

Ombudsman's Determination

Applicant	Mr T
Scheme	Principal Civil Service Pension Scheme (Northern Ireland) (the Scheme)
Respondents	Department of Finance and Personnel (the Department)

Outcome

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

Complaint summary

3. Mr T is dissatisfied with the Department's decision not to allow him membership of either the Alpha section or the Partnership Account when he chose to opt back into the Scheme. The Department say he, Mr T, is only eligible to join the Classic section of the Scheme.

Background information, including submissions from the parties

4. Mr T began work in the Northern Ireland Civil Service (**NICS**) in 1982, and was a member of the Classic section in the Scheme. He took a career break in 2004, returning to work on 2 April 2012, however his employment with NICS has remained continuous.
5. There are two sections in the Scheme. The "1972" section (Classic section) and the "2002" section (Alpha section). The Partnership Account is a group stakeholder pension plan provided by Standard Life which is governed by the "2002" section regulations.
6. On 1 December 2014, following the introduction of pension freedoms, Mr T opted out of the Scheme and transferred his accrued benefits in the Scheme to a SIPP. This was completed in early March 2015.
7. In January 2015, Mr T contacted the Scheme on several occasions requesting information on how to re-join the Scheme. He did not receive a response.

8. On 16 March 2015, Mr T completed the relevant forms to join the Partnership Account. This was set up by Standard Life, and the first contribution was deducted in May 2015. Around the time that the first payment was taken Mr T was informed that he could not join the Partnership Account and, as a result, his contributions would be recovered from Standard Life and the arrangement would be cancelled.
9. Mr T pursued the complaint through the Internal Dispute Resolution Process (**IDRP**). He felt that the recovery of the contribution from his pension was wrong. The response in the first IDRP letter, dated 19 November 2015, explained that he was not eligible to join either the Alpha section or the Partnership Account for the following reasons:
 - membership to the Alpha section is only available to those who were existing members of the Scheme on 1 April 2012 and who were born on or after 2 April 1962; or to new entrants to the Scheme on or after 1 April 2015.
 - he had been a member of the Classic section of the Scheme since 6 December 1982;
 - on 1 April 2012, Mr T was an active member with less than ten years to reaching his Scheme pension age of 60;
 - at 31 March 2015, he was on a qualifying break in pensionable service from the Scheme;
 - he was born in 1960;
 - the Partnership Account is only available to those members who joined the Scheme on or after 1 October 2002; and
 - from 1 October 2015, anyone who is eligible to be a member of the Alpha section will be able to join the Partnership Account. Mr T is ineligible for both sections.
10. Mr T did not accept the findings, and asked for consideration of his complaint under the second stage of the IDRP. The IDRP 2 response of 14 April 2016, explained why his complaint could not be upheld. To summarise:
 - it was explained that individuals had to be re-enrolled into the relevant section of the Scheme they were eligible to join when they were first employed or deemed eligible to join, in Mr T's case, this was the Classic section;
 - because Mr T's date of eligibility was prior to the introduction of the Partnership Account, he has never been eligible to join it;
 - members who, on 1 April 2012, were within ten years of their normal retirement age were not eligible to be members of the new Alpha section. Such members had their rights protected and remained in Classic section of the Scheme; and

- Mr T was in the Classic section when he opted out and he remained in eligible employment. This meant that on opting in he would remain eligible to be enrolled into the Classic section. The fact that Mr T transferred his preserved benefits out of the Classic section in 2014 has no bearing on what arrangement he would be enrolled in when opting back into the Scheme.

Adjudicator's Opinion

11. Mr T's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Department. The Adjudicator's findings are summarised briefly below:-

- Rule 1.4d(i) says:

"Where in any period of employment in the civil service a person has opted out of the scheme, he may once again elect that the scheme is again to apply to him. The election must be in writing, in such form as may be prescribed by the Department of Finance and Personnel".

- The Department has to follow the provisions of the regulations governing the Scheme and that, on interpreting the above, there is no flexibility in the Rules which would allow Mr T to join any arrangement, other than the Classic.
- Section 14(4) of the Public Service (Civil Servants and Others) Pensions Regulations (Northern Ireland) 2014 (the **Regulations**), on 'Eligible Persons', in relation to the Alpha section, provides clarity that a person is unable to join the Alpha section if that person is a 'protected' member under the Scheme.
- A protected member is someone who as at 1 April 2012, is an active member of the Scheme and is less than ten years away from reaching Scheme pension (age 60). Mr T is a 'protected' member under these regulations.
- Section 21 'Tapered protection member not eligible to join this Scheme' says:
"While a person (P) is a tapered protection member of the PCSPS (NI), P is not eligible to be an active member of this scheme."
- The Department is correct in its understanding of the rules that Mr T is unable to join any other arrangement within the Scheme, other than the Classic section, because the rules do not permit it.

12. Mr T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr T 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 T for completeness.

13. Mr T's additional comments are as follows:-

- Regulation 1.4(d)(i) states that “he may once again elect that the scheme is again to apply to him...”. The wording is “may” not “must”. This wording gives the option to re-join the scheme but does not impose an obligation to re-join the Scheme.
- Under regulation 17.1(i) to be eligible to join the Classic section “P must not have signed an agreement with P’s employer in which P voluntarily agrees to waive P’s entitlement to be an active member of the scheme.” By transferring his benefits out he made his intention to waive his entitlement to be an active member of the Scheme clear. Also he ceased to be considered a civil servant before the transfer was processed.
- At 31 March 2012, he was not an active member of the Scheme. At that point he had not been working for the Northern Ireland Civil Service for over 8 years, since 2004.
- To be a ‘protected person’ he would have to meet the criteria defined in “Full protection members of the PCSPS(NI). Paragraph 4 of that Regulation would apply because he was returning from private sector employment with a gap in service of more than 5 years.
- The condition to be a ‘protected person’ is two-fold i.e. that there must not be a break in pensionable service AND that one must be within 10 years of normal retirement age. Whilst he was within 10 years of normal retirement age there had been a break of more than 5 years.
- His normal retirement age being before 2022 is irrelevant because Regulation 12.2 (a) and (b) needed to apply to be a ‘protected person’.
- Given the 8 year gap in service he was re-enrolled in the Classic section on 2 April 2012 in error.
- As he is not a ‘protected person’ he would appear to qualify for the Alpha section and therefore for the Partnership Account.
- There are no specific regulations pertaining to the Partnership Account. It is not therefore clear how he can be excluded from the Partnership Account.

14. In response to Mr T’s additional comments the Department said:-

- The wording ‘may’ provides the member with the opportunity to opt to join the Scheme. It also allows the member to remain opted-out hence the word ‘must’ is not used.
- Rule 17.1 of the Classic rules apply. Legislatively the Department are required to check the underlying section a member would be in had they not opted or transferred out.

- Rule 17.19(e) permits the member not to be an active member of the Scheme but if they wish to be a member of the Scheme the only eligible arrangement for Mr T would have been the Classic section.
- Mr T had taken a career break in 2004 and did not return to work until 2 April 2012, a period exceeding 5 years. Whilst on a career break you are still a member of the Scheme albeit not accruing benefits. In accordance with Factsheet (CWP4) – Changing Working Patterns - Career Breaks when a person returns from a career break they return to whichever scheme they were a member of when they left.

Ombudsman's decision

15. Mr T's complaint concerns which section of the Scheme he is entitled to join following his decision to opt back into the Scheme in March 2015. Mr T contends that he is eligible to become a member of the Alpha section and can therefore gain access to the Partnership Account. The Department disagree and say that Mr T is only eligible to be re-enrolled into the Classic section of the Scheme.
16. Mr T began work in the Northern Ireland Civil Service in 1982, and was a member of the Classic section in the Scheme. Although Mr T took a career break between 2004 and 2012 he has remained in continuous employment with NICS. Mr T says he was wrongly re-enrolled into the Classic section of the Scheme when he re-joined on 2 April 2012.
17. The Department say that although Mr T took a career break between 2004 and 2012 he was still a member of the Scheme, albeit not accruing benefits. They point out that in accordance with Factsheet (CWP4) – Changing Working Patterns - Career Breaks when a person returns from a career break they return to whichever scheme they were a member of when they left.
18. Mr T submits that although his break in service, from 2004 to 2012, started as a career break it extended to more than five years and therefore the career break was terminated in 2009. He says that the additional three years were unpaid special leave.
19. Regulation 1.4 of the 1972 Regulations (see Appendix), defines pensionable service as service as a civil servant; and a civil servant to whom the 1972 section applies. Civil Service is the civil service of Northern Ireland, as defined in Regulation 1.3. Regulation 2.10a of the 1972 Regulations (see Appendix), provides that unpaid leave taken after 1 April 1997 is qualifying service. Taking all of that together Mr T essentially remained an active member of the Scheme in accordance with Regulation 17.1(1) and so the criteria which applied in relation to his eligibility when he joined the Scheme on 6 December 1982, still applied when he recommenced accruing benefits in 2012. It is therefore correct that Mr T was placed back into the Classic section in 2012.

20. On 1 December 2014, Mr T opted out of the Scheme and transferred his accrued benefits in the Classic section of the Scheme to a SIPP. A month later, in January 2015, Mr T contacted the Scheme on several occasions requesting information on how to re-join the Scheme and on 16 March 2015, he completed the relevant forms to join the Partnership Account.
21. The Department say that Mr T is not eligible to join the Alpha section, and so therefore cannot access the Partnership Account, because he is a 'protected person'. Section 14(4) of the 2014 Regulations (see Appendix), in relation to the Alpha section, provides that a person is unable to join the Alpha section if that person is a 'protected' member under the Scheme. A protected member is someone who, as at 1 April 2012, is an active member of the Scheme and is less than ten years away from reaching Scheme normal retirement age (age 60).
22. Mr T says he is not a 'protected person' for the following reasons: by transferring his benefits out of the Scheme he waived his entitlement to be an active member, he ceased to be considered a civil servant before the transfer was processed, and a 'protected person' cannot have had a break in pensionable service of more than 5 years.
23. Regulation 9 of the 2014 Regulations (see Appendix) defines protected members at three levels. Relevant to Mr T is the definition of "Full protection members". The intention of the 'protection' for members was 'eligibility' to the generally more advantageous section of the Scheme rather than protection of accrued benefits. Broadly, members are protected if they have fewer than ten years until normal retirement age and they were an active member on 1 October 2002 and 31 March 2012. Mr T meets this criteria and so is a full protection member in accordance with Regulations 9 and 12.
24. Turning now to Mr T's decision to opt-out of the Scheme in December 2014, and then transfer his benefits to a SIPP in January 2015, before then requesting to re-join the Scheme in March 2015. Mr T ceased to be an active member when he opted out of the Scheme in December 2014 and so the key question therefore becomes whether the gap between the opt-out and the request to re-join was less than 5 years, in accordance with Regulation 9(4) of the 2014 Regulations (see Appendix). As the gap was less than 5 years Mr T has remained a protected member of the Classic section of the Scheme.
25. Regulation 10 (see Appendix), provides that while a person is a full protection member of the PCSPS (NI), he/she is not eligible to be an active member of the Alpha section. So as Mr T was not eligible to join the Alpha section when he asked to re-join the Scheme it follows that he was not able to join the Partnership Account either.
26. Mr T contends that the use of the word "may" means that he is not obliged to re-join the Classic section of the Scheme. To an extent Mr T is correct in that he is not

obliged to re-join the Scheme; he could remain opted-out. Although that in itself would not give him automatic entitlement to join the Alpha section of the Scheme.

27. In my view, it is not possible to extract a single word from a sentence in order to establish the intention of the sentence. In this case the sentence in question states “Where in any period of employment in the civil service a person has opted out of the scheme, he may once elect that the scheme is again to apply to him.” When read in context it is clear that the use of the phrase ‘may once elect’ was used to limit the frequency of re-joining the Scheme.
28. To summarise, Mr T is a protected member and therefore he is only eligible to be a member of the Classic section of the Scheme. He is not eligible to join the Alpha section in order to obtain access to the Partnership account.
29. I do not uphold Mr T’s complaint.

Anthony Arter

Pensions Ombudsman
27 February 2018

Appendix

PCSPS (NI) 1972 Section

Coverage of the Scheme

- 1.3 In these rules 'civil service' means the civil service of Northern Ireland or any of the employments or offices listed in Schedule 1 to the Superannuation (Northern Ireland) Order 1972, or service as a section 3(3a) eligible person.
- 1.4 Except where otherwise stated this scheme applies to all persons serving full-time or part-time in the civil service except the following:-
- (i) casual staff
 - (ii) staff engaged (including former civil servants re-employed) on a fee-paid basis or sessional basis
 - (iii) staff whose terms of appointment state them to be outside the civil service superannuation arrangements
 - (iv) staff who are covered for their service in the civil service by another occupational pension scheme or the 2002 Section or who have a partnership pension account as defined in rule A.1(4) of that Section...

Leave

- 2.10a Periods of unpaid sick absence, unpaid leave and leave at pension rate taken on or after 1 April 1997 count as qualifying service.

Right to Opt out of the Scheme

[...]

- 1.4d (i) Where in any period of employment in the civil service a person has opted out of the scheme, he may once elect that the scheme is again to apply to him. The election must be in writing, in such form as may be prescribed by the Department of Finance and Personnel.
- (ii) As from the effective date of his election, the person again becomes a civil servant within the meaning of the scheme.
- (iii) The effective date is whatever date the Department of Finance and Personnel determine to be the earliest practicable after that on which the form of election, duly completed, is received by the scheme administrator...

Conditions for eligibility

- 17(1) A person ("P") who is in service in an employment or office specified in the list produced for the purposes of section 3(3a) of the Superannuation (Northern Ireland)

Order 1972 (referred to in this rule as “the list”) must meet the following conditions to be eligible to be an active member of the 1972 Section—

(a) P must have been—

(i) a member of the 1972 Section; or

(ii) eligible to be a member of the 1972 Section

on or immediately before the date specified in the description of the employment or office in the list, in accordance with regulation 4(1)(a)(ii) of the Superannuation (Specification of Employments and Offices) Regulations 2013, as the date on which persons must be in that employment or office.

The Public Service (Civil Servants & Others) Pensions Regulations (Northern Ireland 2014

Regulation 9 - Full protection members of the PCSPS(NI)

9. (1) A person (P) to whom any of paragraphs 12 to 17 applies is a full protection member of the PCSPS(NI).

(2) P ceases to be a full protection member of the PCSPS(NI) when P ceases to be in pensionable service under that scheme unless sub-paragraph (3) or (4) applies.

(3) This sub-paragraph applies if—

(a) P returns to service which is pensionable under the PCSPS(NI) from service which is pensionable under an existing scheme or an existing public body pension scheme; and

(b) P would have been a fully protected member of that existing scheme or existing public body pension scheme had P re-entered service which is pensionable under that scheme on the date P returns to service which is pensionable under the PCSPS(NI).

(4) This sub-paragraph applies if—

(a) P returns to service which is pensionable under the PCSPS(NI) otherwise than from service which is pensionable under an existing scheme or an existing public body pension scheme; and

(b) P returns to service which is pensionable under the PCSPS(NI) after a gap in service not exceeding 5 years.

(5) If P returns to service which is pensionable under the PCSPS(NI) in circumstances where sub-paragraph (6) applies, P is a tapered protection member of the PCSPS(NI) when P returns to that service.

(6) This sub-paragraph applies if—

(a) P returns to service which is pensionable under the PCSPS(NI) from service which is pensionable under an existing scheme or an existing public body pension scheme; and

(b) P would have been a protected member of the existing scheme or existing public body pension scheme by virtue of an exception to which section 18(8)(a) and (b) of the Act (or that section as applied by section 32(4)) applies had P re-entered service which is pensionable under that scheme on the date P returns to service which is pensionable under 86 The Public Service (Civil Servants and Others) Pensions Regulations (Northern Ireland) 2014 the PCSPS(NI).

(7) In this paragraph— “exception” means—

(a) in relation to an existing scheme, an exception under section 18(5) or 18(6) of the Act provided for in scheme regulations in relation to that scheme;

(b) in relation to an existing public body pension scheme, an exception under section 32(4) of the Act provided for by the public authority responsible for that scheme; “fully protected member” of an existing scheme or an existing public body scheme means a person in respect of whom an exception applies, which exception is one to which section 18(7) of the Act (or that section as applied by section 32(4)) applies for the purposes of that scheme.

(8) For the purpose of paragraph (4)(b), after the scheme closing date P is not on a gap in service while P is in pensionable public service.

Regulation 10 - Full protection member not eligible to join this scheme

10. While a person (P) is a full protection member of the PCSPS(NI), P is not eligible to be an active member of this scheme.

Regulation 12 - Members of the PCSPS(NI) on scheme closing date

12. (1) This paragraph applies if sub-paragraph (2) or sub-paragraph (3) applies.

(2) This sub-paragraph applies if—

(a) P was an active member of the PCSPS(NI) on the scheme closing date and on 31st March 2012; and

(b) P would, unless P dies, reach normal pension age under that scheme on or before 1st April 2022.

Regulation 14 - Eligible persons

14. (1) For the purpose of this Part an eligible person is a person who is eligible to be an active member of this scheme.

(2) A person who is in service in a scheme employment (P) is an eligible person in relation to that service unless paragraph (3) or (4) applies.

(3) This paragraph applies if the terms of the employment exclude P from being an active member of this scheme.

(4) This paragraph applies if, in relation to service in that employment—

(a) P is a protected member of the PCSPS(NI).

(b) P has a partnership pension account; or

(c) P is a member of any other pension scheme and P's employer pays contributions to that scheme in respect of P.