

Ombudsman's Determination

Applicant	Mr N
Scheme	Principal Civil Service Pension Scheme (Northern Ireland) (the Scheme)
Respondent	Civil Service Pension (NI) (CSP)

Outcome

1. Mr N's complaint against CSP is partly upheld. To put matters right, CSP shall pay Mr N £1,000 for the serious distress and inconvenience he has experienced.

Complaint summary

2. There are two parts to Mr N's complaint. The first part concerns the overpayment of benefits he received and how CSP recovered the overpayment. The second part concerns the Widows and Dependants Pension (**W&D**) and Additional Service Pension (**ASP**) refunds, Mr N was entitled to, when he retired. He would also like someone held responsible for the errors made in the calculation of his benefits.

Background information, including submissions from the parties

3. Mr N was a Prison Officer and had preserved rights in the Scheme. He formally retired in February 2011. At the time, his benefits were governed by the Principal Civil Service Pension Scheme (Northern Ireland) 1972 Rules (**the Rules**), and his total reckonable service, including the doubling of service over 20 years, totalled 45 years and 311 days.
4. Under the Rules, the maximum reckonable service a member can accrue is 45 years. Any service accrued over 45 years is paid as a one-off lump sum known as an ASP. Relevant sections of the Rules are detailed in the Appendix.
5. When Mr N formally retired in February 2011, the benefits payable to him were calculated to provide him with an immediate lump sum and an annual pension that was deferred until his final retirement from the Scheme.

6. In early 2012, Mr N requested a breakdown of the calculation of his benefits. On 2 February 2012, CSP wrote to Mr N and provided him with a breakdown of the calculation used to determine his benefit entitlement. In the letter CSP said:

“This review highlighted a slight error in the previous calculation (a figure of £4,579 rather than £4,536 had been used as the additional service payment in error) and the figures have been reviewed as shown and a revised statement has also been provided...”

7. Mr N finally retired on 30 November 2012, on the grounds of Voluntary Early Redundancy (**VER**).

8. On 4 February 2016, Mr N wrote to CSP and requested a full review of his benefits. On 30 March 2016, CSP wrote to Mr N and informed him that following a review of his benefits, (**the Review**), it was almost in a position to send him a substantive reply to his concerns. In addition, CSP said:

“I do, however wish to advise that as a result of this revision, it has resulted in a reduction in your pension [sic], which CSP have applied with immediate effect, in order to avoid any additional accrual of overpayment.

A balance of any lump sums payable will be issued in due course...”

9. On 11 April 2016, CSP wrote to Mr N to inform him of the outcome of the Review. CSP explained:-

- It had identified errors in the original calculation of his formal retirement award, which had an impact on his final retirement calculations.
- The errors included an overpayment of both his annual pension and lump sum, as well as an underpayment of his ASP and W&D contributions. His annual pension had also been revised.
- In accordance with the Rules, when Mr N formally retired, he should have received a refund of the ASP for the 311 days in excess of the 45 years, which amounted to £609.85. He should also have received a refund of the W&D contributions he had paid, which amounted to £18,024.46.
- These refunds should have been paid to him as a one-off lump sum, in addition to the standard lump sum he received. So, a lump sum of £18,634.31 was payable to him.
- When Mr N finally retired in November 2012, he was entitled to a refund of the ASP contributions he had paid between his formal and final retirement dates. This amounted to £2,615.53. He was also entitled to a refund of the W&D contributions he had paid during that time, which amounted to £1,801.19.
- CSP must calculate the lump sum in accordance with HM Revenue & Customs' (**HMRC**) regulations. Under those regulations, CSP is required to limit the amount

of lump sums paid. HMRC restricts the lump sum to 25% of the total notional value of the pension payable. In cases where this limit is breached there is no option to elect a higher lump sum. So, any excess of the lump sum benefit must be commuted to an annual pension.

- How Mr N's pension should have been calculated on his final retirement date is that: his lump sum should have been £1,978.13 and annual pension £22,930.59.
 - The revision of his benefits resulted in an overpayment of annual pension, between 1 December 2012 and 29 February 2018, of £2,130.54 and an overpayment of the lump sum totalling £5,350.33. Mr N's annual pension entitlement was also reduced to £24,006.29, which was £839.92 less than he was in receipt of at the time.
 - CSP is obliged to attempt to seek recovery where an overpayment involves public money. CSP has the authority under the Pensions (Northern Ireland) Order 1995, Article 89 – Section 5(f) (**the Order**), and as amended by way of Article 243 in the Pensions (Northern Ireland) Order 2005, to recover an overpayment of pension made in error, from the member's ongoing pension benefits.
 - CSP may work with the individual to achieve a repayment plan which is affordable, taking into account the individual's personal financial circumstances.
 - CSP must offset any overpayments against any arrears of pension or lump sum due to the member. CSP deducted the overall total overpayment of pension and lump sum totalling £7,480.87 against the total underpayment of £18,634.31 due to Mr N.
 - CSP made arrangements to pay the balance of £11,153.44 to Mr N on 13 April 2016, and also brought the revised pension entitlement into payment.
10. Between 8 May 2016 and 29 April 2017, there were further exchanges between Mr N and CSP concerning:
- the recalculation of his benefits;
 - CSP reducing his pension and recovering the overpayment, before informing or discussing an affordable repayment plan with him; and
 - why the overpayment had occurred, and why he was not paid a refund of the ASP and W&D contributions at the time he formally retired.
11. During this period Mr N also raised a complaint under both stages of the Scheme's Internal Dispute Resolution Procedure (**IDRP**) about the customer service he had received and the Review.
12. On 1 September 2016, CSP sent Mr N its response under stage one of the IDRP concerning the customer service. In summary it explained:-

- It is standard process that cases are fully reviewed and revised, where appropriate, following a member's request for a review. There are also occasions where certain types of awards are reassessed through bulk exercises.
 - Mr N had telephone conversations with CSP concerning his request for a breakdown of the W&D contributions and letters were issued with reference to those calls. The letters CSP sent to Mr N dated 28 August 2015 and 9 October 2015, referred to the requested breakdown of those contributions. CSP also apologised for any confusion or misinterpretation regarding the information that it had provided to Mr N.
 - Why his pension was reduced immediately following the discovery of the overpayment and clarified that the new rate of pension, applying from March 2016, was the revised rate as a result of the Review. It was not a reduction due to an overpayment.
 - It apologised for the lack of customer service Mr N felt he had experienced.
13. On 9 December 2016, CSP sent Mr N its response to his complaint regarding the Review. In summary CSP explained:-
- It was CSP's opinion that the Rules had been applied correctly. Furthermore, the revised award, and information CSP had provided to Mr N in relation to his revised award, was correct.
 - How the overpayment and underpayment had occurred and provided Mr N with a breakdown of the overpayment calculations.
 - How W&D contributions are paid and managed and confirmed that the correct rate of interest had been applied on his W&D refund, in accordance with the Rules and regulations that determine this calculation.
 - It apologised for the errors that occurred in the processing of Mr N's original award and confirmed that his pension was being correctly paid in accordance with the Rules and regulations of the Scheme.
14. In September 2017, CSP sent Mr N its decision under stage two of the IDRPs concerning his complaint regarding the customer service he had received and also the Review. It apologised for any confusion caused by previous correspondence. However, it noted that CSP's letters dated 11 April 2016 and 9 December 2016, had provided additional information to assist in clarifying the details and position of his case. In summary CSP also explained:-
- Following the Review, his pension was amended, and the correct pension was put into payment.
 - The Review highlighted that a refund of ASP and W&D contributions should have been paid to him at the time of his formal retirement. These were only paid at final retirement, which in turn impacted on the pension and lump sum payments.

- On formal or final retirement, CSP must complete a calculation to determine the maximum lump sum allowed in order to ascertain whether HMRC limits are breached. This calculation is done in accordance with HMRC regulations. Where breaches occur the excess lump sums are inversely commuted to additional pension to comply with the regulations.
- The calculations carried out showed his benefits had breached HMRC guidelines and the lump sum was inversely commuted to pension. This meant that although he was due a refund of £18,634.31 for the ASP and W&D, he had also been overpaid £7,480.87.
- CSP is permitted to offset overpayments against any monies due, and the balance of £11,153.44 was paid to Mr N. CSP also paid him interest for the late payment of the lump sums.
- Had the ASP and W&D refund been paid at formal instead of final retirement, Mr N's pension would still have breached HMRC's regulations.
- Under the Rules, CSP is obliged to pay a member only what they are entitled to. While it is regrettable that errors had occurred, the overpaid benefits were paid from public funds, and CSP is duty bound to recover the overpayment. In this case, it meant offsetting the overpayment against monies due to Mr N.
- Under the Order, CSP has authority to recover any overpayment of public funds.
- It is satisfied that the errors that occurred have been rectified, and the pension in payment is correct.
- It recognised that there was "inefficient handling" of Mr N's case and offered him £500 in recognition of the distress and inconvenience caused by the late payment of the ASP and W&D refunds, and also the time taken to review his case.

Summary of Mr N's position

15. Mr N provided copies of correspondence he exchanged with CSP between February 2012 and February 2018 and said:-
- He was unable to put his financial loss into figures and has been "chasing [his] tail since [he] retired."
 - He was informed on several occasions that he had received the correct monies due. It was only after he asked his friend to write to CSP, in relation to the shortfall, that he was able to get a refund of over £11,000 plus interest.
 - He would like to receive the correct money that he should have received on his retirement, and someone held accountable for the errors.
 - He has not accepted the £500 that CSP offered him for the distress and inconvenience he has experienced.

Summary of CSP's position

16. CSP's additional points are summarised below:-

- CSP corrected any errors made and provided Mr N with a full breakdown of the figures in its response under stage one of the IDRPs.
- The additional ASP and W&D contributions Mr N had paid between his formal and final retirement dates amounting to £2,615.53 and £1,801.19 respectively, were incorporated into his final pension calculation and were not paid as "single monetary identities."
- On 17 August 2016, Mr N complained about the level of service he had received. CSP acknowledged the lack of customer service it had provided to Mr N and apologised for any confusion or misinterpretation of the information provided.
- At stage two of the IDRPs, CSP recognised that Mr N's case had not been handled efficiently because of: (i) the incorrect calculations; and (ii) the delays in responding to the concerns he had raised. In recognition of these errors, CSP offered Mr N £500 for the distress and inconvenience it had caused him.
- CSP has now paid all the monies owed to Mr N, including interest from 13 April 2016. CSP has also apologised to Mr N on several occasions for any hurt or distress caused.
- It is content that the errors which occurred have been rectified and the pension in payment is correct.

Adjudicator's Opinion

17. Mr N's complaint was considered by one of our Adjudicators who concluded that further action was required by CSP. The Adjudicator's findings are summarised below:-

- CSP had accepted that it failed to calculate Mr N's benefits correctly when he retired.
- Following Mr N's request in 2016, the Review was completed by CSP, which highlighted that both an overpayment and underpayment of pension had occurred in Mr N's case. CSP had failed to calculate Mr N's benefits correctly when he formally retired in 2011. The overpayment of pension was made between 1 December 2012 and 29 February 2018.
- In CSP's letters dated, 11 April 2016 and 9 December 2016, it explained how the overpayment and underpayment had occurred, and it also explained that it had a duty to recover the overpayments, which it did, by offsetting it against the refund of ASP and W&D contributions to which Mr N was entitled. CSP also reduced Mr

N's pension to the correct amount immediately following the discovery of the overpayment.

- CSP can only pay Mr N the Scheme benefits to which he is entitled. In the Adjudicator's view, it was not unreasonable for CSP to have reduced Mr N's pension, once the Review had identified the overpayment, to ensure that he was being paid the correct Scheme benefits. This prevented a further pension overpayment.
- The Adjudicator accepted that CSP had a duty to recover any overpayment of benefits, however, it can only do so in accordance with the Limitation Act 1980 (**the Limitation Act**).
- The Limitation Act prevents recovery of an overpayment if the overpayment occurred more than six years before a claim was made for recovery, or six years from the point it was reasonable for the party making the claim for recovery to have become aware of the error.
- In the High Court case of *Webber v Department for Education and another* [2016] EWHC 2519 (Ch), the Judge held that the cut-off date for limitation purposes, in overpayment cases before the Ombudsman, was the date when Teachers' Pensions brought its claim during the course of The Pensions Ombudsman's complaints procedure. That date was identified as being the receipt by The Pensions Ombudsman of Teachers Pensions' response to Mr Webber's complaint.
- Applying this to Mr N's case, CSP's response to Mr N's complaint was received by The Pensions Ombudsman's Office (**TPO**) in November 2018. For the purposes of the Limitation Act, this was the date at which time ceased to run. So, the question was whether CSP had made its claim for repayment within the applicable limitation period.
- The earliest point from which the limitation period could be measured was December 2012, when Mr N's pension commenced. Therefore, CSP had until December 2018 to make its claim for recovery of the overpayment. In November 2018 CSP responded to Mr N's complaint made to TPO, so, it was able to recover the whole overpayment from Mr N.
- The Adjudicator considered whether there was any defence against the recovery of the overpayment.
- The most common defence against recovery of an overpayment is referred to as "change of position", that is, the applicant has changed his position such that it would be unjust to require him to repay the overpayment either in whole or in part. To make out a change of position defence certain conditions must be satisfied. Broadly, the applicant must, on the balance of probabilities, show that because of the overpayment, which he received in good faith, he detrimentally changed his position.

- The requirement of good faith would not be satisfied if the recipient of the overpayments had good reason to suspect that a payment had been made in error. To establish good faith, the Ombudsman would consider if there was anything to alert Mr N to the error, to the point that he may have been aware that something was amiss or could have been expected to make reasonable enquiries.
- The Adjudicator noted that in February 2012, prior to his final retirement in November 2012, Mr N had queried with CSP if his pension had been calculated correctly, and he was informed that it had been. However, Mr N had already made the decision to formally retire, in February 2011, and he was just under age 56 at the time. Mr N finally retired on 30 November 2016, at age 57, on VER grounds.
- On the balance of probabilities, because of Mr N's age, and the fact that he would have received a lump sum in respect of the ASP and W&D contributions, he still would have finally retired in November 2012 even had he been provided with the correct information. So, it was the Adjudicator's view that the change of position defence was not met.
- There are other defences to the recovery of an overpayment, for example, estoppel and contract. These arise less often in pension cases but will be considered if the circumstances of the case suggest that this is appropriate.
- A defence of estoppel could have been raised if Mr N reasonably relied on a clear and unambiguous statement made by the Scheme, to his detriment, such that the Scheme should not be allowed to go back on the statement made. Given the nature of the overpayments, estoppel is not applicable as the Scheme did not make a "clear and unambiguous statement", nor has Mr N shown that he has irreversibly and detrimentally changed his position. For completeness, the Adjudicator also explained that she was unable to identify the necessary elements for a contract to exist, such as offer, acceptance, consideration and the intention to enter into legal relations. So, the defences of estoppel and contract did not apply in this case.
- In the Adjudicator's opinion, none of the possible defences against recovery applied, so the overpayment could be recovered.
- To recover the overpayment, CSP decided to offset the overpayment that Mr N had been paid, against the underpayment he was owed. Under the Order, relevant sections of which are provided in the Appendix, CSP is permitted to offset monies owed against monies due. So, it was the Adjudicator's view that there was no maladministration by CSP when it offset the overpayment against the underpayment.
- Had CSP calculated Mr N's benefits correctly when he formally retired in 2011, he would have received the refund of the ASP and W&D contributions at that time, and he would not have been overpaid any benefits. Mr N was not entitled to the overpaid monies that he received, and CSP has a duty to recover the

overpayment. In the Adjudicator's opinion, offsetting the overpayment from the underpayment put Mr N in the position that he would have been in, had his benefits been correctly calculated at the point at which he formally retired and again when he finally retired.

- In 2016 CSP paid Mr N the remainder of the ASP and W&D refunds he was owed. CSP also confirmed that the additional ASP and W&D contributions Mr N had paid between his formal and final retirement dates were inversely commuted to give him a higher pension. As a result of this, the Adjudicator was satisfied that Mr N had received, and was continuing to receive, the correct Scheme benefits to which he was entitled.
 - In the Adjudicator's opinion, the Ombudsman would not find that Mr N was owed any other benefits from the Scheme or that CSP was wrong to offset the overpayment against the underpayment when the errors were discovered through the Review.
 - However, the Adjudicator noted that Mr N had been querying with CSP whether his pension had been calculated correctly since 2012. She also noted that prior to April 2016, he was informed that it was. It was only through Mr N's persistence that the errors were finally discovered. In the Adjudicator's opinion, CSP could have discovered the errors at the time. Furthermore, when the errors were discovered CSP reduced Mr N's pension immediately without first informing him of the reduction.
 - The Adjudicator appreciated that in CSP's letter to Mr N, dated 1 September 2016, CSP explained that it reduced his pension immediately, when it discovered the error in the calculation of his pension, to prevent any further overpayment. In the Adjudicator's view, being told that he was in receipt of an inflated pension, after being assured he was receiving his correct entitlement, would have caused Mr N significant distress.
 - The fact that his pension was being reduced without any prior notice, which would have allowed him time to put his affairs in order, would likely have contributed to his distress. CSP notifying him that he had been underpaid by over £18,000 would likely have compounded matters further causing him serious distress and inconvenience. So, Mr N should receive an award in recognition of this.
 - The Adjudicator noted that CSP had offered Mr N £500 for the distress and inconvenience he had experienced. In the Adjudicator's view, CSP should increase its award to £1,000, for the serious distress and inconvenience Mr N has suffered.
 - It was the Adjudicator's view that this complaint should be upheld in part.
18. Following the Adjudicator's Opinion there were further exchanges between Mr N, the Adjudicator and CSP concerning whether or not Mr N had been refunded his correct W&D contributions.

19. Following these further exchanges, Mr N confirmed that he did not accept the Adjudicator's Opinion. He made some additional points, which are summarised below:-

- W&D contributions are fully refunded in cases where the officer is single. This refund is a tax free payment, this includes the interest accrued until final retirement. He was single during all of his service.
- He questioned why other single officers received their payment tax free but he was treated differently.
- W&D refunds are not included in the calculation used to determine whether a member has breached HMRC regulations. The refund payable to all single officers is tax free. So, it should not have been included in the calculation of his pension.
- At no time has CSP provided proof that he was not entitled to a tax refund on the overpayment. His letter dated 17 August 2016 to CSP requested a complete breakdown of the overpayment and rate of tax deducted.
- He has been penalised twice: he paid tax on his retirement and also on the part of his lump sum that was converted to pension. So, HMRC has had "two bites at the cherry."
- Prior to being informed of the error in his pension and the overpayment, not once did CSP take into consideration his personal financial circumstances. CSP did not contact him at any time to discuss an affordable repayment plan.
- CSP should have discussed its plans to recover the overpaid lump sum before offsetting the money against the benefits he was entitled to from his final retirement date. It could also have discussed a financial arrangement to deduct the overpayment from his pension on a monthly basis.
- If the Review had been carried out at the time requested, these errors would have been uncovered sooner and he would not have owed as much money.
- CSP does not have a right to deduct money from his refund of the W&D and ASP contributions he was due on retirement. CSP should have contacted him immediately to discuss the situation. He is not complaining about the overpayment of pension. He is aware that CSP is entitled to recover this money.
- CSP said, in its letter of 9 December 2016, that all lump sum payments are taken into account when calculating whether a member has breached HMRC regulations. This statement is incorrect, as the first £30,000 of a redundancy payment is tax free. The W&D refund plus interest is also tax free.
- If CSP included these amounts, when calculating whether he had breached HMRC regulations, he has yet to receive his correct refund from CSP.

- £1,000 is not “enough” to compensate him for the distress and inconvenience caused by the incompetence of CSP. He is still awaiting correct payment eight years later. He has been penalised enough and the way he has been treated is unjust and unfair.
- The defences of estoppel and contract apply in his case. He relied on a clear and unambiguous statement made by CSP to his detriment. CSP should not be allowed to go back on that statement.
- By providing this statement, CSP entered into a binding contract in respect of his retirement benefits. As stated by his employer at the time, this offer was binding and could not be revoked. He has paperwork to prove this.
- CSP’s actions also amount to maladministration. It was not appropriate for CSP to recover the overpayment for the following reasons:-
 - The errors were CSP’s fault.
 - There was no way that he would have been aware of this issue.
 - CSP was negligent in making the overpayment and was aggressive in its handling of this situation.
 - CSP could have acted with more care and discovered the errors earlier.
- He could not have breached HMRC’s regulations, as CSP has alleged. He did not commute his pension. He was never informed of the change in the pension calculations. In particular, the fact that W&D refunds were being factored into CSP’s final pension calculations.
- In light of the information he received from CSP, it is “clearly obvious that the interest payments relating to W&D payments have been miscalculated throughout.” This is supported by Bank of England (**BOE**) base rates, which can be obtained from its website.
- He joined the Scheme in 1978. The BOE interest rates, between 1978 and the date he retired, were higher than those CSP applied to his W&D contributions.
- He is yet to receive his correct refund, as incorrect interest rates have been applied to his W&D contributions.
- CSP gave misleading information. Consequently, he was not in a position to make an informed decision about his pension. Had he received correct information, he would have commuted some of his pension to mitigate his loss of the W&D contributions.
- He has recently received a payment of £79.30 from CSP; no explanation was included with the cheque. After he made further enquiries, he was informed that it related to the underpayment of the W&D he was paid in 2016.

- This clearly demonstrates CSP's maladministration and incompetence in dealing with his payments.
20. CSP provided details of Mr N's revised benefit calculations, including the interest that was applied to his W&D contributions. In summary, it said:-
- The introduction of HMRC's tax simplification on 6 April 2006 had a significant impact on pension calculations. Scheme lump sum, W&D refund and ASP lump sums are now factored into final pension calculations.
 - In accordance with HMRC regulations, CSP is required to limit the lump sums which are paid. HMRC currently restricts the lump sums to 25% of the total notional value of the pension benefits payable.
 - In cases where this limit is breached, there is no option to elect for a higher lump sum and any excess of the lump sum benefits must be commuted to annual pension.
 - In Mr N's case, when he finally retired, the balance of the lump sum amounting to £3,692.04 was payable in respect of the period between his formal and final retirement dates. A W&D refund of £1,801.19 due for this period, and ASP payment of £2,615.53, for his additional service in excess of 45 years, had to be factored into the calculation to see if HMRC restrictions were breached.
 - CSP said it cannot speculate on why other members were paid all of their W&D refund as a tax free lump sum, as all calculations are unique and may not have had the same input values. Consequently, those members may not have been subject to any restrictions.
 - In Mr N's case, only a portion of his W&D refund, namely the element of £1,801.19, accrued between his formal and final retirement dates, were included in the calculation used to determine whether HMRC regulations had been breached. This is because the residue of W&D contributions was revised and retrospectively paid at Mr N's formal retirement, with an ex-gratia payment of £316.96 for loss of interest. No tax was deducted from the payment Mr N received in April 2016, in respect of his W&D refund.
 - The exemption amount of £30,000 that Mr N has referred to, applies to termination payments made to members under the 'Civil Service Compensation Scheme, Northern Ireland' (**CSCS(NI)**). Pension payments do not count towards the £30,000 threshold.
 - The Rules and regulations pertaining to the Scheme were applied correctly in the retirement calculation.
 - An error was identified in the BOE interest rates used in its calculation of the late payment interest applied to the corrected lump sum figures, which was paid on 13

April 2016. This resulted in additional interest of £79.30 being due to Mr N, inclusive of £1.70 interest for late payment.

- In relation to the interest rates used for W&D contributions, CSP said:-
 - The interest rates used for W&D refunds are governed by the Rules¹ and not the BOE base rates. Rule 4.21 refers and rule 4.21(viii)(d) specifically stipulates the rate of 5% is to be used up to 31 March 1990.
 - Between 1 April 1990 and 31 March 1995, the interest rate used was the yearly average of “Building Society Basic Rate,” as prescribed by the Rules.
 - Between 1 April 1995 and 31 March 2014, the interest rate used was the yearly average of “Building Society Average Rate” for share accounts, as prescribed by the Rules.
 - From 1 April 2014, the interest rates were calculated using a formula provided by the Government Actuary’s Department (**GAD**).

21. As Mr N did not accept the Adjudicator’s Opinion, the complaint was passed to me to consider. I agree with the Adjudicator’s Opinion and note the additional points raised by Mr N and the further explanation given by CSP.

Ombudsman’s decision

22. There are two parts to Mr N’s complaint: (i) the overpayment; and (ii) the refund of the W&D and ASP contributions. I will give my finding on each part in turn below.

The Overpayment

23. The Adjudicator explained in her Opinion, as detailed in paragraph 17 above, her reasons why the overpayment is recoverable. I agree that the overpayment is recoverable for broadly the same reasons. I note Mr N is not complaining about the fact that the overpayment was recovered, as he accepts that CSP is permitted to recover the monies. However, he is dissatisfied with how it was recovered.

24. I accept that it would have been helpful had CSP informed Mr N before offsetting the overpayment against the underpayment. However, the Order permitted CSP to recover the overpayment from monies owed to Mr N, so there was no maladministration by CSP in doing so in Mr N’s case.

25. I do not uphold this part of Mr N’s complaint.

¹ <https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/Section-II-of-the-rules-of-the-PCSPS-NI-after-PCSPS-NI-Amendment-S....pdf>

The Refunds

26. Mr N has argued that he has not been refunded the correct W&D contributions because he did not receive this payment tax free. He has also asserted that the incorrect interest rates were applied to these contributions.
27. Based on the evidence, I find that Mr N has been paid his correct W&D and ASP refunds, albeit later than it should have been. CSP has confirmed that the refund of the W&D contributions Mr N was paid in April 2016, which he should have received when he formally retired in 2011, was paid tax free, and that interest, as prescribed by the Rules, was applied to those contributions. It has also confirmed that a small proportion of Mr N's W&D refund was commuted, because the lump sum had breached HMRC guidelines.
28. I understand Mr N's reluctance to accept that he has been paid the correct refunds based on CSP's errors in the past. However, I am satisfied on reviewing the evidence that CSP has now corrected its errors and Mr N has been awarded the correct refunds that he should have received when he formally and finally retired.
29. Notwithstanding this, I find that CSP's failure to refund Mr N his W&D and ASP contributions at the right time; the delay in identifying the initial errors; and the subsequent errors made in relation to the payments, amount to maladministration that has caused Mr N distress and inconvenience. I also find that the manner in which CSP informed Mr N of the overpayment and underpayment would have compounded matters and caused Mr N serious distress and inconvenience for which he should receive an award.
30. I uphold Mr N's complaint in part.

Directions

31. Within 28 days of the date of this Determination, CSP shall pay Mr N £1,000 for the serious distress and inconvenience the maladministration has caused him.

Anthony Arter

Pensions Ombudsman
21 October 2021

Appendix

Relevant sections of the Principal Civil Service Pension Scheme (Northern Ireland) Section 11 of the 1972 Section

“ ...

SECTION 2: RECKONABLE SERVICE

...

2.3 Except for the purposes of rules 1.6a, 1.7, 4.17 (ii) reckonable service cannot exceed 45 years in total. This is subject to the following. Before 1 March 2008 a member may not count as reckonable more than 40 years' service before the pension age. After 29 February 2008, a member who has accrued 40 years' reckonable service before the pension age may count any further service accrued on or after 1 March 2008 as reckonable, subject to the overall limit of 45 years...

SECTION 7: PURCHASE OF ADDED YEARS

7.1 Subject to the other provisions, of this section, a civil servant may opt to increase his reckonable and qualifying service by buying added years...

7.2 The amount of added years purchased must not result in reckonable service exceeding 40 years by the pension age or 45 years in total...”

Relevant sections of the Pensions (Northern Ireland) Order 1995

“ ...

Inalienability of occupational pension

89 (5)(f) subject to paragraph (6), a charge or lien on, or set-off against the person in question's entitlement, or right for the purpose of discharging some monetary obligations due from the person in question to the scheme arising out of a payment made in error in respect of the pension.

(6) Where a charge, lien or set-off is exercisable by virtue of paragraph (5) (d), (e) or (f)

(a) its amount must not exceed the amount of monetary obligation in question, or (if less) the value (determined in the prescribed manner) of the person in question's entitlement or accrued right, and

(b) the person in question must be given a certificate showing the amount of the charge, lien or set-off and its effect on his benefits under the scheme...”