

## Ombudsman's Determination

Applicant	Ms N
Scheme	Deloitte UK Pension Scheme <sup>1</sup> ( <b>the Scheme</b> ), formerly known as the Deloitte & Touche UK Pension Scheme ( <b>D&amp;TUKPS</b> )
Respondent	D&T Pension Trustees Limited ( <b>the Trustee</b> )

### Complaint Summary

Ms N has complained that the Trustee wrongly decided not to award her a dependant's pension or a lump sum from the Scheme following the death of her long term partner, Mr T, in August 2016.

Ms N says that:-

- The Trust Deed and Rules of the Scheme (**the Scheme Rules**) permit payment of death benefits to her, subject to the discretion of the Trustee, following the transfer of Mr T's pension rights from the South Yorkshire Pension Fund (**SYPF**) to the Scheme in 2003.
- Mr T's wishes have consequently not been carried out by the Trustee.

If her position above is not supported, she contends that:-

- The Trustee did not adequately inform Mr T that, as Ms N was not married to him, no benefits would be payable to her from the Scheme on his death.
- Mr T would have taken a "discounted lump sum" from the Scheme if the Trustee had not failed to do this.

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<sup>1</sup> The Scheme's assets and liabilities have now been transferred into the DUKPS Section of the Deloitte Pensions Master Plan (**DUKPS Section**). The rules governing the payment of benefits under the DUKPS Section are identical to those for the Scheme.

## **Summary of the Ombudsman's Determination and reasons**

The complaint should not be upheld against the Trustee because:-

- No death benefits are payable to Ms N in respect of Mr T's death under the Scheme Rules.
- It had properly informed Mr T of the benefits payable in the event of his death from the Scheme.

## Detailed Determination

### Material facts

1. In June 1975, Mr T commenced working for Sheffield City Council (**SCC**) and joined the SYPF.
2. In April 1998, Mr T's employment with SCC transferred under the Transfer of Undertakings (Protection of Employment) (**TUPE**<sup>2</sup>) Regulations 2006 to CSL Group Limited (**CSL**)<sup>3</sup>.
3. At the same time, Mr T became an active member of the Managed Services Section<sup>4</sup> (**the MS Section**) of the D&TUKPS (later to become known as the Scheme).
4. On 3 April 1998, Mr T completed a Statement of Wishes form nominating Ms N to receive any lump sum benefits payable on his death from the D&TUKPS. By signing this form, Mr T acknowledged that the Trustee was not bound by his nomination when exercising its discretion in deciding to whom, and in what proportions, any lump sum should be paid.
5. On 14 December 1999, Mr T completed a transfer request form for the D&TUKPS to inform the Trustee, Deloitte & Touche and the SYPF that:-
  - 5.1. He had decided to transfer his accrued pension rights in the SYPF as at 31 March 1998 to the D&TUKPS on the transfer terms described in the Announcement<sup>5</sup> and accompanying documents.
  - 5.2. He acknowledged that once the transfer had taken place, neither he nor any other person(s) in respect of him would have any further claim against the SYPF for his membership prior to 1 April 1998.
6. Separately, in an announcement dated 28 April 2000, the Trustee informed Mr T that:-

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<sup>2</sup> The TUPE rules protect employees' rights when the organisation or service they work for transfers to a new employer. When TUPE applies, the employees of the outgoing employer automatically become employees of the incoming employer at the point of transfer. They carry with them their continuous service from the outgoing employer, and should continue to enjoy the same terms and conditions of employment with the incoming employer.

<sup>3</sup> CSL was acquired by Deloitte & Touche in 1993. It was subsequently renamed Liberata UK Limited (**Liberata**).

<sup>4</sup> The MS Section was introduced from 1 July 1994 by a deed of amendment dated 30 June 1994. It was established in order to obtain Government Actuary's Department (**GAD**) passports that were required for TUPE transfers as part of the passport certificate system in place at the time.

<sup>5</sup> This announcement dated 27 October 1999 was sent by Ms B, the Pensions Manager of CSL at the time.

- 6.1. In future, pension and life assurance benefits for CSL employees would be provided by the new CSL Pension Plan (**CSLPP**) established on 1 April 2000.
- 6.2. A Transfer Agreement was entered on 31 March 2000 which set out the basis on which a bulk transfer<sup>6</sup> from the D&TUKPS to the CSLPP would be made.
- 6.3. The expected date of the bulk transfer (**the Transfer Date**) was 1 June 2000.
- 6.4. Under the terms of the Transfer Agreement, his membership of the D&TUKPS would be transferred to the CSLPP on the Transfer Date.
- 6.5. His pension benefits under the CSLPP for both past and future service would be the same as under the D&TUKPS. This included death in service benefits and survivors' benefits.
- 6.6. The CSLPP could be amended in the same way as the D&TUKPS.
- 6.7. Mr T's accrued benefits in the SYPF had not yet been transferred to the D&TUKPS. So they would not be transferred to the CSLPP on the Transfer Date.
7. CSL provided Mr T with more details about the proposed changes in an announcement dated 28 April 2000 that said:-
  - 7.1. His membership in the CSLPP would commence on the Transfer Date for future benefits.
  - 7.2. His past service benefits would be transferred to the CSLPP on the Transfer Date.
  - 7.3. The Trustee had obtained independent legal advice that it could properly agree to the proposed reorganisation on the terms set out in the Transfer Agreement.
  - 7.4. The transfer of his accrued pension rights from the SYPF to the D&TUKPS would not be finalised before the Transfer Date.
  - 7.5. Discussions were currently taking place with SCC, the SYPF and their advisers about the mechanics of completing the transfer.
  - 7.6. It was expected that he would be asked to give fresh consent to the transfer of his SYPF benefits into the CSLPP by means of the D&TUKPS.
  - 7.7. CSL Pension Trustees Limited (**CSLPTL**) was the trustee of the CSLPP.
  - 7.8. CSL, the administrator of the D&TUKPS, had been appointed to administer the CSLPP on behalf of CSLPTL.

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<sup>6</sup> The transfer of a group of members from one occupational pension scheme to another.

- 7.9. Both the CSLPP and the D&TUKPS were contracted out of the State Earnings Related Pensions Scheme (**SERPS**).
- 7.10. Pension and life assurance benefits would be provided in the CSLPP according to the CSLPP Trust Deed and Rules.
- 7.11. It would contact him again about the transfer of his benefits from the SYPF.
8. On 1 June 2000, Mr T's accrued pension rights in the D&TUKPS for the period 1 April 1998 to 31 May 2000 were transferred to the CSLPP on a "without consent" basis.
9. In her memo dated 15 June 2001 titled "Transfer of Accrued Pension Rights from the SYPF to the CSLPP or to the D&TUKPS", Ms B, the Pensions Manager of CSL at the time, informed Mr T that:

"As outlined in the announcements dated 28 April 2000 the transfer on agreed special terms from the SYPF did not proceed before the transfer of your accrued benefits from the D&TUKPS to the CSLPP on the 1 June 2000.

I write to inform you that the transfer can now proceed from the SYPF to the D&TUKPS for onward transfer to the CSLPP under the original special terms. This means that the service credit being offered by the CSLPP will be the same as originally offered to you in the announcement dated 27 October 1999.

### **The Options**

Essentially you have three options:

1. Decide to leave your pension rights earned before 1 April 1998 in the SYPF.
2. Decide to transfer your pension rights in the SYPF to the D&TUKPS for onward transfer to the CSLPP on the agreed special terms.
3. Decide to transfer your pension rights from the SYPF to the D&TUKPS, and leave them in the D&TUKPS.

#### **Option 1 – SYPF Deferred Option**

If you choose not to transfer your SYPF pension rights you will be entitled to the usual leaving service benefits from the SYPF which will become payable from your Normal Retirement Date under the SYPF, or earlier if you meet the ill-health criteria....

#### **Option 2 – Transfer to the D&TUKPS for onward transfer to the CSLPP**

Your accrued pensionable service under the SYPF amounted to 22 years and 103 days. If you choose to transfer this service to the CSLPP, you will be awarded 20 years and 9 months additional pensionable service in the CSLPP...

This additional service has been calculated so that the overall value of the benefits you are being given in the CSLPP is equivalent to the value of those you held in the SYPF.

By choosing to accept the service credit of 20 years and 9 months, you will be linking your past service to any future salary increases, which may be greater than the increases to the deferred pension in the SYPF, or in the D&TUKPS, if you choose Option 1 or Option 3...

### **Option 3 – D&TUKPS Deferred Option**

If you choose to transfer your benefits to the D&TUKPS, and decide not to transfer them onto the CSLPP, you will be granted a deferred pension in the D&TUKPS...

**Please note:** The Transfer Request Form attached to this announcement is asking you to confirm your choice of one of the three options available to you..."

10. During the year ended 30 September 2003, South Yorkshire Pension Authority (**SYPA**) paid £844,000<sup>7</sup> into the D&TUKPS representing the total transfer value of the accrued SYPF pension rights available to the CSL employees who had chosen to transfer. The bulk transfer was made in accordance with regulation 119 of the Local Government Pension Scheme Regulations 1997 (as amended) (**the LGPS Regulations**).
11. Mr T's transfer payment was £69,446.
12. SYPA has said that:

"The transfer took several years as there was actuarial involvement and a couple of other delays. In 1999 a further contract was awarded by SCC to CSL. Although the exercise for the 1998 transferees was well under way at that point it was decided to join both the 1998 and 1999 transfers...Despite our then Assistant Treasurer making it clear that the regulations would only allow payment to the D&TUKPS, SCC agreed with CSL that they could re-run the entire exercise again in order to combine the elections...to D&TUKPS and the subsequent transfer to the CSLPP."
13. SYPA also said that:-
  - 13.1. If it did not receive a completed second election form from a transferee, its default position was that the first election form stood.
  - 13.2. There was no reason for it to request a second election form from Mr T. CSL chose to do this and give Mr T an opportunity to change his decision.

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<sup>7</sup> This payment was shown in the D&TUKPS accounts for the year ended 30 September 2003.

- 13.3. It only received the first election form from Mr T that he completed in December 1999. His accrued pension rights in the SYPF were consequently transferred to the D&TUKPS.
14. When CSL was subsequently renamed as Liberata, the CSLPP became known as the Liberata Pension Plan (**LPP**). CSLPTL was renamed Liberata Pension Trustees Limited.
15. In July 2004, Liberata sent Mr T a deferred benefit statement in respect of the D&TUKPS (which it was administering) which showed that:-
  - 15.1. He joined the D&TUKPS on 31 May 2000.
  - 15.2. This date was also when his pensionable service started and his date of leaving D&TUKPS.
  - 15.3. His transferred in service credit from the SYPF was 20 years 9 months.
  - 15.4. The salary used to calculate his deferred pension was £20,158.99 per annum.
  - 15.5. His deferred pension payable from his Normal Retirement Date (**NRD**)<sup>8</sup> in December 2022 was £6,971.65<sup>9</sup> per annum.
  - 15.6. If he died prior to receiving his deferred benefits from the D&TUKPS, his spouse would receive a pension of at least £1,132.89 per annum.
  - 15.7. If he died after having taken his pension at NRD, his spouse would receive a pension of at least £3,845.83 per annum.
  - 15.8. Furthermore, if he died before he had been retired for five years, the rest of the pension payments he would have received in the five years would be paid as a lump sum.
  - 15.9. His Notional Earliest Pension Date (**NEPD**)<sup>10</sup> was his 60<sup>th</sup> birthday in December 2017.
16. The covering letter dated 7 July 2004 said that:-
  - 16.1. If he did not wish to transfer his pension rights from the D&TUKPS, he should retain this letter and the statement in a safe place.
  - 16.2. Any lump sum death benefit available from the D&TUKPS would be payable under discretionary trust. So it would be useful for the Trustee to have a completed Statement of Wishes form for him.

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<sup>8</sup> This was Mr T's 65<sup>th</sup> birthday.

<sup>9</sup> This pension would be subject to increases both during deferment and payment.

<sup>10</sup> Mr T could have chosen to receive his deferred benefits on an unreduced basis at any time from his NEPD.

- 16.3. Mr T should contact Liberata if he had any questions about his deferred benefits or required further information about the D&TUKPS.
17. Liberata also sent Mr T a statement showing his accrued benefits in the LPP.
18. In his e-mail dated 21 July 2004, Mr T asked Liberata the following questions:
- “I understand the statement regarding the LPP information but would like some clarification as to the deferred benefits, i.e. is the LPP the total benefit and the deferred benefit a portion of how the LPP is made up?
- I think that the deferred benefit is for contributions I made to the SYPF during my service with SCC prior to being outsourced...Should I now consider transferring those payments to the LPP or are they better left where they are?”
19. On 14 September 2004, Liberata replied as follows:-
- “...during the process of transferring your employment to CSL, a new pension arrangement was opened for CSL employees, the CSLPP (now called the LPP). At this time you were given the option to leave your transferred rights within the D&TUKPS or to transfer them out to the CSLPP. As we did not receive a response from you at that time your pension rights remained within the D&TUKPS.
- It is not now possible to transfer your pension rights within the D&TUKPS to the LPP as the trustee of the LPP, following advice from its legal and actuarial advisers, had decided that the scheme will not accept transfers which included contracted out benefits accrued after 17 May 1990...There are additional outstanding technicalities, which relate to protected rights built up since 1997.
- Unfortunately, the benefits from your D&TUKPS fall into this category...
- You may of course transfer your pension rights out to another approved scheme...and you will need to seek advice from an independent financial adviser to ascertain if this will be beneficial to you as we are not allowed to give such advice...”
20. Liberata went into administration around 2012 and the LPP was later transferred to the Pension Protection Fund (**PPF**).
21. Deloitte LLP (**Deloitte**).took over the administration of the D&TUKPS which became known as the Scheme.
22. In June 2014, Mr T asked Deloitte for details of the pension benefits available to him from the Scheme if he retired early at age 57. Deloitte explained to Mr T that the pension available to him from the Scheme on early retirement would be reduced to allow for the fact that it would be paid for longer.
23. In July 2014, Deloitte sent Mr T a statement showing that the early retirement benefits available to him from the Scheme if he retired on 19 December 2014 were as follows:



23.1. a full pension of £7,395.69 per annum; or

23.2. a lump sum of £36,880.61 plus a residual pension of £5,532.09 per annum.

A contingent spouse's pension of £5,777.88 per annum on death after retirement was available with both options.

24. In its covering letter dated 1 July 2014, Deloitte recommended that Mr T complete and return a new "Expression of Wish" form.

25. Ms N says that Mr T notified Deloitte that the Statement of Wishes which he completed in April 1998 was still valid.

26. Mr T died in August 2016.

27. On 19 September 2016, Deloitte informed Ms N's solicitor that no death benefits were available from the Scheme because Mr T was single at the time of his death.

28. Ms N was unhappy with this response and made a complaint through her solicitor under the Scheme's Internal Dispute Resolution Procedure (**IDRP**).

29. Ms N's solicitor said that:

"...the deceased (Mr T) had been diagnosed with a life limiting illness and was advised that he would receive greater benefit were he to survive to the age of 60 (and the death benefits would be referable to the full amount) or, alternatively, he could take a discounted lump sum prior to attaining the age of 60.

The deceased elected to wait until he reached the age of 60 before seeking the full lump sum. Unfortunately, the deceased died ...some 15 months prior to his 60<sup>th</sup> birthday...

In light of the deceased's ill health, it is our client's position that had the deceased been aware of the lack of provision that would be made for our client upon his death, he would have accepted a discounted lump sum.

Our client and the deceased had a number of conversations regarding this and the deceased elected not to take the discounted lump sum purely on the basis that he believed our client would be adequately protected. In furtherance of our client's argument, in particular she would state the following:-

1. The deceased's contributions to the pension scheme post 1998 were transferred out of the D&TUKPS and our client receives the appropriate benefits. It is inconceivable that the deceased would have sought to transfer part of the pension scheme but retain 22 years' worth of contributions in the D&TUKPS which had less benefits; and
2. Deloitte specifically requested that the deceased complete an up to date nomination of wishes form in 2014 only two years prior to the

deceased's death. If it was Deloitte's position that our client would not receive any death benefits under the deceased's pension as they were not spouses, this should have been explained clearly and explicitly to the deceased..."

30. In September 2019, Ms N asked her solicitor to submit a complaint against the Trustee to The Pensions Ombudsman (**TPO**) in order to meet the time limits for it to be made.

31. In her Stage One IDRPs decision letter dated 9 October 2019, Ms B who was now both the Director of Deloitte Pensions and Secretary to the Trustee said that:-

31.1. For deferred members of the MS Section of the Scheme such as Mr T whose pensionable service had ended before 31 May 2002, the Scheme Rules only provided for a pension to be payable on his death to a spouse or an eligible child. The Scheme Rules did not permit a pension or lump sum to be paid to a long term partner.

31.2. Rule F3(C)(i) of the Scheme Rules stipulated that:

"The Spouse of the deceased Deferred Member is entitled to an annual pension (payable from the date of the Deferred Member's death until, and including, the date of death of the Spouse) equal to the aggregate of the pensions calculated under rule F3(C)(ii) and (iii) below."

"Spouse" is defined as:

"(C) in relation to a Deferred Member whose death occurs before or on his NRD, the widow or widower of that Deferred Member."

31.3. The Statement of Wishes form nominating Ms N to receive any lump sum benefits available on Mr T's death was irrelevant because no such benefits were payable from the Scheme.

31.4. This standard form applied in many different situations. For example, if Mr T and Ms N had got married or had children, it would have been relevant to benefits payable from the Scheme. Also, had Mr T been an active member, the form would have been pertinent for any death in service benefits available from the Scheme.

31.5. The Trustee (through Deloitte) informed Mr T about the spouse's pension that could have been payable on his death. It also responded properly and promptly to his questions about his own benefits. It did not inform him that benefits would be payable to a long term partner on his death. It was not obliged to investigate Mr T's circumstances or advise him that Ms N would be ineligible to receive any benefits from the Scheme.

32. In its letter dated 20 December 2019 to Deloitte, Ms N's solicitor said that:-

- 32.1. There were two separate sections in the Scheme Rules labelled F3.
  - 32.2. Rule F3(B) which appeared at pages 310 to 312 of the Scheme Rules stipulated that where a deferred member was survived by a chosen adult dependent and there was no surviving spouse or eligible children, a pension would be payable to the deferred member's chosen adult dependent for life.
  - 32.3. Furthermore, Rule 5(A)(ii) and the Trustees' General Power stated that:

“The trustees may exercise all the powers, rights and privileges in connection with the Scheme necessary or proper to enable them to carry out all of any transaction, deed or thing arising under or in connection with the Scheme.”
  - 32.4. So the Trustee had all the necessary powers to make the payment to Ms N.
  - 32.5. The Trustee had been obliged to discuss Mr T's personal circumstances with him so that he could make an informed decision.
  - 32.6. The transfer of Mr T's accrued pension rights from the SYPF to the D&TUKPS took place after he had already left the D&TUKPS on 31 May 2000. This transfer was consequently “nonsensical” and invalid.
  - 32.7. The memo dated 15 June 2001 which Ms B, in her former role as the Pensions Manager of CSL, sent to Mr T suggested that option 2, that is, transferring his pension rights from SYPF to the CSLPP was “the best or most advantageous offer”.
  - 32.8. The Trustee had a duty to act in the best interests of Mr T. It should have made option 2 the default choice if Mr T had not selected an option.
  - 32.9. Alternatively, the default position could also have been option 1. Mr T's pension rights would then have remained in the SYPF and not transferred into a scheme that he had already left.
  - 32.10. Ms B also had a perfect opportunity to notify Mr T in her memo dated 15 June 2001 that no benefits would be payable from the D&TUKPS on his death if there was no surviving spouse.
33. On 30 January 2020, Ms B replied to the issues raised by Ms N's solicitor as follows:

“You are correct that the Scheme Rules include two Rules F3. This is not to make the Rules “deliberately misleading”...Rather, one relates to the Defined Benefit Section and the other to the Defined Contribution Section. The Rule F3 to which you refer...relates to the Defined Contribution Section – for clarity on this, please see Part IIB (The Money Purchase Section Rules) which precedes the Rule F3 to which you refer.

Mr T was a member of the MS Section of the Scheme. This is part of the Defined Benefit Section of the Scheme. Accordingly, the correct Rule F3 for

Mr T's entitlements is contained at page 181....this rule is clear in that no benefit is payable in respect of Mr T to your client.

In particular, Mr T left pensionable service under the Scheme on 31 May 2000. This is before 31 May 2002, when an applicable benefit was introduced for active members (please see Rule F3(C)(v)(a) on page 186 which sets out the benefits payable in respect of a Post 31 May 2002 Pensionable service deferred member).

This means that no benefits are payable from the Scheme following Mr T's death...

The Trustee's member communications complied fully with applicable legal requirements and the Trustee was not (and is not today) obliged or (authorised for FCA purposes) to give individual members tax or estate planning advice on what is appropriate given their personal circumstances.

...on 31 May 2000, Mr T left pensionable service under the Scheme. At this time, he changed from being an active member...to a deferred member... Which means he remained a member of the Scheme but "left it" in the sense of no longer actively building new benefits under it...

This date is important for the purposes of the Rules in that different benefits are payable to different categories of member depending on when they leave pensionable service. This date accordingly is not...simply the date of an administrative change to the management of the Scheme.

...the Rules were changed with effect from 31 May 2002 to provide, for active members after this date only, an adult's dependant's pension where the member died after 31 May 2002 having first become a deferred member (after 31 May 2002). This did not apply to Mr T because he had ceased to be an active member before 31 May 2002.

...you make various complaints about the contents of a memo sent on 15 June 2001 from the pensions manager of the CSLPP. As this is a communication from the CSLPP (subsequently renamed LPP) (and not from the Scheme), the Trustee cannot comment upon this.

....The Scheme is not responsible for communications previously issued by the LPP trustees.

...you note that the following statement in the statement of wishes had the effect of leaving Mr T to believe that pension benefits would be payable to your client:

"You are under no obligation to state your relationship with the person(s) although this information will help the Trustee in exercising its discretion."

We do not agree with your conclusion. The point of the statement was to alert members to the point that, where a benefit may be paid in the Trustee's discretion to a dependant, the nature of the relationship of that person with the member is a relevant factor for the Trustee to take into account.

This statement does not apply to the situation of your client however because there was no discretionary pension payable. This statement does not promise that a benefit will be paid, it just explains one factor that may be taken into account if one is payable."

34. TPO's Resolution Service was unable to successfully resolve Ms N's complaint.
35. In December 2020, Ms N consequently applied for her complaint to be considered by the Trustee at Stage Two of the IDRP.
36. In its letter dated 4 February 2021 to Ms N, the Trustee said that it did not uphold her complaint for essentially the same reasons given by Ms B at Stage One of the IDRP.
37. The Trustee also said that:-
  - 37.1. The relevant member booklets, internal records and correspondence mentioned in Ms N's complaint had been reviewed carefully. They contained "no assurance, or even suggestion", that a dependant's pension would be payable to a long term partner in the event of Mr T's death.
  - 37.2. For example, the information provided to Mr T in an early retirement benefit statement in 2014 and a deferred benefit statement in July 2004 only referred to a "spouse's pension". So it considered that Mr T was adequately and properly informed of the benefits payable from the Scheme in the event of his death.

### **Summary of Ms N's position**

38. The Trustee has asserted that in 2001, Mr T selected option three on the transfer request form, that is, to keep his SYPF pension rights transferred to the D&TUKPS as a deferred benefit<sup>11</sup>. It is unacceptable that the Trustee cannot provide a copy of this form as evidence to prove that it had authority to retain these benefits in the Scheme.
39. She is "fully confident" that, Mr T did not complete this form because:-
  - 39.1. He only became aware in July 2004 that his SYPF pension rights had not been transferred to the LPP after receiving the deferred benefit statement from Liberata.
  - 39.2. Mr T had set a precedent in December 1999 by deciding to transfer his SYPF pension rights to the D&TUKPS, that is, to the pension scheme of his employer

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<sup>11</sup> Please refer to paragraph 53 below for further details.

at that time, CSL, in order to “maximise the value of a final pension... under a defined benefit scheme”.

39.3. He would not have decided in 2001 to keep his SYPF pension rights in the D&TUKPS when it was no longer CSL’s pension scheme and was detrimental to the calculation of his retirement benefits.

39.4. The form should have been retained by the Trustee in Mr T’s file until his death in 2016.

40. She says that:

“It is important to differentiate that the completion of the original transfer request...was not to D&TUKPS itself, but actually to the pension scheme of Mr T’s employer, which for an initial period was held in the D&TUKPS until a specific scheme was set up...The memo of 25 February 1998 introduces the D&TUKPS to “Employees of Sheffield City Council transferring to CSL.”

...it is difficult to reconcile how a transfer form with the original purpose of transferring the SYPF benefits to the pension scheme of CSL...appears to then have changed its purpose to be authorisation for the funds to transfer to the D&TUKPS...”

41. She would like clarification on the intended purpose of the original transfer request form because, in her opinion, this had become “confused” over time.

42. While she appreciates the matter is time-barred, the process followed by the Trustee to transfer Mr T’s SYPF benefits to the Scheme in 2003 was “seriously flawed”.

43. The Trustee should have ensured that Mr T completed and returned the second transfer request form to it and not relied on a “default position”. There was no time pressure on the Trustee to prevent “an entire complete returns position being achieved” in light of the considerable delay finalising the bulk transfer.

44. The Trustee did not know that a default position existed. It would otherwise have used this position as “the basis for their argument to retain the funds” when it could not locate a copy of Mr T’s completed second transfer request form.

45. By completing the Statement of Wishes in April 1988, Mr T had believed that, in the event of his death, she would be entitled to pension and/or lump sum benefits from the Scheme.

46. She is dissatisfied with the Trustee’s explanation as to why it had asked Mr T to update his Statement of Wishes in both July 2004 and July 2014 if no lump sum benefits was available to her on his death from the Scheme.

47. By suggesting that Mr T should complete a new Statement of Wishes in 2014, the Trustee had influenced his decision at a time of critical ill health not to take a discounted lump sum from the Scheme. The Trustee had acted in a “misleading and detrimental” way towards Mr T.

48. In 2003, the Trustee retrospectively opened and closed Mr T's "dormant" pension record on 31 May 2000 in order to accommodate a service credit transferred from the SYPF into the D&TUKPS when he no longer had any pensionable service in the MS Section. So the transfer did not relate to "CSL contributions or employment". She questions the appropriateness of this transfer. It could equally be argued that the transfer had been made to the Deloitte & Touche Section of the D&TUKPS in 2003. The limitation on a lump sum death benefit payment for the MS Section in rule F3(B) for the Defined Benefit Section of the Scheme Rules<sup>12</sup> would then not be applicable.
49. By arbitrarily selecting 31 May 2000 to re-establish a link to the MS Section of the Scheme for his deferred membership, the Trustee also prevented Mr T from benefiting from a change to the Scheme Rules that provided dependent's pensions for active members who died having first become deferred members after 31 May 2002.

### **Summary of the Trustee's position**

50. No dependant's pension or lump sum is payable following Mr T's death to Ms N as his long term partner under the Scheme Rules.
51. Rule F3(B) for the Defined Benefit Section of the Scheme Rules does not provide death benefit lump sums for deferred members of the MS Section who die before their NEPD such as Mr T.
52. Mr T was informed on several occasions about the potential benefits payable from the Scheme, including a spouse's pension. He was never provided with any assurances about what benefits would be payable to anyone other than himself or a spouse. The information Mr T received was consistent and in accordance with the Scheme Rules.
53. With regard to the missing transfer request form, it says that:-
- 53.1. It wrote to the relevant individuals so that they could choose whether to transfer their SYPF benefits into the CSLPP or retain their benefits, once initially transferred (in accordance with legal advice), in the D&TUKPS as deferred benefits.
- 53.2. Mr T confirmed that he wanted to have his SYPF benefits transferred to the D&TUKPS and kept as a deferred benefit.
- 53.3. Unfortunately, it did not have a copy of Mr T's form that was completed over 20 years previously.
- 53.4. However, if Mr T had not selected this option, his SYPF benefits would have been transferred to the CSLPP.

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<sup>12</sup> The relevant sections from rule F3 for the Defined Benefit Section of the Scheme concerning lump sum death benefits has been set out in the Appendix below

54. It has no reason to believe that Mr T's SYPF benefits were inappropriately transferred and retained in the D&TUKPS. It has seen no evidence which suggests that Mr T had concerns about his deferred benefits being held in the D&TUKPS.
55. The transfer of Mr T's SYPF benefits to the D&TUKPS in 2003 did not mean that he commenced another period of active membership. Mr T's pensionable service in the D&TUKPS ended on 31 May 2000. So his SYPF benefits were allocated retrospectively to the section of the D&TUKPS in which Mr T was a member at that time - the MS Section.
56. Mr T received a transfer credit in the MS Section of the D&TUKPS entitling him to the deferred benefits granted in accordance with the terms of the transfer. Had the transfer taken place when Mr T was an active member of the D&TUKPS, and not been delayed, his active membership would still have ceased on 31 May 2000.
57. So despite the late receipt of the transfer payment in 2003, the Scheme records reflect what would have been the position had the transfer not been delayed. As such, the relevant provisions in the Scheme Rules for a deferred member of the MS Section applied to Mr T from 1 June 2000.
58. Mr T had no connection to any other section of the Scheme. There was no reason why he would have been transferred into the Deloitte & Touche Section. He was not categorised as a MS Section member in order to restrict the benefits available to him from the Scheme. Individuals become members of relevant sections within the Scheme as set out in the Rules. It does not have discretion to change or choose the categorisation of an individual's membership in the Scheme.
59. It explained in its Stage One IDRPs decision letter why it had asked Mr T to update his Statement of Wishes.
60. Furthermore, according to rule F5(B)<sup>13</sup> of the Scheme Rules, a lump sum death benefit would have been available from the Scheme if Mr T had died before he had been retired for five years. The rest of his pension payments would then have been paid at its discretion to one or more of beneficiaries and his Statement of Wishes would have been relevant in this situation.

## Conclusions

61. The fundamental duty of the Trustee is to give effect to the provisions of the Scheme Rules. Failure to do so would amount to a breach of trust. The Trustee's legal duties include paying out the right benefits at the right time.
62. In practice, the Trustee can delegate many of these duties, for example the day-to-day responsibility for administering the Scheme, to third parties. The ultimate responsibility for ensuring that the duties are carried out, nevertheless, remains with the Trustee.

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<sup>13</sup> Rule F5(B) for the Defined Benefit Section of the Scheme has been set out in the Appendix below



The Transfer Form

63. Ms N has contended that the purpose of the transfer form which Mr T completed in December 1999 was to transfer his SYPF benefits to the pension scheme of his employer, CSL.
64. In her view, when CSL established its own pension scheme, the CSLPP, Mr T's SYPF benefits should automatically have been transferred from the D&TUKPS to the CSLPP.
65. On 1 June 2000, his membership of the D&TUKPS for the period 1 April 1998 to 31 May 2000 was transferred on a without consent basis to the CSLPP under the terms of a Transfer Agreement dated 31 March 2000.
66. Had the transfer of Mr T's accrued benefits in the SYPF to the D&TUKPS occurred prior to 1 June 2000, they would have transferred to the D&TUKPS on the agreed special terms automatically. However, for the reasons given by SYPA as shown in paragraph 12 above, the transfer was delayed and did not take place until 2003.
67. I note that both the Trustee and CSL informed Mr T in separate announcements on 28 April 2000 that, because of the delay, it would not be possible for the transfer of his SYPF benefits to the D&TUKPS to take place by 1 June 2000. Furthermore, CSL notified him in advance that if he wished to transfer his SYPF benefits to the CSLPP, it was likely that he would be asked to give fresh consent.
68. This was because:
  - 68.1. in accordance with the LGPS Regulations, SYPA could only transfer his SYPF benefits to the D&TUKPS and not to the CSLPP; and
  - 68.2. the original transfer request form showed that Mr T had decided to transfer his accrued SYPF rights specifically to the D&TUKPS on the agreed special terms.
69. Mr T had accrued 22 years and 103 days' pensionable service in the SYPF. Under the special terms, Mr T would have received 20 years and 9 months' extra pensionable service in the D&TUKPS. This would only have been credited to the CSLPP along with his pensionable service accrued directly in the D&TUKPS if the transfer of his SYPF rights had taken place before 1 June 2000.
70. In June 2001, CSL informed Mr T that the transfer of his SYPF benefits to the D&TUKPS on the agreed special terms for onward transfer to the CSLPP, if desired, could now take place. His service credit in the CSLPP would be the same as that originally offered in the D&TUKPS, that is, 20 years and 9 months.
71. CSL asked Mr T to complete and return a new transfer request form after selecting one of the three options available to him, that is, to: (a) leave his benefits in the SYPF, (b) transfer his SYPF benefits to the CSLPP via the D&TUKPS; or (c) transfer his SYPF benefits to the D&TUKPS and leave them there.

72. The Trustee has said that Mr T decided to leave his SYPF benefits in the D&TUKPS. It could not, however, provide a copy of his completed second transfer request form in order to corroborate its statement.
73. SYPA also did not have a copy of Mr T's second form and it transferred Mr T's SYPF benefits to the D&TUKPS on the basis of having received his original form in December 1999.
74. Moreover, I note that Liberata informed Mr T in September 2004 that it did not receive his decision on whether to retain his SYPF benefits in the D&TUKPS or to transfer them to the CSLPP.
75. So I agree with Ms N that Mr T had most likely not completed and returned the new transfer request form to CSL. It is unclear, however, from the available evidence why he did not do this.
76. What is evident is that Mr T tried to transfer his SYPF rights held in the D&TUKPS to the LPP in 2004. Regrettably, it was no longer possible to do so for the reasons that Liberata gave him in September 2004 as shown in paragraph 19.
77. Regulations made by Parliament impose strict time limits on complaints which may be investigated by TPO. Regulation 5 of The Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996 (SI 1996 No.2475), states:
- “(1) Subject to paragraphs (2) and (3) below, the Pensions Ombudsman shall not investigate a complaint or dispute if the act or omission which is the subject thereof occurred more than 3 years before the date on which the complaint or dispute was received by him in writing.
- (2) Where, at the date of its occurrence, the person by or in respect of whom the complaint is made or the dispute is referred was, in the opinion of the Pensions Ombudsman, unaware of the act or omission referred to in paragraph (1) above, the period of 3 years shall begin on the earliest date on which that person knew or ought reasonably to have known of its occurrence.
- (3) Where, in the opinion of the Pensions Ombudsman, it was reasonable for a complaint not to be made or a dispute not to be referred before the end of the period allowed under paragraphs (1) and (2) above, the Pensions Ombudsman may investigate and determine that complaint or dispute if it is received by him in writing within such further period as he considers reasonable”.
78. Part of Ms N's complaint is that the Trustee had improperly transferred and retained Mr T's SYPF benefits in the D&TUKPS. The event took place in 2003 when SYPA paid £69,446 into the D&TUKPS representing the transfer value of Mr T's accrued SYPF pension rights. The “act or omission” therefore occurred some 16 years before Ms N made her formal complaint to the Pensions Ombudsman in September 2019 and clearly falls outside of the primary litigation period in Regulation 5(1).

79. When Liberata brought to Mr T's attention in September 2004 that his SYPF pension rights had not been transferred to the LPP, if he was unhappy, I would expect that he would have made a complaint to the Trustee at the time. So I consider that Mr T should have referred any complaint to TPO about the transfer process by September 2007 at the latest and this part of Ms N's complaint has also been made "out of time" under Regulation 5(2).
80. It remains for me to consider whether it would be reasonable to exercise discretion to allow the extension of this part of Ms N's complaint under regulation 5(3). I can normally exercise discretion if there have been continued and concerted attempts to resolve a complaint, and those attempts have delayed the submission of an application beyond three years. However, I cannot see that this applies in this case.
81. To that extent, I do not make a finding on whether or not the process followed by the Trustee to transfer Mr T's SYPF benefits to the Scheme in 2003 was flawed as this part of Ms N's complaint was made outside the time limits and consequently is not within my jurisdiction.

#### Validity of the Statement of Wishes

82. Ms N has said it was Mr T's belief that by completing the Statement of Wishes in April 1988, she would be entitled to pension and/or lump sum benefits from the Scheme in the event of his death. However by completing this form, Mr T had simply requested the Trustee to consider the person he nominated, that is Ms N, when exercising any discretion to pay any lump sum benefits payable on his death from the Scheme.
83. The Trustee was not obliged to follow Mr T's wishes and I am satisfied that this was made clear to him on the Statement of Wishes.
84. Ms N is also dissatisfied with the Trustee's explanation as to why it asked Mr T to update his Statement of Wishes in both July 2004 and July 2014 if no lump sum benefits were available to her on his death from the Scheme. However, these requests were made by the Trustee many years after Mr T had completed the original nomination form. His personal circumstances could have changed over time. That they had not does not mean it was improper for the Trustee to have enquired whether the original Statement of Wishes still reflected his wishes.
85. The Trustee clearly could not have foreseen when it asked Mr T to consider updating his Statement of Wishes that at the time of his death in August 2016, no lump sum death benefits would have been payable from the Scheme.
86. Furthermore, under different circumstances a lump sum benefit could have been payable from the Scheme in respect of Mr T.
87. In particular, if Mr T had retired early at age 57 after receiving details of the benefits available to him from the Scheme, the rest of his pension payments would then have been paid at the Trustee's discretion to one or more potential beneficiaries in accordance with rule F5(B) of the Scheme Rules as he would have died before he

had been retired for five years. His Statement of Wishes would then have been relevant.

Information Provided About the Benefits Available From the Scheme

88. Ms N has said that Mr T did not retire early at age 57 because the Trustee (through Deloitte) had improperly discouraged him from doing so by informing him that he would receive superior (death) benefits from the Scheme if he deferred retirement until age 60.
89. Ms N has also contended that:-
  - 89.1. The Trustee informed Mr T that he could take a discounted lump sum from the Scheme prior to attaining age 60.
  - 89.2. If the Trustee had adequately informed Mr T that no benefits would be payable to her from the Scheme on his death, he would have taken this discounted lump sum.
90. The Trustee (and Deloitte) were not authorised or qualified to recommend which course of action was right for Mr T. I appreciate that there is a fine line between explaining the options available from a pension scheme and actively making a recommendation, whether explicitly or implicitly.
91. I have carefully studied the correspondence that Deloitte sent on behalf of the Trustee to Mr T and I consider that the information provided did not constitute a recommendation for Mr T to take a particular course of action. It was provided to assist Mr T to understand the options open to him, including the possibility of deferring his retirement until age 60.
92. Consequently, I am satisfied that the Trustee did not provide Mr T with specific advice, which he acted on by deferring his retirement. Regrettably, Mr T misconstrued the information he had received as advice to defer his retirement. As a result, he failed to complete the necessary action in order to apply for early retirement before his untimely death in 2016.

Mr T's Membership of the MS Section of the Scheme

93. Ms N considers that it could be argued that Mr T had joined the Deloitte & Touche Section and not re-joined the MS Section in 2003 following the completion of the transfer of his SYPF benefits to the D&TUKPS. If so, she says that the limitation on a lump sum death benefit payment for the MS Section in rule F3(B) for the Defined Benefit Section of the Scheme Rules would then not apply.
94. When Mr T's accrued pension rights in the D&TUKPS for the period 1 April 1998 to 31 May 2000 were transferred to the CSLPP on 1 June 2000, he ceased to be a member of the MS Section of the D&TUKPS.
95. The transfer of Mr T's SYPF benefits to the D&TUKPS in 2003 did not mean that he commenced another period of active membership though. He received a service

credit of 20 years 9 months in the D&TUKPS that entitled him to deferred benefits granted in accordance with the agreed original special terms of the transfer. Irrespective of when this transfer actually took place, his active membership in the D&TUKPS would consequently still have ceased on 31 May 2000.

96. By calculating the deferred benefits available to Mr T from the service credit based on the section of the D&TUKPS to which he belonged as at 31 May 2000, that is, the MS Section, the Trustee tried to put him back in the position he would have been in if the transfer of his pension rights from the SYPF had not been delayed. Unfortunately, without a completed second transfer form from Mr T, the Trustee could not forward his SYPF benefits from the D&TUKPS to the LPP.
97. Given my conclusions above, I consequently agree with the Trustee that the relevant provisions in the Scheme Rules which apply to Mr T's deferred membership of the Scheme from 1 June 2000 are those for the MS Section.
98. The Trustee had to follow any procedure laid down in the provisions of the Scheme Rules, as qualified by overriding pension legislation, when deciding whether Ms N was entitled to any death benefits from the Scheme.
99. Rule F3(C)(i) of the MS Section of the Scheme Rules stipulates that only a spouse of a deceased deferred member is entitled to a pension from the Scheme. A spouse, however, is defined to be a widow or widower of that deferred member.
100. Furthermore, note 5 to rule F3(B) of the MS Section of the Scheme Rules clearly states that for a MS Section deferred member whose death occurred before his EPD such as Mr T, no death benefit lump sum would be payable from the Scheme.
101. Having carefully considered the appropriate sections of the Scheme Rules, I agree with the Trustee that Mr T did not meet the relevant criteria in order for it to pay Ms N a lump sum or dependant's pension from the Scheme on his death.
102. Needless to say, the decision made by the Trustee would appear unfair to Ms N. However, the Trustee had a duty to pay benefits in accordance with the Scheme Rules.
103. I find that the Trustee did give proper consideration to Ms N's application and it acted in accordance with the Scheme Rules.
104. While I sympathise with Ms N's circumstances, the evidence does not support a finding of maladministration by the Trustee in coming to the decision it did.

CAS-38437-Z8J7

105. I do not uphold Ms N's complaint.

**Dominic Harris**

Pensions Ombudsman

18 August 2025

## Appendix

### Relevant Excerpts from the Defined Benefit Section of the Scheme Rules

As relevant, Rule F3, 'Death of a deferred member before his notion EPD', provides:

#### **"F3(A) Application of Rule F3**

This **Rule F3**, subject to **Rule F6 (General provisions applicable to Section F)**, applies where a Deferred Member (being a Deferred Member who is not also a Member in Pensionable Service) dies before his Notional EPD and before the start of his pension under the Scheme.

#### **F3(B) Lump sum**

- (i) If, immediately before becoming a Deferred Member, the Deferred Member was a Member in Pensionable Service by reference to the Deloitte & Touche Section, there will be payable in accordance with **Clause 13 (Disposal of lump sum death benefits)** a lump sum calculated in accordance with **Rule F3(B)(ii)**.
- (ii) The lump sum, **subject to Clause 22 (Inland Revenue limitations)**<sup>[14]</sup> mentioned in **Rule F3(B)(i)** will be the aggregate of (to the extent not refunded)
  - 
  - (a) his Member's Contributions, together with interest for the period from the last or only date on which he became a Deferred Member to the date of his death at the rate of 6% per annum compound with yearly rests (or at such higher rate, not being such as to prejudice Revenue Approval, as the Trustees, after obtaining the advice of the Actuary and with the consent of the Principal Employer, may decide), and
  - (b) his Notional Contributions plus interest, and**<sup>[15]</sup>
  - (c) the amounts (if any) treated as derived from his contributions under **Rule B3 (Transfers-in)**, without interest (except that if the transfer terms notified in writing by the Trustees to the Deferred Member stipulated that interest calculated on a prescribed basis would be added to the amounts so treated in the event of his death occurring before the start of his pension under the Scheme, interest calculated on the basis so prescribed will be added to the amounts so treated).

...

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<sup>14</sup> "As inserted by a Deed dated 31st October, 2003 with effect from 1st November, 2003."

<sup>15</sup> "As deleted by a Deed dated 31st October, 2003 with effect from 1st November, 2003."

**Note Five:** In the case of a **Managed Services Section Deferred Member** whose death occurs before his Notional EPD, there is no death benefit in lump sum form corresponding to that payable under the preceding provisions of **Rule F3(B)** on the death of a **Deloitte & Touche Section Deferred Member** before his Notional EPD.

...”

As relevant, Rule F5, ‘Death of a Pensioner’, provides:

“ ...

**F5(B) Lump Sum**

- (i) Where the Pensioner dies within 5 years of the date upon which his pension under the Scheme starts, there will be payable in accordance with **Clause 13 (Disposal of lump sum death benefits)** a cash sum equal to the total of the instalments of the pension which (subject to **Rule F5(B) (ii)**) would have been paid to him under the Rules throughout the remainder of that period of 5 years but for his death.
- (ii) When calculating the amount of a cash sum payment...the Trustees, after consultation with the Actuary, will make such assumptions as they consider reasonable as to increases payable under **Rule G2 (Increases to pensions in payment)** during the remainder of that period of 5 years.

...”