

## Ombudsman's Determination

Applicant	Mr E
Scheme	Principal Civil Service Pension Scheme ( <b>PCSPS</b> )
Respondent	MyCSP

## Outcome

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

## Complaint summary

3. Mr E's complaint concerns the inability to transfer his preserved benefits under the Nuvos and Alpha section of the PCSPS to the Partnership, due to changes made by the Pensions Act 2015 (**the Act**) which resulted in members of unfunded public sector defined benefit (**DB**) schemes being unable to transfer to defined contribution (**DC**) schemes.
4. Mr E says that MyCSP did not provide sufficient notification regarding the transfer restriction imposed by the Act.

## Background information, including submissions from the parties

5. Mr E first began employment with the Civil Service on 1 September 2006, and was a member of the DC Partnership section of the Scheme. He left the Civil Service on 29 September 2006.
6. On 16 June 2008, Mr E began employment with the House of Commons and joined the DB Nuvos section of the House of Commons Staff Pension Scheme (**HOCSPPS**). Mr E then moved back to the Civil Service on 1 April 2014, and joined the Nuvos section of the PCSPS, but did not opt to link the service he accrued under the HOCSPPS.
7. In March 2014, the Chancellor of the Exchequer presented his 2014 Budget, announcing the Government's plans for the economy and public finances. One of the changes to be put in place by the Budget was that members of unfunded public sector DB schemes would be unable to transfer their benefits to a DC pension

arrangement (**the transfer restriction**). This was implemented as part of The Act and came into force on 1 April 2015. In accordance with the Act, members of the Nuvos and Alpha DB sections of the PCSPS had until 6 April 2015 to transfer their benefits to a DC scheme.

8. On 9 February 2015, MyCSP updated the 'member news' section of the Civil Service Pension Scheme website, informing members of the transfer restriction. The notification said:

"Transfers from unfunded public service pension schemes to defined contribution arrangements will no longer be allowed from 6 April 2015, following Government changes announced at Budget 2014.

The rule changes mean that members who have not completed and returned an instruction to transfer their Civil Service pension to a defined contribution pension scheme before 6 April 2015 will not be able to do so."

9. On 1 April 2015, the Government introduced the Alpha section of the PCSPS. Members, such as Mr E, who were in a public sector pension scheme between 31 March 2012 and 31 March 2015 and were more than 10 years from their normal retirement date on 1 April 2012 automatically joined the Alpha section. Members were made aware of the forthcoming changes in March 2015 in MyCSP's "Pension Changes Update".
10. In July 2016, Mr E opted to switch from the Alpha section of the PCSPS to the Partnership section. The pension switch was completed in October 2016. Mr E subsequently started to enquire about transferring his Nuvos and Alpha benefits to his Partnership section.
11. On 2 December 2016, MyCSP wrote to Mr E advising that as he had switched from the DB section of the PCSPS to the DC section, he was unable to transfer his Alpha and Nuvos benefits to his Partnership Scheme due to the transfer restriction implemented by the Act.
12. On 25 January 2017, Mr E invoked MyCSP's Internal Dispute Resolution Procedure (**IDRP**), complaining that the transfer restriction had not been communicated to PCPSP members properly. Mr E said that had the full extent of the transfer restriction been made clearer to him before it came into effect, he would not have opted to switch to the Partnership Section of the PCSPS, and would have "transferred completely from the defined benefit scheme".
13. MyCSP issued its IDRP stage one and two decisions on 4 April and 22 May 2017 respectively, and did not uphold Mr E's complaint. In summary, MyCSP said that it notified members of the transfer restriction via the Civil Service Pension website on 9 February 2016, and as Mr E had not asked for his benefits to be transferred before this date, he was unable to do so now. Mr E disagreed with the response he received from MyCSP, and brought the matter to the Cabinet Office.

14. On 1 November 2017, the Cabinet Office issued its IDRPs decision. Amongst other things, it said that Mr E did not enquire about transferring his benefits until 14 months after the transfer restriction had been put in place. The Cabinet Office also highlighted that along with the notification published on the Civil Service Pensions website, the transfer restriction was widely publicised in the media at the time of the 2014 Budget, and therefore Mr E should have been reasonably aware of the transfer restriction.
15. Mr E subsequently brought his complaint to this office and maintained that MyCSP did not communicate the transfer restriction clearly enough to members.

## **Adjudicator's Opinion**

16. Mr E's complaint was considered by one of our Adjudicators who concluded that no further was required by MyCSP. The Adjudicator's findings are summarised briefly below:-
  - The case of PO-15897 was similar to Mr E's case, where the Ombudsman had determined that there was no requirement under The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (**the disclosure regulations**) for MyCSP to disclose to members the transfer restrictions brought by the legislative changes.
  - In the same determination, the Ombudsman had also said that the MyCSP updating the Civil Service Pensions website on 9 February 2015 was a sufficient method of communicating the transfer restriction to PCSPS members.
  - In view of the determination, it was the Adjudicator's Opinion that the complaint would not be upheld if it were referred to the Ombudsman.
17. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr E for completeness, which are set out below: -
  - Mr E questioned how easy it was to find the notification on the Civil Service Pensions website informing members of the transfer restriction, and said:

"On my first attempt it took me some time to find an exact notice using specific search terms, none of which were common to the Nuvos scheme at the time. This would not illustrate whether the search criteria has since been changed."
  - Mr E requested that a Freedom of Information (**FOI**) be lodged in order to ascertain exactly how and when MyCSP updated the Civil Service Pensions website, and what search criteria was required in order to find the notification regarding the transfer restriction. Mr E also said an FOI request should be

submitted to the Cabinet Office to obtain how many complaints similar to his own that MyCSP had received.

- Mr E highlighted that guidance published by the Government for employer work place pensions states that employers must tell members “how to leave a scheme if you want to”. Mr E felt that as he had been “transferred” from the Nuvos to Alpha section of the PCSPS, this constitutes automatic renewal, and therefore MyCSP as administrators were duty bound to provide such information on how he could leave the PCSPS. Mr E also says that keeping both the Nuvos and Alpha benefits in the same Scheme would have been advantageous, but he was not given the option to do so.
- Mr E provided a copy of the “Explanatory Memorandum to the Unfunded Public Service Defined Benefit Schemes (Transfers) Regulations 2015”, which he says states that the transfer restriction did not come into place until September 2015.
- Mr E disagreed that the case of PO-15897 could be applied to his own complaint, as the circumstances differed to his and it dealt with a separate Scheme.
- Mr E believes that the matter of a member’s statutory right to transfer remains unclear, as neither MyCSP nor the Cabinet Office can advise members on where their funds can be transferred to.

## **Ombudsman’s decision**

18. The Act came in effect on 1 April 2015 and restricted the transfer of benefits from unfunded public-sector DB schemes to DC arrangements. The Act itself did not state how pension schemes should communicate the transfer restriction to members. What information pension schemes are required to provide to members is set out in the Disclosure Regulations. As explained by the Adjudicator, and determined in the case of PO-15897, there is no requirement under the Disclosure Regulations for MyCSP to inform members of the transfer restriction.
19. I note that Mr E disagrees that the case of PO-15897 can be applied to his own. Whilst all cases are reviewed with on their individual merits, and Mr E’s individual circumstances will of course differ the complainant’s in the case of PO-15897, it still stands that in both cases there is no regulatory requirement in the Disclosure Regulations for MyCSP inform its members of the transfer restriction.
20. For members of the PCSPS, the transfer restriction came in effect on 6 April 2015. As Mr E did not give an instruction to MyCSP to transfer his Alpha benefits prior to this date, he does not have the right to transfer them now. The question therefore turns on whether there was an administrative failing on the part of MyCSP as a consequence of the way it informed its members of the transfer restriction before it was put in place.

21. MyCSP updated its 'member news' section of the Civil Service Pension website on 7 February to inform members of the transfer restriction. As mentioned in the case of PO-15897, I am satisfied that the media coverage at the time concerning the effect of the Act, along with the notification on MyCSP's website gave reasonable awareness to PCSPS members, such as Mr E, of the transfer restriction.
22. Mr E has said that the transfer restriction did not come into place until September 2015, not April, and cited the "Explanatory Memorandum to the Unfunded Public Service Defined Benefit Schemes (Transfers) Regulations 2015" document in support of this argument. However, the September deadline in this document concerns the restriction of transferring from unfunded public sector DB schemes to overseas pension schemes, not to DC schemes.
23. Mr E has said that the switch from Nuvos to Alpha constitutes an automatic renewal, and MyCSP had a duty to inform him how to leave the PCSPS if he choose. The move from Nuvos to Alpha was part of a wider Government decision on how public finances would be managed. Mr E joined the Alpha section of the PCSPS as he met the required criterion to do so, in accordance with the Government's decision. I do not agree that his joining the Alpha section gave rise to any additional obligations to give him information about how to transfer his existing benefits out of it. Leaving a scheme is not the same thing as taking existing benefits out of it. Mr E still has the right to opt out of the PCSPS if he wishes, and on request MyCSP would still be obliged to inform him how.
24. The Act does not remove Mr E's statutory right to request a Cash Equivalent Transfer Value (**CETV**). This statutory right remains with Mr E under the Pensions Schemes Act 1993. If Mr E wishes to request a CETV from MyCSP, he can, however the implementation of the Act means that he is unable to transfer his DB benefits from the Alpha section to a DC scheme.
25. Mr E has requested that a FOI be submitted to MyCSP and the Cabinet Office to ascertain exactly how and when MyCSP updated the Civil Service Pensions website informing members of the transfer restriction, and how many complaints the Cabinet Office has received which were similar to his own. As I have explained, I am satisfied MyCSP updating the Civil Service Pensions website was a sufficient method to inform its members of the transfer restriction, and I do not see what a FOI request would add. I will leave it to Mr E to submit a such a request if he wishes.
26. Therefore, I do not uphold Mr E's complaint.

**Karen Johnston**  
Deputy Pensions Ombudsman  
22 March 2018