

Ombudsman's Determination

Applicant	Mr D
Scheme	Police Pension Scheme (the Scheme)
Respondent	National Crime Agency (the NCA)

Outcome

1. I do not uphold Mr D's complaint and no further action is required by the NCA.

Complaint summary

2. Mr D has complained that the information provided by the NCA indicated that he would be able continue as an active member of the Scheme when he began his new role with them. He has subsequently learnt that this was not the case, and he has had to join the Civil Service Pension (**CSP**) Scheme instead.

Background information, including submissions from the parties

3. Mr D was a serving police officer with the Metropolitan Police Service and was a member of the Scheme.
4. In August 2019, Mr D applied for a role as a Senior Intelligence Officer at the NCA. The salary and benefits section of the job advert included the information:

“...a competitive contributory pension scheme that you can enter as soon as you join where we will make a significant contribution to the cost of your pension.”
5. The NCA website provided the following information:

“The NCA has the ability to designate service so that you can bring your police pension with you and remain a member of the police pension scheme while working for the NCA. These decisions will be made by the NCA on a case-by-case basis.”
6. Employees of the NCA can continue as an active member of the Scheme if they are categorised as a “specified NCA officer.” Part 2 section 6(3) of the Police Pension 2015 Regulations (**the Regulations**) refer to a specified NCA officer as follows:

“(a) the person is in service as an NCA officer in a role that is designated by the Director General of the NCA, with the agreement of the Treasury, as a role that requires police skills; and

(b) immediately before beginning that service, the person was in UK police service.”

7. In December 2019, Mr D received a provisional employment offer from the NCA. Mr D contacted NCA Human Resources (**HR**) to enquire if he could retain his active Scheme membership.
8. Mr D was informed that his request would be referred to the Head of Pay and then to the Remuneration Committee for a decision.
9. On 29 April 2020, Mr D received a letter from the NCA confirming his appointment and enclosing a copy of his contract. Section 18 of the contract referred to the pension arrangements:

“18.1 As soon as you start your new job you are eligible to join the Civil Service pension arrangements.”

...

“18.6 Officers joining from a Police Force who are currently active members of a Police Pension Scheme can apply to retain their existing Police Pension Scheme Membership. If that application is accepted, they will have their service with the NCA designated as “eligible service” for the purposes of their Police Pension.”

10. In June 2020, Mr D began his employment with NCA and was informed that he had been automatically enrolled into the CSP Scheme and his Scheme contributions had now ceased.
11. On 17 July 2020, Mr D sent an email to the Head of Pay which said in summary:-
 - He transferred to the NCA on a permanent basis from the Metropolitan Police service on 1 June 2020. He would like to clarify what stage his designated service pension enquiry was at.
 - He was made a provisional offer by the NCA in December 2019, and he began making enquiries as to whether he could retain his active Scheme membership when he began working for the NCA. He was aware from the NCA website that this was a benefit that could be extended to Police Officers transferring to the NCA.
 - He did not hear anything further. The last update he received was that his request had been referred to the Head of Pay for consideration and then it would be referred to the Remuneration Committee.
 - He was automatically enrolled in the CSP Scheme upon joining the NCA. He had now been contacted by the CSP requesting a decision regarding his future pension choices. He had discussed his pension with the administrators of the

Scheme, and it had said that pension choices were time dependent. The longer the delay in him getting a decision then the more difficult it would be administratively to make any necessary changes.

- He could find himself in a disadvantaged position especially given his original enquiry was made over six months ago. For the above to progress he needed to understand the decision-making process, where his enquiry sat within that chain, any reasons for delay and a timeframe for resolution.
12. On 5 August 2020, Mr D emailed the Head of Pay and asked whether his email of 17 July 2020 been reviewed.
 13. On 19 August 2020, Mr D sent an email to his line manager and said in summary:-
 - Following their discussion, he had attached details of his pension enquiry which had been ongoing since December 2019. He wanted to know whether he could retain his active Scheme membership under the designated service provisions.
 - He had escalated matters to the Head of Pay without a response.
 - The update he had received prior to joining NCA was that his request was being considered by the Head of Pay and it would then be referred to the Remuneration Committee.
 - CSP had contacted him on several occasions and was now requesting a decision on his future pension choice.
 14. On 26 August 2020, HR sent an email to Mr D and said in summary:-
 - It had considered the question of whether Mr D's active Scheme membership could be retained on joining the NCA and whether this was stated as a possibility or benefit in the job advertisement. To consider this it had looked at the consistency of communication to all officers within a recruitment group, and fairness in terms of recruitment campaigns.
 - The matter had been discussed and considered by colleagues from legal, finance and HR and it had been confirmed that it could not support retaining active Scheme membership for officers joining where this was not part of the job advertisement through which the candidates applied.
 - The reason for this decision was to ensure that the NCA treated all officers who have joined on the same campaign fairly and did not provide a benefit to those who joined later than their peers.
 - It apologised that it had taken some time to reach and communicate the decision.
 15. On 28 August 2020, Mr D sent an email to his line manager to say that he had been told by HR that he could not retain his active Scheme membership. The reason being that it was not a specific benefit in his job advertisement and there was a need to

maintain consistency across recruitment campaigns. He did not think that this was entirely accurate as he thought candidates before and after him had been able to retain their active Scheme membership, but he could not see any further recourse.

16. On 29 August 2020, Mr D's line manager sent an email to HR and said in summary:-
 - He wished to challenge the decision not to enable an experienced Detective Sergeant to retain his active Scheme membership.
 - Mr D had applied for a specialist role based on his Police skills, and he felt that this was an administrative error rather than Mr D trying to create an unfair advantage.
 - As it was one post only no other candidates were disadvantaged. There had not been a "campaign" per se but a specialist recruitment.
 - The large-scale campaigns at the same time enabled the retention of pension rights. The position here was not that other officers were treated unfairly but rather that he had been treated unfairly.
17. On 22 September 2020, Mr D emailed his line manager and said that he had been provided with a quote to transfer his deferred benefits from the Scheme to the CSP Scheme. It was only valid until 27 October so he either needed a decision from the appeals process or that the rationale was clarified.
18. On 22 September 2020, Mr D's line manager sent a chaser email to HR explaining that there was a deadline of 27 October 2020.
19. On 29 September 2020, the Head of Pay sent an email to Mr D's line manager which said in summary:-
 - He had discussed the matter with senior colleagues in reward and finance and reconfirmed the position with the responsible pensions board.
 - The decision made for Mr D and communicated previously was in line with the NCA position on police pension designation.
 - Pension designation was newly introduced and focussed on the large-scale recruitment campaigns in late 2019 and into early 2020. It did not apply to other roles as many of them had been running for some time whether on a bulk or individual basis.
 - The lack of reference in the job advertisement through which Mr D applied was not an administrative error but was a common position across the majority of roles at the time. As such it had not permitted officers to retain their active Scheme membership if it was not referenced in the job advertisement. This was to ensure it was treating all officers in the same position applying for roles on the same stated and advertised basis in the same way.

- To do otherwise would create significant inconsistency without a clear written basis for officers joining now and over the past few months and would conflict with officers who have applied before the large-scale campaign and were not allowed to retain their active Scheme membership.

25. On 30 September 2020, the email from the Head of Pay was forwarded to Mr D.

26. Mr D's position:-

- His application for a role at the NCA was role specific and not part of a generic campaign. At the time of his recruitment retaining active Scheme membership was advertised as a benefit across the NCA and in their publicly available guidance at the time. This included advertisements within both his own business area and specific unit.
- Mr D provided copies of job advertisements for his own role and for alternative roles that did have information about the retaining active Scheme membership. The advertisements are contained in the Appendix.
- HR's inconsistent definition of "designated service" had created a situation where he as a Police transferee joining the NCA had been disadvantaged and treated differently compared to other Police transferees in identical situations joining at the same time.
- Upon joining the NCA he was auto enrolled into an alternate CSP Scheme that he did not agree to. He was still paying into that CSP Scheme which had left him at a significant financial disadvantage.
- At the point of his recruitment into the NCA he was misled to believe retaining his active Scheme membership was purely an administrative process and part of his recruitment. He completed all the necessary paperwork through the appropriate channels, and it was not dealt with correctly. HR had been unable to provide any evidence to the contrary. At no point was he informed that the request could be declined and had he known this he would obviously have reconsidered the job offer.
- His line manager had also confirmed that the omission of the retaining active Scheme membership wording in his job advertisement was purely an administrative error. The wider public agency guidelines on retaining active Scheme membership at the time clearly advised this as a benefit. He therefore made his application to HR accordingly.
- Following his application to retain active Scheme membership there had been a complete lack of communication from HR and a failure to provide a coherent rationale for not allowing him to retain active Scheme membership. This had significantly disadvantaged him financially.

- He was having to deal with the stress of the above at a time when he was starting a new role during the midst of the Pandemic and his father had passed away from Covid-19.

27. The NCA's position:-

- NCA pensions/payroll carried out an administrative pensions function but did not have any input into decisions about the designation issue which was based on recruitment and the terms and conditions of employment.
- At the time Mr D joined the NCA the post advertised was not designated.
- As per pensions legislation NCA had to auto enrol new employees into its pension scheme. This was the CSP Scheme.
- Mr D completed a pension questionnaire that was used to establish which CSP Scheme the NCA should be processing for him. At the top of the questionnaire, it stated:

“Your employer will use your answers to work out which of the CSP Scheme you can join.”
- It cannot be evidenced in any of the recruitment advertisements provided by Mr D that any officer would be able to retain active Scheme membership upon joining the NCA. It was also aware that the role in question was not a designated role.
- Whether a post can be designated is governed by Statute, if the Director General (**DG**) identified a post that needed to be designated the DG must obtain approval from both Her Majesty's Treasury (**HMT**) and the Cabinet Office. If the NCA experienced any difficulties in recruitment, then the NCA would be entitled to apply for designation to HMT and the Cabinet Office.
- At the time Mr D's role was advertised the NCA did not anticipate any difficulties in recruitment. Therefore, the NCA had no need to make individual application for designation approval nor create a policy for approval by HMT and the Cabinet Office.
- However, since that recruitment exercise the NCA did on occasion have difficulties in recruiting for specific roles and therefore, as permitted under statute, approached HMT and the Cabinet Office for approval to designate these roles.
- More recently because of predicted recruitment difficulties the NCA developed a designation policy to allow the NCA to designate police officers without having to make successive applications. The policy was approved by the Home Office and Cabinet Office and remains current policy.

Adjudicator's Opinion

28. Mr D's complaint was considered by one of our Adjudicators who concluded that no further action was required by the NCA. The Adjudicator's findings are summarised below:-

- The information on the NCA website stated that there was the "possibility" of retaining active Scheme membership on joining the NCA. This would be considered on a case-by-case basis. In addition the job advertisement for Mr D's role did not specifically state that he could retain active membership in the Scheme.
- Mr D has said that the ability to retain active Scheme membership was a well known benefit of joining the NCA. In the Adjudicator's opinion the information provided did not state that retaining active Scheme membership would always be allowed.
- Mr D's contract stated that he could apply to retain his active Scheme membership. If the application was accepted he would have his service with the NCA designated as "eligible service" for the purposes of the Scheme. In the Adjudicator's view the fact that there was an application process indicated that retaining active Scheme membership was not a formality but one that was subject to a decision.
- In the Adjudicator's opinion the information provided to Mr D at the various stages of his application was appropriate. There was a possibility that former Police Officers could retain their active Scheme membership but this depended on whether they were considered a specified NCA officer under the Regulations. Mr D was not specifically told, in either the job advertisement that he responded to, or in his contract of employment, that he would be able to retain his active membership of the Scheme as of right.
- The Adjudicator noted that the ability to retain active Scheme membership was set out in the alternative job advertisements that Mr D provided. The relevant extracts are in the Appendix. Mr D said he had assumed that the fact that it had been omitted in his own advertisement was an administrative error. In the Adjudicator's opinion Mr D applied for the role based on the job advertisement and the information that was provided therein. There was no evidence to suggest that he would not have continued with his application had he understood the correct position regarding potential pension scheme membership.
- Mr D has also said that he thought that the referral to the Remuneration Committee was a formality and so he did not chase the matter up. In the Adjudicator's view the NCA did not mislead Mr D with regard to the status of the decision. It was referred to the Remuneration Committee and the decision made was that the role was not designated. This meant that Mr D was not able to

retain active membership of the Scheme under the Regulations. In the Adjudicator's opinion Mr D had not been provided with any incorrect information regarding the ability to retain his active Scheme membership and so there had not been any maladministration by the NCA.

- In the Adjudicator's opinion the NCA could have dealt with Mr D's queries regarding his pension in a more timely fashion but the delay in giving Mr D a formal answer on whether he could retain active membership of the Scheme was not maladministration.

29. 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 I have considered but they do not change the outcome.

Mr D's further comments

30. Mr D submits:-

- He does not accept that a period of nine months repeatedly chasing HR and Pay roll about continuing his active Scheme membership without response was not negligent on their part. He did not feel that the communication was appropriate or that a curt apology sufficed. He received a deliberate dearth of clear communication from the NCA throughout the process.
- The rationales provided by the NCA to explain why he could not retain active membership of the Scheme have only been supplied retrospectively and were not communicated to him at any time over those nine months. Had the correct position been explained to him, he would have reconsidered his application.
- Pension designation had been offered to individuals well before his recruitment and his individual role was not one that had been 'running for some time' and so did not fall outside its scope.
- The Director General at the time, was herself openly advertising police pension transfer as a definite benefit online at the time of his application. On 14 September 2019, the Director General Lynne Owens responded to a question on twitter and stated that:

"We now do allow for short & medium term postings – either on secondment or with police pension transfer."
- The pension designation rationale is by its very nature inherently inconsistent and inequitable. If he was not eligible then he does not understand why he was allowed to apply to retain active membership of the Scheme in the first place.
- In his pension questionnaire he clearly stated that he was seeking to retain membership of the Scheme which he feels was ignored. He was auto enrolled in the CSP Scheme when the NCA had known for nine months that he was already

a member of a qualifying pension scheme and that he had an application pending to maintain active membership of that scheme.

Ombudsman's decision

31. The information provided to Mr D throughout the application process and in his contract of employment does not at any point state that he will be able to retain active membership of the Scheme as of right. It states that there is an application process that Mr D can undertake, and that the outcome could be the retention of active membership of the Scheme. That there was an application process in itself shows that the retention of Scheme membership was not automatic. At no time was a guarantee given that the retention of active membership of the Scheme would be allowed.
32. Mr D has asked why he was allowed to make the application to retain active membership of the Scheme if his role was not designated as eligible service. The information provided by the NCA on its website does state that applications would be considered on a case by case basis, and it would have been wrong of the NCA to deny Mr D the opportunity to make his application and for the full facts of his situation to not be considered.
33. Mr D has referred to the wider communications provided about the possibility of retaining active membership in the Scheme and in particular postings by the former Director General. The tweet that Mr D has provided does state that police pension transfer is allowed. This is the correct position, police pension transfer, meaning retaining active membership of the Scheme is allowed but again it is not stated that it is guaranteed.
34. Mr D has also said that he had stated that he should not have been auto enrolled in the CSP Scheme and that his comments on his pension application form were ignored. The purpose of the application form was to provide information regarding Mr D's current pension situation so that he could be enrolled in the correct scheme. The Pensions Act 2008 (as amended by The Pensions Act 2011), requires that all employers automatically enrol eligible workers into a qualifying workplace pension scheme within three months. It was appropriate for the NCA to enrol Mr D into the CSP Scheme even though his application to retain active membership of the Scheme was ongoing.
35. Mr D is unhappy with the time taken by the NCA to answer his pension queries and to make a decision regarding whether he could retain his active membership of the Scheme. In the Adjudicator's opinion the NCA could have dealt with Mr D's queries regarding his pension in a more timely fashion but there has not been any maladministration. Similarly, I find that the NCA should have provided Mr D with responses to his queries in a much shorter timeframe and also should have provided Mr D with clearer information regarding decisions about pension designation. But this was poor administration rather than maladministration.

36. I note that Mr D has said that he would have reconsidered his application if he had been aware of the correct position regarding retaining active membership of the Scheme. It can be difficult to assess what an individual would have done if they had been provided with additional information. In this case I find that if retaining active membership of the Scheme was a key decision making criteria for Mr D he should have queried why it was not present in the job advertisement he relied on to make his application and to have clarified this as part of the interview process.
37. I do not uphold Mr D's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
9 November 2023