

Ombudsman's Determination

| | |
|-------------|--|
| Applicant | Ms R |
| Scheme | Principal Civil Service Pension Scheme (the Scheme) |
| Respondents | The Cabinet Office MyCSP |

Outcome

1. I do not uphold Ms R's complaint and no further action is required by the Cabinet Office or MyCSP.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Ms R has complained about the attempted recovery of an overpayment made by MyCSP, the application of an incorrect tax code, and the lack of pension increases which were due.

Background information, including submissions from the parties

4. In late 2014 or early 2015, Ms R contacted MyCSP to request information on the level of pension benefits she would receive if she took early payment.
5. On 10 March 2015, MyCSP wrote to Mrs R and confirmed that she was entitled to a lump sum, when actuarially reduced, of £29,768.90. Alternatively, she could commute some of her annual pension for a higher lump sum, up to a maximum of £44,587.40.
6. Ms R was also entitled to a refund of widower's pension contributions (**WP contributions**) of £8,933.02.
7. On 19 March 2015, Ms R signed and returned the necessary forms in order to take early payment of benefits. She selected the maximum lump sum option.
8. On 20 March 2015, MyCSP received the relevant form completed by Ms R.
9. The forms that this Office has been presented with include a handwritten calculation of Ms R's maximum lump sum under HMRC rules (**the calculations**, see **the**

Appendix below). It is disputed whether MyCSP, Ms R, or representatives on behalf of her, wrote it.

10. On 3 July 2015, MyCSP contacted Ms R by telephone to inform her that the final benefits would be different from those quoted. Ms R says that she was told one had increased and one had decreased. Ms R was invited to request a new quote, but declined as it would delay the payment of benefits.
11. On the same day, MyCSP says it wrote to Ms R providing a finalisation statement. The statement confirmed she would receive a lump sum of £43,660.75 and a refund of WP contributions of £8,708.46.
12. Ms R says this statement was not received.
13. At some point in July 2015, HMRC confirmed the tax code that should be applied to Ms R's income, but this was incorrectly applied by MyCSP.
14. On 31 July 2015, Ms R received a lump sum of £52,369.21. This included the refund of WP contributions.
15. On 5 August 2015, Ms R received a further lump sum of £8,708.46, a duplicate refund of the WP contributions.
16. On 31 August 2015, Ms R received her first monthly payment from the Scheme.
17. In receipt of her benefits, Ms R spent money on the property she was living in and paid a deposit on a new home which she subsequently renovated, and moved into, in April 2016. During this time, she spent all the money she had received.
18. On 7 February 2017, MyCSP wrote to Ms R informing her, that following an audit, it had identified that the second payment made to her was a duplicate. The letter referred to the statement sent on 3 July 2015, and said it was reasonable for Ms R to have been aware of the overpayment. It requested Ms R repay the full amount or contact it. It also said that if Ms R did not respond, MyCSP would take further steps which might include legal action.
19. On 25 April 2017, Ms R wrote to The Pensions Advisory Service (**TPAS**). Included in the letter was an index of numbered documents, including the following entry:

"1) Letter dated 10/3/15 from MyCSP – only corres rec'd – T/C later to amend figures."
20. Ms R raised a complaint under the Scheme's Internal Dispute Resolution Procedure (**IDRP**), with the assistance of TPAS. Following some uncertainty on who would consider the complaint, the matter was referred by MyCSP to the Cabinet Office, which issued the IDRP stage two response.
21. A tax issue had also arisen, due to the incorrect tax code, and Ms R addressed this with HMRC.

22. On 3 October 2017, the Cabinet Office issued the stage two IDRP response. The Cabinet Office concluded that there was evidence that Ms R ought reasonably to have been aware that an overpayment had occurred, and that she ought to have queried it. Taking all the circumstances into account, the Cabinet Office's view was that Ms R had no defence against recovery of the overpayment.
23. The Cabinet Office conceded that Ms R's pension increases and tax code had not been handled correctly. For these errors, it directed MyCSP pay Ms R £500. Due to the outstanding overpayment, the payment would be offset against the debt. The Cabinet Office also apologised for the handling of the complaint.
24. On 22 October 2018, the complaint was referred to this Office.
25. The Adjudicator commented on some of the events that took place after the stage two response. However, Ms R has confirmed that these did not form part of the complaint submitted to this Office, therefore I will not comment on them here.

Adjudicator's Opinion

26. Ms R's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Cabinet Office or MyCSP. The Adjudicator's findings are summarised briefly below:-
 - The issues relating to Ms R's tax code and pension increases had now been corrected, and HMRC had written off a portion of the remaining tax due.
 - The outstanding question was whether Ms R had any defence to recovery of the overpayment and whether the approach taken to recovering it had been appropriate.
 - Ms R had made a case for defence to recovery on the basis of having changed her position. She said that the money was spent renovating her accommodation and later purchasing and renovating a new home. In so doing, she had spent the full sum received.
 - The Adjudicator considered whether the argument for change of position should succeed by considering whether Ms R had any reason to know that the amount she had received was incorrect.
 - In respect of the finalisation statement, the Adjudicator concluded that it was likely to have been sent, but that it appeared Ms R had not received it. However, the Adjudicator concluded that the complaint did not turn on this issue.
 - In respect of the calculations, the Adjudicator weighed whether it was more likely that MyCSP or Ms R had carried out these, taking account of the arguments put forward by both parties.

- MyCSP and the Cabinet Office argued that it would be irregular for MyCSP to have made the calculations. MyCSP had specific software that it used for these types of calculations.
- Ms R argued that the calculations were too sophisticated to have been made by her or anyone representing her and were not in handwriting that she recognised.
- Additionally, Ms R argued that, in her experience of working for an organisation that scanned its incoming post, it was plausible that MyCSP may not have scanned this document immediately and that the calculations may have been made prior to the document being scanned.
- Having considered the arguments, the Adjudicator concluded that it seemed more likely that the calculation had been made by Ms R or one of her friends, particularly as MyCSP had no reason to undertake the calculation manually and Ms R had said in correspondence to this Office that:

“I have no memory of this and it isn’t on the copies I hold but I do remember my two friends (one who had already retired and one who had partially retired) trying to work out what I would get and they may well have jotted down their calculations.”

- The Adjudicator also noted that it was reasonable to assume Ms R would try to work out what she might receive prior to deciding to take her benefits, and the calculation could have been part of this.
- Having considered the circumstances surrounding the calculations, the Adjudicator concluded that they were more likely to have been made by Ms R, or those assisting her, than MyCSP; and, that the calculations ought to have given her an idea of the lump sum she could expect to receive.
- The Adjudicator also considered the phone call between Ms R and MyCSP on 3 July 2015. Having done so, he concluded that annotations made on the quote. and provided to this Office by Ms R, showed that she was aware of the lump sum she could expect to receive.
- On the basis that Ms R ought to have been aware that she was overpaid, the change of position and estoppel arguments could not succeed and she had no defence to recovery.
- The Adjudicator also considered the offer of £500 for distress and inconvenience caused, noting that this had been offered for the tax issues, pension increase error and complaint handling. Having considered the circumstances, the Adjudicator concluded that the £500 offered was sufficient and in line with the Ombudsman’s approach to significant distress and inconvenience.
- Therefore, the Adjudicator considered the complaint should not be upheld.

- Although the complaint should not be upheld, because the offer of distress and inconvenience was for issues other than the overpayment, Ms R should be offered the amount in cash, rather than using it to reduce the amount owed, if she chose.

27. Ms R did not accept all of the conclusions reached by the Adjudicator and the complaint was passed to me to consider. Ms R provided her further comments which do not change the outcome. Overall, I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Ms R for completeness.

Ombudsman's decision

28. Following the provision of further evidence, Ms R is now satisfied that she did speak with MyCSP on 3 July 2015, and that it more likely than not communicated the revised, correct sums, she could expect to receive. As such, she accepts that she ought to have known what to expect and that she has no defence to recovery.

29. However, Ms R disagrees with the Adjudicator's opinion regarding which party was more likely to have made the calculations, and is concerned that the Adjudicator's findings bring her integrity into question. Ms R remains certain that neither she nor her friends made the calculations as the Adjudicator had concluded. She has also highlighted further arguments that cast doubt on the Adjudicator's findings in this respect. I acknowledge those doubts and uncertainties, however, it is not necessary for me to decide who recorded the calculation in order to determine the matter as Mrs R has already acknowledged that she was aware of the sum she was due to receive.

30. I have also considered all the circumstances leading up to the stage two IDR response and the appropriateness of the £500 offer. The Cabinet Office's response was:

"I accept that MyCSP's errors, in particular in respect of your tax code have caused you distress and inconvenience. For this reason I find that MyCSP must compensate you £500... I also accept that you had difficulties initiating the IDR process. This was due to procedural changes on the part of Cabinet Office and I apologise for the inconvenience this caused to you."

31. Ms R argues that this was offered solely in respect of the pension increase and tax code issues, and excludes the handling of the recovery and complaint; a distress and inconvenience award is therefore warranted for this separate issue.

32. Having considered the stage two response, I acknowledge that there is a distinction between the tax code/pension increase issue and the overpayment issue. However, I am not persuaded that a further award, for the way the overpayment was communicated, or the way the IDR was handled, is justified; I do not find that it would have caused Ms R significant distress and inconvenience. In the circumstances, I find that an apology is sufficient.

PO-19386

33. I do, however, agree with the Adjudicator that Ms R should be able to decide whether the £500 is paid to her directly, or whether it should be offset against the overpayment and Cabinet Office has agreed that the £500 will be paid to Ms R and not offset against the overpayment
34. Therefore, I do not uphold Ms R's complaint.

Anthony Arter

Pensions Ombudsman
16 August 2018

Appendix

The calculation -

$$\text{max wmp sum } £44,587.40 = \text{pension } £9,028.08 \text{ pa}$$

max wmp sum (wmp sum/wacc)

$$((£9,262.96 \times 20) + £29,768.90) \div 4 = £53,757.02$$

$$\text{Returns of WPs} = 8933.02$$

$$= £44,824.00$$