

## Ombudsman's Determination

Applicant	Mr S
Scheme	Principal Civil Service Pension Scheme ( <b>the Scheme</b> )
Respondents	Cabinet Office; MyCSP

## Outcome

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

## Complaint summary

3. Mr S is unhappy because the Cabinet Office and MyCSP are trying to recover an overpayment from him.
4. The overpayment is for part of the pension income he received from the Scheme between 12 April 2012 and 12 August 2012, after a Pension Sharing Order (**PSO**) between him and his ex-wife came into effect and was implemented respectively.
5. The overpayment arose because Mr S' ex-wife was entitled to part of his pension income once the PSO came into effect, but he was paid the full pension income until the date the PSO was implemented.
6. At the time, Mr S was already sharing his pension income with his ex-wife as part of an informal arrangement, and he had agreed to do this until she received payments directly from the Scheme. He understood there would be an overpayment, but he says he was led to believe his wife would receive four months' worth of arrears once the PSO was implemented. Mr S and his ex-wife had agreed that she would then pay him the arrears and he would use them to offset the overpayment. However, once the PSO was implemented, Mr S was informed that she was not entitled to any benefits until she was age 60. As she had not reached age 60 at the time, there were no arrears to be paid to her and he had nothing to offset against the overpayment due.
7. The Cabinet Office has overall responsibility for the Scheme, and MyCSP is the administrator. At the time though, the administrator for the Scheme was Capita.

## Background information, including submissions from the parties

8. On 23 November 2011, the Cabinet Office says Mr S was sent a booklet regarding pension sharing. In particular, this booklet stated spouses would only become entitled to their share of a pension upon reaching age 60. The booklet also explained that an overpayment would likely occur between the date the PSO became effective, and the date it was implemented.
9. On 12 April 2012, the PSO became effective and the Cabinet Office says that Mr S was reminded an overpayment would likely occur up until the PSO was fully implemented.
10. On 12 August 2012, the PSO was implemented and Capita confirmed with Mr S that he had received an overpayment of £4,082.38.
11. On 21 August 2012, the evidence indicates that Mr S rang Capita and asked whether his ex-wife would receive arrears for her share of the pension between 12 April and 12 August 2012. The Cabinet Office believes Capita informed Mr S that arrears would be paid and his ex-wife would receive the benefits to which she was entitled.
12. On 25 September 2012, Capita wrote to Mr S and confirmed that the overpayment was to be recovered. By this time, Mr S had discovered that his ex-wife was not due to receive any arrears.
13. Mr S complained that he now had no means of repaying the overpayment. He highlighted that Capita had led him to believe there would be arrears which could be offset against it, and added that he and his ex-wife would not have agreed the PSO until she was age 60 had they known she was not entitled to anything before then.
14. The Cabinet Office says there is no evidence Mr S was led to believe his ex-wife would receive arrears before the overpayment accrued. It adds it is regrettable that things were not explained more clearly during the telephone conversation on 21 August 2012, but the overpayment had already accrued by this time.
15. Mr S has said that the conversation on 21 August 2012 was not the first discussion he had had with Capita about his PSO. He says that he had been told since March 2012 that his ex-wife would receive arrears once the PSO was implemented, and that he rang on 21 August 2012 to check this was still the case. He was shocked when he found out it was not, and he does not believe it is fair for the Cabinet Office to recover the overpayment from him. Mr S states he has no evidence of his conversations with Capita before August 2012.
16. The Cabinet Office has confirmed it does not have a record of any telephone calls from Mr S between March and August 2012. It has added that the only record it can find of a telephone call with Mr S before the PSO became effective is from 3 January 2012. It says this conversation was regarding a delay Mr S had experienced in receiving his transfer value from the Scheme. The Cabinet Office has confirmed that

there was no mention of Mr S sharing his pension with his wife at that point, or of whether she would receive arrears following the PSO implementation.

## Adjudicator's Opinion

17. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by the Cabinet Office or MyCSP. The Adjudicator's findings are summarised briefly below:-
  - MyCSP were not the administrators for the Scheme at the time in question, and there is no evidence it has accepted historic liability for Capita's actions before it. The Cabinet Office, on the other hand, has overall responsibility for the Scheme. As such, the Adjudicator felt she could consider the complaint against the Cabinet Office at this time, but not MyCSP.
  - The Adjudicator noted that the Cabinet Office had acknowledged Capita could have done more during the telephone call in August 2012. However, even if this were true, the Adjudicator noted that the overpayment had accrued by this time. She was therefore not satisfied that Mr S had suffered an injustice as a result.
  - The Adjudicator noted that there was no evidence Mr S had been provided with inaccurate or misleading information before the overpayment accrued. On the contrary, there was evidence he had been given sufficient information in the PSO booklet such that he could be reasonably aware his ex-wife would not receive a lump sum of arrears once the PSO was implemented. As such, she did not recommend Mr S' complaint be upheld.
18. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S has provided his further comments and, in particular, highlighted the following:-
  - Capita provided him with incorrect information before the overpayment accrued. Furthermore, Mr S believes that the lack of evidence regarding his conversations with Capita supports his case, as the Cabinet Office cannot show he was provided with accurate information.
  - The Cabinet Office has admitted that there was maladministration. Mr S does not understand why MyCSP would not be liable for this.
  - His pension pot had the same value in it, but after the PSO was implemented he was receiving less whilst his ex-wife was not entitled to anything until she was age 60.
19. Mr S' comment do not change the outcome. I agree with the Adjudicator's Opinion and I will only respond to the key points made by Mr S for completeness.

**Ombudsman's decision**

20. Firstly, I will highlight that I do not generally uphold complaints purely because there has been maladministration. I will uphold a complaint where there has been maladministration if this has resulted in an injustice to an individual. The redress I instruct will then seek to place the individual back into the position he or she would have been in, but for the maladministration.
21. It is uncertain whether MyCSP ought to be liable for Capita's actions. It is unlikely it would be, unless it agreed to be liable for Capita's historic actions, as part of the agreements that were made when MyCSP became administrator for the Scheme. If there was no such agreement, Capita would remain liable. The complaint has never been brought against Capita, however, and Capita has never had the opportunity to respond to it. I therefore cannot consider the complaint against it. However, the Cabinet Office has overall responsibility for the Scheme so Mr S is not disadvantaged by this.
22. I have seen no evidence that Mr S was given incorrect information before the overpayment accrued. The only evidence I have of information provided to him, before the PSO became effective, is the PSO booklet. I believe this booklet would have made him reasonably aware his ex-wife would not be entitled to any benefits before she reached age 60.
23. I do not agree that a lack of evidence regarding any other information Mr S was provided about the PSO supports his case. The evidence I have indicates he was given correct information in the PSO booklet, and he was not given any other information. I have seen no evidence to suggest that he was given incorrect information.
24. I appreciate Mr S says he was given misleading information by Capita. However, as above, there is no evidence of this. It is very unfortunate for Mr S if he was indeed misinformed, and I fully sympathise with him if this has happened. However, in the absence of evidence to support his statement, I cannot uphold his complaint.
25. Lastly, I understand that Mr S feels it is unfair for his pension income to be reduced whilst his ex-wife is not entitled to the corresponding amount. However, normal retirement age under the Scheme is age 60 and the Cabinet Office is acting in line with the Scheme rules. As such there is no maladministration even though the Scheme temporarily pays less benefits.

**Karen Johnston**

Deputy Pensions Ombudsman  
1 September 2017