

PENSION SCHEMES ACT 1993, PART X
DETERMINATION BY THE DEPUTY PENSIONS OMBUDSMAN

Applicant	Mr Patrick Hession
Scheme	Principal Civil Service Pension Scheme
Respondent	My Civil Service Pensions

Subject

My Civil Service Pensions (**My CSP**) provided an incorrect pension quotation on which Mr Hession decided to retire.

Summary of the Deputy Pensions Ombudsman's determination and reasons

The complaint should be partly upheld against My CSP. Errors were made when calculating Mr Hession's final retirement benefits. Although I am unable to conclude on balance that he would not have retired anyway, the level of compensation for distress and inconvenience should be higher than the sum currently offered.

DETAILED DETERMINATION

Material Facts

1. Mr Hession, a Prison Officer, joined Her Majesty's Prison Service (now known as the National Offender Management Service ("**NOMS**")) on 7 May 1973. His membership of the classic section of the Principal Civil Service Pension Scheme ("**the Scheme**") commenced on the same date.
2. Though new terms and conditions (known as fresh start) came into effect for Prison Officers in 1987, Mr Hession retained pre-fresh start terms and conditions. As such, he had a normal pension age of 55 and any reckonable service after 20 years' service counted at double its length.
3. Mr Hession formally retired on 31 March 2002 (his 55th birthday) and took his lump sum award of £33,415.98 at that time. He later took 'final' retirement on 5 January 2003 (known within the Scheme as final after formal (**FAF**) retirement). At that time his award was an annual pension of £11,996.47 (based on pensionable earnings of £24,397.38 and reckonable service of 39 years 123 days) and a further lump sum of £2,573.43 (i.e. a lump sum of £35,989.41 less £33,415.98 already paid).
4. Later in 2003 Mr Hession's employer notified My CSP that he had been re-employed again in a part-time capacity. Mr Hession worked 50% of full-time hours.
5. In 2012 Mr Hession says he made enquires about his retirement benefits following a discussion with his work colleagues who were of similar age and had similar service.
6. On 21 May 2012 the Human Resources team at HM Prison Service sent an email to My CSP submitting an 'Age Estimate Request' form for Mr Hession. The email highlighted that Mr Hession was a re-employed pensioner and he had not received a Personal Benefit Statement. It asked for the estimate to be as at 20 December 2012.
7. Following queries raised on 6 June by My CSP with his employer about his pay and contribution records, My CSP say on 6 August 2012 they issued Mr Hession with an estimate statement. This statement quoted a net lump sum of £15,166.86 (after inverse commutation of £6,615.29 as the lump sum had to be restricted for

tax purposes) and a pension of £20,267.98, which was said to be made up of a pension of £17,992.95 per annum plus an additional pension (due to inverse commutation) of £2,275.03 per annum. These figures were stated to be based on maximum reckonable service of 45 years and pensionable pay of £31,987.48 (including pension increases).

8. Mr Hession's handwritten note on a Statement of Benefits (Final after FAF Retirement) with the same figures on it says "Original statement received and accepted by me Oct 2012 approx".
9. Mr Hession says he submitted a 'Reserved Rights Retirement Notification (EMR55)' form online on 21 August 2012. This form stated that at least four months' notification of a member's retirement had to be given. The instructions on this form indicate that the form can be submitted to Shared Services either online or by post (after printing and signing it). Nonetheless, Mr Hession and his line manager were sent an email saying the online form was not acceptable as it was not signed. Mr Hession says he later sent a second signed version of that form by post.
10. A second Statement of Benefits (Final after FAF Retirement) was issued to Mr Hession, which according to Mr Hession's handwritten note was received shortly after his acceptance of the first statement (though My CSP says it was issued on 29 January 2013 – see paragraph 14 below).
11. Mr Hession says he left his employer on 5 November 2012 as he had unused annual leave. However, in early January 2013 he contacted the HR team at NOMS after he received his December pension payment at the old, existing, rate. He was referred to the paying agent and then on to My CSP. He was told by My CSP that they could not find form EMR55 and they had not been told by his employer that he had requested retirement. He says he completed a third version of form EMR55 on 4 January 2013 and delivered it by hand to Shared Services, his employer's HR agent.
12. On 11 January 2013 the HR team emailed My CSP attaching a retirement notification for Mr Hession. My CSP says they have no record of any other documents being received until this time.

13. My CSP says that as this was the third time Mr Hession was accessing his retirement benefits, any calculations must be completed manually as system limitations do not allow for electronic processing. Manual calculations were completed on 28 January.
14. On 29 January 2013 My CSP issued a further estimate of pension benefits to Mr Hession. Again this statement stated it was based on the same total reckonable service of 45 years (maximum) and pensionable pay of £31,987.48. The benefits quoted were a lump sum of £15,421.14 (including an Additional Service Payment (“**ASP**”) based on 4 years 107 days’ service) and a pension of £20,306.12 per annum. There was no mention of inverse commutation.
15. My CSP says the statement issued on 29 January 2013 unfortunately retained the same error as the estimates previously supplied.
16. Along with the estimate, the letter issued an option form and a personal details form. Mr Hession completed the personal details form on 30 January 2013 and My CSP received this back the following day.
17. Mr Hession complained to My CSP on 6 February 2013 about the tardiness of the processing of his retirement (by Shared Services and My CSP) and payment of his pension at the new rate, though these matters do not form the complaint that he has subsequently brought to me.
18. My CSP says they received all the documents required to allow the processing of Mr Hession’s retirement on 7 February, and on 11 February the pension was finalised and instructions sent to the paying agent (Capita). A statement of Lifetime Allowance used was produced by My CSP and sent to Capita. This stated the lump sum and pension brought into payment as £15,421.14 and £2,313.17 respectively.
19. On 11 February 2013 My CSP also wrote to Mr Hession saying that his classic pension benefits on final retirement at 20 December 2012 had been authorised. Unfortunately the accompanying Statement of Benefits reflected the same figures as shown on the second statement issued on 29 January (i.e. the error was repeated again).
20. Capita wrote to Mr Hession on 14 February 2013 with details of his award (i.e. a total pension of £18,304.68).

21. Mr Hession initially queried the amount payable by telephone when he discovered that his pension benefits were lower than previously quoted.
22. On 21 February 2013 Capita emailed My CSP to say they had received a FAF award for payment. They had been advised to pay an additional pension of £2,313.17 and a lump sum of £15,421.14 and a LSWP of £592.71 (which is also referred elsewhere as refunding excess contributions). Capita confirmed the pension in payment before the final after FAF retirement was £15,991.51 a year. The additional pension of £2,313.17 gave a total pension of £18,304.68 per annum from 21 December 2012. My CSP were asked to check the award and contact Mr Hession, which My CSP did on 22 and 25 February.
23. Mr Hession subsequently made a further formal complaint. My CSP initially responded to Mr Hession's concerns on 8 March by saying they were only obliged to pay benefits that a member was entitled to receive. They apologised for giving incorrect figures previously and made him aware of the Scheme's internal dispute resolution procedure ("**IDRP**").
24. Mr Hession invoked both stages of the Scheme's IDRP. He stated he was repeatedly given wrong estimates which led him to retire 26 months' earlier than he would otherwise have done (which Mr Hession says should have been 15 months – 26 months was based on Mr Hession working to March 2015 (aged 68) rather than age 67. (Mr Hession subsequently said it had been rumoured that the compulsory retirement age would be increasing to age 68). He said this had caused him to change his position, including lost wages of nearly £25,000 net (i.e. £921.20 x 27 months) plus an unknown amount for future wage increases, and greater pension and gratuity. He also said he had incurred other expenses (e.g. phone calls and postage) as well as incurring a great deal of stress and anxiety. (His employer has said that there have been no wage increases since Mr Hession's retirement in December 2012).
25. My CSP says the estimate issued on 6 August 2012 should have stated Mr Hession's total pension as £17,992.95 per annum, of which the actual additional pension payable from 20 December 2012 was £2,275.03 per annum. Hence, the amount of £2,275.03 was counted twice by being added to the £17,992.95.

Summary of Mr Hession's position

26. He would have had to have retired at the compulsory retirement age of 67, at the end of March 2014. (Mr Hession's employer has independently said that the default retirement age of 65 was abolished in 2011 and there is now no compulsory retirement age although Prison Officers are subject to performance assessments). On learning this in November 2014 Mr Hession says his claim for compensation should be even greater.
27. His July 2012 payslip shows a gross payment of £1,205.42 and, after deductions for tax and pension contributions, a net payment of £921.20. His P45 (Part 1A) for the period from 6 April 2012 to 20 December 2012 shows total pay of £10,364.40 and tax deducted of £2,072.80.
28. He considers it was reasonable for him to rely on the incorrect information and that it was to his detriment.
29. He sat around a table with his family to discuss whether he should possibly retire. Though they thought he should perhaps start to wind down, he says he had passed all his medical fitness assessments, was full compliant in all aspects (e.g. control and restraint), and still enjoyed his job. When considering retirement he informally considered his finances and his decision was based on these alone and nothing else. He has not retained any evidence of this, but says there were simply two columns listing income and expenditure. He says that, though a Scheme pension of £20,267.98, his State pension (of £7,020) and his wife's State pension (of £5,460) meant they had less income (and were worse off) compared to his earnings and previous pension award, they knew that some of the lump sum could pay off some debts and though they were worse off they thought they could manage.
30. His wife's State pension was based on his National Insurance Contribution record and began in November 2012.
31. It should be borne in mind that his and his wife's State pensions would have been paid whilst he was still in employment and they would have hoped to build a savings pot for their future old age to replace the gratuity used to pay off certain debts.

32. The difference of £1,963 was important because any pensioner would regard a loss of approximately £40 per week not to be treated lightly especially as it was for the rest of one's life.
33. The supposed "other reasons" that My CSP argue may have caused him to retire are baseless and totally lacking in corroboration. He had no other employment, dependants, grandchildren or pets that required his attention.
34. With regard to My CSP's remarks about approaching his employer in order to attempt to return to work he does not think this would have been an option. He had retired for approximately three months before the mistakes made by My CSP became known. He was in contact with workmates who stated that some surplus staff from another prison had visited his former prison the week after he had left (i.e. mid November 2012) to enquire if there were any staff vacancies for them. His post was available at that time and he knows some of that party subsequently moved between prisons so all vacant posts were filled. He was also made aware in December 2012 that the then Governor was under instructions to cut costs and he opted to achieve this by offering early retirement (with an enhanced financial package) to older members of staff. This further negated the prospect of him getting back his job.
35. As for finding another job, he did think about it. However, as the recession was in full swing he did not feel he would achieve much and having spent 40 years in the prison service he considered his skills in outside industry was nil.
36. With regard to lifestyle changes, they have had to take much longer to save money to accomplish some of their dreams such as travel and home improvements, which would have been more readily achievable on the higher pension figure. Put simply, had he not been denied the opportunity to continue to work to age 67 (or beyond) he would have had a much better bank balance to last him and his wife the remainder of their lives.
37. He wholly disagrees that the sum of £250 is adequate compensation. He hopes My CSP will be taught a lesson for the sake of his ex-colleagues and their future dealings.

Summary of My CSP's position

38. The error identified should have been corrected before the estimate of August 2012 was issued to Mr Hession, and not repeated in the subsequent statements. It accepts this will have caused him some distress and inconvenience.
39. Mr Hession had already reached the maximum limit of reckonable service so his continued service after December 2012 would not have increased his annual pension by any notable amount, although he would have accrued a further lump sum from the additional service payment.
40. The level of pension he will receive cannot be stated as the only reason why a person will retire. There can be a number of other non-documented contributing factors. They agree with the Pension Schemes Executive (**TPSE**) of the Cabinet Office that Mr Hession has not suffered a financial loss but a loss of expectation. Like TPSE, they are not persuaded that Mr Hession would not have retired if the estimate had been correct.
41. On the issue of mitigation, Mr Hession has stated his reasons for assuming (re)employment with NOMS would not be possible. There is no evidence that he has actively sought (re)employment to assist his financial position.
42. It originally offered £100 compensation for distress and inconvenience which was increased to £250 by TPSE at the second stage of the IDRPs. It considers the amount of £250 to be a fair offer.

Conclusions

43. Although Mr Hession's recollection is that he first received figures in approximately October 2012 and discussed retirement with his wife and family at that time, My CSP say they issued figures on 6 August 2012. Mr Hession gave notice of his retirement on 21 August 2012 using form EMR55 and so appears to have made his decision by that earlier time. It seems logical that he would have made an application after having had sight of the retirement figures issued on 6 August.
44. Both parties agree that an error was made in the calculation of Mr Hession's benefits when he retired for the final time (known within the Scheme as 'Final after FAF Retirement') because his pension earned after 2003 has been included twice. This mistake should not have occurred. Moreover, it should have been

picked up by My CSP when subsequent quotes were prepared. Therefore, I find that My CSP's failure to supply Mr Hession with the correct figure amounts to maladministration.

45. Mr Hession's entitlement from the Scheme is dependent upon the statutory legislation that governs it. The fact that Mr Hession was given incorrect estimates by My CSP does not itself entitle him to receive the higher incorrect pension benefits. His actual entitlement does not alter and his benefits should be those set out in the legislation. Mr Hession appears to accept that position.
46. That said, if Mr Hession has acted to his detriment in reasonable reliance on the incorrect estimate then he might be able to be compensated for any loss. So the first question must be was it reasonable for Mr Hession to rely on the incorrect estimate.
47. As this was final after FAF retirement it would likely be complicated to calculate Mr Hession's entitlement. Indeed, My CSP say it is not automated and calculations have to be done manually. Presumably there is a good reason for this. Irrespectively, I am prepared to accept that Mr Hession, as a lay person, would have had difficulty knowing his entitlement particular as he had not been sent an annual Personal Benefit Statement and am prepared to accept that it would be reasonable for him to rely on the figures sent to him by My CSP.
48. The real issue between the parties is the amount of financial loss that Mr Hession has suffered as a result of the incorrect quote and what level of redress there should be. In order to assess that loss, if any, I will compare the situation that Mr Hession is actually in with the situation that he would have been in had the maladministration not occurred.
49. Had he been quoted the correct figures originally what would have happened? There are two outcomes; either Mr Hession would still have retired or he would have carried on working.
50. Mr Hession's existing pension from the Scheme had been in payment for the past ten years and would have continued whatever decision he came to. Mr Hession was happy to retire if his annual pension increased from £15,991.51 to £20,267.98 (the quoted incorrect annual pension when he made his decision in August 2012) but contends he would not have retired had he known his pension was only increasing to £18,304.68 (his actual annual pension entitlement).

51. It therefore seems Mr Hession was willing to forego part-time earnings of £14,465 a year for an increase in his Scheme pension of £4,276 a year but not so if the increase was only £2,313 a year. So the key factor is whether £1,963.30 a year (i.e. the difference before income tax) would have altered Mr Hession's decision.
52. The percentage difference, some 10%, is on the cusp of the region where I might have been able to conclude more easily whether Mr Hession may have retired anyway or may not have retired.
53. It should be noted, though, that any financial loss is not the part-time earnings that he would have earned had he stayed employed since Mr Hession was willing to forego these earnings. His detriment would be £1,963 a year for the period in which he may have continued in employment and not for his lifetime (as he was not entitled to this level of extra pension). The loss may also include any further ASP.
54. Mr Hession says his decision was purely a financial one. I accept that the amount of income in retirement is a crucial part of anyone's decision but it is not necessarily the only one.
55. Mr Hession turned 65 earlier in 2012 and his State pension became payable at that time. His wife's State pension began later, in November 2012. Both State pensions became payable in the year that Mr Hession retired and were factors that he says he took into account.
56. I accept that his and his wife's State pension would still have been payable had he still remained in employment. But an argument that he had hoped to build a savings pot by staying in employment for his (and his wife's) future old age to replace the gratuity he had used to pay off debts is not something he chose to do. Mr Hession (and his wife) would always have been better off had he chosen to continue working and receive annual earnings of £14,465 as well as his existing Scheme pension of £15,991 a year and State pensions of £12,480 a year (i.e. annual income of £42,936).
57. Mr and Mrs Hession's State pensions amount to £12,480 a year and so don't quite cover his part-time earnings of £14,465 a year. However, the shortfall is only £1,985 a year and this is covered by his actual additional Scheme pension of £2,313 a year.

58. I note Mr Hession previously told my investigator in October 2014 that although a Scheme pension (of £20,267.98) plus their State pensions meant less income compared with his earnings and previous pension award by using the lump sum gratuity to pay off debts he (and his wife) thought they could manage. However, I observe that the combined income from his correct Scheme pension (of £18,304) and their State pensions (of £12,480) amounts of £30,784 and is actually more than his combined income of £30,457 from his earnings and previous pension award.
59. Mr Hession has said £1,963 made a difference to his decision to retire on the basis that any pensioner would consider £40 per week is not an insignificant amount. He has explained why he did not re-approach his former employer to seek his job back. Although his two reasons are incompatible with each other, they are both reasons why his former job may not have been available. But as he did not try it is difficult to know how successful or not he might have been.
60. I observe that Mr Hession did not try to find employment elsewhere. Although he considered his skills from over 40 years in the prison service were not transferrable to outside industry, I would have thought that areas in security might be one employment area he might have pursued and there could have been others. The fact that he did not pursue any type of employment suggests the £38 per week difference in his pension (before tax) did not concern him otherwise he would have pursued matters more rigorously.
61. All in all, I am unable to conclude that Mr Hession would not have retired had he been presented with the correct pension amounts.
62. Nevertheless, he will have experienced a loss of expectation of his retirement benefits and did not find out until after his retirement that his entitlement was lower than he had hoped. Notwithstanding awards for non-financial injustice tend to be modest, I consider the sum should be higher and make a direction below. Whilst Mr Hession has indicated that My CSP should be punished, I am not a regulator. My role is to consider any maladministration and what injustice this has caused to him not to apply any wider punishment regime.

Directions

63. Within 14 days of the date of this determination, My CSP shall pay direct to Mr Hession £400 to compensate him for the distress and inconvenience he has suffered.

Jane Irvine
Deputy Pensions Ombudsman

20 March 2015