

## Ombudsman's Determination

Applicant	Mr S
Scheme	Principal Civil Service Pension Scheme ( <b>PCSPS</b> )
Respondent	My Civil Service Pension ( <b>MyCSP</b> )

## Outcome

1. I do not uphold Mr S' complaint and no further action is required by MyCSP.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr S' complaint against MyCSP is that it failed to process his application to transfer out of the PCSPS before the 6 April 2015 deadline. As a result, he was unable to transfer his pension benefit to an overseas scheme, which in comparison, offered flexible benefits.

## Background information, including submissions from the parties

4. By way of background, Mr S resigned from his post, with the Department of Trade and Industry, in September 1997, with a reckonable service of 10 years and 59 days. He will become entitled to preserved pension benefits from his Normal Pension Age (**NPA**), on 18 September 2023 (his 60<sup>th</sup> birthday). In 2008 Mr S moved to Australia, and has lived there since.
5. The Pension Schemes Act 1993 (**PSA93**) restricts transfers out of unfunded public service Defined Benefit (**DB**) schemes to schemes offering flexible benefits (income drawdown or access to a lump sum from age 55 etc.). The restriction did not apply to members who had already made a valid 'Application' to transfer out of the PCSPS before 6 April 2015 (the **Deadline**).
6. This is a two-step process. To make a valid Application, a deferred member must be within at least one year of NPA, and have received a cash equivalent transfer value (**CETV**). Legislation permits an administrator or scheme manager to provide a CETV (also known as a 'statement of entitlement') within 3 months of the initial request. The member then ought to make an Application or election to proceed with the CETV.

7. On 26 January 2015, Mr S emailed MyCSP requesting a CETV. He also asked what impact the upcoming changes in UK pension legislation would have on the ability to transfer to a Qualifying Recognised Overseas Pension Scheme (**QROPS**). MyCSP did not respond to Mr S.
8. Mr S made further contact with MyCSP via email on 23 March 2015, asking for the CETV. Mr S also enquired whether he would be allowed an extension to the Deadline, due to the failure of MyCSP to respond to his earlier enquiry.
9. MyCSP received a letter on 9 June 2015, from Mr S, dated 27 May 2015, enclosing copies of the emails he had sent. He again asked why MyCSP had not responded to his requests for a CETV, and whether his request would be accepted as he had requested it before the Deadline.
10. MyCSP responded by email 3 months later on 11 September 2015. It confirmed that due to legislative changes from 6 April 2015, he could only transfer his benefits to a DB scheme or a QROPS that did not allow flexible benefits. But because MyCSP could not trace Mr S' pension record, it confirmed that it had written to his former employer for salary and service information.
11. There were further exchanges of correspondence between Mr S and MyCSP. On 14 October 2015, MyCSP emailed Mr S and informed him that it had received the requested information from his previous employer. MyCSP subsequently wrote to Mr S on 12 November 2015 quoting a CETV of £108,786.84.
12. Meanwhile, Mr S complained to MyCSP under the PSCPS' Internal Dispute Resolution Procedure (**IDRP**) on 29 October 2015. He complained that:
  - he had requested the CETV on 26 January 2015, with the aim of completing the transfer before 6 April 2015;
  - MyCSP's failure to respond meant he had missed the opportunity to transfer to his chosen QROPS;
  - he had been financially disadvantaged because he could have made tax free withdrawals from a qualifying scheme in Australia;
  - there had been little communication forthcoming from MyCSP and not all of his enquiries had been answered; and
  - Mr S asked that his transfer request be processed as he had made his request some time before 6 April 2015. He said if it was no longer possible for the transfer to go ahead, he should be compensated. In Australia, pensions can be drawn tax free and as lump sums. In addition, the risk of lower exchange rates and inflation in the UK would mean the value of his pension over time would not keep pace with the cost of living in Australia.

13. MyCSP issued the stage one IDR response on 4 January 2016. It explained that it had not met the statutory 3-month timescale for providing the CETV, and accepted that it had taken over 9 months to provide the details. MyCSP said it could only issue a CETV if the request was received before 6 January 2015. This was due to the surge in requests ahead of the anticipated legislative changes. Although MyCSP was unable to allow the transfer, it upheld Mr S' complaint because it had failed to provide him adequate information within the statutory timescales. MyCSP said it had not been provided with evidence of any financial loss suffered, so it offered Mr S £150 in recognition of the delays it had caused.
14. Mr S did not accept the outcome and on 27 January 2016 appealed the decision. He asserted that his loss was around £16,000. He did not accept that £150 was a reasonable offer of compensation as it did not take into account the poor customer service he had received, and that there had been no forthcoming answers as to why the delays had occurred.
15. The Cabinet Office considered Mr S' appeal and issued its final response on 18 July 2016. Its decision can be summarised as follows.
  - In accordance with PCSPS Rule 6.3, members must be given a statement of entitlement before they can apply for a transfer of their benefits. The statement of entitlement must be completed within three months of receiving the request to issue a statement of entitlement.
  - There were also additional duties which MyCSP were working on, including a backlog of inherited work and long standing legacy problems. MyCSP prioritised its commitments and chose to process transfer requests made at least three months prior to the Deadline.
  - Mr S requested the CETV on 26 January 2015, and therefore MyCSP had until 26 April 2015 to provide this, and without the CETV, Mr S could not make his application to transfer;
  - Cabinet Office accepted that it took MyCSP longer than expected to respond to Mr S and said that his complaint was not dealt with in a timely manner. In light of this, it increased the compensation award from £150 to £250 because the delay was significant.

## **Adjudicator's Opinion**

16. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by MyCSP. The Adjudicator's findings are summarised briefly below:-
  - There is no dispute that Mr S cannot now transfer to a QROPS - which may provide flexible benefits, as a result of a change in pension legislation.

- As this was a two stage process, and given that Mr S did not receive a CETV, the formal process had not begun;
  - Mr S remains entitled to the deferred pension benefits he accrued before he left the PCSPS in 1997, and these have not been affected by MyCSP's actions or omissions;
  - Mr S has however lost the option to control his pension and access it in a flexible way to suit his current circumstances. This is a loss of expectation.
  - Mr S has suffered significant distress and inconvenience as a result of his concerns regarding the time it took MyCSP to deal with his request. And, he was further frustrated when he did not receive any acknowledgement, and contacted MyCSP on several occasions for a response. As a result of the investigation carried out, MyCSP increased its initial offer of £250, to £500, in recognition of the significant distress and inconvenience caused.
17. Mr S did not accept the Adjudicator's Opinion. Mr S explained his position on the tax issue, that if he were to transfer his pension to an overseas scheme, it would be worth more because it could be withdrawn tax free, whereas, pension income received in the UK would be taxed at his marginal rate. Mr S also felt that the delays caused by MyCSP had not been fully considered.
18. Further investigation was carried out by the Adjudicator. MyCSP clarified the reasons for the delay in processing Mr S' request, as explained in the second stage IDR response of 18 July 2016. MyCSP highlighted the events previously mentioned, for example, on-going commitments, which, as a consequence, meant prioritising CETV requests received at least 3 months ahead of the legislative changes.
19. The Adjudicator responded to Mr S' concerns and explained:-
- The changes to legislation had not altered the level or value of deferred benefits held in the PCSPS, but rather he had lost out on the flexibility associated with transferring benefits overseas. MyCSP should not be held responsible for the restriction placed by legislation on overseas transfers.
  - Mr S was also informed of the Pension Age Test (**the Test**), introduced by HMRC in April 2015, which prohibits pension schemes from paying benefits to members under the age of 55, except in circumstances of ill health. Because Mr S had not reached age 55 at the time when the test came into force, she did not consider he would have been able to transfer his benefits under the PCSPS to an overseas scheme regardless of the delays.
  - The transfer would not have been possible because the CETV could not have been produced before the Deadline, as the request for the estimate had not been made before 6 January 2015 which is the date at which MyCSP could have reasonably dealt with Mr S' initial CETV request.

20. Mr S did not agree with the Adjudicator's views and submitted the following, in summary:-

- Mr S does not agree that he has only suffered a loss of expectation.
- His pension will be taxed in Australia as overseas income. If he continues to work until age 67, his normal retirement age in Australia, the UK pension benefits paid between age 60 and 67 will be added to his total income and therefore taxed at his marginal rate of income tax, which at present is 38%.
- The explanation from MyCSP given on what caused the delays does not actually clarify why MyCSP did not commence work on his request until eight months after having received it. In his view, MyCSP's explanation is not credible.
- Overseas customers do not easily hear of legislative changes buried in UK government budgets, nor is it easy to make contact with UK based schemes or seek redress from overseas. He has suffered from stress as a result of not hearing from MyCSP for eight months, and then being told his records could not be found, leading him to conclude he had been the victim of fraud.

21. As Mr S remained dissatisfied, the complaint was passed to me to consider. Mr S provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr S for completeness.

### **Ombudsman's decision**

22. Although Mr S did not receive a CETV, prior to the deadline, MyCSP were only obliged to provide him with a CETV (statement of entitlement) within three months of his initial request, specifically no later than 26 April 2015, which is after the date the new legislation came into force.
23. Mr S is understandably aggrieved because of the time it took MyCSP to deal with his request, which I agree was excessive and frustrating. However, it does not change the overall outcome of this case, because on balance, it seems reasonable to conclude that MyCSP would have been unable to process any 'Application' to proceed before the Deadline, given Mr S' request for a 'statement of entitlement' was only made on 26 January 2015.
24. Even if Mr S had submitted his request to MyCSP on 6 January 2015 there was still no guarantee an overseas transfer request would have been agreed. MyCSP still had 3 months to provide Mr S with a statement of entitlement, and so it is entirely conceivable that Mr S would not have been able to make an 'Application' to proceed before the Deadline.

25. It is also worth mentioning that amendments in UK pension law regimes effectively closed transfers from UK schemes to Australian pension funds, unless the Australian superannuation fund did not allow a payment of a pension before the member reached age 55 (or retirement) on the grounds of ill-health as defined under UK law. The Adjudicator made reference to the Test (see paragraph 19 above); it seems more likely than not, that Mr S would have failed to meet this legislative requirement in any event.
26. However, I do agree that MyCSP failed to provide the level of service it ought to have done for a former member of the PCSPS. This appears to be in part as a result that no pension record could be found for Mr S when he first enquired in January 2015, and because of other administrative commitments that MyCSP had at that time. Regardless of the reasons, I agree that Mr S has suffered significant distress and inconvenience.
27. I accept Mr S cannot access his benefits in the way in which he perhaps wished, but that does not mean he has suffered an actual financial loss. I agree that Mr S has suffered a loss of expectation, on the grounds he cannot now access his pension benefits in the flexible way in which he wished. But, Mr S chose to reside in Australia and he cannot expect MyCSP to be held accountable for any future income tax issue he may encounter. Also, there was no requirement for Mr S to wait until 2015 to transfer his My CSP benefits. He could have transferred them at any time from 2008 onwards.
28. In light of the delays and level of service experienced by Mr S I consider that he has suffered a significant non-financial injustice. However, I consider the £500 offered by MyCSP to be reasonable in the circumstances and I do not direct MyCSP to pay any more to Mr S. If Mr S now wishes to accept the award from MyCSP he should make contact with them following the issue of this final Determination.
29. Therefore, I do not uphold Mr S' complaint.

**Anthony Arter**

Pensions Ombudsman  
5 June 2017