

Ombudsman's Determination

Applicant	Mr X
Scheme	Civil Service Compensation Scheme (CSCS)
Respondent	MyCSP, Cabinet Office

Outcome

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

Complaint summary

3. Mr X's complaint against MyCSP/Cabinet Office concerns their decision not to honour an incorrect estimate of his Medical Inefficiency Compensation (**MIC**). Mr X would like to be granted the incorrect estimate of his entitlement for the amount of £36,365.18, under the CSCS.

Background information, including submissions from the parties

4. On 2 May 2015, Mr X took partial retirement.
5. Mr X was dismissed from employment under the MIC terms on 5 July 2017. As he had over two years' qualifying service, he was entitled to a preserved annual pension and lump sum. In addition, Mr X was entitled to a lump sum compensation payment.
6. In June 2017, Mr X's employer emailed MyCSP to request an MIC estimate based on his last day of service, as of 7 July 2017.
7. The Governor sent Mr X a letter in July 2017 that said:

“Departments have discretion to pay compensation in accordance with the Civil Service Management Code. You will receive 100%.”
8. On 15 August 2017, MyCSP sent Mr X an incorrect estimate with a covering letter in which it said, “Please note these are estimates only”. It showed a figure of £36,365.18.

9. On 11 September 2017, MyCSP sent Mr X a letter which explained that:

“The Government recently lost a Judicial Review against the changes made to the Civil Service Compensation Scheme on 9 November 2016. This could potentially mean that any compensation payments made under the 2016 terms need to be recalculated on the pre-2016 terms. We want to avoid any delay in payment so we have taken the decision to calculate and pay your compensation amount based on 2016 terms. This amount is not full and final and your award may need to be revisited...The lump sum compensation payment that you would give up: £3,312.10...net compensation payment: £0.00.”

10. On 10 November 2017, MyCSP wrote to Mr X concerning an error made in calculating the compensation and said:

“Having reviewed your member record note we issued a compensation estimate to your employer on 14 August 2017. This estimate stated a compensation lump sum of £36,365.18 based on 21 years 209 days service...However as you had taken partial retirement on [3 May 2005] [sic], in your circumstances only your service after you partially retired should have been used when calculating your compensation lump sum under 2016 terms. Please accept my apology for this error and any inconvenience caused as a result.”

11. Unsatisfied with the outcome, Mr X appealed against MyCSP’s decision by invoking CSCS’ two-stage internal dispute resolution procedure (**IDRP**).

12. On 31 January 2018, MyCSP sent Mr X a response under stage one of the IDRP that said:

“I can confirm that the reason for this discrepancy is due to a judicial review of the ‘2016’ CSCS terms. Following the judicial review, it has been determined that the 2016 terms are no longer applicable; instead the ‘2010’ CSCS terms are the lawful terms and all CSCS payments must be made in accordance with this ruling. Under the 2010 terms, the calculation of a compensation lump sum for members who leave service under Inefficiency Dismissal terms after 1 April 1988 is detailed under Rule 3.3 of the CSCS Rules as follows:

- two weeks’ pensionable earnings for each year of reckonable service during the first five years of qualifying service; plus
- three weeks’ pensionable earnings for each year of reckonable service during the next five years of qualifying service; plus
- four weeks’ pensionable earnings for each year of reckonable service after the first ten years of qualifying service; plus

- two weeks' pensionable earnings for each year of reckonable service after the fortieth birthday;

In addition to this, members who are within three years of their Normal Pension Age (NPA) are subject to a tapering of their compensation payment in accordance with Rule 5.1 of the CSCS Rules...Whilst it is unfortunate the change to the CSCS terms was implemented between the issue of your Inefficiency Dismissal estimate and quote; as the amount of compensation payable to you has been calculated in accordance with the CSCS Rules, I am unable to uphold this aspect of your appeal...it is clear that MyCSP gave you incorrect information when they overstated the compensation lump sum payable to you and I therefore uphold this aspect of your appeal...You left Civil Service employment under Inefficiency Dismissal terms on 5 July 2017, before you were provided with your overstated compensation estimate on 14 August 2017. In light of this, I do not believe the figures provided by MyCSP influenced your Civil Service working arrangements. However, the fact cannot be overlooked that you were provided with overstated figures. It is understandable that the estimate of 14 August 2017 will have raised your expectations in regards to the compensation lump sum you would receive. The Pensions Ombudsman has provided guidance on redress for non-financial injustice and my view in line with this guidance is that the formal apology within this determination is appropriate redress."

13. Mr X further appealed against MyCSP's decision by invoking stage two of the IDRP. He maintained that he should be entitled to the incorrect figure.
14. On 16 July 2018, Cabinet Office sent Mr X a response under stage two of the IDRP that upheld MyCSP's decision and added:

"PCSP rule 3.3b...allows members to take partial retirement. Under this rule members can opt to take the benefits they have built up:

- based on a proportion of their reckonable service. Their service with effect from the day after their partial retirement date is adjusted to the amount of the unused reckonable service; or
- based on their full reckonable service up to the date of their partial retirement. Their service with effect from the day after their partial retirement date is adjusted to zero.

You took partial retirement on 2 May 2015 and chose to take your benefits on your full reckonable service that you had built up to that date...In your case the calculation was 3/52ths of your pay multiplied by all your reckonable service to 5 July, including the 20 years 176 days reckonable service for which you had taken benefits on partial retirement...The judgement had the effect of returning the CSCS to the Rules that were in force before the 2016 amendment scheme took place. Under these Rules your dismissal

compensation is calculated under rule 3.3 giving you a number of weeks' pensionable pay for periods of reckonable service determined by your age. However, under CSCS Rule 3.3, your reckonable service is only the period you built up since you took partial retirement, i.e. 1 year 32 days, not your full period of reckonable service as under the CSCS 2016 Rules...In recognition of these issues I find that MyCSP must compensate you £500. I have asked MyCSP to send you a full and accurate quote with all the information you need to consider your options for your benefit entitlement."

15. In August 2018, Mr X brought his complaint to this Office.

Adjudicator's Opinion

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

- MyCSP has agreed that it sent Mr X an incorrect estimate on 14 August 2017, so there is no dispute that there had been maladministration. The Adjudicator noted that MyCSP has apologised and offered him £500 for the distress and inconvenience suffered as a result of the error.
- What the Adjudicator needed to establish was whether the incorrect information caused Mr X to incur a financial loss.
- Mr X said that he suffered a financial loss of the difference between the figures in the incorrect estimate and his correct entitlement. He also said that the Governor awarded him with 100% compensation. He said that MyCSP's error exasperated his condition leading to anxiety.
- Mr X is not eligible to receive the incorrect and overstated discretionary compensation, he is only entitled to receive the correct level of compensation as prescribed by the Scheme Rules. The Adjudicator did not agree that Mr X had suffered a financial loss because he was never entitled to the overstated estimate and 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 the Adjudicator's view, Mr X had suffered a loss of expectation, albeit it a significant one, in that he understood that he was entitled to receive a higher compensation lump sum than his actual entitlement; 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. However, where there has been significant distress and inconvenience, the starting point for such awards is £500. MyCSP/the Cabinet Office has offered Mr X £500 in recognition of the non-financial injustice he has suffered, the Adjudicator believed that the award offered

is sufficient and in line with what an Ombudsman might have awarded had MyCSP/the Cabinet Office made no such offer.

- The Adjudicator noted that MyCSP sent Mr X a covering letter with his estimate, dated 15 August 2017 in which it said: "Please note these are estimates only", so he should not have relied on it as it was an indication only and not guaranteed. The Adjudicator also understood that Mr X left his employment on 5 July 2017 and he received his incorrect estimate on 15 August 2017, so the Adjudicator was convinced that the precise amount of compensation was not a material consideration when he left his employment.

17. Mr X did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr X maintained his stance but has not provided any further comments. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr X for completeness.

Ombudsman's decision

18. My starting position is that Mr X is only entitled to the correct level of compensation 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. MyCSP has explained that in this case it was the outcome of the Judicial Review that had an impact on the way his compensation has been calculated. In addition, MyCSP also realised that they had not taken into account that Mr X decided to take partial retirement on [2][3] May 2015, which also affected the amount of his reckonable service.
19. There is no dispute that maladministration occurred when Mr N was sent the incorrect compensation quotation and, I have a great deal of sympathy with the frustration that this has caused to Mr X. However, I do not find that the August 2017 misstatement resulted in him incurring a recoverable financial loss.
20. Mr X was dismissed on the grounds of ill health and has been awarded the maximum amount of discretionary compensation. The actual amount of compensatory payment is calculated in accordance with the Scheme Rules. It is unfortunate that Mr X's partial retirement was not initially taken into account and that due to the Judicial Review, the Scheme Rules had to be changed which resulted in Mr X's compensation payment being significantly reduced.
21. However, I cannot see any reason to conclude that Mr X would have acted differently if he had been made aware of the correct figures. I accept that Mr X's employment was terminated on the grounds of ill health and discretionary compensation was awarded to him. MyCSP has provided an explanation and followed the Rules correctly. The result of the Judicial Review was that MyCSP had no choice but to reinstate the CSCS 2010 terms.
22. Furthermore, the fact that Mr X decided to draw his pension benefits early contributed to his compensation being much lower than expected.

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23. To conclude, there is no dispute that the issuance of incorrect compensation figures would have caused Mr X significant distress and inconvenience. However, I find that the award offered by MyCSP is in line with the award I would have made at the time and in these circumstances. I do not consider it appropriate to make a higher award. Mr X should contact MyCSP if he wishes to take up its offer.
24. I do not uphold Mr X's complaint.

Anthony Arter

Pensions Ombudsman
2 November 2018