PO-16090

Ombudsman's Determination

Applicant	Mr I
Scheme	Principal Civil Service Pension Scheme (**PCSPS**)
Respondents	Cabinet Office MyCSP HMP Lancaster Farms (**the Employer**)

Outcome

1. I do not uphold Mr I's complaint and no further action is required by Cabinet Office, MyCSP or the Employer.

2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr I complains that he was granted ill-health retirement (**IHR**) as a member of the Alpha section of the PCSPS, rather than the Classic section. As a result, part of his pension has been calculated in accordance with the Alpha section regulations, which in his case provide less favourable benefits.

4. The Respondents have argued that Mr I did not apply for IHR until after April 2015, when his PCSPS membership was migrated to the Alpha section. However, Mr I states that he initiated the IHR process in December 2014. He believes he therefore ought to have been considered to be a member of the Classic section of the PCSPS, when he was granted IHR. If he had been, all of his pension benefits would be calculated in accordance with those provided by the Classic section and they would be higher overall.

Background information, including submissions from the parties

5. Mr I previously worked as a prison officer and accrued benefits under the PCSPS. In June 2014, he sustained a knee injury whilst trying to control and restrain a prisoner, which aggravated a serious underlying medical condition he had not been aware of beforehand.

6. By November 2014, Mr I's injury had begun to affect his ability to work. The Respondents suggested a process known as OHP/IHR referral should be initiated. In short, this would allow occupational health advice to be provided for Mr I and, where necessary, IHR to be considered. In particular, the IHR process would only be initiated if any recommended work adjustments did not enable Mr I to continue in his role and dismissal was deemed more appropriate.

7. Notwithstanding this, the Respondents say that the decision to initiate an OHP/IHR referral was changed to a simple OHP referral. This was because Mr I had yet to try a number of treatments and so it was not appropriate to begin the IHR process. As such, occupational health advice was sought from a third party: OH Assist.

8. On 30 December 2014, Mr I signed the OH Assist Employee Consent Form (**the OHP/IHR Form**), providing authorisation for OH Assist to review his medical records. As part of this, Mr I argues that he also initiated the IHR process at the same time. In particular, Mr I marked the 'Yes' box on the OHP/IHR Form, next to the statement saying, "I agree to be considered for IHR".

9. The Employer has provided a copy of its Weekly Absence Management Report (**WAMR**), which has a number of relevant entries regarding Mr I:-

    - On 31 December 2014, Mr I informed his line manager, Mr R, he wanted to be considered for IHR. This was further to a conversation Mr I had had with his Union representative, during which it was recommended he initiate the IHR process. The WAMR states that Mr R told Mr I he was currently only being referred for OHP and that an IHR referral was not appropriate as he had not undergone treatment. In particular, Mr I had corrective surgery booked which had not been completed at that time.

    - On 5 January 2015, Mr R was contacted regarding the OHP/IHR Form. It seems there was internal correspondence from the HR department, and Mr R was informed that Mr I needed to complete further paperwork if he wanted to pursue an IHR referral. Mr R was informed that Mr I should complete a Capita consent form, and Mr R recorded that he would provide this to Mr I on 9 January 2015.

    - On 6 January 2015, Mr R contacted Mr I to inform him he would be provided with a Capita consent form during his next shift on 9 January 2015.

    - On 7 January 2015, Mr R was told by HR that the Capita consent form may not be needed. In particular, Mr R was informed that the IHR referral was being processed without it.

    - On 13 January 2015, Mr R provided Mr I with a Capita consent form. However, Mr I states that this entry is incorrect as he was not given a consent form.

- On 20 January 2015, Mr I had not yet returned the Capita consent form. However, it also records that Mr R was informed that Mr I's IHR referral could still be progressed. Two days later, Mr I underwent knee surgery.

10. In February and March 2015, Mr I had several appointments with an OH Assist doctor; Dr Archer. Dr Archer noted that Mr I's consultant had recommended that he have further surgery on his knee, and said that the likelihood of Mr I returning to normal duties would depend on the outcome.

11. On 24 March 2015, Mr I's Union representative contacted the Employer's HR department to ask what would happen with Mr I's IHR referral if no decision was made until after his PCSPS membership was migrated to the Alpha section. An HR representative responded and confirmed that members who had already initiated an IHR referral would be excluded from migration if IHR was subsequently granted. Cabinet Office later clarified that members who had initiated an IHR referral before the migration date would still be migrated from the Classic section to the Alpha section of the PCSPS whilst a decision was pending. However, if IHR was subsequently granted, they would be moved back and effectively treated as if their membership had never migrated.

12. On 1 April 2015, Mr I's PCSPS membership was migrated from the Classic section to the Alpha section of the PCSPS.

13. Mr I's second surgery was due to take place in June. However, it actually took place on 9 July 2015.

14. In November 2015, Mr I signed a new set of IHR referral forms, and an up to date report was requested from Dr Archer.

15. On 26 November 2015, Dr Archer confirmed that, in his opinion, Mr I was likely to be permanently incapacitated from the normal duties of his employment. At this stage, Mr I was granted IHR. However, his PCSPS membership was not transferred back to the Classic section and the benefits for the membership he had accrued since April 2015 were calculated under the Alpha section rules. As a result, Mr I's IHR benefits were lower than if he had been treated as a Classic section member, and he raised a complaint.

16. In responding to the complaint, the Respondents have argued that Mr I did not complete the necessary forms for an IHR referral to progress until November 2015. In particular, they state that Mr I never completed the Capita consent forms until then, despite being provided with these in January 2015.

17. Mr I argues that he clearly intended to apply for IHR in December 2014. He says he never received the Capita consent form and Mr R did not tell him that he needed to do so. He adds that Mr R was new to his role and therefore may not have been aware of the OHP/IHR process himself.

18. The Respondents have highlighted that, had an IHR referral been processed in December 2014 for Mr I, a decision would have been made within two months in accordance with PCSPS guidance. The Respondents emphasise that, as Mr I had not undergone corrective surgery in early 2015, he would not have met the criteria for IHR at this time under either PCSPS section (see attached Appendix). It would not have been clear at that time whether treatment would allow Mr I to return to work and continue his normal duties, and whether his ill-health was therefore permanent. The Respondents believe Dr Archer's reports, in February and March 2015, support this.

19. Mr I states that it is normal for an IHR referral to be initiated before treatment, and for no decision to be made until after treatment has been completed. He agrees that, where this has been the case for his colleagues, IHR benefits have not been backdated to the original application date. However, he believes that IHR is an ongoing process which he started as a member of the Classic section. He therefore believes that all his IHR benefits ought to be calculated under the Classic section, which would be more favourable for him.

Adjudicator's Opinion

20. Mr I's complaint was considered by one of our Adjudicators who concluded that no further action was required by Cabinet Office, MyCSP or the Employer. The Adjudicator's findings are summarised briefly below:-

- The Adjudicator was satisfied that Mr I had intended to apply for IHR in December 2014. Mr I has a right to apply for IHR whenever he chooses, and he clearly expressed a desire to do so at this time. Whilst he did not initially complete all the necessary forms, the evidence suggests that he may not have been aware he needed to do so. In any event, there was a responsibility on the Employer to ensure his IHR application was properly processed.

- However, the Adjudicator did not believe it would have made any difference to the overall outcome if Mr I's IHR application had begun in December 2014 The PCSPS guide states that a decision regarding IHR applications should be made within 65 days at the latest. If Mr I's IHR application had been progressed in December 2014, a decision would have been provided by February 2015. At that time, Dr Archer was unable to comment on whether Mr I's injury was permanent, as Mr I had not completed his medical treatment, so it is likely that Mr I would not have met the criteria for either section of the PCSPS and IHR would not have been awarded.

- Mr I has not been able to provide evidence of any colleagues whose circumstances match his but who have been treated differently.

- The Adjudicator reviewed all the circumstances and evidence provided concerning Mr I's IHP and IHR applications and did not find that there had been any maladministration.

21. Mr I did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

22. In responding to the Opinion, Mr I emphasised that Cabinet Office required a further report from Dr Archer once the second surgery had taken place, and this negated the 65 day timescale set out in the PCSPS guidelines.

23. Mr I has also referenced other colleagues who initiated IHR before the migration date, but who were returned to their original pension scheme following a successful decision. However, he has confirmed that these colleagues were further along the application process than in his case.

24. Mr I adds that he has known of delays and other problems his colleagues have experienced when applying for IHR. He believes this is evidence that the Respondents acted in maladministration in relation to his application, as errors are prevalent with the administration of the PCSPS.

25. Mr I's further comments do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr I for completeness.

Ombudsman's decision

26. I am satisfied that Mr I intended to apply for IHR in December 2014 as he was entitled to do, but I also consider that, had his IHR application been accepted at that point, it is unlikely that IHR would have been awarded. Therefore, in my view, Mr I would have still needed to make a second IHR application in November 2015.

27. Mr I was a member of the Alpha section of the PCSPS when he was awarded IHR so it is right that his IHR benefits have been partially calculated under the Alpha section regulations.

28. Mr I has said that further reports were required from Dr Archer once he had completed his medical treatment, and time should have stopped running while the Respondents were waiting for the reports. However, there is a limited time period in the PCSPS guide to allow for the production of further reports. The PCSPS guide states that the timeframe for an IHR decision can be extended to 65 days where further reports from third parties are required. There is no provision for the timeframe being paused or extended further.

29. Mr I has referenced three colleagues who were migrated to the Alpha section of the PCSPS initially, but were then awarded benefits in the Classic section following a successful IHR application. However, he has conceded that their circumstances do not match his and it does not provide any evidence that the Respondents routinely departed from the process as set out in the PCSPS guide, and for me to consider directing them to do so in this case.

30. Finally, I acknowledge Mr I's comments that he is aware of numerous errors and inconsistencies in connection with the IHR applications of his colleagues. Although, there may be instances of maladministration committed in relation to the administration of the PCSPS, as with any pension scheme, that is no reason to find that it has occurred here. I do not uphold Mr I's complaint.

Anthony Arter

Pensions Ombudsman
12 January 2018

Appendix

IHR criteria under Classic section of the PCSPS, as per the PCSPS guide:

> *"that you are prevented by ill-health from discharging your duties and that your ill-health is likely to be permanent".*

IHR criteria under Alpha section of the PCSPS, as per the PCSPS guide:

> *"Lower tier - To qualify for a lower tier pension the SMA* must agree that you are permanently incapable of doing your own job, or another similar role.*
>
> *Upper tier - To qualify for an upper tier pension the SMA* must agree that you are permanently incapable of working in any kind of employment".*

*SMA = Scheme Medical Advisor