

Ombudsman's Determination

Applicant	Mr T
Scheme	Principal Civil Service Pensions Scheme (the Scheme)
Respondents	My Civil Service Pensions (MyCSP) Cabinet Office

Outcome

1. Mr T's complaint against MyCSP and the Cabinet Office is partly upheld, but there is a part of the complaint I do not agree with. To put matters right, for the part that is upheld, MyCSP shall pay Mr T an additional £500 for the serious distress and inconvenience caused.

Complaint summary

2. Mr T is complaining that he is unable to transfer his benefits from another pension scheme into the Alpha Scheme. He is also unhappy about delays he experienced, and misinformation he received, whilst his request was under consideration.

Background information, including submissions from the parties

3. Mr T became employed as a civil servant on 1 July 2013 and joined the Nuvos Scheme. On 1 April 2015, he automatically moved to the Alpha Scheme. MyCSP administers the Scheme in accordance with the regulations and guidance provided by the Scheme Manager, the Cabinet Office.
4. The provisions of the Alpha Scheme are set out in the Public Service (Civil Service and Others) Pensions Regulations 2014 (**the 2014 Regulations**). The 2014 Regulations became effective from 1 April 2015.
5. The 2014 Regulations allow for transfers into the Alpha Scheme under part 10, chapter 3, specifically Regulations 148 to 154. The original draft of Regulation 150(2)(c), of the 2014 Regulations, required the member to apply for a transfer within 12 months of "...becoming eligible to become an active member of this scheme."
6. However, The Public Service (Civil Servants and Others) Pensions (Consequential and Amendment Regulations 2015 (**the 2015 Regulations**), specifically Regulation 16(11), amended Regulation 150(2)(c) of the 2014 Regulations, so that the 12 month

time limit applied from when the member "...commences service in scheme employment" instead.

7. On 25 February 2015, Mr T emailed MyCSP requesting clarification on the eligibility to transfer pension benefits into the Alpha Scheme during the 12 months commencing from 1 April 2015.
8. In June 2015, MyCSP replied to Mr T's email, apologised for the delay and confirmed that he would only be allowed to transfer within his first 12 months of service.
9. On 24 June 2015, Mr T emailed MyCSP and referred to the 2014 Regulations which, he said, allowed transfers in within 12 months of the Scheme membership.
10. In July and October 2015, Mr T chased MyCSP twice for a response. On 9 October 2015, MyCSP confirmed to Mr T that a transfer in could only take place within 12 months of joining the Scheme, as per the 2014 Regulations.
11. In October 2015, Mr T emailed MyCSP again, challenged the 2014 Regulations and requested an extension to the 12 month deadline because he had waited eight months for MyCSP to respond to his query.
12. In October and November 2015, there were email exchanges between Mr T and MyCSP regarding his service history. MyCSP's records showed that Mr T had left the Scheme on 31 May 2015, however this was incorrect as Mr T was still an active Scheme member. During these email exchanges Mr T informed MyCSP that the sponsoring employer of one of the schemes he wanted to transfer from, had become insolvent and therefore transfers out from that scheme had been put on hold.
13. On 4 November 2015, MyCSP emailed Mr T advising that the 12 month period would begin on his transition to the Alpha Scheme, namely 1 April 2015.
14. In December 2015, Mr T emailed MyCSP asking again for an extension to the transfer in deadline.
15. In January 2016, MyCSP emailed Mr T advising that it could not grant an extension to the deadline because the Regulations did not allow it.
16. In February 2016, Mr T emailed MyCSP and again asked for an extension. He said, one of the transfer values he had received from a previous scheme was valid until 21 March 2016 and the other still could not be obtained due to insolvency.
17. On 3 March 2016, MyCSP emailed Mr T and said that it was unable to grant an extension and referred him to the Scheme's internal dispute resolution procedure (IDRP).
18. On 7 March 2016, MyCSP emailed Mr T enclosing a provisional transfer application form, which he completed and sent back to MyCSP on 11 March 2016.
19. On 29 March 2016, the Cabinet Office sent Mr T a letter informing him that transfers were currently suspended due to recent budget changes.

20. On 4 April 2016, MyCSP contacted Mr T informing him that once the suspension on transfers had been lifted it would deal with his transfer request.
21. Following the Cabinet Office's resumption of transfers in April 2016, there was further correspondence between Mr T and MyCSP regarding the process of his transfer in from other pension schemes which continued until July 2016. In July 2016, MyCSP emailed Mr T regarding his request for an extension to the transfer in deadline. It explained that this was being considered by its compliance team.
22. In September 2016, Mr T complained about the delays in dealing with his transfer in request and requested compensation for this. In November 2016, Mr T contacted MyCSP to chase a response to his complaint.
23. On 30 November 2016, MyCSP sent Mr T a letter saying:

"Taking all of the above into consideration; it is clear that we provided you with incorrect information concerning your eligibility to transfer benefits into alpha. It is also recognised that you experienced several delays and we could have been more proactive in responding to your enquiries. As such I would like to formally apologise for any frustration and inconvenience caused... Further to this it has been more than 12 months since we first advised you on 15 October 2015 that you could transfer benefits into the alpha scheme. We are unable to offer an extended deadline for you to transfer your benefits from the Caparo 1988 scheme into alpha. We also do not have the authority to use retrospective pension factors to calculate your transfer values."
24. Dissatisfied with MyCSP's response, Mr T requested IDRP forms. Between November 2016 and January 2017, there was further correspondence between Mr T and MyCSP regarding the transfer in.
25. On 12 January 2017, Mr T emailed MyCSP requesting that it deal with his transfer request as a matter of urgency as it had been two years since his first enquiry.
26. On 18 January 2017, MYCSP emailed Mr T saying:

"As an administrator I am not in a position where I can proceed with the transfer against the scheme rules. I have raised a case with our complaints team..."
27. On 19 January 2017, Mr T emailed MyCSP saying that he would prefer to resolve his complaint without the IDRP. He also provided MyCSP with a proposal to increase his transfer cap and enquired about purchasing "added pension" by making monthly contributions from his pay and/or by paying with a lump sum.
28. In January 2017, MyCSP emailed Mr T saying that he was not allowed to purchase added pension in the way he had proposed as this would be "recycling", which was not allowed under HMRC rules.
29. On 9 March 2017, Mr T complained under the IDRP.

30. On 4 May 2017, MyCSP responded and partially upheld his complaint. It said:

“...the time limit to transfer benefits into alpha was 12 months from the date of becoming eligible to be an active member of alpha. In your case, this would have been 12 months from 1 April 2015; the date you became a member of alpha... However, [16(11) of the 2015 Regulations amended 150(2)(c) of the 2014 Regulations] so that the time limit to transfer benefits into alpha was 12 months starting from the date of Civil Service employment. Therefore... as you joined the nuvos section of [the Scheme] on 1 July 2013, you were not eligible to transfer other pension rights into alpha at any point... In regards to the information provided to you by MyCSP, it is clear that you have received conflicting information concerning your eligibility to transfer benefits into alpha... it can be seen that MyCSP caused confusion regarding your eligibility to transfer benefits into alpha... therefore I uphold this aspect of your appeal... Therefore, I would like to apologise on behalf of MyCSP for any stress and inconvenience caused...”

31. Dissatisfied with MyCSP's response, Mr T appealed.

32. On 11 January 2018, the Cabinet Office issued a further response. It said:

“... you started in ‘scheme employment’ on 1 July 2013... by the time you joined alpha in April 2015, you had already passed 12 months within which you could apply to transfer benefits into nuvos under rule G.8... The initial drafting of the 2014 Regulations set the time limit for applying for a transfer into alpha as 12 months from becoming eligible to join alpha. But the 2015 Regulations changed the wording of Regulation 150... Because the 2015 amending Regulations were laid before alpha actually came into existence, the original (un-amended) regulations were never in force. The amendment was made specifically to prevent people from getting a second opportunity to make transfers in to the Civil Service pension arrangements on switching to alpha... In the circumstances, I am satisfied that you suffered significant distress and inconvenience, and find that MyCSP must pay you £500.”

33. As part of his submissions, Mr T made the following points:-

- He would like to carry out transfers in under provisions of the Regulations of the Alpha Scheme that were in force at the time, i.e. the 2014 Regulations.
- The 2014 Regulations clearly allowed transfers in within 12 months of the date of joining or becoming eligible to join the Alpha Scheme.
- He joined the Alpha Scheme on 1 April 2015 so the 12 months should start from that date.
- The 2015 Regulations only came to light in May 2017 when it was mentioned in MyCSP's stage one IDR response.

Adjudicator's Opinion

34. Mr T's complaint was considered by one of our Adjudicators who concluded that there had been maladministration on the part of MyCSP. The Adjudicator's findings are summarised below:-

- The Adjudicator understood Mr T would like to transfer benefits from other pension arrangements into the Alpha Scheme. He would like to do so under the provisions of the 2014 Regulations, which were in force at the time of his initial request to transfer in.
- MyCSP has agreed that it provided Mr T with incorrect information regarding transferring in to the Alpha Scheme. It apologised for this and the Cabinet Office directed MyCSP to pay him £500 in recognition of the significant distress and inconvenience suffered.
- Mr T was a member of the Nuvos Scheme from 1 July 2013 until 1 April 2015, when he transferred to the Alpha Scheme. Under the Nuvos Scheme, transfers from other pension arrangements were allowed within 12 months of becoming employed as a civil servant. It is undisputed that at the time that Mr T requested a transfer in, in February 2015, it would have been more than 12 months from the day of him being employed as a civil servant, on 1 July 2013. So, Mr T was not eligible to transfer in benefits when he first enquired to do so.
- Mr T believes he should be allowed to transfer in benefits because he made the request to do so within 12 months of joining the Alpha Scheme. Although Regulation 150(2)(c) of the 2014 Regulations initially allowed members to apply for a transfer within 12 months of "becoming eligible to become an active member of this scheme" those Regulations were amended before the Alpha Scheme was established to say that transfers in had to be requested within 12 months starting from the date of civil service employment. So, by the time Mr T made his request, the relevant regulation had been amended.
- The Adjudicator was satisfied that MyCSP had applied the Regulations correctly and that Mr T was never eligible to transfer in to the Alpha Scheme.
- The Adjudicator noted that MyCSP incorrectly advised Mr T about his eligibility to transfer in on several occasions and it was clear that Mr T spent considerable time and effort pursuing his case over a prolonged period of time, which could have been avoided.
- In the Adjudicator's view, Mr T had suffered a loss of expectation which amounted to "non-financial injustice" rather than an identifiable financial loss. The Pensions Ombudsman's approach on non-financial injustice is that no award will be made unless the injustice is significant. On the other hand, if the non-financial injustice is significant, awards should properly reflect this.

- Cabinet Office directed MyCSP to pay Mr T £500 in recognition of the non-financial injustice he had suffered. The Adjudicator believed that award was insufficient given the circumstances of the case. In the Adjudicator's opinion, Mr T had suffered serious distress and inconvenience because MyCSP incorrectly advised him on a number of occasions that he could transfer in to the Alpha Scheme and he spent a considerable amount of time and effort pursuing his case over a prolonged period. Taking this into account, the Adjudicator believed MyCSP should pay Mr T an additional £500, to increase the award to £1,000 in respect of the non-financial injustice he had suffered, as this was in line with the Pensions Ombudsman's guidance.

35. Mr T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr T 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 points made by Mr T for completeness.

36. Mr T mainly reiterated his previous points and added:-

- The official published Scheme Regulations were amended in November 2016, well after the relevant 12 month transfer in period had ended.
- It was only many months later, after his enquiry to transfer in, that he received confirmation that the Regulations had been amended, seemingly without the knowledge of the respondents.
- The official Scheme records show that he was not a member of the Scheme in May 2015. Accordingly, "under either or both versions of the Scheme rules", his eligibility to transfer in by 31 March 2016 cannot be in doubt.
- He agrees with the Adjudicator that he suffered a non-financial injustice however the amount recommended is inadequate to his circumstances.
- He became employed on 1 July 2013 as a result of a TUPE arrangement rather than a standard appointment. The possibility of transferring benefits into the Scheme was not mentioned to him. Had he known about it, he would have transferred in at the first opportunity back in 2013.

Ombudsman's decision

37. Mr T believes that he is entitled to transfer his benefits from another scheme into the Alpha Scheme. However, MyCSP and the Cabinet have said that the Regulations do not allow him to do so.

38. It is undisputed that Mr T was a member of the Nuvos Scheme and not the Alpha Scheme, as at 1 July 2013, when he commenced employment as a civil servant. The Regulations are clear that the transfers in from other pension arrangements were only allowed within 12 months of becoming employed as a civil servant. So, in February 2015, when he first enquired about the transfer, Mr T's rights to transfer had expired. I

find that Mr T was never eligible to transfer in benefits to the Alpha Scheme. MyCSP has applied the relevant Regulations correctly.

39. Mr T asserts that had he known he had only 12 months from the day of being employed as a civil servant, to transfer in benefits from another scheme, he would have done it then. I find this to be a new point, not part of this complaint. However, he has not provided any evidence to show that his intention was to transfer in or that he made any enquiries about the possibility of doing so, back in July 2013. His complaint is based on events in and around February 2015, when he first enquired about the transfer.
40. I appreciate that Mr T was misinformed on several occasions, and this led him to believe he could transfer into the Scheme his other benefits. The mis-information has resulted in him suffering a loss of expectation, as opposed to a financial loss. I note that the Cabinet Office directed MyCSP to pay Mr T £500 in recognition of the distress and inconvenience this situation has caused him. However, I find that an award of £500 is insufficient in the circumstances, as I have no doubt that Mr T has suffered a serious level of distress and inconvenience. MyCSP shall increase its award to £1,000.
41. I partly uphold Mr T's complaint.

Directions

42. Within 14 days of the date of this Determination, MyCSP shall pay Mr T an additional £500, bringing the total award he receives from MyCSP to £1,000 for the serious distress and inconvenience he has suffered.

Anthony Arter

Pensions Ombudsman
26 February 2020