

## Ombudsman's Determination

Applicant	Mrs D
Scheme	Civil Service Pension Scheme ( <b>the Scheme</b> )
Respondents	MyCSP The Cabinet Office

## Outcome

1. Mrs D's complaint is upheld and to put matters right MyCSP shall follow the directions set out in paragraph 39 below of this Determination.

## Complaint summary

2. Mrs D has complained that she was not informed that there would be a tax charge if the lump sum death benefit (**Death Grant**) payable to her and her sons from the Scheme following the death of her late husband, Mr D, was not claimed within two years.

## Background information, including submissions from the parties

3. Mr D was employed by the Welsh Government and was a member of the Premium section of the Scheme.
4. On 5 October 2013, Mr D died.
5. On 9 October 2013, Mr D's employer contacted MyCSP to notify it of his death.
6. On 10 October 2013, MyCSP wrote to Mrs D to advise that the Death Grant associated with Mr D's pension was estimated to be £99,684.69. MyCSP also sent the following documents:-
  - A pension claim form.
  - A confirmation of details form for lump sum payments.
  - A guide to Classic Plus and Premium benefits and death in service. This guide contained a section titled "your questions answered." The following wording was provided:

“What about tax?”

Please see the booklet ‘Death Benefits and tax - a guide for personal representatives.’ This is available to download on the Civil Service Pensions web site.”

7. The booklet gave the following information about lump sums:

“The Civil Service pension arrangements may pay a lump sum death benefit when:

- A Scheme member dies in service.
- A member with a frozen pension dies before his or her pension comes into payment; or
- A pensioner member dies shortly after his or her pension comes into payment. This is known as a “pension guarantee” payment and represents the balance of pension to be paid during the guarantee period. The guarantee period is 2 years in classic and 5 years in premium, classic plus and nuvos.”

8. There is no mention in the booklet that there is a two year limit before tax is payable on the lump sum.

9. On 18 October 2013, MyCSP received Mr D’s death certificate.

10. On 16 February 2017, the Welsh Government contacted MyCSP advising that Mrs D had approached it stating that she was not in receipt of any widow’s pension.

11. On 23 February 2017, MyCSP wrote to Mrs D and said in summary:-

- It had previously issued correspondence dated 10 October 2013 regarding the Death Grant payable in respect of the late Mr D.
- It had not received the completed forms or a response to its correspondence. As Mr D’s death was over two years ago the Death Grant had now become taxable. This was in line with the regulations that Her Majesty’s Revenue and Customs (**HMRC**) applied to Death Grant payments.
- Mr D had named Mrs D and his eldest son to receive 50% each of the Death Grant. It estimated that the Death Grant was £99,684.69 in total. It enclosed further claim forms to be completed and returned.

12. Section 206 of the Finance Act 2004 (**the Act**), provides that a Death Grant must be paid within two years of the member’s date of death, or within two years of the date the scheme administrator was first reasonably made aware of the member’s death. If

the Death Grant is not paid within the two year period, it is taxed at the recipient's marginal rate of tax in the tax year in which the lump sum is paid.

13. On 28 February 2017, Mrs D telephoned MyCSP and stated that she was unhappy that a tax bill was now payable due to the late payment of the Death Grant.
14. On 1 March 2017, Mrs D wrote a letter to MyCSP and enclosed the completed application forms. She requested that her younger son also receive a share of the Death Grant as he was born subsequent to her husband's expression of wish but prior to his death. She also set out details of her formal complaint. She stated in summary:-
  - Her husband died while in intensive care on 5 October 2013 following a self-harm incident while in hospital.
  - She received a letter from MyCSP dated 10 October 2013 advising her of the pension and Death Grant. This made no mention of any deadlines in respect of the tax free status of the Death Grant. As this is an area of tax she did not encounter as part of the administration of her husband's estate she had no awareness that there was a time limit relating to lump sums.
  - Any bereavement was traumatic, regardless of the age of the deceased, or nature of death. She believed very few people would be in a state of mind to register and absorb information regarding pension benefits five days after a bereavement. At the point of her husband's unexpected death at age 38 she had two small children aged two and six, a part time but responsible job, a funeral to arrange, an NHS internal enquiry and an inquest to deal with. Her husband also died intestate, so she had the daunting task of the administration of his estate to deal with.
  - Her understanding from the Welsh Government was that MyCSP did not contact them to ensure it had correct, up to date, contact details. MyCSP therefore made no attempt to verify whether she had even received the letter.
  - There appeared to be no awareness among its employees that any duty of care existed between a pension scheme and its beneficiaries and had she not followed this up, the amounts would still be unresolved.
  - MyCSP's lack of action and advice had cost Mrs D and her sons between £20,000 and £40,000 of the sum left by her husband to provide for them after his death.
15. On 15 March 2017, MyCSP sent a letter to Mrs D confirming the payment of the Death Grant. It confirmed the amount of the lump sum payable to her was £49,842.35 and the net amount that would be paid was £28,984.89.
16. On 27 March 2017, MyCSP sent a letter to Mrs D responding to her complaint. It stated in summary:-

- It received confirmation on 10 October 2013 that her husband had died on 5 October 2013. It then issued documentation, including a pension claim form, to her home address on 11 October 2013; however, it appreciated that this documentation may have been unwelcome at this time.
  - Despite not receiving a response to the letter it did not issue any further correspondence nor did the letter confirm the two year tax liability. This was its policy in October 2013; however, it could confirm that its policy had now been revised. If it did not receive a response to its initial correspondence, it now issued further letters and all its correspondence confirmed the two year tax liability.
  - It received a telephone call from the Welsh Government on 16 February 2017 to confirm that Mrs D was not in receipt of a widow's pension, and it therefore reissued the pension claim forms to her.
  - It received Mrs D's completed pension claim forms on 6 March 2017. It then finalised her dependent's pension and issued payment of the Death Grant on 15 March 2017. All relevant documentation was issued to Mrs D's home address on the same day.
  - As previously advised the Death Grant had now become taxable in line with HMRC regulations.
17. On 29 March 2017, Mrs D sent a letter to MyCSP and asked when the policy was revised regarding communication about death benefits as she felt any proper revision would include a review of currently outstanding claims.
18. On 28 April 2017, MyCSP sent a letter to Mrs D and confirmed that the process had been changed in early 2015 and letters now included information regarding the two year limit for claiming Death Grants tax free.
19. On 1 May 2017, Mrs D sent a letter to MyCSP. She said in summary:-
- MyCSP had acknowledged that its policy in October 2013 was revised on the basis that it was not adequate. However, it appeared to consider following the policy in her case entirely discharged its duties. This was not within her understanding of duty of care.
  - She noted that the inadequate policy was revised in early 2015. Her husband died in October 2013 so early 2015 was well within the two year time limit for lump sums. A letter at that point would surely have been appropriate, however it would appear that MyCSP had failed to consider claims in progress. She wished her complaint to be reconsidered.
20. On 8 June 2017, MyCSP wrote to Mrs D and provided a further response to the complaint. It explained that it had followed the procedures in place at the time when it initially wrote to Mrs D. It advised that documents were sent with the original letter of

10 October 2013, that advised Mrs D to contact HMRC for further information regarding the tax surrounding death benefits.

21. On 15 August 2018, Mrs D completed an application form for her complaint to be considered under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). She reiterated her previous concerns and in addition she said in summary:-
  - She had subsequently identified that as her younger son's lump sum was taxed at 40% there was an element reclaimable from HMRC. HMRC had now issued a tax refund of £15,023.96.
  - The remaining loss outstanding related to her eldest son was £10,309.20. The tax suffered by her on the lump sum was all within the 40% banding.
22. On 7 November 2018, MyCSP sent a letter to Mrs D in response to her complaint. It stated in summary:-
  - MyCSP correctly followed its processes in place at the time of Mr D's death.
  - MyCSP wrote to Mrs D in 2013 advising her of the potential benefits payable and requested that she completed and returned the pension claim form, however she did not complete this action.
  - Upon review of the case, it noted that there was no contact regarding the benefits payable to her until February 2017 when the Welsh Government contacted MyCSP.
  - MyCSP then began progressing Mrs D's case and reissued the necessary claim forms for her completion. It was at this stage in its letter of 23 February 2017 that MyCSP made her aware of the tax liability.
  - When all the information was received, MyCSP made the Death Grant payments and followed the correct procedure in taxing the payments in line with HMRC regulations.
  - Although it had great sympathy for Mrs D's circumstances MyCSP followed the agreed process at the time.
23. On 4 December 2018, Mrs D made an application for her complaint to be considered under stage two of the Scheme's IDR. She stated in summary:-
  - Although MyCSP considered it had followed its internal procedure correctly she believed that the internal procedure was not an end in itself but a way in which an organisation achieved compliance with the external regulatory environment. She noted that the internal procedure was subsequently revised.
  - No reference has been made to the duty of care owed to her and her sons as beneficiaries.

- When MyCSP identified that its procedures needed updating this should have included checking for outstanding claims.
- The remaining loss was as follows:
  - Mrs D's tax liability of £25,333.16 as the full amount of the Death Grant was all within 40% banding.
  - Reimbursement of the tax paid by her eldest son which was an unclaimable amount of £10,309.20.

24. On 13 May 2020, the Cabinet Office sent a letter to Mrs D and stated in summary:-

- It could understand her disappointment in finding that when she claimed the Death Grant four years after her husband's death, it had become taxable.
- However, it had reviewed the paperwork MyCSP provided in 2013 and believed that it was adequate. While the letter did not explicitly specify the two year period the supplementary pamphlets provided further information. One of these pamphlets also directed her to HMRC for tax queries. It appreciated that this will not have been a priority especially considering her personal circumstances.
- Unfortunately, the tax rules could not be bypassed. Tax remained the responsibility of the individual and their representative. It therefore could not uphold her appeal.
- It made an award of £500 for the distress and inconvenience caused by the delay in issuing its response and had arranged payment of this directly. MyCSP also offered an award of £500.

25. Mrs D's position:-

- Due to the circumstances of her husband's death an inquest took place and she needed to put in a huge amount of work to review her husbands' medical records during the process of the inquest and the internal hospital enquiry. It took 18 months for both processes to be completed.
- Once the inquest and enquiry had completed, she began sorting her husband's financial affairs. The pension and lump sum were outside the scope of the intestacy work as they were to be paid to her and her children. All the organisations she was dealing with sent periodic reminders that there were issues outstanding. She received nothing from MyCSP.
- It took some time to realise that she was not receiving a pension. She had received a significant life assurance lump sum, and this meant that there was more money in her bank account than she was accustomed to.

## Adjudicator's Opinion

26. Mrs D's complaint was considered by one of our Adjudicators who concluded that there had been maladministration by MyCSP, and the complaint should be upheld. The Adjudicator's findings are summarised below:-

- The correspondence that was sent to Mrs D shortly after the death of her husband did not contain any reference to the fact that the Death Grant would become subject to the provisions of the Act if it was not paid within two years. The only reference to tax implications was contained within the booklet provided and this was just a link to further information on the Civil Service Pensions web site. There was no reference to the two year limit in the web site information.
- MyCSP failed to provide clear information to Mrs D, which she needed as a beneficiary to help her to prioritise claiming the Death Grant within two years. MyCSP had a duty of care to provide this information to any potential beneficiary of the Death Grant as it was of material importance to the settlement of the lump sum.
- In the Adjudicator's view, it was understandable that Mrs D overlooked the original correspondence as it was issued only five days after the death of her husband. So, it would have been prudent for MyCSP to resend its original letter or issue a separate reminder at a later date within the two year deadline. The lack of a follow up letter was an additional failure of MyCSP's duty of care to Mrs D.
- MyCSP should have reviewed any outstanding Death Grants when it changed its policy in early 2015. MyCSP decided that it should notify potential beneficiaries of the potential tax consequences of not claiming the Death Grant within the two year period. If Mrs D had been included in a review and sent a reminder in early 2015, she would still have been within the two year deadline to receive the Death Grant tax free. As the amount outstanding was a substantial sum, there is no reason to believe she would not have acted on any correspondence sent at this time.
- There was no valid reason why MyCSP should not have provided the information to Mrs D regarding the tax consequences of the two year time limit. In failing to provide Mrs D with this information, in the Adjudicator's opinion, MyCSP had failed in its duty of care to Mrs D and her sons as Mr D's beneficiaries.
- The failure to provide Mrs D with the relevant information or follow up the initial letter amounted, in the Adjudicator's view, to maladministration and, as a consequence of the maladministration, Mrs D and her son suffered a direct financial loss equal to the amount of tax that was deducted from their shares of the Death Grant.

27. As MyCSP did not accept the Adjudicator's opinion, the complaint was passed to me to consider. MyCSP has provided its further comments, which I have considered, but they do not change the outcome.

### **MyCSP's further comments**

28. MyCSP submits:-

- While it empathises with Mrs D's position the settlement of the estate is the executor's responsibility. It does not agree that maladministration has occurred or that there has been a failure in the duty of care that the Scheme provided.
- Mr D died on 5 October 2013, and it was notified of the death on 10 October 2013 and pension claim forms were issued to Mrs D on 11 October 2013. So, it fulfilled its responsibility under the Scheme Rules, by providing details of the Death Grant that was payable.
- In the event that an executor does not prioritise settlement of the pension benefits, charges that arise do not become the Scheme's liability. The tax charge has not arisen through maladministration by the Scheme, it has occurred due to delays on the part of the executor. While it may empathise with the executor, the tax position, and any tax liability are their personal affair to address.
- While the information available may have been updated in the interim period, this is a result of efforts to continuously improve and did not imply that the previous process was inadequate.
- It believes that the documentation provided in 2013 was sufficient and, while the letter did not directly specify the two year period, the supplementary documentation provided further information which directed Mrs D to HMRC for tax queries.
- It believes the £1,000 ex-gratia payment (Cabinet Office £500 and MyCSP £500) was sufficient redress for distress and inconvenience.

### **Ombudsman's decision**

29. MyCSP believes that the information it provided in 2013 was sufficient and that the supplementary information directed Mrs D to HMRC for tax queries. It is correct that Mrs D was directed to HMRC but there was no indication that this information related to the Death Grant, or that there were tax implications of which she should be aware. Without the knowledge that there were tax consequences for delaying a claim for the Death Grant then Mrs D would not know that she should contact HMRC. As Mrs D has stated, the tax status of the Death Grant was not something that she would be notified of when dealing with the other aspects of Mr D's estate.



30. MyCSP has also said that the information provided immediately after Mr D's death fulfilled its responsibility under the Scheme Rules. I have considered whether MyCSP has a duty beyond the Scheme Rules.
31. The courts have developed a number of tests establishing whether a duty of care exists, while acknowledging that whatever test is applied the result should be the same. The principal test applied in cases of economic loss is a three-fold test established by the House of Lords in *Caparo Industries v Dickman* [1990]. The three fold test requires: foreseeability, proximity, and fairness. In other words:
- was it reasonably foreseeable that the defendant's conduct would cause loss to the claimant;
  - was there a sufficient degree of proximity or a special relationship between the claimant and the defendant; and
  - would it be fair, just, and reasonable to impose a duty of care in the circumstances.
32. I am satisfied that it was reasonably foreseeable that the lack of information about the tax consequences of not claiming the Death Grant within two years would cause loss to Mrs D.
33. With regard to proximity, in *Capro Industries v Dickman* the Court held that one factor to consider in determining whether a relationship of sufficient proximity exists is whether the information was required for a particular purpose which the adviser knew of, or ought to have known of.
34. In Mrs D's case MyCSP would have known the information it was providing regarding the Death Grant was to a recently bereaved potential beneficiary who was likely to have no experience of making such a claim. It would have been reasonably foreseeable that Mrs D would not know about the two year deadline if she was not informed of it by MyCSP. I am satisfied that there was sufficient proximity between MyCSP as Scheme Administrator and Mrs D for a duty of care to exist.
35. The question then arises as to whether the failure to provide any information regarding the tax consequences of not claiming the Death Grant within two years was a failure in its duty of care to Mrs D.
36. MyCSP are correct in saying that it is the executor's responsibility to prioritise the settlement of the Death Grant. However, MyCSP also has a responsibility to discharge its responsibilities in managing the Scheme and to make sure benefits are paid in a timely manner. Providing full information regarding the tax status of the Death Grant to Mrs D would have made sure both parties responsibilities could be fulfilled. I find that MyCSP had a duty of care to Mrs D, and it failed in that duty by not providing adequate information for Mrs D's needs as executor.
37. Regarding the change of policy in early 2015, MyCSP has said that this did not mean that the previous process was inadequate but rather the change was part of an

improvement process. The Adjudicator has said that this was an opportunity to review outstanding Death Grant payments and if Mrs D was sent a reminder at this point, she would still have been within the two year deadline to claim the Death Grant without incurring a tax charge. I find that this was a lost opportunity by MyCSP to have made sure that there were no outstanding Death Grant claims that it had not paid and to include their follow up within the new process. By not including Mrs D in the updated process MyCSP again failed in its duty of care to her.

38. I uphold Mrs D's complaint.

## **Directions**

39. Within 28 days of the date of this Determination, MyCSP shall:

- pay Mrs D and her eldest son an amount equal to the income tax deducted from their shares of the Death Grant taking into account any income tax that has subsequently been refunded (**the Shortfalls**); and
- pay Mrs D and her eldest son interest on the Shortfalls from 15 March 2017 to the date the Shortfalls are paid. The interest should be calculated at the base rate for the time being quoted by the Bank of England.

**Anthony Arter CBE**

Deputy Pensions Ombudsman  
20 November 2023