

Ombudsman's Determination

Applicant	Miss O
Scheme	Principal Civil Service Pension Scheme and Civil Service Compensation Scheme (the Scheme)
Respondents	Cabinet Office

Outcome

1. I partly uphold Miss O's complaint and direct the Cabinet Office to pay Miss O £500 for the loss of expectation and distress and inconvenience she has experienced as a result of the incorrect information she received from MyCSP.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Miss O has complained because she says that she was given incorrect information during a telephone call with MyCSP, in January 2013, regarding her options under a Voluntary Exit Scheme (**VES**), from her employment with the Crown Prosecution Service (**the CPS**). Miss O has said that the incorrect information led her to choose an option that was not her preference. Had she been provided with correct information, she would have chosen a different option, and remained in employment if it was not granted.

Background information, including submissions from the parties

1. The Cabinet Office is responsible for managing the Civil Service Pension Arrangement and is acting on behalf of the CPS and MyCSP.
2. Miss O was employed by the CPS and was a member of the Scheme. In January 2013 Miss O was given the following six options in relation to the VES:
 - (1) Immediate compensation payment and preserved pension (**option one**).
 - (2) Immediate compensation payment and immediate pension on reduced terms.
 - (3) Immediate payment of pension plus immediate payment of any balance of the compensation payment (**option three**).

(4) Immediate payment of pension. Some or all of the compensation payment to be used to buy added pension.

(4a) Immediate payment of pension. Some or all of the compensation payment to be used to buy added pension and buy out the reduction for early payment.

(5) Immediate compensation payment and pension reduced for early payment. Some or all of the compensation payment to be used to buy added pension.

(6) Immediate compensation payment and preserved pension. Some or all of the compensation payment to be used to buy added pension.

3. On a date between 8 and 11 January 2013, Miss O claims MyCSP gave her incorrect information during a telephone call when it told her that option three was not available to her, and would not be at any time in the future. Miss O said that based on this information, she decided to choose option one instead. The deadline for completing the VES form was 14 January 2013 and on 12 March 2013, Miss O was informed that her VES was successful. Her last working day was on 19 March 2013.
4. On 25 March 2013 Miss O attended a retirement seminar and was told that option three was available to her at the time that she completed the VES form. As a result, on 5 April 2013, Miss O contacted MyCSP and asked if she could change her option. MyCSP agreed to this request and on 8 April 2013 sent new option forms to Miss O by email.
5. On the same day Miss O received the new forms, the CPS emailed her and informed her that it was not possible for her to change her VES option. Following receipt of the CPS' email, Miss O contacted the CPS and asked it to reconsider its decision because she had been given very little time to make crucial decisions and, she had only become aware that she could choose option three after she had attended the retirement course in March 2013, which was after she was told by MyCSP that this option was not available to her.
6. The CPS responded to Miss O on 9 April 2013 and explained the process it had followed to make decisions about the VES applications. It explained that it did not have approval for the extra cost it would incur by making up the shortfall in her buyout costs. However, it would forward her request to the relevant team. During the period that the CPS was considering Miss O's request to change her option, there was further correspondence between Miss O and the CPS and the CPS and MyCSP, regarding advice Miss O had received in relation to her VES options. This resulted in the CPS making a complaint to MyCSP on Miss O's behalf.
7. On 7 May 2013 the CPS informed Miss O that it was unable to allow her to change her VES option as after investigating her complaint, MyCSP has said that it could find no evidence that it had ever given her incorrect advice about her options. Subsequent to this letter, MyCSP processed Miss O's benefit award and on 20 May 2013, wrote to her with the details.

8. This resulted in Miss O referring the issue to the Pensions Advisory Service (**TPAS**) and asking it to assist her with her complaint. On 29 August 2013, TPAS wrote to MyCSP asking it for its comments on Miss O's complaint. It also asked it for a copy of a telephone conversation Miss O had with it in January 2013. MyCSP replied to TPAS on 19 September 2013 and explained that due to an upgrade in its telephone system in May, it no longer had copies of calls prior to that date. MyCSP said that it had incorrectly processed Miss O's benefits using option one instead of option three and apologised for the mistake. It said it would contact Miss O about putting things right.
9. Following the above letter, MyCSP contacted the CPS and queried if it would allow Miss O to change her VES option. The CPS responded and said that it had made the decision to accept Miss O's VES application on the basis of her choosing option one. In addition, it had already informed Miss O that she could not change her choice. On 25 September 2013, MyCSP informed Miss O of the CPS' decision.
10. Disappointed with the response she received, on 18 January 2016, Miss O made a complaint through both stages of the Scheme's internal dispute resolution procedure (**IDRP**). In the IDRP stage one response dated 22 April 2016, MyCSP explained that it could not comment on any disagreement Miss O had with the CPS. However, it accepted that it had given her contradictory information regarding the ability for her to change her VES option. However, as she had left service more than three years ago, it could not instruct the CPS to revisit her case.
11. In the IDRP stage 2 response dated 17 October 2016, the Cabinet Office gave a detailed account of the events that led to Miss O's complaint. It explained that after carefully considering the evidence it was unable to conclude that MyCSP gave Miss O incorrect information during a telephone conversation in January 2013. It said "leaving this telephone call aside, [the] CPS and MyCSP gave Miss O a significant amount of written information with which to make [her] choice... This information was correct and had MyCSP or any other party told [Miss O] something verbally different, [it] would have expected [her] to query [her] position."
12. It also said that Miss O did not make it clear to MyCSP that she was referring to a telephone call she had with it in January 2013 and that it only became aware that she was referring to the said telephone conversation after she wrote to the Pensions Advisory Service (**TPAS**) in August 2013. By this time, MyCSP had changed its systems and could not check telephone records that far back.
13. It explained what the CPS had said regarding how it made its decision to grant VES to individual employees. Therefore, it was unable to say what the outcome for her VES application would have been if she had been allowed to change her option. In addition, it did not consider it had sufficient evidence to support that Miss O had telephoned MyCSP in January 2013 and that it gave her incorrect information about her options during that call.

14. Miss O's email to the CPS on 5 April 2013 was the first indication that she wanted to change her option. In her subsequent email and telephone call to MyCSP on 8 April 2013 she did not indicate that she held MyCSP responsible for giving her incorrect information about her options in a telephone call in January 2013. The Cabinet Office recognised that Miss O was provided with contradictory statements when MyCSP informed her in April 2013, that she could change her option.
15. However, it did not agree that that Miss O would have chosen option three if she had known it was open to her, and ultimately risk the chance of losing the option to leave under the VES. It considered that had Miss O wanted either option three or to remain in CPS' employment, if she believed option three was not available, she would surely have withdrawn her interest in the VES to remain in CPS employment. Instead Miss O chose to apply under option one and when CPS accepted her application, she confirmed her willingness to leave and her understanding that her decision was irrevocable.
16. Therefore, the Cabinet Office did not uphold Miss O's complaint.
17. Dissatisfied with the Cabinet Office's response Miss O referred her complaint to this Office and as well as providing copies of correspondence relating to her complaint, between the different parties, she also made the following comments:
 - The points made in the IDRPs appear to be inaccurate and do not give the full picture. She feels this can be misleading and when parts are extracted, it has in some cases taken matters out of context.
 - She was led to believe that option three would never be available. She did not challenge the information at the time as she had no reason to believe it was inaccurate, as she had received it from the helpline. After she attended a course and learnt that the information she was given was incorrect, she challenged it immediately.
 - She was led to understand that if she wanted to leave she would never have gotten option three so she went for the option she chose. If she had been informed by the CPS that she could have stayed employed while her application was being reconsidered she would have done so. Had she been unsuccessful she would have remained in the CPS' employment.
 - Both MyCSP and the CPS should have provided a copy of the telephone conversation between her and MyCSP, and it was wrong that communication was severed at that point.
 - She specifically asked CPS for a copy of this on 10 May 2013, and says that had the CPS asked MyCSP for the recording at that time, it would have been available, and this was important to her case.
 - Her application should be looked at afresh, and either she would need to return to their employment if option three was not granted, or be awarded loss of earnings

over the period, if it were granted. She further asserts that as it has now been established that MyCSP gave incorrect advice, she should be allowed to change her option in line with the CPS' statement on 7 May 2013 which said it was unable to change her option as it was unable to establish that she was given incorrect advice at any time.

18. After Miss O's complaint was referred to this Office an Adjudicator wrote to the Cabinet Office informing it that he considered MyCSP should pay Miss O £500 for the loss of expectation and the distress and inconvenience she has experienced as a result of the incorrect information she receive from MyCSP.
19. The Cabinet Office agreed to pay Miss O the £500 but Miss O considered that offer was derisory and therefore did not accept it. This resulted in the Adjudicator sending his Opinion to Miss O and the Cabinet Office.

Adjudicator's Opinion

20. The Adjudicator's findings are summarised briefly below:

- Miss O was able to reverse her VES option once made, but only with the agreement of her former employer. It is accepted that MyCSP misled her as to whether she could change her option under the VES, as it failed to inform her that consent of her former employer was required to enable her to do so. It is also accepted that MyCSP was wrong when it informed Miss O's former employer that MyCSP had incorrectly processed the award of option one, rather than option three which she subsequently requested. MyCSP further proceeded to misinform Miss O that her former employer had not followed the appropriate guidance in refusing to change her option, when in fact it was under no obligation to do so.
- The Adjudicator appreciated that Miss O said MyCSP informed her in a telephone call that she would not be successful with an application under option three, because that option was not being paid by her former employer under the VES, nor would it be in the future. However, it was for Miss O to decide whether to proceed with another option or not, in regard to the incorrect information she says she received from MyCSP, alongside the information provided by the CPS.
- This included:-

An information sheet about leaving with a compensation payment.

A Compensation Choice Form (**CCF**).

A letter from the CPS of 7 January 2013 detailing the discretionary nature of a top up payment, and the impact that it might have on the VES procedure.

A link to the Civil Service Pensions website.

- Ultimately what options to grant were a decision for Miss O's former employer to make, on receipt of a completed CCF, which featured option three, along with a subsequent Compensation Declaration Form. Until the return of the Compensation Declaration Form Miss O could have remained in employment, and attended her retirement course to fully consider her options, before a final, potentially irreversible decision was made.
- If Miss O was unprepared to leave employment under option one, she should not have selected and subsequently confirmed that choice. Miss O chose to take option one, leave employment, and took an immediate compensation payment along with deferred pension. There was also evidence that up until 9 April 2013 Miss O was still undecided about whether to choose option three, if it was made available to her. The issue was further complicated by the absence of a record of the telephone call, and Miss O's conflicting note of the conversation, where a cross can be seen next to option 4a, not option three.
- Miss O explained that when she wrote her telephone note, she put a cross next to 4a as it was exactly the same as options three and four. Although she noted that option four was, "as option three", and option five, "as option on one", she used a cross to indicate that option 4a was identical to options three and four. Her letter of 28 August 2013 also conflicted with this explanation, as she stated that:

"I was advised the option 4A was not applicable if I wanted VES - you will see I have put a 'X' against it."

- This also meant that she did not make a specific note at the time of the conversation that her preferred option three was not available to her, nor would be in the future.
- Irrespective of the note, Miss O said that the CPS should have requested, from MyCSP, the recording of the telephone call she had with MyCSP in January 2013, when it was still available, and they are at fault for not doing so. However, the incorrect information that Miss O claims she received, was provided by MyCSP. Therefore, any complaint about this issue should have been made against MyCSP, which Miss O eventually did. Miss O could have requested the recording at any time directly from MyCSP and there was no reason to wait for the CPS to make the request on her behalf.
- The Adjudicator appreciated that the CPS indicated in its statement of 7 May 2013 that it might be able to change a decision that has been made if they were able to establish that incorrect advice was given. However, owing to a lack of evidence it has not been established or accepted that Miss O was given incorrect information. Consequently, the CPS were under no obligation to change its decision in regard to the original VES option that she chose.

- Had Miss O applied for option three, there was no guarantee it would have been granted, and she would have lost the opportunity to leave under option one and receive an immediate compensation payment.
- Miss O was in new employment and her pension under the Scheme is preserved until the normal pension age of the Scheme, when it will be paid on an unreduced basis. It is also open to her to apply to have her pension paid early on a reduced basis.
- Overall, the Adjudicator understood that the confusion caused by MyCSP began in April 2013, but was not fully corrected until April 2016. Therefore, he agreed that the complaint should be partly upheld. However, as the Cabinet Office had already offered Miss O £500 in respect of the significant confusion and loss of expectation caused to her by the incorrect information she received from MyCSP, in relation to whether or not she could change her retirement option, he did not consider I would make a further award.

Further Submissions

21. Miss O did not accept the Adjudicator's Opinion and in response said the following:

- Despite previous statements from both the CPS and MyCSP, the information she has now been provided with, regarding being able to change her option states that it was at the CPS' discretion. She is therefore bound to accept that nothing will change at this stage although she would still like to change it if it were possible.
- The length of time this complaint has been ongoing has caused her a great deal of anxiety and stress and she has been unable to draw her pension while the investigation has been ongoing. The job she has is less money and this situation has caused her financial difficulty. The compensation offered is inadequate.
- If it cannot be agreed for her to return to work or for her to change the option she made in March 2013, could she be granted the option to draw her full pension now?

22. As Miss O did not accept the Adjudicator's Opinion, the complaint was passed to me to consider. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Miss O for completeness

Ombudsman's decision

23. It is clear that errors have occurred in relation to the information Miss O was provided, regarding her ability to amend her VES choice. While I appreciate Miss O's disappointment that she is now unable to change her option, I am unable to find that this has resulted in her incurring a financial loss. It is my view that she has suffered a loss of expectation.

24. There was no guarantee that had Miss O been able to choose option three the CPS would have granted her the option to leave under the VES. Miss O has argued that if she had been informed she could remain in employment, while the CPS reconsidered her VES application she would have done so. However, Miss O requested to amend her VES choice in April 2013 and her last working day was 19 March 2013. Therefore, she requested to have her choice amended after her last day of work. Consequently, I do not find that the CPS' failure to inform her of this has resulted in her incurring a financial loss.
25. I appreciate that Miss O has said that she is currently experiencing financial difficulty and I sympathise with her current situation. However, I am unable to direct the Cabinet Office to grant Miss O her pension, earlier than age 60. This is because I do not find that Miss O was led to choose an option on the VES form, that she did not want to, as a result of MyCSP's or the CPS' actions. Therefore, Miss O may wish to contact the Cabinet Office directly to find out if it would allow her to take the benefits of her pension earlier than age 60.
26. I accept that this situation has been ongoing for a while and that it has caused Miss O significant distress and inconvenience. However, I find the £500 the Cabinet Office has offered her for the distress and inconvenience caused, is reasonable in the circumstances.
27. Therefore, I partly uphold Miss O's complaint.

Directions

28. To put things right, within 21 days of the finalisation of this complaint, the Cabinet Office should pay Miss O £500 for the distress and inconvenience and loss of expectation, this situation has caused her.

Karen Johnston

Deputy Pensions Ombudsman
28 February 2018