

Ombudsman's Determination

Applicant	Mr Y
Scheme	Horizon Pension Scheme (the Capita Scheme)
Respondents	CPLAS Trustees Limited (CPLAS Trustee) Capita plc (Capita)

Outcome

1. I do not uphold Mr Y's complaint and no further action is required by CPLAS Trustee or Capita.

Complaint summary

2. Mr Y's complaint concerns a period of unpaid leave from his employment, in 2014, which he said should be considered as pensionable. He maintains that, when rounding his service, this would give him a further year of pensionable service.

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. Since the events detailed in this Determination, the Capita Pension & Life Assurance Scheme has become the Horizon Pension Scheme. For ease of reference, I have referred to it as the Capita Scheme in the paragraphs that follow.
5. On 4 September 1989, Mr Y commenced employment with the Northern Ireland Electricity Board, and he joined the Northern Ireland Electricity Superannuation Scheme (**the NIES Scheme**). An extract from a working copy of the rules governing the NIES Scheme dated April 1992 (**the NIESS Rules**) can be found in Appendix 1.
6. From 1993, Mr Y was employed by Viridian and he was a member of the Viridian Group Pension Scheme (**the Viridian Scheme**). An extract from the rules of the Viridian Scheme dated 27 April 2009 (**the Viridian Rules**) can be found in Appendix 2.

7. On 1 July 2005, Mr Y joined the Northgate Information Solutions Scheme and he was employed by Northgate Information Solutions.
8. On 26 November 2007, Mr Y's manager authorised his request to take, in 2008, two days of unpaid leave each month for 10 months. The manager signed an 'Application for Bereavement/Special/Unpaid Leave' form. As well as authorising the leave, this form confirmed that Mr Y's employer should pay employer contributions to the Northgate Information Solutions Scheme in respect of the 20 days of leave. The form stated:

"I authorise the above period of unpaid leave and that the Employers Contributions should be paid by Sx3."
9. An 'Employee Change' form, with an effective date of 1 January 2008 and a reason of "Unpaid leave", confirmed that deductions should be made from Mr Y's pay to cover the employee contributions for the 20 days of leave. It said:

"Please deduct 2 days of unpaid each month for next 10 months starting in January 2008 and the last deduction in October 2008."
10. Mr Y's 20 days of unpaid leave in 2008 were treated as pensionable service in the Northgate Information Solutions Scheme.
11. On 1 April 2008, Mr Y joined the Northgate Managed Services Pension Scheme (**the Northgate Scheme**). The Northgate Scheme was governed by a definitive trust deed and rules dated 11 December 2012 (**the Northgate Rules**), extracts from which can be found in Appendix 3.
12. Similar paperwork was completed in 2009, 2010 and 2012 as was completed in 2007 to authorise Mr Y's requests to take, in each of these years, two days unpaid leave each month for 10 months. These periods of unpaid leave were treated as pensionable service in the Northgate Scheme.
13. In January 2014, the Northgate Pension Trustees Limited (**the Northgate Trustee**) issued an announcement to the current members of the Northgate Scheme. It advised that, with effect from 1 April 2014, benefits would be provided from the Capita Scheme.
14. In March 2014, the Northgate Trustee issued a further announcement. It advised that the Capita Scheme would include a new section for the ex-Northgate Scheme members from 1 April 2014. This section would replicate the existing benefits of the Northgate Scheme. A bulk transfer would take place from the Northgate Scheme to the Capita Scheme.
15. On 1 April 2014, the Northgate Scheme was merged into the Capita Scheme and Mr Y became an employee of Capita.
16. Mr Y's benefits in the Capita Scheme were governed by a definitive trust deed and rules, dated 13 December 1996, and the SX3 NIE schedule (**Schedule 3**) of a deed

of amendment and adherence, dated 6 June 2014 (collectively **the Capita Rules**). Extracts from the Capita Rules can be found in Appendix 4.

17. Mr Y said that, in 2014, he made a request to his manager to take two days of unpaid leave each month for 10 months.
18. On 21 May 2014, Mr Y's manager contacted Capita's payroll department. He said that Mr Y wanted to take 20 days unpaid leave. As Capita had no automated process for dealing with this request, he asked that Mr Y's monthly salary payments be reduced by the appropriate amount. There was no mention of how his pension benefits or pensionable service should be treated.
19. On 30 September 2017, Mr Y was part of a TUPE transfer from Capita to ATOS. His complete years of pensionable service at that date were calculated as 27.
20. On 23 May 2018, Capita Pensions Administration sent Mr Y a preserved benefit statement detailing the benefits held for him in the Capita Scheme. It stated that Mr Y's date of joining for pension purposes was 4 September 1989, his date of leaving the Capita Scheme was 30 September 2017, and that his pensionable service was 28 years. The preserved benefit statement was attached to a letter which offered him the option "to round up his pensionable service to the next complete year" (**the 2018 Letter**). The payment he would need to make to exercise this option was £2,883.35, which was equal to the contributions he would have needed to pay to attain a further year of service. On the final page was a form to fill in to exercise the option, which stated:

"I wish to pay a one off deduction of £2,883.35 in order to increase my Pensionable Service to 28 years [sic]."
21. In September 2018, Mr Y's benefits in the Capita Scheme were bulk transferred to the ATOS UK 2011 Pension Scheme (**the ATOS Scheme**).
22. On 7 September 2018, Mr Y left ATOS' employment and his benefits in the ATOS Scheme became deferred.
23. In early 2019, a Cash Equivalent Transfer Value (**CETV**) was paid in respect of Mr Y's benefits in the ATOS Scheme to a personal pension arrangement with True Potential Wealth Management (**TPWM**).
24. On 21 August 2020, XPS Administration (**XPS**) wrote to Mr Y on behalf of the Trustees of the ATOS Scheme (**the ATOS Trustees**) in relation to a query he had raised on the calculation of his benefits. It advised that its previous calculation of the contribution required to round up his service was incorrect. It confirmed that the contribution required to round up Mr Y's service to 29 years was £212.17 and that a sum of £2,885.27 would be returned to him. It said that, based on the data it had been provided with, it could not agree with his assertion that his service should be rounded up to 30 years.

25. On 6 October 2020, Mr Y contacted Capita to query the pensionable service figures it had provided to ATOS when he transferred to the ATOS Scheme. He said Capita had stated that his pensionable service was just short of 28 years, but he thought it should be just over 28 years.
26. On 19 October 2020, Capita provided Mr Y with a breakdown of his pensionable service in the Capita Scheme as follows:-
- 26.1. The period from 4 September 1989 to 30 September 2017 amounted to 28 years and 27 days.
- 26.2. Less a break in his pensionable service due to absence without pay. It had taken this from 4 November 2014 to 2 December 2014 which amounted to 29 days.
- 26.3. Giving a total pensionable service of 27 years and 363 days which, when rounded, amounted to 27 complete years.
27. On 20 October 2020, Mr Y queried the absence period Capita had provided.
28. On 2 November 2020, Capita responded. It confirmed the following periods of unpaid leave, totalling 20 working days:

2 to 4 June 2014	3 working days
1 to 3 July 2014	3 working days
4 to 6 August 2014	3 working days
1 to 3 September 2014	3 working days
1 to 3 October 2014	3 working days
3 to 5 November 2014	3 working days
1 to 2 December 2014	2 working days

29. On 10 June 2021, Mr Y raised a complaint for consideration under the Capita Scheme's two-stage Internal Dispute Resolution Procedure (**IDRP**). In summary, he said:-
- 29.1. Over a number of years while working for Northgate and Capita he had taken unpaid leave.
- 29.2. For all but one year, pension contributions were taken from his pay in respect of the unpaid leave. The deduction of the contributions had been authorised in those years and, on each occasion, he had completed the same form.
- 29.3. A disclosure of information request had not provided a copy of the form for 2014. However, there had been an email from his manager asking how to

handle the unpaid leave request and a response from the payroll department stating it would set it up.

- 29.4. As a result of his unpaid leave in 2014 not being treated as pensionable, he had lost out on an additional year of pensionable service.
30. On 10 August 2021, the CPLAS Trustee provided its response under stage one of the IDRP. It said that the issue needed to be taken up with Capita as it relied on information from the employer in respect of whether periods of absence count as pensionable or not. It understood Mr Y's unpaid leave in 2014 to be non-pensionable.
31. On the same day, Mr Y asked for his complaint to be considered under stage two of the IDRP.
32. On 5 October 2021, the CPLAS Trustee and Capita provided their combined response under stage two of the IDRP. In summary, they said:-
- 32.1. Mr Y's periods of unpaid leave prior to 2014 had been when he was a member of the Northgate Scheme. Under the rules of that scheme, it was for the Northgate Trustee to agree how to treat any periods of unpaid leave they were made aware of by Northgate. It was not clear whether the Northgate Trustee or the administrators of the Northgate Scheme were informed about Mr Y's unpaid leave or were aware of it.
- 32.2. They had seen no evidence that Mr Y paid pension contributions in respect of his periods of unpaid leave in the Northgate Scheme. The Northgate Rules provided that periods of unpaid leave were only generally treated as pensionable when the employee paid contributions for those periods. So, it was surprised that these periods were treated as pensionable when it appeared that no employee contributions were made.
- 32.3. As the treatment of Mr Y's unpaid leave under the Northgate Scheme was the responsibility of Northgate and the Northgate Trustee, they could not comment on the decision-making process at the time. These processes were not directly relevant to what was agreed in 2014.
- 32.4. The unpaid leave in 2014 was when Mr Y was a member of the Capita Scheme. There was no evidence that Capita had agreed it would be pensionable or that he paid employee contributions. So, Mr Y's 2014 unpaid leave was not pensionable.
33. Following the complaint being referred to The Pensions Ombudsman, Mr Y and the CPLAS Trustee made further submissions that have been summarised below.
34. Mr Y made the following additional submissions:-
- 34.1. A precedent had been set by the years when he had taken unpaid leave which was treated as pensionable. There was no reason for the unpaid leave that he took in 2014 to be treated differently.

- 34.2. He was not advised of the withdrawal of the option to continue pension contributions while taking unpaid leave.
 - 34.3. It was a failing on Capita's part that it had been unable to produce a copy of the form submitted by his manager in 2014.
 - 34.4. He had no objection to paying the additional contributions required, which he understood to be in the region of £3,000.
 - 34.5. Under the Electricity (Protected Persons) Pensions Regulations (Northern Ireland) 1992 (**the 1992 Regulations**), it was his right to have the benefits offered by the Northgate Scheme carried forward to the Capita Scheme, including the ability to make pension contributions while on unpaid leave.
 - 34.6. When he left ATOS' employment on 7 September 2018, he was not aware that he was 20 days short of 29 years of pensionable service. Had he known this at the time he would have continued working until 27 September 2018.
35. An extract from the 1992 Regulations can be found in Appendix 5.
36. The CPLAS Trustee made the following additional submissions:-
- 36.1. Under the Capita Rules, the decision whether to treat a member as remaining in pensionable service during a period of unpaid leave was generally determined by Capita with the agreement of the CPLAS Trustee. Where a member was treated as remaining in service, they had to pay contributions at the normal rate unless the Principal Employer decided otherwise.
 - 36.2. Its default position in relation to unpaid leave was to deduct the relevant sums from salary, for contributions to be calculated on the basis of the revised salary and for the relevant days to be deducted from pensionable service.
 - 36.3. The administrators of the Capita Scheme treated Mr Y's periods of unpaid leave in 2014 as non-pensionable, as there was no agreement to the contrary. It had checked its meeting minutes in this respect.
 - 36.4. There was no evidence of any form being completed in 2014, whether in the same format as that previously used by Northgate or not.
 - 36.5. There was no evidence of any communication from Capita that the same approach to unpaid leave applied as under the Northgate Scheme. In fact, Capita had confirmed that Mr Y's periods of unpaid leave should not be treated as pensionable.
 - 36.6. Even if Mr Y was considered as remaining in membership of the Capita Scheme while taking unpaid leave, the part-time employment provisions meant the approach taken when calculating his benefits was consistent with the Capita Rules.

36.7. In relation to the 2018 Letter:-

- 36.7.1. There was nothing on record to suggest that the error in the letter was corrected. It considered that this was because it only became aware of the error in 2020, after the bulk transfer of Mr Y's benefits to the ATOS Scheme.
- 36.7.2. The cost of £2,883.35 shown in the letter was the cost of increasing Mr Y's pensionable service by 340 days from 28 years and 27 days to 29 years.
- 36.7.3. The letter was incorrect in that it did not provide Mr Y with the cost of increasing his actual pensionable service from 27 years and 363 days to 28 years. The cost of purchasing these two additional days was £16.96. However, this option was not available to members who transferred to the ATOS Scheme.
- 36.7.4. Mr Y was provided with a pensionable service credit in the ATOS Scheme equal to his years and days of pensionable service. The data it provided to ATOS around the time of the bulk transfer stated that Mr Y's pensionable service was 27 years and 363 days.

37. In relation to the relevance of the 1992 Regulations to Mr Y's complaint, in summary, the CPLAS Trustee submitted:-

- 37.1. It assumed that Mr Y had been a protected employee when he had been a member of the NIES Scheme.
- 37.2. As Mr Y had joined the SX3 NIE section of the Capita Scheme as part of a bulk transfer as one of the first protected employees, he had a right to accrue future benefits "which are no worse than transfer date rights"¹. This is different from having to provide the same benefits. Transfer date rights meant the future pension rights provided by the NIES Scheme in the form they were at the transfer date.
- 37.3. It was Mr Y's employer at the time, Capita, rather than the CPLAS Trustee, that had the legal obligation to comply with the 1992 Regulations.
- 37.4. While it did not hold a copy of the NIESS Rules at the transfer date, it assumed that the Viridian Rules were not substantively different.
- 37.5. Mr Y's position as a protected employee did not assist him as the situation under the Viridian Rules was substantively the same as under the Capita Rules. Furthermore, the CPLAS Trustee was required to administer the Capita Scheme in accordance with the Capita Rules.

¹Reg 7(1)(b) of The Electricity (Protected Persons) Pensions Regulations (Northern Ireland) 1992.

Adjudicator's Opinion

38. Mr Y's complaint was considered by one of our Adjudicators, who concluded that further action was required by the CPLAS Trustee and Capita. The Adjudicator's findings are summarised in paragraphs 39 to 74 below.
39. In a number of the years prior to 2014, Mr Y made a request through his manager to take two days unpaid leave each month for 10 months. He also requested that these periods of unpaid leave be counted as pensionable service in the Northgate Scheme.
40. Under the Northgate Rules, it was a matter for the Northgate Trustee's discretion whether to allow Mr Y's request to make up any contributions missed during the unpaid leave and thus make that leave pensionable. Mr Y's 20 days of unpaid leave in each of those years were treated as pensionable.
41. Mr Y said that he made a similar request to his Capita manager in 2014. While a copy of the request was no longer available, Mr Y's manager did contact Capita's payroll department in May 2014 to ask that Mr Y's salary payments be reduced by the appropriate amount. However, there was no mention of how his pension benefits were to be treated. The periods of unpaid leave in 2014 were treated as non-pensionable.
42. The Adjudicator took the view that, on the balance of probabilities, Mr Y made this request, and he asked for his unpaid leave in 2014 to be pensionable. The Adjudicator said this was because Mr Y's manager contacted the payroll department which, in the Adjudicator's view, he would not have done had such a request not been made. Furthermore, Mr Y had made similar requests in previous years.
43. The Adjudicator then considered Mr Y's claim that, under the 1992 Regulations, it was his right to have the benefits offered by the Northgate Scheme carried forward to the Capita Scheme, including his right to make pension contributions while on unpaid leave.
44. Regulation 3(1)(a) of the 1992 Regulations provided that an existing employee who was, immediately before the transfer date, a participant in the scheme, was a protected employee. Mr Y became an employee of the Northern Ireland Electricity Board on 4 September 1989 and joined the NIES Scheme on the same date. On this basis he was a protected employee under the 1992 Regulations, and it was also assumed by the CPLAS Trustee that Mr Y was a protected employee.
45. Regulation 6(4) of the 1992 Regulations required that, if a protected person transferred to a relevant scheme "the employer providing the scheme shall procure that the rules of that scheme will secure accrued pension rights which, on the basis of good actuarial practice, are at least equivalent in value to the accrued pension rights so transferred from the former scheme."
46. Regulation 7 of the 1992 Regulations (**Regulation 7**) granted the right of a protected employee to participate in a relevant scheme and to accrue future pension benefits

“which are no worse than transfer date rights”. As the CPLAS Trustee had submitted, it was not entirely clear when the transfer date was, but it was likely to have been in 1993. The exact date was not material to Mr Y’s complaint.

47. Rule 8(F) of the NIESS Rules (**Rule 8(F)**) (see Appendix 1) provided that a member who takes unpaid leave with the agreement of the Principal Employer would be treated as having continuous membership of the NIES Scheme during the period of unpaid leave, but that he would not automatically continue to accrue pensionable service during that period of unpaid leave.
48. However, this rule also allowed a member to pay contributions in respect of a period of unpaid leave. The Committee was, broadly, the decision-making body of the Trustee of the NIES Scheme. The phrase “agreeing with the Committee” suggested that the Committee could refuse to agree to such a request, but the subsequent sentences in the rule referred to the member being able to “exercise” the option without reference to Committee consent. No explicit discretion was conferred on the Committee to approve or reject. It was not phrased as “the Contributor and the Committee may agree” or “the Contributor may, with the Committee’s consent”.
49. In the Adjudicator’s view, a natural reading of this clause suggested that the nature of the “agreement” that the Contributor had the option of reaching with the Committee was administrative, and related to the amount of contributions and their remittance, given that no contributions could be deducted directly from a Contributor’s salary during a period of unpaid leave.
50. On balance, the Adjudicator’s opinion was that the stronger interpretation of this clause was that the member had a right to exercise an option to continue to accrue pensionable service during a period of unpaid leave (taken with the consent of the Employer), if they paid contributions in respect of that period.
51. The question the Adjudicator had to consider was whether the right subsisted under the 1992 Regulations. The right existed under the NIESS Rules and was one Mr Y could have exercised on transfer day in 1993.
52. Under Regulation 7(1)(a) of the 1992 Regulations, Mr Y had the right to participate in a “relevant scheme”, defined as the Original Scheme or an alternative scheme. An “alternative scheme” was defined as a scheme to which Regulation 8 applied, and Regulation 8(e) stated that an alternative scheme provided future pension rights in accordance with Regulation 7.
53. In addition, Regulation 13 of the 1992 Regulations applied where a protected employee changed employer. Broadly, Regulation 13 provided that if the transfer to a new employer was a requirement of a previous employer, the new employer must provide a scheme (whether a relevant scheme or an alternative scheme) to a protected employee which provided future pension rights that were no worse than transfer date rights.

54. The Adjudicator's understanding was that Mr Y was transferred to Viridian as a result of the privatisation of the Northern Ireland Electricity Board. He was then transferred to Northgate Services and subsequently to Capita when it acquired Northgate Services, as required by the previous employer in each case. During his periods of unpaid leave while employed by Northgate, the employer paid the additional employee contributions in respect of those periods. There was no provision in Rule 8(F) for the employer to make employee contributions on his behalf, but this point was not in dispute as Mr Y had stated that he was willing to make the contributions payable.
55. So, under Regulation 7(3) of the 1992 Regulations, Mr Y's rights under the Capita Scheme must be "no worse" than his transfer day rights under the NIES Scheme.
56. There was no explicit right in the Capita Scheme for a member to pay employee contributions to accrue pensionable service during periods of unpaid leave. Rule 5.2 of the SX3 NIE Section Rules (those applicable to Mr Y) provided that:
- "a fraction of a year's Service may be rounded-up to a complete year of Pensionable Service, in which case an amount equal to the contributions that would have been paid by the Member during that year (less the contributions already paid for the part of the year) shall be deducted from the Member's benefits. This Rule 5.2 shall not apply to Members in Part-time Employment."
57. As drafted, it was unclear how this rule was supposed to operate because a member would only receive benefits upon retirement. However, the 2018 Letter (discussed in more detail below) offered Mr Y the option to pay the contributions from funds other than from his retirement benefits, which seems to have been a sensible interpretation of the rule.
58. This right was not exactly equivalent to Rule 8(F). The first question was whether this was a right that was "no worse" than Mr Y's rights in the NIES Scheme. In the NIES Scheme, a retirement pension was equal to "one-eightieth of his Final Salary for each complete year of his Pensionable Service and so in proportion for an incomplete year".
59. Under the NIES Scheme, had Mr Y been a member of it until 30 September 2017 (the date he left pensionable service with Capita), Mr Y would have accrued 27 years and 363 days, had he not elected to pay contributions to increase his pensionable service. Had he elected to do so, he would have increased his pensionable service to 28 years and 27 days, and his retirement benefits would have been calculated on that basis.
60. Under the Capita Rules, Mr Y had 27 years complete service and had a right to increase his service to the next complete year, 28 years. Had he made additional contributions in respect of his unpaid leave, he would have then had the option to round up his pensionable service to 29 years under Rule 5.2. However, without being able to increase his pensionable service in respect of his period of unpaid leave, under the Capita Scheme he was effectively "capped" at 28 years, even if he

exercised the right to round up his pensionable service. In the Adjudicator's opinion, by losing 29 days pensionable service, Mr Y's rights under the Capita Scheme were worse than his transfer day rights under the NIES Scheme.

61. A further issue was the 2018 Letter sent by Capita Pensions Administration. In the letter, Mr Y was informed that:-
 - 61.1. Pensionable service under the Scheme was calculated on the basis of complete years.
 - 61.2. He could pay the sum of £2,883.35 to round up his pensionable service to the next complete year.
62. In the attached preserved benefit statement, it stated Mr Y's date of joining the Scheme was 4 September 1989 and the date of leaving 30 September 2017 (the date on which the TUPE transfer to ATOS occurred). His pensionable service was stated to be 28 years. However, the final page of the letter stated in the pro forma declaration that "I wish to pay the one off deduction of £2,883.35 in order to increase my Pensionable Service to 28 years."
63. In the Adjudicator's view, it was reasonable to approach the 2018 Letter on the basis that it contained two pieces of incorrect information:
 - 63.1. firstly, in the preserved benefit statement that Mr Y already had 28 years' pensionable service on page 3; and
 - 63.2. secondly, the incorrect cost of increasing his pensionable service from 27 years 363 days to 28 years 27 days.
64. Capita Pensions Administration owed Mr Y a duty of care and by providing incorrect information it did not meet the required standard of care. So, the Adjudicator considered what Mr Y would have done had the information been correct.
65. The Adjudicator's view was that, had the 2018 Letter set out the correct information, it would have set out the following options to Mr Y:-
 - 65.1. Pursuant to the 1992 Regulations and Rule 8(F), the option to make a payment of £245.92 ($(£16.96/2)*29$) to increase his pensionable service from 27 years 363 days to 28 years 27 days.
 - 65.2. Pursuant to Rule 5.2 of the SX3 NIE Section Rules, the option to make a payment of £2,883.35 to round up his pensionable service from 28 years 27 days to 29 years.
66. The CPLAS Trustee said that the option offered in the 2018 Letter was only open to members who did not transfer into the ATOS Scheme. The Adjudicator's view was that the letter did not reflect this assertion. It was sent in May 2018 and there was no reference to the offer being contingent on remaining in the Capita Scheme. In any event, this assertion also overlooked the underlying issue that Mr Y had the option of exercising his Transfer Day rights under Rule 8(F) while in the Capita Scheme, which

did not depend on Mr Y remaining in the Capita Scheme after the option had been exercised.

67. Had Mr Y received this correct information in the 2018 Letter, it was necessary to assess whether he would have acted differently. Following *Corsham and Others v Police and Crime Commissioner for Essex and Others* [2019] EWHC 1776 (Ch) (**the Corsham Test**), the following questions should have been considered when establishing reliance:

- 67.1. did Mr Y rely on the 2018 Letter;
- 67.2. was that reliance reasonable; and
- 67.3. would Mr Y have acted differently if he had been told the correct position?

Did Mr Y rely on the 2018 Letter?

68. In the Adjudicator's opinion, Mr Y did not wholly rely on the 2018 Letter, to the limited extent that it was his understanding from his previous employment with Northgate that it was the employer that paid the necessary contributions for him to accrue pensionable service during unpaid leave. However, the preserved benefit statement on page three of the 2018 Letter referred to his pensionable service being 28 complete years, which would have included the periods of unpaid leave taken whilst employed by Capita and appeared to confirm that Capita had the same policy as Northgate. So, the Adjudicator's view was that he did rely on this letter.

Was that reliance reasonable?

69. The Adjudicator acknowledged that the last page of the 2018 Letter containing the pro forma declaration stated that "I wish to pay the one off deduction of £2,883.35 in order to increase my Pensionable Service **to 28** years [the Adjudicator's emphasis]" which was inconsistent with the figure quoted on the preserved benefit statement on the preceding page. However, the letter informed Mr Y of the cost of increasing his pensionable service and his preserved benefit statement stated 28 years' service. So, unless Mr Y intended to proceed with the offer and make the declaration, there would have been no need for him to refer in any detail to the wording of the declaration. Mr Y did not proceed with the offer, so, the Adjudicator took the view that it was reasonable for him to rely on the preserved benefit statement.

Would Mr Y have acted differently if he had been told the correct position?

70. If Mr Y had been correctly informed of his options, as set out in paragraph 65 above, the Adjudicator's view was that, on the balance of probabilities:
- 70.1. he would have accepted the first offer. This offer was essentially what Mr Y was looking to achieve when he requested that his unpaid leave in 2014 be treated as pensionable. He had previously indicated that he was willing to make up any missing employee contributions to increase his pensionable service by the 29 days that he lost; and

- 70.2. he would not have accepted the second offer. The Adjudicator took this view because Mr Y was effectively offered this in the 2018 Letter and did not take it up. While the Adjudicator acknowledged that this letter contained errors, the Adjudicator's opinion was that Mr Y would have queried the contents with Capita had he been interested in the offer.
71. In summary, the Adjudicator's view was that Mr Y had a subsisting option to exercise the right in Rule 8(F). Under this right, he was able to have the unpaid leave that he took in 2014 treated as pensionable in the Capita Scheme.
72. The Adjudicator also considered any non-financial injustice (distress and inconvenience) that Mr Y had suffered as a result of the actions of Capita and the CPLAS Trustee. In the Adjudicator's view, Capita's actions in not approving Mr Y's request to have his unpaid leave in 2014 treated as pensionable amounted to maladministration, as did the provision of incorrect information in the 2018 Letter.
73. In the Adjudicator's opinion, Mr Y had been caused significant distress and inconvenience that was separate from, and distinct to, the financial loss he had suffered, and a total payment of £500 should be made to him to reflect this.
74. The Adjudicator suggested a number of steps to address the financial and non-financial injustice that, in his opinion, Mr Y had suffered.
75. Mr Y and the CPLAS Trustee did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. All parties were invited to provide further comments, which are summarised below.

Summary of Mr Y's additional comments

76. He had purchased additional service when he left ATOS' employment thinking this would bring him up to 30 years of pensionable service. However, it was only when he received his CETV quotation that he discovered it was only increasing his pensionable service to 29 years. He had chosen 7 September 2018 as his date for leaving ATOS, as he thought this would carry him into his 30th year of service.
77. Had his unpaid leave in 2014 been treated as pensionable, he would have had slightly over 29 years of pensionable service when he left the ATOS Scheme. This would have allowed him to purchase additional days of service to bring his total pensionable service up to 30 years. The option of doing this should have been allowed for in the 'Putting matters right' section of the Adjudicator's Opinion.

Summary of the CPLAS Trustee's additional comments

78. The additional comments from the CPLAS Trustee are summarised in paragraphs 79 to 82 below.
79. At paragraph 60 above, it did not consider the wording: "Had he made additional contributions in respect of his unpaid leave, he would have then had the option to round up his pensionable service to 29 years under Rule 5.2" to be relevant. If it was

to be accepted (noting the CPLAS Trustee's position is reserved²) that Mr Y's rights under the Capita Scheme were worse than his transfer day rights under the NIES Scheme:-

- 79.1. The protection afforded by the 1992 Regulations did not operate to offer Mr Y a "best of both", but to put him in a position where he was no worse off than the position under the NIESS Rules.
- 79.2. In this instance, this would have resulted in Mr Y receiving the better of:
 - 79.2.1. the benefits under the Capita Scheme, which (on the construction set out at paragraphs 56 and 57 above) would treat Mr Y's unpaid leave as non-pensionable but would allow him to pay contributions to round up 27 years and 363 days to 28 years; and
 - 79.2.2. the benefits Mr Y would have received under the NIES Scheme, which would have allowed him to pay contributions so that his unpaid leave was pensionable, but did not provide an option to round up to complete years of pensionable service. As summarised in paragraph 58 above, the NIESS Rules did include a proportionate benefit for part-year's pensionable service. This would have resulted in a benefit calculated by reference to 28 years and 27 days of pensionable service.
- 79.3. Neither the Capita Rules nor the NIESS Rules entitled Mr Y to have his pensionable service (had he left preserved benefits in the Capita Scheme) rounded up to 29 years.
- 79.4. This was consistent with the approach taken by the Court of Appeal in *FDR Limited v Dutton*³, in relation to a proviso in a power of amendment. The Court of Appeal rejected that the proviso operated to give members a blend of old rules and new rules, but instead operated to ensure members were no worse off than if the old rules still applied. As set out at paragraph 13 of that judgment:

"The judge regarded the solution to the conundrum as lying in the interpretation of the old rule and the new rule as a blend. While I see the force of that approach, I do not agree with it. In my judgment the answer to the conundrum lies in the proviso and what it would have been understood to protect."

² The CPLAS Trustee noted that there were circumstances where a member would be better off under the Capita Rules (allowing for benefits to be rounded up to complete years of pensionable service with the payment of additional contributions) than under the NIESS rules. For example, if Mr Y had 28 years and 1 month of pensionable service without taking into account the 29 days of unpaid leave, his maximum pensionable service under the NIESS Rules would be 28 years, 1 month and 29 days, whilst under the Capita Rules it would be 29 years. Therefore, the CPLAS Trustee reserved its position on whether the protection afforded by the 1992 Regulations was not satisfied under the Capita Rules.

³ [2017] EWCA Civ 200

- 79.5. It was also consistent with the approach of the Deputy Pensions Ombudsman in two Determinations in relation to the THUS Group Pension Scheme⁴, which concluded that the protection offered by the regulations under the Electricity Act 1988 was for benefits that were no worse in value than if the members' benefits had been calculated under the Scottish Power Pension Scheme.
- 79.6. It therefore considered that Mr Y's comments did not reflect the protection provided by the 1992 Regulations, which was to ensure members were no worse off, not to provide windfall uplifts to benefits. If it were to be accepted that the Capita Rules left Mr Y in a worse position than under the NIESS Rules, then the protection applied to ensure Mr Y was no worse off (that is, so that he was entitled to a benefit calculated by reference to 28 years and 27 days of pensionable service). It did not operate to allow Mr Y to claim the upside of the NIESS Rules (that is, the option to pay contributions to have his unpaid leave treated as pensionable) and then subsequently the upside of the Capita Rules (that is, the option to pay contributions to round up his benefits for an additional year) as this was more generous than either the NIESS Rules and the Capita Rules and went beyond the protection provided by the 1992 Regulations.
80. So, if it were to be accepted (noting its position is reserved) that Mr Y's rights under the Capita Scheme were worse than his transfer day rights under the NIES Scheme, paragraph 65 above would identify the correct options as follows:
- 80.1. pursuant to the 1992 Regulations and Rule 8(F), the option to make a payment of £245.92 to increase Mr Y's pensionable service from 27 years and 363 days to 28 years and 27 days; or
- 80.2. pursuant to Rule 5.2 of the SX3 NIE section of the Capita Rules, the option to make a payment to round up Mr Y's pensionable service from 27 years and 363 days to 28 years.
81. It therefore considered that (if the above position was accepted) paragraph 71 above would need to be clarified to make it clear that the result would be that Mr Y would be entitled to benefits calculated by reference to pensionable service of 28 years and 27 days.
82. If it were to be accepted (noting its position is reserved) that Mr Y's rights under the Capita Scheme were worse than his transfer day rights under the NIES Scheme, the CPLAS Trustee notes the following:-
- 82.1. Mr Y's entitlement under the Capita Scheme would be to benefits calculated by reference to an additional 29 days of pensionable service. In these circumstances, the calculation of the past service reserve when determining

⁴ PO-6444 and PO-6446

the transfer payment from the Capita Scheme to the ATOS Scheme would have been based on pensionable service of 28 years 27 days.

- 82.2. The amount of additional pensionable service Mr Y built up in the ATOS Scheme was not within the CPLAS Trustee's (or Capita's) control. Mr Y acknowledged that he intended to manage his pensionable service in the ATOS Scheme so that, following cessation of his service, he would have slightly more than 29 years of pensionable service, with the intention of this being rounded up to 30 years. If this was Mr Y's intention, he could have clarified his pensionable service position with the ATOS Trustees before choosing a date to leave service (which he acknowledges was within his control).
- 82.3. Furthermore, as the ATOS Scheme only had to mirror member entitlements under the Capita Scheme, under the ATOS Scheme, the protection under the 1992 Regulations would operate so that Mr Y's entitlement would have been to the better of benefits calculated by reference to:
- 82.3.1. years, months and days of total pensionable service in the Capita Scheme (including transferred-in pensionable service) and the ATOS Scheme (including any unpaid leave that is treated as pensionable) but not including the option to round up to complete years (**Option 1**); or
- 82.3.2. years, months and days of total pensionable service in the Capita Scheme (including transferred-in pensionable service) and the ATOS Scheme with the option to round up to complete years (but excluding any unpaid leave) (**Option 2**).
- 82.4. It understood that, in practice, the CETV from the ATOS Scheme was calculated in accordance with Option 2 (that is, by reference to 29 years of pensionable service). It also understood that Mr Y considered his total pensionable service under the Capita Scheme (including transferred-in pensionable service) and the ATOS Scheme to be 29 years and 3 days.
- 82.5. The CPLAS Trustee provided alternative suggestions in relation to the redress the Adjudicator had recommended.
- 82.6. It did not consider that either the rules of the ATOS Scheme (assuming they mirrored the Capita Scheme) or the protection afforded by the 1992 Regulations meant that Mr Y would have been entitled to round up his pensionable service in the ATOS Scheme to 30 years. Moreover, if Mr Y considered he was entitled to a greater CETV from the ATOS Scheme, the CPLAS Trustee submitted that this was an issue between Mr Y and the ATOS Trustees.

83. I issued a preliminary decision (**the Preliminary Decision**) in which I found that a different outcome was appropriate. I did not agree with the Adjudicator's Opinion.

84. Mr Y made further submissions in response to the Preliminary Decision, which are summarised below.

Summary of Mr Y's response to the Preliminary Decision

85. He had not been made aware in 2014 that no decision had been made to make his unpaid leave that year pensionable.
86. In the previous seven years his unpaid leave had been treated as pensionable, following his completion of a form to request this. As a result, a precedent had been set, and Capita had not issued any communication to the contrary. It was reasonable to assume that he had used the same form to make such a request in 2014.
87. It was Capita's failing that no information had been provided on how unpaid leave would be processed or how this would impact his pensionable service. The error in the 2018 Letter had reinforced his supposition that unpaid leave would, as it had been in the past, be treated as pensionable.
88. It was also Capita's failing that it held no evidence of the form he had submitted or that he had approached his manager to request unpaid leave.
89. The stage two IDR response said that there was no evidence that Capita had agreed that the unpaid leave in 2014 would be pensionable or that any employee contributions were paid. This implied that it was within Capita's power to have made it pensionable.
90. He was significantly financially worse off by not having an additional year of pensionable service.

Ombudsman's decision

91. Mr Y has complained that the unpaid leave that he took in 2014 was not treated as pensionable under the Capita Scheme. He said that this restricted his ability to round up his pensionable service to 30 years.
92. Rule 8(F) provides an option for a member to agree with the Committee to pay contributions so that unpaid leave consented to by the Employer or the Principal Employer is treated as pensionable service. The term "agree" requires both parties to agree and cannot be construed as a unilateral member option or right. The requirement is for agreement before commencement of the unpaid leave even though, if agreed, payment of contributions can be made on return. I note that, without this provision, there would be no power for the Committee to agree for unpaid leave to be pensionable, except in circumstances such as, for example, sick leave, which is covered elsewhere. If the option to pay contributions is treated as a unilateral member right, employers can never agree unpaid leave on a non-pensionable basis which could be impracticable.
93. As such Rule 8(F) is a discretionary option, not a right.

94. I do not agree that Rule 8(F) is a transfer date right within the meaning of the 1992 Regulations. In particular:-
- 94.1. "Transfer date rights" means the "future pension rights" provided by the Original Scheme in the form in which they were on the transfer date.
 - 94.2. "Future pension rights" means pension rights as referred to in Regulation 7.
 - 94.3. Regulation 7, ignoring the provisions for alternative schemes and employer changes, provides that future pension rights are:
 - 94.3.1. the right to participate in a relevant scheme; and
 - 94.3.2. the right to accrue pension rights in accordance with the rules of that scheme.
 - 94.4. "Accrue" means to become entitled to pension rights in respect of employment while a member of a relevant scheme, including increases in accrued pension rights under the relevant scheme arising pursuant to increases in remuneration.
 - 94.5. "Accrued pension rights" means the pension rights, other than future pension rights.
95. A discretionary option available on the transfer date and exercisable in the future, subject to the agreement of another person, cannot be a transfer date right because it was not, on the transfer date, a pension right that was capable of accruing (in the sense of the member becoming entitled to such pension right in respect of employment). It was an option subject to the agreement of another party, not a pension right, and could only give rise to a pension right by being exercised with the agreement of the Committee.
96. As such, there was no requirement to maintain and replicate Rule 8(F) in the successor schemes. At most there could be a requirement to maintain it as an option subject to discretions; the employer's discretion to agree the unpaid leave and the Committee's discretion to agree whether such unpaid leave could be pensionable if contributions were paid. However, I do not agree the 1992 Regulations provide that discretionary options were transfer date rights that needed to be maintained. They did not "accrue".
97. The Capita Scheme did provide an option for unpaid leave to be pensionable, in which case the member would need to pay contributions (see Rule 9 of the Capita Rules in Appendix 4).
98. The nub of the case is that Mr Y did not request, and it was not proposed that, his 2014 unpaid leave would be pensionable. Furthermore, he never paid the contributions that would have been payable if he had asked, and it had been agreed that such unpaid leave would be pensionable. In particular:

- 98.1. there appears to be no evidence that there was any discussion or request about that unpaid leave being pensionable from Mr Y or anyone else;
 - 98.2. even if Rule 8(F) had applied (my view is that it did not and the Capita Scheme cannot be deemed to have included an equivalent provision), Mr Y would have needed to make the request and agree it with the CPLAS Trustee before commencing his unpaid leave, and pay the relevant pension contributions; there is no evidence he did any of this;
 - 98.3. there appears to be no evidence that Capita and the CPLAS Trustee agreed for the unpaid leave to be pensionable. The fact that no contributions were deducted and that records held that it was non pensionable, suggest Capita and the CPLAS Trustee did not agree for it to be pensionable, as required under Rule 9 of the Capita Rules; and
 - 98.4. the fact that Mr Y's manager spoke to payroll is no evidence that there was any intention to make the unpaid leave pensionable because it would have been reasonably necessary to speak to payroll about his leave being unpaid.
99. As no decision was made at the time for Mr Y's 2014 unpaid leave to be pensionable, and he did not pay the required contributions, his unpaid leave is not part of his pensionable service under Rule 9 of the Capita Scheme (and would not have been under the NIESS Rules either). Mr Y has referred to the previous seven years in which his unpaid leave had been treated as pensionable following him completing a form to request this. He also said that he was never made aware in 2014 that no decision was made in this respect. However, I do not agree that it was reasonable for Mr Y to assume that any request he may have made had been approved. As his employer had changed to Capita, it would have been prudent for him to have sought positive confirmation concerning the request process and the outcome.

The Capita Scheme includes an option that does not appear to have been available under the NIESS Rules, which allows a member at normal retirement date (and by reference on early and late retirement) to have his pensionable service rounded up to whole years, subject to the relevant contributions being deducted from his benefits. (There is no provision for a person who is no longer an employee or member of the Capita Scheme to pay contributions.) This option is additional and separate from the option to have unpaid leave treated as pensionable and is only available for the Sx3 NIE members. The option is more valuable to members whose service slightly exceeds rather than those whose service slightly falls short of whole years, assuming the value of the additional contributions is less than the value of the additional accrual.

100. There is no basis for crediting Mr Y with his 2014 unpaid leave as part of his pensionable service because the discretions in Rule 9 were never exercised in his favour. Even if NIESS Rule 8(F) had applied, Mr Y took no steps to exercise the option in the terms of Rule 8(F).
101. Mr Y should have been given the correct figures (excluding the 2014 unpaid leave) and it seems clear that whatever the relevant rounding up period, Mr Y would have

asked to round up and accepted the deduction from his benefits under rule 5.2 of Schedule 3.

102. It appears Capita offered an option to pay contributions as an alternative (under discretionary benefit powers) so that no deduction would be made from Mr Y's benefits, and it appears that Mr Y agreed this and would have agreed any other correct amount.
103. Mr Y should have been offered the option of rounding up his pensionable service in the Capita Scheme from 27 years and 363 days to 28 years. Assuming he accepted this offer, having completed a further 342 days of pensionable service in the ATOS Scheme, he should then have been given the option of rounding up his total pensionable service from 28 years and 342 days to 29 years. Under this scenario he would have purchased a further two days of pensionable service in the Capita Scheme and 23 days in the ATOS Scheme.
104. In reality, Mr Y was not given the option of purchasing the additional two days of pensionable service in the Capita Scheme and, on leaving the ATOS Scheme with a total of 28 years and 340 days of pensionable service, he purchased an additional 25 days to round his pensionable service up to 29 years. So, while the split of days purchased between the Capita and ATOS Schemes was not as it could have been, the total days purchased is the same, as is the resultant pensionable service on leaving the ATOS Scheme. So, I find that no corrective action is required.
105. Mr Y said that he would have stayed in ATOS' employment had he realised he would not be able to round up his pensionable service further. I have not seen a sufficiently clear representation that Mr Y would have been able to round up to 30 years pensionable service or that he had accrued pensionable service that would have permitted him to do so if he left service on 7 September 2018. Nor have I seen anything that Mr Y could reasonably rely on or that CPLAS Trustee should reasonably have expected him to rely on in deciding to leave service. Mr Y made his own estimate of his pensionable service (incorrectly assuming his 2014 unpaid leave was pensionable) and deduced that he would be able to round up his pensionable service to 30 years if he had left employment on 7 September 2018. He relied on his own estimate rather than the CPLAS Trustee's benefit statement, and it was his own estimate that was incorrect and led him to retire with less than 30 years of pensionable service.
106. I do not agree that consideration of *FDR Limited v Dutton* or the previous PO cases helps. If Rule 8(F) was a transfer date right (which I consider it was not), the 1992 Regulations required a similar option to be maintained on no less favourable terms and for Mr Y's benefits to be calculated as if it had been maintained. Mr Y did not attempt to exercise the option on Rule 8(F) terms, and Capita and the CPLAS Trustee did not exercise the equivalent option under Rule 9 of the Capita Rules. Even if such an option had been part of the Capita Scheme, I would have to conclude that Mr Y would not have agreed the relevant contributions with the CPLAS Trustee before going on unpaid leave in 2014.

107. If Rule 8(F) is not a transfer date right, there was no obligation to maintain it. Rule 9 of the Capita Rules provided a similar option, and it was not exercised in respect of Mr Y's unpaid leave in 2014. The rounding-up option under the Capita Scheme appears to be a separate benefit option available at retirement or at least at the end of pensionable service (when it can be known whether a person's total pensionable service is in whole years or includes a period short of a year). Nothing in the 1992 Regulations precludes additional benefit options being provided for protected persons. There is no need to "blend" these provisions and I see no reason in principle why a member could not benefit both from Rule 9 (even amended to be on Rule 8(F) terms) in respect of periods of temporary absence during service and also benefit from Rule 5.2 of Schedule 3 at retirement – as indeed Mr Y did. The only point is that Mr Y did not benefit from Rule 9 (or 8(F)) in respect of his unpaid leave in 2014.
108. I have considered any non-financial injustice (distress and inconvenience) that Mr Y had suffered as a result of the incorrect information in the 2018 Letter. The provision of this information amounted to maladministration on the part of the CPLAS Trustee. However, I am not persuaded that Mr Y was caused distress and inconvenience, sufficient to warrant an award for redress in this instance. The minimum award for non-financial injustice awarded by the PO is £500 and I find that this threshold has not been met.

I do not uphold Mr Y's complaint.

Camilla Barry

Deputy Pensions Ombudsman
21 July 2025

Appendix 1

Extract from a working consolidated version of the Northern Ireland Electricity Superannuation Scheme Trust Deed and Rules at 1 April 1992

“8. Cessation of membership

[...]

- (F) A Contributor who, either in accordance with any career break scheme operated by the Employer or otherwise with the consent of the Principal Employer, agrees with the Employer to take unpaid leave from Service will, as from the date of commencement of that leave, be treated as a Contributor during the period of his leave notwithstanding that no contributions may be paid under Rule 10 during that period. In addition the Contributor will have the option of agreeing with the Committee before his unpaid leave commences to pay contributions to the Fund in accordance with Rule 10 either during the period of unpaid leave or at the end of that period and in either case based on his Salary at the date unpaid leave commences. If the Contributor exercises the option he will continue to accrue Pensionable Service during the period of unpaid leave. If the Contributor does not exercise the option his Pensionable Service will, on his return to paid employment with the Employer, be treated as continuous except that no account will be taken of the period of unpaid leave.”

Appendix 2

Extract from the Viridian Group Pension Scheme Rules dated 27 April 2009

"A. INTERPRETATION, STRUCTURE AND ALTERATION OF RULES [...]"

A3 Definitions [...]

Part-time Employment means Employment under a contract of employment which requires an employee to work less than the number of hours in a standard full-time pay period as determined by the Principal Employer.

B. FOCUS SECTION [...]

B1 Interpretation [...]

Scale Pension means 1/60th of a Member's Final Salary multiplied by the period of his Pensionable Employment.

For this purpose:

- (i) any period of the Member's Pensionable Employment which is Part-time Employment is multiplied by PT:FT; [...]

where:

PT = the number of hours the Member is required to work under his contract of employment in each week during the period of his Part-time Employment;

FT = the number of hours in the standard full-time working week as determined for the Member by the Principal Employer. [...]

B6 Retirement at or after Normal Pension Age

- (1) On retirement from Employment at or after Normal Pension Age a Member is entitled to an immediate annual pension equal to his Scale Pension [...]"

Appendix 3

Extracts from the Definitive Trust Deed and Rules of the Northgate Managed Services Pension Scheme dated 11 December 2012

“Schedule 2

Definitions

“Pensionable Service”

In respect of a Sx3 NIE Member, the number of years’ Service as an Active Member, together with any period added by the Trustees by reason of a transfer payment made to the Scheme in respect of him. [...]

Schedule 3

General Rules

The General Rules apply to DB Members, Sx3 Members and Sx3 NIE members

1 Temporary Absence [...]

1.3 Benefit entitlement during temporary absence

- (a) Where a Member or his Employer where the Salary Sacrifice Arrangement applies, continues to pay contributions in accordance with Rule 3 (members contributions) of the DB Rules, the Sx3 Rules or the Sx3 NIE Rules, as appropriate, during his temporary absence (and based on his pensionable Salary or Pensionable Earnings, as appropriate, calculated on the day immediately preceding the commencement of his temporary absence), he shall continue to accrue benefits under the Scheme. Alternatively, the member may elect, with the consent of the Trustees, to reduce or suspend the payment of contributions payable under Rule 3 (member contributions) of the DB Rules, the Sx3 Rules or the Sx3 NIE Rules, as appropriate during the period of temporary absence. Where such contributions have been reduced or suspended, if the Trustees consent, the member (or his Employer where the Salary Sacrifice Arrangement applies) may make up any contributions to the Scheme at the end of his temporary absence. Where contributions have not been paid in full during the period the Trustees shall, on the advice of the Actuary, determine the benefits payable in respect of the period of temporary absence.”

Appendix 4

Extracts from the Definitive Trust Deed and Rules of the Capita Pension and Life Assurance Scheme dated 13 December 1996 and the SX3 NIE schedule of a Deed of Amendment and Adherence, dated 6 June 2014

Definitive Trust Deed and Rules of the Capita Pension and Life Assurance Scheme dated 13 December 1996:

“9 Temporary Absence from Work

General

9.1 A Member who is temporarily absent from Service will be treated as remaining in membership of the Plan for as long as he receives contractual earnings or statutory sick pay (as defined in the Social Security Contributions and Benefits Act 1992). In these circumstances, his Pensionable Service is treated as continuous.

9.2 If, during any temporary absence from Service, a Member does not receive contractual earnings or statutory sick pay (or, if he did, it has stopped) the Employer may decide to treat the Member as remaining in membership of the Plan and for a period as the Employer decides. The Employer will decide, with the agreement of the Trustees, the extent to which Pensionable Service will be treated as continuous.”

SX3 NIE schedule of a Deed of Amendment and Adherence, dated 6 June 2014:

“5.2 A fraction of a year's Service may be rounded-up to a complete year of Pensionable Service, in which case an amount equal to the contributions that would have been paid by the Member during that year (less the contributions already paid for the part of the year) shall be deducted from the Member's benefits. This Rule 5.2 shall not apply to Members in Part-time Employment.”

Appendix 5

Extracts from the Electricity (Protected Persons) Pensions Regulations (Northern Ireland) 1992

“Protected Employee

3 – (1) Subject to paragraph (2), this regulation applies to any person who –

- (a) is an existing employee and immediately before the transfer date is a participant in the scheme; [...]

“Accrued pension rights

6 – [...]

- (4) If a protected person transfers or is transferred to a relevant scheme, and if a transfer payment is made to that scheme in respect of his accrued pension rights, the employer providing the scheme shall procure that the rules of that scheme will secure accrued pension rights which, on the basis of good actuarial practice, are at least equivalent in value to the accrued pension rights so transferred from the former scheme.
- (5) Any new employer shall also procure that if the protected person notifies or is deemed to have notified his new employer in accordance with the terms (if any) of the relevant scheme provided by the new employer, and otherwise within two years of transferring to the new employer, that he desires to transfer his accrued pension rights to the relevant scheme provided by the new employer, he shall be entitled to transfer to that relevant scheme in accordance with paragraph (4) any accrued pension rights which are capable of being transferred.
- (6) To the extent that an employer is unable to provide a relevant scheme which satisfies the requirements of paragraphs (4) and (5), he shall ensure that the accrued pension rights of each protected person in his employment are secured by other suitable means in accordance with regulation 9 to the same extent and at the same level as such rights would have been secured if he had provided a relevant scheme which satisfies those requirements.

Future pension rights

7 - (1) The future pension rights for the purposes of these Regulations are-

- (a) the right of a protected employee to participate in a relevant scheme and (subject to paragraph (3)) -
 - (i) where that scheme is one of the Original Schemes, to accrue pension rights in accordance with the rules of that scheme;

- (ii) where the relevant scheme is an alternative scheme, to accrue pension rights on the same basis as that applicable to other protected employees in that scheme;

[...]

- (b) subject to paragraph (2), the right of a protected employee, who is participating in a relevant scheme and who changes employer to an employer who provides a relevant scheme in which no protected employees are then participating, to accrue pension rights which are no worse than transfer date rights.

[...]

Alternative Scheme

8 - (1) This regulation applies to any retirement benefits scheme which –

[...]

- (e) provides future pension rights in accordance with regulation 7;”

“Provision of relevant scheme

13.- (1) This regulation applies where a protected employee changes his employer –

- (a) in the circumstances referred to in regulation 11(5); or
 - (b) in any other circumstances not falling within regulation 11(1) or 12.
- (2) If the new employer participates in a relevant scheme, he shall enable the protected employee to participate in that scheme and shall provide future pension rights for the protected employee in accordance with regulation 11(4).
 - (3) If his new employer does not participate in a relevant scheme, the new employer shall so far as reasonably practicable provide an alternative scheme.
 - (4) The future pension rights to be provided by any scheme required under this regulation shall be no worse than transfer date rights.”