

Ombudsman's Determination

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

Outcome

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

Complaint summary

3. Mr N believes that his pension benefits have been incorrectly calculated. In particular, he believes that an incorrect figure has been used for his pensionable earnings, and that he is owed an ill health enhancement from the classic section of the Scheme (**the classic section**).
4. Mr N has also complained that his lump sum amount was paid from both sections of the Scheme, when he had asked to receive a lump sum from the alpha section of the Scheme (**the alpha section**) only.

Background information, including submissions from the parties

5. Mr N joined the Scheme in 1986 and was a classic member until 31 March 2015. On this date, the classic section became closed to members who were not within 13.5 years of their normal pension age as at 1 April 2012.
6. Mr N did not fall within this category, so on 1 April 2015 he was transitioned to the alpha section.
7. The alpha section is governed by The Public Service (Civil Servants and Others) Pensions Regulations 2014 (**the Regulations**).
8. On 18 November 2016, Mr N retired on the grounds of ill health and was awarded upper tier ill health retirement benefits. His salary at his date of leaving was £24,600.

9. Mr N was not a protected member of the classic section, so he became a deferred member of this section on 31 March 2015. For this reason, his ill health retirement benefits are governed by the Regulations. The relevant section of the Regulations is quoted in Appendix 1.
10. Under the Regulations, part of the award made to a member who is eligible for higher tier ill health retirement consists of an unreduced pension based on service in the classic section. The relevant part of the classic section rules on ill health benefits is set out in Appendix 2.
11. Rule 1.7 of the classic section sets out that 'Pensionable Earnings' are calculated using the highest figure over a range of 365 day periods, going back 91 days at a time. So, the first 'step back' will look at the average salary and allowance history for the whole year up to the last pensionable service day.
12. In real terms for Mr N, the first step back year is 19 November 2015 to 18 November 2016. The second step back year starts 91 days before the start date of the first step back year. For Mr N, this means 91 days before 19 November 2015, which was 20 August 2015. So, the second step back year for Mr N is 20 August 2015 to 19 August 2016. Under Rule 1.7 there can be a maximum of eight step backs, which will result in nine periods for consideration.
13. Using this method, MyCSP calculated that the best step back year for Mr N was the period 23 May 2014 to 22 May 2015. The average salary, including a pensionable allowance, for this period was £24,534.05. This figure is then set as Mr N's pensionable earnings when calculating his pension benefit entitlement equivalent from the classic section. Mr N was sent the full breakdown of the step back calculations on 15 June 2017. A copy of these calculations is enclosed for Mr N's reference.
14. On 9 November 2016, MyCSP emailed Mr N with responses to questions he had raised about his ill health benefit entitlement. On 11 November 2016, Mr N emailed MyCSP again with some further questions. One of his questions was:

"I would only like to have my extra lump sum taken from my Alpha Upper Tier enhancement, if this is possible, what is the maximum amount that I can take from the Alpha Upper Tier enhancement? If this is in doubt please can you provided (sic) the page and paragraph reference number where this states this on the Pension Scheme rules?"
15. On 23 December 2016, MyCSP emailed Mr N with answers to his questions about pensionable earnings and reckonable service, but there was no response to the above query.

Adjudicator's Opinion

16. Mr N'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 N was not entitled to an ill health lump sum or enhancement from the classic section.
 - Instead, Mr N was entitled to the equivalent of an unreduced pension from the classic section.
 - The pensionable earnings figure of £24,534.05 is correct based on the method defined in Rule 1.7 of the classic section.
 - Mr N's ill health retirement benefits have been calculated in accordance with the relevant rules governing his active membership.
17. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N 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 N for completeness.

Summary of Mr N's response

18. Mr N was originally given a pension estimate based on a leaving date of 30 June 2016 that showed pensionable earnings, using the step back method outlined above, of £24,540.87. Mr N did not in fact retire until 18 November 2016, so his pensionable earnings were adjusted to reflect this. The new figure was £24,534.05. Mr N argues that he would have contested this reduction had he been provided with the updated figures before his leaving date.
19. Mr N argues that he was 'forced' to base his decision to leave employment on ill health grounds on the pension estimate as at 30 June 2016. He has said that, on 2 November 2016, he asked for a revised forecast before he left employment. His request was denied on the basis that any new forecast would be for indicative purposes only and a final calculation would be made upon his actual retirement.
20. Mr N still disputes the pensionable earnings figure used. He does not agree that the period ending 22 May 2015 was his best step back period. Mr N argues that 91 days before his leaving date was 20 August 2016, and so his actual salary on that date should be used.
21. Mr N believes he is entitled to an ill health enhancement of 6 2/3 years' service to his classic section benefits.
22. Mr N did not receive a response about whether he could choose which section of the Scheme to take his lump sum from. He argues that he should have been told this was not possible before he made his decision to retire on ill health grounds.

Ombudsman's decision

23. Mr N has said that he has been negatively impacted by the fact that he was not given an up to date pension estimate before leaving employment on ill health grounds. He has suggested that his decision to retire on ill health grounds was based on out of date information.
24. The criteria for being accepted for upper ill health retirement benefits under the Scheme is that the member be permanently incapable of discharging the duties of their job and of undertaking any other gainful employment. As Mr N was accepted at this tier, I do not see how he believes that he could have made a decision to continue in his employment.
25. Mr N thinks he is entitled to a lump sum and pension from the classic section. He argues that he has been paid a lump sum and pension from the classic section. However, as he was an active member of the alpha section when he became entitled to benefits, his benefits are calculated in accordance with the rules governing the alpha section.
26. Under these rules, a portion of Mr N's ill health retirement benefits is based on benefits he would have received as a classic member. I can understand why Mr N might believe he has received a lump sum and pension directly from the classic section, however they were in fact awarded from the alpha section.
27. It is for this same reason that Mr N would not have been able to take a lump sum from the classic section separately. I find that the lack of response on this question has not been of material detriment to Mr N, as it would never have been possible and he had been deemed permanently incapable of performing his role in any event.
28. It is also for this reason that Mr N is not entitled to an ill health enhancement of 6 2/3 years from the classic section. His benefits are payable through the alpha section only, and the governing rules of this section set out how previous service in the classic section will be incorporated in cases of ill health retirement before pensionable age. Mr N has suggested in his complaint correspondence that the classic section rules still apply to him, however he became a deferred member of that section on 31 March 2015. As such, it is only the alpha section rules that apply to Mr N.
29. Mr N maintains that the incorrect pensionable earnings figure has been used in the calculations. He has argued that the figure should be his actual salary 91 days before his last day of employment. It seems Mr N may have misunderstood the method for calculating the pensionable earnings. I have summarised the method in real terms for Mr N in paragraphs 12 and 13 above, and note that Mr N was sent the full calculations, enclosed with this Determination for Mr N's reference. It is not simply the actual salary on a given date that is used, but the average salary and allowances across a maximum of nine periods of 365 days.

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30. I find that the calculation of Mr N's upper ill health retirement benefits has been made in accordance with the rules governing the alpha section of the Scheme, as Mr N was an active member of this section when he became eligible for the benefits.
31. Therefore, I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
19 February 2019

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-

- (a) becomes entitled to an ill-health pension under this scheme; and
- (b) 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.

...

(4) If the member meets the upper tier payment threshold-

- (a) 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;
 - (ii) the annual rate of an upper tier top up earned pension payable under this scheme; and
 - (iii) 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
- (b) 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.

Appendix 2

PCSPS – Section II (The 1972 Section) 180 Application of rules relating to ill-health pension

16A.

13. (i) This rule applies in relation to a transition member (“T”) with continuity of service who is receiving payment of an ill-health pension in accordance with paragraph 29 of Schedule 2 to the 2014 Regulations (“the ill health pension”).

(ii) T is not entitled under rule 3.4 (retirement on medical grounds) to payment of an ill health pension or a lump sum or to enhancement.

(iii) T is not entitled to payment of a lump sum under rule 3.11.

(iv) The following rules do not apply to T—

(a) 3.1(b) (lump sum on ordinary retirement);

(b) 3.3b, (partial retirement), to the extent that it provides for a lump sum to be payable; and

(c) 3.50 (general option to exchange part of pension for extra lump sum).

(v) Subject to the provisions of this rule, this scheme applies to T as if T was awarded a preserved pension under rule 3.11 on the day that T became entitled to payment of the ill-health pension.

(vi) In calculating the pension that T is entitled to under rule 3.11 on reaching pension age, the following are subtracted —

(a) the amount of pension exchanged for a lump sum as a result of the exercise of an option to commute pension under the 2014 Regulations (if any) to the extent that it relates to pension payable under this scheme; and

(b) an amount equal to any transfer payment made to another scheme before the member reached normal pension age under the PCSPS.

(vii) Before the amounts in paragraph (5)(a) and (b) are subtracted they must be increased by the amount by which the annual rate of a pension of that amount would have been increased under the Pensions (Increase) Act 1971 if —

(a) that pension was eligible to be so increased; and

(b) the beginning date for that pension was the date that the ill-health pension became payable.