

Ombudsman's Determination

Applicant	Mrs A
Scheme	Principal Civil Service Pension Scheme (PCSPS)
Respondents	MyCSP, The Pension Schemes Executive (PSE), The Prudential Assurance Company Limited (Prudential)

Outcome

1. Mrs A's complaint is upheld, and to put matters right Prudential should provide a personal pension plan for her, containing the appropriate amount of money.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs A has complained that neither the PCSPS nor Prudential is accepting responsibility to provide her with pension benefits which in 1990 she requested to be transferred from the PCSPS to Prudential.

Background information, including submissions from the parties

4. Mrs A worked for the Unemployment Benefit Office, which became part of the Department of Employment (**DE**), from October 1975 to August 1979. She married in 1979, changing her surname (her surname changed again in 2013). She rejoined DE in March 1980 and continued working there until December 1988. During her employment she was a member of the PCSPS.
5. Mrs A signed a Prudential transfer proposal form (s.2427) on 13 June 1989. (It was also signed and dated 5 March 1989).
6. On 17 July 1989 DE received from Mrs A their 'potential transfer' enquiry form telling them she was considering a transfer to a Prudential personal pension scheme and asking for a transfer value.
7. On 24 November 1989 DE sent Prudential their own transfer application form for Mrs A's completion.
8. On 29 January 1990 Mrs A signed and dated that form. On 1 February 1990 DE chased Prudential for the completed form and it was received by them the same day.

9. On 6 February 1990 Prudential wrote to Mrs A confirming they had received the information which they needed from the scheme trustees, and attaching a benefit illustration dated 2 February 1990. They said if she wished to proceed she should sign and date section 4 of the blue form s.2427 and return it to them with a copy of the quotation. The next step would be for them to contact the trustees and obtain the cheque.
10. On 21 February 1990, DE wrote to the Paymaster General Office giving instruction to cancel Mrs A's preserved award as she was taking a transfer value.
11. On 22 February 1990, DE wrote to the sales support department at Prudential's Euston Road's office. The letter was headed "Principal Civil Service Pension Scheme Transfer Value – Name: [Mrs A's name at that time]" and said please find enclosed a payable order for £4664.20 numbered 0012500 in respect of the transfer value for Mrs A.
12. On 22 February 1990, DE also wrote to Mrs A:

‘in accordance with your instruction dated 29.1.90, your superannuation benefits with this department have been transferred to the Prudential, a transfer value was paid on 22.2.90. Therefore any queries you may have about that payment etc should be addressed to the Prudential who are now responsible for your superannuation when you were with this department.’
13. On 12 March 1990, Prudential wrote to the DE saying that Mrs A had accepted their illustration and attaching the twice signed and double dated proposal form. They asked DE to complete section 2 or 5 of the form as appropriate and send a cheque in an attached envelope.
14. On 15 March 1990 DE completed section 5 and in the section which declares ‘we enclose a cheque for’ they inserted the amount £4,664,20 and wrote by hand ‘sent 22/2/90’.
15. In April 2011 Mrs A asked MyCSP to trace her deferred benefits. The PCSPS payroll administrator, then Capita Hartshead, made initial enquiries but could not find a pension record for her under either of her surnames. MyCSP then looked into the matter.
16. On 19 September 2012 MyCSP sent Mrs A a copy of her National Insurance contribution record. This showed that when she stopped working in 1979 a “contributions equivalent premium” was paid to reinstate her in the State earnings-related pension scheme, extinguishing her benefits accrued under the PCSPS because her period of pensionable service was then less than five years. The record also showed that Mrs A qualified for a deferred pension during her second period of membership of the PCSPS from 1980 to 1988, but this had been transferred to a personal pension plan, which had a code number for Prudential. MyCSP therefore concluded that the PCSPS had no further liability to provide any pension for her.

17. As Mrs A was not satisfied with the explanations that she received she asked The Pensions Advisory Service (**TPAS**) to look into the matter.
18. On 11 January 2013 Prudential told Mrs A that she had opened a personal pension plan (**PPP**) with Prudential in August 1989, with gross premiums of £30 being payable, but the total premiums she paid were only £90 so the PPP had later lapsed without value, because at that time a minimum amount of £300 was needed to obtain a paid up fund value. TPAS asked Prudential in February 2013 whether any transfer payment from the PCSPS was paid into the PPP. Prudential confirmed in March 2013 that it had not received a transfer payment.
19. In May 2013 Mrs A sent Prudential a copy of a transfer application form that she had completed in 1990, which her previous employer had recently managed to locate.
20. MyCSP told Mrs A on 9 May 2013 that:

“HMRC has the evidence on their records to show there was a transfer from the Principal Civil Service Pension Scheme (PCSPS) to the Prudential’s Scheme Contracted out Number which is ASCN 7001022K. It is the Prudential that should be carrying out investigations to locate your transfer.”
21. When Prudential repeated the information that it had given earlier, Mrs A made a formal complaint to Prudential about the responses that it had sent her. On 12 July 2013 Prudential responded, saying that:

“Although you sent in documents relating to this transfer there [is] no evidence to say that the transfer actually took place.”
22. Although Prudential rejected Mrs A’s complaint about the transfer, it accepted her service complaint and paid her £50 for having sent several letters to her old address instead of her current address.
23. Mrs A then invoked the PCSPS’s internal dispute resolution procedure (**IDRP**). At stage 1 of the IDRP in June 2014 MyCSP rejected her claim, saying that:

“MyCSP has documentation that supports the belief that a payment was made to the Prudential in 1990 and that therefore liability to provide your pension benefits is the responsibility of the Prudential.

MyCSP has been in contact with Her Majesty’s Revenue & Customs (HMRC) who confirms that the contracted out liability was transferred from the PCSPS to the Prudential in 1990 which agrees with MyCSP’s sequence of events.”
24. Mrs A then invoked Stage 2 of the IDRP. This was conducted by The Pension Schemes Executive, part of the Cabinet Office. On 17 November 2014 it rejected Mrs A’s appeal, saying that:

“We have strong evidence that DE paid a transfer value to Prudential in 1990 and no evidence to suggest the transfer process did not complete. The payment discharged the PCSPS liability to pay you benefits and whilst having much sympathy for the position you now find yourself in, we cannot agree to reinstate your rights.”

Adjudicator’s Opinion

25. Mrs A’s complaint was considered by one of our Adjudicators, who concluded that further action was required by Prudential. The Adjudicator’s findings are summarised briefly below:

- Mrs A had accrued pension benefits in respect of her pensionable service under the PCSPS from 1980 to 1988. When she left service she completed the necessary forms authorising a transfer to Prudential. MyCSP were of the view that the transfer cheque was paid to Prudential, so the PCSPS had no further liability to provide benefits to Mrs A. Prudential, on the other hand, said that it never received the transfer cheque and therefore had no liability to provide benefits to Mrs A. This meant that neither party was accepting responsibility for those benefits, and each party was effectively blaming the other.
- As there is no dispute that Mrs A had accrued benefits under the PCSPS, those benefits should not be allowed to vanish. The starting point is that those benefits should remain the responsibility of the transferring scheme, the PCSPS, unless MyCSP can show (on the balance of probabilities) that a transfer payment was sent to Prudential.
- The PPP that Mrs A set up in 1989 would not have lapsed due to holding insufficient funds if the transfer payment had been allocated to it in 1990, and Prudential would have had no reason not to cash a cheque that had been sent to it. This suggests that Prudential did not receive the transfer cheque.
- However, the evidence provided by Mrs A, MyCSP and PSE relating to the events in 1990 was more compelling, particularly the documentation that was dated 22 February 1990.
- Furthermore HMRC’s records, held independently, showed a transfer from the PCSPS to Prudential.
- DE wrote to Prudential on 15 March 1990, saying that it had sent the transfer cheque to Prudential on 22 February 1990. Prudential would have been expected to contact DE to query this statement if Prudential still could not trace the transfer cheque. The fact that Prudential did not do so suggested either that Prudential managed to find the transfer cheque after making more searches or, if it did not find the cheque, it failed to pursue the matter further with DE; that omission would amount to maladministration.
- As there are conflicting views from Prudential and the other respondents regarding matters occurring many years ago, it is not possible to say with certainty that Prudential did receive the transfer cheque in 1990. However, the Pensions

Ombudsman acts on the balance of probabilities, and based on the evidence supplied the Pensions Ombudsman would think it more likely than not that the transfer cheque was sent to Prudential, and on receipt should have been actioned by Prudential, and therefore the Pensions Ombudsman would require Prudential (not the PCSPS) to take responsibility for providing those benefits for Mrs A.

26. Prudential did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mrs A, MyCSP, The Pension Schemes Executive and Prudential provided their further comments which 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 the parties for completeness.

Summary of Mrs A's position

27. She was entitled to a deferred pension, and either the PCSPS or Prudential should provide it, and she should be compensated by them for the distress and inconvenience that they had caused her.

Summary of MyCSP's position

28. Mrs A completed the necessary documentation for a transfer from the PCSPS to Prudential, and this was sent to Prudential. DE's letter of 22 February 1990 to Prudential referred to the transfer cheque being enclosed. Prudential did not challenge DE's comment of 15 March 1990 that the order had previously been sent to Prudential. There is no indication that it was ever returned. Therefore it seemed clear that all necessary steps had been taken to make the transfer and therefore it is Prudential, not the PCSPS, that is liable to provide pension benefits for Mrs A.

Summary of The Pension Schemes Executive's position

29. The correspondence in February 1990 showed that DE paid the transfer cheque to Prudential, and there is no evidence to show the transfer process was not completed. The payment discharged the liability of the PCSPS to pay a pension to Mrs A. Prudential should provide the pension, because there was no evidence that the transfer cheque was not cashed within its three month validity period, and the fact that Prudential did not chase the payment or query the position after 15 March 1990 implied that it had found the transfer cheque and set up benefits for Mrs A.

Summary of Prudential's position

30. Although Mrs A completed documentation for a proposed transfer to Prudential, Prudential never received the transfer cheque, and MyCSP failed to show that the transfer to Prudential had been completed. Prudential did not receive their signed application form back from DE and it is reasonable for them to take non-receipt as Mrs A's decision not to proceed. The fact that they never issued any documentation to Mrs A acknowledging receipt and never issued any scheme documentation supports the conclusion that the transaction never completed. The submission of an

application form is not confirmation that Prudential accepted the business. It was not Prudential's policy to chase for transfer payments. Therefore the liability to provide Mrs A's pension remained with the original scheme, the PCSPS, or with any other pension arrangement to which the PCSPS had made a transfer. The 5 March 1989 signature on the application form was probably a mistake and instead should have read 5 March 1990. It is questionable why MyCSP would have made a transfer payment before the application form was formally signed and accepted by Prudential. In those circumstances even if the transfer cheque was received by them (which is not admitted) they would not be able to accept it or cash it until their transfer application form had been signed by the PCSPS administrator. No maladministration can be proved because Prudential did not receive the transfer cheque.

Conclusions

31. It is clear that Mrs A had accrued pension benefits under the PCSPS in respect of her service from 1980 to 1988. When she left service she completed the necessary forms authorising a transfer to Prudential; she completed the forms required by DE and the forms required by Prudential. Neither party has said she failed to complete any of the necessary procedural steps. MyCSP are of the view that the Order was paid to Prudential, so the PCSPS has no further liability to provide benefits to Mrs A. Prudential, on the other hand, says that it never received the transfer cheque and therefore has no liability to provide benefits to Mrs A.
32. This means that neither party is accepting responsibility for those benefits. As there is no dispute that Mrs A had accrued benefits, those benefits should not be allowed to vanish because of administrative confusion which arose in the course of the transfer process.
33. The question is who was responsible for what went wrong; MyCSP as administrator of the transferring scheme or Prudential as the provider of the receiving scheme? The Pension Schemes Executive was involved only as the party that conducted stage 2 of the IDRPs, and I do not consider it appropriate to make a finding against that body.
34. The question I have taken as my starting point is whether MyCSP as ceding scheme has done what is needed to carry out what the member requires (Schedule 1A, paragraph 16(2)(b) of the Social Security Pensions Act 1975). What the member required was a transfer of membership to Prudential. Both parties needed to take steps to make that happen, but MyCSP can only be held responsible for their own failings.
35. It is plain that both parties intended the transaction to take place and both took steps to make it happen. It is equally plain that those steps did not result in a satisfactory completion of the transfer process from Prudential's point of view. It is evident from the chronology and contemporaneous correspondence that there were two processes operating in parallel, with both sides requiring completion of their own forms. It is also apparent that the DE process was running ahead of the Prudential process. DE were

sending correspondence consistently to the same address from which correspondence was being received and it is apparent that much of it got through, so I think it more likely than not that Prudential received the order, which was clearly labelled. Unfortunately, what happened to it thereafter is a matter about which there is no evidence at all. Despite enquiries it has not been possible to obtain any evidence about whether the order was in fact cashed. However, I am not persuaded that the cashing of the order or otherwise is the sole or definitive question, in the sense that it was not enough just to send over the money. Both parties required completion of formalities; DE wanted its forms completed to ensure proof of discharge and Prudential wanted its forms completed to ensure compliance with its own internal processes.

36. Prudential have taken the position that their process was what was needed. MyCSP have taken the position that their process was sufficient. Neither set of forms was mandatory, and there is no rule that one takes precedence over the other. I am satisfied that DE operated a process which was sufficient to do what was needed to effect the transfer in so far as they were able to control the process, i.e. they got to the point where they were able to issue the payment and did so. In answer to why they did that before receiving Prudential's form of authority, they were clearly acting upon the instruction signed on 29 January 1990. I have looked closely at the record of the transaction produced by MyCSP and it shows that DE kept a consistent track of their own process and did what was needed to carry out the member's instructions to issue the transfer payment. They routed their requests for their transfer mandate to be completed through Prudential and replied to all communications from Prudential. Having completed all of their own processes sequentially, they were entitled in my view to believe the process was complete.
37. It appears that the transfer did not complete at Prudential's end because they failed to obtain completion of the forms which they required to accept the incoming payment. That was maladministration in my view. Mrs A had signed their proposal form in 1989. On their own account Prudential asked her to re-sign it in 1990. I accept that the date of the second signature is probably wrong because it predates the original date on the form, which is inherently unlikely, but that only goes to show in my view how little Prudential were paying attention to their own formalities. Prudential have argued that they were entitled to take non-compliance with their formalities as evidence of a change of mind. However, that is not supported by their letter of 12 March 1990 in which they state that 'the client had accepted their illustration by signing and dating the attached proposal form'. They knew that Mrs A wanted to transfer, and must have been aware of the battle of forms because DE sent its own forms to Prudential and chased them for completion. From the timings it is clear that the instruction to cancel benefit and the letter enclosing the Order were both sent because DE received its own completed forms with a signature against its standard discharge statement.

38. If Prudential needed their form completing before they could accept a transfer value, I consider that they should have asked Mrs A to deal with their form at the latest when DE chased their own. The problem arose in my opinion because although it started its own formal processes earlier, Prudential did not push them on at any pace and ended up lagging behind the DE process. Once that had happened there was nothing prompting Prudential who then did not complete their end of the transaction. If they did not receive payment, or could not complete the transfer because they did not have a completed form to match with the order sent, they should have told DE or Mrs A that that was the case. Having got so far through the transfer process, it was not reasonable in my view to let it lapse without further enquiry.
39. I find that Prudential's failure to progress the transfer with reasonable diligence caused a delay in completion of the transfer process which remains outstanding and, as long as it persists, that causes a financial loss equal to the pension which Mrs A would have had if it had completed promptly. I consider that had Prudential progressed the process with reasonable diligence the transfer could have completed no later than 24 February 1990, the date which they would have received the transfer in the ordinary course of post.
40. I therefore uphold the complaint against Prudential.

Directions

41. Within 28 days of the date of this determination Prudential shall reopen Mrs A's PPP (or if that is not feasible, set up another personal pension plan for her) and accredit it with the fund value that it would now have assuming that the transfer value had been invested on 24 February 1990.

Karen Johnston

Deputy Pensions Ombudsman
11 January 2017