PO-14751

Ombudsman's Determination

Applicant	Mrs N
Scheme	Universities Superannuation Scheme (**the Scheme**)
Respondent	USS Ltd

Complaint Summary

Mrs N has complained that:-

- In 2005, USS Ltd failed to provide her with a transfer statement, sending it instead to her former employer, the University of Southampton (**the University**), resulting in the loss of Pension Scheme Transfer Club (**Club**) transfer rights, the need for an Employment Tribunal, and many years of dispute.
- In 2010, USS Ltd again failed to provide her with a transfer statement, sending it again to the University, resulting in a later revised, lower, transfer value being transferred instead.
- The benefits eventually transferred do not provide the required guaranteed minimum pension (**GMP**).

Summary of the Ombudsman's Determination and reasons

The complaint is partly upheld against USS Ltd because USS Ltd sent the 2010 transfer statement to an address that was no longer appropriate for Mrs N. This error will have contributed to Mrs N's distress and inconvenience and an award in recognition of this is appropriate.

Detailed Determination

Material facts

1. In 1983, Mrs N became a member of the Teachers' Pension Scheme (**TPS**), administered by Teachers' Pensions (**TP**).

2. In September 1997, Mrs N left the TPS and became a deferred member.

3. In November 2002, Mrs N joined the Scheme, having been employed by the University.

4. In November 2003, Mrs N's benefits with the TPS were transferred into the Scheme. The transfer, which represented total pensionable service of 3 years 84 days, was processed on a Club basis which provided a year-for-year service credit.

5. In July 2004, Mrs N left employment with the University and was awarded deferred benefits with the Scheme.

6. In previous years, Mrs N had initiated a claim against former employers about her service in the TPS. This is referred to as a "Preston" claim. As part of this process TP needed to confirm to Mrs N what the transfer value of her accrued benefits would have been had she transferred the additional service to the Scheme in 2003. This was to enable her to make a decision on whether to purchase the additional service arising from the Preston claim.

7. On 13 April 2005, TP recalculated the transfer value of her TPS benefits and sent this to USS Ltd. In its covering letter, TP explained that Mrs N had a Preston claim and asked for USS Ltd to advise her of the increased benefits in the Scheme, should she proceed with the Preston claim. TP asked USS Ltd to advise Mrs N of the revised transfer value and request that she inform TP of her decision. The revised overall transfer value of £45,750.35 was stated to be for 7 years 190 days. TP did not inform Mrs N that this letter had been issued to USS Ltd.

8. On receipt of TP's April 2005 recalculations, USS Ltd forwarded the transfer statement to the University confirming the service that the 2003 transfer would have provided if the increased transfer value had been paid in 2003. At the time, USS Ltd did not inform Mrs N or TP that it had done this.

9. Around this time, Mrs N asked her former TPS employer to ask TP for an update on the situation, but she received no information from TP, USS Ltd or her former employers.

10. In July 2005, one of Mrs N's former TPS employers asked TP what pension contributions, and interest, were payable and the amount of service to be instated.

11. In September 2005, TP replied to that employer, providing the requested information. Mrs N's claim against that employer was subsequently treated as resolved. However, her claim against another employer continued.

12. In February 2006, the second of Mrs N's former TPS employers indicated that it required further consideration of her Preston claim. As a result, the matter was to be progressed to an Employment Tribunal.

13. On 16 March 2007, the Employment Tribunal was held. This clarified the relevant additional service Mrs N was entitled to and the terms under which they were accrued within the Scheme.

14. Over the following year there were negotiations between the second employer and TP about the correct way to calculate her benefits.

15. In 2008, TP communicated with USS Ltd about the additional transfer value, and the benefits it would secure in the Scheme. USS Ltd's stance was that it would accept the transfer, but not on Club terms as had been the case with the 2003 transfer.

16. In October 2008, Mrs N made a complaint against USS Ltd which it dealt with under its internal dispute resolution (**IDR**) procedure. She complained that her benefits from the Scheme were transferred to the USS in 2003 on a Club basis, but her subsequent additional benefits, as a result of the Preston claim, would not be transferred on a Club basis. She had received assurances from USS Ltd that she would not be disadvantaged by any transfer that took place after 2003.

17. On 31 October 2008, USS Ltd responded to Mrs N's complaint. It explained that it had no record of any assurance that a follow up transfer would be made on a club basis or that a Club transfer would have been possible more than 12 months after she joined the scheme. It did not uphold the complaint.

18. In November 2008, Mrs N paid the necessary contributions to pay for the additional service.

19. On 4 December 2008, Mrs N telephoned TP. Her telephone note says "rang TPS still nothing re this agreement or on transfer …". Mrs N told TP to carry on with the transfer at least until she got a response about the agreement, but she was "not sure if I'll do it if not club".

20. It is unclear what happened between December 2008 and October 2009.

21. On 13 October 2009, TP issued another transfer statement for £41,028.75 to USS Ltd in respect of 4 years 102 days' pensionable service. The statement did not confirm a GMP and so the covering letter stipulated that another valuation would be issued once figures for the GMP had been received.

22. On 16 October 2009, USS Ltd emailed Mrs N saying that the approximate service credits that she might receive in exchange for the transfer payment of £41,028.75 quoted by TP were 5 years 201 days on a Club basis and 2 years 168 days on a non-Club basis. Both were stated to be based on a retirement age of 65.

23. On 24 October 2009, Mrs N replied to USS Ltd by email saying that she was unhappy about the difference between transferring on Club and non-Club terms.

24. At around the same time, Mrs N emailed TP to say she had been told by USS Ltd that TP had not applied for the GMP confirmation from HMRC and that her pension transfer could not be calculated for another 4-6 weeks.

25. During the following months, TP liaised with Mrs N's former TPS employers about their responsibility to inform the National Insurance Contribution Office of Mrs N's changed National Insurance (**NI**) record for the relevant years of additional service.

26. On 30 June 2010, TP emailed Mrs N saying it had received all the information required to proceed with her transfer estimate and this would be issued soon.

27. A file note made by TP, dated 20 July 2010, said that, due to the length of time it had taken to obtain GMP figures, with the same figure provided twice which did not look correct, it had been agreed with management that TP use the figures which had been provided by HMRC, £0.

28. On 20 July 2010, TP issued details of the additional transfer values due to USS Ltd.

29. On 26 July 2010, USS Ltd calculated the service credit of 2 years 243 days it would offer on non-Club terms for the transfer payment of £41,155. The offer was issued on 12 August 2010, with a guaranteed date of 19 October 2010, and was sent to the University, which did not forward it on to Mrs N.

30. Over the course of 2011, Mrs N reached TPS' normal retirement age of 60 and, in the absence of information from USS Ltd or TP about the transfer, she applied to TP for her retirement benefits to be paid from the TPS. A TPS pension was put into payment in error, but shortly afterwards was cancelled because, having previously transferred in 2003, she had no entitlement to benefits from the Scheme.

31. On 28 October 2011, TP sent USS Ltd another statement. This statement quoted pensionable service of 3 years 267 days and a transfer value of £36,118.52. The GMP information shown on the statement was '£0.00'.

32. On 13 December 2011, TP sent USS Ltd another statement. This statement also showed the pensionable service to be 3 years 267 days and the transfer value quoted was £36,853.54. The GMP information was again shown on the statement as '£0.00'.

33. On 15 December 2011, the CETV was paid by TP to the Scheme. It appears that this was a unilateral action by TP.

34. On 12 April 2012, USS Ltd emailed Mrs N about the transfer payment of £36,853.54 it had received, noting that it did not include the GMP figures. It said that using the GMP information from July 2010, USS Ltd calculated a service credit of 1 year 343 days on non-Club terms. USS Ltd noted that TP's statement stated 3 years and 267 days' pensionable service, compared with 4 years 202 days in TP's previous correspondence in 2010.

35. USS Ltd explained that due to the infrequency of Club transfers for members aged over 60, it did not have the factors to provide her with a notional Club transfer, although its actuaries could provide this once they received a fully complete statement from TP. At that point, it could calculate the additional payment required for a transfer consistent with Club terms to take place. USS Ltd told Mrs N that it could return the transfer payment paid to it at any time on her request prior to the formal completion of the transfer.

36. On 18 April 2012, TP answered certain queries raised by Mrs N, in particular on the GMP issue. It explained that ordinarily, a GMP deduction would be applied to a CETV as any increase above 3% would be paid by HMRC. However, in her case, because her former TPS employers had not taken the necessary action to adjust her backdated NI contributions, no deductions were made. The reason for this was that without the former employers adjusting the NI contributions from the period of employment, she would have paid a higher level of NI at the time, and then if an additional GMP deduction was made in 2011, she would have paid the cost of this twice. On this basis, TP took the decision not to apply the GMP deduction at the point of transfer. TP confirmed it would communicate this to USS Ltd to enable the transfer to be accepted.

37. On 15 May 2012, in an email to Mrs N, USS Ltd said that its actuaries had calculated that based upon the transfer value of £36,853.54 paid into the Scheme by TP, and information contained in TP's statements, she would have been credited with 4 years and 202 days of service in the Scheme if carried out on Club terms. However, she was not entitled to Club terms, and therefore TP would need to pay an increased transfer value of £87,223.56 to the Scheme in order for her to be credited with the same 4 years 202 days' service on a non-Club basis. USS Ltd caveated this hypothetical information by saying it was based on two different statements from TP, both of which contained conflicting information and so the information should not be relied upon.

38. On 11 September 2012, USS Ltd emailed TP setting out the position, including its hypothetical calculations of May 2012. It noted Mrs N had initially requested USS Ltd return the transfer value but said she had later changed her mind. USS Ltd confirmed it was willing to: (a) credit a non-Club transfer in respect of the money paid; (b) return the money to TP; or (c) credit Mrs N with 4 years 202 days' service if TP was willing to pay the extra transfer value to cover this.

39. On 14 September 2012, Mrs N sought assistance from USS Ltd concerning why the transfer value had changed from £41,155 to £36,853.54. In response, USS Ltd said that it was the responsibility of TP to confirm the correct GMP entitlement and it could not account for the reduced transfer value, which was TP's responsibility.

40. On 25 September 2012, USS Ltd contacted Mrs N again saying that if it received a request for a transfer after two years of membership had elapsed, a Club transfer would not be permitted.

41. On 22 October 2012, TP wrote to USS Ltd, highlighting section 7.12 of the March 2012 (PSTC5) version of the Memorandum by the Cabinet Office about the Public Sector Transfer Club (**the Memorandum**) which says:

> "7.21 'Preston' cases. In cases where a previously deferred member of a Club scheme has been granted additional service credit following a successful "Preston" claim and applies for a transfer of those benefits to another Club scheme, the sending scheme should calculate the additional transfer value using current factors, relevant date and age and allowing for pension increase. Given the background to these cases, it may not be possible for the members to comply with the time limits set out in paragraph 4.1 but it is hoped that receiving Club schemes would take a sympathetic approach to such cases."

42. On 3 June 2013, Mrs N submitted a stage two IDR complaint to USS Ltd, following on from the 2008 stage one complaint. This related to: the fact the transfer was not accepted on Club terms; that USS Ltd should take account of the Memorandum (see paragraph 41 above); that Mrs N had received verbal assurances in 2003 that any later transfer would be on a Club basis; and that it had delayed matters.

43. On 28 October 2013, USS Ltd responded to Mrs N, not upholding the stage two complaint. It highlighted that it had taken account of the Memorandum, but given the length of time since the original transfer, it was not deemed appropriate to accept the follow-on transfer on Club terms. Additionally, there was no evidence on USS Ltd's systems to suggest she was given any assurances about the terms of a follow-on transfer in 2003. Finally, USS Ltd denied it had contributed to any delay.

44. Following this response, Mrs N referred a complaint concerning TP to this Office (PO-1576). In the course of our investigation of that complaint, the USS Ltd correspondence issued to the University, but not to her in 2005 and 2010, came to Mrs N's attention.

45. On 5 September 2014, TP provided comment to this Office regarding the GMP issue. It reiterated that it was the responsibility of the former TPS employers to inform HMRC of the necessary adjustments of her backdated NI contributions. At the time of calculating the follow-on transfer value in 2011, the information it received from HMRC was that the former employers had not provided the necessary information, or if it had, HMRC had not acted upon it, hence there was no GMP deduction applied to the transfer value. However, by September 2014, HMRC had received the necessary information to adjust her NI record. The effect would be to reduce her state pension entitlement, as the additional TP service would result in being contracted-out for a longer period. TP noted that if the matter of the transfer value to the Scheme was reviewed following the adjustment, the transfer value would be reduced.

46. The letter conceded that Mrs N's service had at some point been double counted and that this was not identified until November 2011, at the point the CETV was paid to USS. Mrs N had paid additional contributions due to this double counting, but those additional contributions that should not have been paid had been returned to her by

offsetting these against her overpayment when the pension was incorrectly put into payment by TP in 2011. The correct level of additional service was 3 years 267 days and Mrs N had eventually paid the correct additional contributions for that service. In turn, the CETV that was paid to USS Ltd was based on the correct additional service.

47. TP clarified the effect of the double counting on the CETV, saying:-

> "The transfer value figure of £41,028.75 provided in October 2009 in respect of 4 years 102 days' service, would have been £42,106.11 if provided in December 2011. The figure of £36,853.54, paid in December 2011 would therefore have been proportionately lower if 3 years 267 days' service had been used in the calculation in October 2009 - £35,910.57."

48. On 24 October 2014, Mrs N received information from the Department for Work & Pensions regarding her state pension entitlement. This indicated that a contracted-out deduction would be applied to her state pension of £1,448.20 per year for the period until 5 April 1997.

49. There followed an extended delay in the process of this Office determining the complaint against TP.

50. On 25 November 2016, TP provided further comment to Mrs N about the Preston process. Within this it confirmed that the 2005 figures "were based on an invalid claim", a position that only came to light later at the conclusion of the Employment Tribunal.

51. On 12 July 2017, I issued a Determination in relation to the complaint PO-1576 concerning TP's actions. Following this Determination, Mrs N referred a new complaint about USS Ltd to my Office.

Summary of Mrs N's position

52. Mrs N has said, in summary:-

- She is of the view that USS Ltd was obliged under the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (**the Disclosure Regulations**), to forward the 2005 transfer statement to her directly. Had it done so, she would have accepted the proposed transfer and the transfer would have proceeded shortly thereafter. She suggests the timing would have allowed it to be transferred on a Club basis.

- She also suggests that had that matter been dealt with appropriately by USS Ltd, it would have meant there was no need for an Employment Tribunal, or the subsequent long drawn out dispute with TP and USS Ltd.

- USS Ltd was fully aware that she was no longer employed by the University and, given this, it should have written to her directly.

- Similarly, by 2010, a further five years had passed and yet USS Ltd, again provided a transfer statement to the University rather than to her directly. This also breached the

Disclosure Regulations and resulted in her being unable to accept the CETV at that point, which was higher than the CETV eventually paid by TP to USS Ltd in 2011.

- If USS Ltd had correctly forwarded this to Mrs N she would have accepted the higher guaranteed transfer value, received more service, and would have avoided the subsequent issues with TP setting up a pension in error.

- She was never informed of these letters and therefore could never have notified USS Ltd that they were not received.

- USS Ltd ought to have accepted the transfer on a Club basis, as argued by TP and the Department of Education. To not do so ignored the relevant Cabinet Office guidance.

- USS Ltd should have applied the correct GMP value to the transferred pension in 2011, and should agree that the pension which has now been transferred in does not account for the additional state pension she would have been entitled to had she not made the additional contributions.

- She has pursued this matter for 24 years over a relatively small pension because of a sense of justice for the women the Preston case was implemented for. The intention of the Preston case was for successful claimants to be put into the position they would have been in had they not been excluded from their pension scheme. For this to be the case, the pension should be transferred to the Scheme on a club basis.

- Mrs N's understanding (see Farthing v Universities Superannuation Scheme determined by this Office on 13 September 2010 PO-77239/2) is that USS Ltd only introduced the two year cut-off date for Club transfers on 1 January 2005. On several occasions, Mrs N has been informed by USS Ltd that the cut off date is two years after active membership has ceased, which for Mrs N was July 2004. A Club transfer should have been available until July 2006.

- Mrs N believes it is incorrect that she re-joined the Scheme in November 2002; in fact it was May 2003. The previous Determination, PO-1576, contains November 2002 as an erroneous date which Mrs N has only just become aware of.

- The transfer offer of April/May 2005 was on Club terms. Why would that be the case if she was not entitled to a Club transfer. Either she was entitled to a Club transfer at that point or USS Ltd was prepared to do the right thing and make the transfer on the same basis as the original transfer.

- The fact that the quote issued by USS Ltd did not highlight that a Club transfer would not be possible is an additional instance of maladministration. She could not have made an informed decision on whether to purchase the Preston service if she was not provided with the correct information. Had she been aware that the transfer would not be on Club terms she would not have pursued it.

- Although the former employer later withdrew the offer to accept the claim, there was sufficient time for the transfer to go ahead before that point in 2005. The transfer could

have proceeded and the exact details amended later. The cost could have been quickly paid and adjustments made after the transfer completed, just as in 2010.

- The quote provided in 2005 was not advisory.
- In respect of the time limit argument made by USS Ltd, during the Employment Tribunal she had professional support, but she did not have such support in the subsequent complaints. Further, she has no confidence that if she had contacted USS they would have told her that there was a transfer value she ought to have received.
- In relation to the 2010 quote, had she received it, it would have avoided significant subsequent complications and the associated distress and inconvenience. A delay was caused by USS Ltd requesting unnecessary information and both TP and USS Ltd waiting on each other to act. In that time, she had corresponded with USS Ltd, but had been given no information about the quote. Further, this was a difficult time because of significant personal events in her life.
- USS Ltd failed in its duties and responsibilities to a member of its Scheme. It could have corrected its earlier error in 2010, but instead it repeated it and compounded it by choosing not to take the sympathetic response encouraged by the Cabinet Office's Memorandum to accept transfers such as this on a club basis.
- Between 2010 and 2012, the transfer value offered by TP was reduced from £41,155 to £35,910, but neither she or her former employer received reimbursement for this reduction and she has received no communication from USS on this issue.
- USS Ltd should not have accepted the transfer in November 2012 as it did not include, or notify her of, the GMP. It is a requirement that she was aware of the GMP in order to accept the transfer or not. But TP and USS Ltd excluded her from that discussion and unilaterally liaised with HMRC about the adjustment of her GMP, and in turn her state pension. Additionally, TP offset the adjustments against the lump sum incorrectly paid to her when it paid benefits to her erroneously. As a result of being kept out of the loop, she was not aware that part of her service had been double counted. She still does not know to what service the GMP applies.
- If an interim GMP and transfer was acceptable in 2012, the same should have been the case in 2005. This would have resulted in an increased pension. Had she had the correct information earlier she would have been able to make an informed decision on whether to transfer.
- TP has recently informed Mrs N that certain service was excluded from the transfer in 2011.
- This has been an extraordinarily drawn out process due to USS Ltd's maladministration and decision not to offer a Club transfer. For the purpose of distress and inconvenience, those two issues should not stand or fall together. Similarly, even if other parties bear some responsibility, USS Ltd's conduct has made matters worse and an award should be made in recognition of that.

- USS Ltd's decision to route transfer quotes through the former employer is flawed given that employment in such institutions is no longer a job for life and many will leave the sector resulting in the link with the Scheme being broken.

- If the transfer had proceeded in 2005, the pension would have received annual increases. It would be reasonable for the Ombudsman to direct USS Ltd to apply those increases retrospectively.

Summary of USS Ltd's position

53. Jurisdiction:-

- USS Ltd disputes that I have jurisdiction over the events in 2005 on the basis that it has been brought more than three years after the event complained about and more than three years since Mrs N ought reasonably to have been aware of the error. These time limits are set out under Regulation 5 of the Personal and Occupational Pension Scheme (Pensions Ombudsman) Regulations 1996 (**the Pension Ombudsman Regulations**).

- It considers that Mrs N ought to have chased the matter in 2005 or around that time and could easily have established the fact that the letter was sent to her former employer if she had made enquiries of TP and in turn USS Ltd.

- Given the length of time since the point of expected knowledge and the extensive communication, it would not be appropriate for the Ombudsman to apply discretion to this time limit.

54. Notwithstanding the issue of jurisdiction, USS Ltd said:-

- USS Ltd was not responsible for ensuring the transfer proceeded. It issued a Club transfer offer in 2003, as was required under the Club terms.

- In 2005, Mrs N was not an active member or eligible employee and therefore there was no explicit power for the additional transfer to be accepted.

- Even if Mrs N was still an active member in 2005, USS Ltd was not required, under the Scheme Rules or under legislation, to provide the requested details as a part of the Preston claim.

- The issuance of the transfer statement to the University was the appropriate method of communication in the circumstances of a proposed transfer. It is an established protocol that USS Ltd liaise with the employer in cases of transfers and given that a transfer requires a member to be currently employed by a scheme employer, this is an appropriate arrangement. The protocol does not envisage circumstances such as Mrs N's. USS Ltd acknowledge that in these circumstances, the connection between Mrs N and the University was more distant and the University's responsibilities reduced.

- The letter issued to the University was not an offer of additional benefits in the USS, but was simply information as to what would have happened in 2003 had all of Mrs N's

service been transferred at that time. Additionally, this was only an estimate and would have been recalculated prior to a transfer.

- There was no reason for USS Ltd to have doubted that Mrs N did not receive the 2005 letter as it received no response or follow up from Mrs N.
- Issuing the letter to the University was not maladministration.
- Given the subsequent events and the fact that the transfer value would have needed to be updated, it is not certain that Mrs N would have accepted an offer in 2005.
- It is surely the responsibility of the University to have provided the letter to Mrs N.
- The 2017 determination shows that even if the letter was received by Mrs N, the fact that her Preston claim was unresolved at that time means that no loss has been caused to Mrs N by not having received it.
- In the circumstances it would not object to a distress and inconvenience award being directed.

Conclusions

55. There are three elements to Mrs N's complaint and I will address each one separately: the events in 2005; the events in 2010; and the GMP issue.

The 2005 statement

56. USS Ltd has raised a jurisdiction objection to this issue being considered which is addressed in paragraphs 74 - 79 below. However, given the complications in the matter reaching this stage, in part because of my Office's completion of the previous complaint, I will nevertheless comment on why this complaint would not be successful regardless of jurisdictional issues.

57. In 2005 TP wrote to USS Ltd asking it to provide confirmation of the benefits that Mrs N would be entitled to if she transferred the additional pension from the TPS. USS Ltd subsequently wrote to Mrs N's former employer, the University, and asked that it forward the information to Mrs N.

58. Mrs N's position is that had USS Ltd forwarded the benefit statement to her directly she would have transferred at that time and would have been entitled to a Club transfer.

59. Although, USS Ltd asserts that the decision to forward the information to the University was appropriate under its internal process, and I cannot see that the Disclosure Regulations applies to these specific circumstances, it makes no sense for USS Ltd to have written to the University rather than to Mrs N directly. Mrs N was no longer an employee, USS Ltd knew this, and it had her up to date address.

60. Rule 20.10 of the Scheme Rules supports this position (as at October 2003):

> "20.10 Notices (a) Any notice to any person in receipt of or entitled to any benefit hereunder may be given by sending the same through the post in a letter addressed to such person at their last known place of abode, and any notice so sent shall be deemed to be served on the second day following that on which it is posted."

61. I consider that USS Ltd's failure to identify Mrs N's deferred status and act appropriately in those circumstances constitutes maladministration. Its process was fine in respect of an active member, but it was not satisfactory for a deferred member. USS Ltd acknowledges itself that in this scenario, the employer had a lessened responsibility, but USS Ltd's responsibility was not diminished by Mrs N's status. As a deferred member it should have written to her directly, as it would have done in circumstances other than a transfer.

62. However, whilst USS Ltd's process was flawed, this did not prevent the transfer from occurring on a Club basis. The Pension Scheme Transfer Club rules require members to have applied for a Club transfer within 12 months of the member becoming eligible to join or re-join. I note the Memorandum referred to in paragraph 41 above, but its recommendation is not binding on USS Ltd.

63. USS Ltd has confirmed that it would extend the deadline up to two years after joining the Scheme. I understand that Mrs N joined the Scheme in November 2002, and therefore by 2005, even the extended timescale offered by USS Ltd had expired. Therefore, the proposed transfer of further benefits, by this point, would always have been on a non-Club transfer basis.

64. Mrs N has disputed the use of the November 2002 date, but this corresponds with the date the original transfer request was received, according to USS Ltd, and therefore, it seems more likely than not, that Mrs N was already a member by that time.

65. I also note Mrs N's reference to the time limit on Club transfers coming into force in January 2005, however, I cannot see that this changes the position as any possible transfer would have been after this date and subject to the time limit. Mrs N has referred to being told by USS Ltd that she was eligible up to two years after membership had stopped, but that is unlikely given that only active members have a right to transfer. This appears to have been a misunderstanding and more likely than not will have been a reference to the time limit starting at the commencement of active membership.

66. However, even had USS Ltd written to Mrs N directly in 2005, as it ought to have done, I am of the view that the likely eventual finalised transfer cannot reasonably be said to have been on the basis of that information.

67. The quote issued by USS Ltd was on Club terms, but TP had only requested a quote on the same basis as the original transfer, which was a Club transfer. Just because USS Ltd would provide the quote on the basis requested by TP, does not mean it would ultimately have treated the transfer as a Club transfer. I appreciate this would

not have been helpful in Mrs N's decision of whether or not to make the additional contribution, but USS Ltd was nevertheless merely following TP's instruction.

68. I accept that Mrs N may have opted not to repay the backdated contributions had she been informed by USS Ltd that it would not accept a Club transfer in 2005. However, Mrs N paid the contributions even after USS Ltd, in late 2008, had confirmed a Club transfer would not be acceptable.

69. Further, in any event, because of the nature of Mrs N's claim, including elements of service that were mandatory for her to purchase, a follow up transfer on a non Club basis would always have been necessary.

70. In the years following the 2005 quote, Mrs N's Preston claim was being disputed and was eventually heard by an Employment Tribunal. Mrs N argues that this would not have been necessary if USS Ltd had provided her with the information directly. She suggests that had the transfer offer been received, she would have accepted it and the matter would have been resolved much earlier, and without the need for the Employment Tribunal.

71. I do not find merit in this argument. Although a transfer may have progressed had USS Ltd written to Mrs N directly, the issue of identifying the service Mrs N was entitled to and the amounts that she was required to pay took some time to resolve. Additionally, the fact that it went to an Employment Tribunal implies that there were issues that were disputed. This is further borne out by TP's comments that the claim, as it stood in 2005, was invalid due to certain periods of service being outside the Preston Claim.

72. These uncertainties mean it is not possible to say that the transfer could have gone ahead on the basis of the information provided in 2005. Further, the fact that it was invalid means that I cannot grant the remedy Mrs N is seeking as I cannot make a direction to place Mrs N into a position that she was not entitled to be in.

73. Mrs N has requested that I direct USS Ltd to apply pension increases from 2005 to the transfer value received. Although I understand Mrs N's view that the transfer should have been in place since 2005 and that she should be entitled to the pension increases applicable since that date, I see no justification for requiring this to be backdated now.

Jurisdiction

74. USS Ltd has argued that I do not have the jurisdiction to Determine this complaint as the complaint has been brought out of time. There are time limits on what I can determine (see the Appendix). The starting point is that the complaint must be brought within three years of the event complained of, which this complaint was not. If later than three years, then it must have been brought within three years of the date on which the individual ought reasonably to have cause for complaint.

75. Mrs N argues that she was not aware of USS Ltd's letter to the University until 2017. While I accept this, if I were to accept her argument about the 2005 correspondence and how important it was in avoiding the Employment Tribunal, I consider it would have been reasonable for her to have made the necessary enquiries in 2005, to determine where and how the breakdown in communication had occurred.

76. Had Mrs N asked the employer involved in the Employment Tribunal what was preventing an otherwise agreed settlement from taking place, the employer would have informed her that it was liaising with TP to establish her entitlement. The reasonable next step would have been for Mrs N to contact TP and in turn USS Ltd. At that point the issue of the 2005 transfer statement would have become apparent. So I consider that Mrs N ought reasonably to have become aware much earlier, and certainly within three years of the transfer statement being issued.

77. Mrs N has suggested that USS Ltd would not have been forthcoming with information about the transfer value had she asked for it, but it seems more likely than not, if the paper trail had been followed, that it would have been provided to her. Further, I do not think these enquiries would have required professional assistance to follow up.

78. I have discretion to waive the time limit where it would be reasonable to do so, for example where an individual was incapacitated or exceptionally unable to progress the matter. In this instance, Mrs N has successfully pursued an Employment Tribunal and other complaints over the past 14 years, so I see no reason to think she could not have progressed this matter earlier.

79. On the understanding that this letter was an essential factor to the transfer not being completed in advance of the Employment Tribunal, as Mrs N implies, I find that with reasonable steps, the information would have become known to Mrs N some time before 2017, therefore the complaint has been brought out of time.

The 2010 statement

80. In 2010, the Scheme again received a transfer statement from TP and once more forwarded the transfer quote to the University to provide to Mrs N. As with the 2005 statement, and for the same reasons, I find that this was maladministration. The letter should have been sent directly to Mrs N.

81. However, I cannot see that Mrs N has suffered any financial injustice by this error. The figures provided by TP in that letter to USS Ltd were wrong. It included service that was double counted and therefore she had no genuine entitlement to the higher figure. I could not direct that USS Ltd place her into that position, even if she accidentally might otherwise have ended up in it, because it was based on incorrect information.

The subsequent transfer in November 2011 was a lower figure, but it was correct, and from my understanding of what TP has said, if the correct figure was provided in 2010, it would not have been higher than the amount transferred in November 2011,

and so there has been no loss caused by USS Ltd's decision to send the statement to the University.

Mrs N's GMP entitlement

82. Mrs N has argued that USS Ltd has a responsibility to ensure that her entitlement to a GMP is properly applied to her benefits within the Scheme. I agree, however from my understanding of the situation, the issues regarding clarifying the GMP entitlement stem from third parties, which were not finalised by those parties until some time in 2014; this was after the transfer had occurred.

83. I consider that USS Ltd had little choice but to accept the transfer on the terms that it did. The fact that the GMP was not confirmed at that point was not ideal, but it did not prevent the transfer going ahead.

84. USS Ltd, on receiving a transfer, is entitled to rely on the information provided by the transferring scheme. At that time TP was unable to provide the correct GMP entitlement. The pragmatic solution was for USS Ltd to accept the transfer and subsequently reconcile the GMP with HMRC prior to Mrs N's retirement. I consider this to be appropriate.

85. On my understanding of HMRC's correspondence in 2014, in relation to her employment prior to 1997, Mrs N should receive an annual pension from the Scheme of at least £1,445.20 from her state pension age. Mrs N disputes that this will be provided. I have not seen sufficient evidence to conclude that Mrs N's entitlement for that period does not at least meet HMRC's figure.

86. Although I am not persuaded that USS Ltd made an error in its handling of Mrs N's GMP entitlement, as it realistically had no choice but to accept the transfer, given the circumstances, it would be appropriate for USS Ltd to undertake a GMP reconciliation of Mrs N's benefits and explain the breakdown of her benefits.

87. Mrs N may feel TP and USS Ltd acted inappropriately by discussing the GMP situation without referring to her, and I appreciate her feelings on this. However, the establishment of a GMP is not ordinarily a matter discussed directly with members. It is reasonable for a Scheme to rely on the information received by HMRC, but in this case it was clearly incorrect because Mrs N's former employers had failed to take the necessary steps. In any event, I cannot see any failure on the part of USS Ltd in the handling of her GMP entitlement.

88. Mrs N has also questioned why she had not received a refund of any of the contributions made following the reduction in transfer value. However, the amount of transfer value paid by TP is not USS Ltd's responsibility.

89. As I understand it, Mrs N's former employers were responsible for calculating the necessary back payment of contributions. TP assisted because of the complicated nature of Mrs N's service history. USS Ltd merely applied the transfer value to Mrs

N's USS pension, it is not responsible for the calculation or refund of any potentially overpaid contributions.

Distress and inconvenience

90. It is undoubtedly the case that Mrs N has had an extremely difficult experience in trying to resolve her Preston claim. There are multiple parties involved and multiple factors in play that have contributed to this situation. I am sure that this process will have caused her significant distress and inconvenience over the years.

91. However, this determination solely concerns USS Ltd's actions. USS Ltd did err when writing to the University rather than to her directly. But those errors were secondary to the wider issues that caused this lengthy process. USS Ltd did not cause any financial loss, but on reflection, its maladministration has contributed in part to the overall distress and inconvenience suffered and a direction in recognition of this is appropriate.

92. Solely in respect of the acts complained about here, and those elements of it that are within jurisdiction, USS Ltd shall pay Mrs N £500 in recognition of the significant distress and inconvenience suffered.

Conclusions

93. I uphold Mrs N's complaint in part. USS Ltd did not act appropriately when sending the quotes to the University, and that amounts to maladministration, but the error did not cause Mrs N a financial loss.

Mrs N has suffered significant distress and inconvenience because of USS Ltd's error and in recognition of this, it shall pay Mrs N £500 within 14 days of the date of this Determination.

Anthony Arter

Pensions Ombudsman
30 January 2020