Ombudsman's Determination

Applicant	Mr D
Scheme	Principal Civil Service Pension Scheme (**PCSPS**)
Respondents	MyCSP; and
	The Cabinet Office

Outcome

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

Complaint summary

2. Mr D has complained that a comparison carried out between his benefits in the PSCPS and the benefits he could have been entitled to had his funds remained in his personal pension used a flawed methodology.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points.

4. In 2003, Mr D transferred his pension funds from a personal pension with Scottish Equitable (**SE**) into the PCSPS. The service credit he received was less than he expected so he raised a complaint.

5. On 21 October 2004, the Cabinet Office Civil Service Pensions Division issued an Internal Dispute Resolution Procedure response (**the 2004 IDRP response**) to Mr D. The 2004 IDRP response set out that when he eventually retired the Cabinet Office would obtain a comparison between his potential SE benefits and his PCSPS benefits from the Government Actuary's Department (**GAD**). This would compare the PCSPS benefits arising from the transfer in, with the retirement income he would have received had the funds remained in the personal pension. This comparison would be used to determine whether any compensation was due. The relevant extracts from the 2004 IDRP response are in Appendix one.

6. In September 2019, Mr D retired and wrote to the Cabinet Office, the manager of the PSCPS and also to MyCSP, the administrator of the PCSPS, and requested that the 2004 IDRP response resolution be implemented.

7. On 5 June 2020, MyCSP sent an email to Mr D and said in summary:-

- The Cabinet Office had instructed GAD to conduct a comparison between his PSCPS benefits and the benefits he could have expected to have received if he had not taken the transfer in and instead retained his personal pension fund with SE.

- The investment return he could have received could not be determined as the fund closed some time ago and a return was not available, so a fair alternative methodology was used by GAD to assess the benefits due for the investment.

- It had concluded that the benefits the transfer in bought in the PCSPS were likely to be better than those that he would have received if he had left his personal pension fund with SE. So, no compensation was payable.

8. On 10 June 2020, Mr D sent an email to MyCSP and said that he would like to know the detail of the calculations and if these could be provided.

9. On 10 July 2020, MyCSP sent Mr D a copy of the GAD comparison report (**the GAD report**). The relevant extracts from the GAD report are provided in Appendix two.

10. On 15 November 2020, Mr D sent an email to MyCSP and raised a complaint. He said in summary:-

- He had examined the GAD report carefully but there was insufficient detail for him to determine if the calculations had been done correctly.

- Aegon were now responsible for SE personal pensions and there appeared to have been no effort to contact them. He had provided a letter of authority so this could be done and presumably Aegon would not have asked for a letter of authority had it not been in a position to respond to an information request.

- Due diligence required reasonable effort to obtain information from the previous scheme manager but there was no evidence that this has been done.

- The analysis started with the key assumption that the policies were with profits policies. They were not and the difference was likely to be material. He noted that alternative comparisons of investment returns against the FTSE 100 and FTSE All Share indices had been carried out, but no figures were given in the report.

- Mr D provided his rough comparison calculations which are set out in Appendix three. The calculations suggested that it was easily possible that he would have been better off leaving his pension with SE. The comparison was sufficiently close that reliance on generalised investment indices was not sufficient to answer the question at hand.

- At this stage he had been unable to satisfy himself that the terms of the 2004 IDRP response had been met and he wanted to see evidence that GAD had tried to obtain details of the policies and the performance of the underlying investments from Aegon and that the best information available had been used.

11. On 14 July 2021, Mr D asked for an update regarding what was happening with his complaint.

12. On 22 July 2021, MyCSP sent an email to Mr D and said that it had contacted the Cabinet Office, to request an update. The Cabinet Office confirmed that it had referred his comments to GAD and had chased for a response. Once it had a response from GAD it would provide a further update.

13. On 6 September 2021, Mr D sent an email to MyCSP and said it was now almost ten months since he wrote to challenge the method used by GAD and no response had been forthcoming. Could it make a final attempt to obtain a response from GAD via Cabinet Office.

14. On 22 September 2021, MyCSP sent an email to Mr D and said the Cabinet Office had confirmed that it had yet to receive a response from GAD. It had reissued the request again on 20 September 2021.

15. On 26 October 2021, Mr D sent an email to MyCSP and said that it seemed reasonable to assume that there would be no response from GAD and so he would take his complaint to The Pensions Ombudsman (**TPO**).

16. Following the complaint being referred to TPO the Cabinet Office and Mr D made the following submissions.

The Cabinet Office's submission

17. The Cabinet Office was also responding on behalf of MyCSP. Mr D contacted MyCSP to claim his preserved benefits in 2019. It then arranged for GAD to conduct the comparison that had been agreed in 2004.

18. During this work, GAD attempted to contact the provider of the personal pension fund Mr D transferred his benefits from. The personal pension was a SE product, which was subsequently acquired by Aegon. It should be noted that the fund closed in mid-2003. Aegon acknowledged GAD's contact but did not respond any further which meant that GAD had to make some assumptions during its analysis. At all stages listed below, GAD took the most favourable figure for Mr D.

19. Mr D told GAD that the fund was not a with-profits fund. So, GAD considered the FTSE100 and FTSE ALL Share indices. GAD noted that it would usually expect some transition to lower risk investments as the member approached retirement, however it did not allow for this. The FTSE All Share total gave the highest outcome. The

minimum notional fund value was £117,100 and the maximum was £127,800. GAD's comparison also took into account expenses the fund would have incurred (management fees). It used a range of 0.25%-0.75% per annum (**pa**). With these applied to the fund values, the minimum became £114,100 and the maximum £123,100.

20. In order to convert the notional fund value into a pension to compare to Mr D's PCSPS benefits, GAD had to apply an annuity. It obtained illustrative annuity quotes in February 2020 when it was carrying out the work and based its calculations on those. It estimated an open market annuity at 1 October 2019 assuming:-

- 37.5% dependant's pension which was the same as in the PCSPS and it assumed Mr D had a dependant at 1 October 2019.

- Retail Price Index link capped at 5% pa pension increases.

21. GAD also assumed that Mr D was in good health given that he took age retirement from active service and not ill health retirement. The annuity rate was 44.2.

22. Using these figures, this resulted in an annuity figure of £2,790 pa. The value of Mr D's benefits within the PCSPS was £3,228.77. So, as the benefits within the PCSPS were higher, no compensation was owed to Mr D. GAD had noted that were Mr D in ill health or if he did not have a dependant at 1 October 2019, this could change the result. However, it had no evidence that this was the case.

23. It was satisfied that GAD's comparison and the decision was correct and complied with the directions in the 2004 IDRP response.

Mr D's submission

24. It remained unclear whether or not GAD made sufficient efforts to obtain all the information it needed from Aegon to carry out the comparison set out in the 2004 IDRP response. What was known was that Aegon required a letter of authority, signed by him before it would release information about his personal pension.

25. The Cabinet Office said he told GAD that the fund was not a with-profits fund. He did not know how or when this could have occurred, as he had no direct correspondence with GAD. In any case the GAD Report stated among its assumptions that:-

- The SE Personal Pension policies were With-Profits policies; and

- The nearest approximate funds that the member's policies may have been invested in were the Traditional With-Profits (**TWP**) or Unitised With-Profits (**UWP**) fund. The report indicated that the comparisons with FTSE indices were used to cross-check the findings based on these assumptions.

26. The 2004 IDRP response stated that the comparison should take into account investment returns on the personal pension policy and annuity rates. It did not say what should happen if that information was not available. As such he thought that the Cabinet Office needed to be satisfied that every effort had been made to obtain information from Aegon about what would have happened to the policies had the transfer to the PCSPS not been made, before exploring alternatives.

Adjudicator's Opinion

27. Mr D's complaint was considered by one of our Adjudicators who concluded that no further action was required by MyCSP or the Cabinet Office. The Adjudicator's findings are summarised below in paragraphs 28 to 37.

28. Mr D's complaint was in relation to the resolution set out in the 2004 IDRP response. The resolution put forward was that when Mr D retired GAD would make a comparison of the PSCPS benefits that had arisen from the transfer in of his personal pension and the retirement income Mr D could have received had his fund remained in his personal pension. The comparison was to take account of the investment returns on the personal pension policy and current annuity rates to see if Mr D would have been better off retaining his funds in his personal pension.

29. Mr D correctly stated that a specific methodology for the comparison was not set out in the 2004 IDRP response but rather that investment returns on the personal pension policy would be taken account of in addition to current annuity rates. With hindsight it would have been more satisfactory if a specific methodology had been outlined, particularly as the fund in which Mr D had been invested with SE had closed in 2003. However, in the absence of specific directions the comparison calculation did need to rely on a number of assumptions.

30. The Adjudicator's role was not to audit the work completed by GAD, but it was instead to review whether it was reasonable for the Cabinet Office and MyCSP to rely on the GAD report. The GAD report set out its limitations and explained that there was insufficient information to determine, with certainty, what the value would have been of Mr D's personal pension fund as at 1 October 2019.

31. The fund that Mr D had invested in with SE closed in 2003 and Aegon did not provide any information to GAD. Mr D has referred to the letter of authority for Aegon, and he has said he would not have been required to provide this unless Aegon had relevant information. In the Adjudicator's view the fact that Mr D signed a form of authority does not mean that Aegon had any pertinent information that was relevant to Mr D's personal pension. The form of authority was a part of Aegon's process that had to be adhered to before any checks on its information could be made.

32. Mr D has raised the issue of whether or not the personal pension funds were invested in a with-profits fund. The GAD report does refer to nearest approximate funds that Mr D's personal policy may have been invested in which were the TWP or UWP. The

selection of TWP and UWP was based on section 4 of the Aegon annual report[1] which set out a brief history of the With-Profit funds that were in existence at certain times. Due to the passage of time, there was no specific documentation available regarding Mr D's personal pension. In the circumstances it was reasonable for MyCSP and the Cabinet Office to accept that GAD had to use the publicly available information from Aegon that indicated the possible relevant funds.

33. If Mr D had not been invested in a With-Profits fund, then the use of the FTSE 100 and FTSE All Share Indices would give an indication of the possible level of growth of Mr D's personal pension. In this case GAD has provided both the With-Profits estimate and also taken account of the FTSE 100 and FTSE All Share Indices. These comparisons were simplified as they did not allow for any transfer into lower risk investments nearer to a retirement date and the highest outcome that would benefit Mr D was chosen where possible.

34. Mr D has said that the comparison between his PCSPS benefits and possible personal pension benefits were so close that the reliance on generalised indices was not sufficient. The Adjudicator understood that Mr D would like clarity on this matter but in her view, in the circumstances, it was not possible to provide anything other than a calculation based on generalisations. In the Adjudicator's opinion, the selection of the FTSE indices, as part of the comparison calculation, was a reasonable approach and she would not have expected MyCSP or the Cabinet Office to have challenged GAD over this.

35. Once a figure had been established for the possible value of Mr D's personal pension fund then GAD selected an appropriate annuity to give a comparison with Mr D's PSCPS pension. The result was that there was no significant difference between the proposed annuity and Mr D's actual pension amount. The annuity selected by GAD was on a joint life basis and, as Mr D did not take ill health retirement, was based on him not having any specific health conditions. Mr D's own calculations also produced very similar figures but did not take into account that a spouse's pension was a benefit provided by PSCPS. Mr D has said that he could achieve a higher annuity quotation when he provided weight, smoking, and drinking information. However, in the Adjudicator's view Mr D's comparison was flawed as it was on a single life basis rather than a joint life basis which would provide a lower annuity rate.

36. The comparison showed that there was very little difference between Mr D's actual PCSPS pension and Mr D's potential personal pension, and this was calculated within a framework where the assumptions were set out by GAD. In the Adjudicator's view there was no maladministration by MyCSP and the Cabinet Office in accepting the GAD report. However, the Adjudicator noted that GAD did not provide any further clarification of the points raised by Mr D. MyCSP chased GAD and did not receive any response.

[1] https:www.aegon.co.uk/content/dam/ukpaw/documents/PPFM.pdf

37. The Cabinet Office has now been able to provide Mr D with more detail regarding the calculations. In the Adjudicator's opinion it would have been helpful for Mr D to have been given the actual figures that had been produced in order to make the comparison at an earlier date. This would have helped to reassure him that the comparison report was fairly carried out. However, in the Adjudicator's view the failure to do this was poor administration rather than maladministration.

38. Mr D did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mr D 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 D which are summarised below:-

- The opinion reaffirmed his concerns that little effort was made by GAD to obtain the information from Aegon needed to conduct the analysis required by the terms of the 2004 IDRP resolution. It was this lack of rigour that lay at the heart of his complaint.

- The Adjudicator stated in the Opinion, 'Aegon acknowledged GAD's contact but did not respond further **which meant that GAD had to make some assumptions during its analysis**' (Mr D's emphasis). He contended that GAD should have pressed Aegon for a response and exhausted this line of enquiry before looking for an alternative. At the very least, Aegon should have been obliged to respond to a Subject Access Request made on his behalf. To this day it was not known what relevant information Aegon held.

- The lack of information from Aegon meant that it was not possible to make the actuarial comparison required by the 2004 IDRP resolution because crucial information regarding the investment returns on the policy was missing. At this stage he would have expected GAD to have contacted Cabinet Office and MyCSP for further instructions. He did not know whether this happened, but he did know that GAD then embarked on a separate comparison which, while illustrative, was sensitive to assumptions and could only be claimed accurate within a wide margin of error. That margin had not been reported and the resulting estimates, while claimed to be optimistic, were presented as single figures rather than ranges.

- The IDRP report of 2004 proposed an actuarial comparison but did not say when it should be carried out. A letter from Cabinet Office to OPAS on 19 January 2005 advised that it would be conducted upon him leaving the PCSPS. It must have been obvious at the time that the fund in which his pension was invested could undergo a number of transformations in the years to follow, and that it would be necessary to track the history of the investments up to the point when he retired, but this has not happened.

- The absence of information about the actual performance of the investments meant that no sensible conclusion could be drawn as to whether or not he would have been better off retaining his personal pension.

- He still thought that the actuarial comparison had not been carried out as agreed in the 2004 IDRP response and that his pension benefits should be improved retrospectively.

Ombudsman's decision

39. Mr D has complained that a comparison of his actual benefits in PCSPS and his potential benefits had he remained invested in his personal pension with SE has used a flawed methodology. The benefit comparison resulted from a complaint resolution in the 2004 IDRP response. However, the resolution put forward did not provide any specific guidance as to how the comparison should be carried out.

40. I understand that Mr D has said that Aegon should have been pursued more vigorously by GAD to provide information about his personal pension benefits. However, there is no indication that Aegon held any meaningful information other than that which is publicly available, particularly due to the length of time since Mr D moved his benefits from SE. In addition, there is no instruction in the 2004 IDRP response that GAD should repeatedly chase a party that was not providing information, nor indeed of how the comparison should be conducted. This lack of specificity allows GAD considerable leeway in how it might approach such a comparison.

41. It was entirely right that GAD used actuarial assumptions to carry out the comparison and I would not have expected it to revert back to MyCSP or The Cabinet Office to ask what it should do next once it became clear that Aegon would not be forthcoming with additional information. GAD has produced a comparison report as requested and although I agree with Mr D that a precise comparison has not been made this would simply not be possible in the circumstances given the passage of time and the variability of the potential investments.

42. In the calculations provided, the most beneficial outcome for Mr D's personal pension was selected by GAD and this still did not produce the outcome of Mr D being better off had he stayed in his personal pension. I find that MyCSP and the Cabinet Office were entitled to rely on the GAD report, and I see no grounds to improve Mr D's pension benefits retrospectively.

43. I note that Mr D has said that it must have been obvious at the time of the 2004 IDRP response that that the fund in which his personal pension was invested in could undergo a number of transformations in the years until his retirement. He has said that in the circumstances MyCSP, or the Cabinet Office should have tracked these possible investment changes up until the point when he retired. This is not something that I would have expected MyCSP or the Cabinet Office to do. However, as Mr D

was aware that there were changes to the potential underlying investments that his personal pension had been invested in, he could have tracked the potential investments himself.

44. I do not uphold Mr D’s complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman

30 October 2024

Appendix one: The Cabinet Office Civil Service Pensions Division (CPSD) Internal Dispute Resolution letter dated 21 October 2004.

"Complaint

1. Mr D complains that he has suffered a financial loss due to delays in transferring his pension rights to the Principal Civil Service Pensions Scheme (**PCSPS**)."

….

"Conclusion

47. Where errors have occurred, the correct redress is to put the person back in the position they would have been in had they received the correct information. It is not to put the person in the position they would have held if the inaccurate information had been correct. The simplest way of putting Mr D back in the position he would have held is, on the face of things, to transfer his fund back to Scottish Equitable (**SE**). Paymaster[2] would need to increase the amount transferred so that it equalled the value that his fund would have had if the transfer had not taken place. However, there are two drawbacks to this. First SE have to be willing to accept the return of the fund. CSPD understand that SE have told Paymaster that it is "highly unlikely" that they would do so. Second as Mr D has pointed out, he would find such transfer unsatisfactory, given that SE closed the fund in mid-2003.

48. CSPD have therefore taken advice from the Government Actuary's Department. They have advised that, as an alternative, they could make a comparison of the value of the PCSPS benefits arising from the service credit compared to the retirement income that Mr D would have received had his fund remained with his personal pension. This comparison would take account of the investment returns on the pension policy and annuity rates. If this comparison showed that Mr D would have been better off remaining with SE, the actuary will calculate the amount of compensation that Paymaster will pay him.

49. CSPD therefore uphold Mr D's complaint to the extent, and for the reasons, explained above."

….

"Directions

50. Paymaster must ask Mr D within 28 days of this determination whether he:

- wants them to see if SE will accept the return of his fund; or

- is content to accept the actuarial comparison referred to in paragraph 48 above as an alternative.

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[2] Paymaster administers the PCSPS on behalf of Ordnance Survey, Mr D's employer

Appendix two: Extract from Government Actuary Department (GAD) Comparison Report

“Assumptions

MyCSP confirmed that they do not hold any information on the member’s personal pension funds and given the period of time that has elapsed together with change of fund provider, the chance of ascertaining any additional information from the historic fund manager seems remote. There is insufficient information for GAD to determine with certainty the value of the member’s Personal Pension fund as at October 2019 had the funds remained invested with Scottish Equitable/Aegon. We have therefore determined an approximate value of the Scottish Equitable funds, relying on information that we have been able to gather from internet searches as set out below. We were unable to find any direct information about the “Scottish Equitable Reflex Personal Pension Policy” in our searches. We believe from the documentation provided that this scheme may have been closed in approximately 2003. We have also made the following assumptions in conducting our review:

1. The Scottish Equitable Personal Pension policies were being contributed to before the member joined the PCSPS in 1995 and were With-Profits policies.

2. No additional deductions apply to the member’s fund value to account for annual management charges over the period from 2003 to 2019 (we have assumed that all expenses are reflected in the rate of return applied)

3. The nearest approximate funds that the member’s Reflex policies may have been were the Traditional With-Profits (**TWP**) or Unitised With-Profits fund (**WPE**).

4. The guarantee on the With-Profits funds only provides a guaranteed rate of investment return and no other guarantees apply.

5. We applied a ‘better of’ investment return of either 5.5% per year or the approximate rates of investment return obtained from the fund factsheets above; and assumed that any terminal bonus granted was the highest value possible based on the information we had available.

6. We also did comparisons of average rates of investment return against the FTSE 100 and FTSE All Share indices to obtain an indication of the value of the Personal Pension funds if a higher risk fund had been invested in.

7. After obtaining an approximate fund value, we obtained an estimate of an open market annuity from an online annuity comparison service to obtain an approximate annuity that could have been purchased from the total fund amount. We used parameters for the annuity purchase that would obtain the best possible result for the member, whilst still mirroring PCSPS benefits i.e. that the member was reasonably unhealthy, although without any underlying serious health conditions, slightly overweight who both smoked and drank to a moderate extent. The member’s spouse is assumed to receive a benefit of

37.5% on the member's death, be female and 3 years younger than him (in line with PCSPS valuation assumptions);

8. Whilst we could only easily obtain illustrative current market rates; we are comfortable that rates generally were more beneficial to the member than those at his retirement date.

9. The review covered the period between the member transferring his Personal Pension Funds into the scheme on 23 June 2003 and October 2019 when the member retired."

…

"Comparison results

Having carried out our review and based on our most optimistic approach to the projection of the member's Personal Pension funds and subsequent annuity purchase, we believe that the value of the member's transferred in service credit in the PCSPS scheme is very likely to exceed the value of the pension that the member may have been able to purchase if the Personal Pension Policies had not been transferred.

To note on the assumptions set out above, the value of the PCSPS pension was over 30% higher than the estimate of the benefits from the Scottish Equitable Personal Pension policies would have been. Whilst the position was closer if a fund mirroring the FTSE all share with minimal expenses had been invested in it is still likely that PCSPS provided higher benefits (given the high annuity rates at the point of the member's retirement). As a result, we do not believe that compensation needs to be calculated for the member in line with the IDRP determination in this case."

Appendix three: Comparison calculations provided by Mr D

	At date of transfer June 2003	At date of retirement September 2019
FTSE 100 Index	4031.20	7408.21
FTSE All Share Index	1971.30	4061.74

Amount transferred from SE £35,394.98

Value of transfer at September 2019 based on FTSE 100 Index £65,002

Value of transfer at September 2019 based on FTSE All Share Index £72,929

His pension at retirement was £21,733.64 of which £3,228.85 is accounted for by the transfer.

Using the figure of £72,929 based on the All Share Index he obtained online estimates for annuities which ranged from £3016 (Aviva) to £3817(Canada Life)

Looking at the Aviva figure in more detail and providing specimen data on weight, smoking and drinking gave a figure of £3,381.

He had not been able to account for the spouse’s pension at this stage.