

## Ombudsman's Determination

Applicant	Mr S
Scheme	Principal Civil Service Pension Scheme ( <b>PCSPS</b> )
Respondents	MyCSP HM Revenue & Customs ( <b>HMRC</b> )

## Outcome

1. I do not uphold Mr S' complaint and no further action is required by HMRC or MyCSP.

## Complaint summary

2. Mr S' complaint concerns the date his employment was terminated on the grounds of ill health. He believes that his ill health retirement pension (**IHRP**) should be backdated to at least January 2015, following the original occupational health (**OH**) assessment.

## Background information, including submissions from the parties

3. Mr S joined HMRC in 1993 and was enrolled into the 1972 (classic) section of the PCSPS. Mr S has been on medically certified sickness absence from 11 June 2013. He was on full pay until 8 December 2013, then on half pay until 8 April 2014, and then on nil pay.
4. HMRC's role, as his employer, was to assess Mr S' application in accordance with the criteria for retirement on medical grounds, as detailed in the PCSPS Rules (1972 section). These were:

““Retirement on medical grounds” means retirement from the Civil Service with a medical certificate issued by the Scheme Medical Adviser which states that the person concerned is prevented by ill-health from discharging his duties, and that his ill-health is likely to be permanent.”
5. In January 2015, HMRC referred Mr S to an OH doctor, Dr Wright who concluded that:

“In my opinion, his symptoms of anxiety are sufficiently severe and prolonged for the Equality Act 2010 to apply to him. He is not fit for work for HMRC in any

capacity. Given his prolonged absence for mental health problems, it is unlikely he could secure work in the open market.”

6. Following Dr Wright’s recommendation, HMRC referred Mr S to apply for an IHRP. In September 2015, he was assessed by a scheme medical advisor (**SMA**), Dr Steele-Perkins. However, as Mr S withdrew consent to release his medical reports to Dr Steele-Perkins, Dr Steele-Perkins’ report was withdrawn.

7. Mr S was referred to another SMA, Dr Evans of Health Assured Limited (**HML**). On 11 September 2015, in preparation for his assessment with Dr Evans, Dr Ashby another doctor from HML gathered information from Mr S and provided his opinion that said:

“It would appear that Mr S has become so angry about the treatment he perceives that he has received that he develops symptoms of anxiety and panic attacks whenever he thinks about his work...”

8. On 30 November 2015, Dr Evans issued his detailed report taking account of reports from Mr S’ specialist and GP. In his report Dr Evans said:

“...I think there has been a breakdown in the relationship between Mr S and his employer. In my opinion, this is the root cause of [Mr S]’ current difficulties. I think that this has had a detrimental effect on [Mr S]’ mental health, which in turn has compromised his ability to work...I think that [Mr S]’ current inability to work for HMRC is not solely due to his impaired mental health but is also due to the breakdown in the employer/employee relationship , [Mr S]’ perception of his employer, and [Mr S] no longer wishing to work for HMRC...Resolution of the work circumstances may in itself lead to improvement in [Mr S]’ symptoms. It does seem likely that such resolution would increase the probability that medical intervention, should it be appropriate, would be of benefit...it is my opinion that [Mr S] is not permanently prevented by ill health from discharging his duties and, in consequence, that the pension scheme criteria are unlikely to be met.”

9. On 17 December 2015, HMRC sent a letter to Mr S informing him that he did not meet the criteria for an IHRP.
10. In March 2016, Mr S appealed against HMRC’s decision not to award him an IHRP. His appeal was dealt with under the Civil Service Medical Appeals Procedure. Mr S provided further evidence supporting his case, in the form of the most recent reports from his specialist and GP.
11. On 26 April 2016, Mr S was dismissed from employment with compensation.
12. In May 2016, another HML doctor, Dr Gallagher sent Mr S a report upholding his appeal. He concluded that:

“I have the advantage of my colleague in that [Mr S] has now progressed 6 months closer towards the date of ill health retirement [sic] so that he now has

only 3 years left to work...as he progresses towards his 60<sup>th</sup> birthday the likelihood of regaining sufficient fitness to resume his duties will continually diminish...although I respect the views and opinions expressed by my colleagues who have earlier considered the case it does seem more appropriate from my viewpoint to support the application...He is suffering from an anxiety state. This relates particularly to his work. The most applicable code from the ICD9 manual is 300.00 which represents anxiety state not otherwise stated. I use this in order to take account of the scope for further assessments by psychological carers, as is planned, which may lead to refinement of the relevant psychological diagnosis in this person's case. In my opinion, [Mr S] is prevented by ill health from discharging his duties. This incapacity is likely to continue at least until scheme pension age and therefore satisfy the scheme requirement for permanence."

13. On 15 June 2016, HMRC sent Mr S a letter informing him that his appeal was upheld. It also confirmed that his last day of service would be the same as his date of dismissal which was 26 April 2016.
14. In November 2016, Mr S contacted MyCSP enquiring about a widow's pension scheme liability deduction that had been made to his pension lump sum payment. In its response, dated 10 November 2016, MyCSP explained to Mr S that:

"As you have taken [an IHRP], you are due an enhancement on your reckonable service and this has been applied at the finalisation stage of your award. However, by extension there is an automatic increase to the post retirement widows pension."
15. Mr S approached The Pensions Advisory Service (**TPAS**) for assistance with his complaint and in January 2017, TPAS asked MyCSP to provide clarification on the process with regard to finalising his IHRP. In February 2017, MyCSP sent a letter to TPAS explaining that a request for an IHRP must come directly from HMRC. It said that it received notification from HMRC in January 2015 that Mr S was eligible to apply for an IHRP but not that he had been awarded it. The medical certificate confirming his award, was not issued until 16 June 2016 and the request to calculate an IHRP quote was received by MyCSP on 20 June 2016 at which point MyCSP confirmed Mr S' last day of service as being 26 April 2016, which is the date his ill health pension was backdated to.
16. Mr S raised his complaint through the Scheme's internal dispute resolution procedure (**IDRP**) and, on 5 December 2017, MyCSP sent Mr S a stage one response that said:

"MyCSP are responsible for making payment of an award, however this is not possible until they have received formal notification from an employer...For an application to be supported it is necessary to demonstrate that you not only have a medical condition that means you are unable to do your job or a comparable job. You also need to demonstrate that, despite appropriate treatment, the resulting incapacity is likely to be permanent. Your ill health

retirement application was therefore referred to the SMA for medical assessment, and at this point it was confirmed that you should be retired on ill health grounds...last day of service is an employment matter and therefore this should be directed to your employer, [HMRC]. In addition, you also dispute that you did not receive any salary from June 2014 nor did you receive any statutory sick pay. Statutory sick pay is a discretionary payment made by an employer. This is therefore an employer issue and I again suggest you contact your former employer.”

17. Cabinet Office has said that it would not deal with Mr S' complaint under the stage two of the IDRP as the issue is effectively an employment matter so it fell outside of the IDRP.
18. Mr S remained unhappy and so brought his complaint to us. In his submission, Mr S said he would like HMRC to backdate his ill health pension payments from 25 April to 5 January 2015.
19. HMRC provided us with its response to Mr S' complaint that said:

“Occupational Health may recommend that IHR is a possible option, but do not make decisions regarding staff members' eligibility for IHR. Therefore, it would not be appropriate to backdate Mr S' pension to this date...It would not be possible for pension to be in payment any earlier than this, as Mr S was still in employment until 27 April 2016 [sic].”
20. Mr S made further comments to us in May 2019. A summary of which is provided below: -
  - Whilst in employment up until retirement, he was not paid for over 2 years as his sick pay had run out and he was not on any benefits.
  - He was not given any support by OH to get back to work.
  - HMRC had a policy to continue paying an employee who is deemed to be ill and cannot return to work when Statutory Sick Pay (**SSP**) had been exhausted. This policy was not deployed in his case despite his request to the manager.
  - Mr S believes it was a deliberate attempt for HMRC to leave him without pay or any form of redress/ compensation.
  - HMRC purely relied on the recommendation of its SMA without considering his doctors' medical evidence.

## **Adjudicator's Opinion**

21. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by MyCSP or HMRC. The Adjudicator's findings are summarised below: -
- Mr S believes his pension should be backdated to January 2015, as this is the original date the OH doctor recommended that he applied for an IHRP. Payment of an IHRP can only start on the day the member retires from service. The PCSPS Rules do not allow a member to retire on medical grounds unless a medical adviser has provided a certificate which confirms that his ill health is preventing him from discharging his duties. The certificate also had to confirm that the person's ill health is likely to be permanent.
  - The first decision in relation to Mr S' application for IHRP was made in December 2015. At that time the SMA reached the conclusion that Mr S' symptoms were mainly related to the breakdown in the relationship between Mr S and HMRC. He said that "resolution of the work circumstances may in itself lead to improvement" which could be expected to enable Mr S to return to work, and that his ill health was unlikely to be permanent. Accordingly, he issued a certificate declining to grant Mr S retirement on medical grounds.
  - On appeal, the second SMA concluded that Mr S was entitled to medical retirement on the basis that Mr S was closer to his retirement age and that it was unlikely that his relationship with his employer could be repaired before his normal retirement date. This does not mean that the original decision was flawed.
  - The appropriate certificate was issued on 16 June 2016 and Mr S' ill health pension was backdated to his last day of service, which was 26 April 2016. The Adjudicator's view was that MyCSP followed the process correctly in accordance with the PCSPS Rules. So, she disagreed with Mr S that his pension should be backdated to January 2015 as no decision had been made at that point.
  - Mr S referred to the fact that whilst in employment, he was not paid for two years after his SSP had been exhausted. He also mentioned HMRC's policy with regard to his pay, these issues are employment matters and are not within The Pensions Ombudsman's jurisdiction so cannot be considered and therefore the Adjudicator was of the view that the complaint should not be upheld.
22. Mr S did not accept the Adjudicator's Opinion and 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 and I will therefore only respond to the key points made by Mr S for completeness.
23. Mr S made an assertion that there is confusion around the date of his retirement. He contends that although he retired on 26 April 2016, his ill health pension should have commenced following Dr Wright's report dated January 2015.

24. Mr S strongly believes that if his case were to go to court, the decision would be that his ill health pension would be backdated to January 2015.
25. Mr S is surprised that the Adjudicator has released the Opinion to HMRC before allowing him to provide his comments to it.

### **Ombudsman's decision**

26. HMRC and PCSPS are bound to follow the PCSPS Rules. Those Rules do not permit HMRC to grant Mr S retirement on medical grounds unless a SMA has provided a certificate confirming his ill health prevented him from discharging his duties. The certificate also had to confirm that this ill health was likely to be permanent. This was established by the second SMA on 16 June 2016 and Mr S' ill health pension was backdated to his last day of service, 26 April 2016, in accordance with the PCSPC Rules. Under the Rules, there is no provision that an ill health pension be granted without the member first being dismissed on the grounds of ill health. As Mr S' last day of employment was 26 April 2016, his IHRP cannot be paid before this date. I find that HMRC followed the Rules correctly.
27. Mr S believes that if this case were to go to court, his IHRP would be backdated to January 2015. As the Adjudicator explained, the date Mr S' employment was terminated is an employment matter which falls outside of my jurisdiction. I am only able to consider HMRC's actions to the extent to which they relate to the PCSPS. I find that HMRC has acted in accordance with the Rules in making its decision to award Mr S an IHRP. Any outstanding employment matter would need to be progressed separately.
28. Our procedure is that everyone involved in the complaint will be provided with a copy of the Adjudicator's Opinion and will be given equal opportunity to comment.
29. I do not uphold Mr S' complaint.

### **Anthony Arter**

Pensions Ombudsman  
5 August 2019