

Ombudsman's Determination

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| Applicant | Mr Y |
| Scheme | Railways Pension Scheme (CSC Section) (RPS) |
| Respondents | Computer Sciences Corporation/DXC Technology (CSC) |

Outcome

1. Mr Y's complaint is upheld and to put matters right CSC shall provide additional information to enable Mr Y's benefits to be calculated correctly. It shall also pay Mr Y £500 for non-financial injustice.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr Y has complained that CSC failed to provide the correct information about his pensionable pay to the RPS to enable his benefits to be calculated correctly.

Background information

4. Mr Y was employed by CSC following a transfer from Network Rail under the Transfer of Undertakings (Protection of Employment) Regulations 2006 in September 2007. He is a member of the CSC Section of the RPS (the **CSC Section**). Mr Y was made redundant in October 2015. CSC paid a lump sum to the RPS to take his membership up to April 2016.
5. On 28 February 2007, Network Rail wrote to Mr Y confirming his appointment as an infrastructure systems specialist. It quoted a salary of £37,650 p.a. and an inner London allowance of £2,200 p.a. Mr Y says this was incorrect because the London allowance was £2,250 p.a.
6. On 28 November 2007, CSC wrote to Mr Y setting out details of its flexible reward scheme (**CSC flex**). Mr Y's "Annual Reference Base Salary" was quoted as £41,000. Mr Y says the increase was to incorporate some of his Network Rail benefits, such as a yearly bonus. His "Flex Fund" was stated to be based on the value of his existing terms and conditions and amounted to £47,863.93. It included: holiday, death in service, extended sick pay, personal accident insurance, pension funding, London allowance (£2,250) and basic salary (£41,000).

7. In the section headed "Your Default Options", Mr Y was told, if he made no elections under the CSC flex scheme, certain default options would apply from 1 December 2007. The default options were: to retain his existing holiday entitlement at no monthly "flex charge"; 4 x base salary death in service cover at £18.04 per month; 2 x base salary personal accident cover at £1.10 per month; extended sick pay at £26.32 per month; and continued participation in the RPS at £273.33 per month. In addition, Mr Y would have £3,669.87 "Flex Cash" per month.
8. In the section headed "Your Pension Information", the document stated Mr Y's pensionable salary, as at 1 April 2007, was £33,328.50 "including London Allowance". This section also referred to an Offset of 1.5 x State Pension. The single person's basic state pension in April 2007 was £4,539.60.
9. In 2008, Mr Y received a "New entrant estimate statement". This showed that he entered the CSC Section on 1 October 2007 and his pensionable pay was £39,900.
10. Mr Y received a "Compensation Statement" in 2015. This stated that his "New Base Salary" was £48,423.12. Mr Y's "New Total Flex Fund Amount" was £57,691.31.
11. Mr Y contacted the RPS administrators (**RPMI**) in June 2016. In its response, RPMI said it had received £3,477.39 in respect of additional service. It also said it had received confirmation that Mr Y's pensionable pay was £48,423. It suggested Mr Y contact CSC if he thought this was incorrect.
12. Mr Y says CSC at no point decided to take the London allowance out of his Flex Fund and add it to his base salary. He points to the fact that his Flex Fund Amount was higher than his base salary and says this is because it contained, among other things, the London allowance.
13. Mr Y contacted CSC, in July 2016, enquiring about the pensionable salary used to calculate his benefits. Following further chasing by Mr Y, CSC responded to his enquiry on 10 October 2016. He was informed that CSC's payroll team had provided the necessary additional pensionable pay information to the RPMI. Mr Y then asked if the contributions he and CSC had been paying had been correct. CSC responded, on 7 November 2016, saying it did not believe there had been an error in the contributions paid. It said the delay in completing Mr Y's leaving service benefits lay in calculating his final pensionable salary as defined in the RPS rules. It confirmed that the additional pay information had been provided. CSC suggested Mr Y contact RPMI.
14. Mr Y contacted RPMI on 20 November 2016. On 7 December 2016, RPMI said it had contacted CSC to confirm his final salary information. In response, Mr Y said he was concerned that his pensionable salary details may have been incorrect from the time of his TUPE transfer. On 19 December 2016, RPMI informed Mr Y that CSC had confirmed its records were up to date. It suggested that some elements of Mr Y's salary may have been non-pensionable. It suggested he contact CSC. In subsequent

emails, RPMI explained that Mr Y's benefits were not calculated by reference to the contributions paid.

15. On 13 January 2017, RPMI informed Mr Y that CSC had confirmed that the pensionable salary used to calculate his contributions and preserved benefits was correct. It also said that, although Mr Y had received a London weighting with Network Rail, it did not always apply with other RPS employers. Mr Y contacted CSC again to say that RPMI had not been instructed to amend his final pensionable salary or recalculate his benefits. CSC acknowledged Mr Y's email on 25 January 2017. It said it would discuss the matter with its payroll staff and be in touch with a plan to resolve the matter.
16. Having not heard from CSC, on 14 February 2017, Mr Y contacted the Pensions Advisory Service (**TPAS**). He also made a further attempt to obtain information from CSC by writing to its HR Director. CSC acknowledged receipt of the letter but did not provide a response. Mr Y's TPAS advisor contacted CSC on 17 May 2017. CSC acknowledged the email on the same day and promised to investigate. TPAS received no further contact from CSC.
17. Mr Y applied to the Pensions Ombudsman (**TPO**). A formal response was requested from CSC on 12 October 2017. This was acknowledged by CSC on 13 October 2017. CSC was contacted again on 16 May 2018 and given a further opportunity to respond. It failed to do so. A copy of the CSC Section rules was obtained from RPMI.

CSC Computer Sciences Limited Shared Cost Section Rules

18. Under the rules applying to the CSC Section, a member's pension is calculated by reference to Final Average Pay.
19. "Final Average Pay" is defined as:

“... the greater of the average of the Member's Pay and the Member's Pensionable Pay during the 12 months ending on the date the Member leaves Pensionable Service or reaches age 75 or, if an election has been made by a Protected Person or, in respect of any Member, by the Designated Employer under Rule 5A(5), the date the Member leaves Service, whichever is earlier. If the Member was not in Pensionable Service for the whole of the last 12 months, his Pay and Pensionable Pay shall be deemed to continue for the balance of the year for the purpose of calculating his Final Average Pay ...”
20. “Pay” is defined as:
 - “(a) in the case of a Member who is remunerated at a fixed rate of pay per week, the Member's annual equivalent rate of pay;
 - “(b) in the case of a Member who is remunerated at a fixed rate of pay per annum, that rate of pay, together in each case with such other

remuneration as the Trustee, with the consent of the Participating Employer, from time to time decides,

- (c) except for the purposes of Rule 4B (Additional Contributions by Participating Employers), in respect of any Member who is a Part-time Employee, the equivalent full-time annual rate of pay,

provided that where a Member participates in a Participating Employer's flexible benefits programme and has elected to take part of his remuneration within that flexible benefits programme in the form of benefits in kind rather than basic pay, his 'basic pay' for the purposes of determining his Pay shall be the rate of basic pay he would have received had he not made such an election."

21. "Pensionable Pay" is defined as:

"... the Member's Pay calculated at 1st April prior to the Section Year in question or, if later, the date of joining the Section. Any retrospective change in a Member's Pay shall be ignored for the purposes of calculating his Pensionable Pay ..."

22. Rule 5A "Benefits becoming payable on or after Pension Age" provides that the pension shall be either: 1/60th of Final Average Pay less 1/40th of Final Average Basic State Pension; or 1/120th of Final Average Pay, whichever is the greater.

Adjudicator's Opinion

23. Mr Y's complaint was considered by one of our Adjudicators who concluded that further action was required by CSC. The Adjudicator's findings are summarised briefly below:-

- Mr Y had asserted that his pensionable pay should include a London allowance of £2,250. His deferred pension had been calculated by reference to a salary of £48,423. This was Mr Y's base salary for 2015, as evidenced by his 2015 Compensation Statement.
- Under the CSC Section rules, Pay was defined as the member's fixed rate of pay per annum. It was not restricted to the member's base salary. In fact, base salary was not a term used in the CSC Section rules. The definition of Pay also provided that, where a member had elected to take benefits in kind under a flexible benefits programme, his/her Pay was the basic pay he/she would have received had he/she not made such an election.
- In 2007, Mr Y was entered into CSC's flexible reward scheme; CSC flex. He was allocated a Flex Fund of £47,863.93. This included, amongst other things, a basic salary of £41,000 and London allowance of £2,250. Mr Y's Flex Fund was based on his terms and conditions with Network Rail. He was told that, if

he did not make an election under the CSC flex scheme, certain default options would apply from 1 December 2007. The default options included: holiday, death in service benefit, personal accident cover, extended sick pay, and pension. Each was shown with a monthly CSC flex charge. Mr Y was also told he would receive £3,669.87 Flex Cash per month. This was the balance of his Flex Fund once the default options had been accounted for.

- With effect from 1 December 2007, Mr Y was no longer receiving a London allowance as a separate identifiable amount. It had, effectively, been bundled up in his Flex Fund and formed part of his Flex Cash.
- However, this did not mean that the London allowance did not form part of Mr Y's Pay for the purposes of the CSC Section rules. It still formed part of his fixed rate of pay per annum; albeit not as a separately identified element.
- The definition also stated that, for members who participated in a flexible benefits programme, "Pay" shall be the rate of basic pay he/she would have received had he/she not made any elections for benefits in kind. It was clearly intended that Pay should be more than simply Mr Y's base salary.
- Mr Y's 2015 Compensation Statement showed that his Flex Fund amounted to £57,691.31 and his base salary was £48,423.12. CSC should have notified RPMI of the amount of Mr Y's Flex Cash, together with any other elements of Mr Y's Flex Fund which represented benefits in kind. Instead, it appeared only to have notified RPMI of Mr Y's base salary. This amounted to maladministration on the part of CSC. Mr Y had suffered injustice as a consequence because his deferred benefits had not been calculated correctly.
- Mr Y had made reasonable enquiries of CSC to try and ascertain whether his deferred benefits had been calculated correctly. CSC had failed to respond in an appropriate manner. It had informed Mr Y that additional pay information had been provided for RPMI when this did not appear to have been the case. It also failed to co-operate with TPAS or TPO. In the Adjudicator's view, the circumstances warranted a payment to Mr Y for non-financial injustice in line with the Ombudsman's current guidelines.
- She suggested that CSC should provide RPMI with the correct Pay figures for Mr Y and pay him £500 for significant non-financial injustice.

24. Whilst Mr Y accepted the Adjudicator's opinion, CSC failed to acknowledge or respond to the opinion. In view of the lack of co-operation on CSC's part, it was felt appropriate that I should issue a legally binding determination, which can be enforced if necessary. My further comments follow.

Ombudsman's decision

25. Mr Y is entitled to the benefits set out in the CSC Section rules. In order that RPMI can correctly calculate those benefits, it is necessary for CSC to provide the appropriate pay details. It has so far failed to do so. This amounts to maladministration on its part.
26. Moreover, it failed to respond appropriately to Mr Y's reasonable enquiries or to co-operate with TPAS and TPO. As a result, Mr Y has been forced to pursue his case through the dispute procedure all the way to me. In fact, all that was needed was for CSC to provide RPMI with the correct information about Mr Y's Pay, including those elements of his Flex Fund which represented benefits in kind. As his former employer, this information should have been readily to hand.
27. Therefore, I uphold Mr Y's complaint.

Directions

28. Within 28 days of the date of this Determination, CSC shall provide RPMI with information about Mr Y's Flex Fund and identify those elements which represented benefits in kind.
29. Within the same 28 days, CSC shall pay Mr Y £500 for significant distress and inconvenience.

Karen Johnston

Deputy Pensions Ombudsman
2 November 2018