

Ombudsman's Determination

Applicant	Mr N
Scheme	The Principal Civil Service Pension Scheme (the PCSPS)
Respondent	Revenue and Customs Digital Technology Services Limited (RCDTS)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by RCDTS.

Complaint summary

2. Mr N complains that:
 - The bulk transfer terms, under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (**TUPE**), were published too late. As a result, he was denied the opportunity to make an informed decision about whether to start drawing his pension.
 - RCDTS failed to follow the guidance on Fair Deal.

Background information, including submissions from the parties

3. Mr N was formerly a member of the classic section of the PCSPS (the **Classic Section**). He was transferred out of the public sector to Electronic Data Systems (**EDS**) Limited in 1996 and subsequently to Capgemini under the "old Fair Deal" policy.
4. Mr N was admitted into the Aspire 1994 section (the **Aspire 1994 Section**) of the Capgemini UK (2004) Pension Plan (the **Plan**).
5. In December 2015, Mr N's employment transferred from Capgemini to RCDTS, as part of HM Revenue and Customs (**HMRC**) "Aspire replacement programme". RCDTS is funded and wholly controlled by HMRC.
6. Fair Deal is a non-statutory policy. It details how pension issues are to be addressed when employees are compulsorily transferred from the public sector to independent

providers delivering public services. The policy also applies where outsourced former public sector staff are brought back into the public sector.

7. There is no specific penalty for a failure to follow Her Majesty's Treasury's (**HMT**) guidance on Fair Deal.
8. In June 1999, HMT published Staff Transfers from Central Government: A Fair Deal for Staff Pensions (the **1999 Guidance**). This sets out, in broad terms, how pension issues are to be dealt with in procurement practice going forward when staff are transferred as part of a business sale. The 1999 Guidance does not set out specific timeframes for completing bulk transfers.
9. Paragraph 14 of the 1999 Guidance says:

The guiding principle should be that the new employer offers transferring staff membership of a pension scheme which though not identical is '**broadly comparable**' to the public service pension scheme which they are leaving...A broadly comparable scheme will be one which, in the professional opinion of the actuary, satisfies the condition that there are no identifiable employees who will suffer material detriment overall in terms of their future accrual of pension benefits under the alternative scheme. The PCSPS takes actuarial advice from the Government Actuary's Department [**GAD**]..."
10. Paragraph 17 indicates that the requirement for GAD to provide the above certification, will continue to apply for transfers of staff from Government Departments and Agencies before any contractual commitment is made.
11. Paragraph 18 states that authorities will need to be satisfied about the "broad comparability" of alternative pension schemes "well in advance" of short-listing bidders or selecting a preferred bidder. Bidders will need to provide GAD with detailed specifications of their proposed pension schemes in "good time".
12. Under paragraph 30: "**Subsequent transfers**", the 1999 Guidance says:

Where a public service pension scheme associated with the public contracting authority is not a party to a bulk transfer agreement involving a further transfer of former public servants, the position is substantially more complicated. But appropriate bulk transfer terms should be sought for staff in transfers arising from second-round and subsequent contracting, and sub-contracting. Further guidance will be issued to contracting authorities concerning appropriate contractual safeguards covering availability of bulk transfer terms in subsequent TUPE transfers involving staff who in initial transfers from the Government were the subject of bulk transfer payments by a public service pension scheme."
13. Paragraph 31 states:

"Making these reforms to procurement arrangements will ensure fair treatment of staff pensions in public-private partnerships. It will continue to be important

to look at each case on its merits, and to allow contractual mechanisms to continue to evolve towards better practice. The new approaches described above will guide current practice and new developments to ensure that staff are treated consistently on terms which are fair and predictable, and that **there is in every case an opportunity for staff to understand fully the implications for their pensions and to make any representations they wish to the responsible Minister well before a Government contracting authority makes final arrangements for a business transfer involving the transfer of staff** [emphasis added].”

14. In January 2000, the Cabinet Office published its Statement of Practice: Staff Transfers in the Public Sector (the **COSOP**). This sets out the framework that the Government expects public sector organisations to follow to implement the Government’s policy on the treatment of staff transfers.
15. Paragraph 11 to 13 of the COSOP deals with the policy that should be adopted for the transfer of public sector staff to the private or voluntary sector (the **Policy**). Paragraph 14 describes the circumstances that may qualify for an exception to the Policy.
16. Broadly, the Policy states that the public sector contracting authority should at the “earliest appropriate stage” in the contracting exercise, inform staff in writing of the intention that they will transfer. Where possible, staff should be told when the transfer will take place and that TUPE should apply.
17. A Statement of Practice (**SOP**) by GAD attached to the COSOP sets out the principles GAD carries out when assessing “broad comparability”.
18. The SOP states that the range of benefits under the new scheme(s) must at least match that provided under the current scheme. Benefits must be available from the new arrangement in respect of the same events and at the same time as would have arisen under the existing scheme. The SOP acknowledges that:

“In some cases, the amount of benefit may be lower on a particular contingency than under the current scheme, but this will need to be balanced by better benefits on other contingencies...”

Shortfalls in the level of pensions [sic] increases offered must be offset by better benefits elsewhere.”
19. In June 2004 a Fair Deal for Staff Pensions: Procurement of Bulk Transfer Agreements and Related Issues was published by HMT (the **2004 Guidance**). The purpose of the 2004 Guidance was to reinforce existing guidance on treatment of pension issues in compulsory transfers of public sector staff to the private sector. The 2004 Guidance indicates that the 1999 Guidance and the COSOP “remains in force”.
20. Paragraph three of the 2004 Guidance says that the procurement of the bulk transfer agreement should be handled as an “integral” part of the competition for the overall

procurement. The terms of the agreement should be advertised at the “earliest stage” and finalised before staff transfer.

21. Paragraph 10 explains that the implication of the 1999 Guidance is that a new approach to procurement is required. This “puts pension issues at the front and centre of communications” with prospective private sector partners, staff and trade unions. Paragraph 12 states:

“There are obvious drawbacks for staff and relations with them if something as important to them as the bulk transfer terms to be made available are left uncertain until a late stage.”

22. Paragraph 13 indicates that the 1999 Guidance removed the option of staff transferring to the new employer without a satisfactory bulk transfer agreement in place.

23. Paragraph 15 says that the contractual agreements “prior to the transfer,” need to specify the basis on which the bulk transfer value will be calculated. It emphasises that the bulk transfer agreement cannot be left aside until other procurement issues are settled. Paragraph 17 to 18 says:

“It is not satisfactory for staff to be left in doubt about the provision of bulk transfer cover until close to (or worse, until after) the staff transfer and for them to be told, belatedly, that terms for the transfer of past service into the new scheme will involve a significant erosion of their pension expectations.”

“But to achieve early settlement of bulk transfer terms is extremely difficult within the current procurement practices. For the two pension schemes involved there are many factors which need to be settled before the bulk transfer agreement between them can be concluded.”

24. The 2004 Guidance refers to a more “streamlined procedure” for handling bulk transfer agreements. It states that the terms which the public sector pension scheme is prepared to accept, should be “fully and clearly” detailed at the “earliest possible stage” in the procurement process.

25. Paragraph 55 states:

“There is no reason for it to take longer than six months following the staff transfer to complete the bulk transfer process: option forms should be issued to staff promptly after the transfer with three months for them to complete their election, during which time they can be given information on which to base their decision in writing, via office information systems and in organised presentations [emphasis added].”

26. The 2004 Guidance sets out the action that all public sector bodies covered by Fair Deal should follow when preparing for private sector partnership. These include agreeing with pension and legal advisors the content of information to be given to

transferring staff on the treatment of their pensions. However, it does not set out specific timescales to complete the action.

27. In July 2012, the Government announced a reform to Fair Deal. Under the new policy, staff compulsorily moved from the public sector would be provided with continued access to a public service pension scheme.
28. In October 2013, HMT published Fair Deal for staff pensions: staff transfer from central government (the **2013 Guidance**). This sets out the revised Fair Deal guidance (**New Fair Deal**) that must be followed in all cases from April 2015.
29. Paragraph 1.6 of the 2013 Guidance states that the new guidance comes into effect immediately and should be reflected in procurement practice as soon as is practicable without disruption to projects which are already at an advanced stage. Earlier guidance remains in force and applies in the circumstances outlined in the 2013 Guidance.
30. In relation to retenders involving staff who were transferred out of the public sector under the old Fair Deal guidance, paragraph 1.23 states:

“There are, however, many staff who have already been transferred out of the public sector and to whom the old Fair Deal (i.e. the 1999 and 2004 Guidance referred to in paragraph 1.3 above) still applies. **The guidance in this section applies to retenders of contracts involving compulsory transfers of staff who were transferred out of the public sector under the old Fair Deal** [emphasis added].
31. Paragraph 1.24 indicates that where staff were compulsorily transferred before Fair Deal, the contracting authority should, where compatible with the original contract, follow the 2013 Guidance where a contract involving those staff is retendered in future.
32. Paragraph 1.25 states:

“When a contract involving the compulsory transfer of employees already transferred out under the old Fair Deal is retendered, contracting authorities should (where this is compatible with their obligations under the Public Contracts Regulations 2006) require bidders to provide them with access to the appropriate public service scheme...The appropriate scheme will normally be the scheme that staff would be in, had they remained in the public sector and not been transferred out.”
33. The 2013 Guidance indicates that the employer should otherwise have the option of providing access to a public service pension scheme or to a “broadly comparable pension scheme”. Wherever possible, the “broadly comparable scheme” should be “broadly comparable to the scheme that staff would be in had they remained in the public sector and not been transferred out.”
34. Paragraph B.7 of Annex B: Bulk transfers [the **Annex**], says:

“Staff who are members of the incumbent provider’s pension scheme will have three months [the **Window**] from the date their option packs are sent out in which to consider whether or not to transfer their accrued benefits on the terms set out. After this three month period has expired, the option to transfer under the bulk transfer terms will lapse. Only staff who elect to transfer within this period by completing and returning the paperwork in the options pack can qualify for a transfer under the bulk transfer terms.”

35. In December 2014, HMRC signed a non-binding transition agreement with Capgemini (the **Transition Agreement**). In April 2015, GAD was appointed to work with RCDTS on a bulk transfer exercise. In September that same year, GAD began discussions with the scheme actuary of the Plan.
36. On 9 October 2015, HMRC wrote to Mr N concerning his eligibility for new Fair Deal (NFD) pension protection (the **October Letter**). The October Letter stated:

“We hope that the information provided below helps clarify the pension provisions that are likely to be open to you, and what the next steps will be.

You do not need to take any action at the moment. We will be in communication with you following the transfer to provide further details... NFD eligibility is a difficult concept, see annex 1 [the **Annex**] below, and we believe that you meet these eligibility criteria. This will be reviewed, however if you do not believe you meet these criteria please can you inform us as a matter of urgency. ”

Explanation as to why these pension arrangements are taking place

...

The Government published revised Fair Deal guidance in October 2013. This guidance applies directly to central government departments... and any other parts of the public sector under the control of Government ministers where staff are eligible to be members of a public service pension scheme. **It applies** to both initial transfers out of the public sector and also to retender situations.

Outline of the implications if eligible

We have assumed you are eligible for NFD protection and have summarised below how this will affect you. **However this letter is not confirmation of eligibility** [emphasis added].”

37. The Annex is displayed at the Appendix.
38. The October Letter stated that Mr N’s benefits in the Aspire 1994 Section would be “protected.” It indicated that RCDTS was working with the relevant Government bodies concerning which section of the Civil Service Pension Schemes (**CSPS**) Mr N would join. It advised that he would be provided with further details once the position had been confirmed.

39. The October Letter explained that Mr N could take a “bulk transfer” from the Aspire 1994 Section into the appropriate section of the CSPA, which included the PCSPA. Mr N was advised that his eligibility to re-join the CSPA will be reassessed as part of his transfer. He was asked to contact HMRC if he had any questions concerning his options.
40. In late October 2015, Mr N took the decision to start drawing his pension from the Plan with effect from 1 December 2015.
41. On 6 November 2015, RCDTS wrote to Mr N (the **6 November Letter**). The letter stated:
- “Further analysis has been conducted and I can now confirm that the relevant section of the CSPA pension scheme that you will join from 1st December 2015 is Classic.
- ...
- The existing benefits you have accrued in the Aspire 1994 section of the Capgemini (UK) 2004 pension plan scheme prior to 1st December 2015 will be preserved.
- You will have the option to bulk transfer the benefits accrued in the Aspire 1994 section of the Capgemini (UK) 2004 Pension Plan into the appropriate section of the CSPA or if you so wish, you could decide to retain them in the Aspire 1994 section of the Capgemini (UK) 2004 pension plan.
- ...
- I hope this provides you further clarity of the options that are available to you.”
42. RCDTS emphasised that Mr N's eligibility to re-join the CSPA will be reassessed as part of his transfer.
43. RCDTS repeated that Mr N did not need to take any action at that time. RCDTS would write to him in the near future to confirm other related pension issues. He was advised to contact HMRC if he had any questions concerning his options.
44. On 26 November 2015, RCDTS advised that Mr N had been “identified as having eligibility to Fair Deal protection”. Consequently, he will be “re-admitted to the [CSPA]” (the **26 November Letter**). RCDTS indicated that it was continuing to work with GAD to negotiate the terms under which his pension may be transferred to the CSPA.
45. RCDTS explained that, once it had understood and agreed the terms, Mr N would have three months to decide whether to accept a bulk transfer. RCDTS indicated that the “option period” was unlikely to take place before Spring 2016. It warned that bulk transfers could take twelve months or more to complete. Further information would be made available to Mr N nearer that time.

46. In September 2016, the terms of the bulk transfer option were confirmed. That same month, RCDTS arranged a roadshow (the **Roadshow**) on the bulk transfer process.
47. The Plan provides increases on pensions in payment in excess of the Guaranteed Minimum Pension (**GMP**) in line with the Retail Price Index (**RPI**). The CSPS provides increases on the “excess” in line with the Consumer Price Index (**CPI**). RCDTS has explained that RPI is generally expected to be higher than CPI. Consequently, as part of the terms of the bulk transfer, each year of service accrued in the Plan is increased by 17%. This is to compensate for the loss of the RPI increases (the **Extra Service Credit**).
48. Mr N later discovered that the bulk transfer terms included the Extra Service Credit. In December 2017, Mr N complained that he would have accepted the bulk transfer had the terms been made available before he transferred to RCDTS.
49. On 19 February 2018, HMRC issued its response. The letter highlighted that the bulk transfer terms were confirmed in September 2016. It advised that the Roadshow included an explanation of the differences between the RPI index adopted by the Plan, the CPI index used by the CSPS and the Extra Service Credit.
50. HMRC explained that Mr N was no longer eligible for the bulk transfer option because he had already decided to draw his pension.

Mr N's position

51. Mr N's submissions are summarised below:-

- He was not given sufficient information, before his transfer to RCDTS, to enable him to make an informed decision about his pension.
- HMRC started negotiations with Capgemini before December 2014. It is unacceptable that HMRC was not able to confirm his eligibility to re-join the CSPS until 26 November 2015, and did not provide the bulk transfer terms until September 2016.
- He accepts that the Plan provides benefits of an actuarial equivalent value to the CSPS. However, he should have been provided with all the relevant information before the staff transfer. This would have enabled him to decide whether to accept a transfer, or draw his pension.
- He transferred under TUPE earlier in his career under Fair Deal. Consequently, he should have been eligible to re-join the CSPS, and transfer his pension into the CSPS.
- HMRC did not follow the Cabinet Office's guidelines. If HMRC had followed the guidelines in the COSOP, the bulk transfer terms would have been provided before 1 December 2015.

- By the time he transferred to RCDTS, he had passed his normal pension age (**NPA**) under the Plan. So, he had to decide whether to draw his pension, or transfer it into the CSPA. Since the administrators of the Plan required at least a month's notice, he made the decision in October 2015 to take his pension.
- His decision was based on the fact that his pension would increase in line with RPI while the pension under the CSPA would increase in line with CPI. CPI is generally lower than RPI. Also, HMRC had not yet confirmed that he could re-join the CSPA.
- It was not until 26 November 2015, a few days before the TUPE transfer, that HMRC advised that he could re-join the CSPA and transfer his pension.
- He could not possibly understand the full implications for his pension without knowing the bulk transfer terms. These were not made available until 10 months after he transferred to RCDTS. HMRC had previously given no indication that they would be compensated for the loss of the RPI increases.
- If he had been given timely information, he would have transferred his pension into the Classic Section and benefitted from a higher lump sum and pension increasing in line with CPI. Instead, he receives a lower initial pension, which will receive increases in line with RPI.
- He would have preferred a higher starting pension while he is still young enough to enjoy it. The CSPA is also more secure than the Plan.
- The actual bulk transfer was completed in August 2018, more than two years after he transferred to RCDTS.
- HMRC appears to have overlooked both the 2004 Guidance and the COSOP. The 2004 Guidance is mentioned specifically in paragraph 1.3 of the 2013 Guidance. Paragraph 1.6 of the 2013 Guidance, says that earlier guidance still applies and refers to the earlier guidance in paragraph 3, 10, 12, 13, 15; and 17.
- HMRC did not follow the guidelines on bulk transfers detailed in the COSOP. The COSOP still applies.
- Paragraph 31 of the [1999 Guidance] says that the "new approaches" will guide current practice and future developments. This is to ensure that staff are treated "consistently" and have an opportunity to "understand fully the implications for their pensions" in good time.
- The guidance on New Fair Deal emphasises the need to address pension issues early in the process in order to protect the interests of staff being transferred.

RCDTS' position

52. RCDTS' submissions are summarised below:-

- RCDTS considers that it took all reasonable steps to notify Mr N of his bulk transfer option. Rather than wait for further information, and for the option exercise to be completed, Mr N had already decided to draw his pension.
- Mr N's New Fair Deal eligibility and bulk transfer option was flagged to him as early as 9 October 2015. The October Letter also made clear that HMRC was unable to provide financial advice. Mr N was encouraged to seek independent advice.
- Mr N should have taken independent financial advice in good time ahead of his TUPE transfer to enable him to understand his potential pension options.
- RCDTS confirmed that Mr N would be re-admitted into the CSPA on 6 November 2015. The 26 November Letter reiterated that Mr N was eligible to re-join the CSPA. It also advised that he would be able to transfer his pension under the bulk transfer arrangements. The 26 November Letter provided further detail on relevant timescales.
- Engagement regarding future service delivery would have commenced in the lead up to HMRC signing the transition agreement with Capgemini in December 2014.
- GAD was engaged to assist RCDTS with the bulk transfer exercise. This is a complex process.
- RCDTS was not in a position to provide Mr N with his bulk transfer terms before he transferred to RCDTS. The relevant information was not known at that stage.
- RCDTS did not receive data and information on pensions from Capgemini until September 2015. This was in line with TUPE timescales. RCDTS could not begin to establish New Fair Deal eligibility for the employees in scope until this point.
- Discussions between GAD and the Plan's scheme actuary continued for a year. They agreed the bulk transfer terms in September 2016.
- The 2004 Guidance was replaced in 2013. Consequently, the 2013 Guidance applies to Mr N's transfer. Although not legally binding, it was followed in this case. Bulk transfers are addressed in Annex B. This does not set out any specific timescales for providing the bulk transfer option.
- The actuaries of both the Plan and the CSPA required that the bulk transfer process should follow the "actuarial equivalent basis." This approach is consistent with the 2013 Guidance.

- Based on the assumptions set by GAD and those adopted by the CSPA, there is no difference in value over the expected future period of payment.
- Over the average life expectancy and at long term assumed RPI and CPI rates, the total expected pension plus retirement lump sum would be of comparable value whether received from the Plan or the CSPA.
- If Mr N's life expectancy is less than the expected average, he would be entitled to higher pension benefits under the CSPA when compared to the Plan. Conversely, if his life expectancy is greater than the expected average, the Plan will provide higher benefits.
- RCDTS is unable to advise which scheme provides more security for members. While the CSPA is backed by the UK Government, in the worst case scenario the Plan would go into the Pension Protection Fund (the **PPF**).

53. Mr N contends that Mr T's complaint, [PO-25827], which was determined by the Deputy Pensions Ombudsman in September 2019, but was not upheld, raised similar issues.
54. Following Mr T's TUPE transfer to EDS, he moved his pension from the CSPA to the EDS scheme. Mr T subsequently transferred his pension to the Plan. After he drew benefits, he was notified of the option to transfer to the CSPA and advised of the amount of service credit in respect of that transfer.
55. The Deputy Pensions Ombudsman did not find that Mr T's employer had breached a legal duty or had made an administrative error in failing to inform him that a bulk transfer would take place soon after he intended to take partial retirement. She was also not persuaded that Mr T had suffered financial loss.
56. Mr N considers that RCDTS should acknowledge that it failed to provide him with timely information on his pension. He would like "some financial compensation" to remedy the alleged injustice caused to him.

Adjudicator's Opinion

57. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by RCDTS. The Adjudicator's findings are summarised below:-
- The Adjudicator accepted that Mr N could not have known the full implications for his pension without understanding the bulk transfer terms. However, the Adjudicator was not persuaded that his decision to draw pension, before he was transferred over to RCDTS, was the result of a lack of information or misinformation on the part of RCDTS or HMRC.

- The October Letter indicated that Mr N would have the option of a bulk transfer. The subsequent letters sent the following month advised that he would be able to re-join the PCSPS. RCDTS repeated that Mr N would have the opportunity to transfer his benefits, as part of the bulk transfer arrangements.
- The reason for the urgency of Mr N's decision to draw benefits from the Plan is unclear. While the Adjudicator appreciated that Mr N had attained NPA, there was nothing to suggest that he was required to take his pension benefits at that time.
- In light of the information made available to him, Mr N could have waited to see whether the bulk transfer terms would be suitable for him, before taking his decision to draw his pension. There was nothing preventing him from making enquiries to HMRC or RCDTS and obtaining financial advice on the issue.
- The 2004 Guidance makes it clear that bulk transfers should be communicated to staff that will be impacted, in good time. While the 2004 Guidance sets out some limited timelines, these relate to the period on and after the transfer, not to the period of consultation before the transfer takes effect.
- Both the 2004 and 2013 Guidance set out guidelines for improved procurement processes. Even with these guidelines, there are no specified timelines in respect of the bulk transfer process. Notwithstanding this, there is no legal obligation on employers to follow HMT's guidance notes on Fair Deal.
- On this basis, the Adjudicator concluded that the Ombudsman could not impose an arbitrary timeline for consultation or completion of the bulk transfer in these circumstances. The Adjudicator took into account that the Deputy Pensions Ombudsman did not find that, in the case of "Mr T", that his employer had breached a legal duty.
- The Adjudicator accepted that under the 2004 Guidance, if the time taken to complete a bulk transfer greatly exceeds six months that could amount to maladministration. While Mr N's position is that the 2004 Guidance applies to his transfer to RCDTS, the Adjudicator considered that the evidence did not support this.
- The Adjudicator was satisfied that the 2013 Guidance was the appropriate guidance in this case: paragraph 1.23 of the 2013 Guidance confirms this (see paragraph 30 above).
- The Adjudicator noted that paragraph 1.24 and 1.25 of the 2013 Guidance concern the quality of the receiving scheme rather than other procedural matters in either the 1999 or 2004 Guidance.

- The award of the Extra Service Credit is to compensate for the loss of the RPI increases. The Adjudicator was not convinced that Mr N had suffered any shortfall in pension.
- The Adjudicator considered that even if the evidence supported that the 2004 Guidance applied, and that RCDTS had failed to comply, it does not automatically follow that Mr N's claim for financial loss would succeed. Mr N would then need to demonstrate that he has been financially disadvantaged as a direct result.
- The Adjudicator considered that any alleged financial loss is based on Mr N's own assessment and his view that the benefits are less secure in the Plan. The Adjudicator was not convinced that this amounted to actual financial loss in the circumstances.
- In forming this view, the Adjudicator took into account the fact that, in the case of Mr T, the Deputy Pensions Ombudsman found no evidence of financial loss, as the two schemes were "actuarially equivalent." Crucially, the Deputy Pensions Ombudsman preferred this evidence over the applicant's own assessment.
- In Mr N's case, based on the actuarial assumptions set by GAD, there is no difference in value over the expected future period of payment.

58. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments, but these do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the main points made by Mr N for completeness:-

- Mr N says that he accepts HMT's guidance on Fair Deal is not legally binding. Even so, it is reasonable to expect that a major Government Department would have followed it closely. Paragraph 1.6 of the 2013 Guidance highlights that earlier guidance still applies.
- Mr N considers it "odd" that, if the transfer had taken place before 2013, HMRC would have been required to notify the bulk transfer terms before the staff transfer. Whereas, if the staff transfer occurs after 2013, HMRC can choose when to issue bulk transfer terms. If HMRC has discretion, it is reintroducing some of the issues which the 1999 and 2004 Guidance sought to address.
- Mr N has highlighted that paragraph three of the 2004 Guidance states that the terms of the bulk transfer should be finalised before staff transfer. Consequently, he does not accept that the timelines in the 2004 Guidance only relate to the period on or after the transfer.
- Mr N has pointed out that the October Letter made it clear that it was not confirmation of his eligibility for New Fair Deal pension protection. It was not until 26 November 2015, that his eligibility to re-join the CSPS was confirmed.

- The bulk transfer of pensions should have been one of the first items to be discussed. By the time GAD engaged with Capgemini, it was far too late for bulk transfer terms to be finalised before the transfer.
- He did not claim that he has suffered financial loss. His issue is that he would have preferred a higher pension at the start, increasing in line with CPI, rather than a lower pension increasing in line with RPI.

Ombudsman's decision

59. Mr N's position is that RCDTS unreasonably delayed confirming his eligibility under the Fair Deal to be readmitted into the CSPS. Mr N further contends that RCDTS delayed notifying the bulk transfer terms until September 2016, contrary to the guidance on Fair Deal. To remedy this alleged injustice, Mr N has requested financial redress.
60. With regard to Mr N's eligibility to be readmitted into the CSPS. I accept that the October Letter did not unequivocally set out the position. However, the Annex defined the eligibility criteria for "CSPS protection". If Mr N had reason to question the assumption that he was eligible for CSPS protection, he ought to have made enquiries at the time.
61. Notwithstanding the information in the earlier correspondence, Mr N has acknowledged that the 26 November Letter confirmed his eligibility for protection under Fair Deal. There is nothing to suggest that he tried to reverse his retirement once his eligibility had been confirmed.
62. I do not consider that the alleged delays after 1 December 2015, are materially relevant to the outcome of Mr N's complaint. By drawing his pension, Mr N ceased to be eligible to participate in the bulk transfer exercise so, I make no finding in respect of this aspect of his complaint.
63. Regarding the guidance on Fair Deal, I do not agree that the old Fair Deal guidance applies in this case.
64. It is clear from Section 1.23 of the 2013 Guidance that, in respect to retenders, the guidance contained in the section headed "Retenders of contracts involving staff who were transferred out of the public sector under the old Fair Deal guidance" applies to Mr N.
65. Section 1.24 of the 2013 Guidance states that:
- "Where a contract involving such staff is retendered in future the contracting authority should consider, on a case by case basis, whether the approach taken was equivalent with the old Fair Deal. In cases where the approach was equivalent, the contracting authority should, where this is compatible with the

original contract, and the authority responsible for the pension scheme agrees, follow this guidance.”

66. Under Paragraph 1.24, the approach is equivalent to the old Fair Deal. Consequently, the 2013 Guidance was the appropriate guidance for the retender of Mr N's role.
67. I acknowledge that Paragraph B.7 of the 2013 Guidance provides for a time window to allow staff to consider their bulk transfer options. This broadly reflects the three month period in the 2004 Guidance.
68. Even with the guidelines for improved procurement processes, there are no specified timelines in the 2013 Guidance for completing the bulk transfer exercise.
69. The role of The Pensions Ombudsman is to remedy injustice that an applicant has genuinely suffered as a consequence of a respondent's maladministration.
70. For Mr N's complaint to succeed, the evidence must support the view that he has suffered a loss as a result of serious administrative errors on the part of RCDTS. I do not consider that there have been such errors.
71. In forming this view, I have also taken into account the fact that Mr N has not sustained any financial injustice as a consequence of the alleged maladministration.
72. I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
22 June 2020

Definitions and Eligibility Criteria for CSPA protection***Transferring Eligible Employees*** means those who:

1. Were originally civil servants working on Electronic Data Systems Limited the ‘**Transferred Function**’;
2. Either participated in the CSPA, or were eligible to participate in the CSPA prior to compulsory transfer out on 23rd May 1994;
3. Were compulsorily transferred out of the civil service in on 23rd May 1994 with the transfer of the Transferred Function;
4. Remain ‘Eligible’ as defined below; and
5. Are due to transfer/ transferred to the Revenue & Customs Digital Technology Service to work on the Transferred Function.

Note: Employees do not need to be actively participating in the Aspire 1994 section of the Capgemini (UK) 2004 Pension Plan to be eligible (a Transferring Eligible Employee). It is sufficient that they meet the five criteria set out above and are Eligible to participate as defined below. Opting out will not end eligibility but permanently giving up pension rights will.

Eligibility means where the relevant employee has:

1. continued to work for the majority of their working time under their employment contract (i.e. more than 50%) on the Transferred Function or other functions certified by the Schemes as Additional Eligible Services;
2. not joined another stakeholder pension scheme or any workplace pension scheme, and
3. not otherwise given up eligibility to be in the Aspire 1994 section of the Capgemini (UK) 2004 Pension plan (note this is not the same as opting out);

CSPA means: both the Principal Civil Service Pension Scheme established under the 1972 Act and the Public Service (Civil Service and Others) Pensions Regulations 2014 made under the Public Service Pensions Act 2013 and which establish the new public service pension scheme for Civil Servants known as ‘alpha’ introduced on 1 April 2015