

Ombudsman's Determination

Applicant	Mr W
Scheme	Civil Service Injury Benefit Scheme
Respondents	Department for Work and Pensions (DWP) MyCSP

Outcome

1. I do not uphold Mr W's complaint and no further action is required by DWP or MyCSP.

Complaint summary

2. There are two parts to Mr W's complaint. The first, is that his former employer, DWP, failed to comply with the direction made against it by the Cabinet Office, in July 2020, to pay him £250 compensation for delays in dealing with his injury benefit appeal. The second, is that the compensation awarded is insufficient.

Background information, including submissions from the parties

3. In September 2019, Mr W submitted an injury benefit appeal to MyCSP. Mr W completed the member section of form CSIBS2¹ and emailed the form with medical evidence to MyCSP.
4. On 25 September 2019, MyCSP acknowledged receipt of Mr W's appeal.
5. In early October 2019, MyCSP requested DWP to complete the employer section of the form.
6. DWP notified MyCSP, as Mr W's former Line Manager no longer worked within the employing department, that it had contacted HR Business Partners to find someone who could complete the form.

¹ Appeal against medical advice – injury benefit - CSIBS 2

7. On 19 November 2019, DWP contacted MyCSP for assistance with the completion of the form.
8. On 6 January 2020, MyCSP explained to DWP the sections of the form it was required to complete. The next day, MyCSP updated Mr W, who complained that DWP was deliberately preventing his appeal from proceeding.
9. On 22 January 2020, MyCSP completed the form on behalf of DWP and submitted it together with the supporting documents to the Scheme Medical Adviser (**SMA**), Health Management Limited.
10. Mr W's complaint was considered under the Scheme's two-stage Internal Dispute Resolution Procedure (**IDRP**).
11. At Stage One, MyCSP upheld Mr W's appeal in part. The appointed person for MyCSP said:

"During the course of my investigation, DWP have responded to my query as to why there was a delay. They have provided me with their response, as follows:

I was sorry to read there has been a delay in your application and I have reviewed your case to establish why this has occurred.

To progress with your application part two of the CSIBS2 required completion, due to the timeframe of the first application in 2017 it has been difficult to source a Line Manager from your original command in Warrington. ... have all left the department and with the transfer of your command from Warrington Retirement Services Directorate to Child Maintenance Group all others have left who may have known about your original case. Ascertaining this has caused delays in your application. ...CMG agreed to complete the application and contacted MYCSP to progress. I believe due to annual leave there have been further delays.

I apologise again for the time taken with your situation and hope there will now be a swift conclusion.

For the delays you have encountered, your appeal is upheld against DWP. However their response as above reasonably explains the issues they have encountered. As your appeal is now under review with HML, I am satisfied the correct resolution has now been sought.

Within your application you have referred to the treatment you feel you have received from your former employer, and have referred to their actions as malicious. From investigating your appeal I note you have encountered issue with DWP previously, and these concerns have previously been investigated under the IDR procedure.

In terms of the treatment you received following your Employment Tribunal and your retrospective Ill Health Retirement, I note DWP have previously been instructed to make an ex gratia payment to you of £2,000. It is noted that you experienced further difficulty in receiving this payment, and this was reviewed by the Scheme Manager, Cabinet Office under IDR Stage 2.

As this has previously been investigated, I do not feel it is necessary to review these events again; however I would note that DWP's response above does suggest their delay in completing your CSIBS application was as a result of resource issues rather than intentions of a malicious nature.

For this reason I am unable to uphold this aspect of your complaint.

Nonetheless in light of the further difficulties you have experienced as described within this determination, I accept that this will have caused you distress and inconvenience, and for this I sympathise.”

12. In April 2020, Mr W submitted his appeal of the Stage One decision. Mr W said he believed the delay was one of a series of malicious acts by DWP since dismissing him in 2014 and contended that DWP “should be ordered” to pay compensation and make a “full apology”.
13. On 8 July 2020, the appointed person for the Cabinet Office upheld Mr W’s appeal and directed DWP to pay Mr W £250 for stress and anxiety caused. The appointed person said:-
 - It was clear that DWP’s level of service fell short of the standard that members should expect.
 - There were many delays which held up the submission of Mr W’s injury benefit appeal. Despite MyCSP sending reminders and offering assistance, DWP failed to complete its part of the CSIBS2 form. To save further delay, MyCSP completed the form on DWP’s behalf and submitted Mr W’s appeal to the SMA.
 - There was no reason to believe that DWP had acted maliciously or vindictively towards Mr W. DWP had provided plausible reasons for the delay.
 - As the Stage One decision included both an apology and an explanation for the delay there was no need for a further apology from DWP.
14. On 3 September 2020, Mr W complained to The Pensions Ombudsman (**TPO**). Mr W said DWP was fully aware of his mental health illnesses (anxiety, stress and depression) and believed DWP had deliberately and maliciously not complied with the Stage Two decision.
15. On 8 September 2020, DWP issued the £250 payment to Mr W.

Mr W's position

16. Mr W submits:-

- In September 2016, MyCSP directed the DWP to pay him £250 for a different complaint, which DWP failed to comply with.
- The DWP has been responsible for extensive maladministration in respect of his retrospective ill health retirement and injury benefit applications on other occasions.
- The £250 awarded by the Cabinet Office is insufficient.
- DWP should issue a full apology to him for its failure to timely comply with the Stage Two decision.

MyCSP's position, represented by Cabinet Office

17. Cabinet Office, as Scheme Manager, submits that the compensation award was appropriate and fair under the circumstances. The Stage One and Stage Two decisions cover the events that led to Mr W's complaint and the reasons for awarding the compensation.

DWP's position

18. DWP submits that the Stage Two decision was not sent to it until the afternoon of Friday 4 September 2020. DWP requested Mr W's bank details on 7 September, which Mr W provided the next morning. That same day, the payment was set up.

Adjudicator's Opinion

19. Mr W's complaint was considered by one of our Adjudicators who concluded that no further action was required by DWP or MyCSP. The Adjudicator's findings are set out below in paragraphs 20 to 26.
20. Firstly, the Adjudicator set aside Mr W's comment that DWP failed to comply with a direction by MyCSP in September 2016 to pay him £250 as it was in respect of a separate matter. The Adjudicator also set aside Mr W's comment that DWP had been responsible for extensive maladministration in respect of his retrospective ill health retirement and injury benefit applications on other occasions as it fell outside of the scope of the complaint that TPO had accepted for investigation.
21. There was no dispute that there was a delay in the completion of the employer's section of the CSIBS2 form. This amounted to maladministration by DWP. The form was subsequently completed by MyCSP for DWP and submitted to the SMA.
22. Mr W said DWP deliberately and maliciously delayed the submission of his appeal and that it should apologise and pay him a larger compensation sum.

23. The Stage One decision included both DWP's explanation for the delay and an apology. The Adjudicator did not consider the delay was deliberate or had malicious intent, or that it was necessary for DWP to further apologise.
24. At Stage Two, Cabinet Office directed DWP to pay Mr W £250 as compensation for the anxiety/stress he had been caused by the delayed submission of his appeal.
25. The Adjudicator explained that the Pensions Ombudsman's awards for non-financial injustice start at £500 for significant distress and inconvenience. While the Adjudicator accepted that Mr W had suffered distress and inconvenience as a result of the delayed submission of his appeal to the SMA, on balance, the Adjudicator's view was that the circumstances of Mr W's case did not quite meet the threshold for a distress and inconvenience payment in line with the Pensions Ombudsman's current guidance².
26. It appeared that DWP did not receive the Cabinet Office's Stage Two decision until the afternoon of Friday 4 September 2020. DWP requested Mr W's bank details on 7 September, which Mr W provided the next morning. That same day, the payment was set up.
27. Mr W did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr W has provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr W.

Ombudsman's decision

28. Mr W says that, while his complaint in isolation and in its simplest form, may appear to be quite straightforward and perhaps not that serious, when put in context with two other complaints currently with TPO³, it should be abundantly clear how this complaint has had a serious impact on his mental health, causing him considerable anguish and distress. Nevertheless, I can only consider the material facts and specific merits of this complaint.
29. Mr W says his CSIBS2 form should have been referred to the HR section of DWP, either for it to complete or to refer onto his former employer, the Pension Service, to complete. It was not for the Child Maintenance Group to complete. Nonetheless, it is not disputed that DWP failed to complete the employer section of the CSIBS2 form, which delayed its submission to the SMA.

² https://www.pensions-ombudsman.org.uk/sites/default/files/publication/files/Updated-Non-financial-injustice-September-2018-2_0.pdf

³ CAS-43432-V0Y0 and CAS-76344-C9F5.

30. Mr W says the Adjudicator should not have set aside parts of his complaint. He says when he submitted the complaint to TPO, DWP had for more than five years been consistently uncooperative and obstructive regarding his applications for ill health retirement and an Injury Benefit. This was either due to wilful and malicious intent or due to extreme incompetence and negligence. Whatever the reason, this caused him extreme distress and inconvenience and exacerbated his stress, anxiety and depression. So, all the events that led up to his complaint being submitted to TPO should be considered. Not to do so, would be contrary to the rules of natural justice and support, condone and enable the conduct of DWP and ignore the seriousness of the mistreatment he has received.
31. I disagree. I am satisfied that the Adjudicator considered the material facts pertaining to this complaint and was correct to set aside Mr W's comment that DWP failed to comply with a direction by MyCSP in September 2016 to pay him £250. I also agree that Mr W's comment that DWP has been responsible for extensive maladministration in respect of his retrospective ill health retirement and injury benefit applications on other occasions falls outside of the scope of this complaint.
32. For the same reason, I have set aside the documents that Mr W has submitted with his comments on the Adjudicator's Opinion⁴. I also note that my predecessor considered Mr W's concerns about the initial assessment of the SMA when not upholding Mr W's complaint that his CSIB application had not been properly considered (Determination PO-28030). So, in any case, I cannot revisit this matter.
33. Mr W says even £500 is not enough for the stress, anxiety, depression and inconvenience that he has been caused by the actions of DWP. Nonetheless, I consider Cabinet Office's award of £250 for this was sufficient.
34. Finally, I note Mr W's comment that the eventual processing and issuing of the £250 payment was not coincidental but was only as a direct result of the complaint being submitted to TPO. But any delay between Cabinet Office issuing its Stage Two decision and DWP paying Mr W does not appear to be attributable to maladministration by DWP.

⁴ Mr W has submitted:-

- From his GP Practice: two open letters, both dated 7 September 2015, confirming that it issued an invoice on 15 July 2014 to the then SMA, Capita Health and Wellbeing, to be paid prior to the provision of a requested medical report for Mr W together with a copy of the letter and the invoice it sent to the SMA on 15 July 2014.
- A Report by Dr Raynal (Specialist Occupational Physician) for the SMA dated 7 August 2014 stating that a report requested from Mr W's GP had not been forthcoming despite several reminders.

CAS-57124-Q7D6

35. I do not uphold Mr W's complaint.

Dominic Harris

Pensions Ombudsman

26 March 2024