

## Ombudsman's Determination

<b>Applicant</b>	Miss Helen Dando
<b>Scheme</b>	Principal Civil Service Pension Scheme (the <b>Scheme</b> )
<b>Respondents</b>	Cabinet Office MyCSP

### Complaint summary

Miss Dando has complained that MyCSP and the Cabinet Office have refused to pay a serious ill-health commutation lump sum from the Scheme to her late mother's estate.

### Summary of the Ombudsman's determination and reasons

The complaint should be upheld against MyCSP because but for their maladministration, Miss Dando's mother's application to commute her pension on grounds of serious ill-health would have been processed before her death.

## Detailed Determination

### Material facts

1. In 2005, as part of a pension sharing order, Miss Dando's mother was awarded a 60% share of Mr Dando's, her former husband's pension Scheme benefits payable on her 60<sup>th</sup> birthday.
2. Miss Dando says that while divorced, Mr Dando remained close to her mother.
3. In January 2011 Miss Dando's mother was diagnosed with terminal cancer.
4. At his former wife's request, Mr Dando says he telephoned MyCSP on Wednesday 9 February 2011 about her situation and was asked to send an email. MyCSP do not have a record of the telephone call or the email that Mr Dando sent that day (Mr Dando does not have a copy of the email). There is no record of what (if any) action MyCSP then took. Mr Dando says he did not receive a reply.
5. Mr Dando sent a further email to MyCSP on Tuesday 15 February in which he said:

"I am sorry to trouble you again but could someone please contact me by phone to give me some advice on how long this may take to go through and if there is anything I can do to speed things up...Her condition at the moment is that she has a brain tumour which has affected her speech. Although she is able to understand what is said to her she struggles to give an answer".
6. Mr Dando then telephoned MyCSP on Friday 18 February asking for a call back. He said that his ex-wife had a pension sharing order and wanted to know if she could claim anything as she had terminal cancer and not long to live.
7. MyCSP returned Mr Dando's call on Monday 21 February (the next working day). The file note says that they "talked through options" with him.
8. Mr Dando called MyCSP again on Tuesday 1 March. He said his former wife had a week to live and that he had sent them form DS1500 signed by her treating consultant (form DS1500 is completed by doctors on request for patients with a terminal illness to enable the rapid claim of certain State benefits) – MyCSP have no record of receiving the form. Mr Dando asked if a lump sum could be paid. MyCSP told him that he would need to request claim forms if Mrs Dando died.
9. Mrs Dando died on Wednesday 2 March 2011. Miss Dando's solicitors informed MyCSP who sent a form to claim the death benefit.
10. A deferred member's lump sum death benefit amounting to £23,206.05 was paid to Miss Dando in August 2011. Subsequently, Miss Dando received a further £7,419.45 in April 2013 to correct a miscalculation of the original sum paid that was discovered during the investigation of her complaint. She received a further £1,283 in February 2014 to correct the miscalculation of the pension share order. (She also received interest at bank rate on both additional payments from August 2011.)

11. Mr Dando complained that his former wife would have applied for serious ill-health commutation if the correct paperwork had been sent to her in a timely manner. (Mrs Dando's annual pension at age 60 would have been £6,772.68, when multiplied by five in accordance with the Scheme rules, the serious ill-health commutation lump sum would have been £33,863.40.)
12. There followed extensive correspondence between Mr Dando and MyCSP on this matter which resulted in Miss Dando invoking the Scheme's two stage internal dispute resolution (**IDR**) procedures.
13. On 23 July 2013, MyCSP made their stage 1 decision and said:
  - Mrs Dando should have been sent a letter explaining her options and provided with the correct form to sign when Mr Dando first contacted them;
  - once the paperwork had been received by them, a referral would have been made to the Scheme medical adviser who would usually give a quick reply and if they agreed with the medical evidence, they would be notified and the payment could be made;
  - it is not possible to guarantee that the process would have been completed before Mrs Dando died but every effort would have been made to action the case urgently;
  - the form that should have been signed by Mrs Dando for serious ill-health commutation discharges the Scheme from any obligation to provide further benefits and complies with the Scheme rules which requires an application to be in writing;
  - they do not have the discretion to accept any other form in application for serious ill-health commutation and Miss Dando's complaint could therefore not be upheld as a result of this; and
  - the service that they provided to Mrs Dando was very poor and they offered Miss Dando £350 in respect of this.
14. Miss Dando accepted the compensation but she appealed MyCSP's decision not to pay a serious ill-health commutation lump sum to her mother's estate on the basis that, the estate should receive the amount that would have been paid had her claim been dealt with correctly by MyCSP.
15. The Cabinet Office made their stage 2 decision on 27 January 2014 and set out the process for dealing with such applications:

"In serious ill-health commutation cases the process is as follows:

1. The member tells MyCSP they have less than twelve months to live;

2. MyCSP sends the member an application form and asks the member to send written confirmation of life expectancy from their doctor;
3. Member returns completed application form and the doctor's assessment of life expectancy;
4. On receipt of those documents, MyCSP send the doctor's assessment to [the Scheme medical adviser]
5. [The Scheme medical adviser] considers the doctor's assessment and issues a certificate;
6. On receipt of [the Scheme medical adviser's] certificate, MyCSP calculates and authorises [MyCSP] to pay the benefit;
7. [MyCSP] pays the serious ill-health commutation lump sum to the member

MyCSP cannot authorise the payment of a serious ill-health commutation lump sum without an application form signed by the member and a certificate from [the Scheme medical adviser]."

16. In deciding not to uphold Miss Dando's appeal, the Cabinet Office said:

"...even if MyCSP sent Mrs Dando the application form following receipt of Mr Dando's email of 9 February, as can be seen from [the process outlined above], it is extremely unlikely that it would have been possible for the process to have been completed within three weeks (15 working days) of the initial contact. The sad fact is that the seriousness of Mrs Dando's medical condition meant that Mr Dando's contact with MyCSP on 9 February was too late for serious ill-health commutation to have been possible before she died. Therefore, the benefit that became due, was the benefit that was payable to Mrs Dando's personal representative, the death benefit lump sum."

**Summary of Miss Dando's position (through her representative, Mr Dando):**

17. Mr Dando maintains his position that Mrs Dando's application would have been successful if the application form had been sent when he first contacted MyCSP on 9 February.

**Summary of Cabinet Office and MyCSP's joint position:**

18. As a joint response, the Cabinet Office reiterate the points made in the Stage 2 IDRPs decision and say serious ill-health commutation is a benefit for the member's enjoyment. "It is not the purpose of that benefit for it to be paid to anyone other than the member." The death benefit was paid instead as Mrs Dando was unable to make a claim and is the correct benefit that was due in the circumstances.
19. The Cabinet Office provided the following service standards that apply to the process outlined in paragraph 15 above:

- for step 2, MyCSP must respond (to step 1) by sending an application form within 24 hours of being informed in 90% of cases, the maximum response time is however 5 working days;
- for step 4, cases should be referred to the Scheme medical adviser within 10 working days in 98% of cases, the maximum response time is however 15 working days;
- The Cabinet Office have said the service standard for step 4 would not have applied in Mrs Dando's case had her application form been received with the statement from her doctor as her case would have been referred to the Scheme medical adviser within 24 hours of receipt;
- for step 5, the Scheme medical adviser should issue a certificate within 10 working days of receiving the referral;
- for steps 6 and 7, MyCSP should calculate and pay the award within 7 working days of receiving the certificate.

## Conclusions

20. Miss Dando's complaint is that, but for MyCSP's delay, her late mother's benefits from the Scheme would have been commuted on the grounds of serious ill-health before her death. It is not disputed that Mr Dando requested an application form on behalf of Mrs Dando nor, for that matter that MyCSP sent a form for Mrs Dando to claim serious ill-health commutation. What is not known is when the form was issued or when it was subsequently received by Mrs Dando.
21. The Scheme rules require such applications to be made in writing. It is not disputed that Mrs Dando did not return the form to MyCSP before she died.
22. Although neither Mr Dando nor MyCSP have a copy of Mr Dando's email of 9 February it was received because MyCSP have an automated acknowledgment of it.
23. The Cabinet Office and MyCSP have said that every effort is made to process cases urgently. However, they have said that the application process would not have been completed even if the correct form had been sent to Mrs Dando on 9 February because there was insufficient time (as per their service standards).
24. I do not think that is right. Using the service standards provided, I will start on the basis that the application form could have been issued on 10 February. Mrs Dando would have received it shortly afterwards, say by 11 February. Given the urgency of the situation, my view is that the form would have been returned with the treating consultant's confirmation by 14 February arriving at MyCSP the next working day on 15 February. On the basis that Mrs Dando's case would have been expedited, it would have been referred to Scheme medical adviser on 16 February and the

certificate would need to be issued within ten working days. This would therefore take us to 2 March. Had Mrs Dando not died, the payment should have been made by 11 March to complete the process.

25. Certification by the Scheme medical adviser that a member has a life expectancy of less than 12 months is the point at which that member's application for serious ill-health commutation has succeeded. MyCSP can only calculate and pay the award once they have received the certificate. From the illustration above, although the process could not have been completed through to payment, the certificate would have been issued by 2 March – the day Mrs Dando died. As it is not disputed that Mrs Dando would have been granted serious ill-health commutation, my view is that MyCSP would have proceeded to make the payment to Mrs Dando's estate in these circumstances.
26. In any event, MyCSP have confirmed that "every effort would have been made to action the case urgently". Further, the Cabinet Office have confirmed that Mrs Dando's case would have been expedited at the point of referral to the Scheme medical adviser. Therefore, I can assume that it would not have taken 10 working days for the Scheme medical adviser to review the case and issue the certificate. My view is that MyCSP would have flagged the case as urgent and it could have been considered by the scheme medical adviser in a much shorter timeframe, say within three to five working days (at the generous end). The certificate could therefore have been issued between 21 to 23 February. It follows that the payment would also have been calculated and paid shortly afterwards and certainly before 2 March.
27. For the reasons give above, I uphold the complaint against MyCSP. Having established that Mrs Dando would have been entitled to the serious ill-health commutation lump sum but for MyCSP's maladministration, it is now necessary to consider the amount that should be paid to her estate having regard to the Scheme Rules and the death benefit that have already been paid out.
28. The Scheme Rules state that if a member dies after benefits have become payable under the commutation rules, a death benefit equal to five times the annual pension due less any benefits already paid will be due to the nominated person (see rules 12.5(ii) and 12.6(iv) in the Appendix). The effect of this is that had Mrs Dando received the serious ill-health commutation lump sum of £33,863.40, no further payment would have been made to her estate (or valid nominee) as a death benefit because she would have received all the pension that was due to her.
29. As a death benefit of £31,908.50 has already been paid, this amount should be deducted from the £33,863.40 that would have been due to Mrs Dando leaving a balance due of £1,954.90 that should now be paid to Mrs Dando's estate. I make the relevant direction below.

30. It is inevitable that Miss Dando will have suffered distress and inconvenience in bringing this complaint. MyCSP have already paid her £350 which she accepted. I find that this amount is adequate and will not be making a further direction.

**Directions**

31. Within 28 days of this determination, MyCSP should pay to Mrs Dando's estate £1,954.90 plus simple interest at the base rate for the time being quoted by reference banks from 28 February 2011 to the date of payment.

**Jane Irvine**

Deputy Pensions Ombudsman

15<sup>th</sup> May 2015

## Appendix

### Principal Civil Service Pension Scheme Rules

#### Rule 12.5 - Commutation of pension credit member's pension into lump sum on ill health

- (i) A pension credit member who is suffering from serious ill health may elect, before the benefits under rule 12.2 are due to come into payment, to commute the whole of his or her pension credit into a lump sum payment. This paragraph is subject to paragraph (v).
- (ii) The lump sum payment shall be an amount equal to five times the initial annual pension which would be payable if the pension credit member had reached the age of 60 years.
- (iii) In this rule, "serious ill health" means ill health which is such as to give rise to a life expectancy of less than one year from the date on which an election is made under this rule.
- (iv) For the purposes of this rule, the pension credit member will be required to be medically assessed by the Scheme Medical Adviser.
- (v) No lump sum shall be payable under this rule unless the lump sum is a serious ill health lump sum for the purposes of Part 4 of the Finance Act 2004 (see paragraph 4 of Schedule 29 to that Act).

#### Rule 12.6 - Death of pension credit member

- (i) If a pension credit member dies before any benefits have become payable to him under rules 12.2, 12.3, 12.4 or 12.5, benefits will be paid in accordance with sub-rule (ii) to one person validly nominated by him to receive such benefits, or in the absence of a valid nomination, to his personal representatives.
- (ii) For the purposes of sub-rule (i), the benefits shall consist of a lump sum of 25% of the value of the pension credit at the time of death.
- (iii) If a pension credit member dies after any pension benefits have become payable to him under rules 12.2, 12.3, 12.4 or 12.5 benefits will be paid in accordance with sub-rule (iv) to one person nominated by him to receive such benefits, or in the absence of a valid nomination, to his personal representatives.
- (iv) For the purpose of sub-rule (iii), the benefits will consist of a lump sum equal to five times the initial annual pension in payment to the pension credit member at the time of his death less all the pension and lump sum benefits (if any) that have been paid to the pension credit member that are directly attributable to the pension credit.
- (v) A nomination shall be valid for the purposes of this rule if:



- (a) it is made in writing to the Minister, or if the Minister directs, to the scheme administrator within 60 days of the valuation date, or such longer period as the Minister directs,
- (b) it has not been revoked, and
- (c) the person nominated has not died before the death of the pension credit member.