

Ombudsman's Determination

Applicant	Mr N
Scheme	Principal Civil Service Pension Scheme (PCSPS)
Respondents	HMRC MyCSP The Pension Schemes Executive (TPSE)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by HMRC, the employer, MyCSP, the PCSPS administrators, and TPSE, the managers of the PCSPS.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N complains that his finalised PCSPS benefits were incorrect as a wrong pensionable salary was used in the calculations.
4. Mr N also says that his complaint is not about whether or not he was paid the correct salary by HMRC. He claims that his benefits should be based on the salary he actually received i.e. £61,573, and not the revised salary of £54,741, as stated by the respondents, which has resulted in him receiving reduced benefits.

Background information, including submissions from the parties

5. Mr N transferred from a post in London to a new position in Woking in May 2009. Mr N's salary, however, was not adjusted to exclude the London allowance element.
6. In January 2012, Mr N was offered and accepted voluntary redundancy. The estimate of his pension and compensation award was calculated on the basis of his final pensionable salary being £61,573. This gave him an annual pension of £26,916.04 and a lump sum payment of £80,763.99.
7. On 25 January 2012, MyCSP confirmed to Mr N that the benefits stated in the estimate of January 2012, had been authorised.

8. On 27 February 2012, HMRC wrote to Mr N and informed him that his salary was overpaid between May 2009 and January 2012, due to him continuing to receive the London allowance as part of his salary after moving to Woking. He was advised he would be told of the amount to be repaid and that MyCSP would also be informed.
9. On 2 March 2012, HMRC contacted MyCSP and said they had discovered that Mr N's salary had been overpaid and included details of his revised salary. MyCSP also sent a letter that day to Mr N informing him that his pension was to be revised. They said that Mr N's final pensionable salary should have been £54,741.00, which meant he was entitled to an annual pension of £23,928.91 and a lump sum of £71,802.60.
10. HMRC confirmed to Mr N on 20 March 2012, that the salary overpayment amounted to £10,796.77 and that this should be paid within 14 days.
11. HMRC subsequently informed Mr N that they would not be seeking to recover the overpayment of salary but that the correct revised salary at the time of his leaving would determine his benefits under the PCSPS. They also made a compensation offer to Mr N of £9,000 for their poor handling of his overpayment, in full and final settlement of his case.
12. Mr N accepted the £9,000, ex-gratia payment on 25 April 2013, and received the payment in June 2013.
13. MyCSP however maintain that Mr N's pension should be based on the revised salary of £54,741.00. They said they are required to calculate his PCSPS benefits in line with the information provided by his employer, HMRC, who had informed MyCSP that £54,741.00 was the correct salary due for Mr N.

Adjudicator's Opinion

14. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by HMRC, MyCSP or TPSE.
15. The Adjudicator's findings are summarised briefly below:
 - Ultimately, it is the responsibility of HMRC, as Mr N's employer, to record and maintain his salary information and to ensure that correct details are provided to MyCSP. MyCSP were entitled to rely on the salary information provided by HMRC as being correct.
 - HMRC confirmed to MyCSP on 2 March 2012, that Mr N's final pensionable salary should be £54,741.00. The onus is on Mr N to show this was incorrect. Mr N has not provided any evidence to show that the £54,741.00 was not a correct calculation of what his salary should have been. Therefore, there were no justifiable grounds for finding that the salary figure of £54,741.00, used by MyCSP in the calculation of his finalised pension benefits in March 2012, was invalid.

- The provision of incorrect information does not, of itself, establish a right to the incorrect benefits. Mr N is only entitled to receive the benefits based on the correct calculation of his pensionable salary. As the revised £54,741.00 salary figure was correct, it followed that he has not suffered any financial loss.
 - The most Mr N has suffered is a loss of expectation in believing his benefits might be calculated based on the higher salary figure. Such loss of expectation amounts to injustice inasmuch as it causes distress and inconvenience. However, HMRC did not seek to recover the overpayment of salary from Mr N and paid him £9,000 as compensation in full and final settlement of his case. Therefore, Mr N has received sufficient redress in this case.
16. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his 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 Mr N.

Ombudsman's decision

17. Mr N maintains that he has provided evidence including payslips which show that he was actually paid £61,573.
18. Notwithstanding that Mr N had stated that his complaint was not about whether or not he was paid the correct salary by HMRC, the evidence he has submitted in this regard related to events prior to HMRC's confirmation to MyCSP on 2 March 2012, that his final pensionable salary should be £54,741.00. As explained by the Adjudicator, it is the responsibility of HMRC to record and maintain his salary information. HMRC have said that the £61,573 salary that he had received was wrong and that his correct salary was £54,741.00. I have no reason to doubt the validity of the revised salary figure.
19. Mr N asserts that HMRC does not have a legal right to insist that the revised salary of £54,741.00 was correct. This is because when HMRC paid him £9,000, as compensation for the way they handled the alleged overpayment, and to settle his case, they accepted his wording that he was not overpaid. However, there was no mention in HMRC's offer letter to Mr N of June 2013, accepting that his salary was overpaid. So I disagree with Mr N's assertion in this regard.
20. Mr N contends that the £9,000 compensation he received from HMRC was for the way they handled the alleged overpayment. He says, therefore, that it would be wrong to include that payment with this complaint and suggest that it should be regarded as sufficient redress in this case.

However, I consider that there are sufficient grounds to find that the salary figure of £54,741.00 provided by HMRC used in the calculation of his finalised pension benefits was valid and that they had provided Mr N with an incorrect salary of £61,573. I would normally award an amount be paid to Mr N to reflect the distress

and inconvenience he has suffered because of HMRC's error. However, I note that in addition to paying Mr N £9,000 compensation, HMRC allowed him to keep the overpaid salary he received amounting to £10,796.77. I therefore find that HMRC have provided sufficient redress to Mr N for the distress and inconvenience caused to him by their error.

21. Therefore, I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
22 July 2016