

**PENSION SCHEMES ACT 1993, PART X**  
**DETERMINATION BY THE PENSIONS OMBUDSMAN**

<b>Applicant</b>	Mr K Barnes
<b>Scheme</b>	Principal Civil Service Pension Scheme ( <b>the Scheme</b> )
<b>Respondent(s)</b>	The Cabinet Office, on behalf of My Civil Service Pension ( <b>MyCSP</b> ) The National Portrait Gallery ( <b>the NPG</b> )

**Subject**

Mr Barnes' complaint against MyCSP, the Scheme administrator, and his former employer the NPG is that his request to change his election for a refund of contributions to a transfer value to his stakeholder pension plan was refused and he had experienced delays in the process that prevented him from changing his election.

**The Deputy Pensions Ombudsman's determination and short reasons**

The complaint should only be upheld against the NPG to the extent that their delay in providing information to MyCSP delayed the payment of his refund. But that delay did not prevent Mr Barnes from being able to change his election nor was it the cause of him incorrectly completing his forms.

## DETAILED DETERMINATION

### Material Facts

1. Mr Barnes took up a position with the NPG on 19 September 2011 and was enrolled in the Nuvos section of the Scheme. He left their employment on 31 October 2012.
2. Under the rules of the Nuvos section when a member has accrued more than three months of service but less than two years of qualifying service when they leave employment prior to age 65, they are not entitled to pension benefits under the Scheme. They are instead entitled to either (i) a refund of the contributions they have paid to the Scheme, less the cost of reinstating them into the State Second Pension scheme, or (ii) a transfer of accrued rights to another registered pension scheme.
3. The NPG wrote to MyCSP on 13 November 2012 to say that Mr Barnes had left their employment.
4. MyCSP wrote to Mr Barnes on 30 November 2012 with details of his pension benefit options enclosing also a “Personal Details and Options” form, a transfer sum quotation, a transfer application form, a receiving scheme discharge form and a Scheme leaflet titled “Leaving Nuvos before pension age with less than 2 years’ service”. The covering letter said that he may choose from a transfer of his notional pension benefits to another pension scheme or a refund of his contributions. He needed to return the form with his decision by 1 March 2013, else it would be assumed that he wanted a refund of his contributions. It also said:

#### **“Transferring your pension**

...you can only transfer your benefits to a contracted-out pension scheme or arrangement...The value of the transfer...is £15,144.10 as shown on the enclosed Transfer sum quote...

#### **Refund of Contributions**

If you do not want to transfer your notional pension benefits, you are entitled to a refund of £1,267.51. Details of how this is worked out are shown in the table below...If you receive a refund of your contributions, you will not then be able to take a transfer. Please note that a refund of contributions will probably be worth less than the value of the benefits you can transfer...

Gross contributions refund amount    £1,958.58

Less member’s share of CEP                £374.19

Less deduction for income tax      £316.88

Net contributions refund amount      £1,267.51

**ACTION** If you choose a refund of your contributions, please tick the relevant box on the enclosed form. In making your decision, you may find it helpful to refer to the enclosed leaflet **Leaving nuvos before pension age with less than 2 years' service**".

5. The transfer quote form referred to the sum of £15,144.10 as being available for transfer and said that this could only be paid to a UK pension scheme. Payment was also subject to the receiving pension scheme being appropriately registered and willing to accept it, and further the member's completed application being received within the advised time limit.

6. The Personal Details and Options form said:

"1. Please check the form carefully to make sure that the details are correct and reflect your wishes...

...

Note

We will pay your refund of contributions into the bank account used for paying your salary. If you want your refund to be paid into a different account, or you have changed your bank details within the last few months, please provide the details below.

...

Options on leaving nuvos (with less than 2 years' qualifying service)

Please tick the box at Part 1 or Part 2 to confirm your choice

Part 1 REFUND OF CONTRIBUTIONS

I wish to receive a refund of my contributions, as set out in the covering letter.

Please note that we will pay any refund due to you approximately one month after you return this application form.

Part 2 TRANSFER OF NUVOS BENEFITS...

..."

7. The “Leaving nuvos before pension age with less than 2 years’ service” leaflet again detailed the two options that would be open to a member with more than three months of service and said to note that the value of the two options may be considerably different. It also said:

“Can I ask for a transfer later?

No. Once you have received a refund of your contributions you will not be able to repay the refund to take a transfer instead...”

8. The completed option form was received by MyCSP on 31 January 2013, with Mr Barnes opting for a refund of his contributions. He left the section for bank details blank.
9. During February and March 2013 a few issues arose. The refund was initially sent for authorisation but the authorisation was refused because no bank details were provided by the NPG and also a query arose over the level of contributions provided by Mr Barnes’ employer. MyCSP contacted the NPG in an effort to resolve these two issues on 6 February, 12 February and 27 February 2013. The NPG responded on 8 February to clarify the contributions figure. They did not however provide details of Mrs Barnes’ bank account at that time.
10. The NPG have provided our service with an email of 28 February 2013 which provided the outstanding bank account details. The email address used was [mycsp.newcastle@dwp.gsi.gov.uk](mailto:mycsp.newcastle@dwp.gsi.gov.uk) (this is the same email address that was used in their earlier response of 8 February 2013). The Cabinet Office say there is no record of MyCSP receiving this email.
11. MyCSP say they were not in possession of all the details requested until 14 March 2013. At that time Mr Barnes got into touch with them to query why matters were taking so long and then provided his bank details directly to MyCSP via email. The refund was shortly thereafter prepared and authorised.
12. MyCSP sent a letter on 26 March 2013 thanking Mr Barnes for confirming that he wanted a refund of contributions instead of a transfer value. The net refund payable was £1,267.51 and a breakdown provided an explanation of how this figure was arrived at. They said that the refund would be paid shortly and that he would not be able to have a transfer payment to another pension scheme as he was not able to repay his refund amount at a later date.

13. Mr Barnes called MyCSP on 27 March 2013 to express his unhappiness at the time taken to resolve the issues and also at the amount of the refund he was to receive. He asked that he be provided with a transfer instead of a refund. MyCSP say that they advised Mr Barnes that this may not be possible and that they would refer his comments to the relevant team and arrange for him to be called back. Mr Barnes also followed the call up with an email saying that he had been erroneously advised that he would receive a cheque for the transfer value. Also while payment had been authorised it had not been made. Mr Barnes had a number of conversations with MyCSP over the coming days.
14. MyCSP called Mr Barnes on 2 April 2013 to say that they could not accept his request to transfer his pension rights to another scheme because it had been made after the three month time limit. Mr Barnes again requested that his refund payment be stopped as it had not yet been paid. (Mr Barnes has said to my office that he has no recollection of this telephone call but a letter from Mr Barnes of 2 April 2013 that was provided to our service refers to that conversation).
15. MyCSP wrote to Mr Barnes on 16 April 2013 to say that they would not change their decision and giving details of their formal dispute procedure.
16. A formal dispute was raised in May 2013. Mr Barnes' doctor also wrote a letter of 17 May 2013 saying that Mr Barnes had unexpectedly suffered a stroke in January 2012 (Mr Barnes had taken a period of sickness absence between 11 January 2012 and 26 February 2012). Since that time he had made significant progress relatively quickly. However he had initially lost some of his mental agility. During an appointment in March 2013 Mr Barnes had told him of a number of instances where he had incorrectly submitted official forms, including that for his pension. He asked that the effects of the stroke be borne in mind when reviewing his case. Mrs Barnes' complaint was not upheld under the formal dispute process.

*TPR Code of Practice for Early Leavers*

17. The Pensions Regulator's regulatory Code of Practice number 4 is titled "Early leavers – reasonable periods" and came into force on May 2006. This relates to the rights of members who leave with over three months' service but less than two years' service. It says that such members, if they leave without vested rights, must be notified of their statutory right to take a cash equivalent transfer sum or a contribution refund. The Regulator expects that notices will be provided to a member as soon as reasonably possible and that this should normally be within three

months of the member leaving pensionable service. When a member is provided with a statement of their rights they must be given a reasonable period within which to reply to the trustees or managers in order to exercise those rights, else the default option if no response is received is to pay a refund of contributions. The Regulator expects that the member would normally be given three months from the date that the statement is given to them to the reply date.

18. The Regulator expects that trustees or managers will give effect to a member's rights without unjustifiable delay after the member has elected how they wish to receive them, and in any event this should normally be within three months of the member making the election. No mention is made of the actions that should be taken if a member was to change their mind or ask for a different option later.

#### *The Scheme's Rules*

19. The relevant section says:

#### **"G.3 Applications for transfer value payments**

(1) A member who has applied for and received a statement of entitlement under rule G.2 may apply in writing to the Scheme administrator for a transfer value payment to be made.

(2) On making such an application a member becomes entitled to a payment of an amount equal, or amounts equal in aggregate, to the amount specified in the statement of entitlement (or such other amount as may be payable by virtue of paragraph (10)). In these rules such a payment is referred to as "the guaranteed cash equivalent transfer value payment".

(3) An application under paragraph (1) must be made before the end of the period of 3 months beginning with the guarantee date, and the payment must be made no later than—

(a) 6 months after that date, or

(b) if it is earlier, the date on which the member reaches normal pension age.

(4) The application must specify the pension scheme or other arrangement to which the payment or payments should be applied.

(5) The application must meet such other conditions as the Minister may require.

(6) An application for a transfer value payment to be made under the public sector transfer arrangements may only be made before the first anniversary of the day on which the member becomes eligible to be an active member of the scheme to which the transfer is to be made.

(7) In the case of a person who is not within rule E.1(2), an application under paragraph (1) may only be made on or before the date that is 3 months after the date on which the Scheme administrator gives the person written notice of his options in accordance with section 101AC of the Pension Schemes Act 1993.

(8) The Minister may direct that any time limit applying to an application under paragraph (1) should be extended if he considers it reasonable to do so in the circumstances...”

### **Summary of Mr Barnes’ position**

20. He had expected to receive a payment of £15,144.10 and opted for a refund as his other pensions would be payable on his 60<sup>th</sup> birthday in December 2013. He received only his own contributions when he had to leave the Scheme. His employer’s contributions were lost. If the form had been clearer he would have transferred the sum to one of his other continuing pension funds.
21. His problems had been caused by poor customer service and a dearth of communication. There was also a lack of duty of care in relation to his needs and circumstances. The election form that he received was unclear and the design of the paperwork was obviously flawed. Also he asks that I look at the form without the benefit of my legal experience and as a layman. While he accepts that he gave incorrect instructions he had earned the pension pot available and MyCSP had the responsibility to ensure that he was in the best financial position at retirement. In later correspondence Mr Barnes has added that he refutes any suggestion that he changed his mind – he says he wished to change his option and not his mind. And that if he had completed the wrong option then that itself was proof that the information he was given was not clear or accurate.
22. In relation to the forms he signed they were not clear in showing the value of each option. On the second page the only figure highlighted was the transfer value of £15,144.10 and this was repeated on the fourth page. On the sixth page (this is the part of the form with the section headed “Options on leaving nuvos (with less than 2

years' qualifying service)'' as per paragraph 6 above) he took the refund option to mean a refund of his and his employer's contributions, not just his alone. It would have been better if the form said that you would not receive your employer's contributions if this option was chosen. The forms he received from other pension schemes of which he is a member were clear and that he had offered to send examples of other similar forms to the Scheme's representatives.

23. He first became aware of the problem on 27 March 2013 when he saw the final amount due to be paid. This was just before payment was made and he attempted to have the refund stopped. As he had been waiting a long time and the money was not in his bank account he felt that a transfer should have been allowed. But no one involved in the process helped him to try and stop it once he had discovered his error. He also questions why anyone would choose to opt for the reduced refund amount over the transfer value, saying that only those who were terminally ill would benefit from a refund.
24. He had taken a relatively low paid position but was attracted to the role by the pension provision. But he had now lost the value of that provision.
25. It was suggested to him that he could have contacted MyCSP for assistance with the forms. But contacting them by telephone was a very difficult and time consuming process, with the line often going dead.
26. He noted the Cabinet Office's comments that his employer was not at fault in delaying their response but surely their delay impacted on the three month deadline that applied. This had prevented him from changing his election.
27. Although he has also sent evidence of his medical issues affecting his ability to complete the form he also maintains that the form is badly designed. To put the matter right he should be given a full transfer value to another provider. In addition to the letter from his GP he now also had the support of his MP and former line manager.
28. Mr Barnes has also provided me with details of a stakeholder personal pension he holds with Aviva. Such plans cannot refuse transfers from other UK schemes.
29. Also provided by Mr Barnes are a number of newspaper and online articles regarding very recent problems that members of the Scheme have had with MyCSP's administration (these issues do not relate to those with service of less than two years, but a recent change in how the Scheme is administered). He also points me to



the “Mission Statement” used by MyCSP, adding that they have failed to meet at least 50% of the statement.

30. The letter he was sent was dated 30 November 2012 and so by time of receipt he had less than three months to respond.
31. He also says that the Nuvos section of the Scheme unfairly discriminates against those on short-term employment contracts when compared to full-time colleagues. (This late submission however is not one that was part of Mr Barnes’ complaint during the formal dispute process and was also not part of the complaint accepted by our service for investigation. I am therefore unable to consider this matter as part of this application, but would say briefly, as I have also said below, that the relevant options he was presented with were statutory options that MyCSP were required to present to him or any member, regardless of their employment status, in a similar situation).

#### **Summary of the NPG’s position**

32. They have had difficulty in obtaining a copy of the communications from the relevant time. Also the member of staff who had been dealing with the matter had moved on. However they disagreed with the allegations made and had found two emails from their payroll officer to MyCSP. Their records showed that Mr Barnes’ bank details were provided to MyCSP in the second email of 28 February 2013. Their IT department confirms that the delivery was successful at their end.
33. They had complied with the requests from MyCSP. At no point was there any indication that there was a sense of urgency to the matter. So they should not be held culpable. Also if MyCSP had been having trouble obtaining a response from them then it would have been entirely reasonable and appropriate for them to contact Mr Barnes directly for the outstanding information.
34. They had no control or input into the pension policies and administration procedures of the Scheme or MyCSP. Further if the complaint were to be upheld in full there would be an issue with compensating Mr Barnes directly as a transfer value would not result in a direct payment to the member, but to another pension scheme.

#### **Summary of the Cabinet Office’s position**

35. They are responding on behalf of MyCSP.
36. It was accepted by MyCSP that the delay in processing the Personal Details and Options form was not helpful. However this was outside their control as they could

not make payment without Mr Barnes' bank details and they did not get these until 14 March 2013, as his employer had been slow in responding. Following receipt of this the claim was processed quickly.

37. They also accept that they could have returned Mr Barnes' calls sooner but this would not affect the outcome of his case as the calls took place after 1 March 2013, the end of the three month statutory time limit for requesting a transfer of pension rights.
38. They have checked with MyCSP and they had no record of receiving the NPG's email of 28 February 2013. However this would have been received on the last day of Mr Barnes' option period and so would make no difference to the matter. It would seem unfair to penalise the NPG for what amounted to "12 working days" to provide the requested bank details.
39. Under the Rules of the Scheme Mr Barnes had until 1 March 2013 in which to apply for a transfer. He returned his option form at the end of January 2013. It appears that Mr Barnes thought that he was choosing to have a payment equal to the transfer value paid directly to his bank account. His misunderstanding is most unfortunate but having reviewed the information available to him it was difficult to see why he came to this belief. It was made clear that the transfer value could only be paid to another pension scheme. The information was accurate, clear and suitable for its purpose.
40. The suggestion that MyCSP was responsible for ensuring that he was in the best possible financial position presupposes that MyCSP would know what was "best" in his individual circumstances.
41. The three month time limit was prescribed by the Rules, but there was also a delegated authority for MyCSP to exercise discretion and extend the time limit. An extended time limit was not however a member right. This provision recognised that there may be exceptional circumstances where, through no fault of their own, a member is unable to respond within the three month time limit. Exceptional circumstances varied from case to case, with each being considered on its individual merits. Mr Barnes was given until March 2013 to select his option and returned his form on 29 January 2013, and so well within the time limit. His option was clear and he had given no indication that he had difficulty in understanding the form nor was there any reason to doubt his competence in choosing an option. His was not a case where they needed to consider extending the time limit and he wanted to change his option rather than to make a belated choice.

42. While they appreciate that the pack they send out contains a lot of information and also that Mr Barnes had suffered from some health issues, he knew of these problems before completing the form and so they would have expected him to get assistance before completing it. This could have ranged from simply contacting their office or getting advice from a financial adviser. Their records did not show any evidence of contact before the return of the form. While sympathetic to his position the completion of the form was a matter of personal responsibility for him.
43. Mr Barnes has been critical of MyCSP not confirming his option much sooner than they did. As part of their IDRPs response the Cabinet Office said that they accept that had MyCSP written to him sooner he might have realised before his option period expired that his choice of a refund did not reflect his wishes. The difficulty for MyCSP is that they needed to refer to his employer to check his contribution history and request the bank account details before they could write to him to confirm his position. Whether Mr Barnes would have changed his mind about having a refund had he been contacted sooner was a matter for speculation and assumed that his pension provider was willing and able to accept the transfer and he would have been happy with the benefits that the transfer would buy.
44. Our service wrote to the Cabinet Office to query how long a refund usually takes to be paid and also whether a member could change their option after an award letter is sent. They say they referred this to MyCSP who responded to say first that the service level agreement was ten working days to process the refund and another ten working days to make payment. On the second point they said that they could not say that the member cannot change their mind after their decision had been made but they would reject this if the request was made after the three month limit. The Cabinet Office initially added that there was nothing to stop a member changing their mind provided they did it within the option period.
45. In a later response to my office the Cabinet Office said that they had revisited this point about whether a member could change their mind. They said:

“...I have taken a fresh look at Mr Barnes’ case and the position with regard to the provision of PCSPS rule G.3(7) which states:

.... An application under option (1) may only be made on or before the date that is 3 months after the date on which the Scheme Administrator gives the person written notice of his options....

Mr Barnes had a 3 month period in which to make an option about having a contribution refund or arranging a transfer value and this expired on 1 March 2013. He duly made his option within the time scale on 29 January 2013 and MyCSP took the appropriate processing action.

The wording of rule G.3(7) is not such that it anticipates more than one application in the option period. Neither does it indicate that the option period must expire before the application is accepted as the final chosen option. Given this, the amount of information that MyCSP provide to members to make their option and the clarity of the application form, we do not think it is unreasonable that once made, a member's application reflects their considered and final decision. This being the case, MyCSP process applications when they are received; they do not hold them in abeyance for the duration of the option period in case a member changes their mind. This would penalise members who, for example, made an option for a refund within a week of their option period but then had to wait for the expiry of three months before MyCSP processed the payment. Although MyCSP has said they would allow a member to change their option if they did so within the 3 month period, this is [sic] presupposes that they haven't already acted to put their original option into effect as they will have done at the point they write to the member confirming their option. Mr Barnes' change of heart about his option seemed to have followed receipt of MyCSP's 26 March 2013 letter to him in which they confirmed they had authorised payment of his refund. In the period between receiving his application and writing to him with the refund details MyCSP had to seek information from his former employer to ensure their calculation was correct. Had it not been for this delay MyCSP would have given Mr Barnes the same information earlier – this may have been before 1 March but either way they had would have already performed the administrative actions to give effect to the option he had already made. It seems unreasonable to suggest that the employer is at fault for using up some of Mr Barnes' option period when he had already made his option and the information they provided did not change the basis on which he made it.

As previously explained, having opted for a contribution refund Mr Barnes' former employer made the required Contributions Equivalent Payment so that his period of contracted out service is reinstated for State benefits. His benefit position has therefore been finalised."

46. In a further response to our service the Cabinet Office said that even had MyCSP been able to process the refund without having to refer to NPG for information and this had taken, say 10 working days, they would have authorised payment of the refund amount before Mr Barnes received their letter confirming this. It seems that Mr Barnes misunderstood what he was opting for. He made a mistake. He did not realise his mistake until MyCSP had completed their process to authorise his refund payment. MyCSP took longer to process his refund than might otherwise have been the case because they had to get information from NPG. If anything, the delay gave Mr Barnes a longer window of opportunity to change his mind.
47. The Cabinet Office further say that to compensate Mr Barnes now via a cash sum would not reflect the position that Mr Barnes would have been in had he received a transfer. They say, for example, that the benefits derived from any subsequent pension provider would have depended on the type of fund and annuity rates and other factors. He would not have received an immediate payment. Also the Contribution Equivalent Premium paid to the state does not have the same value as the eventual benefits it will provide him.

## Conclusions

48. Mr Barnes says that the forms he received were unclear. He further says that similar forms that he received from other pension schemes were much clearer. But that is not the appropriate yardstick for me to assess the information that he was given by MyCSP. The Scheme's forms and the supplementary information that he received must be assessed on what they alone say, and taking into account guidance from the Pensions Regulator.
49. I think that there can be little doubt that significant detail was given distinguishing the differences between a pension transfer and a refund of personal contributions. It was clear first that the transfer option and the refund differed significantly in monetary value. Further it was made clear that a transfer could only be paid to another pension arrangement, with no suggestion that it could be paid to a member, and that point was underlined by the need for a receiving scheme form to be completed as well. There was also a specific warning on the covering letter about a refund probably being worth less than the value of the benefits that could be transferred (and indeed even without this statement it is difficult to see why Mr Barnes thought that a refund of his *own* contributions only would be much higher in monetary value than the cash equivalent transfer value of the benefits that could have accrued for his service. There

was nothing in the information given that would lead to this belief). In light of all this information I do not think that it is correct to say that the forms and information provided were unclear. Mr Barnes has also said that on the second page of the covering letter only the transfer value was given. But having reviewed that page *both* the refund amount and the transfer value were listed on that page, with a more detailed breakdown of how the refund amount was worked out on the third page.

50. Fundamentally the problem was therefore caused by Mr Barnes' mistake in selecting a refund. He questions why anyone would choose a refund of their own contributions (which also would result in an increase in the member's State Second Pension entitlement) over the transfer option and also why the default option is a refund of contributions. Whether one option presented greater value than the other (or at least whether it did in my opinion) is not relevant to the merits of Mr Barnes' application. These were statutory options, including the default option of a refund, that MyCSP (or indeed any other occupational pension scheme administrator) was required to present to any member leaving service in the same circumstances.
51. Mr Barnes also says that there was a requirement on MyCSP to ensure that he was in the best financial position. But in their role as the Scheme's administrators they were not authorised to give financial advice to members. And so I do not find that there was any requirement to give Mr Barnes financial advice on what may have been the more preferential option for him (just the opposite – they could not have done so).
52. MyCSP could have given Mr Barnes general information on his options, as they had already in the information pack. Mr Barnes says that there were problems with using the helpline. But he does not expressly say that he did try to call MyCSP in relation to his refund or that he was unable to contact them within the three month period (that is quite a long time within which to make a decision and he could have written to them even if there was a problem with their helpline – but again there is no indication that he did so). And the day that Mr Barnes received the letter telling him of the refund due he appears to have had no problem in getting through to MyCSP on the same day. So I am unable to find that his problems were caused by a lack of communication, or alternatively a difficulty in communicating, with the administrators.
53. In a further submission Mr Barnes says that the Scheme's representatives should have taken into account his health issues and the letters of support that he has provided. Whilst I sympathise with Mr Barnes' health issues I do not consider that these were a relevant factor that either MyCSP or the Cabinet Office needed to consider when

deciding to proceed with the refund or when reviewing his complaint. If he needed help with completing the forms then he should have sought assistance, either from them or a financial adviser.

54. The final arguments raised by Mr Barnes are that he should have been allowed to change his option. In my view however these arguments fail because Mr Barnes simply acted too late.
55. The final details of the refund were confirmed to Mr Barnes on 26 March 2013 after the option deadline had elapsed. At that point I do not consider that there was any onus on MyCSP to help Mr Barnes change his election. For the reasons given I do not uphold the complaint against MyCSP.
56. However Mr Barnes has also advanced a different argument here. He says that if there had not been a delay between 29 January 2013 and 26 March 2013 in confirming the amount of the refund due to him he could have realised his mistake sooner and taken action to instead request a transfer before the option deadline elapsed.
57. In my view there was an unnecessary delay in confirming the refund amount to Mr Barnes and this was as a result of the actions of the NPG, who failed to provide the relevant bank details when they gave their initial response of 8 February 2013. Instead the details were not provided until 28 February after MyCSP had chased for the outstanding information on two occasions (I will add here that my view is that MyCSP did likely receive that email, as it was correctly addressed, but this makes no difference to the issue of whether Mr Barnes could have changed his selected option). But I see no reason why the NPG could not have given the information at the outset, instead of waiting another 20 days to do so. In my opinion that delay constitutes maladministration. The NPG say that MyCSP could have approached Mr Barnes directly for this information. They could have done that but in my view they were entitled to chase his former employer for the information as that was the agreed process. And there would not have been any immediate urgency for them in relation to the deadline date as they could not have anticipated that Mr Barnes would in fact have wanted to change his option had he received the confirmation of the refund figure earlier.
58. But the delay alone would not be enough for me to agree that injustice had been caused to Mr Barnes. I would have to decide that Mr Barnes would have done so at a reasonable point in time. If the NPG had responded with the bank details on 8

February the refund letter would have gone out on around 20 February 2013, prior to the option period ending.

59. There is no provision within the regulations that says a member can change their option within the option period after making an election (and there is also no wording to say that they cannot). The literature provided to Mr Barnes only said that once a member had “received” their refund it was too late to change their option, as opposed to a decision being irrevocable at the time that the initial refund request was processed. Also the TPR guidance makes no comment or provision for what should happen if a member tried to change their election.
60. However the indication from the actions of MyCSP, who considered for some time whether Mr Barnes could change his election but declined this on the basis that he had exceeded the deadline date, suggests that they might have let him change his option if he had made this request earlier. At the second stage of IDRP the Cabinet Office said that whether Mr Barnes would have changed his option about having a refund had he been contacted sooner was a matter for speculation. Later they said that there was nothing to stop a member changing their option provided they did it within the option period. Later still they said that it was reasonable that once made, a member’s application reflects their considered and final decision. And also that MyCSP would have started to put the refund process into effect before writing to the member about it at which point it would be too late to change anything. I take it from this that much would depend on exactly when a request to change an application was made.
61. As MyCSP have highlighted in recent responses to me, Mr Barnes only indicated late in the process that he wanted to change his option after he had received the letter advising of the refund. Moreover his first argument that initial information, on which he says he relied in making this decision, was in some way confusing has failed – the primary fault was his. So it seems likely that irrespective of delays by NPG, Mr Barnes would only have requested a switch to a transfer value upon being advised his initial application option had been actioned. And that in my view was too late in the process regardless of whether it was inside or outside the Option period.
62. It follows that I would not view it as equitable for the NPG’s delay to result in them paying substantial compensation for the lost transfer value to Mr Barnes when the initial error in selecting a refund was his and I have not made a finding of maladministration against MyCSP for not acting when Mr Barnes asked to change his



option, nor did I view there would have been any onus on them to accept his request had the NPG responded sooner.

63. In a further submission Mr Barnes has said that MyCSP should have acknowledged his letter and confirmed receipt of the instruction that he had given them. Confirmation of his position could follow later. He would then know that he had mistakenly chosen the refund option and still could have resolved matters.
64. With the benefit of hindsight it would be easy to say that if MyCSP had written to Mr Barnes twice and confirmed his chosen option (presumably in monetary terms as he did not appreciate at that time the difference value of the options) then, because of the delay by NPG, he could have raised an issue earlier about changing his option. But in my view MyCSP did nothing wrong. They received his forms on 31 January 2013 and contacted the NPG shortly thereafter. If the NPG had responded with all the requested details on 8 February 2013 I do not doubt that Mr Barnes would have received a confirmation letter from MyCSP shortly thereafter (it is only with the benefit of hindsight that we now know that this took longer than necessary). I do not take the view that the failure to send an initial receipt letter detailing back to him his chosen option was maladministration. They would not have known that the NPG would take some time to respond to them delaying their confirmation letter. (And anyway one of MyCSP's queries to NPG was to confirm the amount of the refund due – without that confirmation they could not have given Mr Barnes the actual refund figure any earlier).
65. I am making an award for the distress and inconvenience caused to Mr Barnes for the delay in getting his refund as a result of the NPG's delays.

### **Directions**

66. Within 28 days of the date of this Determination the NPG will pay Mr Barnes £50 in respect of the distress and inconvenience caused in delaying his refund payment.

**Jane Irvine**  
Deputy Pensions Ombudsman

30 March 2015