming that she would like to link all three periods of service but also stated that she believed her first and second previous periods of service had already been linked in 2007.
11. On 20 January 2009, Xafinity Paymaster confirmed that it had written to her previous Pension Administration Centre; Department for Work and Pension (**DWP**) for Ms N's details held with them.
12. On 14 September 2009, Ms N signed an acceptance form to link her preserved classic benefits with her current Nuvos benefits. However, as Xafinity Paymaster had not identified that Ms N's classic award was not cancelled in 2007 following aggregation with her premium service, her classic award was incorrectly linked to her Nuvos service.
13. In October 2016, MyCSP received Ms N's completed Civil Service Compensation Scheme (**CSCS**) 1 form detailing previous service with Registers of Scotland. MyCSP sought additional information from Ms N's employer as it believed that Ms N may have been put in the wrong section of the Scheme. Following receipt of this information MyCSP informed Ms N's employer that she had indeed been put in the wrong section of the Scheme and that she should have been entered into the premium section of the Scheme.
14. On 28 October 2016, Ms N was issued with a voluntary exit (**VE**) quote which informed her of the error and confirmed that due to differing retirement ages some benefits required amending and a further quote would follow. A second quote was issued on the same day following a query from the employer about missing elements.
15. On 23 November 2016, MyCSP provided a quotation. The quote included revised benefits, reduced service for her pension transfers and her added pension contributions. Ms N queried the figures stating that she was financially disadvantaged as the annual benefit statements she had received since the error put her in a better position.

16. Between November 2016 and July 2017, there was significant correspondence between Ms N, MyCSP and the employer.
17. On 27 July 2017, Ms N raised a complaint under the Scheme's IDR stage 1.
18. On 22 December 2017, MyCSP issued its stage 1 IDR response to Ms N. It confirmed that when Ms N re-joined the Civil Service pension arrangement for the third time, her break of service was more than 28 days and less than five years. As such she should have had the option of joining the premium or partnership section of the Scheme. However, due to the information she had supplied on the Pensions Questionnaire, her employer was led to believe that she only had previous service up to 2001 when she left Registrars of Scotland and so had one preserved classic award. Subsequently her Pensions Choice Form only provided her with a choice of joining the Nuvos or partnership sections of the Scheme. MyCSP found that because of the information Ms N provided in the two documents, her employer had placed her into the correct section of the Scheme at the time.
19. However, MyCSP upheld Ms N's complaint in part and said as Ms N re-joined the Civil Service on 1 October 2008 with a break of more than 28 days and less than 5 years, in accordance with Rule B 1A she should have re-joined the premium section of the Scheme. As the premium and Nuvos sections of the Scheme have different NRA's; 60 and 65 respectively, the calculation to link service to them differs. As such, when her preserved classic award was linked to her Nuvos section benefits, the amount of credited service differed to when the classic award was linked to premium section. This resulted in her Nuvos section service credit of 12 years and 258 days to be incorrectly calculated using an NRA of 65. Therefore, the ABS' she has received have been calculated to include this incorrect service credit of 12 years and 258 days, subsequently overstating her pension entitlement
20. Whilst a contributing factor to these errors was the information Ms N provided on her initial Pensions Questionnaire, the previous pensions administrator; Xafinity Paymaster did not correct her Scheme membership and as a result, linked her service incorrectly, overinflating her service credit. MyCSP offered £500 as compensation for the loss of expectation any distress and inconvenience caused to Ms N.
21. On 10 August 2018, Cabinet Office issued its stage 2 IDR response to Ms N. It maintained the same position MyCSP had taken in IDR stage 1 reiterating the reasons the error occurred. As Ms N had been given incorrect annual benefit statements for the whole period as a result of being entered into the wrong Scheme, the decision maker offered an additional £500 due to the distress and inconvenience of the incorrect administration her pension benefits caused and for the delay in replying to her IDR 2 appeal.

Adjudicator's Opinion

22. Ms 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 below:-

- The basic principle for negligent misstatement (in the absence of any additional legal claim) is that a scheme is not bound to follow the incorrect information. A member is only entitled to receive the benefits provided for under the scheme rules, that is, those based on correct information accurately reflecting the scheme rules.
- The Ombudsman will provide redress if it can be shown that financial loss or non-financial injustice has flowed from the incorrect information given. For example, the member may have taken a decision in the expectation of receiving the higher benefits which they would not otherwise have done, such as retiring early. The Ombudsman will consider whether it is more likely than not that a member relied on the incorrect information to their detriment and that it was reasonable for them to do so.
- However, the Adjudicator did not agree that she had suffered a financial loss because she was never entitled to the overstated pension or cash sum detailed on her annual benefit statements and she did not receive more than her correct entitlement. MyCSP has no discretionary power to make awards other than those defined by the Scheme Rules.
- Ms N contends that, had she known her correct entitlement, she would have made additional contributions to top up her pension. Although it is not possible to say with certainty what Ms N would have done if she had been provided with the correct information, the Adjudicator was not convinced, on the balance of probability, from the evidence provided that she would have purchased additional contributions had she received the correct information. The Ombudsman would expect Ms N to have taken steps to mitigate her loss once she became aware of the error.
- The Adjudicator was of the view that Ms N suffered a loss of expectation, as a result of MyCSP's error, in that Ms N was led to believe that she was entitled to receive a higher benefit than she was actually entitled to. This is considered to be non-financial injustice, rather than a financial loss. The Pensions Ombudsman's approach to non-financial injustice is that no award will be made unless the injustice is at least significant. MyCSP and Cabinet Office have offered Ms N a total of £1,000 in recognition of the non-financial injustice she has suffered, which the Adjudicator believed to be reasonable and fair.

23. Ms N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms N provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Ms N for completeness.

Ombudsman's decision

24. Ms N has said that to mitigate her loss she made additional contributions. From the evidence available to me I can see that Ms N took out two additional pension contracts, in January 2015 and February 2016, commencing from April 2015 and April 2016 respectively, to pay an additional 1.8% of her salary. The first contract being for a period of 1 year and the second being until Ms N cancelled it in writing. Both additional pension contracts were taken out prior to Ms N being informed, in October 2016, in the VE quote she received, that there had been an error in the ABS'. So, I do not find that these actions were taken in mitigation. The evidence suggests that she would have taken out these contracts in any event, as she did so before becoming aware of the error. Therefore, I agree with the Adjudicator that Ms N has not provided any evidence to show additional steps taken to mitigate her loss once she became aware of the error.
25. MyCSP has acknowledged that an error occurred, and that Ms N was disadvantaged as a result. Consequently, it follows that she should receive redress for this. However, the error does not give Ms N an automatic entitlement to receive the incorrect, overstated pension.
26. Despite the maladministration, I am satisfied that Ms N will now receive the correct level of benefit to which she is entitled. I therefore will consider whether Ms N has suffered a financial or non-financial injustice as a result of MyCSP's maladministration.
27. In order to conclude that a complainant has suffered direct financial loss as a consequence of a misstatement made to them I have to be satisfied, on the balance of probability, that they reasonably relied upon the misstatement to their detriment when making their decision and, had they known the correct state of affairs, they would have acted differently, the burden of proof is on the complainant.
28. It is always difficult for someone to reconstruct what they would have done differently without the benefit of hindsight. In this case I do not consider that Ms N has been able to demonstrate, on the balance of probability, that she would have made a different decision to the one that she did. I accept that in January 2015 and February 2016 she took out contracts to make additional pension contributions, but this was prior to the error coming to light and I have seen no evidence that she altered her additional contribution contracts as a direct result of being informed of the error.

29. Ms N has therefore suffered a loss of expectation, rather than a financial loss. This is a non-financial loss and awards for losses of this type are not intended to bridge the gap between the amount a recipient will actually receive, and the amount the recipient expected to receive. Generally, the usual starting point for non-financial awards where there has been significant distress and inconvenience is £500. However, there may be circumstances where a higher amount is warranted.
30. Ms N believes MyCSP's and Cabinet's offer of £1,000, for non-financial injustice, does not adequately equate to the degree of distress and inconvenience she has suffered. I disagree. I consider £1,000 to be a reasonable award in respect of the maladministration that has occurred and I do not consider it appropriate to make a higher award. It is open to Ms N to accept MyCSP's and Cabinet Office's offer of £1,000.
31. I do not uphold Ms N's complaint.

Anthony Arter

Pensions Ombudsman
30 January 2019