

Ombudsman's Determination

Applicant	Mr W
Scheme	Principal Civil Service Pension Scheme (the Scheme)
Respondents	Department for Work and Pensions (DWP) Cabinet Office MyCSP

Outcome

1. I do not uphold Mr W's complaint and no further action is required by DWP, Cabinet Office, or MyCSP.

Complaint summary

2. Mr W's complaint is that he experienced delays and problems in getting the payment of his retrospective ill health retirement (**RIHR**) pension finalised.

Background information, including submissions from the parties

3. Mr W was employed by DWP and a member of the premium section of the Scheme. The Scheme Manager is Cabinet Office. The Scheme administrator is MyCSP.
4. In May 2014, Mr W was dismissed by DWP on inefficiency grounds. He subsequently received a payment of £13,733.89 under the Civil Service Compensation Scheme (**CSCS**).
5. In December 2015, Mr W applied for RIHR¹, which was authorised by Cabinet Office, on 12 January 2016.
6. Mr W was required to complete a new application as the application he had been originally asked to complete was incorrect for premium members of the Scheme. Mr W submitted the new application in early February 2016.

¹ As DWP failed to consider Mr W for ill health retirement prior to dismissing him on inefficiency grounds.

7. In October 2016, Mr W received a copy of the SMA's report declining RIHR.
8. On 17 January 2017, Mr W submitted a Stage One Internal Dispute Resolution Procedure (**IDRP**) application and asked why he had not received a response from MyCSP regarding his application for RIHR.
9. In March 2017, the DWP Director of HR Services wrote to Mr W, replying to a February 2017 email from Mr W to the Permanent Secretary. The Director of HR Services said:

“As your case is still within the legal process, it is not appropriate for me to comment in any detail about matters relating to your Employment Tribunal application^[2].

I was however concerned to read your account of delays in your application for retrospective Ill Health Retirement, and that you had not been formally notified of the outcome, nor of your right of appeal.

I asked that your case be investigated with MyCSP, Health Assured and Shared Services Connect Ltd. Firstly I would like to confirm MyCSP do not become involved until retrospective ill health retirement has been granted, they only become involved once Health Assured have approved the application and supply MyCSP with an ill health certificate.

Health Assured have reviewed all your concerns raised and the actions taken by Health Assured. Health Assured made several attempts to obtain medical information relevant to their decision and it was waiting on this information that delayed the decision. Further delays were caused when Health Assured informed DWP of the decision and this information was not used timeously.

I then made further enquiries regarding your statement that you had not received formal notification of the outcome of your application for retrospective Ill Health Retirement, nor your right of appeal.

I am sorry, this information was not forwarded to you by your former manager. I asked that this be rectified as a matter of urgency, and have now received confirmation that the certificate refusing Ill Health Retirement, along with guidance on how you can appeal, was sent to you on 17 February. I hope you have by now, received this.”

10. In September 2017, with the assistance of The Pension Advisory Service (**TPAS**), Mr W submitted his appeal to DWP, which DWP referred to MyCSP rather than the SMA. It was not until February 2018 that Mr W's appeal was submitted to the SMA. There followed a further delay compounded by the SMA informing Mr W that his appeal was time-barred and Cabinet Office notifying the SMA that Mr W's appeal could be considered under the IDRP.

² Mr W's claim for unfair dismissal by DWP.

11. On 12 July 2018, the SMA certified that Mr W qualified for Upper Tier ill health retirement due to chronic back pain.
12. Subsequently, DWP neither notified Mr W that it had authorised his RIHR nor informed MyCSP, so that his RIHR could be progressed.
13. In early August 2018, Mr W submitted a new IDRPs application. The basis of Mr W's complaint concerned the service he had received and the delays in dealing with his RIHR application and subsequent appeals. Mr W also referred to the conduct of DWP Managers and potential conflicts of interest and said that he had complained to the Permanent Secretary of DWP regarding these issues.
14. Mr W sent further documentation in respect of his appeal to MyCSP on 24 and 31 August 2018.
15. In September 2018:-
 - MyCSP acknowledged receipt of Mr W's IDRPs application and said the issues he had raised directly with DWP could not be investigated under the IDRPs as they were employment matters.
 - MyCSP received from:
 - Mr W a copy of the SMA's certification;
 - DWP a 'Request for Services' form; and
 - Cabinet Office a copy of its January 2016 authorisation of Mr W's application for RIHR.
 - DWP's HR Director wrote to Mr W. The HR Director apologised for the delay in administering Mr W's most recent application for RIHR and said Shared Services Connected Ltd (**SSCL**) had received the SMA's certification and was currently liaising with MyCSP and DWP to progress his case.
 - MyCSP issued RIHR quotes to Mr W.
16. In October 2018:-
 - Mr W returned completed retirement documents.
 - MyCSP put into payment Mr W's RIHR benefits and paid the arrears as a lump sum.
 - Mr W contacted MyCSP regarding "Serious Ill Health Tax Allowance" and asked why it had not been applied to his award. MyCSP explained that the information Mr W had provided concerned Annual Allowance³ and Annual Allowance Tax. It said tax relief on pension contributions was up to £40,000. This also included

³ The annual allowance for the 2014/15 tax year was £40,000. This is the maximum amount of pension savings an individual can make in a tax year without incurring an annual allowance charge.

receipt of ill health retirement benefits as an “enhanced pension”. As his benefits in payment were below £40,000, this was not communicated to him. If HMRC ever advised him that he had breached the £40,000 allowance, if he met the "severe ill health" guidelines the IHR enhancement, he was in receipt of, could be deducted from the breach.

- Mr W contacted MyCSP that his tax code had changed following the payment of his RHIR benefits and arrears. Mr W said MyCSP should have communicated with HMRC before his benefits were paid to ensure the correct tax was paid for the relevant years. Mr W said the new tax code had been advised to another pension administrator which had resulted in tax being applied to a pension that previously had not been taxed.
 - MyCSP advised Mr W that it was not possible for it to discuss any potential tax position that he may have with HMRC. Pension administrators were required to follow HMRC’s guidelines with regards to the payment of tax on benefits and arrears payments. HMRC required any arrears payment to be taxed as income by MyCSP and HMRC would work with him to make any amendments or adjustments to the tax he paid. If HMRC required MyCSP to confirm any details or provide a breakdown of payments, it would provide this information.
 - MyCSP informed Mr W that it was drafting its Stage One decision.
17. In November 2018, MyCSP notified Mr W that it had referred his case to Cabinet Office for guidance on the level of compensation.
18. Mr W asked for regular updates, which MyCSP provided between December 2018 and April 2019. MyCSP informed Mr W that his case was still with Cabinet Office and could not be progressed further.
19. On 25 April 2019, MyCSP issued its Stage One decision. In summary, MyCSP said:-
- Following Mr W’s IDR application, Mr W had asked for further issues to be investigated which included how the RHIR arrears were paid, the tax notification he had received from HMRC and the request from DWP to offset the CSCS payment against the RIHR award.
 - It apologised for the time taken to issue its decision and acknowledged that the delays had been significant.
 - When MyCSP received Mr W’s IDR application, it had not received any notification from DWP regarding his RIHR application. When an RIHR was approved by the SMA, DWP was required to confirm to MyCSP that the application had been successful and the terms on which it would be paid. MyCSP required from DWP, a ‘Request for Services’ form, a copy of the SMA’s certification and a copy of Cabinet Office’s authorisation. MyCSP respectively received each document on 8, 11 and 20 September 2018.

- Where a member had previously received a payment under the CSCS, if RIHR was later awarded, the CSCS payment would need to be repaid. Normally, the employer would discuss this with the member at the time the RIHR was authorised by Cabinet Office and an authority would be signed to enable MyCSP to offset the CSCS payment against the RIHR benefits.
- As no authority was obtained by DWP, MyCSP referred to Cabinet Office who confirmed that if Mr W was unwilling to sign the authority, his RIHR benefits should not be delayed and DWP would need to take up the repayment of the CSCS award with him directly. MyCSP advised Mr W of this and the IHR quotes were issued to him. Following receipt of Mr W's completed retirement documents, Mr W was paid his RHIR benefits, including arrears, in early October 2018.
- It upheld Mr W's complaint in respect of:-
 - DWP's failure to consider Mr W for IHR prior to his dismissal.
 - DWP's failure to notify Mr W of its initial decision (following receipt of the SMA's first report that he did not qualify for RIHR), provide Mr W with his appeal rights and send him a copy of the 'Ill Health Retirement Refusal Certificate'.
 - Errors by DWP and the SMA which delayed the consideration of Mr W's appeal of the SMA's initial decision.
 - DWP's failure to notify Mr W of its decision to award him Upper Tier RIHR following the SMA's July 2018 recommendation.
- DWP was instructed to:
 - confirm in writing to Mr W that his RIHR application had been successful; and
 - pay Mr W an ex-gratia payment of £2,000 in recognition of the severe distress and inconvenience he had been caused during this process.

20. In June 2019, after receiving no communication from DWP, Mr W appealed the Stage One decision. Mr W said:-

- DWP had not written to him to confirm its authorisation of his RIHR, and he had not received the ex-gratia payment.
- He considered this was deliberate by DWP to cause him further distress and inconvenience.
- He still did not believe his concerns had been considered fairly.
- He considered £10,000 to be fair compensation and he wanted an unreserved apology from DWP.

21. Between receipt of Mr W's Stage Two appeal and 17 July 2019, MyCSP notified Mr W that it was chasing DWP and preparing his Stage Two application to be sent to Cabinet Office.
22. Also in July 2019:-
- In reply to a letter from Mr W's MP about the delays, the Deputy Director for Civil Service Pensions confirmed that there had been delays in responding to Mr W's Stage One appeal and that Cabinet Office had not yet received his Stage Two appeal.
 - Mr W sent additional information in respect of his Stage Two appeal.
 - MyCSP wrote to Mr W. MyCSP apologised for the delay in sending his Stage Two appeal to Cabinet Office. MyCSP said it had not sent its Stage One decision to DWP, which was why DWP had not complied with the directions, but it had now contacted DWP. MyCSP offered Mr W £250 compensation. The same day, Cabinet Office received Mr W's Stage Two appeal.
 - Mr W clarified the concerns he wanted answered. In summary, these were:-
 - Why had it taken MyCSP eight months to deal with his Stage One appeal and why had it been with Cabinet Office for six of those months?
 - Why did MyCSP not send its Stage One decision to DWP?
 - Why had it taken MyCSP so long to send his Stage Two appeal to Cabinet Office.
23. On 25 November 2019, Cabinet Office issued its Stage Two decision. In summary, Cabinet Office said:-
- At Stage One, MyCSP asked Cabinet Office for guidance on the maximum compensation it could direct an employer to pay under the IDRPs. Cabinet Office gave MyCSP its guidance on 29 January 2019.
 - MyCSP had not been able to explain why it then took until 25 April 2019 to Issue its Stage One decision. The member of staff who dealt with the appeal had since left and there was no way of checking.
 - Mr W sent his Stage Two appeal to the member of staff who dealt with his Stage One appeal, who did not log it until 20 June 2019. While collating the paperwork for Mr W's appeal for sending to Cabinet Office, MyCSP realised that the Stage One instructions had not been sent to DWP and that the member of staff had not followed the correct process in collating the material facts. Due to the volume of paperwork involved in the appeal, this delayed the submission to Cabinet Office while MyCSP carried out this work.

- Although MyCSP's explanations did not fully explain all the delays, nothing would be gained by probing further into the circumstances. The member of staff who dealt with Mr W's case had left, so MyCSP could not provide further details.
- It was clear that there had been delays throughout the IDR process and that Mr W had suffered significant distress and inconvenience. MyCSP's offer of £250 for these delays was inadequate and should be increased to £500.
- It was satisfied that MyCSP's Stage One compensation award of £2,000, payable by DWP, was in line with The Pensions Ombudsman's (TPO's) published guidance on redress for non-financial loss.

24. Following the complaint being referred to TPO, Mr W, DWP and Cabinet Office made further submissions that have been summarised below.

Mr W's position

25. Mr W submits:-

- Cabinet Office's consideration of his Stage Two appeal was prejudiced because it was extensively involved in his case while MyCSP was considering his Stage One appeal.
- The Stage One and Stage Two outcomes glossed over and indeed ignored many of the serious and important acts of maladministration that happened to him by DWP over six years.
- He has not received written confirmation from DWP that his RIHR application was successful as directed by MyCSP in its Stage One decision. This is very important to him. He has never received an apology from DWP for the treatment to which he was subjected.
- He understands that interest should have been paid on the backdated payment of his RIHR⁴.
- He has incurred unnecessary and avoidable charges from HMRC due to the lump sum back payment of his RIHR award. Had MyCSP fully informed HMRC what the lump sum payments represented and supplied appropriate information this would not have happened.
- MyCSP and Cabinet Office took too long to consider his appeals, which caused him further severe distress and inconvenience.

26. Commenting on DWP's position (see below paragraph 30), Mr W submits:-

- The HR Director's letter of 20 September 2018 did not confirm that his RIHR application had been successful.

⁴ To support his position Mr W cites the Ombudsman's Determination Mr S v MyCSP (PO-22618).

- MyCSP never asked for his authority to recover the compensation awarded to him (under the CSCS) from the arrears of the RIHR which became payable to him.

DWP's position

27. DWP submits:-

- It does not agree the consideration of Mr W's IDRPs applications was prejudiced. Stage One and Stage Two were considered independently as per the appeal process, Stage One by MyCSP and Stage Two by Cabinet Office to ensure impartiality.
- Whilst MyCSP's Stage One decision of 25 April 2019 instructed DWP to pay Mr W £2,000 compensation and send him written confirmation that his RIHR appeal had been successful, the Employer Feedback instruction DWP received on 25 July 2019 only directed it to pay Mr W the £2,000 compensation. However, Mr W was verbally notified of the outcome of his RIHR application and received several written letters of explanation and apologies drafted on behalf of the DWP Permanent Secretary in response to his complaints. The HR Director's letter of 20 September 2018 to Mr W specifically apologised for the delayed administration of Mr W's RIHR application and made reference to the successful application being processed by SSCL to progress to payment via MyCSP.
- It does not agree that inadequate compensation was paid to Mr W. The Stage One decision instructed DWP to pay Mr W £2,000 compensation. At Stage Two, Cabinet Office directed MyCSP to pay Mr W a further £500 compensation to ensure he had been compensated adequately in line with TPO's guidance on redress for non-financial loss.
- In response to Mr W's claims for further compensation, recompense for tax liabilities incurred and loss of interest. Under the terms of the Scheme, compensation that an employee receives if dismissed for inefficiency is not appropriate if ill health retirement is subsequently awarded. So, when Mr W's RIHR was approved, MyCSP asked Mr W for authority to recover the compensation awarded from the arrears of RIHR due. As this was not agreed, MyCSP insisted that it would have to pay Mr W the full arrears of RIHR and the £13,733.89 compensation initially paid to Mr W for his dismissal on the grounds of unsatisfactory attendance would have to be recovered by DWP as debt. DWP received legal advice from the Government Legal Department regarding the recovery, however, as a gesture of goodwill, DWP has not pursued the recovery of this debt.

Cabinet Office's and MyCSP's position

28. Cabinet Office submits for itself and on behalf of MyCSP:-

- The Stage One decision of 25 April 2019 and the Stage Two decision of 25 November 2019 cover all the points it wishes to make.
- However, it wishes to emphasise that a portion of Mr W's dispute is in relation to employment matters, which MyCSP made clear in its Stage One decision that it could not investigate. Mr W was advised to raise these grievances with DWP directly.

Adjudicator's Opinion

29. Mr W's complaint was considered by one of our Adjudicators who concluded that no further action was required by DWP, Cabinet Office or MyCSP. The Adjudicator's findings are set out below in paragraphs 30 to 39.
30. The Adjudicator found no evidence to support Mr W's claim that Cabinet Office's Stage Two decision was prejudiced by its involvement at Stage One, which appeared to have been limited to advising MyCSP to put into payment Mr W's RIHR benefits and that it was DWP's responsibility to take up with Mr W the repayment of his CSCS award.
31. The Adjudicator was satisfied that the Stage One and Two decisions considered the salient points of Mr W's complaint. At Stage One, MyCSP explained to Mr W that it could not consider employment matters that he had raised with DWP as these fell outside of the IDRP.
32. Mr W said he had not received written confirmation from DWP that his RIHR application was successful. Nonetheless, the HR Director's letter of 20 September 2018 to Mr W specifically apologised for the delayed administration of Mr W's RIHR application and said SSCL was liaising with MyCSP and DWP to progress his case. Later the same month, MyCSP issued RIHR quotes to Mr W and his RIHR was put into payment the following month.
33. The Adjudicator considered the distress and inconvenience awards, respectively by MyCSP against DWP (£2,000) and by Cabinet Office against MyCSP (£500) were reasonable and in-line with the Ombudsman's guidance on redress for non-financial loss⁵. So, neither was likely to be increased by the Ombudsman if he was required to formally determine Mr W's complaint.
34. Mr W had referred to Determination PO-22618. In that case, the then Deputy Pensions Ombudsman accepted that there was no provision in the Civil Service Injury Benefit Scheme rules for the payment of interest on late, or backdated payments.

⁵ https://www.pensions-ombudsman.org.uk/sites/default/files/publication/files/Updated-Non-financial-injustice-September-2018-2_0.pdf

However, under section 151(2) of the 1993 Act, the DPO noted that she had a general power when determining a complaint, to direct any person responsible for the management of the scheme to which the complaint relates to take, or refrain from taking, such steps as she may specify. The DPO was satisfied that to achieve a complete remedy for Mrs S, she should receive interest at the rate prescribed by s.151A on her backdated benefits.

35. Similarly, there was no provision in the Scheme rules for the payment of interest on late, or backdated payments. While the Ombudsman may direct the payment of interest, the Adjudicator's view was that the Ombudsman would not do so if he was required to Determine Mr W's complaint, as DWP had waived the reclaim of the £13,733.89 paid to Mr W under the CSCS.
36. Finally, on the issue of tax. Mr W said MyCSP should have communicated with HMRC before his benefits were paid to ensure the correct tax was paid for the relevant years. He also said the new tax code advised to another pension administrator resulted in tax being applied to a pension that previously had not been taxed.
37. The Adjudicator explained that once Mr W was awarded RIHR, MyCSP was required to put into payment his pension, which included the arrears. It was unlikely that HMRC would have acted on information given to it by MyCSP in advance of the payment of Mr W's RIHR benefits. Pension benefits were counted as income for tax purposes. HMRC determined Mr W's liability to pay tax based on all his income as a whole amount, not on individual incomes. As MyCSP would have been unaware of any other income he was receiving, it would have applied a general tax code to his pension until such time as HMRC confirmed to it Mr W's individual tax code. It was then for Mr W to liaise with HMRC to ensure that he had been taxed the correct amount.
38. In October 2018, MyCSP informed Mr W that HMRC required any arrears payment to be taxed as income by MyCSP and HMRC would work with him to make any amendments or adjustments to the tax he paid. MyCSP said if HMRC required it to confirm any details or provide a breakdown of payments, it would provide this information. The Adjudicator's view was that MyCSP actions in this matter were reasonable and did not amount to maladministration.
39. So, it was the Adjudicator's opinion that Mr W's complaint should not be upheld.
40. Mr W did not accept the Adjudicator's Opinion, albeit he conceded and agreed with the Adjudicator's findings as set out in paragraphs 36 to 38 above, and the complaint was passed to me to consider. Mr W has provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr W.

Ombudsman's decision

41. Mr W has commented that TPO is funded by the DWP. However, Mr W should be assured that TPO is a non-departmental public body. That is, it is not a government department and operates separately from the DWP. While TPO it is sponsored by the DWP, it is an independent organisation and the decisions it makes are impartial.
42. Turning now to Mr W's comments on the Adjudicator's Opinion.
43. Mr W says the 'Complaint Summary' in the Adjudicator's Opinion is fundamentally flawed and only partially correct as it does not accurately encompass or describe all the important events and the extensive maladministration that occurred.
44. I do not agree. The description in the 'Complaint Summary' is only intended to be a brief summary of Mr W's complaint. It is not intended to detail all of the issues Mr W has raised or the loss that he has claimed. That detail was contained in the Opinion's 'Background' and is now set out in paragraphs 3 to 28 above.
45. I have put to one side Mr W's comments about his dismissal, as employment issues fall outside of my jurisdiction.
46. Mr W says the Adjudicator failed to note in his Opinion that Mr W was not notified by DWP of his right to apply for ill health retirement prior to his dismissal.
47. I do not agree. The Adjudicator noted:
 - Cabinet Office's acceptance of Mr W's application for RIHR, which is "usually only allowed when an error has occurred in the original handling of a case" (see Appendix); and
 - MyCSP's decision and reasons for its £2,000 non-financial injustice (distress and inconvenience) award to Mr W against DWP, one of which being DWP's failure to consider Mr W for ill health retirement prior to his dismissal.
48. The other reasons given by MyCSP for its Stage One decision were:-
 - DWP's failure to notify Mr W of its initial decision (following receipt of the SMA's first report that he did not qualify for RIHR), provide Mr W with his appeal rights and send him a copy of the 'Ill Health Retirement Refusal Certificate'.
 - Errors by DWP and the SMA which delayed the consideration of Mr W's appeal of the SMA's initial decision.
 - DWP's failure to notify Mr W of its decision to award him Upper Tier RIHR following the SMA's July 2018 recommendation.
49. Mr W argues that the sum he was awarded by MyCSP should have been higher than £2,000. In all the circumstances, I find the amount paid was reasonable and that a higher sum is not merited.

50. Mr W says DWP did not explain to him that the CSCS award would need to be repaid if his RIHR application was successful. Nor did it issue the required appropriately worded documentation for his agreement to repay the sum. Nonetheless, DWP decided not to reclaim the compensation paid to Mr W, so Mr W has sustained no injustice. Also, as a consequence of its decision, I do not consider that a payment of interest is merited on the RIHR award.
51. For the same reason as the Adjudicator has given (see paragraph 30 above), I do not find that Cabinet Office's Stage Two decision was prejudiced by its involvement at Stage One of the IDRPs.
52. I find the non-financial injustice award of £500 for MyCSP's delayed Stage One decision, not sending the Stage One instructions to DWP, the delayed recording of Mr W's subsequent appeal and its submission to Cabinet Office, was reasonable and that a higher amount is not merited.
53. I do not uphold Mr W's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
12 August 2024

Appendix

Extract from Civil Service Pensions: ‘Annex 6J – Ill Health Retirement- Procedural Guidance for Employers’.

“5.8. Exceptional grounds for allowing retrospective application for Ill Health Retirement

...Considering Ill Health Retirement retrospectively is an exceptional measure, usually only allowed when an error has occurred in the original handling of a case. For example:

- the member left employment due to ill health without Ill Health Retirement first being considered by the employer, or;
- the member left due to ill health without realising they could have applied for Ill Health Retirement.

Employers must apply for authorisation from the Scheme Manager (Cabinet Office), before referring a retrospective Ill Health Retirement case to the SMA.”