

Ombudsman's Determination

Applicant	Mr R
Scheme	Principal Civil Service Pension Scheme (the Scheme)
Respondent	MyCSP

Outcome

1. I do not uphold Mr R's complaint and no further action is required by MyCSP.

Complaint summary

2. Mr R's complaint concerns MyCSP's request that he repays an overpayment of retirement benefits made to him from the Scheme. He says that MyCSP should write off the overpayment and that repaying it would cause him financial hardship.

Background information, including submissions from the parties and timeline of events.

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. On 31 March 2014, Capita sent Mr R a letter concerning unclaimed pension benefits (**The March Letter**). The letter said:

"Capita is responsible for administering the Principal Civil Service Pension Scheme on behalf of the Cabinet Office.

We have made an initial check of our records and it appears that you may be entitled to benefits from our scheme, although at this stage we cannot make any guarantee. To enable us to further investigate your entitlement you are invited to contact us. An application form can be obtained by completing the request at the foot of the page and returning the letter to the address below."

5. On 8 April 2014, Mr R completed and returned the letter to Capita.
6. On the same day, Capita sent Mr R a 'Personal Details Form (Deferred)' (**the Form**), which it asked him to complete should he wish to claim retirement benefits from the

Scheme. It said that the current value of his annual pension was £1,532.83 and that the lump sum was £4,548.25.

7. Mr R has said that he telephoned Capita to advise that he had not worked for the Civil Service. However, he had been in the Territorial Army. He has also said that Capita told him that “that would be it”.
8. On 14 April 2014, Mr R completed the Form, signed the declaration, and returned it to Capita. The declaration stated that:

“I DECLARE that I am entitled to payment of my preserved pension in respect of my employment covered by the Civil Service pension scheme and I certify that the information given on this form is correct and completed to the best of my knowledge and belief.

I have read the Notes for Pensioners and I understand that any overpayment of the benefits may be recovered and that I am responsible for notifying Capita of any change of circumstances, which might affect my entitlement.”
9. On 23 April 2014, Capita wrote to Mr R and acknowledged receipt of the Form. It said that he would be paid a lump sum of £4,548.25 and an annual pension of £1,532.83.
10. Capita provided a statement of the Lifetime Allowance (**the LTA Statement**) Mr R had used up under the Scheme. However, it quoted a National Insurance number (**NI number**) that was not his.
11. On 25 April 2014, Mr R was paid the lump sum with his first pension payment, including arrears backdated to 11 November 2013.
12. In September 2014, the Cabinet Office notified Mr R that MyCSP had taken over responsibility for the administration of the Scheme from Capita.
13. On 28 May 2015, Mr R noticed that a letter from MyCSP quoted a NI number that was not his. He telephoned MyCSP and he was asked to provide evidence of his correct NI number. He has said that he also told MyCSP that he had not worked for the Civil Service and had been in the Territorial Army. He said he was told that he was entitled to the benefits he was being paid from the Scheme.
14. Mr R subsequently provided MyCSP with proof of his NI number. MyCSP has confirmed that it received details of Mr R’s NI number on 27 July 2015.
15. On 6 March 2018, MyCSP notified Mr R that he was not entitled to any benefits from the Scheme. It said:-
 - He had received total net payments of £9,846.62 in error. It had included a breakdown of the overpayment.
 - Payments could not be made from the Scheme other than in accordance with the regulations (**the Regulations**) that govern it.

- It required him to repay the total amount of £9,846.62 that he had received in error.
 - If he was unable to repay the full amount, he should contact it to discuss repayment options. It was prepared to consider any financial hardship that repayment may cause him.
16. On 21 March 2018, MyCSP wrote to Mr R in response to his telephone call of that same day, when they had discussed his ability to repay the overpayment. It asked him to complete a 'statement of means' form and provide evidence of his income and expenditure.
 17. On 27 March 2018, Mr R contacted MyCSP. He explained that he would find it difficult to make the repayment it had requested. MyCSP subsequently received a telephone call from the Citizens Advice Bureau. It informed MyCSP that Mr R was not in a position to repay the overpayment.
 18. On 11 April 2018, MyCSP wrote to Mr R and enclosed a copy of the statement of means form for Mr R to complete.
 19. On 25 April 2018, Mr R contacted MyCSP and asked for his case to be considered under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**). On 14 May 2018, MyCSP received his completed stage one IDRP form.
 20. On 21 May 2018, MyCSP notified Mr R that his complaint could not be considered under the IDRP as he was not a member of the Scheme. It advised that his case had been referred to its complaints department and it would provide a formal response.
 21. On 20 June 2018, MyCSP provided its formal response but did not uphold the complaint. It said:-
 - It was required to recover the overpayment as Mr R had received benefits to which he was not entitled.
 - He could contact it to discuss repayment options if he was unable to pay the full amount.
 22. On 2 and 4 July 2018, Mr R complained to MyCSP and asked for his complaint to be considered under the IDRP.
 23. On 6 July 2018, MyCSP said that an investigation would be undertaken under the IDRP. It advised that it could not consider financial hardship, as a defence against recovery, until Mr R had completed the statement of means form and provided supporting evidence.
 24. On 7 July 2018, Mr R returned the statement of means form to MyCSP.

25. On 3 September 2018, MyCSP provided its stage one IDRPs response. It repeated the points it had made in its earlier responses and added that:-
- HM Treasury's 'Managing Public Money' guidelines (**the Guidelines**) include guidance on the recovery of overpayments.
 - It was unable to ascertain why Capita had contacted Mr R in March 2014. It may have been part of a member tracing exercise. It may also have been due to Capita administering benefits on behalf of an employer that Mr R had previously worked for.
 - The March Letter clearly stated that the benefits were payable from the Scheme and that there was no guarantee that Mr R would be entitled to any benefits.
 - The records MyCSP inherited from Capita made no reference to the telephone call that Mr R said he made to Capita around the time he was sent the Form.
 - Mr R completed the Form within a week of receiving it. If he had concerns regarding his entitlement to benefits from the Scheme, he could have conducted further research. For example, he could have contacted his former employer or checked historical payslips for details of contributions deducted from his pay in respect of the Scheme. If he could not recall receiving correspondence concerning preserved benefits held in the Scheme, then the need for additional checks was particularly relevant.
 - Mr R provided his NI number when he completed the Form. The LTA Statement, that he was subsequently sent, showed a different NI number. So, it was unable to conclude that he accepted the benefits in good faith and that he had a defence against recovery of the overpayment.
 - The lack of evidence that Mr R accepted the benefits in good faith meant that it could not be held responsible for the loss of any benefits he would otherwise have received from the Department of Work and Pensions (**the DWP**).
26. On 26 October 2018, MyCSP offered Mr R a repayment plan that would require him to make an initial payment of £111.62 followed by 59 monthly payments of £165.00.
27. On 5 November 2018, Mr R asked for his complaint to be considered under stage two of the IDRPs. He advised MyCSP that he did not receive a copy of the stage two IDRPs form it had referred to in its stage one response.
28. On 9 November 2018, MyCSP sent Mr R a copy of the stage two IDRPs form which he subsequently completed. He said that MyCSP had blamed him for the overpayment in its stage one IDRPs response. However, Capita and MyCSP had assured him that he was entitled to the benefits.
29. On 19 June 2019, the Cabinet Office provided its response. It advised that it had treated Mr R's complaint as a standard complaint, rather than a complaint under the IDRPs, for the reasons previously given by MyCSP in May 2018.

30. It said:-

- It was possible that Capita was using a tracing service to try to locate a former Scheme member with similar details to Mr R's and the tracing service provided Mr R's address in error.
- It agreed with MyCSP's view that Mr R could not demonstrate good faith. He had accepted the benefits knowing that he was not entitled to them as he had never worked for the Civil Service.
- Mr R could contact the DWP to find out how he could claim any benefits that he may have been eligible to receive.
- If Mr R owned a property, a charge could be put against it to claim the overpayment from his estate on his death.

31. On 3 July 2019, MyCSP wrote to Mr R and provided a summary of the Cabinet Office's response to his complaint. It suggested a revised repayment plan that would entail an initial repayment of £117.36 and 83 monthly payments of £117.22.

32. On 15 January 2020, MyCSP provided its formal response to the complaint that Mr R subsequently raised with The Pensions Ombudsman (**TPO**).

33. MyCSP confirmed that no recording existed of Mr R's telephone call to it on 28 May 2015. The note of the conversation made at the time (**the Note**) confirmed that Mr R had telephoned it. Furthermore, he had advised that the NI number it held for him was incorrect. The Note also confirmed MyCSP had asked him to provide evidence of his correct NI number.

34. Mr R made the following additional submissions:-

- He had been in receipt of tax credits; he would have received more had he not been paid benefits from the Scheme.
- He would like MyCSP to admit that it is at fault and contribute towards the repayment of the overpayment.
- He questions why MyCSP did not investigate further when he advised that the NI number shown on its correspondence was not his.

35. TPO has been provided with a copy of Mr R's statement of means. This indicates that Mr R and his wife have savings of £7,471.99 and surplus monthly income of approximately £114 after paying essential bills.

Adjudicator's Opinion

36. Mr R's complaint was considered by one of our Adjudicators who concluded that no further action was required by MyCSP.

37. The Adjudicator's findings are summarised below:-

- Mr R was paid benefits from the Scheme that he was not entitled to receive. So, there was no dispute that a problem had occurred and that this had resulted in an overpayment of £9,846.62.
- Before the Adjudicator considered whether Mr R had any other legal defences available to the recovery of the overpaid benefits, he considered whether the Limitation Act 1980 (**the Act**) applied in this case. The Adjudicator explained that the Act can prevent the recovery of an overpayment made more than six years before the claimant, in this case MyCSP, took formal action to recover it.
- The date that formal action was taken by MyCSP was the date it provided TPO with its formal response to the complaint. The formal response was provided on 15 January 2020. The first overpayment occurred in April 2014. So, the Act did not provide Mr R with a defence to recovery because MyCSP made its claim within six years of the date of each overpayment.
- The most common defence against recovery of an overpayment is referred to as "change of position". That is, the recipient has changed their position such that it would be unjust to require them to repay the overpayment; either in whole or in part. Change of position is a defence to a claim in unjust enrichment. The recipient must be able to show on the balance of probabilities that:
 - their circumstances have changed detrimentally;
 - the change of circumstances was caused by receipt of the overpayment; and
 - they are not disqualified from relying on the defence.
- The Adjudicator explained that a change of position defence is not available to an individual who did not act in good faith when changing their position.

38. The Adjudicator went on to consider the good faith test in the context of Mr R's case and made the following comments:-

- To meet the good faith test, Mr R must not have had actual knowledge of the overpayment. The good faith test would not be considered as having been met if the recipient of the overpaid benefits had doubts over their entitlement to the benefits. In other words, the recipient was aware that they might not be entitled to a pension, but then failed to make enquiries of the scheme before spending the money (The Adjudicator explained that this is often referred to as having "Nelsonian knowledge"). The Adjudicator also explained that this includes situations where someone might suspect that there was something amiss and could have taken simple steps to ascertain the correct position but did not do so. In other words, the recipient of an overpayment cannot turn a blind eye.

- Mr R had explained that he telephoned Capita at the time to highlight that he had not been employed in the Civil Service. However, he was told that the benefits related to his service in the Territorial Army.
- Unfortunately, no record of this telephone conversation was passed to MyCSP by Capita. So, the Adjudicator could not be sure exactly what was said by Mr R and also what responses were provided by Capita.
- In the Adjudicator's opinion, Mr R had an opportunity to seek clarity from Capita regarding his entitlement before he returned the Form. Particularly given that, by returning the Form, he was declaring that he was entitled to the benefits it had offered him in the Scheme. For example, he could have written to Capita and asked for details of the employment to which the benefits related. If he had requested information such as the name of the employer, and the period of his pensionable service, it would have been clear to him that he was not entitled to any benefits from the Scheme.
- Furthermore, Mr R had received no documentation suggesting that he had benefits in the Scheme. For example, an annual benefit statement or a preserved benefit statement. Consequently, he would not have been expecting to be informed that he was entitled to benefits.
- The Adjudicator noted that, in May 2015, Mr R raised further concerns regarding his eligibility for benefits from the Scheme, after noticing that a letter from MyCSP quoted a different NI number. The Adjudicator also noted that Mr R maintained that he telephoned MyCSP at the time and that he said he was told he was entitled to those benefits.
- Unfortunately, MyCSP did not have a recording or transcript of the telephone conversation. The Adjudicator highlighted that the Note only referred to the part of the telephone call during which the error in Mr R's NI number was discussed. No record was held by MyCSP of the conversation concerning the fact that he had not been employed in the Civil Service, or the response provided by the call handler. Without knowing what was said by both parties at the time, the Adjudicator said he could not consider the Note as being sufficient evidence that Mr R had adequately questioned his entitlement to the benefits.
- Having considered the evidence, the Adjudicator's view was that Mr R's intentions, in claiming the benefits from the Scheme, were honest. However, in the Adjudicator's opinion, Mr R knew that he may not be entitled to these benefits. So, the good faith test was not satisfied and Mr R did not have a change of position defence to the recovery of any part of the overpayment.

39. The Adjudicator then considered the defence of estoppel:-

- The Adjudicator noted that there were three requirements that needed to be satisfied to establish estoppel by representation; namely:
 - a clear representation or promise made by the defendant upon which it is reasonably foreseeable that the claimant will act;
 - an act on the part of the claimant which was reasonably taken in reliance upon the representation or promise; and
 - after the act has been taken, the claimant must be able to show that he/she will suffer detriment if the defendant is not held to the representation or promise.
- The Adjudicator did not consider that Mr R's acceptance of the benefits he was subsequently paid by the Scheme was reasonable in the circumstances. Mr R had the requisite information to know that he might not be entitled to these benefits. Similarly, because of the knowledge Mr R had at the time, it cannot be argued that there was a common assumption between the parties that Mr R should receive the benefits he was receiving in error. The Adjudicator said that this is necessary to establish a defence of estoppel by convention. Consequently, the Adjudicator did not consider that Mr R had a valid estoppel defence.

40. The Adjudicator said that he had not been able to identify the necessary elements for a contract to exist. In particular, he could not see that there was any intention on the part of Capita, or MyCSP, to enter into a legal relationship with Mr R beyond any entitlement that they considered he may have under the Regulations.

41. In the Adjudicator's view, Mr R did not have any defences available to the recovery of the overpayment of £9,846.62. The fact that Capita paid him benefits which he was not entitled to was nonetheless very unfortunate. MyCSP's request for the return of the overpayment would likely have caused Mr R distress.

42. However, the Adjudicator was of the view that Mr R had ample opportunity at the time to ascertain whether he had an entitlement in the Scheme before signing the Form. For this reason, the Adjudicator did not consider it appropriate to recommend that MyCSP make a payment for any distress and inconvenience he had suffered.

43. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

44. Mr R provided some further comments in response to the Opinion. In summary, he said:-

- He believed Capita when it informed him that his pension in the Scheme related to his service in the Territorial Army.

- He notified MyCSP that the NI Number it had quoted for him was incorrect. This was a missed opportunity for MyCSP to identify that something was wrong.
- He always believed that he would have to pay the money back. Had MyCSP admitted it was at fault, and waived part of the overpayment, he would have made a payment to the Scheme.
- He has paid tax on the pension he has received from the Scheme.

45. The Cabinet Office provided some further comments. In summary, it said:-

- It believed that Mr R's comment that he always felt that he would have to pay the money back supported its position that the good faith test was not met.
- Any tax Mr R paid in respect of the pension he had received from the Scheme had been offset against the amount it was seeking to recover.

46. I have considered the additional points raised by Mr R and the Cabinet Office. However, they do not change the outcome, I agree with the Adjudicator's Opinion.

Ombudsman's decision

47. Mr R's complaint concerns MyCSP's request for him to repay the benefits that have been paid to him in error from the Scheme.

48. Mr R was first contacted by Capita in March 2014, concerning his possible entitlement to benefits in the Scheme. Mr R said that he telephoned Capita and queried this. He maintains that he was told that he was entitled to a pension from the Scheme in respect of his service in the Territorial Army.

49. I note that MyCSP has no evidence of the telephone conversation Mr R says he had with Capita at the time. I do not consider that the telephone call in question would materially change the outcome in the circumstances. On reviewing the evidence, I do not agree that Mr R's service in the Territorial Army would have given him the reasonable expectation that he was entitled to benefits from the Scheme.

50. I agree with the Adjudicator that Mr R should have made enquiries into his eligibility for the benefits before he completed the Form. Particularly, as he had not worked in the Civil Service at any time or received any earlier communications concerning these benefits.

51. Mr R had concerns about his eligibility to receive benefits from the Scheme. However, there is no evidence that he made additional enquiries before claiming those benefits. The good faith test has not been met because Mr R had at least "Nelsonian knowledge" that he may not be entitled to those benefits. I find that Mr R does not have a change of position defence against the recovery of the overpayment. Similarly, the other defences against the recovery of the overpayment do not apply in this case for the reasons explained by the Adjudicator.

52. I accept that MyCSP could have made enquiries at the time it was notified that the NI Number it had quoted for Mr R was incorrect. However, I do not consider that the alleged failure amounts to maladministration on the part of MyCSP in the circumstances. I find that it was reasonable for MyCSP to have considered that Mr R's enquiry was a straightforward request for MyCSP to correct his NI number on its records. I also find that it was a missed opportunity for Mr R to make MyCSP aware of his concerns that benefits were being paid to him from the Scheme in error.
53. While I sympathise with Mr R's position, I do not agree that MyCSP can be held responsible for any distress and inconvenience he has suffered in connection with this matter. Mr R completed the Form to claim benefits from the Scheme without making reasonable enquiries to establish that he was entitled to those benefits.
54. Mr R should now contact MyCSP to discuss a repayment plan in respect of the amount of £9,846.62 that is due to the Scheme. MyCSP has clarified that any tax Mr R has paid in respect of the pension he received from the Scheme has been offset against the amount it is seeking to recover.
55. The information Mr R has provided on the statement of means form, suggests that the repayment plans MyCSP has offered him are unreasonable and would cause Mr R undue hardship.
56. It would be reasonable in the circumstances for MyCSP to give Mr R the opportunity to provide further evidence of his financial circumstances to ensure that recovery would not cause him financial difficulty.
57. Mr R may wish to consider making a one-off lump sum payment to the Scheme. This would reduce the amount outstanding to a level that he could more easily afford to pay by way of monthly instalments.
58. I do not uphold Mr R's complaint.

Anthony Arter

Pensions Ombudsman
29 November 2022