

Ombudsman's Determination

Applicant	Mr R
Scheme	Principal Civil Service Pension Scheme (PCSPS)
Respondent	My CSP

Outcome

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

Complaint summary

3. Mr R disagrees with My CSP's calculation method for the abatement of his pension under the PCSPS.

Background information, including submissions from the parties

4. Mr R joined the PCSPS in July 1984. He retired early at age 55 on 13 November 2016 and decided to exchange £4,823.08 of his PCSPS pension for an additional lump sum of £57,876.96 in accordance with PCSPS rule 3.50 (as detailed in the Appendix below). This meant that his annual pension reduced from £28,581.56 to £23,758.48 and his tax free lump sum increased from £85,744.68 to £143,621.64.
5. Mr R continued to work full time in his existing grade earning £51,239 pa from 14 November 2016. Under PCSPS rule 3.26 (as shown in the Appendix below), My CSP therefore abated Mr R's pension in full.
6. On 11 March 2017, Mr R commenced working part time and his salary was reduced to £41,759.02 pa. In light of this, My CSP reassessed Mr R's abatement position. Taking into account his annual pension of £28,581.56 and his part time salary of £41,759.02 pa, his total income was £19,101.58 higher than his salary of £51,239 pa prior to reducing his working hours. My CSP therefore applied abatement of this amount to Mr R's pension in payment of £23,758.48 pa leaving him with an abated pension of £4,656.90 pa.
7. Mr R disputed the abatement calculation and My CSP explained that:

- it had assessed abatement against his gross pension of £28,581.36 pa and applied the abatement to his net pension of £23,756.48 pa in accordance with PCSPS rule 3.26; and
 - the additional lump sum of £57,876.96 which he had secured by giving up pension of £4,823.08 pa amounted to the advance payment of this pension and it was therefore appropriate to take it into account in the abatement calculation
8. Mr R was dissatisfied with this explanation because he considered that My CSP should not have taken into account that part of his pension which he exchanged for extra tax free cash in its abatement calculations.
9. Mr R's complaint was rejected at both stages of the PCSPS Internal Dispute Resolution Procedure (**IDRP**).
10. In its Stage Two IDRP letter dated 11 January 2018 to Mr R, the Cabinet Office said that:

"PCSPS rule 3.26 states that:

"...If he is re-employed at a salary lower than his old salary, the pension in payment to him...will be reduced to the amount by which his old salary exceeds his salary on his first day of re-employment..."

Taken in isolation, I can understand your argument that in your case, the pension in payment to you is the net amount after your option under rule 3.50...However rule 3.26 was amended from 1 October 2007 to take into account the provision of new rule 3.50...so that it also says that:

"In applying this rule, no account shall be taken of...any decrease in pension resulting from the exercise of the option under rule 3.50."

The purpose of the amendment was to ensure that members were not treated differently depending on how much pension they chose to commute. Using the figures relevant to your circumstances, the following example demonstrates the different treatment if this amendment has not been made:

Salary of Reference	£51,239.00
less	
New salary	<u>£41,759.02</u>
Amount of pension permissible under rule 3.26	£ 9,479.98
Pension for a person who does not opt to commute	£28,581.56
Less amount of pension permissible under rule 3.26	<u>£ 9,479.98</u>
Abatement	£19,101.58

No additional tax free lump sum

Pension for a person who opts to commute	£23,758.48
Less amount of pension permissible under rule 3.26	<u>£ 9,479.98</u>
Abatement	£14,278.50

As you can see, in addition to a higher tax free lump sum of £57,876.96, a person who opts to commute will have a lower level of abatement than a person who does not opt to commute. This would be unfair because the person who has not opted to commute pension will have £4,823.08 higher abatement for the duration of their re-employment but no higher tax free lump sum.

The scheme guidance you have referred to is a leaflet entitled “What is abatement?” On page 3, the penultimate in the section headed “Your questions answered about abatement and re-employment” asks “What if I commuted some or all of my pension into a lump sum...?” The guidance states:

“If you were in classic we will apply abatement as if you had taken a standard lump sum.”

In keeping with the guidance My CSP has assessed your abatement again your gross pension of £28,581.56 (i.e. as if you had taken a standard lump sum). In accordance with PCSPS rule 3.26 to ensure that you are treated in the same way as a person who does not opt to commute pension for extra lump sum, they have applied abatement to the annual pension of £23,758.48. My CSP has therefore acted correctly...”

11. Mr R says that:

- My CSP and the Cabinet Office have not applied abatement properly to his pension in accordance with the PCSPS Rules; and
- in his view, it is clear from PCSPS rule 3.50 that his pension is abated to £9,479.98 pa regardless of whether he elected to receive the standard or enhanced tax free cash because the rule says that, “we do not take into account any decreases in pension resulting from the exercise of the option under rule 3.50

Adjudicator’s Opinion

12. Mr R’s complaint was considered by one of our Adjudicators who concluded that no further action was required by My CSP. The Adjudicator’s findings are summarised briefly below:

- My CSP and the Cabinet Office have interpreted PCSPS rule 3.26 correctly. The reasoning given by the Cabinet Office in its Stage Two IDRPs letter to justify its understanding of the rule was sound.
- The difference between Mr R's salary of reference £51,239 pa and his new lower salary of £41,759.02 pa after switching to part time working was £9,479.98. This was the maximum amount of pension available to him under PCSPS rule 3.26 only if Mr R had taken the standard tax free lump sum of £85,744.68 on early retirement.
- Mr R would have received a PCSPS pension of £28,581.56 pa if he had taken the standard tax free lump sum. By exchanging £4,823.08 of this pension for an extra tax free lump sum of £57,876.96, he was entitled to an increased tax free lump sum of £143,621.64 but his pension reduced to £23,758.48 pa.
- My CSP must calculate the pension benefits available to Mr R in accordance with the PCSPS Rules. When PCSPS rule 3.26 was amended to take into account rule 3.50 from 1 October 2007, the abatement to be deducted from Mr R's pension of £23,758.48 pa became £19,101.58 and no longer £14,278.50 because no allowance for any decrease in his pension resulting from the exercise of the option under rule 3.50 would be taken into account in the abatement calculation.
- Having chosen to receive the additional lump sum, if, Mr R's maximum abated pension of £9,479.98 pa was not reduced by £4,823.08, clearly he would be in a better position than if he had only taken the standard lump sum. He would have the advantage of the additional tax free cash of £57,876.96 yet receive the same pension of £9,479.08 pa regardless of whether or not he chose the option available to him under PCSPS rule 3.50. If Mr R was no longer working, his PCSPS pension would have been £4,823.08 pa lower than the amount available if he had opted to receive the standard tax free cash. This was the reason why Mr R is now only entitled to an abated pension of £4,656.90 pa (i.e. £9,479.98 - £4,823.08).
- Mr R contended that by taking the additional tax free lump sum he was earning less than if he had not done so. But the additional lump sum represented the advance payment of pension which would not have been available to him if he had not chosen this option and thus compensated him for the lower salary.
- The Adjudicator did not therefore share Mr R's view that by taking into account his decision to exchange pension for a higher tax free lump sum, My CSP were treating him less favourably for abatement purposes than if he had not.
- Mr R has not allowed for the fact that his income includes the pension that he exchanged for a higher tax free lump sum. If he had not commuted part of his pension for lump sum, he would have a different starting position for the abatement assessment.

- As My CSP has paid Mr R's benefits in accordance with the PCSPS Rules, there has consequently been no maladministration on its part.
13. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr R 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 R for completeness.

Ombudsman's decision

14. Mr R considers that My CSP have not applied abatement properly to his pension in accordance with the PCSPS Rules. In his opinion, PCSPS rule 3.50 stipulates that his pension is abated to £9,479.98 pa regardless of whether he elected to receive the standard tax free cash of £85,744.68 or the enhanced tax free cash of £143,621.64.
15. In my view, PCSPS rule 3.50 should have been drafted more clearly to avoid misinterpretation which unfortunately has happened here. I agree with the Adjudicator that My CSP's interpretation of this rule is the correct one and it has therefore paid Mr R's benefits in accordance with the PCSPS Rules for the reasons given by the Cabinet Office and as summarised in paragraphs 7 and 10 above.
16. There has consequently been no maladministration on the part of My CSP.
17. I do not uphold Mr R's complaint.

Anthony Arter

Pensions Ombudsman
27 March 2018

Appendix

PCSPS Rule 3.26 stated in full is:

3.26 If a person receiving a pension under rule 3.1 or a preserved pension under rules 3.11 or 3.24 a (ii) or a person entitled to receive a partial retirement pension under rule 3.3b is re-employed in the Civil Service before his 75th birthday at a salary equal to, or higher than, his old salary, the whole of the pension will be suspended. If he is re-employed at a salary lower than his old salary, the pension in payment to him (including any increase under the Pensions (Increase) Act 1971 as amended) will be reduced to the amount by which his old salary exceeds his salary on his first day of re-employment. While he is re-employed, the pension in payment will attract pensions increase but will not be otherwise adjusted unless a relevant event specified in rule 3.25d occurs. In any of those events, the amount of abatement will be increased (or decreased) by the amount of increase (or decrease) in his annual rate of salary resulting from the change; except that

(i) if the change results in an increase in salary, and before the change the whole of his pension was in payment; or

(ii) if the change results in a decrease in salary, and before the change the whole of his pension was suspended; or

(iii) if the change results in a return to a post in the Civil Service of equivalent weighting to the post held immediately before retirement,

he will be treated for the purposes of this rule as having been newly re-employed on the date of the change.

In applying this rule, no account shall be taken of any increases in pension resulting from an election made under rule 3.1a, or rule 5.8(b) of the Compensation Scheme or of any decreases in pension resulting from the exercise of the option under rule 3.50. This rule does not apply to a re-employed pensioner who has reached his 75th birthday.

PCSPS Rule 3.50 states:

3.50 (i) A civil servant who is in pensionable service after 30 September 2007 may opt to exchange part of a pension to which the civil servant would otherwise be entitled under this section ...for an extra lump sum.

(ii) If a civil servant so opts, for every £1 by which the civil servant's annual pension is reduced, the civil servant is to be paid an extra lump sum of £12.