

Ombudsman's Determination

Applicant	Mrs T
Scheme	Civil Service Compensation Scheme (CSCS)
Respondents	Cabinet Office My CSP

Outcome

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

Complaint summary

3. Mrs T considers that the calculation method which My CSP and the Cabinet Office have used to determine the amount of compensation available to her in the CSCS on voluntary redundancy is unfair. She contends that using this method other part-time members with similar circumstances to hers have received more compensation than her from the CSCS despite working less hours and having accrued less reckonable service.

Background information, including submissions from the parties

4. Mrs T joined the Department for Work and Pensions (**DWP**) and the Principal Civil Service Pension Scheme (**PCSPS**) in January 1980. She switched from full-time to part-time employment in August 1988.
5. During 2017, Mrs T applied for voluntary redundancy. My CSP sent her details of the deferred pension and compensation available to her from PCSPS and CSCS respectively based on her proposed leaving date of 28 February 2018.
6. Mrs T accepted these benefits by signing the relevant application form in November 2017. She subsequently received a compensation payment of £28,625.27 from the CSCS which had been calculated using her full-time equivalent pay and part-time reckonable service of 14 years 341 days.
7. Mrs T sought clarification on how the figures were calculated from My CSP which replied in a letter of 31 January 2018 as follows:

“...Within the last 3 years of your time with the DWP you have worked part-time hours of 30 hours per week out of a full-time weekly equivalent of 37 hours per week.

It is stated in the regulations of the 2010 CSCS (**the CSCS Rules***) that “scheme members who have worked part-time in the last 3 years before the date of their departure from the civil service will have the amount of compensation they are entitled to, restricted proportionately”.

The proportionate restriction to your compensation is calculate using pro-rated reckonable service taking your part-time hours into account. We also used your pro-rated full-time equivalent service (this is often referred to your qualifying service).

Your notional salary on record = £19,583.00

Your reckonable service is 26 years & 313 days (for calculation purposes 26.8575)

Your qualifying service is 37 years & 279 days (for calculation purposes 37.7644)

As your salary is below the underpin protection for lower paid staff of £23,000, we will use the £23,000 in our calculations instead of your salary.

There are two sets of calculations that we perform. The first is the standard maximum limit calculation and the second is the proportionate maximum limit calculation.

Standard maximum limit calculation.

$$23,000/12 \times 21 = 40,250$$

Standard maximum compensation = £40,250.00

Proportionate maximum limit calculation

$$23,000/12 \times 21 = 40,250$$

$$40,250 \times \text{reckonable service of } 26.8575 / \text{qualifying service of } 37.7644 = \text{£}28,625.22$$

Proportionate maximum limit calculation = £28,625.22

Under the rules and regulations of the 2010 CSCS, the amount that you as the member are entitled to receive as compensation for voluntary redundancy is £28,625.22.”

*The relevant provisions in the CSCS Rules have been reproduced in the Appendix below.

8. Mrs T was dissatisfied with this response but My CSP did not uphold her appeal at Stage One of the Internal Dispute Resolution Procedure (**IDRP**). In its letter dated 11 May 2018 to her, My CSP concluded that:

“Voluntary Redundancy is provided for under Part 12.4 of Section 12 (the 2010 Compensation Terms) of the CSCS Rules.

Part 12.4 sets out the calculation for a compensation payment where an eligible person leaves their employment on Voluntary Redundancy terms.

As your full-time equivalent salary was less than the “deemed minimum” of £23,000 pa, My CSP used this figure to calculate your compensation as provided for under rule 12.1.2 paragraph (6).

The underlying principle in this matter is that the CSCS compensates staff for the loss of employment. When a full-time worker loses their job they lose full-time employment, a part-time worker loses part-time employment.

The initial compensation calculation is based on pay and service. Pay for part-time staff is the full-time equivalent rate. Reckonable service for part-time staff is their actual reckonable service (that is the service accrued from hours worked). This produces an initial compensation figure which, per year of service actually worked is the same for part-time staff as it is for full-time staff.

The aspect of the rules you are complaining about is how the maximum limit placed on the compensation is then calculated. The maximum limit for full-time staff is 21 months’ full-time pay. To allow part-time staff to also receive 21 months’ full-time pay would treat them better than full-time staff.

To ensure that the treatment between full and part-time staff is fair and proportionate, the ratio between reckonable service (represented by A in the calculation under rule 12.1.6) and full-time equivalent service (represented by B) is therefore used to taper the compensation payment.

You claim this method of calculating a compensation payment is discriminatory against part-time workers. Had you worked full-time hours you would have received more pay and the loss of your job may have had greater impact on your final position. The compensation calculation provides a proportionate means of compensating individuals for the loss of their full-time or part-time employment...

On your finalisation statement you have queried why a reckonable service of 14 years 341 days has been used for the purpose of the compensation calculation. As stated above, to ensure that the treatment between full and part-time staff is fair and proportionate, the ratio between reckonable service and full-time equivalent service is considered when calculating a compensation payment.

This principle still applies to the 21 months maximum limit payable to a member. This provides the following calculation:

$26.8575 \text{ reckonable service} / 37.7643 \text{ qualifying service} \times 21 = 14.9349$ (14 years 341 days)

Effectively, your compensation lump sum has been calculated using the pro-rated 21 months maximum:

$14.9349 \times £1,916.66 = £28,625.12$

As shown above you have been treated correctly in accordance with the scheme rules. While you feel the rules may be discriminatory; as the rules are statutory My CSP has no discretion not to apply them or to vary how they are applied."

9. The Cabinet Office informed Mrs T in its Stage Two IDRP decision letter dated 23 August 2018 that it did not uphold her appeal. It reiterated that:

"The compensation calculation provides a proportionate means of compensating individuals for their loss of full-time or part-time employment. It reflects your work history in comparison to a full-time member of staff, ensuring comparable treatment for you and full-time staff."

10. Mrs T replied as follows:

"Before finishing for many years, I worked 30 hours which is 7 less than full time so salary loss in comparison to someone who works less hours than myself is greater...the calculation is unfair in the respect that someone working less hours and receiving less salary at the time of finishing with less qualifying service and actual service received a larger compensation payment. If you consider my own circumstances what it means is that following maternity and returning to work less hours than I was doing when I left and subsequently increasing these over the following years of service has penalised me in my final payment, i.e. had I returned to work doing more hours and accrued my reckonable service over a shorter qualifying service my compensation would have been significantly different.

My actual calculation $£23,000/12 = £1,916.66 \times 26.8576 \text{ reckonable service} / 37.7643 \text{ qualifying service} \times 21 = £28,625.29$

If it was $£23,000/12 = £1,916.66 \times 26.8576 \text{ reckonable service accrued over } 30.00 \text{ qualifying service} \times 21 = £36,033.82$

A hypothetical calculation $£23,000/12 = £1,916.66 \times 21 \text{ years reckonable service accrued over } 28 \text{ years qualifying service} \times 21 = £30,187.39$

What I am asking is how this is fair or correct?"

11. Mrs T also says that:

“I feel that if you were privy to the other awards even anonymously this would show the discrepancy with the part- time payments. It has been advised it reflects loss of salary at the time of redundancy and service etc. But I know higher payments were given on less hours at time of redundancy and less overall service. What I cannot comprehend is if for instance if I had left and returned to the service which then was classed as continuous service rather than drop to less hours and subsequently increased this would be more advantageous to the final calculation which appeared to be the case in other awards.”

Adjudicator's Opinion

12. Mrs T's complaint was considered by one of our Adjudicators who concluded that no further action was required by Cabinet Office and My CSP. The Adjudicator's findings are summarised briefly below:

- My CSP and the Cabinet Office must comply with the CSCS Rules when calculating the compensation available from the CSCS to members who apply for voluntary redundancy. As the CSCS Rules are statutory, neither My CSP nor the Cabinet Office have the discretion not to apply them or to vary how they are applied.
- Mrs T considered that the calculation method which My CSP and the Cabinet Office have used to determine the amount of compensation available to her was unfair. She contended that using this method other part-time members with similar circumstances to hers have received more compensation than her from the CSCS despite working less hours and having accrued less reckonable service. She had produced calculations for three different scenarios which she said illustrated the point which she was trying to make and the responses given by My CSP and the Cabinet Office during IDRP and my subsequent investigation did not assuage her concerns about the inequality between compensation awards made.
- Mrs T's compensation lump sum of £28,625.29 corresponded to average hours of 71.1% of the full time equivalent ($26.8576 / 37.7643 = 0.711$). In the second example, the lump sum of £36,033.82 corresponded to average hours of 89.5% of the full-time equivalent ($26.8576 / 30 = 0.895$). In the third example the lump sum of £30,187.39 corresponded to average hours of 75% of the full time equivalent ($21 / 28 = 0.75$).
- The compensation amounts available in the three scenarios proffered by Mrs T if expressed for each percentage of full-time hours served throughout their career for Mrs T and the other two comparators were in fact the same, i.e. approximately £402. By expressing the compensation amounts in this way, it became apparent that Mrs T has been treated the same as her two comparators.

- My CSP and the Cabinet Office have not interpreted or applied the provisions of the CSCS Rules incorrectly or in a discriminatory manner.
13. Mrs T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs T provided her 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 Mrs T for completeness.

Ombudsman's decision

14. My role in Mrs T's complaint is essentially to consider whether My CSP and the Cabinet Office have applied the applicable CSCS Rules correctly when calculating the amount of compensation available to her on voluntary redundancy. It is not my role to comment on matters of Government policy or to amend the CSCS Rules.
15. Therefore, even if as Mrs T believes, using the calculation method described in the CSCS Rules has produced compensation awards to comparable part-time members which appeared more generous than hers, I cannot find in her favour because the compensation payable to her has been calculated correctly. There has consequently been no maladministration on the part of My CSP and the Cabinet Office.
16. Therefore, I do not uphold Mrs T's complaint.

Karen Johnston
Deputy Pensions Ombudsman

29 March 2019

Appendix

Part 12.1 DEFINITIONS

12.1.2 (6) Where P's Pay is less than the Deemed Minimum, P's Pay will:

(a) for the purposes of calculating P's lump sum in accordance with rules 12.4.3 or 12.5.2;

(b) where P's employer determines that this rule should apply, for the purposes of determining P's lump sum in accordance with rule 12.3.3, be taken to be the Deemed Minimum

(7) The Deemed Minimum will be such amount, not being less than £23,000 as the Minister shall determine in accordance with instructions previously issued by him.

12.1.6 If P has been in part time Service at any time during the last 3 years of P's

Reckonable Service, the "Voluntary Departure Maximum" in respect of P is:

(a) where P is below Pension Age on P's last day of Service, the lesser of

(i) the amount calculated by multiplying one twelfth of P's Pay by A/B by 21;

(ii) the amount calculated by multiplying one twelfth of P's Pay by the length of P's Reckonable Service in years; and

(iii) the Tapering Maximum;

(b) where P is at or above Pension Age on P's last day of Service, half of P's pay multiplied by A/B where:

A is the length of P's Reckonable Service in years; and

B is what would have been the length of P's Reckonable Service in years if P had worked full time throughout the period of P's service which reckons

12.1.9

(1) The "Tapering Maximum" in relation to a person ("P") is calculated by multiplying one twelfth of P's Pay by the Tapering Sum.

(2) For the purposes of paragraph (1) the “Tapering Sum” is (subject to paragraph 3) 6 plus the number of months (rounded up or down to the nearest whole month in accordance with guidance issued by the Minister) starting on (and including) the day after P’s last day of service and finishing on (and including) the day before P reaches Pension Age.

(a) If P is in part time service on P’s last day of Reckonable Service, the Tapering Sum is the number of months (rounded up or down to the nearest whole month...) starting on (and including) the day after P’s last day of Service and finishing on (and including) the day before P reaches Pension Age plus the Part Time Tapering Sum rounded up or down to the nearest whole number in accordance with guidance issued by the Minister. This is subject to paragraph 3(b).

(b) Before being rounded up or down, the number of months referred to in paragraph 3(a) shall first be multiplied by the percentage of full-time hours P’s terms of service then require P to work.

(c) The “Part Time Tapering Sum” is $6(A/B)$ where:

A is the length of P’s Reckonable Service in years; and

B is what would have been the length of P’s Reckonable Service in years if P had worked full time throughout the period of P’s Service which reckons.

Part 12.4 VOLUNTARY REDUNDANCY TERMS

12.4.1 This Part applies to a person (“P”) if P-

(a) has at least 2 years’ Service; and

(b) leaves Service in circumstances where Voluntary Redundancy terms apply.

12.4.3 If this Part applies to P, P is eligible for a lump sum, which is the lesser of (a) an amount calculated in accordance with rule 12.4.5; and (b) the Voluntary Departure Maximum

12.4.5 An amount is calculated under this rule by

(a) determining the length of P’s Reckonable Service in years; and

(b) multiplying one twelfth of P’s Pay by the length of P’s Reckonable Service