

## Deputy Ombudsman's Determination

Applicant	Mr E
Scheme	Principal Civil Service Pension Scheme ( <b>PCSPS</b> )
Respondents	Cabinet Office My Civil Service Pension ( <b>MyCSP</b> )

### Outcome

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

### Complaint summary

3. Mr E disagrees with the decision made by the Cabinet Office and MyCSP, that following a transfer of his benefits in 2006, he is no longer entitled to a refund of his Widows Pension Scheme (**WPS**) contributions for his service in the PCSPS between 1982 and 2006. He is unhappy that a refund will only be paid from 2006 onwards and is claiming a financial loss of £9,262.
4. Mr E also states that insufficient information was provided at the time of the transfer in 2006, in that he was not made aware that he would lose the right to receive a WPS refund on transferring out of the PCSPS.

### Background information, including submissions from the parties

5. Mr E joined the civil service and the PCSPS on 15 December 1982 and was a member of the classic section, governed under the 1972 Superannuation Act. The specific rules relating to Mr E's entitled to WPS are Rule 4.19, Rule 6.39, Rule 14.15 and Appendix 11 (Rules 6.1, 6.23, 6.29, 6.32 and 6.34) (**the Rules**)<sup>1</sup>.
6. Mr E began working for the House of Commons on 1 November 2002 and joined the House of Commons Pension Scheme (**HOCPS**) on 1 March 2006.
7. Mr E decided to transfer his benefits from the PCSPS to the HOCPS and requested details of the transfer value and what this would be worth in the HOCPS on 6 July

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<sup>1</sup> Relevant sections can be found in the Appendix

2006. This was provided on 26 July 2006, which showed how much a transfer from the PCSPS of £196,860.17 would purchase in the HOCPS, including spousal benefits. This calculated his reckonable service in the HOCPS as 24 years and 355 days, even though his actual service was 23 years and 75 days.

8. On 9 August 2006, Civil Service Pensions (the then administrator of the PCSPS) sent Mr E a cash equivalent transfer value (**CETV**), confirming the transfer value as £196,860.17. It also included a discharge of liability declaration (**the Declaration**), which stated:

“I have received information to enable me to make an informed decision, including an estimate of the reckonable service that could be bought by the transfer value offered by my previous pension scheme ... in respect of my pension benefits that are currently in that scheme.”

9. In the general information sent with the transfer discharge forms, it said: “A transfer value to another Scheme or Personal Pension plan will normally extinguish the member’s pension rights in the Civil Service pension scheme...”

10. Mr E signed the Declaration on 19 October 2006 and the transfer completed on 21 November 2006.

11. Mr E questioned his WPS contributions in a letter to MyCSP dated 2 February 2014, in particular:

“... it is not clear to me whether the Estimate’s lump sum on retirement includes an estimated amount for the refund of my widow’s pension contributions. The leaflet ... indicates that the Estimate will include the “estimated amount of your refund”. I was single on 1 October 2002 and that status has not changed since then.”

12. MyCSP replied by email on 10 February 2014, only to confirm that the statement Mr E received did not include details of a refund of WPS contributions. Mr E did not question this further at the time.

13. On 1 April 2014, the HOCPS became part of the PCSPS and Mr E became a member of the PCSPS again.

14. Mr E left service on 31 March 2017 via voluntary redundancy and Mr E made enquiries about his pension benefits, including queries regarding a WPS refund.

15. MyCSP explained in a letter to Mr E on 13 June 2017 that a WPS contribution refund would only be payable for service from 1 March 2006, because when Mr E transferred benefits into the HOCPS “all rights and liabilities under the Civil Service arrangements were extinguished”. It further said that the rights cannot be reinstated on the grounds that the HOCPS later became part of the PCSPS.

16. On 8 July 2017, Mr E raised a complaint under PCSPS’ internal dispute resolution procedure (**IDRP**). In his first stage submission, he asked MyCSP to review the decision made on his WPS contribution refund. He contended that he transferred

under the Public Sector Transfer Club and that he has “no record that [he] was informed that he would lose the entitlement to refund of the WPS [he] had paid between 1982 and 2006”. He claimed he has suffered a loss of £9,262, being the contributions, he paid £8,578, plus estimated interest of £3,000, less tax.

17. MyCSP did not uphold his complaint. In its response of 12 April 2018, MyCSP provided details of the scheme rules relating to WPS contributions. It concluded:

“... you extinguished all liability under the PCSPS. In accordance with Appendix 11, contributions will not be refunded under rule 4.19 where the Civil Servant has applied for a transfer value before leaving Civil Service ... The transfer value shows that the benefits being purchased within the HOCPS included a pension of £14,707.30, a lump sum of £44,121.90 and a Widow(er)'s pension of £22,060.95 ... Your signed application form dated 19 October 2006 confirms that you accepted the transfer value. This application form included a Discharge of Liability which stated that upon completion of the required conditions, the PCSPS may discharge their liabilities in respect of your scheme membership ...”

18. Mr E did not accept MyCSP's decision and, in April 2018, he appealed under the second stage of the IDRP to the Cabinet Office. His main points were:

- He was not made aware by MyCSP that he would not receive a refund of WPS contributions.
- Although a transfer would extinguish existing pension rights, he was not advised as to what the rights were.
- He submitted details of a Freedom of Information request to show that no reference was made to a refund of WPS contributions at the time of transfer.
- He referred to Public Sector Transfer Club arrangements in his appeal and said that he was not provided with enough information to make an informed decision about his transfer.

19. The Cabinet Office issued its response under the IDRP Stage 2 on 8 January 2018, which did not uphold the complaint. In summary:

- It apologised for the length of the investigation.
- It contended that for the transfer to proceed, Mr E signed a declaration confirming he had received enough information to make an informed decision, and an estimate of the reckonable service credit that could be purchased.
- Statutory transfer provisions allow people to transfer service freely between schemes; transfers are not compulsory; and the decision lies with the member.
- The CETV represents the value of all the benefits a member has in the sending scheme. The receiving scheme uses the CETV to purchase benefits in that

scheme and, when a transfer is complete, the sending scheme no longer has any liabilities, and the former member has no claim to any benefits from that scheme.

- In relation to Mr E's argument that he had not been able to make an informed decision, the Cabinet Office said:

"... I am satisfied that you [had] access to all the relevant information from PCSPS at the time you decided to transfer out. The scheme administrator had no obligation to warn you of anything specific or give you any information other than the CETV. The literature available at the time was also clear about what your options were on leaving the PCSPS. The HOCPS clearly gave you a service credit estimate, which you accepted. In view of that, I cannot agree that you were not in a position to make an informed decision.

I accept that the circumstances may be unusual in that the [HOCPS] became part of the [PCSPS] ...[it] was not foreseen, nor could you have reasonably expected that to happen. On that basis, you accepted a transfer out in 2006, knowing that you were giving up all rights in the PCSPS in return for like-for-like service in HOCPS."

20. Mr E remained unhappy with the response and made an application to the Pensions Ombudsman and added:

- Insufficient information was provided at the time of his transfer, in that: he would no longer be entitled to the refund of WPS contribution or information on the sums that would be lost to him; the opportunity to assess the loss; or the opportunity to make representations.
- Public Sector Transfer Club arrangements kept employment conditions broadly in line with other departments. Therefore, he believes that the liability to refund him pre 2006 WPS contributions lies with the HOCPS now and was not extinguished.
- If he were to marry and die, his spouse would be entitled to WPS based on all his service and not just his post 2006.

21. As part of the investigation, the Cabinet Office confirmed that its opinion had not changed from that in the IDRP. It also provided a break down of the transfer out calculation and confirmed a spouse's benefit was included in the CETV.

## **Adjudicator's Opinion**

22. Mr E's complaint was considered by one of our Adjudicators who concluded that no further action was required by Cabinet Office or MyCSP. The Adjudicator's findings are summarised briefly below:-

- Mr E was not entitled under the relevant scheme rules to a refund of WPS contributions prior to the transfer in 2006.

- The Adjudicator argued that Mr E had received a higher reckonable service in the HOCPS than what he had actually served in the PCSPS prior to the transfer. He considered that this reflected the inclusion of the WPS contributions.
- The Adjudicator agreed that Mr E had signed the Declaration and accepted the transfer, which included spousal benefits and he was satisfied that Mr E had access to the scheme rules, even if the information sent at the time was not specific to his circumstances.

23. Mr E disagreed with the Adjudicator's Opinion and argued, in summary:

- He disagreed that he had access to the scheme rules in that these were not provided to him, nor were they drawn to his attention.
- The Declaration makes no reference to the relevant scheme rules nor did it draw his attention to the scheme rules.
- Regardless, it is unreasonable to have expected him to have read and understood the scheme rules at the time of the transfer.
- The focus of the Declaration was on the transfer and the calculations involved.
- His view is that the respondents had a duty of care and ought to have informed him of the implications on the WPS contribution refund at the time of the transfer.
- He disagreed that the transfer reflected the WPS contribution by increasing the service it bought in the HOCPS.
- Given his personal situation, of which the pension schemes were aware of, it was unlikely that he would ever marry and therefore the refund is more valuable to him.
- The scheme rules make no provision for the HOCPS becoming part of the PCSPS and, as the situation is exceptional, a refund should be made.

24. As Mr E did not accept the Adjudicator's Opinion, the complaint was passed to me to consider. His further comments 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.

### **Ombudsman's decision**

25. I agree that Mr E is receiving his correct entitlement from the PCSPS. The scheme rules applicable at the time he transferred out of the PCSPS are clear that, on transferring out of the PCSPS, a WPS contribution refund cannot be made. I cannot direct the respondents to act outside of the scheme rules and make a payment that would contradict those rules.

26. Mr E clearly signed the Declaration and if he felt that he had not been given adequate information to make an informed decision, he could have raised that at the time. It is only now, with hindsight and his retirement, that this has become an issue for him. He was also made aware at the time, that on deciding to transfer, he would lose any pension rights he had obtained as a PCSPS member. While he transferred on a “club” basis, which provided like-for like benefits, this did not mean that the right to a refund would be replicated in the benefit structure of the HOCPS. Mr E was aware of this at the time, as he received a higher reckonable service on transferring into the HOCPS. In doing so, Mr E chose to accept the transfer out and took the risk of losing some of the rights he had obtained under the PCSPS, like a refund of the WPS contributions.
27. While I understand that the transfer of the HOCPS into the PCSPS was unforeseeable at the time Mr E transferred out, this does not void the relevant scheme rules that were applicable when he transferred in 2006. As stated above, Mr E clearly transferred out of the PCSPS and this extinguished any rights he had to the PCSPS. This does not change just because the HOCPS subsequently transferred into the PCSPS. I have to look at the disclosure as it took place in 2006, on the basis of the PCSPS and HOCPS rules as they stood at the time.
28. In relation to the complaint regarding the amount of information Mr E says was provided prior to the transfer, I agree that no specific information was provided to Mr E in relation to WPS contribution refunds. Mr E has argued that there was a duty of care to provide such information to him. However, there was no obligation on the respondents to provide such information as standard. There is nothing within legislation, including The Occupational Pension Schemes (Disclosure of Information) 1996 Regulations<sup>2</sup>, that compels the respondents to have provided, or drawn to Mr E’s attention, the scheme rules regarding the WPS contribution refund. Nor was it required to predict, at the time or at any other time, what Mr E’s marital status would be and therefore to make additional disclosure to him.
29. I agree with Mr E that it is not clear from the correspondence provided exactly why the service purchased by the transfer into the HOCPS was higher than the service he had accrued up to that point in the PCSPS. From the evidence available I cannot conclude that this was because of his WPS contributions. On that point I do not agree with the Adjudicator’s reasoning. However, I do not consider that this finding should alter the outcome because the transfer documentation clearly identified the value of the spousal pension being given up and one being acquired as a result of the transfer. As I have already found, there was no duty to draw attention particularly to the extinguishment of the right to refund of contributions as distinct from any other PCSPS scheme entitlement which was extinguished upon transfer.

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<sup>2</sup> The regulations in force at the time of the transfer, which have now been revoked

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30. Therefore, I do not uphold the complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
10 September 2019

## Appendix

### 1972 Section of the Principal Civil Service Pension Scheme

Rule 4.19 states:

“...(vii) Notwithstanding anything to the contrary in this scheme, an unmarried person who ceased to be a civil servant on or after 6 April 1978 and on or before 30 November 1989, with

(a) preserved pension under rule 3.11; or

(b) a pension or annual compensation payment specified in rule 4.19(ii)(b) and did not receive a refund under that rule

will, if he is under age 60 on 1 December 1989, become eligible on reaching age 60 for a refund in accordance with rule 4.19(iv), provided that he has remained unmarried throughout the intervening period...”

Rule 6.39 states:

“(i) Without prejudice to the effect of section 99 of the Pension Schemes Act 1993, where a cash equivalent transfer value is paid in accordance with part 1 of this section on or after 1 January 1986, this scheme will be discharged from any obligation to provide any benefits to which the cash equivalent relates...”

Rule 14.15 states:

“(1) If a transfer value is paid by the 1972 Section in respect of a civil servant, all pension accounts relating to the civil servant must be closed except as provided in paragraph (2).

(2) Nothing in paragraph (1) requires any account to be closed if the amounts specified in the account are or include amounts to which the transfer value does not relate or is not attributable, but an account that is not closed because of this paragraph must be adjusted in such manner as the Minister considers appropriate to reflect the extinguishment under rule 6.39 if the rights to any other benefits to which the transfer value payment relates.”

## Appendix 11

### Public Service Transfer Values

#### Outgoing transfers

“...5. (iii) Contributions will not be refunded under rule 4.19 or 4.23d as appropriate, where the civil servant has applied for a transfer value before leaving the Civil Service. However, where contributions for a widow's or widower's pension have been refunded under rule 4.19 or 4.23d, as appropriate, they may be repaid with the addition of compound interest. For the purposes of this rule a reference to compound interest means, in a case



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where the repayment is made before 6 April 1978, compound interest added to the relevant sum at a rate of 4% a year with yearly rests. Any repayment of refunded contributions must be made within the time limits described in paragraph 2. (Formerly rule 6.5) ...”