

Ombudsman's Determination

Applicant	Mr F
Scheme	Principal Civil Service Pension Scheme (PCSPS)
Respondent	MyCSP Limited (MyCSP)

Outcome

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

Complaint summary

3. Mr F's complaint is that MyCSP failed to inform him, when he took preserved benefits from the PCSPS, that it would become possible for him to transfer his benefits in another occupational pension scheme, with Serco, back to the PCSPS. He says had he known this, he would have re-joined the PCSPS, aggregated his pre-1996 PCSPS benefits with his post-1996 benefits and received higher overall benefits.

Background information, including submissions from the parties

4. Mr F was employed by the Ministry of Defence (**MoD**) and was a member of the Classic section of the PCSPS. On 12 August 1996, Mr F's department became outsourced to Serco.
5. Around the same time, Mr F was given the chance to transfer his accrued benefits in the PCSPS to Serco's occupational scheme. However, he chose not to do so and his pre-August 1996 benefits became preserved (**pre-1996 pension**).
6. On 12 August 1996, Mr F became a member of Serco's occupational scheme.
7. In 1999, the Fair Deal policy came into force, setting out how pension issues should be dealt with when staff are compulsorily transferred from public sector bodies to private sector organisations delivering public services.

PO-17947

8. In October 2013, the Fair Deal policy was reformed by HM Treasury, although the amended policy would not apply until private-sector organisations renewed their contract with the public-sector body (in Serco's case, this was in September 2016).
9. In September 2015, Mr F contacted MyCSP to enquire about taking his preserved benefits from the PCSPS from November 2017, two years before his normal retirement date.
10. On 1 October 2015, Mr F completed the paperwork to bring his pre-1996 pension into early payment with an actuarial reduction. These benefits were put into payment on 15 November 2015.
11. In early 2016, shortly after his benefits had come into payment, Mr F discovered that transfers back into the PCSPS would soon become possible.
12. He complained that MyCSP had not told him, when he took his preserved benefits, that a transfer from Serco's occupational scheme back to the PCSPS would become a possibility. He said had it told him of this future change, he would have waited and chosen to aggregate his service, thereby receiving higher overall benefits.
13. In addition, he said that MyCSP acted incorrectly when it did not apply the PCSPS's abatement regulations, specifically Regulation 3.26, to his pre-1996 pension. He said it was MyCSP's failure to apply this regulation that was the cause of his being unable to aggregate his two periods of service.
14. On 18 March 2016, Serco responded to Mr F. It said:

“...the PCSPS administrators [MyCSP] acted in good faith as they did not have any knowledge of the proposals – these were being discussed [between] MoD and the Governments Actuary Department... your benefits, previously accrued in PCSPS and currently in payment, are not subject to the rule of abatement, meaning that they will not be affected by your proposed re-entry to PCSPS. Had the rule of abatement applied, you would indeed have been at a disadvantage, but clearly this is not the case.”
15. On 19 May 2017, Mr F emailed MyCSP and suggested that an alternative approach to resolving his complaint would be for it to allow him to repay the pension benefits he had received, so that he could aggregate his two periods of service.
16. On 14 June 2017, MyCSP responded to Mr F. It said:

“...as your pension benefits have been brought into payment we would be unable to cease the payment of your pension and retrospectively aggregate your benefits. This goes against [HMRC] legislation which advises that once a pension has been brought into payment it must be paid for life and cannot be stopped.”
17. Mr F appealed.

PO-17947

18. On 18 July 2017, MyCSP responded under the PCSPS's Internal Dispute Resolution Procedure (**IDRP**). Among other things, it said:

“For clarification the abatement of your pension benefits has no bearing on your eligibility to aggregate your two separate periods of service... The abatement of a member's pension benefits has no impact on their ability to aggregate two periods of service. Had you been subject to full abatement your benefits would simply have been suspended until the abatement was lifted and you would still have had two separate awards.”

19. Dissatisfied with MyCSP's response, Mr F referred his complaint to this Office.

20. Following this Office's request, MyCSP provided its formal response. Among other things, it said:

“...members could only aggregate a new period of service with an old period of service resulting in benefits which remained preserved in the Scheme. [Mr F] preserved his PCSPS benefits accrued to 12 August 1996 but claimed early payment under PCSPS rule 3.10c in November 2015. Therefore, on re-joining the PCSPS in September 2016 Mr F no longer had preserved benefits to aggregate with his second period of service.”

Adjudicator's Opinion

21. Mr F's complaint was considered by one of our Adjudicators, who concluded that no further action was required by MyCSP. Her findings are summarised below:-

- Mr F said that MyCSP should have informed him of the impending change. However, in the Adjudicator's view, MyCSP had done nothing wrong. MyCSP could not be held responsible for not providing Mr F with information regarding future changes to the Fair Deal policy. MyCSP played no part in the decision which brought about the new Fair Deal policy; and, it was likely unaware of the proposed changes when Mr F applied to start taking early benefits.
- Mr F said he should be permitted to refund the pension payments he had received from the PCSPS, in order to become a member with preserved benefits. However, HMRC legislation is clear that once a pension has been put into payment, it could not be stopped or returned to the pension arrangement. It had to be paid for the lifetime of the member. MyCSP was therefore correct in not allowing Mr F to return his pension payments and re-instate his preserved benefits. This would have been in contravention of HMRC guidelines and legislation.
- Mr F also said his pension should have been abated by MyCSP. He said that if his pension payments were abated, this would have the effect of returning his pension benefits to preserved status, thus allowing him to aggregate his two periods of service. The Adjudicator said abatement would only place his pension payments on hold or reduce them for a period; it would not have changed the status of his benefits.

PO-17947

- In addition, PCSPS abatement rules could not be applied to Mr F because, at the time of his early retirement, he did not meet the definition of a re-employed Civil Servant; he was still contracted out to Serco, and therefore accruing benefits in Serco's occupational scheme. So, he could not have been regarded as a re-employed civil servant; only re-employed civil servants were potentially subject to abatement.
 - In summary, the Adjudicator's view was Mr F was not permitted to return his pension payments. Nor could his benefits be abated in order to allow him to aggregate his pre- and post-1996 service. In her view, MyCSP was correct in its understanding and its application of the PCSPS Regulations, so the complaint could not be upheld.
22. MyCSP had nothing to add to the Adjudicator's Opinion. Mr F did not accept the Opinion and the complaint was passed to me to consider. Mr F provided his further comments, which do not change the outcome. I agree with the Adjudicator's Opinion and will therefore only respond to the key points made by Mr F for completeness.

Ombudsman's decision

23. Mr F made three further points. First, he said it was untrue, as the Adjudicator had stated in her Opinion, that Serco renewed its contract with the MoD in or around September 2016. He said there never was a new contract. However, Mr F has not provided any evidence to support this and, in any case, whether Serco's contract was renewed in September 2016 or a later date, Mr F's benefits were put into payment sometime before that, in November 2015.
24. Further, it is not disputed that Mr F was able to re-join the PCSPS, and in fact did so in September 2016. He would not have been able to re-join the PCSPS unless Serco had renewed its contract with the MoD, since the Fair Deal only applied to private sector firms carrying out relevant work for public sector organisations.
25. Second, he said at no point during the consultation exercise preceding the reformed Fair Deal, was it made clear by Serco whether abatement would apply to his benefits in payment. Further, MyCSP informed him that the abatement rules had not changed, that abatement would apply to his benefits in payment and that, if he transferred back to the PCSPS, his benefits would be "frozen" and his years "aggregated over".
26. Only MyCSP has been named as a respondent to this complaint, so I cannot consider whether Serco misinformed Mr F about the abatement of any of his benefits. Further, there is insufficient evidence that MyCSP gave Mr F incorrect information; that it told him his benefits in payment would be abated, and if he transferred his benefits back to the PCSPS they could be "frozen" and "aggregated". In any case, even if he was so informed, this has not caused him a financial loss. By the time that the option to transfer back into the PCSPS became available to him, in September 2016, Mr F's benefits from deferred service had already been put into payment.
27. Also, Mr F says that the rule of abatement was never discussed during the consultation exercise, and he does not believe it stopped applying thereafter.

28. I have considered Mr F's further points carefully. However, on the evidence available, I do not find he was misinformed with regard to abatement. In any case, his complaint does not turn on whether abatement should apply to his benefits. It turns on whether MyCSP should have told him, in October or November 2015, when he was applying for early payment of his deferred benefits, that he might wish to re-consider and take advantage of the possibility of aggregating his preserved period of service (the period ending August 1996) with his new period of service with Serco.
29. I do not take the view that MyCSP should have informed him. When the Fair Deal was amended in October 2013, the amended policy allowed employees of companies, such as Serco, to be admitted to the PCSPS; so, if they had previously been compulsorily transferred out, they would benefit from fairer pension terms. Under the policy, eligible staff who preserved their benefits in the PCSPS, when they transferred out, were permitted to re-join the PCSPS as if the transfer had never occurred. They were given a choice between (a) aggregating their periods of service or (b) having two separate accruals.
30. However, as the Adjudicator explained, MyCSP had no role in deciding the terms of the reformed Fair Deal. Moreover, it was not for MyCSP to inform Mr F that he would be able to transfer back to the PCSPS and aggregate his periods of service. MyCSP could not have known, in/around September 2015, that Mr F would become, a year later, part of a compulsory transfer back into the PCSPS. In any case, MyCSP would not have been permitted to give Mr F financial advice on whether he should do this.
31. To provide some further context in relation to abatement, if a member has benefits in the PCSPS, and then takes a job with an organisation that is covered by the CSP arrangements, he may not earn more by way of re-employed salary and pension than he was earning previously. If his new salary and pension exceed his previous salary, MyCSP can deduct the excess from his pension. This is "abatement".
32. Abatement would usually apply to Mr F's current pension in payment (assuming that he was receiving more, by way of salary and pensions, than he was paid previously). The normal abatement rules do not, however, apply to the new Fair Deal policy, this is a special allowance. But in any case, this is not relevant to the question of aggregation. Members could only aggregate a new period of service with an old period of service if the old period of service remained preserved in the Scheme. By the time aggregation became possible for Mr F in September 2016, it was too late for him; he had already put his formerly preserved PCSPS benefits into payment the previous year, in November 2015.
33. Finally, I agree that MyCSP cannot permit Mr F to return the pension payments he has received, and for him to re-instate his preserved benefits and aggregate his pre- and post-1996 PCSPS service. This is not allowed under HMRC guidelines and regulations, which require that benefits once put into payment must continue for life.

PO-17947

34. Therefore, I do not uphold Mr F's complaint.

Anthony Arter

Pensions Ombudsman
20December 2018