

Ombudsman's Determination

Applicant	Mrs Dianne Fewings
Scheme	Principal Civil Service Pension Scheme (the Scheme)
Respondent(s)	MyCSP

Complaint summary

Mrs Fewings has complained that Capita Hartshead, the former scheme administrator, provided incorrect information resulting in the overpayment of her pension benefits, which she is now required to repay.

Summary of the Ombudsman's determination and reasons

The complaint should be upheld against MyCSP, the new scheme administrator, because Mrs Fewings relied on the overpayment in good faith and changed her position to the extent that it would not be equitable to require her to repay the money.

DETAILED DETERMINATION

Material Facts

1. Mrs Fewings joined the Civil Service and the Scheme on 25 February 1980.
2. She retired on 14 October 2004 and was re-employed by the Department for Work and Pensions (**DWP**) the next day on a part-time basis. According to information provided by the Scheme Management Executive (**SME**) of the Cabinet Office, DWP informed Mrs Fewings that her pension would be £4,740.66 and she would receive a lump sum of £14,221.98. Her salary dropped to £9,696.42 on re-employment, and to £8,999.78 from July 2007 when she slightly reduced her hours.
3. Capita wrote to Mrs Fewings on 11 October 2007 in reply to an enquiry they say was from her in May 2007 regarding re-employment in the Civil Service. The letter explained abatement under the Scheme rules and explained how her earnings margin was calculated. The letter went on to say that her annual earnings margin at 11 October 2007 was £8,798.60 and that her pension of £7,335.57 a year would not be affected. Capita noted that she was currently employed on an abated pension of £5,100.92 (in actual fact, this was her correct unabated pension). Mrs Fewings says that she called Capita several times to question this sudden increase in her pension. She says that she was told on each occasion that she was entitled to the higher pension.
4. On 24 October 2007, Mrs Fewings asked her employer for a reduction in her working hours from 22.53 hours a week to 18.5 hours a week. She said –

“To be honest, I thought [Capita] had made a mistake as they were quoting a considerably higher pension than I have in payment, 50% more in fact. I have spoken to Capita twice today and they have confirmed the figures quoted in the letter are correct.
It appears that my initial award of pension back in 2004 was incorrect...I could actually be working less hours than I am at the moment and be in the same position financially”.
5. Her employer agreed to the reduction on 30 October and the change was shown in her November payslip when her basic pay reduced to about £647 a month. Capita wrote to her on 8 November saying that they had been notified of her change in hours to 18.75 hours a week starting from 12 November. Capita said her salary of

£8,741.55 a year would no longer affect her pension of £5,168.21 a year. Mrs Fewings questioned the reduced pension, saying that she had been told that her pension was £7,335.57. Capita wrote again on 15 November saying that as she had now reduced her working hours, she was entitled to her full pension of £7,335.57 a year. They apologised for the error in their previous letter which quoted a lower amount.

6. The DWP wrote to Mrs Fewings on 27 November 2007 notifying her of an overpayment of salary amounting to £432.03. They proposed to recover this by a single lump sum from her December pay.
7. Capita wrote again to Mrs Fewings on 15 May 2008 notifying her that her salary had exceeded her earnings margin and her pension would be abated. They also said that an overpayment of £146.03 had arisen as a result. Again, Mrs Fewings repaid the amount.
8. Mrs Fewings complained to MyCSP on 15 October 2010 about being misinformed about her eligibility for an additional lump sum benefit. She said that she was told over the last few years that she could use pension accrued after her retirement in 2004 in exchange for an additional lump sum. In August 2010, she said that she asked for an estimate of her pension if she were to retire in April 2011. She did not get a reply so she called and spoke to a member of staff on 5 October 2010. She told the staff member that she had calculated her additional pension to be about £830, which she was told would provide an additional lump sum of £9,960. Added to her normal lump sum of £2,490, that would give her a total lump sum of £12,450. However, the figures she received by post on 9 October showed an additional lump sum of £1,978.89 and normal lump sum of £2,518.59 ie a total of £4,497.48. When she called for clarification, she says that she was told that the additional lump sum was reduced because she was re-employed after her retirement in 2004.
9. She said that she was not told her re-employment would affect the calculation. She relied on this information and would not have taken out the loan had she known she would not be able to repay it. She said that she had planned to retire in April 2011 but would now have to keep working to make up the loan shortfall. MyCSP apologised for the error but said they were unable to change the additional lump

sum available to her. Mrs Fewings says that she had to postpone her retirement until 11 May 2012.

10. Mrs Fewings called Capita after her retirement when she did not receive her lump sum as she should have done. She eventually received a lump sum payment of £7,233.52 on 5 June and she repaid the loan the same day.
11. On 7 June 2012, Capita told Mrs Fewings that, due to an error, an overpayment of pension amounting to £8,148.34 had occurred from November 2007. Her pension should have been £5,100.91 instead of £7,335.57. Mrs Fewings complained to Capita. Capita admitted their error and deducted £914.82, leaving a balance of £7,233.52. After further correspondence with Mrs Fewings at Stage One of the internal dispute resolution procedure (**IDRP**), Capita offered a further reduction of £150 (to £7,083.52).
12. Mrs Fewings appealed on 15 October 2012 under Stage Two of IDRP. She said that her loss is that she reduced her working hours in October 2007 based on calculations she was given; she took out a loan in reliance on the increased pension; and her husband had not made provision for her from his pension as she assumed that her pension would be sufficient for her.
13. The Stage Two decision was issued by SME on 9 May 2013. They said that an error by Capita led to the incorrect increase of her pension from November 2007 and her pension should never have been abated. They said that Capita had opportunities to discover the error but it is unknown why they did not.
14. However, they said that the Scheme rules did not allow Mrs Fewings to be paid benefits above what she was entitled to. They said that she had not made any defences against recovery and the Scheme was entitled to recover the overpayment. They went on to consider if Mrs Fewings had suffered any detriment and whether she could have known there had been a mistake. The SME said that it was not unreasonable to expect her to have questioned the increase of her pension more rigorously than she seemingly did. They noted the size of the increase, the fact that there was no reason for it, and that she was in a position to know that the reduced amount notified to her on 8 November 2007 was correct. SME said that they had not found any evidence that could have led her to believe that, after three

years, she was suddenly entitled to about £2,000 a year more in pension. They said that it was likely more persistent questioning from her “would have alerted Capita to their mistake and prevented the overpayment. In view of this, SME believes it is reasonable to expect a person in this situation to realise they were being paid too much. As such, SME does not believe that defences against recovery as set out in [the Managing Public Money guidance] are appropriate”. They found that the redress already offered by Capita exceeded any amount they would have found appropriate and did not uphold the complaint.

15. Mrs Fewings estimates that she would have received about £7,905 in gross earnings (based on her 2007 salary) had she not reduced her hours from 2007 to 2012. Taking into account the increased pension she would have therefore been entitled to, she estimates a total loss of about £9,137. This is more than the overpayment and does not include her performance payment bonus and additional annual/privilege leave entitlement.
16. Although she accepts that her pension has to be reduced to the correct amount, she does not agree that the overpayment should be recovered. She says that she and her husband decided not to make provision for her from his pension as she already had a good pension. Her pension has now reduced by about £90 a month.

Conclusions

17. The accepted legal principle in cases such as this is that benefits can only be paid in accordance with the rules of the particular scheme and that the member cannot benefit from a mistake. Accordingly, I am of the view that MyCSP can reduce Mrs Fewing’s pension to the correct amount. However, Mrs Fewings may be able to argue that she has changed her position by relying on the incorrect payment such that it would now be inequitable for MyCSP to recover the overpayment arising from it.
18. First of all, I would need to consider whether Mrs Fewings should have been aware that an overpayment of her pension had occurred, as is the view of SME. SME say that she should have known as her pension suddenly increased by about £2,000. However, Mrs Fewings did question the increase - more than once according to the email to her employer in which she asked to change her hours. She was

remarkably frank in the email when she said that she initially thought Capita had made a mistake as her pension had increased by such a margin. It was only after being repeatedly assured by Capita that it was not a mistake that she changed her working hours (and her position). I do not agree that Mrs Fewings could have questioned the change “more rigorously”. She thought there was an error and brought it to Capita’s attention. If anything, Capita should have checked that the information they provided was correct but they did not.

19. SME say that there were other opportunities for Capita to have spotted the error and they do not know why it was not. Clearly, this is maladministration by Capita and Mrs Fewings has been disadvantaged by it. She reduced her hours and has lost out on the income she would have earned over that period from November 2007 to May 2012. She was earning about £8,999.78 a year from July 2007 and this reduced to about £8,741.55 a year from November 2007 – a difference of £258.23 a year. Mrs Fewings has estimated that she has lost about £7,000 in earnings based on the figures provided by SME but I do not see how that can be the case based on these figures (which she does not disagree with). As SME say that she was never in danger of her pension being abated, she could have worked longer hours (up to her annual earnings limit) without losing any of her pension.
20. Mrs Fewings says that she and her husband took account of her pension and decided not to make any provision for her from his pension. However, I am not persuaded that this would have been the sole/most significant reason for taking such a decision. Moreover, they would have benefitted from not taking out a widow’s pension at the time. So I am not persuaded to take this into account.
21. Mrs Fewings says that she has spent her lump sum on repaying the loan she took out on the basis of more incorrect information given to her by MyCSP. Her pension has also reduced by about £90, leaving her with less disposable income to live on. The loan was taken as a direct consequence of incorrect information provided to her on a different occasion. It did not form part of the overpayment and I do not consider it as part of this investigation. I am however prepared to accept that her pension would have formed part of the consideration in deciding whether she could afford the loan in the first place.

22. I have considered SME's comments on Managing Public Money and I do not agree that Mrs Fewings does not have a defence against recovery. I find that Mrs Fewings can rely on the defence of change of position. I am satisfied that Mrs Fewings received the money in good faith, relied on it when changing her hours to reduce her salary and taking out the loan, and she has changed her lifestyle accordingly in a manner that is irreversible. In respect of the first point, as set out previously, I have borne in mind that Capita repeatedly reassured Mrs Fewings that the incorrect amount was in fact correct, so she accepted the incorrect amount in good faith. In respect of the second point, Mrs Fewings would have reasonably taken her increased pension into account in deciding how much income was needed for her day to day expenses and – as such – she would not have reduced her hours to reduce her salary or have taken out the loan had she known the true position. Finally, I am satisfied that the changes Mrs Fewings has made are irreversible. The loan, once taken out, has to be repaid in accordance with the agreed terms and so cannot be undone. Furthermore, the reduction in hours cannot be undone as the error was only discovered after her second retirement.
23. It would therefore now be inequitable for MyCSP to recover the overpayment.

Directions

24. MyCSP are not to attempt to collect any of the overpayment from Mrs Fewings. If SME require MyCSP to make an equivalent payment to the Scheme, then MyCSP are to do so and, should they wish, seek reimbursement from Capita.
25. Within 21 days of this determination MyCSP are to pay £200 to Mrs Fewings to compensate her for the distress and inconvenience caused by their actions.

Jane Irvine

Deputy Pensions Ombudsman
20 March 2015