

Ombudsman's Determination

Applicant	Ms E
Scheme	Civil Service Pension Scheme (the Scheme)
Respondents	Cabinet Office MyCSP

Outcome

1. Ms E's complaint against MyCSP is partly upheld. To put matters right MyCSP shall pay Ms E £500 for the significant distress and inconvenience caused.

Complaint summary

2. Ms E has complained that MyCSP failed to explain to her the effect partial retirement would have on her ability to take her Widows' Pension Scheme (**WPS**) refund as a lump sum.

Background information, including submissions from the parties

3. On 1 October 2017, aged 58, Ms E took partial retirement. In doing so, she accepted an actuarially reduced pension while continuing to work 16 hours a week. Prior to doing so, she says she contacted MyCSP and queried the impact this would have on her WPS refund. She was told that this would be refunded at the point of final retirement.
4. Shortly after taking partial retirement her employer accelerated the planned closure of her office to January 2019. In discussions with her employer it was agreed that she would not be capable of continuing to work in the new location, which was further away, due to her health.
5. In April 2018, Ms E received details of a voluntary redundancy package, including her final pension. This detailed that her WPS refund, which was valued at £10,881, would be partially inversely commuted, leaving £3,457 available to take as a lump sum. The amount above this was inversely commuted to provide an additional income of £389.09 per year.

6. Ms E queried the way in which the WPS refund had been handled. It was explained that as the total WPS refund exceeded 25% of the pension benefits due to be paid at final retirement, the amount above this would need to be inversely commuted to avoid being an unauthorised payment.
7. Ms E subsequently raised a complaint under the internal dispute resolution procedure (IDRP).
8. On 24 August 2018, Ms E left employment on the basis of voluntary redundancy. She did not take the benefits accrued following her partial retirement or the WPS refund.
9. On 17 September 2018, MyCSP issued its IDRP stage one response. The complaint was upheld on the basis that insufficient information about WPS refunds was made available to Ms E at the point of partial retirement. However, it maintained that the inverse commutation was necessary under the Scheme's regulations and pension scheme taxation rules. To redress the failure to inform, MyCSP invited Ms E to retrospectively adjust her choices regarding partial retirement for her to receive a lump sum equivalent to the WPS lump sum. It requested she allow 28 days for the additional information to be provided.
10. Ms E had to chase MyCSP on several occasions following the expiry of the 28 days.
11. On 8 November 2018, MyCSP wrote to Ms E providing an alternative partial retirement quote which would adjust her partial retirement choice enabling her to access her WPS refund in full. It explained that this adjustment may result in an overpayment of pension since the partial retirement but provided no detail about this.
12. Dissatisfied with the proposed redress, Ms E requested it be considered under the IDRP stage two.
13. On 28 June 2019, Civil Service HR Pensions responded. It did not uphold the complaint, explaining that it considered MyCSP's proposed redress to date was appropriate and that it was not possible to now pay the WPS refund lump sum due to the Scheme Rules and pension legislation. It acknowledged that her decision at partial retirement may have been different had she been aware of the impact on her WPS refund but argued that she was also not aware that she would be made redundant so shortly thereafter.
14. Civil Service HR Pensions also said that steps were being taken to ensure members were aware of the impact of partial retirement on WPS refund rights.
15. Ms E remained dissatisfied and raised the following points:-
 - At no time was she made aware of the impact partial retirement would have on her right to a WPS refund lump sum.
 - She intended to rely on the lump sum to bridge her retirement from the closure of her office (originally due to occur later) until state pension age.

- The same issue was previously determined by the Ombudsman, under a separate case in 2011 (Ref 81681.1), and yet the relevant literature remained silent on the impact on WPS refunds, when it should have been recognised and acted upon since 2011.
 - Had she been aware of the implications of partial retirement she would not have taken it; would have continued to work full time, and she would have received the full lump sum of £10,881 at the point of retirement.
 - It is not fair or reasonable to bind her to the consequences of legislation of which she was not made aware at the relevant time.
16. In the process of investigating the complaint, MyCSP was asked to provide details of the impact on Ms E's pension, were she to retrospectively increase her pension commencement lump sum (**PCLS**) at partial retirement, to enable her to take an amount equal to the WPS refund. It was established that Ms E could commute her partial retirement pension to increase the PCLS to the level of the full WPS refund lump sum. But, the commutation rate was less favourable than the rate applied to inversely commute the WPS lump sum at final retirement and would result in Ms E having to repay an overpayment that would have accrued between partial retirement and final retirement. Ms E says that this option does not properly redress the error and feels that it would leave her worse off.

Adjudicator's Opinion

17. Ms E's complaint was considered by one of our Adjudicators who concluded that a distress and inconvenience award should be made by MyCSP. The Adjudicator's findings are summarised below:-
- It was agreed that there was an issue to be addressed. The question to be considered was whether MyCSP's proposed redress was sufficient.
 - The Adjudicator was of the view that Ms E had not suffered a financial loss because the inverse commutation of the lump sum would result in an actuarially equivalent payment of the WPS refund as income. Nevertheless, in anticipation of the WPS refund being paid as a lump sum, and planning her future on that basis, it is understandable that Ms E feels worse off.
 - As this is a case of 'failure to inform', the Adjudicator considered whether Ms E had changed her position. For example, she may have continued working or retired in full if the correct information had been provided to her.
 - However, considering Ms E's own circumstances, there was insufficient evidence and too much uncertainty to make a finding that she would have acted differently. Complicating this consideration was the fact that at the point of partial retirement she did not know that redundancy would follow so soon afterwards, and so her opinion on whether she would have acted differently is impacted by

factors that were unknown to her at the time. Additionally, partial retirement is a planned for event and the prospect of working less is ordinarily valued by those individuals considering it.

- Ms E has now been offered the opportunity to increase her PCLS to make up the lost WPS refund lump sum, which would have been a way to mitigate this issue had she been aware of it at the point of partial retirement. She is not prepared to do this now because it would lead to a reduced pension and an overpayment, but this may have been appealing at the time. This is a further option that was available to Ms E and adds uncertainty as to what she would have done.
- The Adjudicator was of the view that there was insufficient clarity as to what Ms E would have done differently to justify recommending retrospectively amending Ms E's benefits.
- She did however, suffer a loss of expectation and distress on learning that she would not receive the WPS refund as a lump sum. She had retired in anticipation of this. MyCSP ought to have been more forthcoming with information to enable her to make an informed decision about whether to retrospectively increase her PCLS and detailing the consequences of that decision.
- The Adjudicator noted a recent decision issued by the Deputy Ombudsman that had similar circumstances but in which no distress and inconvenience award was made, and an older case, from 2011, in which the Ombudsman awarded £400. He agreed that MyCSP should be able to rely on recent Determinations to inform its position but concluded that each case was assessed on its own merits and that this case warranted a significant distress and inconvenience award of £500.

18. Neither party accepted the Adjudicator's Opinion and the complaint was passed to me to consider. The parties provided their 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 Ms E and MyCSP for completeness.

Ombudsman's decision

19. Ms E has highlighted that she specifically queried when the WPS refund would be made and was told it would be paid at the point of final retirement. She points to the fact that MyCSP has known of this issue for some time and should have notified members of the impact of partial retirement. Members affected by this error should be appropriately compensated. The offer to retrospectively amend the benefits is inadequate and financially unfavourable.
20. I understand Ms E's frustration at MyCSP's failure to share this information with her at the point of partial retirement, but it is not my role to direct how administrators operate

their schemes. My role in this context is to look at individual complaints and, where appropriate, redress disadvantage suffered by members. I would however expect scheme administrators to take into consideration complaints that have arisen when deciding on the format and content of information shared with members in future and that might be appropriate here.

21. Ms E is certain that had she been given the correct information she would have structured her retirement differently. I accept that this may be the case, however there is no certainty over which approach she would have taken. She could have; retired taking all her benefits; deferred full retirement until the proposed closure date of her office (which was subsequently brought forward) and received redundancy; taken partial retirement with enhanced PCLS; or, partially retired in the format she did.
22. Each of the alternatives would significantly alter her benefit structure. For example, if she had retired with all benefits paid, she would have received the full WPS refund lump sum, but not have received redundancy compensation. If she deferred until the office closure, she would have received the WPS refund lump sum and, particularly as the office closure was brought forward, likely also a redundancy payment. However, while these alternatives are now more appealing to Ms E, it is simply not possible for me to reach a view on how, in all likelihood, she would actually have acted differently.
23. With regard to the argument on distress and inconvenience, MyCSP has referred to PO-18189, which it says has identical circumstances. In that case the Deputy Ombudsman did not award a distress and inconvenience payment, instead concluding that the offer to adjust the member's benefit structure was sufficient.
24. While I agree that the offer to allow Ms E to retrospectively increase her PCLS at partial retirement allows her to somewhat mitigate the loss of the WPS lump sum, it is an imperfect remedy as the commutation rate provides for a poorer outcome than the inverse commutation rate used to convert the WPS refund lump sum to pension income. Additionally, it would result in an overpayment that would need to be repaid. It is appropriate for MyCSP to offer this option to Ms E, but nevertheless, she has also suffered distress and inconvenience stemming from the lack of clarity provided to her at the point of partial retirement.
25. MyCSP has accepted that its communications with Ms E on this issue ought to have been better and upheld the complaint. A consequence of this failure to inform was Ms E's false understanding that the WPS refund would be paid as a lump sum, as she had anticipated. On learning that it would not be paid as a lump sum she has suffered a loss of expectation. In these circumstances I find that a significant distress and inconvenience award is appropriate.
26. I uphold Ms E's complaint.

PO-26998

Directions

27. Within 28 days of the date of this determination, MyCSP shall pay Ms E £500 for the distress and inconvenience suffered.

Anthony Arter

Pensions Ombudsman
20 May 2020