

Ombudsman's Determination

Applicant	Mr L
Scheme	Principal Civil Service Pension (PCSP)
Respondent	Competition and Markets Authority (CMA)

Outcome

1. Mr L's complaint against CMA is partly upheld, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld) CMA shall pay Mr L £500 for the significant distress and inconvenience caused.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr L's complaint concerns CMA's delays in dealing with his application for an ill health pension. As a result, Mr L has incurred a tax charge for £1,881. He would like CMA to fully accept that it has mishandled his application and should be held liable for the financial loss he has suffered.

Background information, including submissions from the parties

4. Mr L worked for the Civil Service until he left on 31 December 2005 by way of signing a Compromise Agreement.
5. It was not until April 2017, that Mr L contacted MyCSP, the PCSP administrator, via email to query applying for an ill health pension. MyCSP advised Mr L to get in touch with his former employer, CMA, as it is the one who should process his request.
6. Mr L subsequently contacted CMA and in May 2017, CMA emailed Mr L to update him on the progress and that it had contacted MyCSP for advice and was awaiting a response to his query.

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7. On 28 July 2017, CMA emailed Mr L informing him that he would not be able to claim a retrospective ill health retirement. It said:

“As you accepted a settlement payment upon leaving, under a Compromise Agreement (dated 21 December 2005) under the rules of ill health retirement you have no right to claim ill health retirement as you have already received compensation and therefore a case for Retrospective Ill Health Retirement cannot be considered.”
8. In response to CMA’s email, Mr L reiterated that he was not seeking retrospective ill health pension and expressed his dissatisfaction at CMA’s lack of knowledge. There was further email exchange between Mr L and CMA with regard to terms of his Compromise Agreement and whether he can claim an ill health pension.
9. On 31 July 2017, MyCSP advised CMA that this was not retrospective ill health retirement request, but that Mr L could apply for an Early Payment of a Preserved Pension (**EPPA**) on medical grounds as he was a member of the Classic section of the PCSP. Following which, CMA sent Mr L an application form which he submitted the same day.
10. On 22 September 2017, Mr L’s full medical evidence was sent to the PCSP’s medical advisers for assessment.
11. On 25 September 2017, Mr L contacted CMA for an update. CMA advised Mr L that it had passed his case to Health Management and that the process may take longer than usual, up to 6 months because of the amount of time that had passed since Mr L left his employment.
12. On 21 February 2018, the medical adviser issued a certificate agreeing that Mr L met the criteria for EPPA.
13. Mr L’s pension was not processed until 12 April 2018 when he received a backdated pension and lump sum. This was due to an unclear delay on the CMA’s part.
14. On 16 April 2018, MyCSP sent Mr L a statement showing a gross pension payment of £7,128.62 and income tax charge of £1,881.00 that was deducted from his pension.
15. On 17 April 2018, Mr L raised a complaint with MyCSP about the delay with his application. MyCSP emailed Mr L back on 21 May 2018 saying that:

“The final decision to award [EPPA] is an employer’s, [EPPA] cannot be awarded unless the SMA [scheme medical adviser] has provided an employer with a Medical Retirement Certificate and importantly, the employer has forwarded this to MyCSP. MyCSP cannot calculate and make payment of a member’s ill health retirement benefits until they have received the medical certificate from the member’s employer. Whilst I appreciate the delays you experienced at the beginning of the [EPPA] process with your [sic], as advised above we were not in a position to process your [EPPA] award prior to 12

March 2018. I therefore suggest you raise this grievance with your employer directly.”

16. On 19 April 2018 Mr L raised a formal complaint with CMA by invoking PCSP’s two-stage internal dispute resolution procedure (**IDRP**), with regard to income tax charge and delays in dealing with his application. He also contended that had it not been for the delays, he would not have incurred a tax charge which falls within 2018/2019 financial year. In his comments he also said:

“This was seen by HMRC as a monthly payment and has therefore drawn a payment from me of £1881. This amount will also count towards my annual allowance which, in effect, will mean that each of the twelve monthly payments of pension until 4 April 2019 will also attract income tax payments to HMRC of 20 per cent...The culmination of these matters means that I will face a heavy tax burden for a full year that is unnecessary and unwarranted. Had the supplementary payment been made at any time before 4 April 2018 then very light or zero income tax would have been applied.”

17. On 1 June 2018, CMA sent Mr L a response under stage one of the IDRP apologising for the delays and that “the case has taken an exceptionally long time.” It concluded that:

“I believe that the case has taken a long time to process because of a number of factors:

- The HR department’s initial misunderstanding at the start of the process as to what Mr L was seeking. The case was incorrectly handled as an ill-health retirement case when Mr L was seeking EPPA. This misunderstanding was compounded by incorrect early advice from MyCSP and lack of expert pensions knowledge within the HR team;
- Difficulties in finding the information required by the medical assessors due to insufficient/poorly archived records being transferred from OFT to CMA in 2014; and
- Delays in HML [Health Management] processing the medical assessment despite regular correspondence and chasing by the CMA...

Therefore, I propose as a remedy that the CMA should acknowledge that this case has taken a long time, even if some of the contributory factors were outside of our control, and apologise to Mr L for the delays...Lessons should be learned... a new Senior HR Adviser is being appointed to the team who will take a lead on such complex pensions cases...I do not believe that it is the CMA’s responsibility to find out about, or take into account, Mr L’s tax position when processing his EPPA claim...There is no evidence that, had the pension been processed earlier, Mr L would have been better off financially. No remedy is proposed.”

18. Mr L further appealed and on 9 July 2018, CMA sent him a response under stage two of the IDRPs that maintained its previous stance and added that:

“...it is not reasonable for the CMA to bear responsibility for processing pension applications in such a way to minimise the applicant’s income tax liability. No such responsibility is created by the Pensions Scheme Act nor set out in the Guidance on the Civil Service Pensions website...I have determined that a payment of compensation will not be made and I endorse the Stage 1 decision...”

19. In July 2018, Mr L brought his complaint to this Office.

Adjudicator’s Opinion

20. Mr L’s complaint was considered by one of our Adjudicators who concluded that further action was required by CMA. The Adjudicator’s findings are summarised below: -

- CMA has admitted that Mr L’s case has taken a long time to process because of a number of factors, so there is no dispute that the delay has occurred. In Adjudicator’s view there were two periods of delays on the part of CMA. First, the delay between April and July 2017 with regard to Mr L’s enquiries to the HR team. This could have been avoided. The Adjudicator would expect the HR team to have had better knowledge and understanding of the ill health pension process as it was the first point of contact for Mr L in relation to his application.
- The second delay was, from the time that the medical adviser’s certificate was issued, 21 February 2018 until the date of when Mr L’s pension payment was processed, 13 April 2018. It is unclear why it took CMA nearly two months to send the required information to MyCSP in order to process his pension payment. It was again CMA, who was responsible for the delay in sending this information, as confirmed in the email from MyCSP, dated 21 May 2018.
- The Adjudicator was of the view that if it weren’t for these delays, Mr L’s pension, on the balance of probabilities, would have been processed before 5 April 2018 (beginning of the 2018 financial year) and consequently his tax charge of £1,881.00 could have also been avoided. Nevertheless, the Adjudicator was unable to hold CMA responsible for reimbursing the tax charge to Mr L as the tax matter is solely between himself and HMRC. The Adjudicator did believe though, that Mr L has suffered significant distress and inconvenience caused by CMA’s delays. Therefore, in the Adjudicator’s view, he deserved a £500 award, in recognition of the significant distress and inconvenience he has suffered.
- The Adjudicator also recommended that CMA issue Mr L with a schedule of the pension payments that Mr L was due from 31 July 2017 setting out what his payments would have been, had his pension been put into payment from its effective date. This would allow Mr L to approach HMRC to further discuss his tax

charge and potentially put him in the position he would have been in had he received his monthly payments as they fell due, however this is a matter for Mr L to take up with HMRC directly.

21. Whilst CMA accepted the Adjudicator's Opinion, Mr L did not accept it and the complaint was passed to me to consider. Mr L provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr L for completeness.

22. In his email dated 10 December 2018, Mr L said:

"I should just like to record the fact that though I welcome your findings in my case against the CMA, the only issue I rejected was the level of compensation suggested by you, since it comes nowhere near the actual losses suffered..."

Ombudsman's decision

23. CMA has accepted that Mr L's case has taken exceptionally long time and apologised for the delay. It has agreed to pay Mr L £500 for the significant distress and inconvenience caused.

24. It is not for me nor the Scheme to make awards to minimise the member's income tax liability. There is no provision in the Pensions Scheme Act to make such awards. The tax charge issue is purely a matter between Mr L and HMRC to resolve. I find that it is reasonable for CMA to provide Mr L with the necessary information for him to approach HMRC directly and request that his taxation be reviewed for the relevant period.

25. The Adjudicator felt that an award of £500 was necessary in respect of the distress and inconvenience this matter will have caused Mr L. However, Mr L has suggested that such an amount is not sufficient given the nature of the maladministration established.

26. I agree with the CMA that Mr L had to wait too long for this matter to be resolved. In particular, he suffered two avoidable periods of delay, from April to July 2017, and from February to April 2018 and I am satisfied these were caused by administrative errors on the part of the CMA. In addition, Mr L has suffered distress and inconvenience as a result of this matter; and, he will suffer further inconvenience because he will have to liaise with HMRC to resolve this matter. In the circumstances, I find that an award of £500 is insufficient. I find that Mr L has suffered a "serious" level of distress and inconvenience in this case. Accordingly, I find that the CMA should increase its award to £1,000.

27. Therefore, I partly uphold Mr L's complaint.

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Directions

28. Within 21 days of the date of this Determination, CMA shall pay Mr L £1000 for the maladministration identified.
29. Within 21 days of the date of this Determination, CMA shall request MyCSP to issue Mr L a schedule of the pension payments that Mr L was due from 31 July 2017 to show what the payments would have been had the pension been paid from its effective date. This will allow Mr L to approach HMRC to further discuss his tax charge.

Anthony Arter

Pensions Ombudsman
16 January 2019