

Ombudsman's Determination

Applicant	Mrs E
Scheme	Principal Civil Service Pension Scheme (the Scheme)
Respondents	MyCSP The Crown Office and Procurator Fiscal Service (COPFS)

Outcome

1. I do not uphold Mrs E's complaint and no further action is required by MyCSP or COPFS.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs E has complained that she received her 2011/2012 annual pension saving statement (**PSS**) significantly later than expected, and after retiring. She believes that had she received this earlier, she would have known that she had exceeded her annual allowance and been able to make more suitable arrangements to pay this.
4. She has also complained that she was misinformed about the amount of her tax liability and about whether she could use a facility offered by the Scheme called Scheme Pays.

Background information, including submissions from the parties

5. Mrs E was employed by the Crown Office Procurator Fiscal Service.
6. In 2011, Mrs E was considering taking retirement as part of a voluntary exit scheme.
7. On 1 November 2011 Cabinet Office issued a circular EPN310 detailing changes to the tax regime for the tax year 2011/12, specifically changes to the annual allowance, which was being reduced from its previous level to £50,000. It attached a briefing for HR managers and staff with Q&A's. This included a question and answer about how the annual allowance charge is paid which explained 'Members who have breached the annual allowance must account for the tax to HMRC under Self Assessment'. If

they have not yet taken their pension, and the tax charge... is £2,000 or more, they can request to use the 'Scheme pays' facility.

8. On 26 January 2012, Mrs E completed forms to apply for her retirement benefits.
9. On 31 March 2012, Mrs E's retirement benefits were brought into payment.
10. On 2 October 2013, Mrs E received her PSS documents from MyCSP which referred to her annual allowance for the tax years 2011/12 and 2012/13. The information in this letter led Mrs E to believe that she had a tax liability of £19,405.
11. The note that accompanied the PSS made reference to Scheme Pays. This facility allows for any tax charge in excess of the annual allowance to be paid by the Scheme in exchange for a reduction in future retirement benefits.
12. On 14 May 2014, Mrs E completed and returned the required form to apply for Scheme Pays.
13. Mrs E and her financial adviser chased MyCSP for a quotation in regard to Scheme Pays.
14. On 16 September 2014, MyCSP wrote to Mrs E explaining that the calculation regarding her tax liability was incorrect. Her recalculated tax liability was a figure of £3,131.80. The letter also explained that Scheme Pays was not an option open to Mrs E.
15. Mrs E complained to MyCSP under the Scheme's Internal Dispute Resolution Procedure (**IDRP**).
16. On 20 October 2015, MyCSP responded under stage one of the IDRP. I have summarised what it said below.
 - Although Mrs E was not made aware of the annual allowance breach sooner, the October 2013 PSS was issued within the statutory deadline for such statements.
 - MyCSP's overall assessment of benefit growth against the annual allowance is carried out for all members that have been active during the Pension Input Period (PIP) annually, rather than at the point of retirement.
 - Mrs E had been issued a Scheme Pays quotation in May 2014. At this time, the Cabinet Office had not established whether members in receipt of pension benefits could use Scheme Pays.
 - The Cabinet Office subsequently confirmed that Scheme Pays could not be used by members whose pensions were in payment.
 - MyCSP did not respond in a timely manner when issuing the Scheme Pays quotation and once the completed quotation had been received. Furthermore, inconvenience had been caused to Mrs E by the initial incorrect information on the tax liability.

PO-6438

- As the correct position had since been established, no further administrative action was required to address this.

17. Mrs E appealed this decision.

18. Under stage two of the IDRPs, the Cabinet Office said the following:-

- Mrs E retired only four months after the Cabinet Office issued Employer Pension Notice (EPN) 310. Therefore, it is not unreasonable to conclude that as part of her retirement planning, Mrs E should have read all of the guidance available, including EPN 310 which outlined the annual allowance, and said that Scheme Pays was available to members who had not yet taken their benefits.
- Although the mistakes made by CSP were regrettable, the fact remained that Mrs E breached the annual allowance and must pay the tax liability arising. As Mrs E would need to pay this regardless of how MyCSP had handled matters, there was no financial loss.
- However, MyCSP must pay Mrs E £500 for the distress and inconvenience she suffered due to its handling of the situation.

19. The complaint was subsequently referred to this Office for an independent review.

20. In an email to this Office of 25 November 2016, Mrs E confirmed that she had been paid the above compensation.

Adjudicator's Opinion

21. Mrs E's complaint was considered by one of our Adjudicators who concluded that no action was required by MyCSP or COPFS. The Adjudicator's findings are summarised briefly below:-

- There had been maladministration in terms of the incorrect information being provided on more than one occasion.
- EPN 310 should have been issued to all members of the Scheme by 30 November 2011. Mrs E was not certain whether she received this information.
- COPFS, as Mrs E's employer, would have been responsible to disseminate this information to her and other employees. When approached about this during the course of this Office's investigation of the complaint, it said it could not confirm whether this information was provided to Mrs E.
- Whilst it would have been useful for Mrs E to have received this information, it was a general update. Therefore, it would be difficult to determine what weight would have been attached to EPN 310 by Mrs E. Equally, it was not possible to say with certainty that having sight of this document would have affected Mrs E's pension planning going forward.
- The main documents for Mrs E's purposes was the PSS, as it contained information specific to Mrs E. Although Mrs E is unhappy that she received her

PSS for the tax year 2011/12 in October 2013, this was not in breach of MyCSP's requirements.

- The information in EPN 310 explained that the usual requirement was to issue a PSS in the relevant tax year. However for the 2011/12 tax year, schemes were allowed an additional year to produce these statements. Accordingly, October 2013 was the revised deadline.
- The additional time provided was linked to the reduction in the annual allowance which took place in 2011, from £255,000 to £50,000, and the increase in administration which would follow.
- Mrs E had retired in March 2012, so if she had received the 2011-12 statement towards October 2012, she still would not have been able to use Scheme Pays as her benefits were in payment.
- MyCSP were not obliged to inform Mrs E of any annual allowance breach when she applied for her benefits.

22. MyCSP and COPFS accepted the Adjudicator's Opinion. Mrs E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs E provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mrs E for completeness.

Ombudsman's decision

23. Mrs E says it was unreasonable that she was not given clear and accurate information about the tax liability at the time it arose, rendering her unable to make an informed choice on an appropriate course of action. Furthermore, she says that no solution or choice has been presented to her, other than to pay the considerable financial liability.
24. Whilst I am sympathetic to Mrs E's situation in becoming aware of her tax liability after retiring, MyCSP acted within the permitted statutory timescales when issuing information on this.
25. I understand that Mrs E and her financial advisers were taking care to avoid breaching the annual allowance, and were frustrated at the misleading information provided by MyCSP. However, this tax liability has not arisen because of the additional time taken by MyCSP to issue the 2011-12 statement but because of the significant change in the annual allowance, which is outside of MyCSP's control.
26. Mrs E contends that she would have been able to use the Scheme Pays facility had she been notified of the liability earlier. Yet when considering that Mrs E's retirement took place towards the end of the tax year, even in ordinary circumstances, she would not have received her PSS until after the end of the tax year. Therefore, the timing of Mrs E's retirement and when the liability arose led to the facility of Scheme Pays not being available to her, rather than any delay on MyCSP's part.

27. In order for the tax liability not to have transpired, Mrs E would need to have known of the tax change in advance of making pension payments for that year and been in a position to act on that information with accuracy. The timing of the changes meant that in order to access 'scheme pays' Mrs E would have had to make a precautionary application prior to retirement in advance of knowing the precise pension input figures. The timing of the change to the annual allowance was part of the tax regime and was outside the control of MyCSP and Cabinet Office. EPN310 explained their impact in some depth. Whilst it has not been proven whether or not Mrs E received EPN 310, I agree with the Adjudicator that the responsibility for disseminating the information contained in it rested with the employer, not MyCSP. Further, it is not clear how much emphasis Mrs E would have placed on this and whether she would have acted differently had she received it.
28. I note that MyCSP incorrectly calculated Mrs E's initial tax liability by a substantial amount. This and the misinformation about the availability of the Scheme Pays facility amounts to significant maladministration, but MyCSP has already paid Mrs E compensation of £500 for this and was required to do so as part of the IDR process. I am satisfied that Cabinet Office considered the relevant legislative requirements, made a relevant finding of maladministration and made an award for distress and inconvenience which is in line with that which I would ordinarily consider. In the circumstances, I am not minded to make a further award.
29. Therefore, I do not uphold Mrs E's complaint.

Karen Johnston

Deputy Pensions Ombudsman

11 May 2017