

Ombudsman's Determination

Applicant	Mr L
Scheme	Principal Civil Service Pension Scheme (the Scheme)
Respondents	MyCSP Cabinet Office

Outcome

1. Mr L's complaint is partly upheld and, to put matters right for the part that is upheld, MyCSP and the Cabinet Office shall take the actions as set out in paragraph 71 below.

Complaint summary

2. Mr L complained that MyCSP incorrectly abated his deferred benefits when they were put into payment in December 2013 and the error was not corrected until March 2020. Mr L said this caused him financial detriment.

Background information, including submissions from the parties

3. The Scheme was established under the Superannuation Act 1972 of which Section II (**the Classic Regulations**) governs the Classic Section of the Scheme (**the Classic Section**). Section 3 of the Classic Regulations provides that:

"Retirement and Death Benefits

3.11 A [member] who resigns or opts out of the scheme and who (i) has two or more years' qualifying service; or (ii) is a woman [member] who resigns on or after 6 April 1978 and who leaves the [Scheme] after the end of the tax year preceding that in which she attains the age of 60 (notwithstanding that she has not completed 2 years' qualifying service); or (iii) was formerly entitled to rights under a personal pension scheme in respect of which a transfer payment has been made to this scheme and who does not opt to transfer the whole or, under rule 6.2(iv), 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. Subject to rule 3.12, 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...

Re-employment

3.26 If a person receiving a pension under rule 3.1 or a preserved pension under rules 3.11 or 3.24a(ii) or a person entitled to receive a partial retirement pension under rule 3.3b is re-employed [and re-joins the Scheme] before his 75th birthday at a salary equal to, or higher than, his old salary, the whole of the pension will be suspended. If he is re-employed at a salary lower than his old salary, the pension in payment to him (including any increase under the Pensions (Increase) Act 1971 as amended) will be reduced to the amount by which his old salary exceeds his salary on his first day of re-employment. While he is re-employed, the pension in payment will attract pensions increase but will not be otherwise adjusted unless a relevant event specified in rule 3.25d occurs. In any of those events, the amount of abatement will be increased (or decreased) by the amount of increase (or decrease) in his annual rate of salary resulting from the change...”

4. On 4 February 1985, Mr L commenced employment with HM Customs & Excise (**the Employer**) and joined the Classic Section of the Scheme.
5. On 24 April 2012, Mr L emailed MyCSP, the Scheme’s administrator, and asked whether or not it would be possible to opt out of the Classic Section and then subsequently re-join.
6. On 26 April 2012, MyCSP wrote to Mr L and confirmed that after opting out of the Scheme he would be entitled to re-join the Classic Section on one occasion during that same period of employment.
7. On 1 May 2012, Mr L opted out of the Scheme.
8. On 1 June 2012, Mr L re-joined the Classic Section.
9. On 21 August 2012, MyCSP sent Mr L a deferred benefits statement (**the August 2012 Statement**). It quoted a yearly pension at age 60 of £11,580.67 plus a lump sum of £34,742.01, based on a final pensionable salary (**FPS**) of £36,337.35.
10. On 4 September 2012, Mr L emailed MyCSP and said:
 - The August 2012 Statement referred to an annual FPS of £36,337.35. However, a previous benefit statement dated 26 April 2012 had quoted a pensionable salary of £36,536.
 - MyCSP should clarify whether his correct FPS figure had been used in calculating the August 2012 Statement. He would also like clarification on whether it would be possible to continue working part-time for the Employer beyond age 60 and still claim retirement benefits.
11. On 11 September 2012, MyCSP emailed Mr L and said that the FPS of £36,337.35 quoted in the August 2012 Statement was for the year ending 30 October 2010. Increases would multiply that sum by 1.0656 resulting in an actual FPS figure of £38,721.08.

12. With regard to working while receiving benefits from the Scheme, a leaflet attached to the email explained that Mr L's pension could be subject to a reduction called 'abatement'. This would be applicable if any retirement pension in addition to his ongoing earnings exceeded his pre-retirement FPS plus any increases applied to it (**the salary of reference**).
13. On 12 September 2012, Mr L emailed MyCSP and said he understood that if he retired at age 60 and continued working for the Employer, abatement could be applicable. So, he would like clarification as to whether a new yearly part-time salary of £20,220 could be used to calculate whether abatement should apply.
14. On 18 September 2012, MyCSP emailed Mr L and said:
 - There had been changes to the regulations governing the Scheme with effect from 1 April 2007. Consequently, a member's FPS reflected their highest actual salary received in any 12-month period during the three years immediately before retirement.
 - Under the new provisions, Mr L's salary of reference was £24,224.91. Subject to confirmation provided by the Employer, his retirement pension and salary should not exceed that figure. Otherwise, the retirement pension could be abated.
15. On the same day Mr L he emailed MyCSP and questioned whether he could be "penalised" by abatement, if he retired at age 60, because his pension, in addition to his part-time pay, would exceed his salary of reference.
16. MyCSP responded on 19 September 2012 and said "The issue for you in respect of avoiding abatement is the same as for someone who is working full-time in that you need to reduce your ongoing earnings by at least 20% to do so."
17. On 20 November 2012, Mr L emailed MyCSP and said:
 - He was still employed by the Employer and intended to continue working after reaching the Scheme's normal retirement age (**NRA**) of 60, which was in December 2013, but claim the benefits that were deferred in May 2012.
 - He would like clarification on how claiming a pension lump sum would impact on any applicable abatement.
18. On 26 November 2012, MyCSP emailed Mr L and said:
 - A pension lump sum would be payable in full, should he still be in employment linked to the Scheme at age 60. He could elect to commute some of his retirement pension in exchange for a larger lump sum. If he exercised this option, any abatement would still be assessed on the value of the pension before commutation.

- When applying for the benefits, Mr L would be required to confirm his employment status. MyCSP would then pay the lump sum and at the same time suspend the retirement pension until it had been assessed for abatement purposes.
19. On 16 August 2013, Mr L sent a retirement claim to MyCSP with a covering letter. His pension claim form confirmed that he had remained in continuous employment with the Employer. It also stated that Mr L's salary had reduced from £30,331 to £20,220 per year having changed from full-time to part-time working hours.
 20. In the covering letter Mr L said that he wished to claim retirement benefits from age 60, in December 2013. But he was aware that the retirement pension would be subject to abatement as he planned to remain in his existing employment.
 21. On 19 August 2013, MyCSP wrote to Mr L confirming that his retirement claim had been processed and that a lump sum of £37,834.51 would be paid by December 2013. MyCSP also said that Mr L's pension would be suspended until the Employer had confirmed his salary of reference.
 22. On 17 September 2013, Mr L wrote to the Employer and said:

“For clarification, I shall be 60 in [December 2013], whereupon I wish to draw my deferred Classic pension. This is allowed under the terms of the Principle (sic) Civil Service Pension Scheme. I have taken advice from MyCSP, HR and Capita and I am fully aware of the financial implications of this move in respect of my deferred pension and my future pension. By ceasing to receive the CIDAA Intermediate Allowance I will be able to receive the maximum pension award that is allowed. It is therefore important that Capita are advised of this migration before the calculation of my pension award.”
 23. On 20 November 2013, Capita, the Scheme's payroll administrator at the time, wrote to Mr L confirming that his salary of reference was £26,380.93 a year. As his existing salary was £20,220, the maximum pension payable from December 2013 would be £6,160.93. The remaining balance would be abated.
 24. Mr L continued to work for the Employer and on 6 February 2019, he claimed the benefits from his second period of pensionable service, to be paid with effect from 1 April 2019.
 25. On 2 March 2020, Mr L emailed MyCSP stating that a former colleague had recently retired, having previously opted-out of the Scheme and re-joined. Mr L said this former colleague had subsequently received a payment of pension arrears from MyCSP because his deferred benefits entitlement should not have been abated at retirement. Mr L asked MyCSP to check whether his circumstances were similar to those of the former colleague.
 26. On the same date, MyCSP wrote to Mr L on another matter and provided a breakdown of contributions by tax year from 2012/2013 to 2019/2020. MyCSP also provided HM Revenue & Customs' contact details.

27. On 20 March 2020, MyCSP wrote to Mr L in response to his enquiry of 2 March 2020 and confirmed that he had opted out of the Scheme and become a deferred member with effect from 1 May 2012. So, his pension should not have been subject to partial abatement.
28. MyCSP said that as a result of this Mr L would receive a lump sum of pension arrears totalling £35,778.63 gross, covering the period December 2013 to 1 April 2019. This sum would be credited to Mr L's bank account within the next few days.
29. On 22 September 2020, Mr L emailed MyCSP and complained that:
 - Higher rate tax of 40% had incorrectly been deducted from the pension arrears lump sum of £35,778.63. It had subsequently taken several weeks of correspondence with HM Revenue & Customs to obtain a tax rebate and correct his tax liability.
 - MyCSP should offer an award in recognition of the distress and inconvenience caused. A further award should be offered for financial detriment resulting from the five-year delay in paying the pension arrears, which caused lost interest.
30. On 22 October 2020, MyCSP wrote to Mr L in response and said:
 - An investigation following his enquiry of 2 March 2020 identified that he had been entitled to claim deferred benefits, having previously opted out of the Scheme, without partial abatement applying.
 - On 7 November 2018, updated guidance was received from the Cabinet Office, the Scheme Manager. This confirmed that the Classic Scheme Regulations did not stipulate that a pension could only be paid when a member had left employment or taken partial retirement. So, a member who opted out of the Scheme and remained in employment could claim their deferred pension without abatement being applicable. On that basis, his retirement benefits should not have been subject to abatement. However, Cabinet Office's guidance had not been received at the time his benefits claim was being processed.
 - A payment in respect of the pension arrears of £35,778.63 gross was credited to his bank account in March 2020. However, there was no provision under the Scheme Regulations for interest to be paid when a member's pension instalments had been delayed. When justified, a goodwill payment could be made. In Mr L's case, MyCSP did not consider this was appropriate since his retirement claim had been processed in accordance with Cabinet Office guidance available at the time.
31. On 22 October 2020, Mr L emailed MyCSP and said that he was disappointed not to have been offered an award. He said that MyCSP was aware that abatement had been applied to his pension in error in 2018 but failed to contact him at that time. If he had not subsequently discussed the issue with a colleague, the issue would have remained unresolved.

32. On 2 December 2020, Mr L complained under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**) and reiterated the points he had previously made in the emails of 22 September 2020 and 22 October 2020.
33. On 29 January 2021, MyCSP wrote to Mr L in response and said:
- Regulation 3.11 stated that where a member had a deferred pension, the benefits would be put into payment from their 60th birthday. The intention of abatement was to prevent a member from receiving a higher total in terms of post-retirement pension and salary upon being re-employed, than their pre-retirement pay.
 - Generally, abatement was applicable when a member either partially retired or fully retired from service, then was subsequently re-employed by an employer linked to the Scheme. However, none of these circumstances applied to Mr L. The Scheme Regulations allowed some members to claim retirement benefits whilst remaining in service, without their pension being subject to abatement.
 - Mr L opted out of the Scheme and was not re-employed at the time he re-joined it. So, his pension should not have been abated. Consequently, this part of Mr L's complaint was upheld. Arrears totalling £35,778.63 had been paid to Mr L as redress. The excess tax liability relating to that payment was subsequently corrected by HM Revenue & Customs.
 - There was no provision in the Scheme Regulations for interest to be paid on the pension arrears, as the payments were normally used to cover daily living expenses. Mr L had also provided no evidence to show that he intended to invest the benefits.
 - In 2013, Mr L stated that he understood his pension would be subject to abatement. This suggested that Mr L was not expecting to receive the retirement pension in full and did not support his claim that he was considering investment at the time. So, it would not be appropriate to offer an award of over £6,000 for each year that the pension was abated, as he had suggested.
34. On 21 March 2021, Mr L appealed under stage two of the Scheme's IDR and said:
- It was unreasonable of MyCSP not to offer an award in recognition of the distress and inconvenience caused in obtaining a rebate on the excess tax charged, following payment of the pension arrears lump sum. It took from March 2020 to July 2020 to reach a resolution with HM Revenue & Customs.
 - He reduced his pensionable salary in 2013 by changing from full-time to part-time working hours, due to abatement being incorrectly applied following his initial pension claim. So, when he retired following his second period of service, in 2019, the pension was lower than it would have been had he not been forced into a lower pensionable salary.

- If his pension had not been partially abated, his full entitlement would have been £12,611.50 a year in August 2013, according to his calculations. However, he received a yearly pension of only £6,160.93.
- The abated pension only covered the reduced salary that he received. He was unable to provide evidence that he would otherwise have saved the unpaid portion of his pension if it had been available. But he was a habitual saver, having done so for many years starting in the 1980s. On that basis, MyCSP should award interest at the Bank of England base rate on the lump sum pension arrears.
- MyCSP became aware of the issue regarding deferred pensions being abated in error in November 2018, but did not contact him at that time. It was only due to the fact that he contacted MyCSP in March 2020 that his pension arrears were paid. This suggested that MyCSP had been attempting to avoid paying the benefits and an award in recognition of the financial detriment he had suffered.

35. On 21 July 2021, the Cabinet Office wrote to Mr L in response and said:

- The statutory nature of the Scheme Regulations meant that the Cabinet Office had no discretion in determining the way that retirement benefits could be paid to members. When Mr L initially made a retirement claim in December 2013, MyCSP correctly abated the pension in accordance with existing guidance on the related Scheme Regulations at the time. MyCSP would not have been aware that abatement should not have applied in Mr L's case.
- It was only on 7 November 2018 that the Cabinet Office provided MyCSP with revised guidance regarding the way that abatement should be applied for members who had opted out of the Scheme before reaching their NRA. This guidance confirmed that when a member opted out of the Classic Section and claimed their deferred pension, without leaving service, abatement was not applicable.
- In December 2013, Mr L was aware that abatement would be applied to his pension and retired on that basis. With the benefit of hindsight, it was possible for Mr L to claim that he would have remained in paid employment at pre-2013 pay levels had abatement not been applied. However, Mr L had provided no evidence to support this assertion. So, it would not be appropriate to award interest on the delayed pension arrears lump sum.
- There had been ambiguity in the Scheme Regulations which allowed some members to claim their pension without abatement being applied. This point was subject to a review by MyCSP in 2018, to identify any such members. However, due to an error, MyCSP failed to identify Mr L as being affected at that time. This was a genuine mistake and not an attempt to withhold Mr L's full benefit entitlement. MyCSP should award Mr L £500 in recognition of the distress and inconvenience he had suffered as a result.

- MyCSP was required to calculate the tax deducted from Mr L's lump sum of pension arrears on a Pay As You Earn basis on the date of payment. This correctly resulted in higher rate tax being applied. However, Mr L subsequently became entitled to request that HM Revenue & Customs recalculate the tax by reference to the tax year that the individual pension instalments originally became due.
- It was not MyCSP's role to contact HM Revenue & Customs on Mr L's behalf as tax was a member's individual responsibility. However, MyCSP could provide a breakdown of pension payments by tax year and inform a member of their relevant HM Revenue & Customs contact details regarding any tax liability enquiry. MyCSP did so in the letter of 2 March 2020.

Mr L's position

36. In December 2013, he had expected to receive his full retirement pension immediately and continue to earn his existing full-time salary. However, due to the incorrect application of abatement "he was asked to reduce his salary at that time in order to receive any of that pension". This caused a loss of income and reduced the value of his second retirement pension from the Scheme that has been in payment since April 2019.
37. MyCSP became aware of the issue regarding some members' deferred pension entitlement being abated at retirement in error, in November 2018, but did not contact him at that time. It was only due to the fact that he contacted MyCSP in March 2020 that his pension arrears were paid.
38. When the error was eventually identified, he received a lump sum of pension arrears totalling £35,778.63, which was inappropriately taxed at the higher earnings rate of 40% instead of the basic rate of 20%. MyCSP and Cabinet Office should award interest at the Bank of England base rate on the pension arrears.
39. After contacting HM Revenue & Customs, he received a tax rebate to correct his tax liability, but the effort involved caused him distress and inconvenience. MyCSP should offer an award in recognition of this.

Adjudicator's Opinion

40. Mr L's complaint was considered by one of our Adjudicators who concluded that the Cabinet Office should pay Mr L interest at the Bank of England base rate covering the period December 2013 to 6 November 2018. The Adjudicator's view was that MyCSP should pay Mr L interest at the same rate covering the period between November 2018 to March 2020. The Adjudicator's findings are summarised below:
 - Mr L opted out of the Scheme on 1 May 2012 and re-joined it on 1 June 2012, then subsequently claimed his deferred benefits with effect from 9 December 2013. At the time Mr L claimed payment of his deferred retirement benefits,

abatement was correctly applied in line with the existing guidance on the related Scheme Regulations.

- MyCSP would not have been aware that abatement should not have applied in Mr L's case until the amended guidance was received in 2018. However, this issue was not resolved until 2020. In the Adjudicator's view, MyCSP's failure, having received the Cabinet Office's revised guidance, to identify Mr L as a member who could be affected by the error, amounted to maladministration.
- The Cabinet Office had been responsible for ensuring that any guidance it provided to MyCSP was appropriate and properly reflected the Scheme Regulations at the time of Mr L's initial retirement, in December 2013. It was not until 7 November 2018 that the Cabinet Office provided MyCSP with appropriate guidance regarding the way that members, including Mr L, who had opted out of the Scheme, and re-joined before reaching the Scheme's NRA, should be treated when retiring.
- The Cabinet Office's initial failure to provide appropriate guidance to MyCSP amounts to maladministration. So, the normal course of action would be, as far as possible, to put Mr L back in the position he would have been in, had the errors not occurred. However, that has already happened following the payment of the wrongly abated pension. So, the remaining issue was whether Mr L incurred a financial loss or whether non-financial injustice flowed from the incorrectly abated pension.
- On 4 September 2012, Mr L emailed MyCSP and enquired whether it would be possible to work part-time for the Employer beyond age 60, and still claim retirement benefits. This suggests that Mr L had been considering a change to part-time hours with a corresponding reduction in pensionable salary as a personal choice. On 12 September 2012, Mr L emailed MyCSP and said he understood that if he retired at age 60 and continued working for the Employer, abatement could be applicable.
- Mr L then submitted a pension claim form to MyCSP on 16 August 2013, confirming his change to part-time hours and reduction in pensionable salary. In the attached covering letter Mr L did not state that this had been a requirement to claim the retirement pension. Mr L simply said that he intended to retire at age 60, in December 2013, and he understood abatement would apply.
- This does not support Mr L's assertion that he was expecting to receive his full pension entitlement at the time. There is also no evidence that Mr L's change from full-time to part-time hours of employment was anything other than a personal choice. So, the maladministration previously referred to did not contribute to the reduction in pensionable salary or the second pension entitlement that Mr L has referred to.

- The £500 award that MyCSP paid Mr L is sufficient recognition of the distress and inconvenience Mr L has suffered. The Cabinet Office was responsible for the late payment of Mr L's benefits for the period December 2013 to 6 November 2018, when inappropriate guidance was provided to MyCSP. MyCSP was at fault for the late payment of Mr L's benefits covering the period 7 November 2018 to 31 March 2020 having failed to act immediately upon receipt of revised guidance from the Cabinet Office.
- The Cabinet Office should pay Mr L a lump sum equal to simple interest on the arrears of pension payments for the period December 2013 to 6 November 2018, calculated at the base rate for the time being quoted by the Bank of England. MyCSP should pay Mr L a lump sum equal to simple interest on the arrears of pension payments for the period 7 November 2018 to March 2020, calculated at the base rate for the time being quoted by the Bank of England.

41. MyCSP and the Cabinet Office accepted the Adjudicator's Opinion and have agreed to pay interest at the Bank of England base rate on the lump sum of pension arrears that Mr L received. It was also confirmed that the £500 award offered to Mr L at stage two of the IDRPs was paid in September 2021.
42. Mr L did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mr L and the Cabinet Office provided their further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr L and the Cabinet Office.

Mr L's additional comments

43. When he initially applied for payment of his deferred pension he was already in part-time employment and at that time he had 'never heard of abatement'.
44. MyCSP's email of 18 September 2012 was "clear" in confirming that his retirement pension would be subject to abatement. On the same day he emailed MyCSP in response and questioned whether he could be "penalised" by abatement, if he retired at age 60, because the pension, in addition to his part-time pay, would exceed his salary of reference.
45. MyCSP then emailed him on 19 September 2012 stating that "The issue for you in respect of avoiding abatement is the same as for someone who is working full-time in that you need to reduce your ongoing earnings by at least 20% to do so."
46. As a result of the emails received from MyCSP on 18 September 2012 and 19 September 2012, he decided to reduce his income and avoid abatement. He was already working on a part-time basis at the time so he had no other option than to forgo the Investigation Allowance he was receiving at the time to do so.
47. During a telephone conversation with MyCSP around the time of his retirement in December 2013, he was again told that his pensionable salary would need to reduce following the application of abatement. As he was already working part-time hours of

24 hours a week, he sacrificed an Investigation Allowance he had been receiving to comply with that guidance.

48. He only accepted abatement on his retirement benefits as MyCSP said that it would apply in the email of 18 September 2012 and Capita incorrectly confirmed this in the letter of 20 November 2013. If MyCSP had not made its error he would have continued receiving his pre-retirement salary from November 2013.
49. Those higher earnings would also have formed the basis of the calculations for the benefits when he retired again in February 2019. Before receiving the misinformation from MyCSP in September 2012, he had thought that his full pension would be paid as the retirement benefits were in the Classic Section.
50. His pensionable pay was not forcibly reduced by MyCSP. However, he decided to reduce it because "...in my mind I had no choice but to do so, as otherwise I would have received none of the pension to which I was entitled. Therefore, I felt I was being forced to do so." As his deferred pension was made subject to abatement, he could 'only receive any of the benefits by reducing his pay'.
51. He should be put into the position he would have been in if abatement had not been incorrectly applied; and to his mind that includes carrying on receiving the salary he was receiving in November 2013 and that salary then being used to calculate his second pension from December 2013 to April 2020.

Cabinet Office's additional comments

52. Mr L's full-time equivalent salary was £30,331 a year but based on his part-time working arrangement of 24 hours per week, his actual pay was £20,220 before 1 December 2013. From that date his pay remained the same but he ceased receiving the pensionable Investigation Allowance of £4,278.96 a year.
53. There was no requirement under the Classic Regulations for Mr L to reduce his pensionable earnings to claim his benefits in December 2013. Neither was this stipulated in any guidance provided by the Cabinet Office to MyCSP.
54. MyCSP's email of 19 September 2012 incorrectly compared Mr L's situation to that of a member seeking partial retirement. So, the email incorrectly stated that Mr L would need to reduce his earnings by 20%. However, this guidance was only provided to assist him in avoiding abatement.
55. There is no record of either MyCSP or the Cabinet Office informing Mr L that he needed to reduce his pensionable earnings to claim any of his deferred pension in December 2013. There is also no record of a telephone conversation between Mr L and MyCSP in 2013.
56. The Employer paid Investigation Allowances to reflect an employee's role. On 17 September 2013, Mr L wrote to the Employer explaining that he would like to cease this part of his role so that he could receive the "maximum" benefits with no abatement applied when retiring at age 60.

57. Mr L also said he was aware of the financial implications of doing so in respect of his future benefit entitlements from the Scheme. This shows Mr L was aware that his future pension accrual would be affected by foregoing the Investigation Allowance he had previously received.
58. Mr L's full pension if abatement had not been applied incorrectly from December 2013 ought to have been £12,611.50 a year. However, a pension of only £6,160.93 a year was paid from that time until the error was identified. Consequently, a lump sum of pension arrears totalling £35,778.63 was paid into Mr L's bank account on 31 March 2020.

Ombudsman's decision

59. Mr L complained that MyCSP incorrectly abated his deferred benefits when they were put into payment in December 2013 and the error was not corrected until March 2020. Mr L said this caused him financial detriment despite the fact that he had received a lump sum payment amounting to the incorrectly abated pension. Mr L initially said that to put matters right he should receive interest on the backdated payment of his pension.
60. More recently Mr L has also argued that he should be put into the position he would have been in if abatement had not been incorrectly applied. That is that he would not have foregone the Investigation Allowance that he was receiving in November 2013 as part of his role had he not been told that abatement would apply. Mr L considered that the higher salary should be used to calculate the benefits he accrued in the Scheme between December 2013 and April 2019.
61. There is no dispute that abatement was wrongly applied to Mr L's retirement benefits for the period from December 2013 to 31 March 2020. This has been partly remedied by the payment of the pension arrears totalling £35,778.63 which has been paid to Mr L.
62. However, it was not until March 2020 that this resolution was reached as the Cabinet Office had initially provided incorrect guidance to MyCSP regarding the way in which members, who had opted out of the Scheme, and re-joined before reaching the Scheme's NRA, should be treated at retirement. Having then received corrected guidance in 2018, MyCSP failed to identify Mr L as a member who could be affected by the Cabinet Office's initial error. I find that these errors amount to maladministration by the Cabinet Office and MyCSP. The resulting delay in paying Mr L his full benefit entitlement from December 2013 until 31 March 2020 would have caused him financial detriment that has not been fully recognised in the payments of pension arrears lump sum Mr L received.
63. I agree that it is appropriate for interest to be added to the payment of the pension arrears and that the Cabinet Office is responsible for the late payment of Mr L's benefits for the period December 2013 to 6 November 2018, when it provided appropriate guidance. MyCSP is responsible for the period from November 2018 to

March 2020 when it eventually acted in accordance with the revised guidance, and paid Mr L's pension arrears. I find that this is sufficient to fully redress the late payment of Mr L's full pension entitlement for the period from December 2013 to March 2020.

64. Mr L contended that if MyCSP had not said in its email of 19 September 2012 that there was a requirement to reduce his pensionable pay by at least 20%, he would not have reduced his salary from December 2013. Mr L said he was again told that his pensionable salary would need to reduce following the application of abatement during a telephone call with MyCSP in December 2013. MyCSP has no record of this telephone call. So, I am unable to place any weight on the contents of that telephone call in my findings.
65. Having reviewed the emails that MyCSP exchanged with Mr L on 18 September 2012 and 19 September 2012, I note that abatement, and the ways in which Mr L could avoid it were discussed and that MyCSP's email of 19 September 2012 incorrectly stated that Mr L would need to reduce his pay by at least 20%.
66. Mr L applied for payment of his deferred benefits in August 2013, claiming the maximum lump sum permitted under the Scheme of £37,834.51, and a residual pension of £6,160.93 a year, after the incorrect application of abatement. Then on 17 September 2013, Mr L wrote to the Employer confirming that he would like to stop receiving the Investigation Allowance so that he could receive "maximum" benefits from the Scheme. Mr L also stated that he was aware of the financial implications of doing so in respect of his future benefit entitlements from the Scheme.
67. It is clear that the reason why Mr L chose to forgo the additional Investigation Allowance was to mitigate the effects of abatement. While I agree with Cabinet Office's view that Mr L was aware of the financial implications this decision would have in respect of his future benefit entitlements from the Scheme. The question is what would Mr L have done had he been aware of the correct position in 2013?
68. Mr L contends that he would not have made that decision and would have continued to undertake that part of his role and so receive the higher salary. The Cabinet Office said that Mr L has made this claim with the benefit of hindsight. While I acknowledge that it is somewhat difficult to provide evidence of actions that might have been taken but were not, I find that there is a high level of uncertainty in Mr L's claim. For example, it is unclear what the investigation allowance entailed to justify the additional payments, but I would assume it was a not insignificant additional responsibility. Further, Mr L may not have chosen to continue to undertake the additional responsibilities for the full period between 2013 and 2019 or indeed the Employer may not have wanted or required him to do so for the entirety of that period. I find that, given the variable outcomes of these questions, it is not possible to conclude that the loss argued for by Mr L is one that should naturally flow from the emails sent by MyCSP to Mr L.

69. However, I do accept that the maladministration identified will have caused Mr L serious distress and inconvenience which should be recognised, so I find that £1,000 (i.e. an additional £500, on top of the amount already paid by MyCSP) is an appropriate award in the circumstances of this case.

70. I partly uphold Mr L's complaint.

Directions

71. Within 28 days of this Determination:

- The Cabinet Office shall pay Mr L a lump sum equal to simple interest on the arrears of pension payments for the period December 2013 to 6 November 2018 calculated at the base rate for the time being quoted by the Bank of England.
- MyCSP shall pay Mr L a lump sum equal to simple interest on the arrears of pension payments for the period 7 November 2018 to 31 March 2020 calculated at the base rate for the time being quoted by the Bank of England.
- MyCSP shall pay Mr L an additional £500 in recognition of the serious distress and inconvenience caused.

Dominic Harris

Pensions Ombudsman
27 December 2023