

Ombudsman's Determination

Applicant	Mrs T
Scheme	Principal Civil Service Pension Scheme (PCSPS) and Civil Service Injury Benefits Scheme (CSIBS)
Respondents	MyCSP, the Cabinet Office

Outcome

1. Mrs T's complaint is upheld and to put matters right the Cabinet Office shall notify Mrs T of its decision to waive the revised debt.

Complaint summary

2. Mrs T's complaint concerns an overpayment of injury benefit amounting to £4,104.81.

Background information, including submissions from the parties

3. Appendix 4.11: overpayments, of HM Treasury's "Managing public money" (**MPM**) document states:

"... Public sector organisations may waive recovery of overpayments where it is demonstrated that recovery would cause hardship. But hardship should not be confused with inconvenience. Where the recipient has no entitlement, repayment does not in itself amount to hardship, especially if the overpayment was discovered quickly. Acceptable pleas of hardship should be supported by reasonable evidence that the recovery action proposed by the paying organisation would be detrimental to the welfare of the debtor or the debtor's family. *Hardship is not necessarily limited to financial hardship; public sector organisations may waive recovery of overpayments where recovery would be detrimental to the mental welfare of the debtor or the debtor's family. Again, such hardship must be demonstrated by evidence.*" [emphasis added].

4. Under the heading "Defences against recovery," the MPM document states:

"... Defences which may be claimed against recovery include:

- the length of time since the overpayment was made

- change of position
- estoppel
- good consideration
- hardship.

Lapse of time

A4.11.12 There can be time limitations on recovery. In England and Wales, a recipient might plead that a claim is time-barred under the provisions of the Limitation Act. Proceedings to recover overpayments must generally be instituted within six years (twelve years if the claim is against the personal estate of a deceased person) of discovery of the mistake or the time when the claimant could, with reasonable diligence, have discovered it.”

5. Mrs T is receiving an injury benefit following a traumatic incident that occurred during her employment as a nurse in the prison service. The incident has affected Mrs T's mental health. Mrs T suffers from post-traumatic stress disorder (**PTSD**).
6. Mrs T was contracted out of the State Second Pension in respect of her membership of the NHS Pension Scheme. Mrs T reached State Pension Age (**SPA**) in 2005.
7. In January 2005, the Department of Work and Pensions (**DWP**) notified the PCSPS that Mrs T had a guaranteed minimum pension (**GMP**) in the scheme (the **Notification**). The GMP amounted to £7.86 per week at SPA.
8. Mrs T was paid the GMP via the PCSPS by mistake. The Notification should have been sent to the administrators of the NHS Pension Scheme.
9. MyCSP was not the administrators or payroll provider of the PCSPS at the time of the error in 2005. The error was discovered in 2015, after Mrs T queried her tax status. In January 2016, MyCSP notified Mrs T that she would not receive any further payment of GMP.
10. During the complaint process, the Cabinet Office acknowledged that the GMP was not attached to Mrs T's injury benefit, as the injury benefit is not a pension. The Cabinet Office explained that the overpayment was caused by the DWP instructing Capita to pay the GMP.
11. The Cabinet Office accepted that the overpayment had been received in good faith. However, Mrs T had received monies that she was not entitled to. The Cabinet Office maintained that it was not the role of its internal dispute resolution (**IDR**) team to determine, in circumstances such as these, whether an overpayment should be recovered. Consequently, Mrs T's appeal was turned down.
12. The Cabinet Office stated that good faith was not sufficient defence against recovery of an overpayment. It explained that other possible defences against recovery include

change of position, estoppel, and hardship: "supported by reasonable evidence that recovery would detrimentally affect the welfare of the individual and their family."

13. In the response, it was acknowledged that Mrs T had retired on medical grounds with effect from 1 November 1996, following a period of sick leave from 21 December 1994. The Cabinet Office also acknowledged that Mrs T had been awarded compensation through the CSIBS as a result of an incident that took place in October 1993.
14. The Cabinet Office advised that there was a different route for appeals against repaying overpayments via the pensioner payroll team at MyCSP and the Civil Service Pension Finance Team (**CSPF**) of the Cabinet Office.
15. Mrs T was informed that she may wish to write to MyCSP setting out any possible defence against recovery of the overpayment. MyCSP would then review her case with CSPF.
16. Apart from the internal dispute resolution procedure (the **IDRP**), Mrs T has not been through any appeal process with MyCSP or the Cabinet Office to challenge recovery of the overpayment.
17. The Cabinet Office acknowledged mistakes made during the IDR process. Mrs T was told that her complaint would be reviewed under stage one of the IDR. The Cabinet Office was unable to determine that a decision was issued by MyCSP. MyCSP agreed that Mrs T's case should be referred to the Cabinet Office under stage two of the IDR. However, MyCSP's note of the telephone conversation did not state what Mrs T was appealing against.
18. On 26 April 2019, the Cabinet Office provided its formal response to The Pensions Ombudsman.
19. During the investigation, the Cabinet Office acknowledged that Mrs T has a defence under the Limitation Act 1980 (the **Limitation Act**) in respect of any overpayments made more than six years before 26 April 2019. Consequently, Mrs T cannot be asked to repay any of the debt that built up before 27 April 2013. It has offered to reduce the overpayment after taking account of the provisions of the Limitation Act.
20. The Cabinet Office is seeking to recover a revised amount of £1,384.72, in respect of the overpayment that occurred after 26 April 2013. That is, the overpayment it considers that it can legally recover under the Limitation Act (since this falls within six years of 26 April 2019).
21. Mrs T has highlighted that she is in her 70s. She has lost money and her health has deteriorated. She now has flashbacks from her PTSD. Mrs T considers that she is being forced to remember a time she thought was behind her; she still cannot get away from the incident [that occurred in October 1993].

22. The Cabinet Office offered to make a distress and inconvenience award of £750, which it would then offset against the revised debt. This would have reduced the amount Mrs T would have been required to repay to £634.72.

Adjudicator's Opinion

23. Mrs T's complaint was considered by one of our Adjudicators who concluded further action was required by the Cabinet Office. The Adjudicator's findings are summarised below:-
- The Adjudicator acknowledged that Mrs T had raised other unrelated issues that do not form part of the complaint under consideration. The Adjudicator did not consider it appropriate to comment or make any findings in respect of any other matters that may be ongoing.
 - The most common defence against recovery of an overpayment is referred to as "change of position." 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 money must have been spent on something the applicant would not otherwise have bought; and the expenditure was irreversible.
 - The Adjudicator accepted that Mrs T had received the GMP in good faith. However, there was nothing indicating that Mrs T had spent the money on a purchase that she would not otherwise have made, had she been aware of the mistake at the time.
 - Mrs T has a defence under the Limitation Act against some of the amount that can be recovered. The Cabinet Office has accepted this.
 - In the most recent case of *Webber v Department for Education* [2016] EWHC 2519 (Ch), the High Court held that the applicable cut-off date for the purposes of the Act 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.
 - In Mrs T's case, the claim was made on 26 April 2019, when The Pensions Ombudsman received the Cabinet Office's response, dated 24 April 2019, to Mrs T's complaint.
 - For the purposes of the Limitation Act, time started running from the date that the overpayment first occurred in 2005 and subsequently upon each further overpayment occurring (section 5 Limitation Act). However, the limitation period can

be postponed where there has been fraud, concealment or mistake (section 32 Limitation Act).

- In such cases, the limitation period is six years from the date the PCSPS discovered the fraud, concealment or mistake or could do so with reasonable diligence. In Mrs T's case, the error went unnoticed for several years.
- However, with reasonable diligence, it would likely have been identified in 2005 that the GMP did not relate to the injury benefit because the administrators of the PCSPS had all of the information to know that they would inevitably be making an overpayment. It follows that it cannot be argued that time starts to run later because there was a mistake given that the administrators could have detected in 2005 that there was a mistake. It runs from when the administrators could have reasonably discovered it.
- The effect of the Limitation Act is that Mrs T has a limitation defence against the recovery of any overpayments made more than six years before the relevant date when the limitation period is to be regarded as having stopped (the cut-off date).
- It follows that Mrs T has a limitation defence in respect of any overpayments made prior to April 2013. This means that MyCSP and the Cabinet Office are unable to recover any overpayment that occurred during the period 2005 to 26 April 2013, because it occurred more than six years before the relevant cut-off date. However, any overpayment from 27 April 2013 onwards is recoverable, unless any other defence to recovery applies, because the Cabinet Office has made its claim within the required limitation period.
- Appendix 4.11 of HM Treasury's MPM document, states that Public sector organisations, may waive recovery of overpayments where it is demonstrated that recovery would cause hardship.
- The appendix also says that acceptable pleas of hardship should be supported by reasonable evidence that the recovery action proposed by the paying organisation would be detrimental to the welfare of the debtor or the debtor's family. This includes where recovery would be detrimental to the mental welfare of the debtor or the debtor's family.
- In cases such as this, the respondent would be expected to ensure that it takes into account any hardship claims that may arise in accordance with Appendix 4.11 of the document when dealing with the complaint under the scheme's IDRPs.
- Mrs T suffers from PTSD. The CSIBS provides compensation where a member has been injured or contracts a disease during the course of his or her official duties. The Cabinet Office should be aware of Mrs T's medical condition, since evidence of Mrs T's illness would likely have been provided around the time of the award of the injury benefit.

- The information available at the time the Cabinet Office prepared its response under stage two of the IDRPs, indicated that Mrs T had been on long term sickness absence before retiring on illness grounds. The Cabinet Office was also aware of the incident in October 1993.
 - The evidence supports the view that the Cabinet Office did not give proper consideration to the negative impact recovery would likely have on Mrs T's wellbeing when it reviewed Mrs T's complaint under the second stage of the IDRPs. Appendix 4.11 of the MPM document should have been considered in light of Mrs T's individual circumstances that were already known to the Cabinet Office.
 - The evidence also indicates that the Cabinet Office initially failed to consider whether the monies could legally be recoverable under the provisions of the Limitation Act.
 - The Adjudicator noted that "time limitations on recovery" is covered in the MPM document. The Cabinet Office should have ensured that the guidance was properly considered during the IDRPs process.
 - Before agreeing a repayment plan for the remaining debt of £1,384.72, the Cabinet Office should consider the impact of recovery on Mrs T's welfare in line with the MPM document. If the Cabinet Office requires more current medical evidence, it should request this from Mrs T before forming a view.
 - If the Cabinet Office decides that the revised debt cannot be waived on hardship grounds, Mrs T should be given the option to offset the inconvenience award of £750 against the overpayment that is recoverable under the Limitation Act.
 - Should the Cabinet Office decide to waive the revised debt, it would not be reasonable for the Cabinet Office to then make a distress and inconvenience award to Mrs T.
24. Mrs T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs T has provided her further comments, but these do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs T for completeness.
25. Mrs T has explained that she first contacted Capita in 2013 concerning the tax code that had been applied to her injury benefit. MyCSP then took over her complaint in 2014. After contacting MyCSP on multiple occasions, MyCSP eventually escalated her complaint to stage two of the IDRPs. Although MyCSP had been aware since the start of 2015 that the GMP had been wrongly attached to the injury benefit MyCSP made no attempt to stop payment of the GMP until 2016.

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26. Mrs T considers that MyCSP and Capita both mismanaged her data. This continues to cause her and her family significant distress and hardship.
27. Mrs T says that she agrees that the entire overpayment should not be paid back. However, she cannot accept the Adjudicator's Opinion. Her whole case is very complex, difficult and has lasted many years without resolution. Rather than a review of her complaint relating to the overpayment of £4,104.81, a judicial review of her entire case is required.

Ombudsman's decision

28. I acknowledge that Mrs T has raised wider pensions issues, which are being dealt with separately by The Pensions Ombudsman. This Determination only deals with the original overpayment of Mrs T's injury benefit amounting to £4,104.81.
29. I note that the Cabinet Office has agreed to waive recovery of the revised overpayment of £1,384.72. I agree that this is a reasonable outcome in the circumstances, which adequately recognises the distress and inconvenience caused to Mrs T. I do not consider that any further action is required except that the Cabinet Office should notify Mrs T of that decision.
30. I uphold Mrs T's complaint.

Directions

31. Within 21 days of the date of this Determination, the Cabinet Office shall notify Mrs T in writing of its decision to waive the revised debt of £1,384.72 on hardship grounds.

Karen Johnston

Deputy Pensions Ombudsman
03 March 2020