

Ombudsman's Determination

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

Outcome

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

Complaint summary

3. Mr N's complaint against MyCSP concerns its decision to offer him £500 in recognition of the distress and convenience caused in providing him with an incorrect quotation for PCSPS benefits paid early on retirement under the Civil Service Compensation Scheme (**CSCS**). Mr N would like the reinstatement of pension benefits offered by MyCSP prior to early retirement and the review of MyCSP administration process.

Background information, including submissions from the parties

4. Mr N worked for the Home Office and was a member of the classic section of the PCSPS since June 1980.
5. On 1 March 2010, Mr N moved to the UK Identity and Passport Service and left service under Voluntary Exit (**VE**) terms on 30 June 2016.
6. On 2 February 2016, MyCSP received the CSPS notification from Mr N's employer which confirmed he would be leaving service. MyCSP subsequently contacted Mr N's employer by email and requested details of his salary history. It also queried a break in his service history which the employer confirmed resulted from a reduction of salary due to a change in grade.
7. On 3 February 2016, MyCSP contacted Mr N's employer by email and requested details of Mr N's Widow Pension Scheme (**WPS**) contributions from 1981 to 1986.

8. On 8 March 2016, MyCSP received an email from the employer confirming it had no dispute with the WPS contributions held by MyCSP.
9. On 9 March 2016, MyCSP sent a letter to Mr N with a VE quotation. The letter informed Mr N that it is an illustration only and it is not a promise of the benefits which he may eventually receive. The letter quoted an annual pension of £30,182.13 per annum and a cash lump sum of £90,546.39 or the maximum cash lump sum of £168,908.15 and an annual pension of £25,336.23 per annum. It also quoted a WPS refund of £20,210.86. Based on this information, Mr N returned acceptance forms for payment of his benefits to MyCSP.
10. On 4 July 2016, MyCSP emailed Mr N to inform him that the 9 March quotation he had received was inaccurate. The email apologised for the error and explained that:

“I can confirm that the original quote overstated the compensation at 12 months’ pay (£66,939), however due to tapering the maximum amount available is 11 months’ pay (£61,360.75). The maximum lump sum available was £168,908, however as this amount includes any WPS refund due, the maximum lump sum from pension commutation is £148,697.29 (£168,908.15 - £20,210.86). The quote should have stated the max lump sum as £148,697.29. As stated in my previous email these figures have changed slightly, as you are now due a larger WPS refund. Unfortunately, the buy out calculator provided did not show the correct figures, as the standard pension of £30,182.13 & standard lump sum of £90,546.39 needed to be input. As a result, the buy out cost would not be affected by the max lump sum discrepancy.”
11. On 6 July 2016, Mr N emailed MyCSP, in response to the above explanation saying that his decision to retire was based on incorrect information and “being informed of the error by MyCSP after the date of my retirement is a matter of significant concern and I would anticipate some form of compensation in the absence of being able to reverse my retirement decision”.
12. The same day, MyCSP emailed Mr N reiterating the reasons for the error which was due to the tapering not being correctly applied to his original quotation.
13. On 8 July 2016, Mr N raised a complaint with MyCSP.
14. On 15 August 2016, a MyCSP senior complaint handler, sent a letter to Mr N following a telephone conversation dated 12 August 2016 that said:

“...since your benefits were finalised, we have received a further interface from your employer. This interface contained further information that meant your benefits needed to be revised. I can confirm your benefits were revised on 11 August 2016 and your finalisation paperwork was issued the same day. During our call you also raised concerns that during the process of Voluntary Exit, you received no formal notification of your entitlement prior to you retiring, there was a lack of communication and a lack of information...Your request for

compensation has been considered and you will be contacted directly under separate cover regarding the outcome.”

15. On 16 August 2016, MyCSP sent Mr N a letter informing him that it was willing to make an ex-gratia payment of £250 to him in settlement of his complaint. The offer was made by MyCSP without any admission of liability.
16. Mr N did not accept MyCSP's offer and raised further points in his response. In the email dated 15 September 2016, My CSP explained to Mr N that it wished to make a revised offer of £500 for the issues he had experienced. The email added that:

“Your retirement benefits were finalised on 4 July 2016 and following the receipt of further information via an interface from your employer, your benefits were revised on 11 August 2016. I can confirm that following the revision of your benefits on 11 August 2016, your benefits have been finalised to reflect you correct entitlement. I would like to take this opportunity to apologise again.”
17. Mr N did not accept the revised offer and insisted on getting further explanation from MyCSP for how the error occurred. In the email dated 23 September 2016, MyCSP provided further comments saying that the error was due to an administration oversight. It said that “when quotes are produced they are checked and authorised. Regrettably, on this occasion the usual validation checks failed due to human error”.
18. In January 2017, Mr N raised further complaint by invoking PCSPS' two-stage internal dispute resolution procedure (**IDRP**). In his submission, Mr N contended that he was not in a position to reject the terms of the VE and have the option to remain in employment. He said that he would not have taken early retirement based on the lower settlement figure. He was also dissatisfied that he left well paid employment early based on incorrect figures which have resulted in an underpayment in excess of £20,000.
19. On 4 April 2017, MyCSP sent a response to Mr N under stage one of the IDRP that said:

“...tapering of compensation applies when a member is close to their scheme pension age. The maximum compensation payable is the lesser of the normal maximum for those under pension age and the number of months to pension age plus six months. As your last day of service was 30 June 2016, you were five months from reaching your scheme pension age of 60; on 24 November 2016. Therefore, you were only entitled to a maximum of 11 months' worth of compensation...You have also stated that you made contact with MyCSP on a number of occasions to request a final statement confirming the benefits payable to you at retirement, prior to making your decision regarding Voluntary Exit...I have been unable to locate such correspondence on MyCSP's work management system...It is not possible to provide members with a valuation

of their final benefits before they choose to claim retirement...you have suffered a loss of expectation rather than the actual financial loss...”

20. Following Mr N’s further appeal, on 22 January 2018, MyCSP sent him a response under stage two of the IDRP that further added that:

“However, whether or not reinstatement was a desirable or viable prospect, you could have explored this as a means of mitigating your circumstances if your corrected benefit position was not acceptable to you. Alternatively, you could seek other employment to mitigate the possible shortfall of investment choice. Whilst MyCSP’s errors in your quote denied you the opportunity to make a fully informed decision about whether to take early retirement I have seen no evidence to support that you would have rejected an opportunity to retire early with a valuable benefit package, albeit it was not as valuable as MyCSP led you to believe. MyCSP has offered to compensate you £500 for the distress and inconvenience that their error in providing incorrect retirement figures has caused you. This is in line with what the Ombudsman would normally award where a person has suffered disappointed expectations and I do not propose to increase it.”

Adjudicator’s Opinion

21. Mr N’s complaint was considered by one of our Adjudicators who concluded that no further action was required by the Cabinet Office and MyCSP. The Adjudicator’s findings are summarised briefly below:-

- MyCSP has agreed that it sent Mr N incorrect benefit figures in March 2016, so there is no dispute that the problem had occurred. The Adjudicator noted that MyCSP has apologised and offered Mr N £500 in recognition of the significant distress and inconvenience caused. Therefore, the Adjudicator needed to establish if the incorrect information caused Mr N to incur a financial loss.
- Mr N said that he had made the decision to retire based on the incorrect statement sent in March 2016 and suffered a financial loss of the difference between the figures in the incorrect quote and his correct entitlement. He also said that it was not practical for him to ask his employer about reinstatement when he discovered his correct benefit position four days after his leaving date.
- The legal position of the Scheme is that, Mr N is not eligible to receive the incorrect and overstated pension benefits, and he is only entitled to receive his correct level of benefits prescribed by the Scheme rules. The Adjudicator did not agree that Mr N had suffered a financial loss because he was never entitled to the overstated pension or cash sum and he did not receive more than his correct entitlement. MyCSP has no discretionary powers to make awards other than those defined by the Scheme rules.

- In any case, if an individual incurred a financial loss, the Ombudsman would expect the individual to have attempted to mitigate their loss. Although it is not possible to say with certainty what Mr N would have done if he had been provided with the correct information about his pension benefits, the Adjudicator was not convinced by the evidence she had seen, that Mr N had taken sufficient steps to reinstate his job and mitigate his claimed financial loss. Particularly as he had discovered the error only four days after his leaving date. Alternatively, the Adjudicator had seen no evidence to show that Mr N had sought other employment to mitigate the claimed loss.
 - In the Adjudicator's view, Mr N suffered a loss of expectation, albeit a significant one, in that he understood that he was entitled to receive a higher benefit than he was actually entitled to. This is termed non-financial injustice, rather than a financial loss. The Pensions Ombudsman's approach on non-financial injustice is that no award will be made unless the injustice is significant. On the other hand, if the non-financial injustice is significant then awards should properly reflect this. MyCSP has offered Mr N £500 in recognition of the non-financial injustice he has suffered. The Adjudicator believed that award is appropriate given the circumstances of the case, and is in line with what an Ombudsman might have awarded had MyCSP made no such offer.
22. 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. Except where I make a different finding below, I agree with the Adjudicator's Opinion. I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman's decision

23. Mr N's assertion is that MyCSP should make the good the difference between the incorrect figures and the correct ones. This is due to its incompetence.
24. Mr N is not happy with MyCSP's poor and inadequate administrative process which has in effect resulted in maladministration.
25. Mr N disputes that he was able to take steps to reverse his position.
26. My starting point is that Mr N is entitled to the correct level of benefits under the rules unless he can prove that he suffered direct financial loss as a result of relying on the incorrect quotation sent to him. MY CSP has explained that in this case its usual validation checks failed. There is no dispute that maladministration occurred when Mr N was sent the incorrect benefit quotation and I have a great deal of sympathy with the frustration that correct benefit figures were not available prior to Mr N leaving service. However, for the reasons set out below I cannot conclude the March misstatement has resulted in Mr N incurring a recoverable financial loss.
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

probabilities that they reasonably relied upon the misstatement when making a decision and, had they known the correct state of affairs, they would have acted differently. In these cases, the burden of proof is on the complainant.

28. It is always difficult for someone to reconstruct what they would have done differently without benefit of hindsight. In this case I do not consider that Mr N can demonstrate that he would probably have made a different decision to the one that he did if he had been given the correct lump sum figures in March. I accept that by July it may well have been too late for him to try to get his job back, but I have also considered the fact that when he was made aware of the error and asked what he would like to do, he went ahead with his original plan to use his lump sum to buy out the shortfall in his pension and draw it early. I cannot see any reason to conclude that he would probably have acted differently if he had been made aware of the correct position in March.
29. There is no dispute that the issuance of incorrect benefit figures would have caused Mr N significant distress and inconvenience. However, I find that the compensation previously offered by MyCSP is in line with the scale of awards I would have made at the time and in the circumstances. I do not consider it appropriate to make any higher award.
30. Therefore, I do not uphold Mr N's complaint.

Karen Johnston

Deputy Pensions Ombudsman
25 July 2018