

Ombudsman's Determination

Applicant	Mrs Y
Scheme	Principal Civil Service Pension Scheme (PCSPS)
Respondent	MyCSP

Outcome

1. Mrs Y's complaint is upheld and to put matters right Cabinet Office should pay Mrs Y £2,000 to recognise the significant distress and inconvenience she has suffered.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs Y's complaint against MyCSP is about the delays she experienced when requesting a transfer out of the PCSPS to an overseas scheme in Australia. This has meant that the receiving scheme is no longer on the Recognised Overseas Pension Schemes (**ROPS**) list and the transfer is no longer possible.

Background information, including submissions from the parties

4. From 6 April 2015, two changes occurred in pension legislation that affected overseas transfers. First, members of unfunded occupational schemes (like the PCSPS) were only allowed to transfer to other defined benefit arrangements¹.
5. The second change (effective from the same date) was the introduction of the Pension Age Test in relation to overseas pension schemes². The new ROPS rules required confirmation from overseas pension schemes that benefits would not be paid to members prior to age 55 (except in cases of ill health early retirement). HMRC wrote to all schemes then on the Qualifying Recognised Overseas Pension Schemes (**QROPS**) list asking them to confirm by 17 June 2015 if they met the new Pension Age Test. Those that did not meet the test, or failed to respond, were not included on the newly published ROPS list from 1 July 2015. The majority of the schemes listed

¹ The Pension Schemes Act 2015 made amendments to the Pension Schemes Act 1993 which restricted transfers out of unfunded occupational pension schemes

² Regulation 3 of The Pension Scheme (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2006 as amended by The Overseas Pension Schemes (Miscellaneous Amendments) Regulations 2015

in Australia disappeared from the ROPS list when it was introduced, as Australian legislation allows for benefits to be taken for other purposes, other than ill health, before age 55. Payments made to overseas pension schemes that do not meet the Pension Age Test are considered unauthorised (and subject to substantial tax penalties for the member and the scheme).

6. In late 2014, Mrs Y contacted an independent financial advisor (**IFA**) regarding a transfer from the PCSPS to a pension provider in Australia. Throughout November and December 2014, and into early 2015, Mrs Y and her IFA were in regular contact with MyCSP requesting a cash equivalent transfer value (**CETV**) and providing letters of authority. This was because MyCSP were unable to find Mrs Y's details on its system, as her name and address had reverted to out of date details when the IT system was updated in September 2014. There were many exchanges between MyCSP, Mrs Y and her IFA in an attempt to verify Mrs Y's identity.
7. By March 2015, MyCSP accepted that Mrs Y was who she said she was and the relevant transfer documents, including a CETV, were sent to her via email on 24 March 2015. On 30 March 2015, MyCSP had received Mrs Y's transfer form with a request from her to process her transfer before the changes on 6 April 2015. Mrs Y's receiving scheme in Australia was on the QROPS list until it was suspended on 17 June 2015.
8. On 28 April 2015, MyCSP contacted Mrs Y and asked for further information from her Australian pension provider. A response was received from the Australian pension scheme on 19 May 2015, which enclosed a completed Overseas Transfer form.
9. Following this, no further action was taken in relation to Mrs Y's transfer by MyCSP. However, Mrs Y was informed (after chasing the matter) on 30 June 2015 that the transfer was progressing and would be completed by 21 July 2015. By this stage, the QROPS list had been suspended and Mrs Y's chosen overseas pension provider was no longer on the list.
10. On 15 July 2015, MyCSP emailed Mrs Y to inform her that it was unable to make payments to overseas schemes pending further advice from the Cabinet Office (which was reiterated in its email to Mrs Y on 28 July 2015). Mrs Y chased MyCSP, highlighting the previous commitment to complete the transfer by 21 July 2015. In its submission to this service, the Cabinet Office have not been able to confirm whether any such instruction was given and only that MyCSP made a general reference to such transfers being suspended in relation to the legislative changes.
11. Mrs Y raised a complaint with MyCSP via email on 21 August 2015 (which included details of the service she had received from MyCSP and the transfer delay), which MyCSP say it acknowledged on the same day. However, it was not until 7 November 2015 that MyCSP informed Mrs Y that a transfer could only proceed to a scheme on the ROPS list and her scheme was no longer on the list. The response did not comment on the substance of the complaint.

12. Mrs Y raised complaints about MyCSP's service standards and delays thought the year leading up to MyCSP's response of 7 November 2015. Mrs Y complained again in detail on 10 November 2015 and it now included a complaint that due to MyCSP's delays, she could no longer transfer to an overseas provider of her choice.
13. MyCSP responded on 18 November 2015 via letter. In this, it stated that it did not have an updated letter of authority in November 2014 to converse with her IFA and that this was not received until 21 January 2015. MyCSP apologised for the level of service Mrs Y had received and also said:

“Regrettably the legislation changes implemented on 6 April 2015 resulted in all transfers to Qualifying Recognised Overseas Pension Scheme’s (QROPS) being suspended, awaiting guidance from the Cabinet Office.

The pension scheme you intended to transfer to was not on the current Recognised Overseas Pension Scheme (ROPS) list produced by HMRC. As MyCSP are contractually bound to only process transfers to defined benefit or ROPS schemes that appear on the HMRC list, we were unable to proceed with your request.”

14. Mrs W raised a further complaint on 26 November 2015, which MyCSP replied to on the same day. MyCSP's reply was the same as that of 18 November 2015. Following this, Mrs Y contacted the Pensions Advisory Service (**TPAS**) and raised a complaint under the PCSPS's internal dispute resolution procedure (**IDRP**).
15. MyCSP responded under the first stage of the IDRP on 23 June 2016. It said:

“From 11 November 2014 to 10 December 2014, MyCSP were unable to locate your personal pension record. Your IFA provided information to MyCSP on 10 December 2014 which assisted MyCSP in locating your record; however MyCSP then stated that they required evidence of your name change before they could work on your request. In September 2014, MyCSP moved all scheme administration onto a new IT system. From my investigations, it is apparent that MyCSP's system had reverted your name to ... as a result of the IT system transition.

“MyCSP further delayed the process when they informed your IFA that the Letter of Authority (LOA) which they provided on 10 December 2014 was not valid as it was older than 3 months. However MyCSP had already received a more recent LOA, which was received on 11 November 2014 which was included with the initial Transfer Out request.

On 12 March 2015 MyCSP informed your IFA that they could not guarantee that the transfer quotation would be completed prior to the change in legislation on 6 April 2015 nevertheless, MyCSP issued the Transfer Out quotations to you on 25 March 2015.

As you returned the Transfer of UK pension scheme funds application forms prior to 6 April 2016, MyCSP should have been able to finalise the transfer even though they did not receive the required information from HESTA Australia until 19 May 2015. However, at the time of payment HESTA Australia had been taken off the Recognised Overseas Pension Schemes (ROPS) list ... and as a result, MyCSP could not process the transfer out successfully.

Taking into consideration my aforementioned points, I uphold your complaint that you have missed the opportunity to transfer your benefits to a ROPS under previous pension legislation due to delays by MyCSP. However, it is no longer possible for a transfer to a non ROPS scheme to take place. The transfer would be classed as an intentional unauthorised payment and as a result, would be subject to tax charges... it is possible to transfer to another scheme which is currently on the ROPS list.”

16. MyCSP also offered Mrs Y £300 to recognise the distress and inconvenience caused to her.
17. Mrs Y remained unhappy and proceeded to the second stage of the IDRPs with the Cabinet Office. The Cabinet Office provided its response on 7 February 2017 and did not uphold Mrs Y’s complaint. It concluded:

“MyCSP do not dispute that they mishandled your transfer request and they have accepted responsibility for you having missed the opportunity to transfer to your chosen ROPS before 6 April 2015. MyCSP has offered to compensate you £300 for the distress and inconvenience this situation has caused you. You have rejected MyCSP’s offer and appealed to be allowed the transfer you wanted to HESTA.

However, MyCSP cannot provide redress for their mistakes by allowing you to now transfer your PCSPS benefits to an arrangement other than in accordance with the statutory scheme rules and other governing legislation. This means that from 6 April 2015 they are not permitted to arrange transfers to schemes which are not on HMRC’s list of approved ROPSs or defined contribution arrangements subject to the ban under the Pension Schemes Act 2015... Your evidence of errors and delays by MyCSP does not change the position. Although now more limited the option is still open to you if you do not wish to retain PCSPS benefits.

Whilst sympathetic to your circumstances, for the reasons set out above I am unable to uphold your appeal for a transfer to HESTA. MyCSP has rightly offered to compensate you for the distress and inconvenience that you experienced through their mishandling of your case and I find their offer of £300 is reasonable and fair.”

18. Mrs Y remained unhappy with the response to her complaint and made an application to this service.

Adjudicator's Opinion

19. Mrs Y's complaint was considered by one of our Adjudicators who concluded that further action was required by MyCSP. The Adjudicator's findings are summarised briefly below:-

- Both MyCSP and the Cabinet Office had agreed that MyCSP were responsible for delays in processing Mrs Y's transfer. MyCSP refused the transfer on the basis that Mrs Y's chosen scheme was not on the ROPS list, while MyCSP also confirmed that the transfer could not proceed unless it was to another defined benefit arrangement. Therefore, there was no dispute that a problem had occurred and that Mrs Y had been disadvantaged as a result.
- The Adjudicator agreed that the relevant legislation did not allow Mrs Y to be put in the position she ought to have been in if the error had not occurred. She also noted that under the relevant PCS rules³, neither MyCSP nor the Cabinet Office can permit a payment to be made to a member that would be considered unauthorised by HMRC.
- The Ombudsman cannot direct MyCSP and the Cabinet Office to act outside of the relevant legislation and scheme rules. The Adjudicator had great empathy for the situation Mrs Y was in as she was no longer able to access her funds tax free under Australian tax law. However, it was noted that she will still receive her benefits from the PCS, so her loss can be argued as a loss of expectation.
- The Adjudicator felt that the amount of £300 offered by MyCSP was insufficient and that it was reasonable that Mrs Y had the expectation that her transfer request would be dealt with quickly and professionally. Her expectations that the transfer was proceeding were raised by MyCSP over a period of months and that this should be recognised with a payment of £2,000.

20. Neither Mrs Y nor the Cabinet Office (on behalf of MyCSP) agreed with the Adjudicator's Opinion. Mrs Y has submitted, in summary:

- The recommendation of £2,000 is a reasonable amount to recognise the distress and inconvenience she has suffered. However, she does not feel that this covers the injustice and the real financial loss she has suffered because she is unable to transfer to her chosen Australian pension scheme.

³ Civil Service Pension Scheme Rules, Section III, K.11 "nothing in these rules requires or authorises the making of any payment, which, if made, would be an unauthorised payment for the purposes of Part 4 of the Finance Act 2004 (see section 160(5) of that Act)."

- She has spent four years “of my time and energy and fight for injustice” and that she believes that “the Ombudsman will request that they give me what is fair not a [sic] insult”.
 - She says her loss is not one of expectation, but one where she now cannot semi retire at age 60 and access her tax free lump sum “enabling me to focus on me and have the quality of life I have worked for”. She also notes that she will be taxed on her pension in Australia from age 60.
 - If she cannot be put back into the position she ought to be in, then MyCSP should pay her a larger compensation amount (for example, £20,000).
21. The Cabinet Office disagreed with the amount of £2,000 on the basis that this is much higher than awards the Ombudsman has made previously, especially in relation to what it considered to be a similar case where the applicant was awarded £500. Instead, it felt that an award of £1,000 would be more reasonable.
22. As the parties did not accept the Adjudicator’s Opinion, the complaint was passed to me to consider. The further comments do not change the outcome. I agree with the Adjudicator’s Opinion and I will therefore only respond to the key points made by the parties for completeness.

Ombudsman’s decision

23. My role is to consider complaints and establish whether maladministration has occurred which has caused the member an injustice. In doing so, I can then put the person back into the position they ought to have been in, had the maladministration not occurred, but within the limits of the law. I can also make awards for non-financial injustice, should I feel that this is warranted. There is no doubt between the parties that there has been maladministration which has caused Mrs Y an injustice. The question is what I can do to put the matter right.
24. Unfortunately for Mrs Y, I must agree with the Cabinet Office that the prevailing legislation no longer permits a transfer to her chosen overseas pension provider. As previously explained, legislation now prevents transfers to non-defined benefit schemes and to schemes not on HMRC’s ROPS list. In order for a transfer to have proceeded, all of the transfer documentation needed to have been received by 5 April 2015 and HESTA needs to be on the ROPS list at the date of transfer. While the first requirement appears to be made out, the second is not. I conclude that but for the delays which occurred in the early stages of the transfer request, there would probably have been time for MyCSP to have completed the process of due diligence on HESTA and complied with the transfer instruction while HESTA was still a QROPS, but because HESTA is not on the ROPS list that is no longer an option.

25. I do not have the authority to ignore the Pension Schemes Act 1993 or the Finance Act 2004. Nor do I have the authority to override the scheme rules and allow an unauthorised payment to be made. While I agree that Mrs Y has suffered an injustice, there is little that I can do to put the matter right.
26. In coming to this conclusion I have considered s.241(2) of the Finance Act 2004 which states that an unauthorised payment is exempt from being scheme chargeable if (c) it is being made to comply with the order of a court or a person or body with power to order the making of the payment. I conclude that this provision does little to assist in this case. While it could save the scheme from exposure to a tax charge, it would not make the payment authorised, with the result that it would still be caught by the prohibition in the scheme rules.
27. I conclude that the law prevents me from making the direction which Mrs Y requests.
28. The Adjudicator is correct that Mrs Y will receive her correct benefits from the PCSPS, just not in the way that she wants to. As Australian tax law is outside of my jurisdiction, I cannot comment on what the tax implications will be when she decides to take her benefits from the PCSPS. I can only agree that she will receive her correct benefits. She is therefore unable to demonstrate a direct financial loss. However I am satisfied that she has sustained a serious loss of expectation as to how she was to use that money in her retirement as a consequence of the maladministration which has occurred
29. As a consequence of record keeping failure, failure to recognise her initial instruction to deal with her IFA, and delay, Mrs Y has suffered a wrong which cannot now be righted. Looking at the large quantity of correspondence between MyCSP and Mrs Y, I can see how frustrated she was by the level of service she had received from MyCSP. I can also see that it took MyCSP between April and November 2015 (a period of eight months) to confirm that the transfer could not progress during which time it continued to inform Mrs Y that the transfer was progressing and would be made, which elevated her expectation that she would receive the transfer to her chosen scheme.
30. As to the Cabinet Office's response that I should consider the award made in a previous determination, each case is considered on its own merits. In this case, Mrs Y is only a few years away from her 60th birthday which would have allowed her to access tax free benefits from her Australian pension scheme (those, I understand, would be above the 25% tax free cash allowed by HMRC). Her expectation was to use the amount transferred to help pay off her remaining mortgage as a lump sum and to allow her to cease working by age 60. Mrs Y is claiming that she will now have to work an additional seven years to achieve this. In the circumstances I consider that the distress and inconvenience which has been caused was unusually great and make an award which attempts to recognise that fact.
31. Therefore, I uphold Mrs Y's complaint.

PO-16581

Directions

32. Within 21 days of the date of this Determination that MyCSP pay Mrs Y £2,000.

Karen Johnston

Deputy Pensions Ombudsman
24 January 2018