

Ombudsman's Determination

Applicant	Mr E
Scheme	Royal Mail Statutory Pension Scheme (RMSPS)
Respondents	Cabinet Office Capita

Outcome

1. Mr E's complaint is upheld and to put matters right Capita should pay Mr E his retirement benefits on the basis that he would have chosen a lump sum and reduced pension, rather than a full pension. Additionally, the Cabinet Office and Capita should each pay Mr E £250 (in total £500) for the significant distress and inconvenience that he has suffered.

Complaint summary

2. Mr E's complaint relates to the way in which Capita has paid his retirement benefits due from the RMSPS.

Background information, including submissions from the parties

3. Mr E was a member of the Royal Mail Pension Plan (**RMPP**).
4. When Royal Mail was privatised, the Government took on the liability for paying pension benefits accrued in the RMPP before 1 April 2012. Such benefits were transferred into the RMSPS. The RMSPS was established under part two of the Postal Service Act 2011.
5. Mr E held benefits in the RMPP and the RMSPS (**the Schemes**). The Normal Retirement Age (**NRA**) was 60 for his benefits accrued in the RMSPS before 1 April 2012 (**NRA60 benefits**) and 65 for benefits accrued after this date (**NRA65 benefits**).
6. In 2020, Mr E contacted Capita, the RMSPS administrator, regarding his benefits.
7. On 7 July 2020, Capita sent Mr E a letter which explained that:-
 - The benefits set out were only in relation to Mr E's membership in the RMSPS, but they were contingent on him claiming his benefits from the RMPP. For

example, if Mr E took his NRA60 benefits from the RMSPS, he would also have to take them from the RMPP.

- Mr E could either take a full pension or a reduced pension with a pension commencement lump sum (**PCLS**).
 - If Mr E took his benefits before his NRA, they would be actuarially reduced for early payment.
 - Mr E should get in contact if he had any questions, or he could seek free impartial advice.
8. Capita also enclosed an estimate of retirement benefits with the letter. Each option stated that the figures were actuarially reduced.
 9. On 20 August 2020, Capita sent Mr E a retirement quotation based on him taking early retirement in November 2020. The benefits in the quotation were actuarially reduced because Mr E was claiming his benefits before his NRA.
 10. On 16 September 2020, Mr E returned the retirement option forms to Capita. Mr E:
 - opted to take his full pension from the Schemes, with no PCLS;
 - signed a declaration which said that he was electing to take a PCLS, but it would not be used to invest as a pension contribution to a registered scheme; and
 - requested a transfer pack and completed the form which he was only required to do if he planned to explore the option of transferring his benefits from the Scheme.
 11. On 17 November 2020, Capita informed Mr E that his pension would be paid at an annual rate of £7,206.17.
 12. On 23 and 24 November 2020, Mr E sent Capita an email. He said that he had incorrectly chosen the full pension instead of the reduced pension and PCLS in the option form. Mr E asked for a new form so he could select the correct option.
 13. On 4 December 2020, Mr E emailed Capita again because he had not received a response.
 14. In response, Capita clarified that Mr E would need to explain, in writing, why the Cabinet Office, the RMSPS Manager, should allow him to change his retirement option.
 15. The Cabinet Office has said that on 16 December 2020, Capita received an undated letter from Mr E. In this letter he said that a third party had told him that he ticked the incorrect box. Mr E asked the Cabinet Office to review his request and allow him to take the reduced pension and PCLS.
 16. On 28 January 2021, the Cabinet Office told Capita that it did not approve Mr E's request because the retirement and transfer options were clearly presented to him. It

also said that Mr E had not provided details of any exceptional circumstances that would warrant it allowing him to change the option that he selected. According to the Cabinet Office, Capita notified Mr E of the decision on the same date.

17. On 11 February 2021, Mr E complained to the Cabinet Office about its decision to not allow him to take a reduced pension and PCLS instead of his full pension.
18. On 9 March 2021, Capita responded to Mr E's complaint, which it did not uphold. In summary, it said that the Cabinet Office had reviewed his request and decided not to approve his request to reverse his decision to take a full pension. It said that it had reviewed Mr E's account, as well as the form that he returned, and decided that the options were made clear to him. So, neither Capita nor the Cabinet Office were at fault. Capita provided Mr E with details of the RMSPS' Internal Dispute Resolution Procedure (**IDRP**) if he remained unhappy with the decision.
19. On 24 March 2021, Mr E made a stage one IDRP complaint. In summary, he said:-
 - The purpose of taking the PCLS was so that he could help his daughter with her university fees.
 - Capita took two months to acknowledge that it had received his completed options form.
 - He contacted Capita immediately after he received the letter which outlined his payment entitlement because it was incorrect.
 - As far as he was aware, he had completed the form correctly. He had asked Capita for a copy of the form, but it said that it could only provide screenshots.
 - He should have been able to contact someone, through the Royal Mail or Capita to get advice on taking his pension benefits.
 - He felt let down by the decision.
20. On 15 April 2021, Capita provided its stage one IDRP response. It said:-
 - It had sent Mr E a retirement quotation, for his benefits in the schemes, approximately three months before his 60th birthday.
 - Mr E opted for a full pension and later got in contact to explain that he had selected the incorrect option.
 - The Cabinet Office concluded that the options were clearly presented, and Mr E had not provided any exceptional circumstances which may allow him to now change the option he selected.
 - While acknowledging receipt of his completed retirement options form would have been best practice, there was no legal requirement for it to do so.

- It was unable to override the Cabinet Office's decision. Instead, it considered whether the Cabinet Office took the relevant facts into account, asked the correct questions, and reached a decision that any other reasonable decision maker would reach.
- There was no legal requirement for it to confirm bank details, retirement options or any other details provided by a member. It would only get in contact if it believed that there was an error in the paperwork or that the instructions were unclear. Neither of these applied in Mr E's case.
- It did not uphold the complaint and agreed with the Cabinet Office's stance.

21. On 6 May 2021, Mr E wrote to Capita and said:-

- He was unhappy with the decision and its lack of empathy and understanding. Additionally, it had suggested that he was 60 when he was, in fact, 55.
- He decided to take a PCLS and reduced pension from the schemes and believed he had completed the forms correctly.
- If the forms were not completed correctly, Capita should have queried his request because he had not reached age 60.
- He believed that:
 - Capita had paid his pension five years earlier than it should have; and
 - there were faults on both sides, however, he had not received any financial advice and he believed that Capita should have helped him.
- If it could not honour the reduced pension and PCLS, it should reverse his decision to take the pension until his 60th birthday in 2025.

22. On 22 July 2021, Mr E requested acknowledgement of the letter that he had sent on 6 May 2021. He explained that the error was causing him stress, particularly as he had agreed to use some of the PCLS to help his daughter with her university studies.

23. On 27 July 2021, Capita acknowledged receipt of Mr E's letter of complaint. It said it hoped to respond as quickly as possible and to provide a decision within 10 working days.

24. Mr E received no response, so he referred his complaint to The Pensions Ombudsman (**TPO**) and queried whether the figures were correct.

25. Following correspondence from TPO in July 2022, the Cabinet Office confirmed that it had not received Mr E's stage two IDRPs request from Capita. It agreed to issue a stage two IDRPs response by 24 December 2022.

26. On 10 January 2023, the Cabinet Office provided its stage two IDRP response. In summary, it did not uphold Mr E's complaint for similar reasons to Capita. It also said:-

- It was satisfied that Mr E made a clear and unambiguous choice to take his pension without a lump sum.
- Capita had not erred in paying his pension before his 60th birthday because it was payable earlier with an actuarial deduction. This was made clear in the retirement option form.
- Mr E's benefits had been processed in accordance with his instructions. If Mr E had any queries, he should have contacted Capita or sought free impartial advice as explained in the retirement option form.

27. During the course of this investigation, the Cabinet Office provided a copy of the retirement options form that it received from Mr E. It also provided copies of the letters sent by Capita and Mr E.

Adjudicator's Opinion

28. Mr E's complaint was considered by one of our Adjudicators who concluded that there had been maladministration and further action was required by the Cabinet Office and Capita. The Adjudicator's findings are summarised below:-

- Having reviewed the completed retirement option forms, the options were sufficiently clear. However, Mr E's completion of the forms was contradictory. Although Mr E ought to have contacted Capita if he was unsure how to complete the forms, Capita should have contacted Mr E when it received the forms as Mr E's choice was unclear and confused. Had it done so, it is likely that Mr E would have realised his error and opted for the lump sum and reduced annual pension.
- Capita's failure to contact Mr E constituted maladministration. The normal course of action would be to put Mr E, as far as possible, in the position he would now be in had the maladministration not occurred. This meant allowing Mr E to take his pension benefits in the way he wanted to.
- There was no evidence to suggest that Mr E had received the incorrect pension and although there was an error in the IDRP response regarding Mr E's age Capita had not erred in paying his benefits before he reached age 60.
- The failure to respond to Mr E's stage two complaint within two months was maladministration.
- The Cabinet Office and Capita should each pay Mr E £250 (in total £500) for the significant distress and inconvenience that he had suffered.

- Capita should also calculate the difference between what Mr E would have received if a lump sum and a reduced pension had been paid since his retirement date and the total pension he has received and pay the difference to Mr E as a lump sum plus simple interest. If this resulted in an additional tax liability for Mr E, then Capita should pay Mr E the equivalent amount.

29. Capita did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Capita provided further comments in response to the Opinion. In summary it said:-

- It recognised that Mr E had completed the forms in a way that was contradictory, but it did not believe that it automatically followed that, had Capita contacted Mr E he would have realised his error.
- It appears as though Mr E completed every signature box on the paperwork. It believed that it could be argued that if Capita had asked for clarification, Mr E would have told Capita to proceed with the options he chose for claiming his benefits and to ignore the other sections he had completed. Therefore, he would not have realised his error in completing the form.
- It was happy to pay the £500 ex-gratia, but it did not agree that Mr E should be paid the difference between the payments he has received to date and the amount he would have received if he had opted for a reduced pension and a lump sum.
- The reasons for this were:
 - It did not believe it automatically followed that Mr E would have realised his error if Capita had questioned his claim form.
 - It appeared as though it was being directed to continue paying Mr E's ongoing pension payments at the same rate as though he had not taken a lump sum. Therefore, his pension would be paid at a higher rate for the rest of his life. This means that he would be in a better position than if he had chosen the correct option initially.
 - In addition, there are difficulties in implementing the direction. It could do this in a number of ways. The first would involve recovering all of the net pension payments made to the member and the tax paid to HMRC. That way, the Benefit Crystallisation Events (**BCE**) for the pension and PCLS would start again from the date the member confirmed his new options. Considering the member's pension came into payment in November 2020, this option may not be amenable to the member given the large sum of money involved.
 - The other way to implement the direction would mean that the payment for the PCLS would be an unauthorised payment (as it is more than 12 months since the BCE). The direction states that Capita would be liable for any

additional tax liability the member would need to pay. This could be over £10,000 (the unauthorised payment charges would be 70% (split 55% member and 15% scheme)). This seems inequitable given Capita were not solely at fault for this situation. The interest payable on the delayed payment of the PCLS would have to be paid as a Scheme Administration Member Payment and the member would have to pay tax on this. It is not clear whether the Opinion also directs that Capita is expected to meet this tax amount.

- Finally, it also needed to consider any implications on Mr E's lifetime allowance. He may have taken benefits from elsewhere. Mr E would need to confirm whether or not this is the case.

30. Since Capita's response to the Adjudicator's Opinion, Mr E has confirmed that he has not taken and does not have any other pension benefits.
31. I have considered the additional points raised by Capita and they do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

32. Mr E has complained about the way in which Capita has paid his retirement benefits due from the RMSPS. The crux of this complaint centres on how Mr E completed his retirement options form and whether Capita should have allowed him to amend his chosen retirement option.
33. Mr E returned his completed retirement options form on 16 September 2020. The retirement options form gave Mr E three different options; a full pension with no PCLS, a reduced pension with a PCLS or to request a transfer pack. Each option was set out fairly clearly.
34. Unfortunately, Mr E signed and dated the full pension and the request for a transfer pack. This was clearly incorrect as the options were mutually exclusive. He also completed the recycling declaration that was required if a PCLS had been chosen. It should therefore have been clear to Capita, even from a cursory review, that Mr E had been unclear in his declaration as to which option he wished to take.
35. It was not until 17 November 2020 that Capita wrote to Mr E confirming payment of his pension would be made at the higher rate with no associated PCLS. Mr E immediately contacted Capita to explain that an error had occurred. Capita therefore had from 16 September 2020 until 17 November 2020 to review Mr E's completed option forms and if necessary, clarify the situation. This would have been a similar process to the one taken had Mr E not completed his bank details. In that scenario Capita would have absolutely needed to contact Mr E to obtain the necessary information and I can see no reason why it did not do so in this case given the confused nature of Mr E's election.

36. Capita has asserted that if it had telephoned Mr E to clarify his intentions with regard to his retirement options, he would have just asked Capita to proceed with the option he had already chosen.
37. I disagree. Mr E clearly stated that he wanted to take a lump sum and a reduced pension and as soon as he realised that he would receive a full pension he immediately emailed Capita to ask for matters to be rectified. This indicates that if Capita had telephoned Mr E and asked him to confirm which retirement option he wished to select Mr E would have realised his error, and the matter could have been dealt with appropriately at that time. I find Capita's failure to contact Mr E was maladministration and that Capita's argument in this regard is flawed and is not supported by the facts.
38. In addition, there was an opportunity for matters to be put right after Mr E's emails to Capita on 23 and 24 November 2020 and 4 December 2020. I find that if Capita had reviewed the fact that Mr E's option form was contradictory and clearly completed incorrectly, along with his request to correct the choice that had been put in place, then the error could have been rectified quickly without any detriment to Mr E.
39. Capita has argued that it is difficult to implement the remedy suggested by the Adjudicator as a reason for not accepting the Opinion. I find this to be a poor argument. The clearly stated aim of the remedy is to put Mr E back in the position he would have been in had the maladministration not occurred and whether this is difficult for Capita to implement is not a factor to be considered. The remedy put forward in the Opinion is to redress the maladministration identified, so the pension should be paid at the reduced level going forward in line with Mr E's wishes.
40. Capita says it seems inequitable that it should be liable for any additional tax liability that Mr E may need to pay given that it was not solely at fault for this situation. But Capita missed an opportunity to correct the matter in late 2020 (when Mr E asked for a new form so he could select the reduced pension and PCLS option) and avoid the possibility an unauthorised payment.
41. I uphold Mr E's complaint.

Directions

42. Within 28 days of the date of this Determination:-

- Cabinet Office and Capita shall each pay Mr E £250 (in total £500) for the significant distress and inconvenience that he has suffered.
- Capita shall:-
 - Contact Mr E regarding any other pension benefits he might have drawn. If this requires Capita to liaise with other thirds parties Capita should seek Mr E's written authority to do so.

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- Calculate what Mr E would have received if a lump sum and a reduced pension had been paid since his retirement date (A).
- Calculate the total pension that Mr E has received (B).
- Pay Mr E (A) – (B) as a lump sum plus simple interest at the base rate for the time being quoted by the Bank of England from Mr E's retirement date to the date of payment.
- If the payment of the lump sum results in an additional tax liability on Mr E, then Capita should pay Mr E the equivalent amount.
- Provide Mr E with written confirmation of the relevant steps that it has taken.

Anthony Arter CBE

Deputy Pensions Ombudsman
6 December 2023