

Ombudsman's Determination

Applicant	Mr E
Scheme	Principal Civil Service Pension Scheme (the Scheme)
Respondents	MyCSP Cabinet Office Ministry of Justice (MoJ)

Outcome

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

Complaint summary

2. Mr E complained that when he opted out of the Scheme and then re-joined several years later, he was admitted to the wrong section of the Scheme. It was not until he submitted his retirement claim that MyCSP informed him of this, meaning he had been misinformed for several years and had planned his retirement based on incorrect figures.

Background information, including submissions from the parties

3. The Scheme is a statutory pension arrangement under the Superannuation Act 1972. It is governed by the Principal Civil Service Pension Scheme Regulations (**the Scheme Regulations**). Section I of the Scheme Regulations (**Section I**) covers the Premium Section of the Scheme (**the Premium Section**).
4. Regarding membership of the Premium Section, Part B of Section I stipulates:
"B.1 Eligibility: general
(1) A person is eligible to be an active member of this section of the Scheme if the conditions A to C are met...
[...]
(2) Condition A is that the person-

(a) is in permanent employment in the Civil Service
[...]

(4) Condition B is that the terms on which the person holds the employment do not Exclude him from belonging to the Scheme.

Condition C is that-

(a) the person's employment begins on or after 1st October 2002 and before 30th July 2007..."

5. Section III of the Scheme Regulations (**Section III**) covers the Nuvos Section (**the Nuvos Section**) of the Scheme. Regarding membership of the Nuvos Section, Part B of Section III states:

"Eligibility: general

(1) A person is eligible to be an active member of this section if-

(a) conditions A, B and C are met, or condition E is met, and, if condition D applies in the person's case, that condition is met...

[...]

(2) Condition A is that the person-

(a) is in permanent employment in the Civil Service,

[...]

Condition B is that the terms on which the person holds the employment do not excluded him from being an active member of the Scheme or this Section of the Scheme.

(5) Condition C is that the person has not reached the age of 75.

(6) Condition D is that-

(a) the person's employment begins on or after 30 July 2007, and

(b) the person is not eligible to become an active member of the 2002 Section..."

6. MyCSP is the administrator of the Scheme, and the Cabinet Office is the Scheme Manager.
7. On 11 April 2005, Mr E commenced permanent employment with the MoJ. By virtue of Mr E's employment, he was automatically enrolled into the Premium Section.
8. On 17 June 2005, Mr E opted out of the Premium Section and received a refund of contributions.
9. On 1 February 2009, Mr E elected to re-join the Scheme and the MoJ incorrectly admitted him to the Nuvos Section of the Scheme.
10. On 11 November 2015, MyCSP sent Mr E an annual benefit statement (**the 2015 Statement**), confirming an annual pension entitlement, under the Nuvos Section, of £2,753. MyCSP also included a disclaimer that stated "The figures shown are an

illustration only. This statement is not a promise of the benefits to which you may later be entitled". A note included in the letter also stated:

"Pension benefits are only payable in accordance with [the Scheme Regulations] and this statement does not override these. If there is a difference between this statement and [the Scheme Regulations] or what is payable under [the Scheme Regulations], the Regulations will apply..."

11. On 16 November 2016, MyCSP sent Mr E an annual benefit statement (**the 2016 Statement**), setting out benefit details under the Nuvos Section, including an annual pension of £3,218. MyCSP also included a disclaimer that stated "Every effort has been made to ensure that this statement is accurate. It is based on the latest data that is held, but it is not a guarantee of your entitlement". The note that had previously been included in the 2015 Statement was also reiterated.
12. On 23 July 2019, MyCSP sent Mr E another annual benefit statement (**the 2019 Statement**), confirming an annual pension entitlement, under the Nuvos Section, of £4,872. MyCSP also included the disclaimer that was quoted in the 2016 Statement and the note that had previously been included in the 2015 Statement was reiterated.
13. On 9 January 2020, the MoJ notified MyCSP that Mr E intended to retire on 30 June 2020 and asked for a retirement quotation on his behalf.
14. On 16 April 2020, Mr E emailed MyCSP asking for an update on his retirement claim.
15. On 13 May 2020, MyCSP emailed Mr E and said that it had been necessary to contact the MoJ to seek additional information before his retirement claim could be processed.
16. On 8 June 2020, Mr E telephoned MyCSP for an update on his retirement claim and was told that clarification had been requested from the MoJ regarding his membership in the Nuvos Section.
17. On 16 June 2020, after clarifying that Mr E should have been admitted to the Premium Section of the Scheme, MyCSP sent Mr E a retirement quotation for his benefits under the Premium Section based on a retirement date of 30 June 2020 (**the 2020 Quotation**). It set out benefit options including an annual pension of £4,003.07.
18. On 22 June 2020, Mr E telephoned MyCSP and said that the 2020 Quotation was for retirement under the Premium Section; however he had accrued benefits in the Nuvos Section.
19. In response, the call handler said that Mr E had been admitted to the Nuvos Section in error; he should instead have re-joined the Premium Section when he opted in on 1 February 2009. The call handler said that it would not be possible for Mr E to retire under the Nuvos Section.
20. On 8 July 2020, Mr E complained to MyCSP and said:-

- It was unreasonable to cancel his membership in the Nuvos Section and instead apply his membership to the Premium Section. This would result in reduced benefit entitlements, causing him financial hardship. MyCSP should have notified him of the error earlier.
- He was not at fault for being admitted into the wrong section of the Scheme. Had he known earlier that he should have been in the Premium Section, he could have retired at age 60 without an actuarial reduction rather than at age 65 in the Nuvos Section.
- The misinformation he received had caused him financial detriment, distress and inconvenience.

21. On the same day, MyCSP responded to Mr E and said:-

- It was the MoJ's responsibility to enrol him into the correct section of the Scheme and deduct appropriate employee contributions from his salary. MyCSP's role is to review a member's benefit entitlements at retirement.
- A review had established that, as he had previously been a Premium Section member, he should have been readmitted to the same section in February 2009. The Scheme Regulations did not permit him to join the Nuvos Section at that time.

22. On 12 July 2020, Mr E formally complained under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**).

23. On 11 September 2020, MyCSP issued its stage one IDRP response to Mr E which said:-

- A member's benefit entitlements under the Scheme are subject to the Scheme Regulations. Under Section I, the Premium Section was effectively closed to new members from 30 July 2007. However, eligibility to join the Premium Section is based on when an individual's employment with a Civil Service employer begins rather than the date on which the active Scheme membership commences.
- A member who opts out of the Scheme can only re-join in the section of the Scheme that they would have been in, had they not elected to opt out. He had been in permanent employment before 30 July 2007. So, he should have been readmitted to the Premium Section when he elected to opt into the Scheme with effect from 1 February 2009.
- He cannot have suffered financial loss as a result of the difference in benefits payable between the Premium Section and the Nuvos Section, as he had never, in fact, qualified to join the Nuvos Section. Instead, he had suffered a loss of expectation. MoJ's error led him to incorrectly believe that he was a Nuvos Section member for over 11 years.
- This would have affected his financial planning as the normal retirement age (**NRA**) for a Premium Section member is age 60, while the NRA in the Nuvos

Section is age 65. An actuarial reduction is applied when a member takes retirement benefits before reaching their NRA. He was over age 60 when informed of his correct membership under the Scheme.

- MoJ's error in admitting him to the Nuvos Section resulted in him being unable to make informed decisions regarding his retirement options. So, MoJ should award him £500 in recognition of the resulting distress and inconvenience he had suffered.

24. On 6 October 2020, Mr E appealed the stage one decision under stage two of the Scheme's IDRPs and said:-

- MoJ automatically enrolled him into the Premium Section in February 2005, he had not previously decided to join. So, he elected to opt out of the Premium Section on 17 June 2005. In 2009, he elected to rejoin the Scheme and was admitted to the Nuvos Section, as the Premium Section had closed to new members.
- There was a lengthy delay between 2 January 2020 when he submitted his retirement claim, and 10 June 2020 when MyCSP confirmed that he had been admitted to the wrong section of the Scheme. During this period, he contacted MyCSP on several occasions asking for an update but received no clarification other than further information was required from the MoJ.
- It was not until 20 June 2020 that he eventually received the 2020 Quotation setting out his benefit entitlements from the Premium Section. The delay in providing this information caused him distress and inconvenience, especially as he had suffered ill health during the period that his retirement claim was being considered.

25. On 14 January 2021, the Cabinet Office provided its stage two IDRPs response to Mr E and said:-

- It is the MoJ's responsibility to ensure that he was enrolled in the correct section of the Scheme in 2009. The application form that he completed at that time was for a new employee rather than the appropriate form for an existing employee intending to opt into the Scheme. This contributed to MoJ's error in enrolling him to the Nuvos Section.
- Mr E could have retired without an actuarial reduction at age 60 in the Premium Scheme if he had been correctly enrolled in 2009. However, he had also worked beyond the NRA of 65 that applies in the Nuvos Section. So, it is unlikely that he would have retired at age 60, even if he had been given the opportunity to do so in the Premium Section.
- He did not incur a financial loss since he had never been entitled to join the Nuvos Section. However, the MoJ should increase his award to a total of £1,000 in recognition of the distress and inconvenience he had suffered.

26. On 1 October 2021, Mr E's retirement benefits from the Premium Section went into payment.
27. On 2 September 2021 Mr E lodged his complaint with The Pensions Ombudsman

Mr E's position

28. Based on the pre-retirement figures quoted during the period he was admitted to the Nuvos Section, he intended to retire on 30 June 2020. He would then have purchased a motor home and travelled. He only received the 2020 Quotation on 20 June 2020 and the figures included were lower than expected. Consequently, he was forced to postpone his planned retirement date.
29. He was subsequently admitted to hospital on 3 November 2020, due to a medical condition caused by stress relating to the reduced pension entitlement. He then remained absent from work on sick leave until 30 September 2021. At that point he received medical advice that he should not return to work and retired.
30. Consequently, his wife temporarily took employment on a part-time basis at the age of 67. She is now suffering from a terminal illness, which means that she is unable to work any longer. So, his reduced income from the Premium Section has adversely affected his retirement planning.

MyCSP, the Cabinet Office and MoJ's position

31. Under MyCSP's normal procedures, a member is sent a retirement quotation two months before their intended retirement date. In order for this to apply, MyCSP expects a member to submit their benefits claim at least four months before the retirement date. If the benefits claim has been received accordingly, and all required data is available, MyCSP's system automatically sets a target date two months before the retirement date for a retirement quotation to be sent.
32. A retirement claim is then subjected to an initial "data validation check", which normally establishes whether further data is required before the target date for sending the retirement quotation. If further information is required, a data request is raised. However, there are some occasions when the validation check does not identify any additional data requirements.
33. In Mr E's case, MyCSP received MoJ's request for a retirement quotation on 9 January 2020 with confirmation that his intended retirement date was 30 June 2020. An initial validation check was then completed on 13 January 2020. However, when MyCSP attempted to calculate the retirement quotation on 29 April 2020, it was identified that additional information regarding the circumstances of Mr E opting out of the Scheme was required, and this was requested from the MoJ on 30 April 2020. There was no unnecessary delay between 9 January 2020 and 29 April 2020. MyCSP followed its normal procedures in processing Mr E's retirement claim.
34. The MoJ paid Mr E £500 in October 2020 and a further £500 in September 2021. So, Mr E has appropriately received awards totalling £1,000 in recognition of the distress

and inconvenience he suffered as a result of being incorrectly readmitted to the Nuvos Section of the Scheme.

Adjudicator's Opinion

35. Mr E's complaint was considered by one of our Adjudicators who concluded that no further action was required by MyCSP, the Cabinet Office or MoJ. The Adjudicator's findings are summarised below:-

- MyCSP and the Cabinet Office are required to act in accordance with the Scheme Regulations. Section III precluded Mr E from joining the Nuvos Section in 2009 since his employment with the MoJ did not commence on or after 30 July 2007. As Mr E's employment with the MoJ commenced on 11 April 2005, he only qualified to re-join the Premium Section in accordance with Condition C of Section I for admittance stipulates, "(a) the person's employment begins on or after 1st October 2002 and before 30th July 2007...".
- It had been the MoJ's responsibility to ensure that Mr E was readmitted to the Premium Section in accordance with Section I of the Scheme Regulations. So, the MoJ was at fault for incorrectly readmitting Mr E to the Scheme in the Nuvos Section in 2009. That error amounted to maladministration by the MoJ. However, Mr E was not entitled to rely on the figures quoted in his pre-retirement annual benefit statements relating to the Nuvos Section. Each of those documents confirmed that the figures provided were not guaranteed, and that Mr E's benefits would, ultimately, be based on the Scheme Regulations.
- Even if Mr E was able to demonstrate that his reliance on these benefit statements was reasonable, this would not materially change the outcome in the circumstances. MyCSP had corrected MoJ's initial error by retrospectively reapplying the benefits Mr E had accrued from November 2009 in the Premium Section. So, MyCSP had satisfied the requirement to put Mr E back into the position he would have been in, had the MoJ not made the error.
- There was a difference in annual pension figures of £868.93 between the 2019 Statement and the 2020 Quotation. Mr E provided no evidence of having made any irreversible commitments based on the misinformation in the 2019 Statement that have directly caused him financial detriment. Neither has Mr E provided evidence to support his assertion that the reduced benefits in the 2020 Quotation would cause him to suffer financial hardship. So, it would not be appropriate for MyCSP, the Cabinet Office or the MoJ to reinstate Mr E's membership in the Nuvos Section and increase his benefit entitlements.
- Mr E's benefit entitlements would not have been guaranteed until after the MoJ contacted MyCSP in January 2020 to confirm that his intended retirement date was 30 June 2020. This resulted in MyCSP producing the 2020 Quotation. It was during the process of completing the calculations for this quotation that MyCSP identified the MoJ's error. MyCSP has confirmed that Mr E's retirement claim was

processed in accordance with its normal procedures. So, there is no evidence of maladministration by MyCSP that delayed the 2020 Quotation being sent to Mr E.

- Mr E reached age 60 in December 2013 but remained in employment with the MoJ beyond his Nuvos retirement age of 65. This does not support Mr E's assertion that he would have retired at age 60 under the Premium Section, had he known that he should have been admitted to that part of the Scheme from 2009.
- Further, Mr E was required to at least attempt to mitigate his perceived reduced pension entitlement before making a claim for financial loss. So, Mr E's decision to delay his retirement date in response to the 2020 Quotation was an option for him. It is regrettable that Mr E and his wife have suffered ill health since Mr E's planned retirement date and that it is not possible to further mitigate the perceived financial loss. However, Mr E had never, in fact, been entitled to the overstated benefits quoted in the 2015 Statement, the 2016 Statement or the 2019 statement. So, Mr E has not incurred an actual financial loss.
- Mr E suffered a loss of expectation when MyCSP eventually confirmed his correct benefit entitlement in 2020. There was also a lengthy delay between 2009 and 2020 when MyCSP identified the MoJ's error. This would have caused Mr E serious distress and inconvenience. An award of £1,000 is in keeping with the Ombudsman's guidance for non-financial injustice of this type. So, in my view the MoJ's awards totalling £1,000 to Mr E were sufficient recognition of the distress and inconvenience he had suffered.

36. MyCSP, the Cabinet Office and MoJ accepted the Adjudicator's Opinion, Mr E did not, and the complaint was passed to me to consider. Mr E provided his further comments which do not change the outcome, I have considered the additional points raised by Mr E but I agree with the Adjudicator's Opinion.

Mr E's additional comments

37. In 2005, the MoJ ought to have informed him which section of the Scheme he could join and given him three months' notice before enrolling him to the Scheme. Instead, the MoJ automatically enrolled him to the Premium Section without his consent. Once he became aware of this, he opted out of the Premium Section.
38. In 2009, he decided to rejoin the Scheme and made enquiries with the MoJ. He was then told that the only option available was to join the Nuvos Section. So, he was admitted to the Nuvos Section through no fault of his own.
39. The pre-retirement benefit statements that he subsequently received were the only information that he could use to plan his retirement. He also attended pension seminars prior to retirement during which he was informed that the benefits payable would be close to the figures quoted in those pre-retirement benefit statements.
40. In 2020 he submitted a retirement claim with the expectation that the benefits would be paid in accordance with the annual benefit statements regarding the Nuvos

Section he had received during the preceding 11 years. Had he been admitted to the Premium Section, he could have retired at age 60.

41. However, he would not have done so because he had planned to work beyond age 65 if his health allowed this. The Nuvos Section has an NRA of 65 as confirmed in the annual benefit statements he received. It was this information that led him to continue working beyond age 65. He eventually retired in 2021 due to health issues which were exacerbated by his concerns over his benefit entitlement under the Scheme.
42. Had he joined the Premium Section from 2009, he would have made additional investments in preparation for retirement. For example, he would have paid additional voluntary contributions (**AVCs**). The MoJ's failure to admit him to the Premium Section from 2009 forced him to work longer than planned and cancel his plans to purchase a motorhome and travel.
43. The MoJ's award of £1,000 was insufficient since he has been unable to claim the expected benefits under the Nuvos Section, forcing him to work longer than expected and causing him health issues.

Ombudsman's decision

44. Mr E said that the MoJ enrolled him into the Premium Section of the Scheme in 2005 without his consent. He considers that the MoJ ought to have advised him which section of the Scheme he could join in 2005 and given three months' notice of this.
45. The Regulations that govern the Scheme provide that new employees are automatically enrolled into the relevant section of the Scheme as soon as the individual becomes a permanent employee. There is no requirement for employees to be given notice of enrolment in the Scheme. The Nuvos Section did not commence until 30 July 2007 and therefore I find that Mr E was correctly enrolled into the Premium Section in 2005. The Regulations include the option to opt out of the Scheme if the member wishes to do so. Mr E exercised his right to opt out of the Premium Section in June 2005 and he received a refund of contributions. So, I find that there was no maladministration by the MoJ when it automatically enrolled Mr E to the Premium Section of the Scheme in 2005.
46. That MoJ subsequently admitted Mr E to the Nuvos Section incorrectly in 2009 is not in dispute. MyCSP, the Cabinet Office and MoJ are required to act in accordance with the Scheme Regulations and in accordance with Part B of Section I of the Scheme Regulations, Mr E's only option in 2009 was to rejoin the Premium Section. So, I find that MyCSP, the Cabinet Office and MoJ have correctly concluded that Mr E was not entitled to join the Nuvos Section nor claim benefits from it.
47. The appropriate remedy in these circumstances was to put Mr E back in the position, he would have been in, had MoJ's error not occurred. MyCSP has taken such action since it correctly reapplied Mr E's benefits accrued from 2009 in the Premium Section following his retirement claim in 2020.

48. Mr E said that he would have made alternative investments such as paying AVCs to increase his retirement income, had he been admitted to the Premium Section from 2009. I consider that it is with the benefit of hindsight that Mr E now makes this point in support of his complaint.
49. I note Mr E's contention that the MoJ's failure to admit him to the Premium Section in 2009 forced him to work longer than planned and to cancel his plans to purchase a motorhome and travel. Conversely, he also stated he would not have retired when he reached 60 because he had planned to work beyond age 65 if his health allowed this which he did until he retired in 2021, aged 67. I find therefore that the error in Mr E being admitted wrongly to the Nuvos Section had no effect on his retirement planning.
50. MoJ's error in admitting Mr E to the incorrect Section of the Scheme amounts to maladministration which undoubtedly will have caused Mr E serious distress and inconvenience. I find that the awards he received from MoJ, totalling £1,000, were appropriate recognition of this.
51. I do not uphold Mr E's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman

20 March 2024