

Ombudsman's Determination

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

Outcome

1. I do not uphold Mr H's complaint and no further action is required by Cabinet Office or MyCSP.

Complaint summary

2. Mr H's complaint is that MyCSP inverse commuted £9,870.73 of his lump sum benefits at final retirement for an additional yearly pension of £620.87. Mr H questions the authority/legality of MyCSP's action and wants the lump sum paid to him.

Background information, including submissions from the parties

3. Mr H is a Classic (Section II The 1972 Section) member of the Scheme.
4. Relevant extracts from the Classic section of the Scheme Rules, The Finance Act 2004 and HMRC's pensions tax manual 'PTM063230' are provided in the Appendix.
5. In December 2010, Mr H applied for partial retirement. In February 2011 MyCSP informed Mr H that his partial retirement had been authorised. Mr H received a pension commencement lump sum (**PCLS**) of £48,931.74 and a yearly pension of £16,310.58.
6. The next year MyCSP sent Mr H a 'Pension Benefits Estimate' detailing the pension he had built-up since partial retirement. The statement included Widow(er)'s Pension Scheme (**WPS**) refundable contributions of £9,419.76. A note advised:

"...this refund will be included in the lump sum when this is paid. If the total lump sum payable exceeds a third of 20 times the pension, then we are required to convert part of the lump sum to pension so that this limit is not exceeded."

7. In March 2015 the Government Actuary's Department (**GAD**) issued a note, 'Inverse commutation (lump sum to pension)', 'Factors and guidance for classic section'. This says:

“For cases of inverse commutation under rule 1.19 (unauthorised lump sum payment)...the member can only surrender the lump sum in exchange for an increase to the member's pension.”
8. The note states the “general formula” for the increase in member's pension as equalling the amount surrendered multiplied by the relevant Government Actuaries Department (**GAD**) factor (based on the member's age and gender) divided by 100.
9. In March 2017 MyCSP sent Mr H a 'Final (after Partial) Retirement Quotation'. This detailed a yearly pension payable after inverse commutation of £1,223.16. Of this sum £649.76 was derived from the inverse commutation of £10,329.99 (£1,783.74 lump sum plus £8,456.25 refund of WPS contributions).
10. Mr H queried the calculation of the additional £649.76 pension and asked if he could instead receive the £10,329.99 as a lump sum.
11. MyCSP replied that HM Revenue & Customs (**HMRC**) did not permit his lump sum benefits at retirement to exceed 25% of his total pension benefits¹. To ensure this did not happen, his lump sum (including the WPS refund) was subject to compulsory inverse commutation. The additional pension was calculated by multiplying £10,329.99 by the appropriate GAD factor (6.29, based on his age and gender) and dividing the result by 100.
12. In April 2017 Mr H received a revised quotation based on his corrected total reckonable service. This detailed a yearly pension payable after inverse commutation of £1,355.42. Of this sum, £620.87 was derived from the inverse commutation of £9,870.73 (£2,203.65 lump sum plus £7,667.08 refund of WPS contributions).
13. In October 2017 Mr H invoked the first stage of the Scheme's two-stage internal dispute resolution (**IDR**) procedure. In his submission Mr H asked:-
 - Why was inverse commutation not mentioned on MyCSP's website, in the Scheme booklets or annual benefit statements?
 - Why was the refund of his WPS contributions plus interest included as part of his PCLS?
 - Why did the March 2017 quotation use wrong reckonable service?
 - MyCSP had mentioned that without inverse commutation he would be liable to 55% tax. Would this be more beneficial to him than the 52% deduction from inverse commutation?

¹ That is 20 x annual pension after NI modification + any lump sum.

- Why was there no “ownership” of his case within its organisation enabling responses to come from the same person?

14. Mr H said:-

- He required an explanation of inverse commutation and why it applied to his modest circumstances.
- He required specific evidence (“para or section which contains the legislation”) that inverse commutation was compulsory.
- He had previously submitted a computation based on PTM06300² indicating that the deduction from his lump sum should not exceed £2,836. He had also given other computations indicating that there should be no deduction. He required MyCSP’s response.

15. The following month MyCSP partially upheld Mr H’s appeal:-

- ‘The classic retirement benefits: A brief guide to the benefits available’ was published in March 2011 and therefore available on the Civil Service Pension Scheme website when he took partial retirement in April 2011. The booklet explained:

“Am I entitled to a refund of my WPS contributions?”

If you remain single through to your retirement, you will receive a refund of the widows/widowers contributions you paid for the period that you were single. This will be paid as an additional lump sum when you finally leave and take your pension, provided that this will not exceed the limit set by HMRC. (In the unlikely event that this applies, the excess will be paid to you as pension instead.)”

- However, it noted his concerns about the guidance and information available to members on WPS refunds payable at final retirement. It had referred his comments to its Scheme Communication team who would undertake a review of the documents available to members. It therefore upheld this aspect of his complaint.
- Cabinet Office had agreed the format of Annual Benefit Statements (**ABS**). While Mr H believed compulsory inverse commutation should be included on the ABS, the number of active, deferred and pensioner members of the Scheme meant it was not possible to carry out such a level of validation and produce bespoke statements. An ABS was a projection of a member’s benefits. It was not possible to project whether compulsory inverse commutation would be necessary. It was

² This applies to money purchase arrangements and says, depending on the rules of the scheme, the member can take their entire uncrystallised funds as a single lump sum or as a number of lump sums spread over a period of time.

unable to confirm whether a member's pension lump sums would exceed 25% of the value of their total benefits until final retirement.

- As a WPS refund was not payable until final retirement it deemed it unnecessary to include details of it and the potential for compulsory inverse commutation on a partial retirement statement. However, the 2012 Pension Benefits Estimate did advise on inverse commutation.
- The WPS refund arrangements changed from April 2006 in accordance with changes to tax legislation applicable to pensions. Tax simplification meant that on final retirement WPS refunds were to be treated under rule 4.19 (ix)(a) as part of a civil servant's PCLS. As his WPS refund plus pension lump sum exceeded the maximum PCLS permitted under HMRC rules, in accordance with rule 1.19, it had converted part of his excess lump sum into a pension.
- It accepted that its advice on inverse commutation had been disjointed at times. However, the information was correct and in accordance with the Scheme rules and current tax legislation.
- It agreed that there had been no ownership of his case within MyCSP. This had resulted in a lack of clarity and consistency in its responses.
- The March 2017 retirement quotation inaccurately stated his additional reckonable service. This was an administrative oversight that occurred during the calculation of his award. A corrected retirement quotation had been issued in April 2017.
- As the Scheme was not a money purchase arrangement, PTM06300 was not relevant to the calculation of his PCLS.
- There was no provision for a member to opt for a tax charge on their full benefits as anything over the 25% HMRC limit of total benefits must be inversely commuted.

16. On 8 December 2017 Mr H replied to MyCSP:-

- His complaint was not specific to WPS refunds but concerned MyCSP's authority to make any deductions from his total lump sum, given his modest circumstances, and the lack of guidance and information about "inverse commutation". His complaint also asked why MyCSP was including WPS refunds and interest as part of his lump sum.
- While MyCSP had provided evidence that refunded WPS contributions were an additional lump sum he had not seen any evidence that additional lump sums should be treated in the same way as a PCLS. Rule 1.19 only referred to lump sums, not additional lump sums. Rule 4.19 referred to refunded contributions (which presumably included refunded WPS contributions albeit it was not clear) as

an additional lump sum. Therefore, lump sums and additional lump sums were not the same things and should be treated separately.

- Rule 1.19 indicated that restrictions to lump sums was not compulsory.
- GAD's March 2015 document contradicted MyCSP's claim that inverse commutation was mandatory and made no reference to the 25% rule.
- HMRC's PTM063230 stated that the permitted lump sum payable was 25% of the Lifetime Allowance and not 25% of pension benefits.
- It therefore appeared his lump sum should be paid in full.

17. In January 2018 MyCSP asked Mr H to complete an IDR stage two application. Mr H completed and returned the application.

18. On 13 February 2018 MyCSP wrote to Mr H informing him that it had referred his complaint to Cabinet Office - the IDR stage two decision-maker. MyCSP said its IDR stage one team would provide a response to the comments he had made in his December 2017 email.

19. On 28 February 2018 MyCSP wrote to Mr H:-

- Its stage one decision explained that it had to inversely commute a portion of his WPS refund into an additional pension to ensure that his PCLS remained within 25% of the total value of his benefits coming into payment at final retirement.
- Rule 4.19 (ix)(a) of the Classic section of the Scheme Rules stated that a WPS refund was to be treated as part of a civil servant's PCLS.
- The conditions required for a lump sum to be a PCLS were set out in PTM063230.
- The maximum level of PCLS was set out in PTM063230 – the lower of 25% of the member's lifetime allowance and 25% of the capital value of the benefits coming into payment under the scheme generating the lump sum benefit.
- It had accepted that the topic was not sufficiently detailed within the available guidance for members – additional details of the process and frequently asked questions would be added to the website soon.
- The general definition of inverse commutation was the commutation of a lump sum into a pension. It was a voluntary option for members who met the relevant criteria, but it was a mandatory requirement if a member's benefits exceeded the 25% limit of their total benefits to the extent required to bring the total value of benefits within the 25% limit.

20. In August 2018 Cabinet Office upheld Mr H's complaint:

“In reviewing the information available to individuals who take partial retirement and also have entitlement to a WPS refund it is clear that the guidance and statements issued do not give an adequate amount of information for you to make an informed decision.

As this is a genuine administrative error we have instructed MyCSP to revisit your case and offer you a retrospective opinion to change the choices made at partial retirement in order to take a larger WPS refund lump sum at final retirement. There will be no unauthorised payment issues and no tax implications where any overpaid pension is used to offset the underpaid lump sum if you decide to change your options.”

21. Cabinet Office informed Mr H that it had directed MyCSP to contact him within 28 days to explain his options and supply quotes if he chose to consider any retrospective changes to his partial retirement award.

22. On 7 September 2018 MyCSP wrote to Mr H:-

- The options it had been instructed to make available to him were:
 - to opt for a retrospective change to the benefit options he chose at his partial retirement; or
 - to leave his benefits as they were, as per his original choice at partial retirement.
- It could only provide him with information³. If he wished to make a retrospective change neither it nor Cabinet Office could provide financial advice. It strongly recommended that he take independent financial advice prior to making his choice.
- It asked Mr H to confirm within 28 days whether he wished to retrospectively change the options he had taken at partial retirement; and if he did, to complete and return a new retirement options pack. It would then provide a quotation to detail the benefits due to him on final retirement, based on his revised partial retirement option, to enable him to make a final decision. His benefits would not be revised until he accepted the final quotation.
- HMRC regulations only allowed a maximum of 25% of an individual's total benefits to be paid as a tax-free cash lump sum at benefit crystallisation. For tax purposes, partial retirement and final retirement were both crystallisation events and the HMRC limit applied to each crystallisation event separately. If he chose a retrospective change to his benefits a full recalculation dating back to the date of his partial retirement would be required. Any amounts previously overpaid would be deducted from the newly calculated amounts prior to putting any new benefit options into payment.

³ MyCSP provided links to the Scheme's website on 'partial retirement' and 'member calculators'

23. On 13 September 2018 Mr H contacted Cabinet Office:-

- MyCSP had informed him that it had been instructed to make available to him the option to retrospectively change the benefit options he made when he applied for partial retirement. But he was not aware that any option(s) he made in 2011 were wrong; and MyCSP had provided him with no explanation of the options available or any quotes. Due to a lack of explanation and quotes from MyCSP he did not know where to start.
- MyCSP had already told him that the calculation of his new pension did not take account of any pension already being received through partial retirement. So, it was a complete waste of time to change his options at partial retirement as this would have no effect on his final pension and additional lump sum.
- MyCSP had suggested that he employ an IFA. It was asking him / an IFA to make a decision based on inadequate information within 28 days. That was absurd, unacceptable, unfair and unreasonable. MyCSP had taken 18 months to get to this position and had failed to meet Cabinet Office's deadline by 9 days.
- As Cabinet Office had decided that he had suffered a "genuine administrative error", why was he being punished by being asked to "jump through impossible hoops" and incur costs by employing an IFA in order to do MyCSP's job?
- Its suggested solution would not appear to result in him receiving the full amount of the withheld lump sum because: a) it had said that any overpaid pension would be used to offset the underpaid lump sum; and b) it had suggested that he would not get any tax refund following the recovery of the overpaid pension
- All he ever wanted was to be paid the full amount of his lump sum. As his appeal had been upheld, he now expected to be paid the remaining lump sum of £9,870.83.

24. The same day Mr H notified MyCSP that he was currently unable to respond to its letter as he had contacted Cabinet Office to clarify some details. Mr H said he could not find a new retirement options pack among the documents it had enclosed.

25. On 24 September 2018 Cabinet Office wrote to Mr H:-

- It understood MyCSP had written to him with details of his benefits at partial retirement before any options he made had been implemented.
- As he had a range of financial options to consider, MyCSP was unable to supply quotes without a request from him, as to do so could be construed as financial advice.
- Its IDR stage 2 decision was that whilst his benefits had been correctly calculated he should have been informed of the implications of the benefit options he chose at partial retirement on his WPS refund at final retirement.

- If he was content with his existing benefits' he need do nothing. If he wished to consider retrospectively altering his options he then needed to complete and return the options form to MyCSP. If he wished to take benefits that would give him entitlement to a full / or larger WPS refund at full retirement he should make that clear in his application. MyCSP would then review his choice(s) and contact him if he selected an option that still meant that some of his WPS refund would be paid as a pension and check that he did want to take that option.

26. Mr H replied to Cabinet Office:-

- He had not heard from MyCSP since its 7 September 2018 letter.
- Cabinet Office appeared to have ignored or dismissed almost all his 13 September 2018 email⁴.
- He accepted that the overpayment of his pension since 1 May 2017 could be deducted from the remaining lump sum to be paid. However, he did not accept that he should suffer the loss of the associated income tax. "This would be in the region of £890 (based on the additional pension from "inverse commutation" of £628.64 pa, subject to adjustment for the pension increase in April 2018) x 20% = £178"
- He also expected the interest on the WPS refund to be recalculated to the present date plus compensation for the length of time the matter had taken.

27. Cabinet Office replied to Mr H on 5 October 2018:-

- At partial retirement he had several options pertaining to the amount of pension/lump sum he wanted to take. At that time, he was entitled to a refund of WPS contributions at final retirement and should have been given details of what impact his choices would have on the level of the WPS refund at final retirement. As that did not occur, its IDR stage two decision was that he should be offered a retrospective option to change his decision at partial retirement.
- If he had opted for a lower pension at partial retirement the level of tax-free cash available at final retirement would have increased, therefore paying more refund⁵. This was the option offered at IDR stage two.
- MyCSP were aware of the benefit choices being considered and had said on receipt of his application if it thought the choice(s) he made might not produce the results he required it would contact him.
- The deduction from his gross lump sum and WPS refund was partly due to the HMRC rules on tax-free cash. The lump sum was converted to pension to maintain the tax-free lump sum.

⁴ Mr H reiterated the main points of that email.

⁵ That is more WPS refund as a lump sum.

- When paying a WPS refund a one-off insurance type premium was deducted to cover the member's share of the potential cost of providing a post-retirement widower's pension. This accounted for the additional deduction from the refund.
 - To avoid making an unauthorised payment, any payment above the 25% tax-free cash was converted to pension.
28. On 8 October 2018 Mr H emailed MyCSP that he wanted to change his benefit choices made on partial retirement. He said he was looking for the best option that would give him all of the lump sum that it had withheld.
29. MyCSP acknowledged receipt of Mr H's emails (13 September and 8 October 2018) and informed him that his case was currently with Cabinet Office.
30. Hearing nothing further, Mr H chased Cabinet Office on 30 October 2018. Mr H said to receive the correct additional lump sum (£9,870.73) it appeared he would need to give up more than £2,000 a year of his pension. This would quickly leave him in a considerably worse off position than currently. Therefore, its solution was totally unacceptable and flew in the face of its decision to uphold his appeal. He should benefit from winning his appeal, not be financially disadvantaged by being asked to pay for the error.
31. Cabinet Office reiterated to Mr H that his benefits had been correctly calculated at both partial retirement and full retirement. Its IDR stage two decision upheld his right to retrospectively revisit the options he had taken because he had not been given comprehensive information concerning his choices and the impact of those choices. It had asked MyCSP to send him the relevant option forms to complete. Following the receipt of the completed forms MyCSP would then supply the relevant figures, including what this meant regarding any overpaid pension or underpaid lump sum.
32. Mr H replied to Cabinet Office that as it did not appear to be its intention to honour its decision to uphold his appeal, he was left with no option but to refer the matter to us.

Mr H's position

33. Mr H says:-
- MyCSP and Cabinet Office have fabricated and twisted the correct nature of his appeal. They have constantly ignored his questions and the answers they have given simply state that their actions are correct. They have provided no evidence to support their position.
 - Annual statements issued by MyCSP stated that he would receive a pension and lump sum based on his final salary and reckonable service. None suggested a deduction would be made from the lump sum.
 - The total WPS refundable contributions cover contributions made from 1967 to 2017. It is therefore wrong to restrict the refund of these contributions by reference only to the pension earned from 2011 to 2017.

- As his appeal has been upheld, he should be paid his claimed additional lump sum of £9,870.83. While he is receiving an additional pension of £620.87 per annum this is taxable and will take around 20 years to recoup the loss of the lump sum.
- Revisiting his 2011 options at partial retirement is irrelevant.
- Cabinet Office should not impose any restrictions, conditions or financial penalties on him. The "solution" it has offered would leave him considerably worse off.
- Cabinet Office has failed to explain "the catastrophic communication breakdown" between itself and MyCSP, which meant its suggested "solution" could never happen.
- MyCSP has failed to answer many of his questions; and has failed to pass information to him which the Cabinet Office has instructed it to do.
- He notes Cabinet Office's comment that "a number of similarly affected individuals" have been offered the same 'solution'. Have they accepted Cabinet Office's 'solution'? Have they suffered the same inconvenience? Have their complaints/appeals been satisfactorily resolved? It is important that all "victims" are treated the same way.

Cabinet Office's and MyCSP's position

34. The Cabinet Office says:-

- It has explained to Mr H why it is not possible for him to receive a full refund of his WPS contributions unless he opted to revisit his options at partial retirement.
- In its IDR stage two decision it confirmed that Mr H had been paid his benefits correctly based on the decisions he made at partial retirement but acknowledged that he had been given inadequate information to make a fully informed decision.
- Exceptionally, Mr H, and other similarly affected individuals, have been given the option to revisit their decisions at partial retirement in order to achieve a larger WPS refund at full retirement.
- Mr H received some of his WPS refund as a commuted pension. Any option to revise the previous partial retirement award, to allow a larger lump sum at full retirement, would mean that some, or all, of the pension paid to Mr H due to inverse commutation would have to be recovered and offset against his WPS refund at full retirement.
- Following complaints, such as Mr H's, it was working with MyCSP to revise the relevant literature to include more information on the implications of taking partial retirement if there is an option of a WPS refund at final retirement.
- MyCSP has no further comment to make.

Adjudicator's Opinion

35. Mr H's complaint was considered by one of our Adjudicators who concluded that no further action was required by Cabinet Office or MyCSP. The Adjudicator's findings are summarised briefly below:-

- As a member of a defined benefit pension scheme, the amount of PCLS that Mr H can receive is determined by the Scheme's rules. However, the Finance Act 2004 imposes an overriding upper limit on the amount of PCLS available to a member when they take benefits. In most cases this limit is the lower of 25% of the total notional value of pension benefits⁶ being put into payment and 25% of the member's available lifetime allowance.
- Under rule 1.19 "any benefit payable as a lump sum under the rules" which would be an unauthorised payment may in part or in total be paid "in the form of a pension calculated in accordance with guidance provided by the Scheme actuary." This includes the refund of WPS contributions paid as an additional lump sum (a PCLS for the purposes of Part 4 of the Finance Act 2004) under rule 4.19.
- The inverse commutation of part of Mr H's WPS refund and lump sum at final retirement to an equivalent pension for life does not amount to a financial loss. Mr H is receiving the same overall benefit but in a different form. This ensured that his PCLS at final retirement did not exceed the permitted maximum of 25% of his total pension benefits; thereby avoiding an unauthorised payment charge by HMRC.
- Cabinet Office and MyCSP have accepted that the information (guidance and statements) available to Mr H, and other similarly affected members, was inadequate to make a fully informed choice(s) at partial retirement. To put matters right Cabinet Office:
 - has given Mr H the option to revisit his choice(s) at partial retirement; and
 - is working with MyCSP to revise the relevant literature to provide more information on the implications of taking partial retirement if there is an option of a WPS refund at final retirement.

⁶ The notional value of pension benefits crystallised is [the residual annual pension x 20] + the PCLS

- Mr H says Cabinet Office should not impose any restrictions, conditions or financial penalties on him. But Cabinet Office has simply offered Mr H the opportunity to revisit his choice(s) at partial retirement. It has stated (at IDR stage two) that there will be no unauthorised payment issues and no tax implications where any overpaid pension is used offset the underpaid lump sum if Mr H decides to change his choice(s) at partial retirement.
- It is for Mr H to decide whether he wants to change his choice(s) at partial retirement. He is under no obligation to do so.
- Whilst Cabinet Office's offer is reasonable, if Mr H chooses to change his choice(s) at partial retirement and this results in the recovery of overpaid pension paid, if he is subsequently unable to reclaim all or part of the tax that was paid on the recovered sum from HMRC, Cabinet Office should compensate Mr H by paying him an amount equivalent to the shortfall.
- Mr H notes Cabinet Office's comment that a number of similarly affected individuals have been offered the same opportunity to revisit their choice(s) at partial retirement. Mr H asks if these others have accepted Cabinet Office's offer, suffered the same inconvenience that he has and had their complaints/appeals satisfactorily resolved. But the Ombudsman can only consider the merits of Mr H's case.
- Whilst the Cabinet Office and MyCSP have acknowledged that more information could have been provided for Mr H at the time of his partial retirement, they have offered adequate redress for this.

36. Mr H did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr H provided his 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 Mr H for completeness.

Ombudsman's decision

37. Mr H says he did not receive the February 2012 Pension Benefit Estimate issued by MyCSP. Nevertheless, the statement was correctly addressed to him.
38. Mr H says paragraphs 11 and 12 of the 2015 GAD guidance indicates that inverse commutation is voluntary. But that only applies where a member has the option to convert part of his/her lump sum for an additional pension. Mr H does not have that option as his lump sum calculated at final retirement exceeds the permitted maximum of 25% of his total pension benefits by £9,870.83. Therefore, as explained in paragraph 18 of the same guidance, under rule 1.19 the portion of the lump sum in excess of this limit can only be exchanged for an increase to his pension.
39. Mr H says British law states that anyone who suffers financial loss as a result of someone else's error, action of failure to act is entitled to compensation equivalent to

their loss. He says he has lost £9,870.73 of his additional lump sum at final retirement. He says Cabinet Office accept that his loss arose due to an administrative error and given that it has upheld his appeal he should be paid compensation equal to his loss. Mr H calculates that it will take roughly 20 years of additional pension to recover the withheld lump sum and that if he was paid the £9,870.73 and invested it, he would at least be £3,360.52 better off in 20 years.

40. Mr H's calculation ignores that if the £9,870.73 was now paid as an additional lump sum, without him taking up the offer to revisit his partial retirement choices, it would constitute an unauthorised payment and be liable to tax at 40% or higher. In any event the inverse commutation of £9,870.83 for an additional pension of £620.87 per annum does not amount to a financial loss. It is an equivalent benefit.
41. Rule 1.19 allows the Minister (of the Civil Service) to covert an unauthorised payment into an actuarial equivalent additional pension. In accord with GAD guidance, Cabinet Office acts on behalf of the Minister and has taken that decision. I am therefore satisfied that the approach to commutation was lawful.
42. Cabinet Office has accepted that the information made available to Mr H around the time of his partial retirement was inadequate for Mr H to make an informed decision about what he wanted to do. It has therefore agreed to allow Mr H to revisit that decision and I am satisfied that, if Mr H now takes up that offer, he will be placed back in the position he would have been in if he had been given the proper information in the first place.
43. Mr H says while Cabinet Office's "solution" might give short term redress, the loss of part of his pension for the rest of his life would quickly undo that and he would be financially disadvantaged. I disagree for the reasons above. Moreover, Mr H is not obliged to change his choice(s) at partial retirement.
44. If Mr H chooses to change his choice(s) at partial retirement, resulting in the recovery of overpaid pension paid; and Mr H is unable to claim back any part of the tax paid on the recovered sum from HMRC, then Cabinet Office should compensate Mr H by paying him the shortfall.
45. In September 2019, on Cabinet Office's instruction, MyCSP sent Mr H a letter inviting him to revisit his partial retirement options, explaining what they were, and asking him to confirm what he would like to do. Mr H now needs to choose one of the options offered so that MyCSP can provide him with detailed calculations of how his benefits will be adjusted if he changes his original choice. Mr H will be asked to make a final decision after he has that detail and can see exactly what outcome his indicative choice would produce. Cabinet Office have confirmed that the options pack will be sent to Mr H again when I issue this decision. MyCSP are aware that Mr H wants to maximise his tax-free lump sum and have undertaken to contact him if it thinks the choice he makes might not produce the results he requires. I hope that Mr H will now feel confident to take up the offer of redress which has been made to him.

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46. Therefore, I do not uphold Mr H's complaint.

Karen Johnston

Deputy Pensions Ombudsman
04 February 2020

Appendix

Principal Civil Service Pension Scheme: Section II - The 1972 Section (Classic)

47. As relevant rule 1.19, 'Conversion of lump sum into pension', says:

"This rule applies where any benefit payable as a lump sum under the rules would be an unauthorised payment for the purposes of Part 4 of the Finance Act 2004 (see section 160(5) of that Act). The Minister may determine in such cases that some or all of the benefit shall instead be paid in the form of a pension calculated in accordance with guidance provided by the Scheme actuary."

Section 4 'Widows' and Dependants' Benefits Contributions'

48. As relevant, 'Section 4 – Widows' and Dependants' Benefits Contributions' says:

"4.9 A civil servant will, while in service, pay periodical contributions of 1½% of salary (or wages) from 1 June 1973 until the end of his pensionable service,...

...

4.19 (ix) When this paragraph applies: (a) the refund of contributions payable to the civil servant shall be paid as an additional lump sum when his pension commences under rules 3.1 ['Ordinary Retirement']...(the additional lump sum shall form part of the civil servant's pension commencement lump sum for the purposes of Part 4 of the Finance Act 2004);.."

Finance Act 2004

49. As relevant, 'Schedule 29 – Registered Pension Schemes: Authorised Lump Sums – Supplementary' says

50. As relevant 'Part 1, Lump Sum Rule' says:

"1

(1) For the purposes of this Part a lump sum is a pension commencement lump sum if—

(aa) the member becomes entitled to it in connection with becoming entitled to a relevant pension...

(b) it is paid when all or part of the member's lifetime allowance is available..,

(c) it is paid within the period beginning six months before, and ending one year after, the day on which the member becomes entitled to it,

(d) it is paid when the member has reached normal minimum pension age...,and

(f) it is not an excluded lump sum...

(2) But if a lump sum falling within sub-paragraph (1) exceeds the permitted maximum, the excess is not a pension commencement lump sum.

...

2

(5) ...the permitted maximum is the lower of—

(a) the available portion of the member's lump sum allowance, and

(b) the applicable amount, calculated in accordance with paragraph 3.

(6) The available portion of the member's lump sum allowance is—

$$\frac{CSLA - AAC}{4}$$

•where—

•CSLA is the current standard lifetime allowance, and

•AAC is the aggregate of the relevant amount in the case of each benefit crystallisation event which has occurred in relation to the member before the member becomes entitled to the lump sum, as adjusted under sub-paragraph (7) (and if no such benefit crystallisation event has occurred, is nil).

...

3

(6) Where the member becomes entitled to a scheme pension under a defined benefits arrangement, the applicable amount is—

$$\frac{LS + AC}{4}$$

...

(7) In sub-paragraph (6)—

•LS is the amount of the lump sum, and

•AC is—

- (a) in a case where the member becomes entitled to the pension before reaching the age of 75, the amount crystallised by reason of the member becoming entitled to the pension..."

51. This says:

“The maximum level of pension commencement lump sum payable

Paragraphs 1(2), 2 and 3, Schedule 29 Finance Act 2004

The maximum level of pension commencement lump sum that can be paid under an arrangement at a given time is referred to as the ‘permitted maximum’.

A scheme can pay a member a higher lump sum, if they so wish. But any amount over the permitted maximum will not be a pension commencement lump sum. However, if the excess payment was paid with the intention of being a pension commencement lump sum and is authorised under the Registered Pension Schemes (Authorised Payments) Regulations 2009 - SI 2009/1171, then it will be accepted as being an authorised payment. For the purposes of the tax rules, it will be treated as a pension commencement lump sum (see [PTM063260](#)). If none of the above-mentioned regulations apply, it will be an unauthorised member payment and taxed accordingly.

Definition of permitted maximum

Paragraph 2 Schedule 29 Finance Act 2004

The permitted maximum is defined in the legislation as being the lower of two amounts. These are:

- the available portion of the member’s lump sum allowance, and
- the applicable amount.

In broad terms the available portion of the member’s lump sum allowance is an amount equal to 25% of the member’s lifetime allowance available when the lump sum crystallises. It is calculated on the basis that the member is entitled only to the standard lifetime allowance. However for individuals with valid primary or enhanced protection (but no lump sum protection), where entitlement to the lump sum arose after 5 April 2014 and whilst the standard lifetime allowance is less than £1.5 million, use £1.5 million in the calculation instead. Full details on how to calculate the available portion of the member’s lump sum allowance can be found at [PTM063250](#).

In broad terms the applicable amount represents 25% of the capital value of the benefits coming into payment under the relevant arrangements under the scheme generating the lump sum payment, but ignoring any disqualifying pension credit held.”