EPN 104

Compensation terms for redundancy

ISSUE Compensation terms for redundancy. This EPN is being issued in response to the level of queries CSPD is receiving from employers

This Notice will be of particular interest to:

- **HR staff involved in redundancy exercises**

ACTION To note

TIMING Routine

***REFERENCE** EPNs 61, 79

6.3.7 The terms for compensation payments for civil servants who are made redundant are set out in the Civil Service Compensation Scheme (CSCS). The CSCS is a statutory scheme and provides the authority to employers to pay compensation for loss of office. You should note that these arrangements are completely different from the pension arrangements made under PCSPS and do not require an individual to be a member of the PCSPS.

You are responsible for meeting the full costs of compensation, including the early payment of pensions, paid under CSCS. See the further information in section 6.3 and annex 6A of the Employers Pension Guide. (Please note that the most recent actuarial tables were issued under cover of EPN 42 as replacement EPG pages.)

For civil servants joining since 1 April 1997, compensation payments reflect the length of service in the Civil Service. They do not take account of any service transferred into the PCSPS, Added Years bought, or aggregation of any preserved PCSPS service. These only count for pension purposes.

You have discretion to agree that people who transfer to the Civil Service from a ‘by-analogy’ scheme (or to the Department of Health from the NHS) can be treated in a “seamless” way so that their earlier service continues to count for compensation purposes to the same extent as it did before. You need to exercise discretion on a case-by-case basis.

Special arrangements also apply to staff who have joined the Civil Service following a compulsory transfer of employment, including those resulting from a machinery of government change (see 7 below).

Re-employment

If a member leaves PCSPS employment with benefits under the CSCS and is re-employed in any body covered by the PCSPS, their benefits could be affected in a number of ways:

i. Unless the re-employment is both on merit and as a result of fair and open recruitment competition, they may have to re-pay either part or all of any lump sum compensation payment.

ii. If they are in receipt of an annual compensation payment (ACP), it may be suspended or reduced (abated) during the period of re-employment. Information on ‘Abatement’ was issued under EPN 90.

iii. If they left on CES terms with “reserved rights” they would have received a lump sum equivalent to the benefits they would have received under the former early retirement provisions. For the purposes of calculating abatement, only the benefits they would have received under these former provisions are treated as if they were in payment. This can lead to their salary being abated even though there is no pension in payment.

iv. If the member has received enhancement of service which is more than the period between the early retirement and the date of re-employment, the reckonable service during re-employment may be reduced by the difference.

Details on how the re-employment may affect the member can be obtained from Capita where there is an ACP in payment, or from the relevant Scheme Administrator (APAC).

Redundancy following a compulsory transfer of employment

When an individual is compulsorily transferred to another employer and it is deemed that TUPE applies, their conditions of employment are protected on transfer. This includes their redundancy (but not their pension) terms. Therefore, if it is intended that an individual who has joined a PCSPS employer following a compulsory transfer of employment is to leave on redundancy, you should take care to establish the redundancy terms which have transferred with them. Those protected terms provide the baseline for compensation terms.

Under rule 1.7 of the CSCS, CSCS terms can be changed to reflect either the individual's protected terms and conditions, or, any Ministerial undertaking made at the point of transfer. This effectively allows you to pay redundancy compensation either:

i. under the terms of the previous employment for the total period of employment with both you and the previous employer; or

ii. under CSCS terms for the period of Civil Service employment only; or

iii. under any other terms which reflect a Ministerial undertaking given at the point of transfer.

Option (i) is a TUPE-protected benefit. Option (ii) would normally only apply if it resulted in something better than TUPE-protected benefits.

These options apply irrespective of whether the member's pensionable service in the previous employer's scheme has been transferred to PCSPS. This is because the compensation is linked to an individual's length of employment, not their pension position.

In these circumstances you should liaise carefully with your APAC to ensure that compensation is calculated correctly.

Other compensation arrangements

As mentioned in 1 above, the CSCS provides the statutory authority for you, the employer, to pay compensation benefits. If you wish to pay compensation in other circumstances (for instance to people over pension age), or at different rates (for instance at a rate between that provided by the "flexible" and the "compulsory" terms), you must contact CSPD in good time and before agreeing any terms with staff representatives. If we are satisfied that a good business case exists it will then be necessary for you to make a scheme and lay it before Parliament. This can be a lengthy process.

If you believe you have an obligation to pay compensation other than as prescribed in the CSCS it is important that you take legal advice on the extent of your obligations and also discuss your proposals with CSPD. It is essential that you have the necessary authority to offer and pay compensation in any form other than under CSCS. If legal advice is that other terms should be paid, this would probably necessitate your Minister setting out the case to our Minister and then making and laying a specific statutory scheme to put this into effect (see 9 above). Our view is that, without a separate statutory scheme providing the necessary authority for those terms to be paid, your Accounting Officer is vulnerable to challenge from NAO and, ultimately, the Public Accounts Committee.

Often the question of compensation terms arises when legislation is being drafted to establish a new organisation following a machinery of government change. It is important that you consult CSPD during the drafting stage to ensure that the desired outcome is achieved.

Contacts: Enquiries about content, or if you would like to receive this information in a different medium, please contact:
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***Reference** All EPNs and forms may be found on the website:
www.civilservice-pensions.gov.uk
in the Employer and APACs section

Username: employers
Password: mc2fxqfy

23 August 2004