

Ombudsman's Determination

Applicant	Mrs R
Scheme	Research Councils' Pension Scheme (the Scheme)
Respondent	JSS Pensions Administration (JSS)

Outcome

1. I do not uphold Mrs R's complaint and no further action is required by JSS.

Complaint summary

2. Mrs R has complained that JSS failed to inform her that further action was required after she had provided information to allow a change in the way that her three children's pensions would be taxed. Mrs R argues that this has caused her financial detriment.

Background information, including submissions from the parties

3. In December 2006, Mrs R's three children each became entitled to a child's pension from the Scheme. Due to the age of the children the pensions were all paid in Mrs R's name.
4. On 5 August 2010, JSS, the Scheme administrator wrote to Mrs R and said:-
 - Due to advice provided by HMRC, each child's pension would need to be set up in their own name to ensure that the benefits were not incorrectly taxed as income paid to a parent. JSS explained that it would create individual records for each child and then inform HMRC that the previous record in the name of a parent had been terminated and provide the new details.
 - To process these amendments HMRC needed each child's National Insurance Number (**NI Number**), if allocated, or alternatively their Child Reference Number. So, Mrs R should send these details to JSS.
 - If any child was aged under 16, their NI number would instead be registered as a Child Reference Number, which was allocated by the Department for Work and Pensions (**the DWP**) when a child benefit claim was made. The HMRC Child

Benefit Helpline could confirm this reference number if it was not clear from any Child Benefit documentation Mrs R held.

5. On 17 August 2010, JSS received a letter from Mrs R quoting a family child benefit number and said that she hoped this was the required information.
6. On 21 June 2017, JSS wrote to Mrs R and said:-
 - Following a review as to whether one of her children remained in full-time education, it had been noted that the pension for each of Mrs R's three children remained set up in her name, despite the tax implications previously notified in 2010.
 - To facilitate payment of the benefits to each child individually, Mrs R would need to provide the children's NI numbers if available, and their bank details.
7. On 27 June 2017, Mrs R telephoned JSS and provided the NI number for one of her three children.
8. In response JSS informed Mrs R that she could send documentation showing that the other two children were still in full-time education, in order that individual pensions could be set up for them as well.
9. On 6 July 2017, JSS wrote to Mrs R having received appropriate information to make the proposed tax changes on the child pensions and said:-
 - Individual pension records had been created for her three children so that they were correctly registered for tax purposes. The change would take effect from July 2017.
 - The child pensions previously paid in Mrs R's name from December 2006 had ceased on 30 June 2017, and HMRC would be notified of this in addition to the new records for the three children.
 - Mrs R would need to contact HMRC regarding her tax liability on the children's pensions previously paid in her name.
10. On 15 March 2018, Mrs R telephoned HMRC to enquire whether it would be possible for a review to be completed on the tax she had paid on her three children's pensions since December 2006.
11. On 4 April 2018, HMRC wrote to Mrs R in response and said:-
 - It had only been possible to review her tax liability on the children's pensions from the 2013/2014 tax year onwards, due to time constraints in HMRC procedures. The applicable details provided by JSS were:

2013/2014	Pension £5,751.71	Tax £1,150.20
2014/2015	Pension £5,906.93	Tax £1,181.20

2015/2016	Pension £5,979.46	Tax £1,195.80
2016/2017	Pension £5,980.44	Tax £1,196.00

- All the tax deducted between the 2013/2014 and 2016/2017 tax years had been refunded with interest added. A further review of Mrs R's tax liability for the 2017/2018 tax year would be completed once JSS had confirmed the relevant details.
12. On 26 September 2018, Mrs R emailed JSS and said she had received a tax refund from HMRC but only back to April 2013. But since she was not at fault for any further tax payments, JSS should refund those deductions.
 13. On 3 October 2018, JSS wrote to Mrs R and said that it would not be possible to refund the tax she had paid prior to April 2013, as the Scheme is not responsible for any member's tax affairs. Consequently, her email of 26 September 2018 had been dealt with under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**), and her complaint was not upheld.
 14. On 10 January 2019, Mrs R appealed under stage two of the IDRP.
 15. On 7 March 2019, JSS wrote to Mrs R in response and said:-
 - It had clearly informed her of the requirements to pay the pension in the three children's names, but this information was not provided at the time. JSS then failed to chase for a response, as it ought to have done to clarify the consequences of continuing to receive the benefits in her name.
 - So, it was appropriate to offer an award totalling 50% of the tax that Mrs R had been unsuccessful in claiming back from HMRC. Confirmation had been received that the amount of tax deducted from 1 August 2010 to 31 March 2013 was £5,884.80. Accordingly, 50% of that figure amounted to £2,942.40 which equalled a refund of £980 for each of the three children.
 16. On 18 March 2019, Mrs R emailed JSS to ask what action it took upon receiving her letter on 17 August 2010.
 17. On 19 March 2019, JSS emailed Mrs R and confirmed that no action had been taken in response to her letter received on 18 March 2010, until the letter of 21 June 2017 was sent.

Mrs R's position

18. JSS had requested information from her following advice received from HMRC. However, JSS failed to say that further action was required after she had provided a child benefit number, even though her letter stated that she hoped this was the information JSS required. It was reasonable to assume that JSS would deal with any remaining issues from this point.

19. Consequently, she provided no further information to JSS and did not expect a prompt response, especially as resolving issues with HMRC can take some time. If JSS had made it clear in August 2010 that she needed to contact HMRC, she would have done so immediately. So, JSS was at fault for her paying additional tax in error.

JSS' position

20. On 5 August 2010, a letter was sent to Mrs R explaining that children's pensions could be set up in their own name rather than that of a parent in accordance with HMRC advice. JSS asked Mrs R to provide NI numbers or Child Reference Numbers to enable the creation of individual pensions for each of her children. JSS also explained how Mrs R could obtain a Child Reference Number. Instead, Mrs R quoted a Child Benefit Number for her family in her letter received on 17 August 2010.
21. In the letter of 21 June 2017 to Mrs R, JSS again explained the option of setting up individual pensions in each of her children's names. Subsequently, individual pensions were created for the children that went into payment from 1 July 2017. During the period from August 2010 to July 2017, Mrs R had received regular payslips, monthly until June 2012, and after that time, three times a year in March, April, and May. Mrs R was also sent a P60 each year and an annual notice of pension increase that applied each April. However, Mrs R did not contact JSS during this period to ask for the children's pensions to be paid individually.
22. Mrs R would have continued to see payment of the child pensions into her own bank account, with no changes in the values, other than those resulting from annual increases. Further, the payslips and P60's sent to Mrs R showed the pensions being paid to her. Consequently, Mrs R had 7 years in which to reclaim the tax deducted from HMRC directly or inform JSS that the children's pensions needed to be changed, but she failed to do so. This meant that the tax Mrs R paid on her children's pensions was not solely because of JSS' inaction. However, an award of 50% of the tax deducted was appropriately offered to Mrs R at stage two of the IDRP and this was paid to her on 15 March 2019.

Adjudicator's Opinion

23. Mrs R's complaint was considered by one of our Adjudicators who concluded that no further action was required by JSS. The Adjudicator's findings are summarised below:-
- JSS first wrote to Mrs R regarding HMRC's advice that separate pensions should be set up for her three children on 5 August 2010. This information would allow the children's pensions to be taxed individually. The letter also specified that Mrs R would need to provide either the children's NI numbers or their Child Reference Numbers to allow the changes. In response, Mrs R sent JSS a letter, which was received on 17 August 2010, quoting a family child benefit number, and stating that she hoped this was the required information.

- In the Adjudicator's opinion Mrs R could reasonably have been expected to contact JSS within a reasonable timescale having received no reply to her letter. But as Mrs R failed to contact JSS further, it was not until June 2017, while it was conducting a review, that JSS established that she had not provided appropriate information in 2010. JSS then confirmed that Mrs R had continued to be taxed. In the Adjudicator's view, Mrs R would have received payslips for several years between August 2010 and June 2017 showing that the tax liability on the children's pensions had not changed.
- Also, JSS has confirmed that the pension values did not change, except when annual increases were applied each April. So, Mrs R ought to have been aware that the expected tax changes had not been applied and so could have contacted JSS in 2010. In the Adjudicator's opinion, even though Mrs R considered that HMRC could take some time in dealing with the matter, a period of almost seven years waiting for confirmation of the tax changes from JSS was not reasonable. Consequently, Mrs R must take some responsibility.
- JSS has acknowledged however that it ought to have chased for an appropriate response, after receiving Mrs R's letter on 17 August 2010. Accordingly, it has awarded Mrs R £2,942.40, which is equivalent to 50% of the tax that she was unable to claim back from HMRC covering the period from 1 August 2010 to 31 March 2013. In the Adjudicator's view this was an appropriate award under the circumstances and there was no requirement for JSS to offer Mrs R a greater award as her continued tax deductions were caused by action or inaction by both her and JSS.

24. JSS accepted the Adjudicator's Opinion, Mrs R did not, and the complaint was passed to me to consider. Mrs R provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mrs R.

Mrs R's additional comments

25. When JSS wrote to her in August 2010 regarding advice provided by HMRC on child pension tax, she had recently been widowed and was a single mother of three children aged six, eight and eleven. So, this was a difficult period. Further, one of the children had been suffering from a medical condition since 2008.
26. Consequently, she required support from her MP in recovering some of the tax that was deducted from the children's pensions in her name. This further emphasises that it is unreasonable to conclude that a person "suffering her experience in 2010" should be held equally responsible with JSS for the tax that has not been refunded.
27. She was aware that JSS would take some time to arrange the tax changes following the letter that was received on 17 August 2010. This letter was sent within a week of JSS requesting the required information on 10 August 2010. The suggestion that she subsequently received regular payslips quoting largely unchanged payment details that ought to have been queried, does not mitigate JSS' responsibility for the tax that

was deducted in her name from August 2010 onwards and does not take into consideration her personal circumstances at the time.

28. She relied on JSS to make the changes that would reduce her tax liability. However, JSS took seven years to respond to her letter, which it received in August 2010, and included a request to let her know if any further information was required. This error has resulted in her incurring additional tax liability of around £3,000 that JSS should pay.

Ombudsman's decision

29. Mrs R complained that JSS failed to inform her that further action was required after she had provided information to allow a change in the way that her three children's pensions would be taxed. Mrs R argued that this caused her financial detriment.
30. Mrs R submits that when JSS wrote to her in August 2010, regarding guidance provided by HMRC on child pension tax, she had recently been widowed and was a single mother of three young children, including one with a medical condition that had been diagnosed in 2008. Mrs R said that this was a difficult period for her so it is unreasonable that she should be held equally responsible with JSS for the tax that was deducted from the children's pensions in her name from August 2010.
31. While it is regrettable that Mrs R was experiencing difficulties in her personal life in 2010, she was sent regular payslips for approximately seven years, showing no change in the child pension payments she was receiving except in respect of the annual increases. Although, JSS and HMRC may take a period of time to process the tax changes that Mrs R expected to be made, it was not reasonable for her to have waited for such an extended period without querying the delay until she received the letter of 21 June 2017.
32. Consequently, I find that by not contacting JSS earlier Mrs R was equally responsible with JSS, for the circumstances under which tax was deducted in her name from the children's pensions between August 2010 and June 2017. JSS cannot be held responsible for the period constraints in HMRC's procedures, which meant that it could only review Mrs R's tax liability from the 2013/2014 tax year onwards with the provision of a corresponding tax refund.
33. I do not uphold Mrs R's complaint.

Anthony Arter

Pensions Ombudsman
01 September 2022