

Ombudsman's Determination

Applicant	Mr B
Scheme	Principal Civil Service Pension Scheme (the Scheme)
Respondent	Government Communications Headquarters (GCHQ)

Outcome

1. I do not uphold Mr B's complaint, and no further action is required by GCHQ.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr B has complained that GCHQ failed to transfer him to the correct scheme following 2015 Government changes. His Normal Retirement Age (**NRA**) was deferred by one year, from age 65 to 66. As a result, he was provided incorrect information about his NRA, which he relied on to make his decision to retire at age 65. Consequently, he has suffered financial loss as he was unable to access his pension, without reduction, for an additional year.
4. He has said that GCHQ's offer of £500 does not adequately compensate him for his loss or provide sufficient redress for the distress and inconvenience he has suffered. As compensation he is seeking the one-year difference between the two schemes NRA's amounting to £3,982.

Background information, including submissions from the parties

5. The sequence of events is not in dispute, so I have only set out the key points. I acknowledge there were other exchanges of information between all the parties.
6. On 4 August 2014 Mr B began employment with GCHQ and became an active member of the Nuvos pension scheme.
7. Mr B began to receive annual benefit statements (**ABS**) from the Administrator of the Scheme, Civil Service Pensions (**MyCSP**). The statements stated he was a member of the Nuvos Scheme (**Scheme A**), with a NRA of 65 in August 2020.

On 1 April 2015, following the introduction of a new section of the Civil Service Pension Scheme (the 2015 Section, **Scheme B**), Mr B incorrectly remained in Scheme A and was treated as a protected member. However, as Mr B joined the Scheme on 4 August 2014, after the relevant cut off date (**the presence test**), he should have transferred into Scheme B. This was due to incorrect information provided by GCHQ. Scheme A and B were similar with the main difference being that Mr B's NRA was deferred from 65 in August 2020 to 66 in August 2021.

8. In 2019, Mr B left employment with GCHQ prior to his NRA under both Schemes.
9. In January 2020, MyCSP provided Mr B with his ABS. It confirmed his membership in Scheme A with the NRA of 65 in August 2020. This was seven months prior to his NRA of 65 and illustrated an annual pension of at least £3,982.
10. On 13 May 2020, MyCSP wrote to Mr B to inform him of his deferred benefits. It noted his preserved pension benefits in Scheme A and Scheme B, the latter of which he was unaware of.
11. On 22 July 2020, GCHQ wrote to Mr B. It informed him that it had failed to correctly transition him to Scheme B as of 1 April 2015. It explained the 'presence test' that was applied regarding the decision not to retain his pension benefits in the Scheme A. This was five weeks prior to Mr B's retirement date in August 2020.
12. On 3 August 2020, MyCSP emailed Mr B and informed him that:
 - His Employer, GCHQ failed to correctly transfer him into Scheme B on 1 April 2015. Upon Mr B leaving employment in 2019, MyCSP double checked the data provided by GCHQ in order to accurately calculate his deferred benefits. It was at this point the mistake was discovered and it informed GCHQ. It then correctly transferred his benefits post 1 April 2015 into Scheme B and informed him of his deferred benefits in its letter of 13 May 2020.
 - It acknowledged the one-year difference between Scheme A and Scheme B's NRA, and the impact to his retirement plans. But it emphasised that it was governed by Scheme Rules and hence unchangeable. However, it did note that Mr B had the option to retire early and receive a reduction to his benefits.
13. On 3 March 2021, Mr B emailed GCHQ to query its letter of 22 July 2020. He questioned:
 - That despite being only 5 years away from his NRA in 2015, he was not entitled to full protection in Scheme A that was offered to others in his age group. Further, he contested that the requirement to protect members nearing their NRA's should override any other test criteria.
 - The mistake was worsened as he had remained in Scheme A throughout his employment with GCHQ. He was only informed of the mistake and the Scheme transfer five weeks prior to his NRA under Scheme A, at age 65. As such, he expected a degree of protection.

- Again, he challenged that the overriding criteria in the pension test should be the age of the individual and the number of remaining years prior to retirement, not the presence test which used an arbitrary date. Regardless, the fact he remained in Scheme A was GCHQ's mistake. Its approach to rectifying the issue, by transferring him into Scheme B, would delay his NRA to age 66 and was unacceptable.
- He referenced the McCloud judgment¹ which found that 10 years was insufficient time to make necessary pension plan adjustments. Hence, he argued that five weeks was a ridiculously short period of time in order to make adjustments to his pension.
- As a solution he requested that he be returned to Scheme A and resume his original NRA of age 65 in accordance with his expectations and retirement plans over the past five years.

14. On 10 March 2021, GCHQ emailed Mr B in response and clarified:

- The Scheme Rules were very specific at the time and required Mr B to satisfy the presence test in order to remain in Scheme A. It was not in a position to speculate on the rationale behind the Regulations, which had passed through government legislative process.
- It was its responsibility as an employer to ensure that Mr B was placed in the correct scheme. Although, this was executed later than it should have been, Mr B was now in the correct position.

15. On 11 March 2021, Mr B emailed GCHQ in response. He identified that all his ABS' stated he was a member of Scheme A, with the latest statement being in January 2020. All his ABS' noted his NRA as August 2020 at age 65. He acknowledged that the mistake was unfortunate; however it was an employer error that GCHQ should take ownership of.

16. On 24 March 2021, GCHQ emailed Mr B in response:

- It acknowledged Mr B's ABS' incorrectly stated he was a member of Scheme A and thus contained incorrect information. However, it was bound under the Scheme Rules² to put him into his correct Scheme. By placing him in the correct scheme, Scheme B, it was taking ownership of the error.
- As advised by the Cabinet Office (**Scheme Manager**), GCHQ sought to remedy the situation by offering to reinstate Mr B's employment. This would have enabled him to work for an additional year to mitigate the loss to his pension.

¹ *Lord Chancellor v McCloud & Ors, Sargeant and Ors v Secretary of State for the Home Department and Ors* [2019] ICR 1489

² Civil Service Pensions Scheme Rules

17. On 6 April 2021, Mr B emailed GCHQ in response. He disagreed that GCHQ had taken ownership of the error, rather its actions amounted to an abdication. Instead of achieving resolution through dialogue, it automatically moved him to Scheme B with no regard of the implications and effect on his financial position. Further, he rejected the idea of reinstatement stating that he had retired and had no intention of taking up employment. He requested for his complaint to be investigated under its Internal Dispute Resolution Procedure (**IDRP**).
18. On 7 April 2021, GCHQ emailed Mr B in response. It noted that it was bound to comply with the Scheme Rules as directed by the Scheme Manager, which it could not override. Therefore, the corrective action of moving him to Scheme B had to be taken irrespective of the prior incorrect actions. It noted his decision not to reinstate his employment and directed him to MyCSP to progress his complaint.
19. On 11 April 2021, Mr B emailed MyCSP. He explained that he made the decision to retire early based on his NRA of 65 under Scheme A. He had sufficient savings income to support the short duration between his retirement date and Scheme A's NRA in August 2020, when his benefits would become payable. However, due to the 2015 mistake and his transfer to Scheme B his NRA under Scheme B had been deferred to August 2021. Further he was only informed 5 weeks prior to his NRA under Scheme A. Therefore, he requested to be returned back to Scheme A.
20. On 14 April 2021, MyCSP emailed Mr B in response to his complaint. It informed him that:
 - His Employer, GCHQ were responsible for providing it with accurate and up to date information. Upon GCHQ informing it of Mr B's leaving date in 2019, data queries were made. It was from these queries that the mistake was discovered. It was following this that it sent its letter of 13 May 2020.
 - It could only provide Mr B the benefits to which he was entitled. Hence it had to transfer him to Scheme B for membership post 2015. It was unable to deviate from this and keep him in Scheme A.
 - It emphasised that while his NRA was age 66, he could retire Early at age 65 with a reduction to his benefits.
21. On 5 May 2021, Mr B emailed MyCSP in response. He clarified:
 - He was disappointed in the way the resolution was conducted. In rectifying the mistake there was no regard given to the impact it would have on him, further there was no discussion. He found it unacceptable that he was transferred to Scheme B weeks prior to receiving his pension benefits under Scheme A's NRA, especially without any consultation.
 - He referred to the McCloud judgment. It had challenged the transition of its members to Scheme B as discriminatory, further its members were not provided sufficient time to reevaluate their retirement positions. As such, Mr B found this

could be applicable to his case. Even if he was not entitled to transitional protection in 2015, he believed that he should be entitled to it considering the Scheme transition took place weeks prior to his NRA in Scheme A.

22. On 7 May 2021, MyCSP emailed Mr B. It explained the presence test that was applied in deciding whether to transition members from Scheme A to Scheme B. It acknowledged and apologised for the inconvenience caused by the delay to notify him of the mistake, however it again emphasised the responsibility of his employer to provide accurate information.
23. GCHQ have offered £500 as compensation.
24. Following the complaint being referred to The Pensions Ombudsman, Mr B and GCHQ made the following submissions.

Summary of Mr B's position

25. Mr B only retired with the expectation of accessing his pension upon reaching Scheme A's NRA of 65 in August 2020.
26. At no point was he informed of the transition of his pension benefits from Scheme A to Scheme B. Upon the mistake being discovered, he was automatically transitioned to Scheme B.
27. He was only made aware of the mistake and the change to his NRA five weeks before his retirement date in August 2020. He was not provided with an explanation or the opportunity to explore any redress. He feels that there was no consideration for the impact of the amended NRA or the impact to his financial circumstances. As such, he was denied any degree of protection to ensure sufficient time to plan for his retirement.
28. He believes that under the McCloud judgment and the respective Government Consultation exercise, he should have been offered the option to choose whether to be transferred to Scheme B or remain within Scheme A. Further, GCHQ's mistake has affected his financial planning for retirement. He has had to rely on his savings and the financial support of his partner until his corrected NRA in August 2021.
29. He feels GCHQ's offer of £500 is not sufficient. As compensation he is seeking the financial loss of the 1 year difference between Scheme A's NRA (65) and Scheme's B NRA (66) amounting to £3,982. Due to the duration of time that has passed, he acknowledges that it is no longer realistic for his pension benefits to be reverted back to Scheme A.

Summary of GCHQ's position

30. GCHQ have acknowledged and apologised for providing MyCSP incorrect information, which led to the failure to transfer his benefits to the correct Scheme B

back in 2015 and resulted in Mr B receiving incorrect information in his benefit statements as to his expectant retirement age.

31. It further acknowledges that because of its mistake, Mr B was within weeks of his intended retirement date before it was discovered he was in the wrong Scheme and he was informed.
32. Upon the discovery of its mistake, remedial action was immediately taken to correct it. Mr B's NRA increased from 65 to 66, which caused a loss of expectation to his retirement plans. However, he did receive a slight increase in his pension accrual rate from 2.3% to 2.32%.
33. While sympathetic, GCHQ and MyCSP are only able to provide Mr B with benefits in line with the Scheme Rules, thus transferring him from 1 April 2015 to Scheme B. It was unable to override the application of the presence test to return him back to Scheme A.
34. In recognition of the distress and inconvenience suffered by Mr B, GCHQ has offered £500 as compensation.

Adjudicator's Opinion

35. Mr B's complaint was considered by one of our Adjudicators who concluded that there was maladministration. The Adjudicator's findings are summarised below:-
 - The basic principle for negligent misstatement (in the absence of any additional legal claim) is that a scheme is not bound to follow the incorrect information. A member is only entitled to receive the benefits provided under the scheme rules, that is, those based on the correct information accurately reflecting the scheme rules.
 - Redress for negligent misstatement will only be made available if it can be shown that financial loss or non-financial injustice has flowed from the incorrect information given. For example, the member may have taken a decision in the expectation of receiving the higher benefits which they would not otherwise have done, such as retiring early. The Ombudsman will consider whether it is more likely than not that a member relied on the incorrect information to their detriment, that it was reasonable for them to do so.
 - The Adjudicator found that Mr B had reasonably relied on the incorrect information regarding his NRA. GCHQ failed in its duty to ensure it provided MyCSP the correct information, hence ensuring Mr B's pension benefits could be correctly calculated. The duration and the consistency of GCHQ's mistake, particularly with regard to the NRA, reaffirms his reliance.
 - However, the Adjudicator did not find that Mr B had suffered financial loss. The transfer of Mr B's benefits to Scheme B delayed his NRA by one year, however this in itself did not constitute financial loss rather, a loss of expectation. As a

result, his benefits were not decreased but merely recalculated. He would still receive his correctly calculated benefits, just a year later.

- The Adjudicator acknowledged that while Mr B may have remained in employment until August 2021, it was hard to say, without the benefit of hindsight the choice he would have made had he been aware of the change to his NRA. Furthermore, as stated by Mr B himself, he was in an increasingly acrimonious work environment at GCHQ which contributed to his decision to leave in 2019. Additionally, after the mistake was discovered, he had the opportunity to cancel his retirement and continue employment for an additional year, which he declined. Regardless, GCHQ's mistake did not entitle him to the incorrect NRA of 65, as he was legally only entitled to his correctly calculated pension under the Scheme Rules.
- The McCloud judgement did not apply in Mr B's case as he was not a member of the Scheme before 1 April 2012. He joined GCHQ on 4 August 2014, which was after the relevant McCloud period. Further, it was left to individual Schemes to determine the approach used to address such cases. In this case MyCSP used the presence test, which established that Mr B's benefits should have been transferred to Scheme B. Therefore, the test used by MyCSP and the transfer of Mr B's benefits were legally in line with the Scheme's Rules. It was unfortunate that the mistake was discovered so close to his retirement date.

36. Mr B did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mr B provided further comments which do not change the outcome. I largely agree with the Adjudicator's Opinion, and I will therefore only respond to the key points raised by Mr B and clarify certain points in the Adjudicator's Opinion.

37. In summary Mr B said:-

- Due to GCHQ's mistake, the deferral of his NRA has cost him the financial loss of a year's pensionable income. He had no way to recover that income in any way.
- The issues in his working environment had no bearing whatsoever on his decision to retire. His decision was solely based on the incorrect NRA in August 2020 under Scheme A. Had he been provided with his correct NRA in August 2021, he would have extended his employment into 2020.
- He does not believe he was presented with an opportunity to cancel his retirement and resume employment. He finds it especially unlikely considering it was during the UK's COVID-19 lockdown. He had already been out of employment for 10 months by the time GCHQ had identified the mistake and MyCSP rectified it.
- In conclusion, Mr B does not feel GCHQ's compensation of £500 addresses the distress and inconvenience he has suffered as a result of its error. When the mistake was discovered in 2020, he felt that GCHQ did not take appropriate accountability for the mistake. He was made to feel not important and his financial loss of losing an entire year's income was treated as irrelevant.

Ombudsman's decision

38. Mr B has complained that GCHQ failed to provide MyCSP with correct information, which led to a failure to transfer him to the correct scheme following the 2015 reforms. As a result, he was issued with ABS' by MyCSP between 2014 and 2020 which incorrectly stated that he had an NRA of 65, rather than 66, on the basis that he was in Scheme A rather than Scheme B. The error was only picked up in May 2020 and was fully explained to him in July 2020 shortly before his expected retirement date in August 2020 at the age of 65.
39. As stated in the Adjudicator's Opinion, errors in ABS' will not alter the member's rights under the scheme. A member is only entitled to receive the benefits provided under the scheme rules, that is, those based on the correct information accurately reflecting the scheme rules even where incorrect information has been provided.
40. The basic principle for negligent misstatement is that if incorrect information, such as an incorrect ABS, is provided by a person with a particular expertise or responsibility such as a scheme administrator to a person to whom they owed a duty of care in respect of that information, such as a scheme member, in the reasonable expectation that the member would rely on it for a particular transaction or decision (or type of transaction or decision) and the member does rely on it in that way and suffers a financial loss in consequence, the scheme administrator may be liable to compensate the member for the loss he suffers. This may turn on whether the loss was of a type the scheme administrator was required to protect the member from by taking care in the provision of the relevant information. The compensation is not to put him in the position he would be if the incorrect information were correct (i.e. to give him an NRA of 65) but to put him in the position he would have been he would have been if the correct information had been provided (i.e. if he had been told his NRA was 66 in his ABS').
41. ABS' are estimates of members' benefits and are issued annually to members to enable them to understand their benefits and to therefore plan for their retirement. They are important documents. That does not necessarily mean that scheme administrators will be liable if they contain errors as they are only estimates and are based on information held in the system at the relevant time. As they are issued annually, administrators may not have the opportunity to check all data that they are based on as they might be expected to when providing an individual retirement quotation. For this reason, scheme administrators may not generally be liable to the member for losses they suffer in reliance on incorrect ABS. Here, the complaint is against GCHQ, who provided the information to MyCSP that resulted in the incorrect information in the ABS.
42. Reliance for the purpose of compensation for negligent misstatement requires that the person reasonably relied on the information in relation to some decision or transaction. I have no doubt that Mr B relied on the ABS' in planning to retire in August 2020 at age 65. However, as he had received the corrected information

before he retired, his decision to retire in August 2020 could not reasonably be based on information which he was by then aware was incorrect.

43. I find that Mr B was provided with an opportunity to cancel his retirement. In GCHQ's e-mail to Mr B on 24 March 2021, he was offered the opportunity to be reinstated and continue employment for another year. This would have mitigated his loss. Further, it would have provided him the opportunity to increase his pension by a year. As evidenced in Mr B's response on 6 April 2021, he declined this offer noting he was retired and had no intention of continuing any form of employment. I find that Mr B's decision to retire in August 2020 was not solely based on the incorrect statements in his ABS' providing that he was in Scheme A and had an NRA of 65 arising in August 2020 and that instead it was based on his desire not to continue in employment.
44. As such, I find that Mr B did not reasonably rely on the incorrect ABS' issued to him between 2014 and 2020 (and which was based on incorrect information provided by GCHQ) when deciding to retire in August 2020 primarily because he was given correct information by MyCSP and GCHQ that his NRA was 66 before he retired in August 2020. Even if he had not been provided with correct information, his response to GCHQ's offer of reinstatement in April 2021 indicates that, on the balance of probabilities, he would not have continued working had his ABS' correctly stated that his NRA was age 66. In declining the offer of reinstatement, I also find that Mr B was given the opportunity to mitigate his perceived loss but declined it.
45. While I sympathise with Mr B regarding the unfortunate timing of the mistake's discovery and the late notification to him that he had an NRA of 66 not 65, I agree with the findings of the Adjudicator. Mr B has suffered a loss of expectation but did not have a right to retire at 65 and does not have a right to compensation from GCHQ for negligent misstatement in respect of the incorrect statements in the ABS' that he did have such a right.
46. I acknowledge that Mr B will be frustrated and that receiving the incorrect information will have caused him significant distress and inconvenience, but I find that GCHQ's offer of £500 is appropriate.
47. Therefore, I do not uphold Mr B's complaint.

Camilla Barry

Deputy Pensions Ombudsman

11 September 2025