

Ombudsman's Determination

Applicant	Mrs N
Scheme	Universities Superannuation Scheme (the Scheme)
Respondent	Universities Superannuation Scheme Ltd (the Trustee)

Outcome

1. I do not uphold Mrs N's complaint and no further action is required by the Trustee.

Complaint summary

2. Mrs N's complaint concerns her membership in the Scheme. She says that she was not informed, prior to leaving the Scheme, that her benefits would be calculated differently, if she had less than two years' membership in the Scheme.
3. Mrs N also believes that her benefits in the money purchase section (**the DC section**) of the Scheme is incorrect, because the value of those benefits is the same as the value of the contributions she paid into that section of the Scheme.

Background information, including submissions from the parties

4. Mrs N was automatically enrolled into the Scheme when she commenced employment with USS as Head of Client Communications. She was an active member of the Scheme between 14 October 2016 and 1 February 2018 and her contributions were paid via salary sacrifice.
5. The Trustee administers the Scheme in accordance with the rules that govern the Scheme (**the Rules**). Rule 18 states how Member's benefits should be calculated, if they have less than two years' membership in the Scheme (**the two-year Rule**). Relevant extracts of the Rules are in Appendix 1.
6. The Scheme has two sections, a defined benefit section (**the DB section**) and a defined contribution section (**the DC section**). Members accrue benefits in the DB section up to a salary threshold and, if their salary exceeds the threshold, certain contributions are paid into the DC section. The DC section benefits are calculated by reference to the salary over the threshold. In addition, Members can make additional voluntary contributions (**AVCs**), into the DC section, even if their salary is over the threshold. Members can also make a voluntary contribution of 1% of their salary to

the DC section which their employer would then match and pay into the DC section on their behalf (**the match**).

7. Mrs N's salary was above the threshold. So, as well as paying contributions into the DB section, she paid contributions into the DC section, and also chose to pay AVCs and take the match.
8. The Trustee said that, on 8 February 2017, Mrs N was sent a letter welcoming her to the Scheme (**the joiner letter**). On 22 September and 24 October 2017, she received illustrative benefit statements, which showed the benefits she could expect to receive at retirement. Mrs N says that the statements she received were not easy to understand and the figures in each statement were different.
9. On 1 February 2018, Mrs N became a deferred member of the Scheme and was sent a deferred benefit statement (**the deferred statement**) later that month. As the figures in the deferred statement were lower than she expected them to be, she contacted the Trustee to query them. Mrs N says she was informed that the value of her benefits was less than what was stated on previous statements because of the two-year Rule.
10. Unhappy with this, Mrs N complained through the Scheme's internal dispute resolution procedure (**IDRP**). In her submissions, she explained that she was not made aware of the two-year Rule prior to joining, or while she was a member of the Scheme. She said that had she been informed of the two-year Rule, she would have opted out of the Scheme. Mrs N also queried the value of her DC benefits and explained that she believed USS' contributions had not been added to those benefits, as the value of her DC benefits were the same as the contributions she had paid.
11. In the IDRP stage one decision dated 18 June 2018, the Trustee did not uphold Mrs N's complaint. It explained the background to her membership in the Scheme, detailed the benefits the Scheme provides, and explained that her benefits had been calculated in accordance with the Rules. The Trustee explained that when Mrs N had joined the Scheme, she was sent the joiner letter which provided information about the Scheme. It said the joiner letter explained that further information about the Scheme could be found in the Scheme's Member Guide (**the Guide**), which was available for download on its website.
12. The Trustee explained that page 23 of the Guide says:

“Leaving within two years of joining

If you've less than two years' qualifying service, you may choose any one of the following:

...a deferred pension and lump sum in USS based on the value of your contributions to USS but not including any contributions from your employer.

...In respect of the [DC section]... if you've paid more than three months' contributions you'll receive the accumulated value of your benefits (i.e. including any investment returns on those contributions)."

13. In relation to the value of Mrs N's benefits the Trustee said:

"Your benefits have been calculated correctly in accordance with the Rules.

Where a member leaves USS with less than two years' service and their contributions have been paid via salary sacrifice, their deferred benefit options under Rule 18 are as follows:

Retain benefits in USS, as follows:

- [DB section] benefits based on contributions made by the member only; plus
- [DC section] benefits the member may have built up based on contributions made by both the member and the employer; ..."

14. The Trustee also explained how the transfer value of Mrs N's deferred benefits was calculated and explained that all member and employer contributions had been credited to her DC benefits correctly. It provided a breakdown of hers and USS' contributions and said:

"I note that you believe you have paid contributions totalling £30,691, but this is not evidenced by the Trustee's records. If you can provide evidence to the contrary then I will be happy to review this point further."

15. Disappointed with the IDR stage one decision, Mrs N appealed it through stage two of the IDR. In her IDR appeal, Mrs N reiterated that had she been aware of the two-year Rule, she would have opted out of the Scheme and would not have invested as much as she did into the AVC. Mrs N also attached details of the contributions she had paid into the Scheme.

16. Further, Mrs N said she had no recollection of receiving the joiner letter, and even if she was sent the joiner letter, the Trustee should not have assumed that she would have gone online to search for the two-year Rule, within a "convoluted and complex legal guide." The two-year Rule should have been made clear to her at the outset and not "brushed under the carpet." Mrs N also explained she was unhappy that she would have to pay for advice from an independent financial adviser if she wished to transfer her benefits and that she would be charged if she requested a further transfer value quote.

17. Mrs N's IDR stage two appeal was considered by the Advisory Committee (**the Committee**), but the Committee did not uphold her appeal. It explained that the Trustee had complied with its duties in relation to providing information about benefits payable to members who left USS with less than two years' service.

18. The Committee said that the Trustee had been unable to find any evidence to suggest that the joiner letter was not issued to Mrs N, and that providing information about leaver benefits via a publicly available website was reasonable and transparent. In addition, the Committee said there is a well-established communication protocol which is applied to all new and leaving members, and the methods and content of such literature does not cause any “systematic or thematic” issues, whether as identified by Mrs N or otherwise.
19. The Committee confirmed that all contributions had been correctly applied to Mrs N’s DC section benefits and that the deductions shown on her payslip included her full contributions for both the DB and DC sections. The Committee explained to Mrs N that it was only the contributions in excess of the threshold, plus her AVC contributions that were credited to the DC section of the Scheme. The Committee explained why Mrs N would need to seek financial advice before transferring her benefits from the Scheme, informed her that she could access her DC section benefits online, and it explained why the Trustee could charge her a fee if she requested a transfer value quote more than once in a 12-month period.
20. Unhappy with the IDRPs responses, Mrs N referred her complaint to The Pensions Ombudsman and made the following comments: -
 - If she had known about the two-year Rule, she would have opted out of the Scheme and done what she had done in previous years prior to joining the Scheme. She had consistently invested her maximum tax allowance with another provider and she has carried on investing in this way, since leaving USS.
 - Upon accepting a job from USS, she was informed of the “amazing pension deal” she could benefit from. She was not informed of any conditions relating to her membership and it was a “key aspect of the package negotiations on [USS]’ behalf”.
 - She would have asked for more money on the base salary had she known this would backfire and she would miss out on benefits, as she never planned to stay there long.
 - Caveats around early departure are usually highlighted, but as far as she was aware, none of the communications mentioned the two-year Rule.
21. In response to Mrs N’s complaint, the Trustee gave details of the background of the complaint, including information Mrs N was given when she joined the Scheme. It also gave details of the contributions members and employers could make into the DB and DC sections of the Scheme and made some comments. A summary of which is below: -
 - In response to Mrs N’s first complaint, the Trustee explained that the statements provided to her in 2017 set out the benefits she would have been entitled to, assuming she had continued in active service beyond the two-year qualifying

period. Those statements reflected both the contributions USS had made to the Scheme on her behalf via salary sacrifice, and the employer contributions.

- On the contrary, the deferred statement set out the benefits Mrs N was entitled to as a deferred member, without two years' qualifying service, in accordance with the options set out under Rule 18 of the Rules.
- The joiner letter sent to Mrs N on 8 February 2017, gave background information about the Scheme and encouraged her to register on the Scheme website. The joiner letter also stated that the Scheme website held a copy of the Guide and gave clear instructions on how to access the Guide. The Guide clearly explained the benefit options available when a member, like Mrs N, left service without two years' qualifying service.
- So, it is the Trustee's position that Mrs N was provided with all the relevant information, in relation to her benefit entitlement into the Scheme, at the relevant times.
- In relation to Mrs N's second complaint, the Trustee explained that it reviewed the contributions paid into the Scheme by both Mrs N and USS and confirmed that all contributions due have been paid and accounted for.
- The benefit figures Mrs N has calculated do not match the Trustee's records, but Mrs N has not provided the Trustee with any evidence to support her account of the benefits she believes she is entitled to.

Adjudicator's Opinion

22. Mrs N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised below:-

- There are two elements to Mrs N's complaint and the Adjudicator addressed each element in turn.

The first complaint

- Mrs N's first complaint concerns the information she was given when she joined the Scheme. She asserts that had she been informed of the two-year Rule, she would have opted out of the Scheme and invested elsewhere as she has done in the past and has continued to do, since her employment with USS ceased.
- To reach a conclusion on this element of Mrs N's complaint, the Adjudicator reviewed the obligations placed on the Trustee by The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (**the 2013 Disclosure Regulations**). Relevant extracts of the 2013 Disclosure Regulations are in Appendix 2.

- The Adjudicator reviewed the communication that Mrs N received while she was a member of the Scheme. The Adjudicator appreciated that the joiner letter did not provide Mrs N with details of the two-year Rule. However, it did provide her with basic information about the Scheme and told her where she could find the Guide, which would provide her with further information about the Scheme.
- The Trustee provided the Adjudicator with a copy of an undated Guide and the Adjudicator also obtained a copy of the Guide dated April 2019, from the Scheme's website. Page 23 of the Guide informs Members of what happens to their benefits, if they leave the Scheme without having accrued two years' qualifying service. Relevant sections of the Guide are in Appendix 3. Details of the two-year Rule are also available on the Scheme's website, and it provides the same information as is stated in the Guide.
- In the Adjudicator's opinion, the Guide and the information on the Scheme's website concerning what would happen to Members' benefits if they had less than two years' qualifying service was easily accessible to Mrs N. So, in the Adjudicator's opinion, the Trustee complied with its statutory obligations under the 2013 Disclosure Regulations.
- In the Adjudicator's view, Mrs N could have found out about the two-year Rule, after she joined the Scheme, and made an informed decision concerning whether she should or should not opt out of the Scheme. The Adjudicator appreciated Mrs N's comments that details of the two-year Rule were not highlighted in any of the communications she received. However, in the Adjudicator's opinion, as it was not her intention to stay employed by USS for a long period, it would not have been unreasonable for her to contact the Trustee to see if her leaving the Scheme early would have an impact on the benefits she would be entitled to, at retirement.
- The Adjudicator reviewed the benefit statements Mrs N received in September and October 2017. Those statements informed her of the value of her benefits at that time. The Adjudicator accepted that the statements did not say that her benefits could be affected if she left the Scheme prior to completing two years' service. However, in her opinion, it was not unreasonable that the statements did not include this information. This was because, at the time Mrs N received those statements, she was still an active member of the Scheme. The Trustee would not have been aware of her intention to leave the Scheme prior to completing two years' qualifying service, so did not have a reason to calculate her benefits differently.
- In addition, the statement dated 31 March 2017 that Mrs N said she received in October 2017, informed her that she should go to the website to find out more about her benefits. In the Adjudicator's opinion, on the balance of probabilities, had Mrs N done so, she would have become aware of the two-year Rule.
- The Adjudicator appreciated that Mrs N was disappointed with the level of her deferred benefits. However, the Trustee has to pay her the benefits she is entitled

to, under the Rules. Rule 18 of the Scheme states that if a member leaves the Scheme prior to completing two years' qualifying service, only the member contributions that were paid into the DB element of the Scheme would be included in the calculation of their deferred benefits. In the Adjudicator's opinion, Mrs N's benefits have been calculated in accordance with the Rules.

- The Adjudicator noted that Mrs N said that had she been made aware of the two-year Rule, she would have opted out of the Scheme and she would also have negotiated a higher base salary. However, in the Adjudicator's opinion, Mrs N has not suffered a financial loss as a result of being a member of the Scheme, she has experienced a loss of expectation. This is because, at retirement, Mrs N will still receive a pension from the benefits she accrued in the DB and DC sections of the Scheme. However, it may not be the value she was expecting.

The second complaint

23. Mrs N's second complaint concerns the value of her benefits in the DC section of the Scheme. She believes the value of those benefits are incorrect because the value amounts to the total contributions she had paid into that section of the Scheme.
24. The Trustee has previously explained to Mrs N that the evidence she provided shows the contributions that were paid to both the DB and DC sections of the Scheme. However, only the contributions in excess of the threshold were credited to the DC section of the Scheme. So, this is why her contribution history does not match the Trustee's.
25. In the Adjudicator's opinion, the onus is on Mrs N to provide evidence to the Trustee of the total contributions she paid into the DC section of the Scheme, if she believes the Trustee's records are incorrect. There was no evidence that Mrs N has done this and so the Adjudicator was unable to conclude that the value of Mrs N's DC section benefits was incorrect.
26. So, it was the Adjudicator's opinion that this complaint should not be upheld.
27. Mrs N did not accept the Adjudicator's Opinion and said: -
 - The Adjudicator wrongly implies, in her opinion, that she had received the joiner letter. She did not receive any information about the Scheme when she commenced employment with USS.
28. As Mrs N did not accept the Adjudicator's opinion, the complaint was passed to me to consider. I agree with the Adjudicator's Opinion and will therefore only respond to the key point made by Mrs N for completeness.

Ombudsman's decision

29. There is no dispute that Mrs N is disappointed with the benefits she will receive from the Scheme at retirement. So, I have to decide if this loss of expectation has resulted from maladministration by the Trustee.
30. Having read and considered the submissions provided by Mrs N and the Trustee, it is my view that Mrs N's loss of expectation was not due to any maladministration by the Trustee.
31. Mrs N was automatically enrolled into the Scheme when she commenced employment with USS. The Trustee says that Mrs N was provided with a joiner letter when she joined the Scheme, however Mrs N disputes that she ever received this letter. Mrs N would have received a number of communications about the Scheme in the course of being auto enrolled and choosing to make AVC contributions. I would not expect her to recall every piece of correspondence separately. I give weight to the standard practice of the Scheme and conclude it was more likely than not that the joiner letter was sent.
32. Even if the joiner letter was not provided to Mrs S at the time that she commenced employment with USS, it is clear that Mrs N was made aware that she was a member of the Scheme. Detailed information about the Scheme, including information about the two-year Rule was and is currently on the Scheme's website. The Scheme is a large one and I do not find it unreasonable for the Trustee to put important information about the Scheme on its website. The Guide and details of the two-year Rule are easily accessible to members of the Scheme, such as Mrs N. For these reasons I find that the Trustee has complied with its obligations under the 2013 Disclosure Regulations.
33. I note that Mrs N has not made any further comments concerning the Adjudicator's view on her second complaint. I make no comment on the second complaint either, as I agree with the Adjudicator's view in this regard.
34. Consequently, for the reasons stated above in paragraphs 30 - 34, I do not uphold Mrs N's complaint.

Karen Johnston

Deputy Pensions Ombudsman
27 September 2019

Appendix 1

Relevant extracts of the Rules of the Universities Superannuation Scheme

Definitions

Qualifying Service means such period of service or other qualification as entitles a member or former member to preserved benefits.

Preserved Benefits means the benefits which must be payable to or in respect of a former member in order that the scheme shall comply with the preservation requirements.

Preservation Requirements means the preservation requirements of Chapter 1 of Part 4 of PSA 93.

18. EARLY LEAVERS WITHOUT PRESERVED BENEFITS

18.1 Application of this Rule

This rule applies to a former member who does not have qualifying service on ceasing service.

18.2 Refund of contributions

Such a former member is entitled to a refund of:

18.2.1 that individual's contributions (excluding MPAVCs and that individual's contributions as referred to in sub-rule 18.2.3), subject to deduction of any tax and an amount in respect of any CEP, plus compound interest at such rate as the trustee company may determine;

18.2.2 an amount equal to the MPAVCs paid by that individual together with the investment return on those MPAVCs, subject to deduction of tax; and

18.2.3 an amount equal to that part of the member's DC account which is attributable to contributions paid by that individual, including the investment return on those contributions, subject to deduction of tax.

18.3 Pension and lump sum option

18.3.1 Notwithstanding sub-rule 18.2, a former member may elect, in lieu of a refund of contributions, for the amount under sub-rule 18.2.1 to be applied without the deductions to provide a pension and lump sum for the former member at normal pension age (and corresponding payments on death for the former member's spouse or civil partner, dependants and eligible children) of such amounts as the trustee company may determine, acting on actuarial advice.

18.3.2 Contributions made by an employer under sub-rule 41 (Salary Sacrifice) (other than matching contributions under sub-rules 5.3 and 6.3) in respect of a member who has

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become a former member to whom this rule applies shall be included in the amount to be applied to provide the benefits payable under sub-rule 18.3.1.

18.3.3 Such a former member may opt to have a transfer payment made to a transfer arrangement as if Chapter I of Part 4ZA of PSA 93 applied.

18.4 **DC account**

In addition to the benefits under sub-rule 18.3.1, the member's DC account (if any) shall be used to provide benefits in accordance with rule 22 (DC benefit options).

18.5 **MPAVCs**

In addition to the benefits under sub-rules 18.3.1 and 18.4, the member's MPAVC fund (if any) shall be used to provide benefits in accordance with rule 36 (Money purchase AVCs).

Appendix 2

Relevant extracts of The Occupational and Personal Pension Scheme (Disclosure of Information) Regulations 2013 (SI 2013/2734)

Part 2

Information for New and Prospective Members

6 Basic Scheme information

- (1) The basic scheme information mentioned in paragraph (2) must be given in accordance with this regulation.
- (2) The basic scheme information is the information listed in-
 - (a) Part 1 of Schedule 2, and

...

Schedule 2

Basic Information

Part 1

Information to be given by occupational pension schemes that fall within paragraph 1 of Schedule 1

...

- 3 A summary of what can be done with a member's accrued rights where the member leaves pensionable service before normal pension age, including whether accrued rights can be transferred out of the scheme, converted into an annuity, designated as available for the payment of drawdown pension and commuted to a lump sum.

...

Appendix 3

Extract from page 23 of the of the Guide the Trustee has provided

Leaving the Scheme within two years of joining

If you've less than two years' qualifying service, you may choose any one of the following:

- A refund of your own contributions, less statutory deductions of tax; and a premium to reinstate you in part of the State Pension System for any membership up to 5 April 2016 (see adjacent note);
- A deferred pension and lump sum in USS based on the value of your contributions to USS but not including any contributions from your employer; or
- A transfer of the value of your full benefits to another approved pension arrangement. You also have the facility to transfer any benefits you have in the USS [DC section] or money purchase AVC funds independently of your benefits in the [DB section].

In respect of the [DC section], if you've less than three months' contributions, your refund will be based on the amount you've paid in. If you've paid more than the three months' contributions you'll receive the accumulated value of your benefits (i.e. including any investment returns earned on those contributions).

Note: If you've contributed to USS through salary sacrifice, you won't be entitled to a refund of contributions for the period of any sacrifice as these will have been paid for you by your employer as part of the arrangement. Please note that if you transferred benefits from a personal pension into USS, you won't be able to receive a refund even if your service including the transfer, is less than two years.