

Ombudsman's Determination

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

Outcome

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

Complaint summary

2. Mr N has complained that because his pension was incorrectly paid in 2009 the pension he eventually received was at least £2,000 per annum less than it should be. To put matters right he would like all the underpayments to be now paid to him together with interest at 8%. He also points out that he has been pursuing his complaint since 2012 and it has caused a great amount of stress for which he deserves significant compensation.

Background information, including submissions from the parties

3. Mr N, a Prison Officer, joined Her Majesty's Prison Service (now known as the National Offender Management Service ("NOMS")) on 5 May 1981. His membership of the Classic section of the PCSPS commenced on the same date.
4. Though new terms and conditions (known as fresh start) came into effect for Prison Officers in 1987, Mr N retained pre-fresh start terms and conditions. As such, he had a normal pension age of 55 and any reckonable service after 20 years' service counted at double its length.
5. On 5 May 2009, Mr N claimed Formal retirement. However, he only required payment of his tax-free cash lump sum at the time, as he was continuing to work full-time and on the same terms and conditions. His pension entitlement at the time was £13,887.30 and his tax-free cash lump sum was £41,661.

6. Under the rules of the PCSPS a member is entitled to commute part of his pension for an additional tax-free cash lump sum. Mr N elected to commute £2,727.85 thereby leaving him with a pension of £11,159.45.
7. On 28 January 2012, Mr N reduced his working hours and claimed the full pension he had accrued to date. This is known as Final after Formal retirement (FAF).
8. On 31 July 2012, Mr N elected to leave employment altogether under a voluntary early departure scheme (VEDS) and to take the additional pension entitlement he had accrued. This is known as Final after Final after Formal retirement (FAFAF).
9. Mr N says that when he claimed his FAF pension in January 2012, it was considerably less than he was expecting, and he started to query this at that time. On further investigation he concluded this was because his reduced pension entitlement of £11,159.45 had been abated rather than the full figure of £13,887.30 and that the lower figure had been used to calculate all increases and additional pension.
10. Mr N says the rule in place in 2009 for Prison Service Staff was that when taking an additional lump sum the whole pension entitlement would be fully abated and this amount would be taken off the final pension when it was calculated. In his case this should not have happened until he took his FAF in January 2012.
11. He believes that it was because his pension entitlement was wrongly processed in 2009 his pension was incorrectly reduced by the commuted amount of £2727.85. He says this would have been correct had he claimed his pension at the time, but, as he had not this was wrongly put into payment.
12. As part of his discussions regarding the VEDS he discovered MyCSP still had him on record as having fully retired from 5 May 2009. He says MyCSP was instructed to correct this in October 2012.
13. Mr N raised his complaint through the PCSPS Internal Dispute Resolution Process (IDRP).
14. In its IDRP decision, dated 12 February 2018, the Cabinet Office agreed one month's pension instalment of £851.96 had been paid in 2009 but was immediately returned. The administrator had corrected the error and Mr N's pension was fully abated.
15. It also concluded Mr N had claimed both pension and lump sum on formal retirement in 2009, as it is not possible to claim one and not the other. But it was accepted that only the lump sum was paid.
16. In Appendix 2 to its decision, the Cabinet Office set out the pension calculations at Formal retirement, FAF and FAFAF. It agreed that the FAFAF calculation had been incorrect and Mr N was entitled to additional pension and tax-free cash as a result.
17. It also acknowledged the distress and inconvenience caused to Mr N in having to pursue his complaint. It offered an apology and an ex gratia payment of £750.

18. On 23 March 2018, MyCSP wrote to Mr N to say his pension rates had been amended and arrears paid. It also confirmed the ex gratia payment of £750 plus £66.57 interest had been paid.

Adjudicator's Opinion

19. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by My CSP and the Cabinet Office. The Adjudicator's findings are summarised below:-
- Mr N's complaint has two underlying elements, the incorrect payment of his pension in 2009, and the amount of abated pension leading to the final pension calculation in January 2012.
 - The tax-free cash lump sum, or gratuity as Mr N refers to it, is defined in legislation as a pension commencement lump sum. A cash sum may normally be treated for tax purposes as a pension commencement lump sum only if the member has become 'actually entitled' to a relevant pension benefit under the registered pension scheme making the lump sum payment. The maximum amount payable will be capped by reference to the value of that arising pension entitlement. This is set out in legislation by the Finance Act 2004.
 - Paragraph 1(3)(b) Schedule 29 Finance Act 2004, says:

Pension commencement lump sum

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

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

(3) A pension is a relevant pension if—

 (a) it is income withdrawal, a lifetime annuity or a scheme pension, and

 (b) the member becomes entitled to it under the arrangement under which the member becomes entitled to the lump sum.
 - So, for Mr N to be able to receive his gratuity, he had to formally retire and effectively take his scheme pension. The Adjudicator considered this had been recorded correctly in accordance with legislation.
 - It is accepted that the first instalment of Mr N's pension was paid in error in 2009, as Capita was not aware he was continuing to work. But the Adjudicator did not consider this was relevant to the way in which his benefits have been calculated.
 - Regarding the pension abatement, the PCSPS rules require pension to be abated in circumstances where the member takes formal retirement but continues to work.

Abatement in this circumstance means the pension is suspended in full or in part. The relevant calculation is that the pension and ongoing salary should not exceed the rate of salary being received on the last day before retirement.

- A booklet for members entitled "What is abatement? A guide for members of classic, classic plus, nuvos and premium" says:-

"What if I commuted some or all of my pension into a lump sum, or lump sum into pension?

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

- And Rule 3.26 says:

"If a person receiving a pension under rule 3.1 or a preserved pension under rules 3.11 or 3.24a(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".

- Rule 3.50 deals with the option to exchange part of pension for extra lump sum.
- In the Adjudicator's view for the purpose of the abatement calculation, in other words assessing whether Mr N could receive both pension and salary whilst he

continued working between Formal retirement and FAF, Mr N is correct when he says the total pension was to be abated even though he had surrendered part of his pension for an additional cash lump sum.

- However, in the Adjudicator's opinion this has no direct impact on the FAF and FAFAF benefits and, having considered the calculations set out in Appendix 2 of the IDRP response he was satisfied that Mr N's benefits have been calculated correctly based on his total service and pensionable earnings.
- Having reviewed the various exchanges of correspondence between Mr N and the respondents, there is no doubt Mr N has had to invest a lot of time and effort in pursuing his complaint and that there has often been delay in him receiving information from the respondents. However, this was acknowledged in the IDRP and an ex gratia payment of £750 was made.

20. 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 points made by Mr N for completeness.

21. In his comments, Mr N has primarily restated his case and resubmitted documents previously seen and considered. As these have largely been referred to previously by the Adjudicator, I will not repeat them all here.

22. Mr N says:-

- When he took Formal Retirement he wanted to receive the cash lump sum only. He says it was explained to him by MyCSP that his pension was only calculated to assess how much the lump sum would be, and to calculate how much pension could be converted into additional lump. It would be when he took Final after Formal retirement that his pension would be re-calculated and whatever lump sum and additional lump sum that he had converted would be deducted at this point.
- The underlying cause of all his complaints is that his pension was put into payment in May 2009, so reducing this Pension by the amount that he had converted into additional Lump Sum.
- Letters from Capita Hartshead (**Capita**), the paying agent, dated 10th September 2013, and 23rd December 2013, show that it had not been informed of the change in pension history, as it was still using the pension that should never have existed.
- His pension records at Capita between April 2009, and 28th January 2012, are still wrong and it is obvious that MyCSP have not instructed them to change their records.

- MyCSP and Capita are still using that pension, which was wrongly imposed and wrongly reduced in 2009, to calculate all increases in his pension to the present date.
- Because his pension was wrongly put into payment in 2009, this effectively made him unpromotable. He says he applied many times but was told he could not because of this. Had he been allowed promotion, his pension would be higher.

Ombudsman's decision

23. I thank Mr N for his further comments. It is clear he has spent a considerable amount of time and effort in pursuing his case. However, I find that his case is based on his misunderstanding of how his benefits were treated when he took Formal Retirement and the subsequent abatement of his pension.
24. As the Adjudicator explained, it was not possible for Mr N to simply take his cash lump sum in 2009. He had to formally retire and claim his pension at the same time.
25. However, the Rules of the PCSPS allowed for members to continue to work after taking Formal Retirement, but in these circumstances their pension was subject to abatement.
26. Mr N was provided with an explanatory leaflet entitled 'What is Abatement?' This gave the following definition:
- "Abatement is the reduction or suspension of your pension during a period of employment with an employer covered by the Civil Service pension scheme..."
27. The leaflet said
- "Abatement may apply to you if:
- You are working in the Civil Service and at the same time receiving your Civil Services pension..."
28. Put simply, the abatement calculation was to ensure the member's income after retirement, both salary and pension, did not exceed the member's salary immediately before retirement. For the purposes of this calculation the pension was the full entitlement before any amount surrendered for additional cash lump sum.
29. Rule 3.26 says:
- "If a person receiving a pension under rule 3.1 or a preserved pension under rules 3.11 or 3.24a(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."

30. In Mr N's case, because he continued to work full time at the rate of salary he was earning prior to retirement, his total pension was suspended.
31. However, as Mr N had already effectively received part of his pension by surrendering £2,727.85 for an additional cash lump sum, it follows that it was his reduced pension of £11,159.45 which was to be suspended.
32. Mr N appears to believe that this is wrong and that it indicates that MyCSP's records were incorrect. However, that is not the case.
33. The basis for the benefit calculations at FAF and FAFAF, relevant to Mr N, is set out in Rule 3.31 (b). This says:

“...a person who has been awarded a pension under this section, and who is reemployed as a civil servant after the pension age will:

...if his final retirement occurs on or after 6 April 2006, on final retirement receive an additional pension calculated so that when it is added to his existing pension the resulting aggregate pension is based on reckonable service in the earlier period of employment (excluding any enhancement under rule 3.4) together with reckonable service after re-employment.

The revised or aggregate pension will be calculated on the greater of:

- (i) pensionable earnings at his earlier retirement;
 - (ii) pensionable earnings at his final retirement.
34. The pensionable earnings at earlier retirement are increased to take account of inflation by the same proportion by which a pension of that amount beginning on the following day would have been increased under the Pensions (Increase) Act 1971, as read with section 59 of the Social Security Pensions Act 1975.
 35. In Mr N's case the pensionable earnings at earlier retirement, that is at Formal Retirement, increased to take account of inflation, is higher than his pensionable salary at FAF and FAFAF.
 36. His reckonable service at FAF and FAFAF is correct and reflects the doubling of service above 20 years.
 37. I have carefully reviewed MyCSP's calculations of Mr N's FAF and FAFAF benefits and I am satisfied the Rules have been applied correctly and that he is in receipt of the correct pension.
 38. Whilst his pension was incorrectly put into payment in 2009, this has had no impact on the subsequent calculation of his pension at FAF and FAFAF. And with regard to his claim that this has also led to him not receiving promotion, he has provided no evidence to support this statement.

PO-21039

39. Mr N has spent a great deal of time and effort in pursuing his complaint and there have been delays in him receiving information from the respondents which will have added to his inconvenience.
40. However, in recognition of this, I note that he has already been paid £750. This is no less than I would award in the circumstances.
41. I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
16 April 2020