

Ombudsman's Determination

Applicant	Mr K
Scheme	Tyne and Wear Pension Fund - Local Government Pension Scheme (LGPS), the National Health Service Pension Scheme (NHSPS)
Respondent	NHS West Yorkshire Integrated Care Board (ICB), formerly NHS Wakefield Clinical Commissioning Group (Wakefield CCG) (the Employer)

Complaint Summary

1. Mr K has complained that the Employer failed to provide and complete in a timely manner the documentation required for the transfer of his pension. He said:
 - 1.1. The Employer caused delays to the transfer of his pension from LGPS to the NHSPS and as a result he lost the opportunity to transfer his pension on public sector club terms.
 - 1.2. To resolve this, he would like the opportunity to transfer his pension on club terms as he was unable to comply with the time limit through no fault on his own, or alternatively to be compensated for any potential financial loss he may suffer if the transfer of his pension is completed on non-club terms.

Summary of the Ombudsman's Determination and reasons

2. The complaint should be upheld against the Employer because:-
 - 2.1. The Employer had a duty under both contract and common law to prevent Mr K from suffering reasonably foreseeable harm in respect of his ability to transfer to the NHSPS on advantageous Club Transfer terms.
 - 2.2. Mr K relied on the Employer to complete necessary administrative tasks in a timely manner in respect of his statutory right to request a transfer of his pension benefits from the LGPS to the NHSPS and to enable him to complete the transfer on advantageous Club Transfer terms.

- 2.3. The Employer failed to do what was reasonably required of it in respect of those administrative tasks, in breach of its contractual and common law duties to Mr K.
- 2.4. The Employer's breach has caused Mr K to lose the ability to complete his transfer on advantageous Club Transfer terms. The Employer is therefore liable for any financial loss Mr K has suffered as a result.
- 2.5. Mr K has also suffered distress and inconvenience as a result of the Employer's maladministration.

Detailed Determination

Material facts

3. The sequence of events is not in dispute, so I have only set out the salient points.
4. The Public Sector Transfer Club (**the Club**) allows easier movement of employees and their pensions from one public sector employer to another. Members who move between Club schemes can transfer their pension on special terms, so the pension benefits they will receive in their new scheme will be similar to those accrued in the old scheme (**a Club Transfer**). The NHSPS and the LGPS are both members of the Club.
5. Members of the Club are expected to complete Club Transfers in accordance with a Memorandum issued from time to time by the Cabinet Office (**the Club Memorandum**). The Club Memorandum says "an individual must arrange for an election to proceed for a Club transfer to be received in writing to the receiving scheme within 12 months of becoming eligible to join".
6. The current Club Memorandum was issued in September 2023 and expressed to be effective from 1 October 2023 (**the 2023 Memorandum**). The Club Memorandum in force during the period relevant to Mr K's complaint was dated April 2019 (**the 2019 Memorandum**).
7. The terms of the Club Memorandum are also reflected in the NHS Pension Scheme Regulations 2015 (**the NHSPS Regulations**) which set out the rules governing the NHSPS.
8. On 9 November 2020, Mr K started his employment with Wakefield CCG. Wakefield CCG was abolished on 1 July 2022 as part of the Health and Care Act 2022, and its work was taken over by ICB. For the purposes of this complaint I will refer to both organisations together as the Employer.
9. Mr K wanted to transfer his pension from the LGPS to the NHSPS. On 13 November 2020, Mr K requested a Cash Equivalent Transfer Value (**CETV**) from the administrator of the LGPS, South Tyneside Council (**the LGPS Administrator**).

10. On 19 November 2020, a Mr B (payroll manager at the Employer) emailed Mr K to acknowledge that, in his new employee paperwork, Mr K had indicated he was interested in transferring his previous pension rights into the NHSPS. Mr B directed Mr K to information about transferring his pension rights to the NHSPS via a link to the NHS Business Service Authority (**NHSBSA**) website. NHSBSA is the scheme administrator for the NHSPS and carries out the functions and responsibilities of the scheme manager as set out in the NHSPS Regulations.
11. The website contained NHSBSA's 'Transfer in guide and application pack' (**the Guide**). The Guide provided information about the process of transferring former pension benefits into the NHSPS, including that members could not instruct their old scheme to go ahead with their transfer until NHSBSA had given the member an estimate (based on the CETV from their old scheme) of the benefits they would receive in the NHSPS (**the NHSPS Estimate**). The website also included the transfer forms members would need to complete to request a transfer, and explained the information NHSBSA would need for the NHSPS Estimate along with the time limits that applied to transfers. Relevant sections of the Guide are set out in the Appendix, including the following extract in respect of Club Transfers:

“[Your] signed election to proceed with the transfer must be received by your former scheme within 12 months of becoming eligible to transfer for Club transfer arrangements to apply. A request for an estimate is not an election to proceed. An election to proceed is your signed confirmation and request for payment of the transfer value after you have received the transfer estimate from the NHS Pension Scheme.

If the conditions for the Club transfer are not met you may still be able to transfer on non Club terms.”
12. On 3 December 2020, the LGPS Administrator acknowledged Mr K's request for a CETV quotation.
13. On 10 March 2021, Mr K sent a letter to the LGPS Administrator and queried the delay as he had not yet received a CETV quotation.
14. On 16 March 2021, Mr K received a transfer pack from the LGPS Administrator, which included a CETV quote (**the First CETV**). Notes to the First CETV confirmed it had been “calculated on a Club basis” and was guaranteed for three months from 11 March 2021.
15. On 17 March 2021 and 18 March 2021, Mr K emailed Mr B of the Employer to say (in summary) he had received the First CETV from the LGPS Administrator and to ask where he should send it to progress the transfer to NHSPS. Mr K also noted in the first of his emails that the forms and information being requested by the LGPS Administrator felt like “bureaucratic overkill” for a Club Transfer and that the LGPS Administrator had already been “glacially slow” in processing his request. On 19 March 2021, Mr B of the Employer responded to say “if Form A, part 1 has been completed by you and part 2 of Form A has been completed by [the payroll

department at the Employer], and Form B has been completed by your previous pension scheme” then Mr K should send all the forms to NHSBSA at the address Mr B set out in the email. Mr B also included a link to further information on the process.

16. On 24 March 2021, Mr K emailed to Mr B of the Employer a copy of the NHSBSA transfer ‘Form A’. In accordance with the instructions set out in Form A and as directed by Mr B in his email of 19 March 2021, Mr K had completed Part 1 and asked that Mr B arrange for Part 2 to be completed on behalf of the Employer. In a second email sent less than 10 minutes later, Mr K also sent Form A to an email address, which appears to be a direct address for the payroll team at the Employer, again asking for Part 2 of the form to be completed and then returned to him. Part 2 of Form A required the Employer to confirm Mr K’s personal information, his salary, date of starting NHS employment, date of joining the NHSPS, payroll reference number and the date the “Transfer Guide” had been requested.
17. On 5 May 2021, Mr K emailed both Mr B and the payroll team of the Employer to follow up on his email of 24 March. In his email Mr K asked if there was something else he needed to do to complete the next steps in the transfer process, adding that he’d submitted the forms in his previous email “based on what I read in the guidance and a conversation with my previous pension fund”.
18. On the same day, Mr B of the Employer replied to say that he would pass Mr K’s Form A to the Employer’s pension team for completion.
19. On 1 June 2021, Mr K contacted Mr B of the Employer again and expressed his concern at lack of progress with Form A. He added that he was not sure whether to expect the pensions team at the Employer to deal directly with NHSBSA (in respect of his transfer request) or to return Form A to him, Mr K, for him to send all the transfer forms to NHSBSA himself. Mr K apologised to Mr B for emailing him again, but noted he needed to do so as he, Mr K, did not have contact details for the Employer’s pensions team.
20. On 16 June 2021, Mr K received a letter from the LGPS Administrator advising him that the guarantee period of the First CETV had expired. It also informed Mr K that he would not be able to request a new CETV until 10 November 2021, as he was only entitled to request one CETV in any 12-month period.
21. On the same day, Mr K emailed a Ms S (an HR advisor) at the Employer forwarding the letter from the LGPS Administrator (as described above) along with the earlier chain of emails with Mr B and the payroll department at the Employer (also described above). He asked for Ms S’s urgent help in escalating the matter, noting he had requested information from the Employer about his pension transfer in March and was now “at a loss as to what to do next”. He explained the LGPS Administrator had agreed to provide a new CETV for him if the Employer provided a letter confirming the date he had requested the information from it. He asked the Employer to provide this letter. He explained the reason for the urgency was that, without the Employer’s letter, the LGPS Administrator would not be able to provide a new CETV until 10

November 2021, which was after his contract with the Employer was due to expire on 8 November 2021. This in effect meant he would lose the right to transfer his LGPS benefits to the NHSPS.

22. Mr K also asked for further advice about the process as NHSBSA had told him it had not received any instruction to process his transfer request. He also noted he had no contact details for the Employer's pensions team and had "no confidence in being able to resolve this through the route I have been using to date".
23. On the same day, Ms S forwarded Mr K's email onto a Ms V, who supported on pensions issues for the Employer. Mr K then also forwarded his own original email to Ms V, to ensure she had the attachments he had included.
24. On 17 June 2021, Ms V of the Employer responded to Mr K to ask if he had completed the transfer forms and submitted them to NHSBSA. She said if he had, he would need to contact NHSBSA directly to check on the progress, and gave Mr K their telephone number.
25. On the same day, Mr K raised a complaint with a Ms B (Mr K's line manager at the Employer), copying Ms V to his email. Mr K referred to his earlier email to Ms S, explaining again that he needed a letter from the Employer confirming his earlier request for information about his transfer and that unless it was provided promptly he would not be able to complete the transfer before the expiry of his contract.
26. Ms V replied to Mr K's email to say again that the request needed to come from NHSBSA and Mr K should contact NHSBSA to find out what had happened to his application. Mr K directed Ms V again to his earlier emails, noting again the forms were with the Employer to complete. Ms V then replied to say she had checked with NHSBSA and they did not have the forms, but Mr B, payroll manager at the Employer, would send Mr K a duplicate copy of his Form A, on receipt of which Mr K should complete his section and send it to NHSBSA, and that Mr K would "have until November for this to be completed".
27. Later that day Mr B of the Employer sent Mr K a copy of Form A which had been completed by the Employer. The form was stamped as having been received on 5 May 2021 and signed by Mr B with the same date. The "Date Transfer Guide requested" was given as 24 March 2021.
28. Mr K, Ms B of the Employer and Ms V of the Employer exchanged further emails regarding the transfer process and the need for a letter from the Employer confirming the original application date. The exchange of emails indicates a misunderstanding between Mr K and the Employer as to what the transfer process entailed and what was required at this stage to progress it. The Employer continued to state that Mr K needed to send his completed forms to NHSBSA so it could give the NHSPS Estimate and that he shouldn't worry as he was "within the time limits set out" for the transfer. Mr K continued to respond that this was not the issue at this stage: the issue was that NHSBSA would not be able to give him the NHSPS Estimate without a current CETV from the LGPS, but the LGPS Administrator would not provide a new

CETV without a letter from the Employer to confirm he had initiated the transfer process with the Employer on 24 March, shortly after the First CETV had been issued.

29. During the course of the exchange of emails, Mr K began to copy them to a Ms T (a senior officer responsible for his work) for her support in the matter. Ms T suggested Mr K call the LGPS Administrator to explain the situation and to forward the exchange of emails to them for information.
30. On 28 June 2021, Mr K replied to Ms T, copying the Employer, to confirm that after two phone calls during which he spoke to managers at the LGPS Administrator, the LGPS Administrator had agreed to provide a new CETV without requiring a letter from the Employer. He added “[now] the challenge will be to complete before the end of my contract on 8 November which I think also coincides with the end of [the NHSPS] transfer window”.
31. On 5 August 2021, the LGPS Administrator wrote to Mr K acknowledging his request for a CETV. It asked him to complete and return a CETV request form.
32. On 12 August 2021, Mr K returned a completed CETV request form to the LGPS Administrator.
33. On 27 October 2021, Mr K sent a letter by special delivery to the LGPS Administrator as he still had not received a new CETV. He also said the situation was desperate as he was close to the end of the 12-month window for a Club Transfer.
34. On 5 November 2021, Mr K submitted a formal complaint to the Director of Strategy and Partnerships at the Employer. Mr K said the transfer of his pension from LGPS to the NHSPS failed because the Employer had not completed and returned Form A to him until 17 June 2021, after the three-month guarantee period for the First CETV had expired.
35. On 9 November 2021, the Associate Director of HR at the Employer emailed Mr K in response to his formal complaint. During a subsequent exchange of emails Mr K agreed the pensions department of the Employer could contact him directly about his complaint.
36. On 9 November 2021, the LGPS Administrator issued a new CETV (**the Second CETV**) to Mr K. It was calculated as a Club Transfer and guaranteed for three months from 5 November 2021.
37. On 17 November 2021, Mr K submitted a complaint to The Pensions Ombudsman (**TPO**) about the (potential) loss of his right to transfer his LGPS benefits to the NHSPS due to the Employer’s failure to complete the necessary documents within the time limits required by the LGPS Administrator. In the meantime, he continued to try to complete his transfer.
38. On 26 November 2021, Mr K sent completed transfer forms to NHSBSA, along with the Second CETV.

39. On 22 January 2022, Mr K contacted NHSBSA to ask for an update on his transfer request. NHSBSA said it had not received his transfer forms. Mr K resubmitted them the same day.
40. On 2 February 2022, NHSBSA acknowledged receipt of Mr K's completed transfer forms, and informed Mr K it would send his NHSPS Estimate and discharge forms within two calendar months.
41. On 8 February 2022, the LGPS Administrator wrote to Mr K advising him the Second CETV had expired and the transfer could not proceed as the LGPS Administrator had not received Mr K's transfer forms within the Second CETV guarantee period. The letter also said Mr K would not be able to request another CETV until 12 August 2022.
42. On 9 February 2022, NHSBSA issued an NHSPS Estimate and discharge forms to Mr K, with a cover letter explaining Mr K had until 8 May 2022 to effect the transfer.
43. On 21 February 2022, Mr K sent completed discharge forms to the LGPS Administrator. However, as the guarantee period for the Second CETV had expired, the LGPS Administrator could not complete Mr K's transfer.
44. On 11 July 2022, the LGPS Administrator issued a new CETV (**the Third CETV**) to Mr K. It was calculated as a Club Transfer and guaranteed until 14 October 2022. The cover letter noted the LGPS Administrator had also sent a copy of the Third CETV directly to NHSBSA.
45. On 10 August 2022, NHSBSA wrote to Mr K saying it needed further information before it could consider his transfer request. It said to be eligible for a Club Transfer members must elect to proceed with the transfer within 12 months of being eligible to join the NHSPS. Because Mr K had not done this, his transfer must be on non-Club terms, and he should ask the LGPS Administrator to provide a new CETV calculated on non-Club terms.
46. On 14 September 2022, Mr K responded to NHSBSA to say he was not prepared to accept a transfer on non-Club terms. He considered the delay in making the transfer beyond the 12-month window was because of the way his transfer application had been administered by the Employer.
47. Mr K has made further submissions to TPO which are summarised below. The Employer has not responded to TPO's repeated requests for its formal response to Mr K's complaint.

Summary of Mr K's position:-

48. The Employer failed to complete the necessary documentation within the timescale needed to enable him to complete the transfer of his pension from LGPS to the NHSPS within the time limit for a Club Transfer.

49. The First CETV was guaranteed until 11 June 2021. He did not receive the completed Form A from the Employer until 17 June 2021, and so he was unable to accept the First CETV within the guarantee period.
50. As a result, he had to ask the LGPS Administrator to issue the Second CETV, and then the Third CETV to restart the transfer process. Each CETV was calculated as a Club Transfer. However, NHSBSA refused to accept the transfer as a Club Transfer as his formal transfer request was not made until after the 12-month time limit for a Club Transfer had passed.
51. He would like the opportunity to transfer his pension to the NHSPS as a Club Transfer as he missed the relevant time limit through no fault of his own. Alternatively, he would like be compensated for any financial loss he may suffer if the transfer of his pension completes on non-Club terms.

Adjudicator's Opinion

52. Mr K's complaint was considered by one of our Adjudicators who concluded further action was required by the Employer. The Adjudicator's Opinion (**the Opinion**) was the Employer should recognise the distress and inconvenience Mr K suffered and pay him £500. The Adjudicator's findings are summarised as follows:-
 - 52.1. The Employer's delay in returning Form A to Mr K was maladministration. Mr K asked the Employer on 24 March 2021 to complete and return Form A to him, but the Employer did not return Form A to him until 17 June 2021.
 - 52.2. The Adjudicator's view was that, on the balance of probabilities, the Employer failed to provide the completed Form A in a timely manner. The Employer also failed to action Mr K's request after Mr K contacted it again on 5 May 2021 and 1 June 2021. Although the completed Form A shows the Employer signed its part of Form A on 5 May 2021, the Employer did not provide any evidence suggesting Form A was returned to Mr K at or shortly after that date.
 - 52.3. The Adjudicator also noted it was disappointing the Employer had not responded to Mr K's complaint despite repeated requests from TPO.
 - 52.4. Although the Adjudicator's view was the Employer should have returned Form A to Mr K sooner, she did not consider the Employer could be held responsible for Mr K missing the opportunity to complete his transfer as a Club Transfer because:-
 - 52.4.1. The Guide informed Mr K of the step-by-step process and detailed the timescales involved for transferring former pension benefits into the NHSPS. It explained a Club Transfer could only be made if Mr K's signed election to proceed with the transfer was received by his former scheme within 12 months of becoming eligible to transfer.

- 52.4.2. The Guide asked Mr K to complete Form A as Step 1 in the process and Step 2 informed him he needed to attach the completed Form A to "the transfer value quotation" before sending the documents to NHSBSA. It also informed Mr K it was important he did not cause delays to the process, if his former scheme had set a deadline date for the transfer. It was therefore the Adjudicator's view that, had Mr K followed the steps in the Guide, he would have asked the Employer to complete Form A at least at the same time that he requested the CETV from the LGPS Administrator in November 2020, instead of waiting until he had received the First CETV.
- 52.4.3. The LGPS Administrator was also late in issuing the CETV quotation to Mr K, so the Adjudicator's view was that it would have been more prudent for Mr K to have asked the Employer to complete Form A sooner.
- 52.4.4. Mr K did not follow up with the Employer until 5 May 2021, after receiving no response from it to his request of 24 March 2021. Mr K was aware the First CETV was guaranteed for only three months. The Guide stated it was important to avoid delays, if his former scheme had set a deadline date for the transfer. Step 3 of the Guide also informed Mr K the next step in the process could take up to two months to complete.
- 52.5. The Adjudicator's view was therefore that Mr K should have acted with more urgency to progress his transfer, by asking the Employer to complete Form A sooner and by following up within a more reasonable timeframe when he did not receive a response to his request.
- 52.6. Although the Employer did cause a delay of almost three months to the process, the Adjudicator's view was the Club Transfer could still have completed had Mr K followed the Guide and asked the Employer to complete Form A around the same time as he requested the CETV from the LGPS Administrator.
- 52.7. The Adjudicator's view was by providing the Guide to Mr K the Employer sufficiently informed Mr K of the steps required to progress his. Although Mr K did discuss the transfer process further with the Employer in June 2021, a significant amount of the 12-month time limit had already elapsed by this time and the guarantee period of the First CETV had expired. This did not leave enough time for Mr K to restart the process of transferring his LGPS pension into the NHSPS.
- 52.8. The Adjudicator's view was the Employer's delay in completing and returning Form A to Mr K was maladministration which had caused Mr K to suffer significant distress and inconvenience. She considered the Employer should pay £500 to Mr K to recognise the non-financial injustice he suffered.

53. Mr K did not accept the Opinion, and the complaint was passed to me to consider. Mr K has provided further comments as follows:-
- 53.1. He has transferred his public sector pension on a number of occasions, and had never before had an issue with the complexity of the process or been required to undertake so much of the process himself.
 - 53.2. He considers the Employer did not complete Form A on 5 May 2021, the date it was signed. Given this and the Employer's failure to respond on this matter, he believes it would not be unreasonable to assume the Employer acted in bad faith. There was no good reason for the Employer to have failed to return the completed Form A until after the First CETV had expired.
 - 53.3. Because the Employer returned Form A late, Mr K could not make the transfer before the First CETV expired. He therefore considers the Employer should be deemed responsible for the failure of the transfer to take place.
 - 53.4. He made the initial CETV request from the LGPS Administrator in November 2020 at the earliest opportunity and before he started working at the Employer or received a link to the NHSBSA website. He was unaware of the Guide at the time he requested the CETV. However, he still considers it was appropriate to have made an early request for a CETV as he did. He could not have anticipated it would take months for the Employer to complete Form A, and it would be unreasonable to assume he has insights into the potential pitfalls of pension transfers.
 - 53.5. He does not believe it is reasonable to reach the opinion that it would have been more prudent to ask the Employer to complete Form A sooner, as it depends on the wisdom of hindsight and an acceptance that it is reasonable to expect an employer to take months to complete and return a form confirming details of a member of staff's employment.
54. I have considered Mr K's further comments and accept his argument that it is reasonable to expect the Employer to have completed Part 2 of Form A and returned it to Mr K promptly and, had it done so, a Club Transfer of Mr K's benefits from the LGPS to the NHSPS could and most likely would have been achieved within the 12-month time limit.
55. I therefore do not agree with the Opinion that the Employer's failure to complete Form A promptly did not cause Mr K to lose the opportunity to complete a Club Transfer. I do agree with the Opinion that the Employer was responsible for maladministration causing distress and inconvenience.

Conclusions

56. Mr K complained that the Employer caused delays to the transfer of his pension from the LGPS to the NHSPS by failing to complete and return Form A in a timely manner and as a result he lost the opportunity to complete a Club Transfer.

57. For completeness, I note at this stage that Mr K's right under the NHSPS Regulations was only to apply for his transfer value to be accepted into the NHSPS (and for it to be accepted as a Club Transfer): it is for the NHSBSA to then decide whether to accept the transfer value and on what terms¹. Mr K therefore did not have a right under the NHSPS Regulations to the Club Transfer itself. However, it appears clear from the correspondence and from the Club Memorandum that, had Mr K made his transfer application within the relevant timeframe, NHSBSA would have accepted his transfer into the NHSPS and would have accepted it as a Club Transfer. In practice, therefore, Mr K's right to request a Club Transfer and his right to obtain one can be regarded as one and the same and, for the purposes of this Determination, I shall treat them as such.
58. The Opinion was that the Employer was responsible for maladministration, which caused Mr K distress and inconvenience, and Mr K should be compensated for the non-financial injustice he has suffered. The Adjudicator did not consider the Employer's maladministration caused Mr K financial injustice, as it was not clear the Employer's maladministration was the only reason for the transfer having been delayed.
59. I agree with the Opinion that the actions of the LGPS Administrator and NHSBSA fell short of the standard to be expected of reasonably competent scheme administrators, and they were slow to deal adequately with Mr K's enquiries. However, I do not agree that the actions of the LGPS Administrator or NHSBSA did not cause Mr K financial loss: notwithstanding other delays on the part of either of them, the Club Transfer could still have completed within the relevant timescale had the Employer completed and returned Form A promptly. The Employer's maladministration may not have been the only reason for the transfer process being slow overall, but it does not necessarily follow that the maladministration could not by itself have caused Mr K to suffer financial injustice, for which the Employer may be liable.
60. To find the Employer liable for financial injustice, I must be satisfied it has infringed an underlying legal right of Mr K's and that infringement has caused Mr K to suffer financial loss. I must base my assessment on established legal principles, such as a breach of contractual obligations or the negligent performance of a function where a duty was owed to perform that function with reasonable care and skill. If a breach has occurred, it must then be shown that the breach caused the loss Mr K claims to have suffered.
61. I find the Employer owed a duty to Mr K, under the terms of its employment contract with him (**the Contract**), to do what was reasonably required of it to enable Mr K to exercise his statutory right to request a transfer of his benefits from the LGPS to the NHSPS, and to do so within the timescales that would enable him to benefit from a Club Transfer. I also find the Employer breached its duty to Mr K in this respect.

¹ Regulations 141 and 143, NHSPS Regulations

62. In the alternative, I find the Employer owed a common law duty of care to Mr K in the same respect, and that it breached this duty.
63. While I accept other parties contributed to the delays in completing Mr K's transfer, I find it is more likely than not that the Employer's breach of contract and / or of its duty of care caused Mr K to lose the ability to obtain a transfer on Club Transfer terms.
64. I consider these points in further detail below.

Contractual obligations

65. It is an established principle of contract law that a contract can consist of both express terms (that is, terms that have been expressly stated and agreed by the parties, either orally or in writing) and implied terms (that is, terms that have not been expressly stated and agreed by the parties but which have been implied into the contract by the court).
66. There are several bases on which the court can imply a term into a contract. These include terms implied in fact (where a term is implied to reflect what the court objectively understands the parties' intentions would have been when they entered into the contract) and terms implied in law, for example where the term is a necessary characteristic of the type of contract in question (such as terms necessary to an employment contract or a contract for goods and services) (also known as **characteristic terms**).

Terms implied in fact

67. A term may be implied in fact if it is considered:
- 67.1. necessary to give 'business efficacy' to the contract (**the business efficacy test**)²; or
- 67.2. so obvious that if an officious bystander were to suggest to the parties that they should include it, the parties would respond that of course it should be included – that is, that the term is so obvious it goes without saying (**the officious bystander test**)³.
68. To imply a term in fact, the implied term must satisfy either the business efficacy test or the officious bystander test (it need not satisfy both), be capable of clear expression, and must not contradict any express term of the contract.⁴ Terms implied in fact commonly arise where the performance of the contract requires the co-operation of both parties, so that where both parties have agreed that something shall be done but that thing cannot be done unless both play a part in doing it, a term shall be implied such that "each agrees to do all that is necessary to be done on his part

² *The Moorcock* [1889] 14 PD 64

³ *Southern Foundries (1926) Ltd v Shirlaw* [1939] 2 K.B. 206

⁴ *Marks & Spencer plc v BNP Paribas Securities Services Trust Company (Jersey) Ltd* [2015] UKSC 72

for the carrying out of that thing, though there may be no express words to that effect”⁵.

Characteristic terms

69. A characteristic term may be implied where the term is a necessary characteristic of that type of contract. It is accepted that contracts of employment include characteristic terms implied to give effect to only part of the contract rather than the contract as a whole. In *Scallly v Southern Health & Social Services Board*⁶ (**Scallly**) the court confirmed it could not imply a term into an employment contract using the business efficacy or officious bystander tests in circumstances where the implied term was not necessary to give effect to the contract as a whole. However, it held a term could be implied into a contract to give effect to a part of that contract in circumstances where, based on wider considerations, such a term was “a necessary incident of a definable category of contractual relationship”⁷.
70. *Scallly* held a term was implied into an employment contract that required the employer to draw its employees’ attention to a valuable benefit available to them through their employment. The term was implied because it was (a) necessary to give effect to that part of the contract which conferred a right to the benefit and (b) was “a necessary incident” of a contractual relationship of employer and employee in which:
- 70.1. the terms of the contract of employment had not been negotiated with the individual employee but resulted from negotiation with a representative body or were otherwise incorporated by reference;
 - 70.2. a particular term of the contract made available to the employee a valuable right contingent upon action being taken by him to avail himself of its benefit; and
 - 70.3. the employee could not, in all the circumstances, reasonably be expected to be aware of the term unless it was drawn to his attention⁸.
71. The judge in *Scallly* noted “it is not merely reasonable, but necessary, in the circumstances [set out above], to imply an obligation on the employer to take reasonable steps to bring the term of the contract in question to the employee's attention, so that he may be in a position to enjoy its benefit”⁹.

Application to this complaint

72. This complaint is not about whether the Employer told Mr K about his right to a Club Transfer: it is clear the Employer did give Mr K this information in its email to him of 19 November 2020 (in which the Employer noted its awareness of Mr K’s intention to

⁵ *Mackay v Dick and Another* (1881)

⁶ *Scallly v Southern Heath & South Services Board* [1992]

⁷ *Ibid*, at 12.

⁸ *Ibid*.

⁹ *Ibid*.

transfer his accrued benefits to the NHSPS and provided information on how to achieve this).

73. This complaint instead relates to the performance by the Employer of the steps it was required to take to enable Mr K to exercise his right to request a transfer from the LGPS into the NHSPS and for that transfer to be a Club Transfer.
74. It is not disputed that for Mr K to exercise his right to request a Club Transfer:
 - 74.1. he needed to obtain a CETV from the LGPS Administrator;
 - 74.2. the Employer was required to complete Part 2 of Form A and return Form A to Mr K, so Mr K could submit Form A, Form B and the CETV to NHSBSA to request the NHSPS Estimate;
 - 74.3. Mr K must have received the NHSPS Estimate before he could instruct the LGPS Administrator to complete a transfer;
 - 74.4. Mr K must have instructed the LGPS Administrator to complete a transfer before CETV's guarantee period expired; and
 - 74.5. on receipt of Mr K's instruction, the LGPS Administrator must formally have requested that NHSBSA receive a transfer in respect of him within 12 months of his joining the NHSPS.
75. The exchange of emails between Mr K and Mr B of the Employer shows the Employer understood the process outlined above and therefore that Mr K's ability to exercise his right to request a transfer was contingent upon timely action by the Employer. It is clear the Employer also understood the fixed term of the Contract meant there was a time-limited window within which Mr K could exercise his right to request a transfer at all, and separately that there was a time-limit for Mr K's right to a Club Transfer.
76. Following the reasoning in *Scally*, I consider the Employer was under a contractual obligation to take timely action in respect of Mr K's transfer request. The terms of the Contract incorporated a right for Mr K to request a Club Transfer by reference to the NHSPS Regulations (satisfying the first limb of the *Scally* test), and Mr K's ability to exercise that right was contingent upon action being taken by him (satisfying the second limb in *Scally*). I consider the third limb is satisfied by analogy: Mr K could not be expected to benefit from the term (indeed he could not benefit) unless the Employer also took some action. On this basis, a term must therefore have been implied into the Contract requiring the Employer to take reasonable steps to play its own part in the transfer process, and to do so within a reasonable timeframe, so that Mr K could exercise his (time-limited) right to request a Club Transfer. As in *Scally*, it was "not merely reasonable, but necessary" to imply such a term into the Contract if Mr K was to "be in a position to enjoy its benefit"
77. It is clear Mr K had completed the first actions required of him to exercise his right under the Contract, being to obtain the First CETV and to ask the Employer complete

Part 2 of Form A and return it to him. Mr K's remaining actions (being to send the completed Forms A and B, along with the First CETV, to NHSBSA with sufficient time for NHSBSA to provide the NHSPS Estimate before the First CETV guarantee period expired) were contingent upon the Employer completing Part 2 of Form A and returning it to him promptly.

78. Mr K sent his copy of Form A to both Mr B of the Employer and the Employer's payroll team on 24 March 2021. The Employer took no action until 5 May 2021, after Mr K followed up on his earlier email. Mr K contacted the Employer again on 1 June 2021, as he had still had not received a completed copy of Form A from the Employer at this date. The Employer again failed to respond and had not responded by the expiry date of First CETV guarantee period. At this point, Mr K lost the right to transfer his benefits on the basis of the First CETV, and the entire transfer process had to begin again.
79. I see no reason for the Employer's delay, and the Employer has given no explanation for it. I therefore find the Employer failed to take reasonable and timely steps to play its own part in enabling Mr K to obtain a time-limited benefit to which he was entitled under the Contract, and did so in breach of a term implied by law into the Contract.

Common law duty of care

80. It is an established common law principle that one party (Party A) is liable in negligence to another party (Party B) where Party A has a duty of care in respect of Party B, Party A breaches that duty and, as a result of that breach, Party B suffers harm as a consequence of Party A breaching its duty of care to Party B.
81. There are many situations in which it has been established that a duty of care is owed: this includes a duty by employers to their employees¹⁰. Otherwise, in more general terms, it is also established that determining whether a Party A owes a duty of care to Party B and, if so, the scope of that duty depends on the foreseeability of harm occurring to Party B as a result of Party A's act or failure to act, whether there was a relationship of proximity between Party A and Party B and the degree to which it is reasonable in the circumstances to impose a duty of care on Party A in respect of Party B. Party A must also be shown to be under a duty to prevent the particular harm Party B claims to have suffered.¹¹
82. Accepting there is a prima facie duty of care owed by employers to their employees not to cause them financial harm by failing to carry out administrative tasks or other duties imposed on them or assumed by them with due skill and care, the question then becomes whether the harm suffered by Party B (the employee) was reasonably foreseeable and whether Party A (the employer) had a duty to prevent the particular harm suffered. As a starting point, Party A generally has no duty to prevent Party B from suffering harm that is purely economic, unless a 'special relationship' exists

¹⁰ *Robinson v Chief Constable of West Yorkshire Police* [2018] UKSC 4, at 26

¹¹ *Caparo Industries plc v Dickman and others* [1990] 1 All ER 568

between the parties.¹² A special relationship can exist where Party A has assumed a responsibility to Party B (see further below) and it is reasonable for Party B to rely on Party A to prevent harm from arising.

83. Liability in negligence usually depends on Party A performing an act negligently, as opposed to simply failing to act. Courts have been reluctant to find that Party A has a positive duty to perform an act in order to prevent Party B from suffering harm: that is, Party A will generally only be held liable for committing an act which causes harm to Party B, and will not usually be held liable for simply failing to prevent harm to Party B. However, liability in negligence may arise where Party A has assumed a responsibility to carry out a task which, if Party A fails to carry it out or fails to carry it out adequately or in a timely manner, such failure causes harm to Party B which was reasonably foreseeable. This includes harm that is purely economic in nature, as the assumption of responsibility gives rise to the special relationship referred to above. It further extends to 'harm' which is not simply a direct or immediate financial loss but may also include the loss of Party B's ability to obtain a benefit which, but for the failure of Party A, he would have obtained.¹³ This is provided that such financial loss is within the scope of the duty, i.e. the type of loss or risk that Party A was required to protect Party B from by carrying out its duty with due skill and care.
84. In this case, I find the Employer had assumed responsibility for completing Part 2 of Form A to enable Mr K to transfer his benefits from the LGPS to the NHSPS, and to do so as a Club Transfer and that the loss of the benefit of a Club Transfer right and of any particular CETV, such as the First CETV, was within the scope of the Employer's duty in respect of completing Part 2 of Form A. I note in particular:
- 84.1. On 19 November 2020, Mr B of the Employer emailed Mr K to acknowledge Mr K's expression of interest in transferring his LGPS benefits to NHSPS, and to provide the information needed to complete this.
- 84.2. On 19 March 2021, Mr B of the Employer responded to Mr K's requests for help with the transfer process, advising him of the process for completing and submitting Form A, including that Part 2 of Form A must be completed by the Employer's payroll department before Mr K could send Form A to NHSBSA to request NHSPS Estimate. The process for Club Transfers essentially required the Employer to complete Part 2 of Form A and the Employer had responsibility for doing so with due skill and care. Mr K necessarily relied on the Employer for this as Part 2 of Form A could only be completed by the Employer under the Club Memorandum process. Mr K sent Form A to the Employer on 24 March 2021 for the Employer to complete Part 2, as Mr K had been advised.

¹² *Hedley Byrne & Co v Heller & Partners* [1963] 2 All ER 575

¹³ *White and another v Jones and others* [1995] 1 All ER 691

- 84.3. On 5 May 2021 Mr K emailed the Employer to follow up on his email of 24 March. By reply on the same day, the Employer said it would pass Mr K's Form A on to the pensions team for completion.
- 84.4. On 1 June 2021, Mr K emailed Mr B of the Employer again to ask for an update on the completion of Form A. However, the Employer failed to respond to this email or to complete Part 2 of Form A and return it to Mr K in time for him to accept the First CETV.
- 84.5. Mr K continued to correspond with the Employer after the First CETV had expired. During the course of this correspondence, the Employer (having misunderstood what Mr K was asking of it) contacted NHSBSA to ask about the progress of Mr K's transfer and, on finding that NHSBSA had not received Mr K's forms, arranged for a duplicate of the completed Form A to be sent to Mr K so he could progress the transfer, noting Mr K would "have until November" to complete the transfer. In later correspondence, the Employer continued to advise Mr K that he needed to send Form A to NHSBSA, assuring him he needn't worry as he was within the time limits required for the transfer.
85. I find the above demonstrates the Employer understood it was required to take action to enable Mr K to obtain the transfer and there was a deadline by which the transfer had to be completed. By accepting the Club Memorandum and by explaining to Mr K what was required in respect of Form A, advising Mr K it would arrange for Part 2 of Form A to be completed, and (following the expiry of the First CETV quotation) assuring Mr K the transfer could be achieved by the relevant deadline, the Employer had assumed responsibility for doing what was required of it to progress Mr K's transfer.
86. Having done so or being subject to a duty pursuant to the Club Memorandum, the Employer was under a duty of care to perform its role with reasonable care and skill. It was reasonably foreseeable that a failure to take reasonable care and skill (including to act in a timely manner) would result in harm to Mr K, in the form of the loss of his ability to obtain a Club Transfer (and potentially to obtain any transfer at all).

Cause of loss

87. Whether in contract or common law, it is not enough to show the Employer owed a duty to Mr K or that it breached that duty and that the loss suffered was within the scope of the duty: to be liable for any financial loss Mr K may have suffered, it must be shown that the Employer's breach (whether in contract or common law) was the cause of Mr K's loss. This is often referred to as the 'but for' test: that is, would Mr K have achieved a Club Transfer but for the Employer's breach of contract or duty of care?
88. The Opinion concluded that the Employer was not the only party responsible for delays in the transfer process (the various delays, and the parties responsible for them, are set out above and I do not repeat them here). Because other parties,

including Mr K himself, contributed to delays in the overall transfer process, the Opinion was that the Employer's failure to complete Part 2 of Form A promptly contributed to, but did not cause, Mr K's loss of the right to a Club Transfer. On this basis, the Opinion concluded it is not clear Mr K would have achieved a Club Transfer 'but for' the failure of the Employer and therefore the Employer is not liable for any loss Mr K has suffered.

89. I respectfully disagree. The courts have shown that in respect of a 'but for' test, it is necessary to consider (1) the nature and effect of the error or breach of Party A and (2) whether it was more likely than not that 'but for' Party A's conduct, Party B would have obtained the benefit sought.¹⁴
90. Reasons for delays by either party are also relevant and periods of delay cannot be compared by duration alone. The time taken by a scheme member to make decisions in respect of their financial future (and to give effect to those decisions) cannot fairly be measured against the time taken by the party responsible for implementing the decision where all that is required of it is to complete a straightforward administrative task.¹⁵
91. The courts have also shown that (for claims based on a common law duty of care) where Party B has already suffered harm by the negligent act of Party A, and Party C subsequently causes the same harm to Party B by a negligent act, Party A will be held liable for all the harm suffered by Party B and the negligent acts of Party C can be ignored¹⁶. I have noted above that the conduct of both the NHSBSA and the LGPS Administrator fell below the standard to be expected, in particular in respect of the Second CETV and the Third CETV, and as such may have been in breach of a common law duty owed to Mr K. However, any breaches which occurred after the Employer's failure to act promptly do not alter the harm Mr K had already suffered and so can be ignored. I consider this in further detail below.
92. I find that, but for the Employer's failure to act promptly, Mr K would have obtained the benefit of a Club Transfer of his pension benefits from the LGPS to the NHSPS. In particular, I find that:-
- 92.1. it is more likely than not (indeed, I consider it is certain) that, had the Employer promptly completed Part 2 of Form A and returned it to Mr K when Mr K first requested this on 24 March 2021, Mr K would promptly have sent Form A and Form B to NHSBSA, along with the First CETV; and
- 92.2. having done so, it is more likely than not that NHSBSA would have provided the NHSPS Estimate to Mr K in time for Mr K to confirm his transfer request to the LGPS Administrator before the First CETV expired, meaning Mr K's transfer to NHSPS would have completed within the timeframe for a Club Transfer. In reaching this view I note that, once Mr K had resubmitted his

¹⁴ *Baugniet v Capita Employee Benefits Ltd and another* [2017] EWHC 501 (Ch), at 44

¹⁵ *Ibid*, at 47.

¹⁶ *Baker v Willoughby* [1969] UKHL 8

forms to NHSBSA on 22 January 2022, NHSBSA acknowledged receipt of them on 2 February 2022 and issued the NHSPS Estimate on 9 February 2022.

93. Returning to the conduct of the LGPS Administrator and the NHSBSA, I find that while:-

- 93.1. the LGPS Administrator failed to send the First CETV to Mr K within the statutory time limit¹⁷, the First CETV was nevertheless provided (and had an expiry date) well within the 12-month time limit for a Club Transfer and the delay did not therefore cause Mr K to lose the right to a Club Transfer;
- 93.2. there was also a long delay between the LGPS Administrator agreeing by telephone on 25 June 2021 to issue the Second CETV and it writing to Mr K with the necessary paperwork on 5 August 2021 (without which it might still have been possible to complete a Club Transfer within the 12-month time limit) it nevertheless remains the case that had the Employer completed and returned Form A to Mr K promptly after his request on 24 March 2021, it is more likely than not that a Club Transfer would have completed on the basis of the First CETV and it would not have been necessary for Mr K to request the Second CETV (or, indeed, the Third CETV);
- 93.3. NHSBSA were slow to provide the NHSPS Estimate for a Club Transfer in respect of the Second CETV (and had they provided it sooner the Club Transfer might have been able to complete before the Second CETV expired), it nevertheless remains the case that had the Employer acted promptly (as described above) the NHSPS Estimate would have been based, and the transfer completed, on the First CETV;
- 93.4. it is not clear what the relevant timings were in respect of the Third CETV, the same reasoning applies in that, had the Employer acted promptly in respect of Form A, there would have been no need for the NHSBSA and the LGPS Administrator to consider any transfer request that was based on the Third CETV; and
- 93.5. it may be possible to argue that the NHSBSA and the LGPS Administrator acted negligently and that their negligence caused or contributed to the harm suffered by Mr K (such harm being the loss of the right to a Club Transfer), the first act which caused Mr K to suffer harm was the Employer's failure to complete and return Form A promptly so that Mr K was unable to request a transfer before the First CETV expired. Any subsequent negligent acts by either the LGPS Administrator or the NHSBSA can therefore be ignored.

¹⁷ The effect of regulation 6 of The Occupational Pension Schemes (Transfer Values) Regulations 1996 is that a CETV must be sent by no later than three months and ten days from the date of the member's request.

94. In respect of any delays on Mr K's part, I consider they cannot fairly be measured against delays on the part of the Employer. The Employer was required only to complete Part 2 of Form A, confirming Mr K's personal details, his salary, the date his NHS employment started, the date he joined the NHSPS, his payroll reference number and the date he requested the transfer guide. This information ought to have been readily available to the Employer and I cannot see a reason the Employer could not have completed and returned Form A to Mr K on the day he requested it. Indeed, the version of Form A the Employer did complete was signed and dated 5 May 2021, the date Mr K emailed the Employer to follow up his earlier email of 24 March 2021. I do not consider it reasonable that the Employer appears to have taken no action until chased by Mr K (or that, even then, it failed to return the completed Form A to Mr K as he had requested).
95. I agree with Mr K that there is no good reason for the Employer not to have returned the completed Form A to him promptly. It follows that I also agree with Mr K that the Adjudicator's finding that it would have been prudent to ask the Employer to complete Form A sooner suggests an assumption that it was reasonable to expect the Employer to take several months to complete and return a simple one-page form with information it would have had readily available. I find it was reasonable for Mr K to assume the Employer would complete Form A and return it to him within no more than a day or two.

Summary

96. I find the Employer:-
- 96.1. was obliged by a term implied into the Contract to do what was reasonably required of it to enable Mr K to obtain the benefit of a Club Transfer, which the Contract entitled him to request: and/ or
 - 96.2. owed a common law duty of care to Mr K to prevent Mr K from suffering harm by way of the loss of his right to obtain the benefit of a Club Transfer and the loss of his right to the benefit of the First CETV in particular and should have foreseen that breach of its duty would cause Mr K to suffer that harm;
 - 96.3. breached the term implied into the Contract and / or its duty of care; and
 - 96.4. by such breach(es), caused Mr K to lose the right to obtain the benefit of a Club Transfer and a Club Transfer on the basis of the First CETV in particular.
97. I therefore find the Employer is liable for making good any financial loss Mr K has suffered as a result of losing the opportunity to obtain a Club Transfer and specifically as a result of losing the opportunity to obtain a Club Transfer on the basis of the First CETV.
98. I also agree with the Opinion that the Employer's maladministration caused Mr K to suffer significant distress and inconvenience. In recognition of this, the Employer shall pay Mr K £500.

99. I uphold Mr K's complaint.

Making good Mr K's loss

100. Mr K has asked to be given the opportunity to transfer his pension to the NHSPS as a Club Transfer or, in the alternative, to be compensated for any financial loss he may suffer if his pension transfer completes on non-club terms.

101. I recognise that any directions I give in respect of a complaint only bind the parties to that complaint. Because NHSBSA is not a party to this complaint, I am unable to direct it to accept a Club Transfer of Mr K's benefits from the LGPS. I am also unable to direct the LGPS Administrator to make a Club Transfer of Mr K's benefits to NHSPS.

102. I also recognise managers and administrators of public sector statutory schemes are required to manage and administer schemes in accordance with the regulations that govern them. It has been confirmed by the courts that I cannot direct a public authority to provide an ultra vires benefit even if a member has lost the right to a benefit through no fault of their own.

103. The NHSPS Regulations say transfer in requests may only be made by active members¹⁸, must be submitted within 12 months of the date on which a member first became eligible to join the scheme (or before the member reaches their normal retirement age), and must meet such conditions as NHSBSA requires¹⁹. I therefore could not direct NHSBSA to accept a Club Transfer for Mr K even if NHSBSA was a party to this complaint, as the acceptance of any transfer (including a Club Transfer) is at NHSBSA's discretion.

104. However, I consider there are discretionary provisions within the NHSPS Regulations which would permit NHSBSA to accept a Club Transfer into the NHSPS in respect of Mr K, notwithstanding that his request is now outside the parameters that would usually apply.

105. Part 2 of Schedule 3 of the NHSPS Regulations sets out certain administrative matters in respect of claims and payments. Under Schedule 3:

105.1. a person may claim an entitlement to benefits under the NHSPS Regulations by submitting a claim to the scheme manager. The claimant and, where appropriate, the member's employer must provide evidence of entitlement and such information as the scheme manager requires to deal with the claim. Alternatively, a person other than the claimant may submit the claim where the scheme manager permits this.²⁰

¹⁸ NHS Regulations, regulation 141

¹⁹ Ibid, regulation 142.

²⁰ Ibid, paragraph 4, Schedule 3

105.2. the scheme manager may extend a time limit mentioned in the NHSPS Regulations as it applies in a particular case.²¹

106. Taken together, I consider Schedule 3 of the NHSPS Regulations permits the Employer to submit a claim to NHSBSA (as the body carrying out the functions of scheme manager) on behalf of Mr K, that Mr K is entitled to a Club Transfer into the NHSPS, by providing evidence of his entitlement and the reasons Mr K was unable to exercise his entitlement (as set out in this determination) along with any other information NHSBSA may require to consider the claim. I also consider, on receipt of such application from the Employer, NHSBSA has discretion to extend the 12-month time limit for Club Transfers to permit Mr K to transfer his benefits into the NHSPS as a Club Transfer.

107. In reaching this view I note the 2023 Memorandum provides:

“A Club transfer may proceed if the election is made after the 12 month time limit if there were exceptional circumstances that have caused delays that prevented the member from making an election within 12 months. The receiving scheme must agree to waiving the time limit and, for an Inner Club transfer, the sending scheme must also agree.”²²

108. An “Inner Club” transfer refers to a transfer of CARE scheme benefits between schemes made under the Public Service Pensions Act 2013. Mr K’s transfer is an Inner Club transfer. Both NHSBSA and the LGPS Administrator must therefore agree to waive the 12-month time limit to allow a Club Transfer of Mr K’s benefits. I note the Third CETV was issued outside the usual 12-month window on a Club Transfer basis, indicating the LGPS Administrator was willing at that time to waive the usual time limit.

109. I note again that I cannot direct either NHSBSA or the LGPS Administrator to agree to waive the usual time limits and permit Mr K to complete a Club Transfer. However, I would hope in the interests of fairness they will each have a mind both to this Determination and to the terms of the 2023 Memorandum.

110. In the event that NHSBSA and / or the LGPS Administrator do not agree to permit a Club Transfer of Mr K’s benefits (and assuming NHSBSA remains willing to accept Mr K’s transfer on non-Club terms), the Employer must compensate Mr K for any financial loss he suffers as a result, by paying to him an amount equal to the difference in the value of the benefits provided under the NHSPS from a non-Club Transfer and those that would have been provided by a Club Transfer, as calculated by the NHSPS actuary. The Employer must also cover any costs reasonably required by the NHSPS actuary for making such calculation.

²¹ Ibid, paragraph 8, Schedule 3

²² 2023 Memorandum, paragraph 4.1

Directions

111. Within 21 days of the date of this Determination, the Employer shall:-

111.1. pay £500 directly to Mr K in recognition of the distress and inconvenience he has suffered;

111.2. initiate a written claim for benefits to the NHSBSA in accordance with paragraph 4, Schedule 3 of the NHSPS Regulations, on behalf of Mr K. The claim shall:-

111.2.1. be that Mr K is entitled to a Club Transfer of his benefits from the LGPS to the NHSPS;

111.2.2. request that NHSBSA extends the time limit for a Club Transfer in accordance with paragraph 8 of Schedule 3 of the NHSPS Regulations and paragraph 4.1 of the 2023 Memorandum; and

111.2.3. request that NHSBSA seeks the agreement of the LGPS Administrator to complete a Club Transfer outside the usual 12-month time limit in accordance with paragraph 4.1 of the 2023 Memorandum.

112. The Employer shall do what is reasonably required of it to procure that a Club Transfer of Mr K's benefits from the LGPS to the NHSPS is made and to assist Mr K in submitting any forms or information required by NHSBSA or the LGPS Administrator in respect of his transfer.

113. In the event that NHSBSA and / or the LGPS Administrator do not agree to complete a Club Transfer of Mr K's benefits, the Employer shall arrange for the NHSPS actuary (or, if the NHSPS actuary is unable or unwilling to act, another suitably qualified actuary) to calculate the loss Mr K has incurred (**the Loss**). The Loss shall be equal to Amount A less Amount B, where:-

113.1. Amount A is the cash value of the additional benefits Mr K would have received under the NHSPS, from the NHSPS Estimate that would have been given to Mr K had it been calculated as a Club Transfer on the basis of the First CETV as at the date the First CETV guarantee period expired (that is, as at 16 June 2021); and

113.2. Amount B is either:-

113.2.1. the cash value of the additional benefits Mr K actually receives under the NHSPS, should a transfer of his LGPS benefits be made on a non-Club Transfer basis; or

113.2.2. in the event NHSBSA do not agree to receive any transfer into the NHSPS in respect of Mr K's LGPS benefits, the CETV of Mr K's LGPS benefits as at the date of this decision.

114. The Employer shall pay Mr K an amount equal to 80% of the Loss within 28 days of the date the Loss is calculated. The reduction of the payment by 20% is designed broadly to put Mr K in the same net tax position he would have been in had he become entitled to additional benefits under the NHSPS on the basis of a Club Transfer of his LGPS benefits. If HMRC then seeks to levy income tax on the payment made by the Employer pursuant to this paragraph, the Employer should pay Mr K an additional sum designed to put him in the position he would have been in, if such additional tax liability had not arisen. The Employer should also pay Mr K an additional amount designed to meet any additional tax liability, if HMRC treat the above payment as an unauthorised member payment for the purposes of the Finance Act 2004.

Camilla Barry

Deputy Pensions Ombudsman
27 January 2026

Appendix

NHS Pensions – Transfer in guide and application pack

1. Transfer in time limits

An application to transfer pension benefits into the Scheme must be made before your Normal Pension Age and within the following time limits:

- 1995 Section: within 12 months of joining the Scheme for the first time and before Normal Pension Age (age 60).
- 2008 Section: within 12 months of becoming eligible to join the Scheme for the first time and before Normal Pension Age (age 65).
- 2015 Scheme: within 12 months of becoming eligible to join the Scheme for the first time and before your Normal Pension Age which is equal to your State Pension Age, or age 65 if that is later.

...

3. Public Sector Transfer Club arrangements

Public Sector Transfer Club transfer time limits

If your former scheme is a member of the Public Sector Transfer Club a transfer can only be completed on Club terms if the length of the break between leaving the former scheme and joining the NHS Pension Scheme is no more than five years.

In addition, your signed election to proceed with the transfer must be received by your former scheme within 12 months of becoming eligible to transfer for Club transfer arrangements to apply. A request for an estimate is not an election to proceed. An election to proceed is your signed confirmation and request for payment of the transfer value after you have received the transfer estimate from the NHS Pension Scheme.

If the conditions for the Club transfer are not met you may still be able to transfer on non Club terms.

...

7. Information about the transfer in process

Guaranteed transfer value

Your former pension scheme may guarantee their transfer value and set a deadline for the transfer to be completed. If they have, it is important to send us their transfer value quotation and any option forms requiring our completion as soon as possible as NHS Pensions will not be responsible for any charges if their deadline is not met.

...

The estimate from the NHS Pension Scheme

The estimate we will send you will include an option form for your completion. If you choose not to transfer any subsequent enquiry will be treated as a new request and will be subject to the time limits in the normal way. The estimate will specify what you will receive if the transfer goes ahead.

...

If you want the transfer to go ahead, you must complete our option form and any option forms your former pension scheme has asked you to complete. Send the completed option forms (and any other documents your former pension scheme may have asked for) to your former pension scheme as soon as possible. A delay in sending these forms to your former pension scheme may reduce the transfer in credit your transfer value will buy in the NHS Pension Scheme

...

9. What do I need to do to if I want to transfer?

Member Guide to Form A and Form B and the transfer in process – Please keep this for reference

What Form A is about

You should complete this form if you wish to consider the transfer of previous pension rights to the NHSPS. If you have previous pension rights in more than one scheme please complete this form for each scheme.

You should not use this form if you have previous membership of the NHS Pension Scheme. This will be automatically linked with your current membership.

...

Step 1 - Prepare your application

- Check that you are within the time limits shown in the Important Notes. If not the transfer cannot be accepted.
- Complete Part 1 of Form A
- Send the form to your Pensions Officer so they can complete Part 2.
- Send Form B and Form B Notes to your former pension scheme if required.
- Important: Form B is not required if you are transferring from another health service scheme, simply send the fully completed Form A to NHS Pensions.

Step 2 - Submit your application

- When you receive your pension transfer quotation and discharge forms, do not complete or sign any of the discharge forms at this stage.
- It is important you do not delay the process if your former scheme has set a deadline date for the transfer.
- Attach the fully completed Form A to the transfer value quotation and send to NHS Pensions

- Do send: discharge forms (we need to see these). NHS Pensions will return these to you with our estimate.
- Don't send: policy document

Step 3 - NHS Pensions will consider your application

- We will determine your eligibility to transfer and if eligible estimate the additional benefits that you would receive from the NHS Pension Scheme if the transfer goes ahead. This usually takes up to 2 months.
- We will send you the estimate and return any discharge forms the former scheme requires. We will also include any additional information your former scheme may have requested.
- It is important you remember the time limits that may govern your transfer as detailed in the Transfer In Guide and Application Pack and in the Key Notes in our estimate.

...