

## Ombudsman's Determination

Applicant	Mr Y
Scheme	Principal Civil Service Pension Scheme ( <b>the Scheme</b> )
Respondents	Scottish Prison Service ( <b>SPS</b> ) The Cabinet Office

## Outcome

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

## Complaint summary

2. Mr Y's complaint concerns his reserved rights (**RR**) status in the Scheme. He says that the SPS did not make him aware that, should he move to a role not eligible for RR, he could regain his RR status by moving to a RR eligible role at a later date.

## Background information, including submissions from the parties and timeline of events

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. On 16 November 1985, Mr Y joined the SPS. He initially worked as a prison officer before moving to the role of prison officer / maintenance electrician. He joined the classic section of the Scheme, governed under the 1972 Superannuation Act. The Scheme is managed by the Cabinet Office and the administrator is MyCSP.
5. The specific rules relating to Mr Y's entitlement to RR are Rule 2.26, Rule 2.27 and Appendix five (Rule 2.26) (**the Rules**). The relevant sections can be found in the Appendix.
6. On 1 December 1999, the Head of Employee Relations wrote to Mr Y. He said that Mr Y's role had been re-designated as non-operational. As a result, he was no longer strictly entitled to RR status. However, the Cabinet Office had agreed to allow his RR rights to continue as he had not been advised that such a change ended his RR status. He also said:

“... should you voluntarily move from your current post to any other non-operational post, under the Pension Scheme rules your Reserved Rights will end. In this respect you are now in the same position as any operational member of staff considering moving to a non-operational post.”

7. The letter provided Mr Y with details of someone he could contact should these arrangements have been unclear.
8. On 24 September 2012, Mr Y voluntarily moved to the role of Special Projects Deputy Area Maintenance Manager. This role was classified as a non-operational role and did not qualify for RR. Mr Y lost his RR status.
9. In August 2017, Mr Y reached age 55.
10. On 1 August 2018, the Cabinet Office sent an email to the HR Business Partner (**HRBP**) at the SPS. It said that rule 2.27 applied if an individual was employed in a RR eligible role on 30 September 1987 and on the day before their 55th birthday. Where this was the case, any service in a RR eligible role in excess of 20 years was doubled. The rule had never excluded people who met this criterion and who had a period of service when they were not in a RR eligible role.
11. On 17 January 2019, the SPS issued a notice to all staff employed before 1 November 1987 on the subject of “New Advice: Reserved Rights roles” (**the Notice**). It stated that:

“In accordance with rule 2.26 of Section II (1972 section) for the Civil Service Pension Arrangements, employees who left an eligible prison officer role (as detailed within Appendix 5 of these rules), lose their ‘reserved rights’ when they move to a role not listed in Appendix 5.

Until recently SPS understood that a move out of an eligible role resulted in an employee losing their reserved rights on a permanent basis. However, SPS has been advised by Cabinet Office that an employee who has previously had reserved rights status, but who lost that status following a move to a role that was not eligible, has the right to regain this status if they move back to an eligible role.”
12. It also said that RR status meant that, after 20 years of reckonable service, each subsequent year counted as two. Furthermore, the earliest age at which a pension could be taken without reduction was 55.
13. On the same day, the SPS wrote to Mr Y. It said that it had received new advice in relation to RR status rights. It repeated the advice in the Notice and said that time served in a non-eligible role would only attract accrual of pensionable service at a single rate, even if RR status was subsequently regained. Mr Y was given the name of the HRBP who he was told he could discuss his individual circumstances with. This included the potential of him applying to transfer to a vacant role that was eligible for RR status.

14. On 21 January 2019, Mr Y emailed the HRBP. He asked to discuss the possibility of reinstating his RR status with the aim of releasing his lump sum, as he had reached age 55 and had over 30 years of service. He maintained that his role fell within the roles listed in Appendix five. He said that he had continued to have RR in his previous role until his promotion.
15. On 23 January 2019, the HRBP responded to Mr Y. He asked for information from Mr Y's pension statement dated 31 March 2018.
16. On 1 March 2019, the SPS wrote to Mr Y. It said:-
  - Roles not in Appendix five could not have RR status.
  - His current role was not on the list.
  - In December 1999, he had been advised by the Head of Employee Relations that special agreement had been obtained from the Cabinet Office to continue his RR status. This was despite the fact that he was not strictly entitled to it. However, this correspondence advised that, should he voluntarily move from his post to a non-operational post, his RR status would end.
  - Subsequently, in 2012, he was successfully interviewed for the role of Special Projects Deputy Area Maintenance. He was issued with non-operational terms and conditions which he accepted. His RR eligibility ended at that point.
  - He had been provided with clear guidance in respect of his RR status.
  - As many of the roles in Appendix five no longer existed, it was likely that the only roles eligible for RR status relevant to him were the operational roles. He could apply for one of these if he wished to regain his RR status.
17. On 12 April 2019, Mr Y completed a SPS formal grievance notice. He said:-
  - His current role was as a Special Projects Deputy Area Maintenance Manager. He should be allowed to revert to a RR eligible role and draw his lump sum.
  - What consultations had taken place with the Trades Union Congress (**TUC**) when assigning bands to the roles as these had been applied at a later date?
  - What evidence was there of the original decision to remove his RR status and the new advice from the Cabinet Office?
  - What was the SPS' understanding in relation to a move away from a RR eligible role leading to a permanent loss of RR status?
  - Section 2.26 of the Rules did not say that members who moved away from a RR eligible role lost their RR status. He was not clear where this was stated.

- The SPS did not provide accurate information over a protracted period of time in relation to pension options. As a result, staff were denied the opportunity to apply for a RR eligible role.
- He did not dispute that he knew what he was doing when he signed his new contract in August 2012. However, he had assumed that authority had been sought to remove his RR status. There was no evidence that this was the case. It suggested that SPS did it off its own back against the Rules.

18. On 9 May 2019, the SPS provided its response to Mr Y's grievance. It said to Mr Y:-

- While it could not reinstate his RR status, it would consider, on its merits, any request he made to revert to a RR eligible role.
- Appendix five had not been amended so no consultation with the TUC had been needed.
- It was unable to confirm the source of the original advice which resulted in the removal of his eligibility for RR status. In relation to reverting back to RR eligible roles, the Cabinet Office confirmed the position to SPS in an email dated 1 August 2018.
- It had no record of any historical decision being made in relation to a move away from a RR eligible role leading to a permanent loss of RR status. Any removal of RR status would not have been triggered by it as it did not have the authority to do so.
- A change of role had an impact in terms of how the Rules applied to him.
- He had questioned where it was stated that members who moved away from a RR eligible role lost their RR status. His current role was not included in Appendix five, so his service was not classified as "service as a Prison Officer" in line with rule 2.26. So, rules 2.26 and 2.27 did not apply to him.
- It was initially unaware of the information relating to staff reverting back to RR eligible roles. Impacted individuals were informed when it did become aware, and they were provided with an option to resolve the issue.

19. On 24 May 2019, Mr Y appealed the SPS' decision on the grievance he had raised. He wanted his RR status reinstated together with an acknowledgement from the SPS that he had been discriminated against and had not been informed of all relevant information regarding RR. He said:-

- The evidence he had asked for had not been provided, so there was no prior approval for the SPS to alter his terms and conditions.
- The SPS operated a discriminatory promotion process. Non-operational staff had not been made aware of their ability to revert to a RR eligible role.

- Any job change had to factor in the associated permanent loss of RR status, something his operational colleagues did not have to factor in. He had been discriminated against. He had not applied for promotions due to this.
- Appendix five must have been amended. In addition, his job merited inclusion in Appendix five.
- The SPS had notified MyCSP that it had changed his role from being eligible for RR to being non-eligible.
- The SPS did not notify him that the ability to regain his RR status existed.
- The only reason not to change the Rules to remove the discrimination was that it would be problematic and only a small, decreasing population of people were impacted.

20. On 6 August 2019, the SPS provided its response to Mr Y. It proposed taking no further action and it said:-

- The SPS had not been advised that people could revert to a RR eligible role and regain RR status. When it contacted the Cabinet Office, it said that it had only recently become aware that this was the case following legal advice.
- There was no evidence to suggest that the letter of 1 December 1999 included false information. The contents represented what was known by the SPS and the Cabinet Office at the time.
- He had voluntarily moved to a post not listed for RR eligibility. He had not been moved without his approval. He had been made aware that he would lose his RR status as a result of this move, and he chose to do this.
- As a result of the move, the SPS had notified MyCSP to remove his RR status.
- The Cabinet Office determined the grades in Appendix five. Any changes would have to take place at a national level with the unions being involved.

21. On 13 August 2019, Mr Y sent an email to MyCSP. He said that, in 1999, he was informed that, if he moved to a role deemed not to be eligible for RR, then he would lose his RR status. He maintained that this had a major impact on his career as promotions or lateral transfers would mean he would lose his RR status. He said that his operational colleagues did not have this issue and confirmed that he had now been informed by the SPS that this situation was reversible.

22. On 15 November 2019, MyCSP provided its response under stage one of the Scheme's two stage Internal Dispute Resolution Procedure (**IDRP**). It partially upheld Mr Y's complaint. It said:-

- The letter of 1 December 1999 warned him that he would lose his RR status if he moved to another non-operational post.

- The Rules did not stipulate that the loss of RR status was permanent. The rights could be regained by moving to a qualifying role before attaining age 55. It acknowledged that he was not initially informed of this.
- It did not uphold his discrimination claim as he had been put in the same position as any operational member of staff.
- It upheld the part of his complaint relating to the fact that the SPS was not aware that RR status could be regained. However, this had been remedied through the publication of the Notice.

23. On 6 January 2020, Mr Y asked that his complaint be considered under stage two of the IDRP. He said:-

- His complaint related to him not having all the information prior to moving to a role that did not qualify for RR. Had he had all the information, his career path would have been very different.
- He met the criteria to be able to move to a role that qualified for RR status and retire at age 55. However, he was not told that this was the case until after his 55th birthday. This option had been taken from him.

24. On 21 May 2020, the Cabinet Office provided its response under stage two of the IDRP. It did not uphold Mr Y's complaint. It said to Mr Y:-

- In September 2012, he voluntarily moved to a role that he knew was not eligible for RR. There was no certainty that he would have transferred back to a RR eligible role nor that his career would have taken a different course had he been notified of all the facts earlier. If he had always intended to retire at age 55, it was not persuaded that he would have made the move at age 50 which resulted in him losing his RR status.
- While he had said that, between 1997 and 2019, the SPS had failed to inform him of his rights, it was not in a position to do so. It published the Notice and wrote to him when it became aware of the correct position.

25. Mr Y made the following additional submissions:-

- The Cabinet Office said that the Rules had never excluded people who were in a RR eligible role but had an earlier period of service which was not eligible for RR. RR rights could be regained if the individual returned to a RR eligible role before they reached age 55. He was not informed of this until 17 January 2019, at which point he was over age 55.
- He was misled by the SPS and this had determined which career path he had to take. It had limited potential promotions and increases in pay. He missed the potential of being promoted to governor level, with an earnings potential of £73,365 per annum.

- Due to the threat of losing his RR status, he did not move to a new role until 2012 when his personal circumstances changed. After this promotion he was informed that his RR status would be removed permanently. If he had known that he could have regained his RR status, he would have applied for promotions long before 2012. He would have then reverted back to a RR eligible role prior to retiring at age 55.
- The SPS should admit he has been disadvantaged. He would like his RR status reinstated and to be given the opportunity to retire without reduction for early payment. In addition, he would like compensation for the distress and inconvenience caused to him and his family.
- The stage one IDR response of 15 November 2019 upheld the part of his complaint relating to the SPS not being aware that RR status could be regained. So, this current complaint should be upheld.

26. On 21 January 2022, the SPS said that:

“Had Mr [Y] applied, and been successful, for a role that qualified for reserved rights, he would have been eligible for early retirement in line with this pension scheme and the rules associated with reserved rights status, which would have taken into account his accrued service. This was equally the case if he moved before he was 55, in January 2019 and, further, if he moves today.”

## **Adjudicator’s Opinion**

27. Mr Y’s complaint was considered by one of our Adjudicators who concluded that no further action was required by the SPS or the Cabinet Office. The Adjudicator’s findings are summarised below:-

- On 1 December 1999, Mr Y was first notified that, should he voluntarily move to another non-operational post, his entitlement to RR would end. It was then not until 17 January 2019 that he was notified that he could regain his right to RR if he subsequently moved back to a RR eligible role.
- The Adjudicator noted that the information that Mr Y was provided with in December 1999, would have been something that he would have taken into account when considering a change of role. He had been made aware that a voluntary move to another non-operational role would result in his right to RR ending. However, in the Adjudicator’s view, at no point was he told that this would be permanent.
- The letter Mr Y was sent in December 1999 provided a contact who was available to answer any questions that he had. The scenario of moving to another non-operational role and then moving back to a RR eligible role in the future was not covered in the letter. In the Adjudicator’s opinion, it would have been possible for Mr Y to investigate this further with the named contact.

- Furthermore, Mr Y made the decision to voluntarily move to a role that he knew was not eligible for RR in September 2012. He could have sought clarification at the time on what would have happened should he have chosen to move back to a RR eligible role in the future, but he chose not to do so.
- The Adjudicator noted that, in both December 1999 and September 2012, the SPS believed that a move back to a RR eligible role would not have resulted in the restoration of RR status. So, there is no certainty that, had Mr Y asked the question concerning the impact of a move back to a RR eligible role, he would have received a correct answer. However, it is possible that, having raised this point, more investigation would have been undertaken by the SPS and a correct answer supplied.
- In its letter of 17 January 2019 and the Notice, the SPS provided greater clarity on this point. The letter acknowledged the fact that each individual's circumstances were unique, and that it had been unable to provide tailored advice about Mr Y's circumstances in the letter. However, it provided a contact who he could discuss his individual circumstances with. Furthermore, the Notice referred to the fact that, under RR, the earliest age that a pension could be drawn without reduction was 55.
- Mr Y said that he would have liked to have been given the opportunity to retire without reduction for early payment. From the use of the word "earliest" in the Notice and the SPS' response of 21 January 2022, which was shared with Mr Y on 29 January 2022, the Adjudicator took the view that Mr Y still had options in this respect. The Adjudicator recommended that he discussed this with his contact at the SPS.
- Mr Y said that, when compared to his colleagues in operational roles, he has been discriminated against when applying for new roles. In the Adjudicator's opinion this was not the case. In the letter of 1 December 1999, Mr Y was told that his role had been re-designated as non-operational. He was also told that, while no longer strictly entitled to RR status, the Cabinet Office had agreed to allow his RR rights to continue. So, he had been put in the same position as his operational colleagues who had a right to RR. Both would lose their RR status on moving to a non-operational role and both would retain their RR status on moving to an operational role.
- In summary, it was the Adjudicator's view that Mr Y had a number of opportunities to request information on how RR worked in his own specific circumstances. The Adjudicator had seen no evidence that he chose to do this. In the Adjudicator's opinion, it would have been unreasonable to hold the SPS or the Cabinet Office at fault in this respect. Additionally, the Adjudicator had seen no evidence that Mr Y was provided with incorrect information. In his view, no maladministration had taken place on the part of either the SPS or the Cabinet Office.

28. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
29. Mr Y provided his further comments which do not change the outcome. In summary, he said:-
- The SPS informed him that his RR status would be lost if he moved to a non-operational role. He had no reason to question this.
  - The fact that the SPS did not provide him with any information on what would happen to his RR status should he have moved back to a RR eligible role was its responsibility. It was not his responsibility to ask for this information.
  - If he had been given all the facts regarding the removal and reinstatement of RR then he would have been in control of his future. He would have sought promotion and reverted back to an operational role prior to 2017 and then retired at age 55. He now has to work until age 60.
  - He was being led by an employer which he thought had his best interests at heart. However, it was using him as a cost cutting opportunity.
  - The SPS wrote to him to apologise in 2019. It openly said that it was its fault and the Cabinet Office confirmed that the correct information had always been available to the SPS.
30. I note the additional points raised by Mr Y, but I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

31. Mr Y's complaint concerns the fact that he was able to regain his RR status, which was something the SPS did not share with him until 17 January 2019. He says that this delay adversely affected his earlier career decisions and took away his ability to retire at age 55.
32. Mr Y was first notified in December 1999 that, on voluntarily moving to another non-operational post, his entitlement to RR would end. I have seen no evidence that this notification, or any subsequent communication from the SPS or the Cabinet Office, said that it was not possible for Mr Y to regain his RR status should he have moved in the future to an RR eligible role. Nor have I seen any communication in which it was said that the loss of RR status was permanent.
33. So, I am satisfied that Mr Y was not provided with incorrect information in this respect. It was not until January 2019, that the SPS issued the Notice to confirm that a return to a RR eligible role would result in Mr Y regaining his RR status.
34. I note that this information would have been of interest to Mr Y and, had he received it earlier, he may have made different career decisions. However, the letter that the Head of Employee Relations sent to Mr Y in December 1999 provided contact details

for someone with whom he could discuss his position. So, Mr Y did have the opportunity to discuss his own individual circumstances. He chose not to do this at the time.

35. Mr Y has said that, as a result of the SPS not sharing all the information with him, he had to work to age 60. However, the SPS said that, had Mr Y applied and been successful for a role that qualified for RR, he would have continued to have been eligible for early retirement in line with the rules associated with RR at any point up to the present time. So, while the January 2019 notice came too late for Mr Y to retire at age 55 under the RR arrangements, he did have ongoing options in this respect.
36. While I acknowledge that this may not have been obvious to Mr Y from the communications that he had been sent, there was an ongoing opportunity for him to discuss his personal circumstances. In particular, the letter that the SPS sent him on 17 January 2019 acknowledged that it had been unable to provide advice tailored to Mr Y's circumstances. So, it provided a contact with whom he could discuss it.
37. In summary, while the communications issued to Mr Y did not provide all the information relevant to his own situation, I do not find that Mr Y was provided with incorrect information. Mr Y was given adequate opportunity to request further information from SPS regarding his personal circumstances.
38. I do not uphold Mr Y's complaint.

**Anthony Arter**

Pensions Ombudsman  
28 April 2022

## Appendix

### Extracts from the rules – Principal Civil Service Pension Scheme Section II (The 1972 Section)

#### “Prison Officers

2.26 “Service as a prison officer” means service as a civil servant serving in an institution to which the Prison Act 1952 or the Prisons (Scotland) Act 1952 applies, in one of the grades or pay bands listed in Appendix 5.

2.27 For prison officers with service as a prison officer who were in post on 30 September 1987, the pension age is 55 (but see rule 3.12); and after 20 years of actual service as a prison officer (including service that reckons under this scheme because of rule 2.17 or 2.17a and which preceded or interrupted service as a prison officer) further service reckons (subject to the maximum limits laid down in rules 2.3 and 3.31) at double its length, and will so reckon for the purposes of any payment under rule 3.2, or rule 3.32a or, subject to the provisions of rules 2.2 or 2A.5 of the Compensation Scheme, rules 2.1, 2A.4, 3.1 or 3A.4 of the Compensation Scheme. This is subject to rule 7.13.”

#### “Appendix 5

##### Prison Officer Grades

(Rule 2.26)

Subject to the notes below, rules 2.26 and 2.27 apply to service as a prison officer in one of the following grades or pay bands:

England and Wales	Scotland
Chief Officer I/Grade IV/Governor 4	Chief Prison Officer 1&2/Grades IV&V/pay band G
Chief Officer II/Grade V/Governor 5	Principal Prison Officer/Grade VI/pay band F
Principal Prison Officer/Grade VI/Principal Officer	Senior Prison Officer/Grade VII/pay band E
Senior Prison Officer/Grade VII/Senior Officer	Prison Officer/Grade VIII/pay bands D or C
Prison Officer/Grade VIII/Officer	Senior Foreman of Works
Senior Foreman of Works	Foreman of Works

Foreman of Works	Engineer Officer
Engineer	Chief Clerk Officer
House Matron/Grade VI/Principal Officer	Principal Clerk Officer
Pharmacist	Clerk Officer
Principal Nursing Sister	Borstal Matron
Nursing Sister	Nursing Sister
Temporary Officer/Grade VIIIA (who joined before 12.12.82)	
Prison Auxiliary (who joined as a Temporary Officer before 18.1.74)	
service in an operational capacity in Grade 3	
service in an operational capacity in Grade 2 band B or C	
service in an operational capacity as Manager E, F, or G	
service in a non-operational capacity as a Manager G if appointed in that capacity before 1 January 2007	

Note 1. Persons in service as Governor IV, Assistant Governor and Assistant Governor (Trainee) who are, or have been regraded Grade IV or V on or before 30 September 1987 and subsequently graded Governor 4 or 5 are excluded.

Note 2. Persons in service as Prison Officer, who have been recruited through the open competition for governor grades but who have been required by their terms and conditions of service to serve 1 year as a Prison Officer before being regraded Grade V, are excluded.”