

Ombudsman's Determination

Applicant	Mr I
Scheme	Principal Civil Service Pension Scheme (PCSPS)
Respondents	MyCSP

Outcome

1. I do not uphold Mr I'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 I has complained that MyCSP has refused to issue him with a cash equivalent transfer value (**CETV**) to enable him to transfer his PCSPS benefits into a SIPP.

Background information, including submissions from the parties

4. Mr I was employed by the Department for Work and Pensions (**DWP**), from 3 September 2007 until 2 September 2009.
5. While employed by DWP, Mr I was a member of the Nuvos section of the PCSPS.
6. Mr I was issued with a 'Preserved Pension Benefit Statement' by the then scheme administrators, Capita on the following dates; 27 August 2010, 29 September 2011, 10 September 2012 and 10 September 2014.
7. On 4 August 2011, Capita provided Mr I with a transfer value and 'Statement of Entitlement'. This transfer value was guaranteed for 3 months. A follow up letter regarding the transfer value and its expiry date was issued on 20 October 2011. Mr I did not complete the transfer so his benefits remained within the PCSPS.
8. In March 2014, the Chancellor of the Exchequer presented his 2014 Budget, setting out the Government's plans for the economy and public finances, which included various changes impacting on savings, and fundamental changes to the taxation of defined contribution (**DC**) pension savings.
9. It was acknowledged that an increase in the number of people transferring their rights from unfunded public service defined benefit (**DB**) schemes to DC schemes, would

increase. To address this the Government stated its intention to introduce legislation that would remove the option to transfer from a public service DB scheme to a DC scheme, except in very limited circumstances.

10. The Pension Schemes Act 2015 (**the Act**) received royal assent on 3 March 2015, and restricted transfers from unfunded Public Sector pension schemes such as the PCSPS. The deadline for processing applications for any transfers out to a DC arrangement was 5 April 2015.
11. Separately, in September 2014, the Cabinet Office issued a letter to individual members of the PCSPS who, either had pensions in payment or who held preserved entitlements, notifying them that that the PCSPS was now administered by MyCSP.
12. On 9 February 2016, MyCSP updated the PCSPS website detailing information on the restrictions to be placed on transfers from unfunded public service pension schemes.
13. On 14 December 2016, Mr I requested a transfer value and was informed by MyCSP that due to a change in legislation he was no longer able to transfer to his SIPP as “new regulations came into effect from 1 April 2015”.
14. Mr I formally complained by email on 3 January 2017, stating that:

“For many years now I have not received an annual benefit statement and I was not contacted about the 1 April 2015 deadline.”
15. On 31 January 2017, MyCSP responded to Mr I’s initial complaint and explained that the legislation change was communicated to all members via the PCSPS website and that the legislation change did not affect his statutory right to request a transfer. Mr I was also informed that it was not MyCSP’s policy to issue benefit statements automatically to deferred members but information would be provided “upon request”.
16. Mr I disagreed with this response stating that he:

“...was never informed about the new transfer legislation deadline of 1st April 2015, the letter [31 January 2017] above confirms I was never contacted but simply a message placed on MyCSP’s public website. This is unacceptable and is not considered being notified.”
17. After completing the PCSPS complaints procedure Mr I brought his complaint to this office.

Adjudicator’s Opinion

18. Mr I’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:-

- The Act placed restrictions on transfers from unfunded Public Sector pension schemes, such as the PCSPS. This meant that benefits from the PCSPS could not be transferred to DC arrangements after 5 April 2015.
 - There is no express legislation in place that explicitly states that MyCSP must communicate with all members in writing only and a widely accessible, central website is the easiest, most cost effective way of reaching a membership base as extensive as the PCSPS. As such, a notification put on the PCSPS website is sufficient notification.
 - The Act did not receive royal assent until 3 March 2015, so it is unreasonable to expect MyCSP to provide all members with an update about legislation which had not yet been fully enacted.
 - The Act was extensively publicised in the media and its expected implications were widely available from a variety of media sources and the internet.
 - Mr I's still has a statutory right to transfer. The change in legislation only affects to what scheme he can transfer. This was a policy decision made by the Government not MyCSP.
 - There has been no maladministration because no rules or regulations have been broken and Mr I's subsisting right to benefits still exists within the Scheme.
19. Mr I did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr I provided his further comments which are summarised below:-
- The Adjudicator had misunderstood the complaint as the issue was that MyCSP had removed his right to request a CETV by not informing him of the Government's change in legislation.
 - Mr I believes the Trustees of the PCSPS have a responsibility to "...always act in the best interests of scheme beneficiaries". If this issue was a complaint against a wealth manager and a private client, there would be no doubt that the wealth manager had breached their fiduciary duty to the client.
 - As this is a government institution the Adjudicator had chosen to "side" with the larger institution.
 - The Adjudicator concluded that the PCSPS is so large that it cannot be expected to write to all members individually regarding legislation changes. Mr I argues that he had therefore been disadvantaged because he is a member of a large scheme. The same decision would not have been reached had there been only 100 members. Other large schemes continually write to their members and in fact Capita used to write to members annually before MyCSP took over.
 - Reference to previous transfer requests are "irrelevant" and a "distraction" to the case. Mentioning this clearly shows a bias to find in favour of MyCSP.

20. Mr I's comments 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 I for completeness.

Ombudsman's decision

21. The Act amended the Pension Schemes Act 1993 to restrict transfers out of unfunded public service DB schemes to schemes offering flexible benefits. The restriction did not apply to members who had already made a valid application to transfer by 5 April 2015. As Mr I made his request in December 2016 there is no dispute that MyCSP have correctly interpreted the Act by not allowing a transfer to a SIPP in this case. As such, there has been no maladministration.
22. I must then consider whether Mr I has suffered a loss as a result of any other potential failings by MyCSP's administration.
23. As explained by the Adjudicator, the Act did not receive royal assent until 3 March 2015, and prior to this date the legislation was subject to change. I do not believe that it is reasonable to expect MyCSP to provide all members with an individual written update about legislation which has not yet been fully enacted. In addition to this, the early versions of the Bill provided little information on the intended changes or restrictions that were to be applied to unfunded Public Sector Pensions Schemes, so any update would have been limited in scope.
24. It is reasonable for MyCSP to refrain from publishing information concerning the effect of the Act on transfers until 9 February 2015, and that the information was only set out on the website. While I acknowledge that there was less than the normal 3 month statutory deadline in which a CETV must be provided this was unavoidable in the circumstances.
25. The Act did not bring about a change to Mr I's benefits within the PCSPS, which remain the same. The changes only affect the type of pension arrangement to which the benefits may be transferred should a member decide to take his benefits out of the PCSPS. This was a Government policy decision, not a matter decided, or indeed influenced, by MyCSP, which fulfilled its obligation to inform members, with a notification on its website. The Act itself does not require Schemes to make their members aware of its implementation. Usually, legislation prescribes what information shall be provided and in what circumstances, and as the Act was silent on the matter of informing members, there was no requirement for MyCSP to provide details of the impact of the Act.
26. Mr I's right to a CETV was not annulled by the Act. Section 93A in Chapter IV of the Pension Schemes Act 1993, confers a right for members to obtain a CETV so the Act did not remove his ability to receive a CETV, but to restrict his options on what Mr I could do with the CETV. If Mr I wants a CETV, despite being unable to transfer to a DC scheme, then MyCSP is still obligated to provide one.

27. The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 details what information pension schemes are required to supply to members. There is no requirement within those regulations to disclose information such as the transfer limitations introduced by the Act. There is, however, a requirement to provide certain information if requested by a member. I consider that placing the notification on the website was a reasonable method of providing the information in this case. I have seen no evidence that Mr I requested any information in relation to the Act, and I have no reason to believe that if he had, it would not have been given, or that he would not have been directed to the website. Further, as Mr I says he had not received a benefit statement for a number of years, until after 2014, this should have prompted him to query this with the scheme administrator, at which point he would have been directed to the website and, I have no doubt, would have been provided with further information on request.
28. Mr I has also argued that MyCSP and the Trustees had a duty of care to act in his best interests. I do not agree. As I have explained, MyCSP was not under any legislative obligation to inform its members of the expected implications of the Act.
29. I find that the notification on the website, together with the wide spread media coverage concerning the effect of the Act, was a sufficient method of communicating the legislative changes and that MyCSP have not made any administrative errors in this case.
30. Therefore, I do not uphold Mr I's complaint.

Anthony Arter

Pensions Ombudsman
7 February 2018