

## Ombudsman's Determination

<b>Applicant</b>	Miss E
<b>Scheme</b>	Principal Civil Service Pension Scheme ( <b>PCSPS</b> ) and Civil Service Compensation Scheme ( <b>CSCS</b> )
<b>Respondents</b>	The Cabinet Office and MyCSP

### Complaint Summary

1. Miss E's complaint against MyCSP and the Cabinet Office is about the calculation and payment of her benefits under PCSPS and CSCS, and the subsequent mismanagement of her complaint.

### Summary of the Ombudsman's decision and reasons

2. The complaint should be partly upheld against MyCSP because:
  - a. of the delay in paying Miss E the compensation lump sum due to her under CSCS; and
  - b. of mismanagement of her complaint.

## Detailed Determination

### Material facts

3. Miss E was employed by the Department for Work and Pensions (**DWP**), but left their service on 20 August 2009 on grounds of inefficiency. She was awarded a lump sum (the **Lump Sum**) as compensation under CSCS.
4. The maximum lump sum compensation under CSCS is 2 years' pensionable earnings. However, under the rules of this scheme, where a member is within three years of pension age, in Miss E's case age 60, the lump sum is reduced by 1/36 for each month of service (part of a month is counted as a full month) within three years of normal retirement. Miss E's 60<sup>th</sup> birthday was one year three months and 24 days before her service with DWP ended, i.e. 20 August 2009.
5. On 19 October 2009, the DWP wrote to Miss E saying that when her estimate request was completed on 27 July 2009, they had not been notified by Human Resources (**HR**) of the period when she was sick for which she was not paid. The period started on 15 December 2008. They explained that it was non-reckonable for pension purposes, and when they were notified by HR they updated their records to reflect this. However, it resulted in a decrease to her reckonable service and therefore the amount of the benefits available to her.
6. On 18 December 2009, Miss E wrote to DWP asking for information about the amount of the Lump Sum and giving the sort code, account number and name of a Post Office Instant Saver (the **PO Account**) into which the Lump Sum was to be paid.
7. A letter, dated 2 December 2009, from the Post Office to Miss E shows that she opened the PO Account with an initial deposit of £500. It states that interest is paid from 25 November 2009. It also explains that the interest rate payable is 0.10% gross pa and a bonus rate of 2% gross will be payable for the first 12 months an account is open.
8. In November 2010, Miss E wrote to MyCSP saying that the Lump Sum had still not been processed and asked for compensation for loss of interest.
9. In January 2011, £24,380.09 was paid to Miss E in respect of the Lump Sum due to her. Soon after, she asked MyCSP for a stage one decision under the Scheme's internal dispute resolution procedures (**IDRP**) seeking compensation for the late payment of this benefit.
10. Around November 2011, Capita, the then administrators of PCSPS and CSCS, wrote to Miss E informing her that the Lump Sum had been overpaid by £147.34.
11. On 20 February 2012, MyCSP wrote to Miss E apologising for the delay in dealing with the stage one IDRP decision she had requested and saying that one would be issued within two months. They said that they did not know how an overpayment of the Lump Sum had occurred. They explained that Capita would apply pension

increases to the original award (i.e. £23,788.26) which would result in the slightly higher amount advised by Capita in November 2011.

12. On 11 April 2012, Capita wrote to Miss E about a complaint she had made in March 2012, regarding the increase to her benefits. In their letter, they explained how the increases were calculated in respect of her pension from PCSPS and the Lump Sum. In respect of the Lump Sum, they said that the amount was £23,788.26, which after applying pension increases, increased to £24,232.75. However, as she received £24,380.09 there was an overpayment of £147.34.
13. Miss E contacted the Pensions Advisory Service (**TPAS**) in October 2012, to complain about the lack of response from MyCSP with regard to her request for an IDRP decision. TPAS wrote to MyCSP, but they did not receive a substantive response.
14. During the period between January 2011 and March 2013, MyCSP had sent Miss E a series of acknowledgement letters, some explaining that they were having difficulty in tracing her papers.
15. In June 2013, MyCSP sent Miss E a stage one IDRP decision as follows:
  - a. they apologised for the delays she had experienced;
  - b. they upheld her complaint about the late payment of the Lump Sum and the failure to respond to correspondence;
  - c. the calculation of her reckonable service giving a total of 31 years 178 days was incorrect – the correct figure was 31 years 68 days;
  - d. as a result of the recalculation of her benefits they found that she had been overpaid, but they proposed to write off the overpayment;
  - e. they attached a 12 page document (the **Document**) showing how her benefits had been calculated.
16. Miss E asked MyCSP for a stage two IDRP decision describing the efforts she had made to obtain a stage one decision; disagreeing with their calculations and returning the Document with a number of amendments; asking for reimbursement for the costs of postage, photocopying and telephone calls; and saying that their failures had had an adverse effect on her health.
17. MyCSP checked on the points raised by Miss E and, in particular, on the period of sick leave in May and November 2008 that were shown as non-reckonable service. DWP confirmed that her absence from 28 April to 11 May 2008 was unpaid sick leave and therefore non-reckonable service, but her absence from 14 to 19 November 2008 was not recorded as unpaid leave and therefore had been incorrectly deducted from her reckonable service.

18. In May 2014, Miss E was given a stage two IDR decision by the Cabinet Office. The decision was that:
- a. She had accurately reflected the figure provided by MyCSP in their letter of 6 May 2011 (i.e. 3 years 156 days), and MyCSP had not provided an explanation of why the figure had reduced to 3 years 87 days.
  - b. Regarding her change to the tapering calculation, the three year period before pension age began on 27 April 2008. Her last day of service appears to have been 20 August 2009. Therefore, the period of service within that three year period was one year three months and 24 days. As part of a month counts as a full month, her compensation payment should be reduced by 16/36ths and not 17/36ths as MyCSP stated.
  - c. It is unfortunate that MyCSP passed her request for a stage two IDR decision without examining the changes she made on the Document to check how many of her changes were valid.
  - d. Taking account of the loss of interest on the late payment; the postage and other costs associated with trying to obtain a stage one IDR decision; the uncertainties and confusion over the level of her benefits; and the resultant distress and inconvenience, MyCSP should pay her £500 as compensation.
  - e. They directed MyCSP to:
    - i. ask DWP to confirm that Miss E's absence from 28 April to 11 May 2008 was unpaid in view of her statement that she was paid for that period;
    - ii. examine all changes Miss E made to the Document, changing the records where she is right and providing an explanation where she is wrong;
    - iii. calculate the amount of any overpayment if her benefits have still been overpaid after those changes;
    - iv. repay any overpayment to the Civil Superannuation Vote;
    - v. if there is no overpayment, pay her £500 compensation for distress and inconvenience; and
    - vi. if there is an overpayment, and it is less than £500, pay Miss E the difference between £500 and the amount of the overpayment.
19. On 16 October 2014, following the Cabinet Office's stage two IDR decision and their subsequent enquiries, MyCSP wrote to Miss E as follows:
- a. DWP had confirmed that her absence from 28 April to 11 May 2008 was unpaid absence which meant that this period could not be taken into account for pension purposes.

- b. It had been confirmed that the period from 14 November to 19 November 2008 was paid absence and could be included for pension purposes. They could only act on information given to them by her employer, and if she still disagreed with this she should contact DWP to resolve this matter.
  - c. They had reviewed the calculations as outlined in their stage one IDRP decision and made the necessary amendments. Whilst they agree with most of her corrections, the differences in their calculations compared to her figures were very small.
  - d. They enclosed three sheets of their calculation of her reckonable service to 20 August 2009.
  - e. Her pensionable pay had changed from £21,409.43 to £21,401.13, which was the result of amendments to her pension records in respect of her sick leave from 11 to 19 November 2008. This change has resulted in a reduction to the Lump Sum from £23,788.26 to £23,779.03, an overpayment of £9.23.
  - f. They concluded that her gross pension was £8,432.93 per annum, which after applying the National Insurance Modification reduces to £8,429.21 per annum, from 27 April 2011, her 60<sup>th</sup> birthday; her gross retirement lump sum was £25,298.78 payable on 27 April 2011; and the Lump Sum payable on 21 August 2009 was £23,779.03. They asked her to let them know if she agreed with their calculations and they would arrange for Capita (the administrators of the Scheme) to make payment of her corrected award.
  - g. They enclosed an 'Ex-Gratia Payment Form' which read: "I confirm that I am willing to accept the ex-gratia payment of £490.77 offered by MyCSP. I accept that this is entirely on a without prejudice basis and MyCSP is making no admission of any liability".
20. There is no evidence to show that Miss E responded to MyCSP's letter of 16 October 2014.
21. Miss E brought her complaint to us in November 2014.
22. On 17 May 2016, MyCSP wrote to Miss E saying that it had come to light that the overpayment in respect of the lump sum of £9.23 as stated in their letter of 16 October 2014 had been understated. They said that increases had not been applied to the correct revised compensation lump sum and the actual amount that was paid to her, i.e. £24,380.09, was not taken into consideration when calculating the overpayment. The revised overpayment was £403.69 and a breakdown of the overpayment was as follows:

"Pension increase factor with a deemed date of 20/02/2009 = 1.0083

£23,779.03 x 1.0083 = £23,976.40

£24,380.09 - £23,976.40 = £403.69”

MyCSP explained to Miss E that the Lump Sum is increased in line with the increase in the Consumer Price Index (**CPI**) in accordance with the Pensions Increase Act 1971; pension increases were applied from her award deemed date, i.e. 20 February 2009, the day after her best year of pensionable pay; and therefore a pension increase factor of 1.0083 has been used to revalue the Lump Sum. They pointed out that the pension increase factors are accessible online at

<http://www.lgpsregs.org/timelineregs/pi/2009pi.xls>. The factors online appear in a document headed “MULTIPLIERS FOR PRESERVED PENSIONS AND PRESERVED LUMP SUMS”. The preamble following the heading says: “A pension or lump sum which (a) becomes payable on or after 6 April 2009, or (b) becomes eligible for payment of pensions increases on or after that date because of a qualifying condition is satisfied, should have the appropriate multiplier below applied to the basis pension and the lump sum (if appropriate)”. The document contains two columns, one headed ‘Any year up to’ and the other headed ‘Multiplier’. The ‘Multiplier’ for the period 22 January to 21 February 2009 is shown as 1.0083.

23. In response to our enquiries, Miss E initially claimed that interest at the rate of 2.95% should be paid between August 2009 and January 2011, as a result of the delay in payment of the Lump Sum. When asked to provide evidence to show that she had a savings account paying 2.95% interest for this period, she said:

“When you asked me to quantify potential loss, I quoted a typical interest rate available at the time: 2.95% was at the TSB up to November 2009. Predominantly I have banked with the Halifax. When I telephoned their Savings Team, to chase for a reply to my letter of 7<sup>th</sup> June, they instructed [sic] that information on interest rates for 7 years ago was archived and dealt with by the Central Processing Team; I have sent a reminder letter by Special Delivery. However, I did specifically open a new account with the Post Office: proof attached [this is the letter of 18 December 2009 to DWP and the letter of 2 December 2009 from the Post Office]”

24. When we enquired how long she would have left the Lump Sum in the PO Account, Miss E said in an email dated 13 July 2016:

“It would have been inappropriate to open a savings account with a fixed period bonus rate until I believed that the payment would be forthcoming. I knew this could not happen before I opened the account as MyCSP had failed to send me the complete paperwork to claim it. The delay from 21/08/2009 was the fault of MyCSP and I should therefore not be penalised.

Regarding the end date for calculation of loss of interest, at the end of the 12 month bonus period, I would never have been negligent by leaving a large investment in an account with 0.1% interest. I closed the account and moved

my initial deposit; it is inconceivable that I would have done anything different with a large sum”

25. Miss E has sent us a letter from the Halifax, dated 19 July 2016, which states that between 2009 and 2011 she had several variable savings accounts open/live and confirmed that the interest rates on these accounts were: Halifax Savings Direct – 3%; Halifax Guaranteed Saver – 2%; and Halifax Regular Saver – 4%.

26. In a letter dated 27 August 2016 to us, Miss E said:

“My priority in 2009 was to check that my lump sum had reverted to the original position of £40,000 plus, as [Ms S of DWP] had stated (letter 19<sup>th</sup> October [2009]). I reminded [Ms S] of her explanation for the change to the amount and therefore the need for its correction to the estimate of 27/7/09. The motivation for my letter of 18/12/09 is in the sentence: “please will you inform the amount, to be paid into the following account”. My emphasis was the amount, the new account was simply the means to this end. I thought that by issuing specific account instructions they would be obliged to tell me what was being paid. I desperately wanted to know the amount as this had been the deal breaker in abandoning medical retirement; I wanted affirmation that I had made the right decision.

In the latter half of my email of 13 July [2016] I was addressing only start and end dates, not the interim period. I was denying categorically the 0.1% afterwards with reference to my £500 deposit, which I did in fact keep for 12 months and then more. I was expecting the Halifax letter (19 July [2016]) confirming the preferential interest rates so I did not confirm the 2.1% for 12 months for the lump sum. It is contrary to my operational standards to leave a lump sum in an account at 2.1% when I had an account open with 4% (2/7/09 – 1/7/10)...

I have a standard 2 page letter entitled PCSPS: the section headed Payment of Benefits states “Your lump sum compensation payment will be paid into your bank/building society account within days of your last day of service”. I would have opened the new account to accept it in August, as previously explained the timing of opening of the new account corresponded to the MyCSP delays. Subsequently my options were 4% to 1<sup>st</sup> July 2010 and 3% to January 2011.”

### **Summary of Miss Wearne’s position**

27. She does not believe the overpayment figure of £403.69 claimed by MyCSP. She says that if it was correct they would have presented facts instead of vague assertions. She has sent MyCSP a cheque for £147.34 to make the point that this is the correct overpayment.

28. She was informed by Capita in February 2011, about the change in the basis of annual pension increases from the Retail Price Index (**RPI**) to the CPI. She was told that if her preserved pension benefits were due for payment after April 2011, she may be affected by the change and she would be provided with revised figures. She did not receive any revised amount. The Lump Sum was paid in January 2011, when the regulations provided for pensions to be increased in line with RPI.
29. When the increase to the Lump Sum was calculated in April 2012, the more favourable RPI factor of 1.01869 (i.e. £24,232.75/£23,788.26 taken from Capita's letter of 11 April 2012) was correctly used as opposed to the lower CPI of 1.0083. The factor of 1.0083 is wrong as it is for deferred lump sums which become payable in the period 7 April 2008 to 6 April 2009. The correct factors are for deferred lump sums which become payable in the period 12 April 2010 to 11 April 2011. The factor which should have been applied is 1.0396 and is for 22 January 2009 to 21 February 2009. She enclosed a document headed "Annex C – Increases in Lump Sums", which sets out the increases that should be applied for deferred lump sums payable on or after 6 April 2009 and those payable in the period 7 April 2008 to 6 April 2009, and says that these match with Annex B which gives the factor of 1.0396. Miss E has not supplied us with Annex B.
30. She was informed that the Lump Sum would be about twice her salary and she acted upon it to her detriment by abandoning her application for medical retirement.
31. She has lost interest on the difference between her current pension benefits and the corrected award as set out in MyCSP's letter of 16 October 2014. She has been due this since 27 April 2011 (i.e her 60<sup>th</sup> birthday).
32. She is also seeking compensation for the loss of private and confidential documents, including bank statements, she had supplied to MyCSP.

### **Summary of the Cabinet Office's position**

33. Miss E claims that she made a life changing decision based on the incorrect estimate she was given in July 2009. However, it seems that she had no option other than to leave the Civil Service. Her employing department's letter of 20 August 2009, makes it clear that they were terminating her employment, but decided to award compensation at the rate of 100 per cent.
34. It is possible that Miss E could have applied for medical retirement. However, she has provided no evidence that she was considering this or that her employer was considering putting her forward for it. In either case, the scheme medical adviser would have had to issue a medical retirement certificate (**MRC**) before the employer could consider whether to medically retire her. In order to be able to issue a MRC, the medical adviser would have had to be satisfied that her condition in 2009 was such that she was incapable of discharging her duties, that all possible medical treatments had been tried without success and that her condition was likely to be permanent.



Even if she had applied for medical retirement, it is not clear whether the medical adviser would have been able to issue a MRC.

35. It is not possible to pay Miss E the amount shown on the incorrect estimate because PCSPS and CSCS are statutory schemes and members can only have benefits in accordance with the schemes' rules.
36. Regarding the late payment of Miss E's compensation, where interest is payable on late payment it is paid at bank rate. However, as shown in the stage two IDR decision, the compensation payment of £500 includes compensation for loss of interest. This payment is to compensate her for loss of interest, the postage and other costs associated with trying to get MyCSP to issue a stage one IDR decision, the uncertainty and confusion about the calculation of her benefits and the resultant distress and inconvenience.
37. They are sorry that Miss E's case had been subject to confusion, contradiction and delays. Some of this is due to the complexities surrounding her reckonable service with its periods of full-time and part-time service, paid and unpaid absences and the difficulties MyCSP had in getting accurate and timely information from her employer. However, this does not excuse the late payment of the Lump Sum or the delays in issuing the stage one IDR decision and they consider that £500 is an appropriate level of compensation.

## Conclusions

### ***The complaint about the calculation and payment of Miss E's benefits under the PCSPS and the CSCS***

38. The Cabinet Office main involvement in Miss E's complaint is to review MyCSP's stage one IDR decision and to issue a stage two decision. They were not involved in the calculation and payment of her benefits. Therefore, there is no maladministration on the part of the Cabinet Office and this part of the complaint against them is not upheld.
39. The initial calculation of Miss E's benefits and payment of the Lump Sum was carried out by Capita. Later, MyCSP were involved in the recalculation of her benefits.
40. Miss E's benefits were recalculated because she disagreed that the two periods, i.e. 28 April to 11 May 2008 and 14 to 19 November 2008, during which she was ill, were considered to be non-pensionable. On rechecking these periods, DWP confirmed to MyCSP that one of the periods, i.e. 14 to 19 November 2008, was pensionable but the other one was not. Neither MyCSP nor Capita, could have known, without confirmation from DWP, whether these periods were or were not pensionable. Therefore, any errors as a result of these two periods being considered to be non-pensionable are not the fault of MyCSP, as they were only acting on the information provided by DWP.

41. Dealing with Miss E's claim that she has lost interest on the difference between her current pension benefits under PCSPS and the corrected award as set out in MyCSP's letter of 16 October 2014, there is nothing to show that she has contacted MyCSP to confirm that their revised calculations were correct as they had requested. I am sure that once she has contacted them, they will be able to put into payment the correct award plus interest backdated to 27 April 2011.
42. I now turn to the calculation of the Lump Sum. Miss E says that she was initially informed that the amount she would receive would be twice her salary. The maximum amount she could receive was twice her pensionable earnings, but under the rules of CSCS, as she was within three years of her pension age, the amount had to be reduced.
43. Miss E says that she relied upon the incorrect information and abandoned her application for medical retirement. I do not dispute that Miss E could have applied for medical retirement, however there is nothing to show that she would have done had she been given the correct information in the first place. In addition, even if she had applied, she would have had to meet the criteria to be granted an ill health pension under the PCSPS and there is nothing to show that she would have been successful.
44. Miss E questions the factor applied to increase the Lump Sum. She says that the factor of 1.0083 used by MyCSP is incorrect. MyCSP have pointed to where they had obtained the factor of 1.0083 in their calculations. Initially, she claimed that the factor that should have been applied was 1.0869, but she subsequently claimed that the factor should be 1.0396. She refers to some factors and enclosed a document (**Annex C**) but does not clearly explain from where she obtained this information. In addition, the factor of 1.0396 does not appear on Annex C. Therefore, on balance, I believe that the factor of 1.0083 is more likely to be correct.
45. I now turn to the payment of the Lump Sum which was due in August 2009, but was not paid to Miss E until January 2011. I agree that the delay in payment of the Lump Sum is maladministration. However, I have to consider whether Miss E has suffered an injustice as a consequence of that maladministration.
46. I agree with the Cabinet Office that normally where interest is payable on late payment of a benefit it would be in line with bank base rate. However, it would be unreasonable not to consider a loss of investment on a benefit if the person can demonstrate that they would have invested the benefit in a particular way, such as a savings account, and provide evidence to show that the investment was available to them at the time they received the benefit.
47. Miss E says that she has suffered a loss of investment due to the delay in payment of the Lump Sum, because she would have invested it in a savings account. I would agree with this provided that she can demonstrate that she had opened a savings account. I would add that as the Lump Sum she received in January 2011 was higher

than the amount due in August 2009, the difference of £403.69 should be taken into consideration in assessing any loss of investment due to her.

48. I now need to consider how her loss of investment is to be calculated. There is evidence to show that in November 2009 Miss E had opened the PO Account. She gave DWP the details and asked to be informed of the amount to be paid into this account. Therefore, I would agree that it was her intention that the Lump Sum would be paid into the PO Account.
49. When subsequently asked about how long she would have left the Lump Sum in the PO Account, she said that the Lump Sum, and her initial deposit of £500, would be moved to another account at the end of 12 month bonus period. This indicates that she would have left the Lump Sum in the PO Account for 12 months, in order to receive a bonus of 2% interest.
50. Miss E has subsequently claimed that she had accounts with the Halifax which paid interest at the rate of 3% and 4%, and would have moved the Lump Sum to these accounts. The Halifax have confirmed that between 2009 and 2011 she had savings accounts which paid interest of 2%, 3% and 4%. However, they have not stated exactly when between 2009 and 2011 these accounts were opened.
51. The Lump Sum was due on 20 August 2009, but Miss E did not open the PO Account until November 2009. Therefore, in the absence of any evidence of saving accounts she may have had at that time, between 20 August and 25 November 2009 the interest due would be based on the bank base rate.
52. Miss E has said that she would have moved the Lump Sum after the 12 month bonus period, even though she later contradicted herself by claiming that it would have been moved earlier to the savings accounts with the Halifax paying 3% and 4% interest. As I have stated, there is nothing to show when these savings accounts were opened with the Halifax. Therefore, from 25 November 2009 to 24 November 2010, the interest due would be 2.1%.
53. Miss E received the Lump Sum in January 2011. Therefore, in the absence of any evidence of saving accounts she may have had at that time, the interest due between 24 November 2010, when the PO bonus period ended, to the date she received the Lump Sum in January 2011 would be based on the bank base rate.

***The complaint about the subsequent management of Miss E's complaint***

54. As previously stated, the Cabinet Office were only involved in the stage two IDRP decision. Therefore, I am unable to find maladministration on their part in respect of this part of the complaint.
55. There is no dispute that Miss E's complaint was mismanaged by MyCSP and this is maladministration. Therefore, I uphold this part of the complaint against them.

56. I acknowledge that Miss E has suffered significant non-financial injustice in the form of distress and inconvenience as a result of MyCSP's maladministration, and I consider that the sum of £500 offered is adequate compensation for this.

***Compensation for loss of private and confidential papers, including bank statement, which she had supplied to MyCSP***

57. MyCSP have confirmed that they do not have a record of receiving private and confidential documents and bank statements from Miss E. They say that this is not a matter she has raised with them as a complaint, and that she should contact them if she wishes to do so.

**Directions**

58. I direct that within 28 days of the date of this determination MyCSP shall calculate and pay Miss E a sum in compensation of the loss of investment she has incurred on the late payment of the Lump Sum, calculated as follows:
- a. simple interest, calculated in accordance with the rate declared from time to time by the reference banks from 21 August to 24 November 2009 on a lump sum of £23,976.40;
  - b. 2.1% from 25 November 2009 to 24 November 2010 on the sum of the interest calculated in a. above, plus the lump sum of £23,976.40;
  - c. simple interest, calculated in accordance with the rate declared from time to time by the reference banks, from 25 November 2010 to the date in January 2011 Miss E received the Lump Sum on the sum of the interest calculated in a. plus b. above, plus the lump sum of £23,976.40.

The compensation paid to Miss E should be the difference between £403.69 and the sum of the interest calculated in a, b and c above. If the sum of the interest is lower than £403.69, the difference should not be recouped from her.

59. In addition, MyCSP shall within 21 days of the date of this determination pay Miss E £500 for the significant non-financial injustice she has suffered.

**Anthony Arter**

Pensions Ombudsman  
20 October 2016