

Ombudsman's Determination

Applicant	Mr N
Scheme	Principal Civil Service Pension Scheme (PCSPS)
Respondents	Civil Service Pensions (MyCSP) Cabinet Office

Outcome

1. Mr N's complaint is partly upheld against MyCSP. To put matters right, MyCSP shall within 28 days of the date of this Determination pay Mr N a further £500 for the serious distress and inconvenience he sustained as a result of its uncoordinated approach to administering his claims.

Complaint summary

2. Mr N has complained that:-
 - He was misinformed, in 2017 and 2018, that his membership of the 1972 (**Classic**) Section of the PCSPS was still live and that he could retire under the Classic Section.
 - His benefits have not been calculated correctly; in particular, his ill health retirement benefits should be calculated by reference to the Classic Section, his injury benefit should be backdated to 16 January 2019, and he is entitled to receive a refund of his contributions to the Widow(er)s' Pension Scheme (**WPS**).
 - MyCSP did not properly consider his complaint at stage one of the internal dispute resolution procedure (**IDRP**). It dismissed his complaint despite not having paperwork from the previous administrators or the evidence to dispute his claim.
3. Mr N also complained that his two periods of service in the PCSPS had not been aggregated when he rejoined the PCSPS in 2004. This part of Mr N's complaint has not been accepted for investigation because it is outside the time limits for bringing a complaint to my Office.

Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of correspondence between the parties.
5. Mr N was employed by the Prison Service from August 1999 to January 2002. He was a member of the Classic Section of the PCSPS. When Mr N left his employment in 2002, he became entitled to preserved benefits in the Classic Section payable at his normal pension age.
6. The Classic Section was closed to new members on 30 September 2002.
7. Mr N re-joined the Prison Service in June 2004. He became a member of the 2002 (**Premium**) Section of the PCSPS.
8. In 2015, a new pension scheme was established under the Public Service Pensions Act 2013 (the **Alpha Scheme**). Members of the Classic and Premium Sections of the PCSPS who did not have protected membership were transitioned to the Alpha Scheme. The date on which the member transitioned depended on their age on 1 April 2012¹. Mr N transitioned to the Alpha Scheme on 1 April 2015.
9. On 26 September 2017, Mr N telephoned MyCSP to query the pensionable service shown on his annual benefit statement. He queried why the statement only showed service from 2006 and advised MyCSP that he had service in the Classic Section between 1999 and 2002.
10. In May 2018, MyCSP requested information from Mr N's employer. MyCSP has said that the employer initially informed it that it had no record of a preserved benefits award for Mr N. MyCSP also said that, on 12 May 2018, the employer confirmed Mr N's last day of service. On 14 May 2018, MyCSP issued a preserved benefits statement for Mr N's Classic membership. It issued a further preserved benefits statement on 11 June 2018.
11. MyCSP said that, on 31 August 2018, it received a request for an ill health retirement estimate from Mr N's employer, together with a request for an efficiency dismissal with a compensation estimate; both for a date of leaving of 30 September 2018. MyCSP issued an ill health retirement estimate to Mr N's employer on 17 September 2018. It issued an efficiency dismissal estimate to the employer on 4 October 2018.
12. On 5 November 2018, Mr N telephoned MyCSP to discuss his two periods of service. MyCSP said that he was told that he could access his Classic benefits via Early Payment of a Preserved Award (**EPPA**). Mr N completed a claim form for EPPA on 12 November 2018. He telephoned MyCSP again, on 13 November 2018, and informed MyCSP that he wished to take ill health retirement. MyCSP said that it explained the process to Mr N.

¹ This reflects the position prior to *McCloud v Lord Chancellor* [2017] 029 PBLR (035).

13. MyCSP said that: it received a lower tier medical certificate for the Alpha Scheme from Mr N's employer on 20 December 2018, together with a request for an estimate of benefits for a leaving date of 16 November 2018; it sent a request for a severe ill health certificate to Mr N's employer on 2 January 2019; and the employer sent it a further copy of the Alpha Scheme certificate, so it sent another request for a severe ill health certificate on 4 January 21019.
14. Mr N also submitted an application for an injury benefit. MyCSP requested a statement from Mr N's employer in connection with his injury benefit claim on 28 January 2019. It said that it chased for the statement on 15 February, and on 7 and 18 March 2019. On 1 April 2019, the employer requested clarification on what was required. The employer subsequently said it had been advised to defer its response because of a legal case Mr N had against it. On 24 April 2019, the employer emailed MyCSP saying it had been advised it could provide the required document. MyCSP contacted Mr N and asked him to complete another injury benefit application form because the first one was now out-of-date.
15. Mr N completed another injury benefit application form on 1 May 2019. MyCSP said that: it received the application form on 15 June 2019; and it then wrote to Mr N's employer, on 1 July 2019, confirming that Mr N's injury benefit application had been referred to the Scheme Medical Advisor (**SMA**), however, the SMA contacted it to advise that Mr N's application for injury benefit was incomplete and so it provided the missing information to the SMA on 29 July 2019.
16. Mr N submitted a complaint under the IDRP. He submitted:-
 - He had been advised that he would receive ill health retirement benefits under the Classic Section of the PCSPS.
 - He wanted a refund of his WPS contributions.
 - He had requested EPPA in respect of his Classic Section benefits.
 - He wanted a payment for interest in respect of the late payment of his benefits.
17. MyCSP said that the SMA contacted it again, on 14 August 2019, requesting details of Mr N's GP, and again requested the information on 21 August and 3 September 2019.
18. Mr N telephoned MyCSP, on 4 September 2019, to query his start date. MyCSP said that it contacted his employer the same day and, the following day, the employer confirmed Mr N's start date as 28 June 2004. It issued an ill health retirement quote to Mr N's home address the same day.
19. On 6 September 2019, Mr N sent an email to MyCSP saying that he had attempted to aggregate his Classic and Premium membership in 2006. He also submitted another EPPA application form.

20. On 9 September 2019, MyCSP wrote to Mr N saying that the SMA required a signed GP consent form from him. It said it could not use the GP consent form sent with Mr N's EPPA application because it was now out-of-date. MyCSP also acknowledged receipt of an email from Mr N with documents relating to his EPPA application and said it had been forwarded to the relevant department.
21. The SMA notified MyCSP, on 10 September 2019, that it had closed Mr N's case because it had not received details of his GP. MyCSP said that it wrote to Mr N, on 20 September 2019, asking him to complete the relevant section of the injury benefit application form providing his GP's details.
22. MyCSP issued a stage one IDRPs decision on 8 November 2019. It said:-
 - (i) Employers were responsible for providing it with accurate and up-to-date data.
 - (ii) Prior to it taking on administration of the PCSPS in 2012, Mr N's pension had been administered by an Authorised Pension Administration Centre (**APAC**). It had inherited member records from the APAC.
 - (iii) When Mr N re-joined service, in 2004, he was enrolled in the Premium Section because the Classic Section was closed to the majority of re-joiners from October 2002. He transitioned to the Alpha Scheme in April 2015.
 - (iv) In the Premium Section, eligible members had been able to aggregate periods of service in their first 12 months of new service. It had not been the administrator at the time Mr N joined the Premium Section and it had been unable to find any documentation or other evidence that he had asked to aggregate his two periods of service. It acknowledged that this did not mean that Mr N had not tried to do so. It said it could not comment further for the purposes of its IDRPs decision.
 - (v) Mr N had queried his service history in 2017. It had been identified that his Classic Section service had not been preserved at the time he had left in 2002. This element of Mr N's complaint was upheld against the APAC.
 - (vi) It had been unable to identify a record of Mr N being advised that he was a member of the Classic Section in May, June or July 2017. It was, therefore, unable to comment on this aspect of his complaint.
 - (vii) It had not received a request for an ill health retirement quotation from Mr N's employer until 20 December 2018. Mr N's employer had confirmed that he had been referred to occupational health in November 2017 and the ill health retirement process had been initiated in May 2018. Mr N's employer had received a lower tier medical retirement certificate from the SMA on 17 December 2018.
 - (viii) It had asked Mr N's employer for a severe ill health certificate before processing his quotation. This had not been required and had delayed Mr N's

ill health retirement award. This aspect of Mr N's complaint was upheld. It apologised and offered Mr N £500 as an ex-gratia payment².

- (ix) Mr N had advised it that he wished to access his Classic Section benefits. He had been advised that he would need to apply for EPPA. This information was correct. However, Mr N's employer had confirmed that it had not clarified the process for him and this aspect of his complaint was upheld against the employer.
- (x) Mr N had submitted an EPPA form on 6 September 2019. His former employer was responsible for referring the form to the SMA. There had been a delay in referring Mr N's form to his employer and it apologised for this. It had instructed the employer to refer the form to the SMA immediately if it had not already done so.
- (xi) Mr N had requested a refund of his WPS contributions. A WPS refund was payable under the Classic Section. It was not payable until Mr N claimed his Classic Section benefits.
- (xii) Mr N had applied for both a temporary and permanent injury benefits. It had received his application on 15 June 2019 and referred it to the SMA on 1 July 2019. Mr N's application for a permanent injury benefit could not be considered until his claim for a temporary injury benefit had been decided. The SMA had requested details of Mr N's GP on 21 August 2019. The SMA had confirmed receipt of these details on 24 September 2019 and his application was progressing.
- (xiii) It had not received a completed personal details form allowing it to make payment of Mr N's ill health retirement benefits. It would make payment on receipt of this paperwork and backdate the benefits to his last day of service.

23. Mr N completed another injury benefit application form on 2 December 2019.

24. Mr N submitted a stage two IDRPs complaint on 11 February 2020. The second stage of the IDRPs is undertaken by Cabinet Office. It issued a decision on 28 August 2020. Cabinet Office said:-

- (i) When considering an IDRPs appeal, it aimed to put the individual in the position they would have been in if the administration of their pension had been done correctly at the relevant time. The PCSPS Rules were statutory and could only be varied where there was discretion to do so. An individual could not be left any better or worse off than they would have been if treated correctly at the relevant time.

² Payment was made on 20 December 2019.

- (ii) When Mr N left the Prison Service in 2002, he should have been awarded preserved benefits. This did not happen and his pension record remained open. This would have shown him as a member of the Classic Section.
- (iii) When Mr N rejoined in 2004, he had been correctly enrolled in the Premium Section. He had said that he enquired about aggregating his two periods of service and provided copies of payslips showing contributions to both the Classic and Premium Sections to evidence this. This had been due to his Classic Section record remaining open. There was no evidence to indicate that Mr N had made enquiries about aggregation prior to 2019. This aspect of his complaint was not upheld.
- (iv) If Mr N had opted to aggregate his service in 2004, all of his service would have been treated as in the Premium Section, subject to Rule G4(4) (see Appendix).
- (v) MyCSP had confirmed that no benefits had yet been paid to Mr N. It was waiting for confirmation of service and pay from the Prison Service before it could finalise his injury benefit award. It was waiting for Mr N to return paperwork for it to process his ill health retirement. His WPS refund would be payable when his Classic Section benefits were brought into payment.
- (vi) MyCSP had acknowledged its part in the delay in issuing Mr N's ill health retirement quotation and had offered him £500. This was an appropriate payment and in line with guidance issued by the Pensions Ombudsman.
- (vii) Mr N had requested quotations based upon membership of the Classic and Premium Sections and the Alpha Scheme. He was only entitled to a quotation based upon the appropriate rules and regulations. The appropriate regulation in his case was Regulation 182 and Schedule 2, Part 5 (see Appendix). This applied to the payment of ill health retirement benefits to transition members with continuity of service (Premium and Alpha). Mr N could apply separately for EPPA on the grounds of ill health in respect of his Classic Section benefits.

25. Mr N submitted a complaint to my Office on 15 September 2020.

26. On 1 April 2021, MyCSP wrote to Mr N notifying him that he was eligible to receive a permanent injury benefit award effective from 17 November 2018. MyCSP said Mr N's injury benefit had been calculated on the basis of 50% of his pensionable pay less other income he was receiving.

Mr N's position

27. Mr N has made extensive submissions. The main points are summarised as follows:-

- (i) He was injured in December 2016 and suffered complications after surgery. He was having doubts about whether he could get fit enough to carry on as a prison officer. He telephoned MyCSP, in or around May 2017 and

subsequently, and was told his Classic Section pension was live and he would be medically retired under the Classic Section.

- (ii) He had a meeting with his union representatives, who told him that they thought MyCSP was wrong because of his age and the fact that he had been transitioned into the Alpha Scheme in 2015. His union representatives suggested that he telephone MyCSP again, which he did. He was again told he was in the Classic Section.
- (iii) It was not until he telephoned MyCSP in June 2018 that an investigation was opened into his pension. His union representatives can provide evidence that he had been told he was going to be medically retired under the Classic Section.
- (iv) He understands that, if someone has been led to expect a certain amount by their pension company, then the company can be held liable even if something changes.
- (v) If he took ill health retirement under the Classic Section, he would get added years. He would also get a lump sum of three times his annual pension.
- (vi) If his Classic Section service had been aggregated with his Premium Section service, his benefits would be calculated by reference to his final salary of £32,000; not the salary he was getting in 2002. MyCSP has admitted that his Classic Section benefits were not preserved in 2002 and yet the benefits have been calculated by reference to his 2002 salary.
- (vii) He has provided a payslip showing both Classic and Premium contributions being taken from his pay, which he considers evidence that he had been communicating with the APAC to try to sort his pension out.
- (viii) MyCSP's website states: "If you were a member of classic on 30 September 2002 and chose to join premium from 1 October 2002 your reckonable service in classic will have been converted into premium reckonable service. You will have been told at the time how many years of reckonable service you would receive in premium in exchange for your years of classic reckonable service."

He remembers having a discussion, when he telephoned MyCSP on rejoining, about whether his years in the Classic Section would/could be classed as years under the Premium Section. There was also a discussion about continuing in the Classic Section as an option.

- (ix) If his membership of the Classic Section is live, as he has been told, his complaint relating to EPPA will be irrelevant. However, in order to cover himself, he filled in the paperwork before he left his job. As at the date of submitting his complaint to TPO, he had not received any paperwork from MyCSP.

- (x) His medical retirement was ended when he accepted pay-in-lieu-of-notice (**Pilon**) on 18 November 2018. This was done in order for him to get a lump sum, However, he did not get a lump sum under Pilon and continued to be paid until the end of January 2019. He also carried on contributing to his pension. He did raise this as part of his complaint, but he was ignored. He would like his pension calculated up to the end of January 2019. He can provide payslips to evidence this.
- (xi) He had to submit his injury benefit claim form three times and it took about a year for his case to be progressed. He discovered that the prison governor had declined to sign the employer's part of the form because of concern that it might open up the Prison Service to litigation. He was not told that his claim had been 'timed out' until he chased it up. He was sent information in January 2021 but has not received an apology for the delay.
- (xii) He has been notified that his injury benefit is 50% of his salary. It should be 60% because he has more than 15 years' service.
- (xiii) MyCSP has stated there was an error by the APAC and, as a result, it cannot see his previous communications. MyCSP has just ignored the fact it cannot provide evidence to dispute what he is saying. He queries how MyCSP can dispute his claim if his records with the APAC are not available.
- (xiv) He was offered £500 for delay, but no other compensation or an apology for the ongoing delays.

Cabinet Office's position

28. Cabinet Office is responding on behalf of itself and MyCSP. It has referred to the decisions issued at stages one and two of the IDRP.

29. In addition, Cabinet Office has said:-

- Mr N has been granted ill health retirement in respect of his Premium Section and Alpha Scheme benefits. These benefits have not been put into payment because Mr N has not returned a claim form.
- It was agreed, in November 2020, that Mr N met the criteria for EPPA on the grounds of ill health for his Classic Section benefits. Mr N was sent a quote on 29 December 2020. These benefits have not been put into payment because Mr N has not returned a claim form.
- The EPPA quote included a refund of Mr N's WPS contributions. This is payable when Mr N claims his Classic Section benefits.

Adjudicator's Opinion

30. Mr N's complaint was considered by one of our Adjudicators who concluded that MyCSP should pay Mr N a further £500 for the serious distress and inconvenience he had sustained as a result of its uncoordinated approach to administering his claims. The Adjudicator's findings are set out in paragraphs 31 to 57 below.
31. Mr N's complaint related to information he said he was given concerning his PCSPS benefits. In particular, Mr N asserted that he was told that his membership of the Classic Section was still "live" and that he could retire on the grounds of ill health under the Classic Section.
32. MyCSP and Cabinet Office had accepted that, when Mr N left service in 2002, his record was not updated to show that he had preserved benefits in the Classic Section. Mr N had queried why, if his Classic Section benefits were not preserved until 2018, they had been calculated by reference to his salary in 2002. This was because Mr N's entitlement to preserved benefits in the Classic Section arose in 2002; by reason of him leaving the PCSPS at that time. The fact that this was not recorded properly at the time did not alter the nature of Mr N's entitlement; it was an administrative error and did not change the way the PCSPS Rules applied to him.
33. The Classic Section had closed by the time Mr N rejoined the Prison Service in 2004. He was correctly enrolled into the Premium Section. The Adjudicator noted that Mr N had referred to the payslips he received showing contributions being paid to both the Classic and the Premium Sections. As before, this was an administrative error and did not change the way the PCSPS Rules applied to Mr N. He was not able to rejoin the Classic Section in 2004.
34. The Adjudicator said, as Mr N's complaint about the aggregation of his two periods of service had not been accepted for investigation because it fell outside the relevant time limits, the investigation must, therefore, proceed on the basis that the two periods of service were not aggregated. The Adjudicator noted Mr N's assertion that MyCSP had not provided any evidence to dispute his claim that he attempted to aggregate his service. However, the onus was on Mr N, as the claimant, to provide evidence of aggregation.
35. The Adjudicator said, as it stood, Mr N had preserved benefits in the Classic Section of the PCSPS. Mr N was able to take these before his normal retirement age and noted that his application for EPPA on the grounds of ill health had been agreed. His WPS refund would be paid with these benefits. Mr N's application for ill health retirement from active service had to be considered by reference to the scheme that he was a member of at the time his service ended in 2018. This was the Alpha Scheme.
36. The information on the MyCSP website, which Mr N had referred to, related to individuals who were active members of the Classic Section on 30 September 2002 and chose to transfer to the Premium Section on 1 October 2002. Mr N was not an

active member of the Classic Section on 30 September 2002, having left his employment in January 2002

37. The Adjudicator noted Mr N's reference to Pilon. The non-payment of Pilon was an employment matter and did not come within my jurisdiction. The Adjudicator noted Mr N's submission that his employment continued until the end of January 2019. Mr N's employer would need to provide details of his actual last day of service to MyCSP in order for it to recalculate Mr N's benefits.
38. The Adjudicator then moved to consider Mr N's complaint about the information he was given regarding his PCSPS benefits. Mr N's complaint was, essentially, a complaint of negligent misstatement. Any complaint of negligent misstatement must be based upon an inaccurate statement; referred to as a "representation". The representation was usually in the form of spoken or written words, but could also be made by conduct. The representation must be a statement of past or present fact or, in certain circumstances, of the law. The representation must be clear and unequivocal.
39. If it could be shown that a clear and unequivocal representation had been made, the next question was whether the person to whom the representation had been made had relied on it to their detriment; that is, they had taken some action they would not otherwise have done. It was also necessary for them to be able to show that it was reasonable for them to have relied on the representation.
40. The fact that Mr N's entitlement to preserved benefits in the Classic Section was not properly recorded lent some weight to his assertion that he was told his membership was still live. However, by the time Mr N contacted MyCSP, he had transitioned to the Alpha Scheme. He could only be an active member of one scheme at any one time. The fact that he was an active member of the Alpha Scheme meant that he could no longer be an active member of the PCSPS; either in the Classic or the Premium Section. This made it less likely that Mr N would have been told he could retire on the grounds of ill health under the Classic Section. He would have needed to be an active member of that section in order to do so.
41. The Adjudicator accepted that Mr N had provided an accurate account of his recollection of what he was told. Unfortunately, MyCSP had been unable to trace any record of Mr N being advised that he was an active member of the Classic Section in May, June or July 2017. Mr N had explained that he discussed the matter with his union representatives, who told him that the information he had been given was incorrect. This certainly indicated that Mr N had been left with the impression that his membership of the Classic Section was still active. It did not, however, help to establish exactly what was said in the conversations between Mr N and MyCSP.
42. Setting aside for the moment the question of whether, or what, Mr N was told about ill health retirement under the Classic Section and considering whether he had shown that he had relied to his detriment on such a representation. Mr N was looking to take ill health retirement. To do so, he would have to have suffered a breakdown in health

involving incapacity for employment. Therefore, his decision to seek retirement was not taken in reliance on anything he might have been told about his membership of the PCSPS; rather, it was prompted by his health. In other words, Mr N would have been retiring when he did regardless of anything he might have been told about his membership of the PCSPS.

43. There was no evidence of any other decisions which Mr N took in reliance on incorrect information about his PCSPS benefits. In the Adjudicator's view, a claim for negligent misstatement was likely to fail on the basis that there was no detrimental reliance. So, it was not strictly necessary to come to a conclusion as to whether Mr N was, in fact, told his Classic Section membership was still live or that he could retire under that section.
44. The Adjudicator said the lack of any detrimental reliance would also mean that a claim based upon estoppel would also fail.
45. Estoppel was a legal principle which provided that if a person caused another person, by action or statement, to believe that a particular set of facts or circumstances was true, they should not be allowed to draw back from the statement or action if to do so would be unjust or unconscionable. The Adjudicator thought this was what Mr N was referring to when he said he understood that, if someone had been led to expect a certain amount by their pension company, then the company could be held liable even if something changed.
46. For an estoppel to arise, the claimant must show that they relied to their detriment on a clear and unambiguous statement (representation) or a mutual assumption of fact or law (convention). It was unlikely that a telephone conversation with a helpline would be considered sufficiently clear and unambiguous for the purposes of estoppel. But, the main issue for Mr N was that he had not been able to show that he relied to his detriment on what he might have been told about his membership of the Classic Section.
47. The Adjudicator said, in addition to considering negligent misstatement and/or estoppel, I would consider whether there had been maladministration in the handling of Mr N's claims for benefits.
48. Regarding Mr N's ill health retirement, MyCSP had said that it received a medical certificate for the Alpha Scheme from Mr N's employer on 20 December 2018, together with a request for an estimate of benefits for a leaving date of 16 November 2018. It had explained that it sent a request for a severe ill health certificate to Mr N's employer on 2 January 2019. MyCSP had acknowledged that it did not require a severe ill health certificate in Mr N's case and that this delayed the processing of his claim. It had paid Mr N £500 for any distress and inconvenience caused.
49. Mr N completed a claim form for EPPA on 12 November 2018. He sent another EPPA form to MyCSP in September 2019. MyCSP had acknowledged that it received this form on 6 September 2019, but it had explained that the form should have been

sent to the SMA by Mr N's employer. MyCSP had acknowledged that it delayed sending the form to Mr N's employer.

50. It was agreed, in November 2020, that Mr N met the criteria for EPPA on the grounds of ill health for his Classic Section benefits. Mr N was sent a quote on 29 December 2020.
51. Mr N also submitted an application for an injury benefit. On 28 January 2019, MyCSP requested a statement from Mr N's employer. It said that it had chased for the statement on 15 February and on 7 and 18 March 2019. On 1 April 2019, the employer requested clarification as to what was required. The employer subsequently explained that it had been advised to defer its response because of a legal case Mr N had against it. On 24 April 2019, the employer emailed MyCSP saying it had been advised it could now provide the required document. However, MyCSP then asked Mr N to complete another application form because it said that the first one was out-of-date. There was nothing on the form itself to indicate it was time limited.
52. Mr N completed another injury benefit application form on 1 May 2019. MyCSP had confirmed it received the form on 15 June 2019. MyCSP had said that the SMA contacted it to advise that Mr N's application for an injury benefit was incomplete and that it provided the missing information on 29 July 2019. The SMA then contacted MyCSP again, on 14 August 2019, requesting details of Mr N's GP. The SMA chased up this information on 21 August and 3 September 2019. On 9 September 2019, MyCSP wrote to Mr N saying that the SMA required a signed GP consent form from him. It said it could not use the GP consent form sent with Mr N's EPPA application because it was now out-of-date. It was not clear which EPPA form MyCSP was referring to, but the most recent form had been completed by Mr N in September 2019 and received by MyCSP on 6 September 2019.
53. The SMA notified MyCSP, on 10 September 2019, that it had closed Mr N's case because it had not received details of his GP. MyCSP had said that it then wrote to Mr N, on 20 September 2019, asking him to complete the relevant section of the injury benefit application form providing his GP's details. Mr N completed another injury benefit application form on 2 December 2019.
54. On 1 April 2021, MyCSP wrote to Mr N notifying him that he was eligible to receive a permanent injury benefit award effective from 17 November 2018.
55. The Adjudicator acknowledged that Mr N's case was complicated by the fact that he was applying for three separate benefits, and each had a process which needed to be gone through. However, the time taken from first application to final confirmation of Mr N's benefits was December 2018 to April 2021. In all, Mr N appeared to have had to complete five (or possibly six) application forms and provide the same information on more than one occasion. There seemed to have been a complete lack of coordination around Mr N's case. Whilst not all of the delays were caused by MyCSP, it was best placed to ensure that due process was followed with minimum stress for

Mr N at what was already an extremely stressful time for him. Instead, it appeared to have adopted a rather passive approach and acted in the manner of a post-box.

56. MyCSP did pay Mr N £500 for the distress and inconvenience he sustained as a consequence of delay. However, it was the Adjudicator's view, the rather chaotic approach taken in Mr N's case warranted a higher award in line with the guidance issued by my Office. It was, therefore, the Adjudicator's opinion that Mr N's complaint could be upheld in part.
57. Since Mr N submitted his complaint to my Office, he had received further information about his pension and injury benefit. The Adjudicator noted that Mr N had queried the calculation of his pension and injury benefit. These queries were outside the scope of the current investigation. Mr N should raise any queries concerning the calculation of his benefits with MyCSP in the first instance.
58. Neither Mr N nor MyCSP accepted the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N and MyCSP have provided their respective comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr N and MyCSP.

Mr N's further comments

59. Mr N says:-

- He received £500 for the delayed processing of his IHR paperwork. He has not received compensation for the delayed processing of his EPPA and injury benefit claims.
- He has tried to sort out the Pilon issue with his employer. MyCSP and SSCL blame each other. He needs the recalculation of his pension until January 2019 or a refund of the contributions into his pension. He will keep chasing but hopes that I can apply weight to sort the matter out.
- His deferred Classic Section benefits should be calculated by reference to his final salary, not his salary in 2002.
- As his pay and service were relinked his injury benefit should be a guaranteed minimum income of 60% based on over 15 years reckonable service.

60. Mr N asks:-

- If he was paying into the Classic Section on re-joining the PCSPS and those payments have not gone into his Classic lump sum, should he not receive a refund of those contributions?
- Is he entitled to interest on the delayed payments or is that included in the suggested £500 compensation?

61. Mr N has submitted:-

- Emails that he says evidence that his years of service were relinked. He says he does not know if SSCL passed this information onto MyCSP.

- A document from his Classic pension pack that says:

“If you leave PCSPS employment with a preserved pension and lump sum and you are re-employed after six months, you will have the choice of: adding your periods of reckonable service together for one pension and lump sum; or keeping them separate.”

Mr N says despite requesting this, and presuming it had been done, it did not happen.

- An extract from the same pack that says:

“Where staff have a preserved final salary pension due to being enrolled into Alpha, the calculation of their benefits would still be based on the best consecutive 12 months pensionable pay earned in the three years of reckonable service from their last day in service and not the salary they were in receipt of on the date they moved into the Alpha pension scheme. For further details staff should refer to their Pension Administrator.”

MyCSP’s further comments

62. Cabinet Office has responded to say that MyCSP would like to pay an additional £250, instead of the additional £500 the Adjudicator suggested, for distress and inconvenience. Making the total distress and inconvenience payment to Mr N £750 instead of £1,000.

63. MyCSP submits that Mr N’s injury benefit application was not included in his IDRPs appeal at either stage 1 or 2, so it was not considered during that process. It says the award of £500 was adequate for the distress and inconvenience caused by the matters Mr N raised at that time. However, if Mr N had raised the matter at stage 1 it would have awarded Mr N total compensation of £750. This was because the delayed consideration of his injury benefit application was not significant. But together with the delayed consideration of his IHR and EPPA applications it moved his distress and inconvenience from ‘significant’ but not fully into the ‘serious’ category.

Ombudsman’s decision

64. Mr N has said that he has tried to sort out the Pilon issue with his employer. He says MyCSP and SSCL blame each other. He says he will keep chasing but hopes that I can apply weight to sort the matter out.

65. Pilon is an employment matter and does not come within my jurisdiction. Mr N will need to separately pursue this matter with his former employer and MyCSP.
66. Mr N believes his preserved Classic Section benefits should be calculated by reference to his final salary, not his salary in 2002.
67. I do not agree. As things stand, Mr N was enrolled in the Premium Section in 2004 when he rejoined the Prison Service, as by that time the Classic Section had closed. So, his Classic Section benefits are linked to his salary when he left the PCSPS in 2002.
68. Mr N has asked that, as he was paying into the Classic Section on re-joining the PCSPS and those payments have not gone into his Classic lump sum, should he not receive a refund of those contributions? This is a separate matter to the issues that were originally submitted and accepted for investigation. So, Mr N will need to raise this with MyCSP in the first instance.
69. Mr N has submitted emails that he says are evidence that his years of service were relinked. I have put this matter to one side as this aspect of his complaint was not accepted for investigation because it falls outside of the relevant time limits for me to be able to consider it. However, Mr N may, if he so chooses, pursue this matter directly with his former employer and MyCSP.
70. Mr N has queried: (i) whether he is entitled to a refund of contributions that he says he paid into the Classic Section on re-joining the PCSPS; and (ii) whether he is entitled to interest on the delayed payment of his claims for EPPA, ill health retirement and injury benefit.
71. As both matters are outside of the scope of the complaint that was accepted for investigation, Mr N will need to raise these queries with MyCSP in the first instance.
72. Mr N says his injury benefit should be a guaranteed minimum income of 60% based on over 15 years reckonable service.
73. Again, this is outside the scope of complaint that was accepted for investigation. Mr N should raise his concern about the calculation of his injury benefit with MyCSP in the first instance.
74. Finally, MyCSP has argued that it would like to pay an additional £250 for distress and inconvenience caused, instead of the additional £500 the Adjudicator has suggested.
75. I agree with the Adjudicator that a further payment of £500 is merited. MyCSP's uncoordinated approach to administering Mr N's claims will undoubtedly have caused Mr N serious distress and inconvenience.
76. I partially uphold Mr N's complaint.

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Directions

Within 28 days of the date of this Determination, MyCSP shall pay Mr N a further £500 for the serious distress and inconvenience he sustained as a result of its uncoordinated approach to administering his claims.

Anthony Arter

Pensions Ombudsman
25 November 2022

Appendix

The PCSPS Rules

77. The PCSPS Rules are divided into four sections: Section I (the 2002 Section); Section II (the 1972 Section); Section III (the 2007 Section); and Section IV (the General Provisions Section).

The 1972 Section

78. Rule 1.1 states:

“Except where otherwise stated, this scheme applies to staff whose service ends on or after 1 June 1972 and before 1 October 2002 or who are in service on 30th September 2002.”

79. Rule 1.2a provides that references to “this scheme” or “the scheme” shall be taken to be referring to Section II (the 1972 Section) unless the context otherwise requires.

80. Rule 1.3a states:

“Except in relation to persons or classes of persons determined by the Minister, or where rule 1.3b, 1.3c, 1.3e or 1.3f applies, the 1972 Section is closed to persons serving in the civil service whose service begins, or whose service after re-employment begins, after 30 September 2002.”

81. Rule 3.11 states:

“A civil servant who resigns ... and who ... has two or more years’ qualifying service ... and who does not opt to transfer the whole or ... part of his accrued pension benefits out of this scheme, will be awarded a preserved pension and lump sum in respect of such part of his accrued pension benefits as is not transferred. ... these will be brought into payment when the civil servant reaches the pension age, and will be calculated in the way described in rule 3.1.”

82. Rule 3.1 provides for a pension to be calculated on the basis of 1/80ths of pensionable earnings multiplied by the length of the member’s reckonable service. It also provides for a lump sum basis of 3/80ths of pensionable earnings multiplied by the length of the member’s reckonable service.

83. Rule 1.6a defines “pensionable earnings” as: “salary (or wages) ... and pensionable emoluments in whichever of the last three years of reckonable service gives the highest figure ...”. Rule 1.5 defines “reckonable service” as: “service ... which reckons towards a pension under this scheme”.

The 2002 Section

84. Rule B.1 “Eligibility: General” provides

“(1) A person is eligible to be an active member of this Section of the Scheme if the conditions A to C are met, or condition D is met, and he is not prevented by rule B.2 (persons with other pension arrangements) or B.3 (eligibility where pension or lump sum previously received).

This is subject to rule B.1B³.

(2) Condition A is that the person -

(a) is in permanent employment in the Civil Service,

(b) holds a permanent employment or office that is listed for the time being in Schedule 1 to the Superannuation Act 1972, or

(c) holds an appointment in the Civil Service for a fixed term or an employment or office that is so listed for a fixed term.

(3) Persons engaged on a fee-paid basis and unestablished staff engaged locally overseas are not regarded as meeting condition A.

(4) Condition B is that the terms on which the person holds the employment do not exclude him from belonging to the Scheme.

(5) Condition C is that -

(a) the person's employment begins on or after 1st October 2002 and before 30th July 2007 and the person is not someone who became an active member of the 1972 Section in respect of that employment and subsequently opted out of the 1972 Section,

(b) the person has opted to join this Section of the Scheme under Part K or L (persons who have been members of the 1972 Section),

(c) the person's employment begins on or after 30th July 2007 and one of paragraphs (2) to (5) of rule B.1A applies to that person, or

(d) the Minister determines that condition C is met for the person or for a class of persons to which the person belongs.

(6) Condition D is that the person –

(a) is in service in an employment or office specified in a list produced for the purposes of section 1(4A) of the Superannuation Act 1972; and

(b) fulfils the conditions for eligibility specified in J1.1.”

³ Employment on and after 1st April 2015

85. Rule G.4 "Option to aggregate earlier membership: members joining this Section for the first time" provides:

- "(1) Subject to paragraph (6), this rule applies in the case of a re-employed active member to whom rule G.3 does not apply who was awarded a preserved pension and lump sum under rule 3.11 of the 1972 Section.
- (2) The member may opt for the qualifying and reckonable service in respect of which the member was awarded the preserved pension -
 - (a) to be aggregated with the reckonable service and qualifying service that he is entitled to count as a result of his membership of this Section in the current employment for the purpose of determining rights under this Section in respect of that membership, and
 - (b) to be disregarded for all other purposes.

This is subject to paragraphs (3) to (6).

- (3) If the member is entitled to more than one preserved pension under rule 3.11 of the 1972 Section, the member may only exercise the option under paragraph (2) in relation to the service to which the later (or, if there are more than two, the latest) of the awards relates.
- (4) Where a person exercises the option under paragraph (2), the reckonable service and qualifying service he may count as a result of the exercise of the option is to be calculated in accordance with guidance and tables provided for the purpose by the Scheme Actuary.
- (5) If -
 - (a) the award under the 1972 Section of a member who exercises an option under this rule is subject to a pension debit, and
 - (b) in the opinion of the Scheme administrator it is necessary for the purpose of giving effect to the pension debit for some or all of the benefits to which the pension member is entitled under this Section of the Scheme as a result of exercising the option to be taken in a different form from that in which he would otherwise be entitled to take them, the Scheme administrator may, after taking advice from the Scheme actuary, make such modifications to the member's rights as to the form of those benefits as he considers necessary for that purpose.
- (6) A person to whom rule B.3(4) applies (eligibility where pension or lump sum previously received) may not exercise the option in paragraph (2) in respect of the previous employment referred to in that rule."

86. Rule G.6 “Procedure for exercising options under rules G.3 to G.5” provides:

“(1) An option under rule G.3(2) or G.4(2) may only be exercised before the end of -

(a) the period of 12 months beginning with the day on which the current employment begins, or

(b) such longer period, if any, as the Minister or, if the Minister so directs, the Scheme administrator considers appropriate.”

The Public Service (Civil Servants and Others) Pensions Regulations 2014 (SI2014/1964) (as amended)

87. Regulation 182 provides that Schedule 2 has effect.

88. Schedule 2 contains the “Transitional Provisions” for members transitioning from the PCSPS. Part 5 provides for “Payment of Ill-health Benefits to Transition Members with Continuity of Service”. Paragraph 29 states:

“(1) This paragraph applies in relation to a transition member with continuity of service who –

(a) becomes entitled to an ill-health pension under this scheme; and

(b) has not reached normal pension age under the PCSPS.

(2) If this paragraph applies –

(a) an ill-health pension and lump sum are not payable under the PCSPS;

(b) an ill-health pension is payable under this scheme in accordance with this paragraph; and

(c) the member becomes a deferred member of the PCSPS ...”