

Ombudsman's Determination

Applicant	Mr D
Scheme	Principal Civil Service Pensions Scheme (PCSPS)
Respondent	Carillion UK (Carillion)

Complaint Summary

1. Mr D is complaining that Carillion failed to action his requests to allow the purchase of Added Pension in the PCSPS. As a result, there was a delay in the payment of his benefits.

Summary of the Ombudsman's Determination and reasons

2. The complaint should be upheld against Carillion because it failed to act on Mr D's instructions and process his pension benefits within a timely manner.
3. My reasons for reaching this view are explained in more detail below.

Detailed Determination

Material facts

4. In July 2015, Carillion became a “New Fair Deal” employer for the first time. This meant that as an employer undertaking work formerly done within the Government, it was admitted into the PCSPS.
5. In late 2015, Mr D elected to take voluntary redundancy, effective from 31 December 2015 and, as part of this, to take early retirement under the PCSPS. On 23 September 2015, Carillion first contacted MyCSP to request a quotation in regards to Mr D using his redundancy payment to buyout the reduction of his pension due to early retirement reduction costs, and also to purchase Added Pension.
6. On 17 December 2015, Mr D completed an option form for Carillion, as his employer, confirming he wished to use his redundancy compensation to buyout the reduction to his early retirement benefits and to purchase Added Pension using a lump sum payment of £14,394. This was received by MyCSP on 21 December 2015.
7. Throughout January 2016 emails went back and forth between Carillion, MyCSP and Mr D in the course of which the necessary process was clarified. In February 2016, MyCSP queried with Carillion differences in Mr D’s salary, which MyCSP explained was in order to find the most beneficial award payable to Mr D. Carillion also had to check historical service history with a previous employer. MyCSP explained that depending on the outcome of these enquiries the buyout figure would need to be recalculated.
8. On 28 February 2016 Carillion paid Mr D £6,543 for pay in lieu, untaken leave and time off in lieu.
9. On 1 March 2016, MyCSP emailed Carillion the following:

“we received the paperwork from Mr D who indicated he would be interested in **buying out the reduction of his pension and using the remaining compensation to buy AP. I have attached the calculators showing the cost of the buyout and also attached the AP calculator.** If Carillion is paying the cost you will need to arrange to send the costs direct to cabinets [sic] office via the electronic process and cabinet office should advise MyCSP when the payment has been cleared so that we can proceed with the pension award. If the Carillion is not paying the amount direct to cabinet office – i.e. you have paid the member the full amount of compensation. The member then needs to makes the arrangements themselves and would need to send a personal cheque to MyCSP and we will arrange for the payment to be sent to cabinet office – **ATTACHED DOCUMENT CONFIRMING BUYOUT COST £19,676.08.**”
10. On 31 March 2016, Carillion were informed by MyCSP that further option forms needed to be submitted, including further details regarding Mr D. However, this was later confirmed as not being relevant to Mr D.

11. On 11 April 2016, MyCSP contacted Mr D directly saying that it had not heard anything from Carillion as to whether or not he still wished to purchase Added Pension.
12. On 19 April 2016, Mr D emailed MyCSP saying that he was expecting to receive his benefits at the end of the month. He said he had already indicated he wanted to take 'Option 2' i.e. an unreduced pension. Mr D knew this would reduce his redundancy payment and he was waiting to be asked how much of the lump sum he wanted to use to buy added pension.
13. On 7 May 2016, MyCSP received a chaser email from Mr D for payment.
14. On 9 May 2016, MyCSP wrote to Carillion, "as we have previously advised MyCSP cannot process the pension until the buyout costs have been paid and cleared by Cabinet Office. Can you please arrange for the buyout costs to be paid and the AP if Mr D is going ahead with the purchase." On the same day, Mr D told MyCSP that he had already provided this information to Carillion and could not get a response. MyCSP then provided details of its contact at Carillion so that Mr D could chase the matter.
15. On 9 May 2016, Mr D sent an email to Carillion, copying MyCSP, advising that he wanted to take 'Option 2' to buy out the age reduction and purchase Added Pension using £24,000 of his lump sum. He instructed Carillion to send payment to the Cabinet Office. The same day Carillion checked with MyCSP that Mr D's confirmation was acceptable. MyCSP replied by return that it was, but it needed the payment to have cleared before it could process Mr D's benefits. It asked Carillion to advise when the payment had been sent.
16. On 24 May 2016, MyCSP clarified to Carillion "We were aware of the pension options however it was the buyout costs being sent to Cabinet office and the payment being cleared by Cabinet office that has caused the delay. If you can advise us once they have been sent and confirm the amount sent, whether it is a bacs or cheque payment and the date sent then I will contact ... Cabinet office to check the funds have cleared we will then be able to process Mr D's award." The same day Carillion chased internally to see whether payment had in fact been made.
17. On 2 June 2016, Carillion raised a question about the amounts to be paid, which was clarified the same day. The buyout cost required to be sent to Cabinet Office was reiterated as £19,676.08.
18. On 3 June 2016, Carillion sent the buyout costs to Mr D, which he agreed to. Mr D was paid the balance of his redundancy payment on 17 June 2016 (£20,573.92).
19. On 8 September 2016, the buyout payment was sent to the Cabinet Office. However, Carillion say that, due to human error, this was paid to the wrong bank account. As the Cabinet Office cannot transfer money between accounts, the money was returned to Carillion. On 24 October 2016, Carillion paid an incorrect amount (£18,708) but

this time to the correct account. Again, Carillion has submitted that this was due to human error. The amount should have been £19,678.08, therefore there was a shortfall of approximately £970. Unfortunately, MyCSP informed Carillion that the shortfall was higher (£1,676.08). On 26 October Carillion questioned why the figures had changed. The same day MyCSP responded that they had not changed and it could not explain the difference. On 8 December 2016, MyCSP contacted Carillion with the correct details of the outstanding amount and apologised for providing an incorrect figure. The outstanding amount was received on 15 December 2016 and Mr D's benefits were put into payment before the end of December 2016, almost one year after he had originally taken voluntary redundancy.

20. Mr D made a complaint to this service. As part of this, an Adjudicator investigated and agreed that, in her opinion, Carillion were responsible for the delay and Mr D was entitled to financial redress.
21. The Adjudicator felt that Carillion ought to have been in a position to pay the outstanding amount to MyCSP to allow his pension benefits to be put into payment by the end of April 2016. She felt that Mr D should be compensated for his loss of investment from May to December 2016, loss of interest on the delayed net pension, and the loss of a monthly reward attached to Mr D's bank account. It was also the Adjudicator's view that Mr D had suffered significant distress and inconvenience and Carillion should therefore pay Mr D £1,000 to recognise this.
22. Both parties disagreed with the proposed outcome.

Summary of Mr D's position

23. Mr D agreed with the majority of the Adjudicator's findings, but not the calculation of his financial loss. He says that all of the tax free cash lump sum should be considered as financial loss. He asserts that he would have invested it. He would not have left it idle and he did not keep more than the basic necessary amounts in his current account. He says he would have put it in the Halifax Foreign and Colonial Investment Trust (the **F&C investment**), where he put the redundancy payment which he received in June 2016. He contends that the balance of the lump sum paid to him, which is not included in the Adjudicator's original calculation, should be considered as financial loss (i.e. £10,990 - £3,466.199 = £7,532.81).
24. Mr D says even if you follow his December 2016 investment pattern rather than that of June 2016, this money would have been added to his ISA account. On that investment basis he has calculated an additional loss of £1,311.

Summary of Carillion's position

25. Carillion disagreed with the Adjudicator's view. It felt that the Adjudicator had relied on MyCSP's response, and drew attention to the email chains on 31 March 2016 (regarding an incorrect request for additional forms which they had received from

MyCSP) and on 2 June 2016 (My CSP's confirmation that the buyout costs were £19,676.08).

26. Carillion say that MyCSP did not ask it to share the buyout cost detailed in its email of 1 March 2016 with Mr D. Previously MyCSP had shared this information directly with Mr D which led them to believe he had it.
27. There were no standard payment processes in place for Carillion to make payments of this nature to the Cabinet Office, as it was new to the "New Fair Deal" partnership and therefore inexperienced. Also, that over the summer period, many members of staff were on leave and this often leads to delays across the organisation.
28. There should have also been an onus on MyCSP to have discovered the incorrect "top up" amount post October 2015.
29. Carillion feel that the Adjudicator was unfair in not acknowledging the impact of MyCSP on the delays caused to Mr D.
30. Carillion also feel that the Adjudicator did not adequately explain why the end of April 2016 is being used as a reference for determining Mr D's financial loss.
31. Carillion disagree that it should pay interest on the pension payments between January and April 2016 as, using the Adjudicator's logic, there is no delay in this period. It also disagrees that interest should be paid between April and December 2016 as it was not wholly responsible for this delay.
32. Carillion disagree with the value of the non-financial loss payment recommended by the Adjudicator and in doing so, reiterate the points above.

Conclusions

33. Carillion have submitted a number of arguments that it should not be responsible for the delay in the payment of Mr D's benefits, or for any loss that he suffered as a result of this delay. I will address each concern.
34. Carillion state that MyCSP are also to blame for any delays caused. Whilst I can see that there were two occasions when MyCSP provided incorrect information (i.e. on 31 March 2016 when it asked for an irrelevant form, and on 25 October 2016 when it provided an incorrect "top-up" amount following Carillion's error in sending the wrong buyout amount), the majority of the delays and most significant errors are due to Carillion. Carillion took no action in contacting Mr D when it received details of the Additional Pension costs on 1 March 2016 and, on receiving what it says is confirmation from Mr D to proceed on 9 May 2016, nothing was done to pay an amount (which was incorrect, twice) to the Cabinet Office until 8 September 2016, four months later.
35. Having looked at the email chain of 2 June 2016, it is clear that the buyout cost was the same as quoted in the original email of 1 March 2016. I therefore cannot agree

that Carillion were entitled to take no action in regards to the information dated 1 March 2016 (especially as it was in possession of this 30 calendar days before it says it received the incorrect information request from MyCSP on 31 March 2016), and can see no good reason why it still did not make a payment to the Cabinet Office until 8 September 2016.

36. While I understand the argument about its general inexperience and staffing issues over the summer period, that timescale was unreasonable. I bear in mind that when Carillion asked direct questions about how the buyout payment and added years payments were supposed to work, and queried the numbers which were being used in MyCSPs's calculations, which it did on 2 June 2016, those questions were resolved the same day.
37. Carillion assert it was not directed to share the information in the email of 1 March 2016 with Mr D. I agree that it does not specifically state this, but the email does say that if Mr D is interested in buying out the costs, the amount this would be, and what Carillion needed to do to enact payment. Carillion therefore knew that Mr D wanted to buyout his pension reduction and that, as it was paying the cost on his behalf, it needed to make a payment to the Cabinet Office. If there was any doubt that Mr D wanted to proceed, then the "ball was in their court" to contact Mr D to confirm this before making the payment. However, there is no evidence submitted to show that Carillion acted on this email, whether to clarify the buyout costs (as it later did in June 2016), to confirm with Mr D that he wanted the payment made or to start the process of making the payment.
38. Carillion put forward that it was new to the process and therefore payment processes were not in place. Because of this, delays were caused while processes were set up and approved and that staff were on leave. I accept this evidence, but Carillion had been an employer under the "New Fair Deal" arrangement since July 2015, five months before Mr D's redundancy. There was, in my view, sufficient time to set up new processes long before the email of 1 March 2016 was received. Carillion had known since September 2015 that Mr D was considering using his redundancy in this way, as it requested a quotation from MyCSP at this time. Knowing that an employee was about to take up this option ought to have alerted Carillion that it would need processes in place to make these types of payments. The email of 1 March 2016 explained the type of payment and who it needed to be paid to and Carillion were repeatedly told that the payment needed to clear before Mr D could receive benefits. In those circumstances, I consider that the issue should have been escalated and processed manually if no system was yet in place.
39. I have considered Carillion's point about the period between 25 October and 15 December 2016 during which MyCSP had requested an incorrect top up payment be made. However, I am conscious that if Carillion had paid the correct amount in the first place to the correct bank account, there would not have been an issue regarding a "top up" payment. Having made the original mistake I do not think it is reasonable to hold a third party responsible for remedying it.

40. I have considered whether the end of April 2016 is an appropriate date to conclude that the pension and lump sum should have been paid. I conclude that it is. Carillion were aware of the buyout costs on 1 March 2016. If Carillion had taken action promptly after that date, it is likely (even allowing time for Carillion to raise queries with Mr D and MyCSP) that it could have made payment to the Cabinet Office in time for Mr D to receive his benefits by the end of April 2016, effectively two months later. The question it raised with MyCSP in June 2016 was answered the same day. Once the Cabinet Office had received the final buyout payment, pension benefits were paid to Mr D within nine working days. So, absent Carillion's delay I can see no reason why Mr D could not have been in receipt of his pension within two months of receiving the email of 1 March 2016.
41. Carillion says it should not pay interest to Mr D for the periods that he was without his monthly pension payments. I agree with this in part. As there was a realistic expectation his pension would have been paid at the end of April 2016, then there should be no interest paid between January and April 2016. I conclude that Carillion should pay interest on the amount of £7,541.59 (pension arrears) between May and December 2016.
42. I turn now to the losses flowing from late payment of the lump sum. The principle is that Mr D should be put back into the position he would have been had the maladministration not occurred. He is entitled to compensation for losses directly flowing from the delay caused by Carillion, including any lost investment opportunity which he can prove, but he is not entitled to a windfall. Ascertaining what a member would have done with a lump sum had they been in receipt of funds at the first opportunity is often difficult and Carillion have argued that it is speculation what Mr D would have done. They therefore object to paying for his investment losses.
43. However, I am satisfied that Mr D has demonstrated that he in fact invested his lump sum and has produced reasonable evidence of the funds in which he would probably have invested had he received it earlier. He has provided evidence (via copies of his bank and investment fund statements) that he had investment accounts, and that he had a practice of using large payments received to make investments. His bank account records show that, on receiving large payments, in January, June and December 2016, he made correspondingly large investments. The statements show that he did not invest the whole amount received, but the majority of it, which supports his statement that he kept back only what was needed for immediate living expenses. Carillion have been provided with a copy of these statements. The statements provide evidence of what Mr D did with the redundancy money he received in June 2016 and of what he did with the lump sum which he received in December 2016. The investment he made in June was into the F&C investment, and the investment which he made with the lump sum received in December was split (31% in the F&C investment and 69% in the ISA). The reason he gave for the difference in approach was that he wanted to top up his ISA before the end of the financial year.

44. From this evidence I am satisfied, on the balance of probabilities, that if he had received the lump sum which was due to him at the end of April 2016, any money in excess of what was needed for immediate living expenses would have been invested. From the investment decision which he made about the lump sum in December 2016 I am satisfied that had he received the money on 1 May, i.e. in the same financial year, he would probably have split the investment between the F&C investment and the Fidelity Investment Savings Account (the **ISA**) in the same way. I therefore apply the same split of funds to arrive at a calculation of his investment loss.
45. The return on the F&C investment over the period between 4 May and 28 December 2016 was 25% with share prices closing¹ on 4 May at 431.70 and 543.00 on 28 December.
46. The return on the ISA was 15%, with share prices on 16 May at £1.0084 and on 28 December 2016 at £1.1814 (as per the statements provided by Mr D).
47. I bear in mind that Mr D was also in the habit of retaining some money to spend and the fact that only 90% of the money which he received in June 2016 was invested. Recognising the principle that he should not receive a windfall, I am satisfied that he can prove that he would have invested 90% of any sum received, and have calculated his loss of investment accordingly.
48. I have therefore calculated the investment loss as follows:
- F&C investment – $(£10,990 \times 0.31) \times 0.25 = £851$ (approximately)
 - The ISA – $(£10,990 \times 0.69) \times 0.15 = £1,137$ (approximately)
 - In total - $£851 + £1,137 = £1,988$
 - 90% of the total = $£1,988 \times 0.9 = \mathbf{£1,789.20}$
49. Carillion have argued that it is not entirely to blame for the position Mr D is in and that some of the blame and therefore the liability for compensation should be borne by MyCSP. I disagree because Carillion were responsible for making the necessary payment to Cabinet Office, not MyCSP. As explained above, I cannot identify any periods of delay for which MyCSP were solely responsible to the exclusion of Carillion.
50. Turning to non-financial injustice, Mr D had to wait nearly a year to receive the benefits he was entitled to. He also had to resort to complaining to me to have the matter resolved. The amount of effort and time that Mr D has put into his complaint, and Carillion's failure to properly address that complaint until it reached my office needs to be recognised. Mr D's distress and inconvenience is significant and I

¹ Source: <http://www.hl.co.uk/shares/shares-search-results/f/foreign-and-colonial-investment-tst-ord-25p>

consider that he should be awarded £1,000 in recognition of his non-financial injustice.

51. Therefore, I uphold Mr D's complaint.

Directions

52. Within 21 days, pay Mr D interest on the sum of £7,541.59 (the backdated net pension he received in December 2016) for the period between 1 May and 31 December 2016;
53. Within 21 days, pay Mr D £1,789.20 as compensation for his loss of investment opportunity in respect of his pension lump sum;
54. Within 21 days, pay Mr D £30 for the loss of his monthly "reward" paid by his bank; and
55. Within 21 days, pay £1,000 in recognition of the significant non-financial loss Mr D has suffered.
56. For the purpose of these directions, simple interest is to be calculated at the base rate for the time being declared by the reference banks.

Karen Johnston

Deputy Pensions Ombudsman
18 September 2017