

## Ombudsman's Determination

Applicant	Miss N
Scheme	The Universities Superannuation Scheme ( <b>the USS</b> )
Respondents	The Trustee of the Universities Superannuation Scheme ( <b>the USS Trustee</b> ) The University of Oxford ( <b>the University</b> )

## Outcome

1. Miss N's complaint against the USS Trustee and the University is partly upheld in respect of the University but not the USS Trustee; however, there is a part of the complaint I do not agree with. To put matters right for the part that is upheld, the University shall pay Miss N £500 in respect of significant distress, including loss of opportunity and loss of expectation.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Miss N's complaint is that her employer, the University, failed to promptly inform the Trustee of the Oxford Staff Pension Scheme (**OSPS**) that she had left OSPS-linked service. As a result, she was denied the opportunity to transfer her OSPS benefits to the USS, while she was still a member of the USS. This has caused her, and will cause her, various losses, including distress and inconvenience.

## Background information, including submissions from the parties

4. In 2015, Miss N was engaged on a role (**the first role**) with the University, became a member of the OSPS and began accruing benefits.
5. In May 2017, Miss N left the first role, became a former member of the OSPS and started another role (**the second role**) with the University. At around the same time, she became a member of the USS and commenced accruing benefits.
6. In September 2017, Miss N left the second role and became a former member of the USS. In October 2017, the trustee of the OSPS (**the OSPS Trustee**) discovered that Miss N had left the first role.

7. In November 2017, the OSPS Trustee wrote to Miss N outlining her options. It said she could either transfer her OSPS benefits to another pension or apply for a refund of contributions.
8. In or around December 2017, Miss N discovered that she could have transferred her OSPS benefits to the defined contribution section of the USS. However, she was told that, as she had left the second role, a transfer to the USS was not allowed under the USS's rules, as she was now a former member of the USS.
9. In February 2018, Miss N complained to this Office. The key points were:-
  - Her exact loss could not be calculated. She could set up a private pension, but it would cost time to manage and involve further costs. Nor would she consider transferring her benefits into a pre-existing account with National Employment Savings Trust (**NEST**).
  - The USS Trustee failed to respond to her emails and phone calls. The only reason she knew it would not accept a transfer was that her OSPS contacts had informed her.
  - The OSPS Trustee considered the matter closed, so she had decided not to proceed with its Internal Dispute Resolution Procedure (**IDRP**). Further, she had not been provided with details of the USS's IDRP, and she did not think this would help.
  - If the USS Trustee could or would not accept a transfer in, she should be compensated to put her back in the position she would be in, had she been able to transfer her OSPS benefits to the USS in May 2017.
  - The OSPS and USS were separate pensions. However, the University, as sponsoring employer for both, was seemingly at fault for failing to inform the OSPS Trustee that she had left the first role. So, her dispute was really with the University.
10. This Office informed Miss N that she would need to complain to both schemes under their respective IDRPs, which she then did.
11. On 5 March 2018, the USS Trustee responded under stage one of its IDRP but did not uphold Miss N's complaint. This was because, by the time that she had requested to transfer her OSPS benefits to the USS, she was a former member of the USS. Under the USS rules, transfers in from former members were not permitted.
12. On 22 March 2018, the OSPS Trustee responded under stage one of its IDRP and did not uphold Miss N's complaint. This was because it had a duty to provide her with transfer options within two months which it had done. The reason it did not provide transfer options sooner was that it did not know, as the University did not inform OSPS, that Miss N had left the first role. OSPS also asked her to explain what losses she had incurred and provide evidence. Finally, it offered an "alternative transfer value", calculated at July 2017, being around the time she left the first role, on condition that she transfer-out within three months.

13. Miss N appealed under stage two of the USS' IDRPs. There is no sign she appealed under stage two of the OSPS IDRPs. Nor did she take up the OSPS Trustee's offer of a backdated transfer value.
14. On 10 August 2018, the USS Trustee responded under stage two of its IDRPs but it did not uphold Miss N's complaint. It said the USS rules had been applied correctly, as a transfer-in from a former member was not permitted under the USS rules.
15. During this Office's investigation of Miss N's complaint, the University offered Miss N £500 in recognition of the distress and inconvenience caused by its failure to provide sufficient information. Miss N did not accept this and made the following comments:

"...you agreed that [the University] had been at fault in not informing OSPS when I left my OSPS-linked post, resulting in my being unable to transfer my OSPS pension to my USS pension, and suggested that it consider awarding me compensation for:

the time/cost involved in setting up and managing a personal pension over the next 30+ years, including the cost of obtaining regular financial advice.

loss of investment growth my OSPS transfer balance would have accrued between May 2017 and the present, had I been able to transfer it to USS.

loss of investment growth associated with the value of my OSPS benefits in USS over the next 30+ years, which is likely to have been more favourable than a private [Self-Invested Personal Pension, "**SIPP**"] ... compensation for stress and aggravation over the past 14 months...

My research suggests that with an OSPS Transfer Balance of £3,315, a cash investment alone would require significant additional contributions to guarantee that the fund would not be worth less than the amount invested at retirement. This does not extend to covering charges for managing the fund, making investments, or providing financial advice, amongst other things. Nor does it cover the risk that the fund might not perform as well as USS.

As I understand it, there are no charges associated with USS. I am therefore unclear how you have come to the conclusion that £500 worth of compensation is fair.

Selecting a SIPP, even for a DIY investor, is also not straightforward because of the varying charging structures and rates, and then the shares in which to invest have to be selected as well; selecting even a managed fund means reviewing the performance of such funds, which still requires specialist knowledge and time to research, plus the aforementioned additional costs for buying/selling shares and managing the fund portfolio. An IFA would be able to advise on this, which my research suggests would cost in the region of £750 - £1000 for one-off advice, on which SIPP to invest in. Continued advice on investments and managing the fund would incur further charges. The

situation in which I have been unreasonably and negligently placed is therefore not a trivial matter.

If the £500 is intended as compensation for time and aggravation I am afraid it does not go nearly far enough – I have spent at least five hours just researching the information needed for this letter and henceforth will be keeping a record of my time. Despite being in possession of four degrees, I have found trying to understand the ins and outs of pension funds beyond me. I cannot imagine I would have the time to become an expert DIY pension investor for the next 30+ years and would therefore need to pay for financial advice and investment management.

One of the reasons put to me for accepting £500 worth of ‘compensation’ for all this, is that the level of my loss to date, and in the future, cannot be readily determined. This is completely unreasonable, as it means all the risk of the situation, which is not of my making, falls on me, rather than the body that caused it. Up to now, I have tried to navigate the complexity of the appeal process and investigating SIPP’s using my own time and resources since, as a student, I cannot afford legal or financial advice. It seems however, that unless I obtain professional advice, my complaint will not be taken seriously and assessed accordingly, with regards to putting me in the position in which I would have been, as far as possible, had [the University] acted reasonably. It seems that the only way to demonstrate how inadequate £500 is, is by spending money, which I don’t have, to obtain appropriate advice, making this an even more stressful situation.”

16. The University provided its formal response and responded to Miss N’s specific comments. It said:

“In response to the complaint, the University acknowledges it did not provide [the OSPS Trustee] with details of [Miss N] leaving her post as promptly as it intended. It is sorry for the inconvenience that this delay has caused.

As stated in my letter of 19 December 2018, steps have now been taken to ensure that the same does not happen again. The reports identifying closed OSPS posts are now being run promptly on a regular monthly basis.

Whilst working in the Pensions Office over the past six years, I am unaware of this situation occurring before. The University does not track the information you have asked for regarding an individual remaining in employment with the University, but leaving one period of relevant employment and becoming a deferred member of the associated pension scheme. These cases are dealt with and recorded as discrete events. Currently there are only two OSPS members who are also USS members and who if they left OSPS would be entitled to a short service refund or transfer.

There are no specific agreements between the University and the pension schemes you mention to evidence the University's obligations where a member leaves one period of relevant employment for another, whilst remaining employed by the University.

Regardless of the extent of any specific legal duty (which you note is not as clear cut for employers as is the case for trustees), as a matter of good practice the University does aim to notify the relevant pension scheme of the termination of a relevant employment within one month of the termination date.

The University is not aware [Miss N] has suffered any financial loss as a direct result of the delay and there has been no evidence provided to the contrary.

I would like to make a few observations and comments regarding [Miss N's] email to you dated 23 January 2019:

Time/cost – financial advice is something that [Miss N] may seek regardless of the arrangement she selects to transfer her OSPS benefits. It would be as relevant to a transfer to USS.

Loss of investment growth – [Miss N] has not been prevented from transferring her benefit[s] from OSPS and doing so is not contingent on the outcome of her complaint. The University is not responsible for any change in value as a result of market losses or gains since 2017.

USS investment returns – It should not be presumed that any change in the value of a DC fund invested in a particular fund offered by USS would be any less (or more) favourable than that of other providers. The value of investments depends on multiple factors, including a member's own investment choice.

Charges in USS – [Miss N] is mistaken in her assertion that there are no charges in USS. Charges for transferred in funds are not subsidised so charges are deducted from any transferred in funds. I enclose an extract of page 18 of the USS Investment Builder booklet. The full booklet is available at <https://www.uss.co.uk/members/members-home/the-uss-scheme/uss-investment-builder>. There are other arrangements available to [Miss N] that have similar charges to certain USS funds. For example, NEST has an annual management charge (AMC) of 0.3% and accepts short service transfers in. The USS default fund charges a similar AMC, 0.3%.

It is unclear why IFA advice might only be necessary if her funds were not transferred to USS. The risks and uncertainties of investing in a DC fund are not eliminated by investing in a USS DC fund."

## Adjudicator's Opinion

17. Miss N's complaint was considered by one of our Adjudicators, who concluded that there had been maladministration on the part of the University but not the USS Trustee. The Adjudicator's findings are summarised below:-

- The USS Trustee had not made an administrative error as there was no provision under the USS rules to accept a transfer-in from a former member.
- The USS Trustee failed to respond to Miss N's enquiries around December 2017 and this would have caused inconvenience but it would not have been significant, therefore no further action was required. Nor would any delay at that stage have caused Miss N a financial loss as it was already too late for her OSPS benefits to be transferred to the USS.
- However, the University failed to inform the OSPS Trustee that Miss N had left her first role and this was maladministration on its part. The University accepted this.
- No clear loss had been shown and therefore the University's offer of £500 was reasonable in the circumstances.
- The OSPS Trustee offered Miss N a backdated transfer value. Had she accepted this, she would have received the same benefits as if the University had promptly informed the OSPS Trustee that she had left the first role; the only difference was, she would have been unable to invest them in the USS. But whilst this option was unavailable to her, it would have been possible for her to invest the OSPS benefits in an existing account with NEST. Miss N could have thus mitigated any potential losses.
- Miss N claimed that the University should compensate her for:
  - (1) the marginal cost of running a SIPP, over and above what the USS would have charged to manage her OSPS and other benefits;
  - (2) the cost of one-off financial advice, to help her to decide how to invest her OSPS and other benefits; and
  - (3) the cost of ongoing financial advice to help her decide how to invest/manage her benefits.

However, the Adjudicator said this was not appropriate.

- Without knowing what Miss N would actually do with her OSPS benefits, it was not possible to provide redress for costs that she might incur as a result of having to invest them in an alternative pension. Further, it was unclear that her only option was to invest them in a SIPP; for example, she could have invested them with NEST.

- Miss N felt unable to quantify her loss without incurring further costs, that is, the cost of financial advice. However, the onus is on Applicants to show what losses they have incurred as a result of any omissions by Respondents. In this particular instance, the only clear loss was a loss of opportunity. Miss N had been denied the opportunity to arrange her pension benefits the way she wanted them, that is, have them all in one place within the USS.
- An award of £500 was appropriate in the circumstances as Miss N had suffered significant distress and inconvenience, and a loss of opportunity, due to the University's failure to inform the OSPS Trustee that she had left the first role.

18. The USS Trustee accepted the Opinion and provided no further comments.

19. The University agreed with the Opinion and the proposed outcome. It only added that, contrary to what the Adjudicator had said, there was no obligation on the University to inform the OSPS Trustee, or Miss N, of her transfer options in respect of her OSPS benefits. Nor could it have done so, as it did not hold the relevant information. Rather, its failure was not informing the OSPS Trustee that Miss N had left the first role.

20. Miss N did not accept the Opinion and made the following points:-

- There was a four-month window, between leaving the OSPS-linked role in May 2017 and leaving the USS-linked role in September 2017, when she was still a member of the USS. Had the University correctly informed the OSPS Trustee that she had left the first role, she would have been able to transfer her benefits from one to the other.
- She did not take up the OSPS Trustee's offer of a backdated transfer value as she was waiting for this Office to investigate her case. Accepting a backdated transfer value would have caused problems if she later transferred to the USS. Moreover, she had no pension scheme in which to invest the OSPS benefits, and no means of setting one up.
- The University never actually informed the OSPS Trustee that she had left her OSPS-linked post; the OSPS Trustee only discovered this by accident in October 2017, and the USS Trustee only found out in November 2017, after the OSPS Trustee's transfer request. Further, she actually had two OSPS-linked roles, so the University had missed two chances to inform the OSPS Trustee that she had left OSPS-linked service.
- Although the University had admitted it was at fault, it seemed the onus was on her, the "victim", to demonstrate the losses she had incurred; this was unfair. She had already pointed out that the cost of one-off financial advice, for transferring her OSPS benefits to a suitable SIPP, would be at least £750. She could not incur these initial costs without a guarantee that they would be reimbursed. Nor could she fund the costs of a SIPP over 30 years then submit a claim for costs, which was unreasonable.
- It was untrue, as the University had suggested, that she would have incurred costs to transfer her OSPS benefits to the USS. While advice might have been useful, it was neither obligatory nor necessary. On the other hand, if she would transfer to an alternative scheme, she would need to obtain advice to determine which SIPP to open.

- It was also untrue, as the University had suggested, that she was not prevented from transferring her benefits out of the OSPS; the University was entirely responsible for preventing transfer to the USS or an equivalent scheme. Additionally, its error meant she had been forced to undergo both schemes' IDRP's, which had caused a delay that was still ongoing. Her OSPS benefits had attracted no investment growth during that period, as she tried to rectify the University's error.
  - In her view, comparing the charges and performance of the USS with alternative schemes, to demonstrate a loss, would require significant expertise and expense, which she should not be required to incur. Moreover, her research showed that the performance of NEST was inferior to the OSPS and USS; so, it was unreasonable to suggest that she should have invested her OSPS benefits in NEST.
  - She was only enrolled in NEST because her employer was required to enrol her in it. She was only a member for two months and her current balance was less than £70. Further, she never wanted to be enrolled in NEST and it was "highly unlikely" she would be enrolled again. So, there was no valid reason she should be forced to transfer her OSPS benefits to NEST, and it was not a comparable scheme to the USS.
  - Investment values could go up and down. However, it would be "surprising" if NEST performed as well as the USS. Further, the distress and inconvenience she suffered when the USS Trustee did not respond to her queries, was significant; her concerns were "dismissed".
  - While it was possible she would re-join the USS this was unknown; it should not be a reason why the University should not compensate her. Also, whilst it was difficult to quantify unknown losses, it would be unfair if the University were not required to redress her for costs not yet incurred; it was possible that she would incur them.
  - She had lost the opportunity of investing her OSPS benefits in the USS. This was not just her preference; it was her right. But for the University's maladministration, she would have been able to exercise that right.
  - £500 was inadequate compensation for the distress and inconvenience suffered. She did not understand how this sum could compensate her for loss of opportunity but not financial loss; in her opinion, the two were linked.
  - Resolution of the complaint required: (1) being allowed to transfer her OSPS benefits to the USS, or compensation for the costs of transferring them to a comparable scheme, from which she could transfer back to the USS at no cost; (2) compensation for loss of investment growth on her OSPS benefits during the period of her complaint; and (3) compensation for "distress, inconvenience and time spent dealing with this case".
21. As Miss N did not accept the Adjudicator's Opinion, the complaint was passed to me to consider. Miss N has provided her further comments, which do not change the outcome. I agree with the Adjudicator's Opinion and will therefore only respond to the key points made by Miss N for completeness.



## Ombudsman's decision

22. I agree that there was maladministration on the part of the University when it did not inform the OSPS Trustee that Miss N had left OSPS-linked service. That failure meant she was denied the opportunity to transfer her OSPS benefits to the USS whilst that option was available to her.
23. However, I do not agree that Miss N had an absolute right to transfer her OSPS benefits to the USS; she was, for a time, eligible to do so. But there is no additional maladministration by the University in this regard, that is, over and above its failure to inform the OSPS Trustee that she had left OSPS-linked service.
24. I agree that Miss N has been disadvantaged as a result of this maladministration. Therefore, I have considered what the University can and should do to put matters right. Having done so, I agree that Miss N's loss is too uncertain to remedy in this instance. Therefore, the appropriate remedy is an award for loss of opportunity and loss of expectation. I also agree that this will have caused her significant distress and inconvenience, so an award of £500 is justified. As explained by the Adjudicator, this sum is designed to recognise the non-financial injustice Miss N has suffered due to the University's maladministration; it is not designed to replace any loss of pension benefits. It is also not meant to be compensation in absolute terms for the actual time spent, etc., but an award in recognition of this. I agree the onus is on Miss N to show what financial loss she has suffered, which unfortunately has not been done here. I have explained this further below.
25. Had Miss N taken up the OSPS Trustee's offer of a backdated transfer value, she could have mitigated her potential loss by investing her OSPS benefits in a personal pension such as, but not necessarily, a SIPP. To my knowledge she has not availed herself of this opportunity.
26. While the costs of managing such a pension might possibly be higher than the USS, this is uncertain as it did not happen and has not happened. It would be unfair for the University to cover the cost of advice that has not been, and may not be, incurred.
27. Further, Miss N would have received the same sum in respect of her OSPS service as if the University had informed the OSPS Trustee that she had left the first role. Insofar as she would have invested in similar funds in NEST, or alternative scheme, it's impossible to determine that a significant loss of investment growth would have occurred.
28. I have considered Miss N's reasons for not accepting a backdated transfer value. For instance, she says she was waiting for this Office to investigate her case. Had she accepted a backdated transfer, it would have interfered with that and caused further problems if she later transferred to the USS. Further, she says she had no other scheme to transfer her OSPS benefits to, nor any means of setting one up.
29. I have considered this. Miss N has confirmed that she had an account with NEST. Although she has explained that she did not wish to transfer her OSPS benefits to

NEST, because she was enrolled in it against her wishes; does not envisage being enrolled in it in future and considers its investment performance to be inferior to the USS, nonetheless I find that it would have been reasonable for her to mitigate her potential loss by doing so. I find it would have been reasonable for Miss N to have taken action to mitigate her potential losses as soon as she realised that a transfer to the USS was no longer possible; there was no need to await the outcome of this Office's investigation.

30. The difficulty here is that while the maladministration by the University is reasonably clear, the loss Miss N has suffered is not. Were I to award Miss N a sum in respect of the marginal costs of managing an alternative pension over several years, and further sums to defray the costs of up-front and ongoing advice, then she could potentially be over-compensated.
31. I sympathise with Miss N and appreciate why she feels the burden of proving her loss is being unreasonably placed on her. However, I find in this particular instance that no clear loss has been shown. The only clear loss is a loss of opportunity and a loss of expectation. That is, Mrs N has been denied the opportunity to arrange her benefits the way she wanted them in the USS. Therefore, the appropriate remedy is an award for non-financial injustice, as a result of the maladministration by the University, as Miss N has had to spend time complaining to the OSPS Trustee, the USS Trustee and this Office, about the matter.
32. I find that the USS Trustee is not required to pay Miss N an award in respect of non-financial injustice. The evidence indicates she found out, in or around December 2017, that she could no longer transfer her OSPS benefits to the USS. In February 2018, she contacted this Office and was advised to invoke the USS's IDRP. Therefore, while Miss N says the USS Trustee did not respond to her enquiries in or around December 2018, which would have caused some distress and inconvenience, I do not find that it would have been significant, so no further action is required by the USS Trustee.
33. Therefore, I uphold Miss N's complaint in part in respect of the maladministration by University.

## **Directions**

34. Within 21 days of the date of this Determination, the University shall pay Miss N £500 for significant distress and inconvenience, including loss of opportunity and loss of expectation.

**Anthony Arter**

Pensions Ombudsman  
22 March 2019