

Ombudsman's Determination

Applicant	Mrs S
Scheme	Principal Civil Service Pension Scheme (PCSPS) Civil Service Injury Benefit Scheme (CSIBS)
Respondents	MyCSP (Scheme Administrators) Cabinet Office (Scheme Managers)

Outcome

1. Mrs S' complaint is upheld and to put matters right MyCSP and the Cabinet Office shall pay interest on backdated injury benefit payment.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs S' complaint against MyCSP and Cabinet Office concerns their decisions not to award interest on her injury allowance arrears paid under CSIBS.

Background information, including submissions from the parties

4. In a previous case, PO-6592, Mrs S complained that her applications for ill health retirement and an injury benefit were not considered in a proper manner. The complaint was determined by me on 22 March 2016. I concluded that:-
 - A three-month delay in communicating the medical appeal board decision knocked on into the time taken by Mrs S to produce her further evidence on the issue of permanence, causing her to miss the deadline for her second injury benefit appeal. Therefore, I directed that conducting the second appeal with consideration of the evidence she sought to submit at that time was adequate remedy in the circumstances.
 - In relation to her injury benefit application, Mrs S should be offered the opportunity to provide MyCSP with the evidence she wished them to consider in July 2013; and that MyCSP should determine whether this evidence should have caused it to refer the question of permanence back to the Scheme medical adviser (**SMA**) for review.

5. The CSIBS provides compensation to members who are injured, or contract disease, during the course of their official duties. CSIBS benefits are discretionary under Rule 1(ii) which states:

“The benefits under this scheme will be paid at the discretion of the Minister and nothing in the scheme will extend or be construed to extend to give any person an absolute right to them.”
6. Mrs S’ application was reconsidered by MyCSP and it informed her that she met the criteria for total impairment. The SMA found her eligible for an award of 85% of her pensionable pay. MyCSP subsequently backdated Mrs S’ injury benefit to the date when she left her employment, 22 October 2011.
7. On 22 August 2017, MyCSP sent Mrs S the forms to complete to claim her injury benefit award (**IBA**) which she filled in and sent back.
8. On 9 September 2017, Mrs S emailed MyCSP with a number of questions about her IBA calculations and whether it would pay interest on her benefits.
9. Mrs S raised a formal complaint under the Scheme’s internal dispute resolution procedure (**IDRP**).
10. In her submission, Mrs S said that she should be paid interest on her benefits on the grounds that they might have been paid sooner had MyCSP agreed to look at her new medical evidence when she submitted it on 29 July 2013.
11. On 8 March 2018, MyCSP sent Mrs S a response under the IDRP that concluded:

“CSIBS benefits are discretionary under rule 1(ii)- there is nothing in the scheme to give any person an absolute right to them. Accordingly, there are no provisions in the CSIBS rules for the payment of benefits on a given date, or for the payment of interest. Your appeal in July 2013 for a review of your impairment assessment did not give rise to your entitlement to benefits or give you an expectation that benefits would be paid to you on a particular date. Your expectation was, that if your appeal resulted in a decision by MyCSP to award you CSIBS benefits, these would be backdated to the date you left service. The dispute about your eligibility to appeal took some time to resolve and you did not become entitled to injury benefits until August 2017. You received payments a month later. Cabinet Office will not agree to pay interest on benefits that you received 1 month after MyCSP exercised discretion to pay them.”
12. In April 2018, Mrs S brought her complaint to this Office.

Adjudicator's Opinion

13. Mrs S' complaint was considered by one of our Adjudicators who concluded that further action was required by MyCSP and Cabinet Office. The Adjudicator's findings are summarised below:-
- In the Adjudicator's view, in backdating the IBA to 22 October 2011, MyCSP has accepted that Mrs S should have been entitled to it from this date. Therefore, the Adjudicator believed that MyCSP should have awarded simple interest on the lump sum and pension payments, and that Mrs S' complaint should be upheld
 - The Adjudicator referred to section 151A of the Pensions Schemes Act 1993 (**the 1993 Act**) which deals with interest on late payment of benefits.
14. MyCSP and Cabinet Office did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. MyCSP and Cabinet Office provided their further comments which do not change the outcome. I agree with the essence of the Adjudicator's Opinion, and I will therefore only respond to the key points made by MyCSP and the Cabinet Office for completeness.

Ombudsman's decision

15. MyCSP and Cabinet Office have asserted that CSIBS is a statutory scheme made under Section 1 of the Superannuation Act 1972. No provision is made within the scheme rules for payment of interest on late, or backdated payments under the scheme.
16. MyCSP and Cabinet Office contend that, with reference to section 151A of the 1993 Act, an Ombudsman's power to award interest is discretionary and that the discretion can only be exercised following a direction to the scheme to make a payment. They believe that section 151A is not relevant to Mrs S' case as in the previous Determination issued on 22 March 2016, there was no direction or requirement that interest be paid. Further, the direction was to consider the further evidence provided by Mrs S, not for any payment to be made, so it would not have been possible to make a direction for the payment of interest.
17. MyCSP and Cabinet Office further contend that this decision was not appealed by Mrs S, and any such appeal now would be significantly out of time. In the circumstances, the Determination of 22 March 2016 cannot give rise to any additional right to interest. They referred to the case of Riddell, case reference PO-72726/1, which demonstrates that there is no legal entitlement to interest and assert that there can be no complaint of maladministration in respect of the decision not to pay interest.

18. In her first complaint under case reference PO-6592, Mrs S complained about the failure to consider her applications properly. This complaint concerns the failure to compensate her fully for the late payment of benefits, having decided on the evidence that MyCSP's decision was incorrectly taken the first time around and having decided that payments should therefore be backdated.
19. I accept that the relevant rules themselves do not make provision for interest to be added in these circumstances. However, I do not consider that this means interest cannot be paid. There is authority that interest is payable when a trustee pays arrears of pension to a beneficiary to acknowledge and compensate for the fact that the member has been kept out of their money, which they should have had sooner. The issue was recently considered in the case of *Lloyds Banking Group Pensions Trustees Limited v Lloyds Bank Plc and others* (2018)¹.
20. I accept MyCSP and Cabinet Office's submissions that in the circumstances, section 151A of the 1993 Act cannot apply here as there was no direction to make any payment earlier. Until the rededuction to backdate benefit had been made it could not have been known whether there was any basis to award interest under section 151A.
21. However, under section 151(2) of the 1993 Act, I have a general power when determining a complaint, to direct any person responsible for the management of the scheme to which the complaint relates to take, or refrain from taking, such steps as I may specify. In this case I am satisfied that to achieve a complete remedy for Mrs S, she should receive interest on the benefits which have been backdated to 22 October 2011. That interest should run from the date each instalment of benefit would have been paid until the date when it was in fact paid. On these facts I can see no reason to diverge from the rate which is prescribed for use by s.151A.
22. Therefore, I uphold Mrs S' complaint.

Directions

23. Within 28 days of the date of this Determination, MyCSP shall pay Mrs S simple interest on each of her benefit payments from the date she was originally eligible to receive it up to the date it was actually paid, at the base rate for the time being quoted by the reference banks.

Karen Johnston

Deputy Pensions Ombudsman
5 February 2019

¹ [2018] EWHC 2839 (Ch)