

Ombudsman's Determination

Applicant	Ms N
Scheme	Teachers' Pension Scheme (TPS)
Respondents	Ashcroft High School (Ashcroft School) Teachers' Pensions (TP)

Outcome

1. I do not uphold Ms N's complaint and no further action is required by TP.

Complaint summary

2. Ms N complained that:-
 - TP provided her with several incorrect benefit statements between 2006 and 2013. (**Complaint 1**)
 - Ashcroft School failed to correctly process the transfer she requested when she rejoined the TPS in 2005. (**Complaint 2**)
 - TP has refused to accept her application to transfer into the TPS on Public Sector Transfer Club (**Club**) terms. She says that TP should accept this application despite it being made outside the 12-month period, given previous errors made by TP. (**Complaint 3**)

Background information, including submissions from the parties

3. There are time limits within which complaints need to be brought to The Pensions Ombudsman (**TPO**). In most cases, applications need to be made within three years of the event being complained about, or, if later, within three years of when an applicant was aware of this issue or should have been aware of it. Complaint 1 and Complaint 2, following an earlier jurisdiction review by my office, have not been accepted for investigation, as they have been made outside of these time limits and so are not within the jurisdiction of TPO. However, some aspects of those complaints have been addressed to the extent that they are germane to Complaint 3.
4. The sequence of events is not in dispute, so I have only set out the key points. I acknowledge there were other exchanges of information between all the parties.

5. The Club is an agreement between certain public service pension schemes to offer preferential terms for members transferring between them. The Cabinet Office's 2019 Club Memorandum (**the Memorandum**) provides the rules on Club transfers.
6. Rule 4.1 of the Memorandum states the following:

“An individual must arrange for an election to proceed for a Club transfer to be received in writing to the receiving scheme within 12 months of becoming eligible to join, or, subject to (i) below, rejoin the scheme. (A request for an estimate of a transfer value should not be regarded as an election to proceed.) ...”.
7. Rule 4.2 of the Memorandum states the following:

“A Club transfer is normally available until the date the individual reaches the normal pension age of the sending scheme. However, a Club scheme may allow a Club transfer to be taken after this date provided the receiving scheme is willing to accept it AND the member has not started drawing the benefits from the sending scheme. The sending scheme may impose other time limit, which affect the individual's rights to a Club transfer value, where there is no statutory requirement to provide preserved benefits”.
8. The TPS is a statutory scheme which is governed by the Teachers' Pension Scheme Regulations (**the TPS Regulations**). The regulations relevant to Ms N's live complaint are the TPS Regulations 2014 (**the 2014 Regulations**) and the TPS Regulations 2010 (**the 2010 Regulations**).
9. Regulation 212 of the 2014 Regulations (see Appendix 1) sets out that, in order for a Club transfer application to be accepted, the application must be made within 12 months of entering pensionable service in the TPS, by written notice to the Scheme Manager.
10. Regulation 213 of the 2014 Regulations goes on to say that, on receipt of any application (made under Regulation 212), the scheme manager “may accept” payment of a club transfer value if, amongst other conditions, retirement benefits have not become payable under either the TPS or the ceding scheme.
11. Ms N's Normal Pension Age (**NPA**) in the TPS is age 60.
12. Regulation 60, together with Schedule 7, of the 2010 Regulations specifies that if a member is in pensionable service on the day on which they reach NPA in relation to their reckonable service, their 'entitlement date' would be the date after they cease to be in pensionable service.
13. Entitlement date is defined in Regulation 3 of the 2014 Regulations as the date on which retirement benefits become payable to a member under the TPS.
14. On 1 September 1981, Ms N began employment as a teacher and joined the TPS.
15. On 31 December 1999, Ms N left pensionable service in the TPS and became a deferred member.

16. On 1 January 2000, Ms N began employment as a School Improvement Adviser for the Luton Education Authority. Through this employment she became a member of the Local Government Pension Scheme (**LGPS**), which was locally administered by the Bedfordshire Fund (**the Bedfordshire Fund**). At that time, Ms N asked TP to transfer the past service benefits she had accrued in the TPS for the period 1981-1999 (**preserved TPS benefits**) to the LGPS on Club terms.
17. On 16 October 2000, the Bedfordshire Fund provided Ms N with a transfer value statement which showed the amount of preserved TPS benefits she could transfer to the LGPS. It also enclosed an acceptance form for Ms N to complete if she wanted to proceed with the transfer. Ms N subsequently returned the acceptance form to the Bedfordshire Fund, and her Club transfer was successfully completed in 2001.
18. On 31 December 2004, Ms N left pensionable service in the LGPS and became a deferred member of the LGPS.
19. On 1 January 2005, Ms N became employed as a Head Teacher with Ashcroft School and became a member of the TPS again.
20. Ms N has said that, immediately upon rejoining the TPS, she requested that Ashcroft School transfer all of the past service benefits she accrued between 1981 and 2004 from the LGPS (**the preserved LGPS benefits**) into the TPS on Club terms. She has also said that, on 11 January 2005, she completed and submitted the relevant transfer application forms to Ashcroft School (**the 2005 transfer request**).
21. Ashcroft School has confirmed that Ms N requested a transfer from the LGPS to the TPS in 2005 and, in a letter sent in September 2019, has admitted that Ms N's request "was never carried out by the School".
22. Between 2006 and 2013, TP provided Ms N with several incorrect benefit statements. These statements erroneously showed the pensionable service Ms N accrued in the TPS, between 1 September 1981 and 31 December 1999, even though this service had been transferred to the LGPS in 2001. The first one that TPO has been provided with was dated 29 December 2006.
23. In November 2013, TP corrected the error in Ms N's benefit statements by removing the TPS service for the period 1981-1999 from her service record, to reflect the Club transfer, from the TPS to the LGPS, that had taken place in 2001. The benefit statements Ms N received after this correction, from 2014 onwards, only showed the TPS service she accrued from 1 January 2005 onwards.
24. Ms N's representative has said that "in both 2014 and 2015 [Ms N] received annual benefits statements from the TPS which stated that she had 16 years' 114 days less accrued service in the TPS than was set out in her statements from 2006-2013". As a result, it went on to say that Ms N "on both occasions, immediately queried this with Ashcroft High School's business manager...". It was not, at that point, raised with TP.

25. On 23 August 2018, TP responded to an enquiry Ms N raised regarding her service record. Ms N was informed that the service she accrued in the TPS between 1 September 1981 and 31 December 1999 had been transferred to the LGPS in 2001.
26. On 26 October 2018, Ms N sent transfer application forms to TP requesting it to accept a transfer of her preserved LGPS benefits into the TPS on Club terms.
27. On 30 October 2018, TP rejected Ms N's Club transfer application. It informed her that her application had been declined. This was because she rejoined the TPS on 1 January 2005 and, in order to be eligible for a Club transfer, the application had to be submitted within 12 months of joining or rejoining the TPS.
28. On 29 November 2018, Ms N sent transfer application forms to the Bedfordshire Fund requesting it to transfer her preserved LGPS benefits into the TPS on Club terms.
29. On 6 December 2018, the Bedfordshire Fund rejected Ms N's Club transfer application. It explained that her application had been turned down because she had reached NPA in the LGPS and therefore was unable to transfer to another pension scheme.
30. On 31 August 2019, Ms N left pensionable service in the TPS and became a deferred member.
31. On 11 September 2019, Ashcroft School sent a letter to TP asking it to accept Ms N's Club transfer application. It explained that Ms N had submitted a transfer request in 2005 as she was keen to ensure that her pension was with one provider. However, the transfer was not carried out by Ashcroft School, as the school was in special measures and the Finance/HR department in particular was in disarray. It said that Ms N had no reason to suspect that her 2005 transfer request had not been actioned, due to the incorrect benefit statements TP provided her between 2006 and 2013.
32. On 19 September 2019, TP responded to Ashcroft School explaining that it could not accept Ms N's late Club transfer application, as she had become entitled to receive retirement benefits from the TPS.
33. On 21 May 2020, Ms N raised a formal complaint with the Bedfordshire Fund and made the following arguments:-
 - In 2005, she asked Ashcroft School to transfer her preserved LGPS benefits into the TPS on Club terms, however this was not actioned. As a result of this, she lost the advantage of a final salary link, which significantly reduced the value of her pension. All of the service she accrued between 1981 and 2004 will be calculated using the salary of £46,809.00, which was her salary when she left the LGPS, in 2004. Even though, her final pensionable salary when she left the TPS, in 2019, was £120,997.

- Between 2006 and 2013, TP sent her several incorrect benefit statements which showed the TPS service she accrued between 1981 and 1999. This led her to believe that the transfer she requested in 2005 had been completed.
 - Upon realising that her 2005 transfer request had not been actioned, she subsequently sent application forms to the Bedfordshire Fund to effect the same transfer in 2018. However, the Bedfordshire Fund refused her application on the basis that she had reached NPA under the LGPS.
 - The legislation governing the LGPS allowed the Bedfordshire Fund to process a Club transfer even in circumstances where the member had reached NPA, if the sending scheme and the receiving scheme both gave their consent. So, in view of the errors that had been made during the administration of her pension and the significant financial loss she incurred, the Bedfordshire Fund should exercise its discretion and process a Club transfer to the TPS.
34. On 29 May 2020, Ms N wrote to TP and explained that she had raised a formal complaint with the Bedfordshire Fund for refusing to process a Club transfer to the TPS. She said she was notifying TP in case it was asked to accept this transfer.
35. On 11 June 2020, TP sent a letter to Ms N informing her that there were no provisions within the TPS Regulations that would allow it to accept a transfer after a member had become entitled to receive their retirement benefits. It explained that as retirement benefits had become payable to Ms N, it could not accept a Club transfer at such a late stage.
36. On 17 June 2020, the Bedfordshire Fund responded to Ms N's complaint. It said the following:-
- There was no record of Ms N requesting a transfer from the LGPS to another pension arrangement at any point before December 2018.
 - If the 2005 transfer request had been actioned, the LGPS service for the period 1 January 2000 to 31 December 2004 would have been included in the TP statements Ms N received between 2006 and 2013.
 - It provided Ms N with annual benefits statements between 2005 and 2018. The benefits shown in these statements were clearly based on the service she accrued in both the TPS and the LGPS.
 - It accepted that the decision it provided on 6 December 2018 was incorrect. It was based on the assumption that Ms N's preserved LGPS benefits were effectively in payment as once processed, the payments would be backdated to September 2018. However, that was not the date Ms N would reach her NPA under the LGPS, it was simply the earliest date she could claim her benefits without reduction.

- The legislation governing the LGPS allowed for a transfer up to 12 months before NPA, which in Ms N's case was age 65. Technically, this meant that a transfer on Club terms was not available, as Rule 4.1 of the Memorandum specified that a Club transfer application had to be made within 12 months of joining the receiving scheme.
 - It was able to process a transfer to the TPS or any other pension arrangement on non-Club terms, but Ms N would lose the final salary link.
 - The information provided so far indicated that TP would not accept a transfer on any terms. However, if TP was to confirm that it was willing to accept a transfer and specified whether this would be on Club terms or non-Club terms, it was willing to process Ms N's transfer request.
37. On 30 June 2020, Ms N sent a letter to inform TP that the Bedfordshire Fund had confirmed that it was willing to process a Club transfer to the TPS, as she had not reached her NPA of 65 under the LGPS. She explained that Rule 4.2 of the Memorandum allowed the receiving scheme to accept a Club transfer until the member reached their NPA under the sending Scheme. She said that, as she was aged 60, she was well within the age limit for TP to accept a Club transfer from the LGPS. Ms N made the argument that although she was requesting a Club transfer outside of the 12-month period, in view of the incorrect benefit statements TP had provided to her it would be appropriate for TP to accept a late transfer of her preserved LGPS benefits on Club terms.
38. On 14 July 2020, TP responded to Ms N saying that its position regarding a Club transfer was outlined in its letter dated 11 June 2020.
39. On 4 August 2020, Ms N wrote to the Department for Education (**DfE**), as she was not satisfied with TP's response. In this letter, Ms N reiterated the complaint points she raised with the Bedfordshire Fund on 21 May 2020 and with TP on 30 June 2020, and requested that the DfE urge TP to accept her Club transfer application.
40. On 25 August 2020, the DfE responded to Ms N and said the following:-
- Its responsibility was to ensure that the TPS Regulations had been applied correctly and the process followed by TP had been appropriate.
 - It was disappointing that TP failed to correct Ms N's service record until 2014, so it accepted that Ms N could have reasonably assumed up to 2014 that her 2005 transfer request had been actioned. However, following the correction, multiple benefit statements were made available to Ms N which clearly showed a significant reduction in her accrued service. However, she did not query this reduction until 2018.
 - The 2014 Regulations were clear that any Club transfer application had to be made to the Secretary of State within 12 months of joining the TPS, which in Ms N's case was not done. TP was correct in stating that, as Ms N left pensionable

service on 31 August 2019, she became entitled to retirement benefits on 1 September 2019. Considering this, it was satisfied that TP had correctly applied the TPS Regulations and Ms N's Club transfer application could not be accepted.

- It acknowledged that Ms N had seen a significant increase in her salary since 2005 and this was why she believed she had suffered a financial loss. However, TP's refusal to accept her Club transfer application was correct.

41. On 25 September 2020, Ms N requested that the DfE consider her complaint under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). She said the following:-

- She honestly believed that her 2005 transfer request had been actioned. The incorrect benefit statements she received from TP, between 2006 and 2013, confirmed this belief. It was only in August 2018 that she realised that a transfer had not taken place and she immediately began taking steps to rectify this issue.
- In 2014 and 2015, she noticed that her TP benefit statements showed 16 years and 114 days less accrued service. On both occasions she queried this with Ashcroft School, who informed her that TP were experiencing administration issues. A colleague reassured her that the problems had been identified and would be resolved in due time.
- It was reasonable for her to accept her colleague's explanation that the 16 years and 114 days of missing service was purely down to administrative issues. This was because of the erroneous benefit statements she received from TP and because TP failed to inform her that her 2005 transfer request had not been actioned.
- Although more than 12 months had passed since she rejoined the TPS, a potential avenue of redress could be for TP to grant her full protection member status under the 2014 Regulations. According to Paragraph 26 of Part 5 Schedule 3 of the 2014 Regulations, if a full protection member made an application to TP and asked for a Club transfer value to be accepted, "the scheme manager must accept payment of the Club transfer value if it is offered". The terms applicable to full protection members for effecting a Club transfer did not contain a 12 month limitation on such a transfer being accepted by TP.
- If TP was to contend that retirement benefits had become payable to her under the TPS, it was important to note that she had been requesting a Club transfer since August 2018, before she reached her NPA. She subsequently had withheld from drawing her pension until her complaint had been resolved.
- Rule 4.2 of the Memorandum allowed TP a margin of flexibility to accept her Club transfer application. In light of the significant detriment and maladministration she had suffered, it would be reasonable for TP to accept a transfer of her preserved LGPS benefits into the TPS on Club terms.

42. On 16 October 2020, the DfE responded to the complaint under stage one of the IDR. It said the following:-

- Ashcroft School had not provided any contemporaneous evidence that Ms N completed a transfer application in 2005, or that this was forwarded to TP or the Bedfordshire Fund. TP further confirmed that no transfer application was received from Ashcroft School at that time.
- Having gone through the transfer process previously, Ms N would have been aware of the need for her to personally sign paperwork with reference to the transfer. In particular, for her to sign and agree to the transfer proceedings, once a transfer value statement was provided by TP. So, it would have expected to see evidence on Ms N's record that she queried the progress of her 2005 transfer request, when no transfer correspondence was forthcoming.
- While Ms N's past TPS service for the period 1981 to 1999 had continued to show on the benefit statements she received from TP between 2006 and 2013, it did not show any of the service she accrued in the LGPS between 2000 and 2004.
- Once TP corrected Ms N's service record, in November 2013, it should have been apparent, from the subsequent benefit statements, that her preserved LGPS benefits had not been transferred to the TPS in 2005. Although Ms N said that she raised this issue with Ashcroft School, it was unfortunate that she did not contact TP directly with her concerns.
- Ms N quoted Paragraph 26 of Part 5 Schedule 3 of the 2014 Regulations as stating that 'the scheme manager must accept payment of the Club transfer value if it is offered'. Part 5 dealt with actions to be taken on receipt of a Club transfer value, and Paragraph 6 made it clear that these must be paid into the existing scheme for full protection members. These were instructions for dealing with the payment of a Club transfer that had been accepted. It was Section 2 (transfers out) Part 10 (transfers) of the 2014 Regulations that dealt with applications for the acceptance of a Club transfer. In this section, Regulation 212 made it clear that such an application must be made within 12 months of entering pensionable service in the TPS. Regulation 213 made it clear that a Club transfer might not be accepted if retirement benefits had become payable under either the TPS or the sending scheme.
- It was disappointing that TP failed to correct Ms N's service record in the TPS, to reflect her 2001 transfer, until November 2013. However, the DfE was not convinced that this prevented Ms N from transferring her preserved LGPS benefits into the TPS on Club terms, within the prescribed time limit.

43. In her submission to TPO, Ms N said in summary that:-

- The question of whether or not she exercised her right to submit a Club transfer application within 12 months of rejoining the TPS is irrelevant. This is because, to the best of her knowledge, her 2005 transfer request had been actioned.

- A series of errors and mistakes have been made during the administration of her pension. The provision of incorrect benefits statements from TP over a seven-year period solidified her belief that the transfer she requested in 2005 was completed by TP within the required 12-month period.
- Rule 4.2 of the Memorandum gives TP a legal basis on which it can accept her Club transfer application, despite it being made outside the 12-month period.
- As TP has refused to accept a Club transfer of her preserved LGPS benefits into the TPS, she has lost the final salary link for all the service she accrued between 1981 and 2004. The practical effect of this is that the value of her pension has significantly reduced by around £10,000 per annum and she has lost around £30,000 of the tax free lump sum.

44. In its submissions to TPO, TP said in summary that:-

- It is not in a position to accept Ms N's late Club transfer application, as she has not met the requirements outlined in the 2014 Regulations. The specific provisions preventing a Club transfer are Regulations 212 and 213.
- Paragraph 26 of Part 5 Schedule 3 of the 2014 Regulations deals with actions to be taken on receipt of a 'Club transfer value'. As Ms N does not meet the criteria for the acceptance of a Club transfer, this provision is not applicable to her.
- While Ms N has said that she has not yet claimed her pension, the regulatory position is that retirement benefits have become payable in line with "Case A" of Regulation 60 of the 2010 Regulations.
- It is aware that the Bedfordshire Fund rejected Ms N's Club transfer application initially but has since stated that it is willing to allow a transfer on an exceptional basis, provided that TP is willing to accept such a transfer. It can confirm that TP is not willing to accept Ms N's late transfer application, as the requirements specified in the 2014 Regulations have not been met. Further, in TP's opinion, Ms N could have acted before 2018 to initiate a Club transfer application or late transfer appeal.
- It can confirm that Ms N is already a full protection member of the TPS. However, full protection status does not allow for a Club transfer application to be accepted outside of the 12-month timescale, as Ms N has suggested.
- Ashcroft School has not provided any contemporaneous evidence that Ms N completed a Club transfer application in 2005 nor that this was sent on to TP or the Bedfordshire Fund at that time. TP can confirm that no transfer application forms were received from Ms N or Ashcroft School within 12 months of 1 January 2005, the date on which Ms N rejoined the TPS.
- It considers that Ms N could have checked the progress of her 2005 transfer request with Ashcroft School or the Bedfordshire Fund or queried whether a

transfer had been noted on her record. Discretion was considered in Ms N's case but was not deemed appropriate.

- Discretion where a Club transfer application has been submitted outside of the 12-month time limit considers whether there were delays outside of the member's control. When Ms N raised her complaint under the IDRP, the finding was that it was within Ms N's control to submit a transfer application within the prescribed time limit or to contact TP about the transfer. In addition, there was no discretion to accept a late transfer application where the transferee had reached NPA and was no longer in pensionable service. Under these circumstances a transfer of any kind was not possible, whether it was on Club or non-Club terms.

Adjudicator's Opinion

45. Ms N's complaint was considered by one of our Adjudicators who concluded that no further action was required by TP. The Adjudicator's findings are summarised in paragraphs 46 to 52.
46. Complaint 1 and Complaint 2 were outside the time limits within which complaints needed to be brought to TPO, therefore the Adjudicator made no findings regarding the incorrect benefit statements Ms N received from TP between 2006 and 2013, or the matter of Ms N's transfer request not being actioned by Ashcroft School. However, she acknowledged that TP had accepted that it had provided Ms N with incorrect statements and that Ashcroft School had said that it had failed to process Ms N's 2005 transfer request.
47. The complaint the Adjudicator was able to investigate and reach a conclusion on was Complaint 3, which related to TP's refusal to accept Ms N's application to transfer her preserved LGPS benefit into the TPS on Club terms.
48. After reviewing the Memorandum and the relevant TPS Regulations, the Adjudicator was satisfied that TP was correct that Ms N did not meet the necessary requirements to qualify for a Club transfer. The Memorandum and the 2014 Regulations stipulated that a Club transfer could only be accepted for members who made their application within 12 months of joining or rejoining the receiving scheme. In Ms N's case, since she rejoined the TPS in January 2005 and submitted a Club transfer application to TP in October 2018, her application was made 13 years after the 12 month period had passed.
49. The Adjudicator noted Ms N's assertion that Rule 4.2 of the Memorandum provided that a Club transfer was available to members until they had reached their NPA under the ceding scheme and that she had not reached her NPA in the LGPS. However, she explained that Rule 4.2 also came with the caveat that the receiving scheme had to be willing to accept the Club transfer. In this case, TP had refused to accept Ms N's Club transfer application for two specific reasons. Firstly, she had not met the 12-month time frame required for such a transfer. Secondly, her benefits in the TPS had become payable. While Ms N had not yet claimed those benefits, in accordance with

the 2010 Regulations, as of 1 September 2019 she was entitled to receive retirement benefits from the TPS. These benefits automatically became payable to her when she left pensionable service in the TPS on 31 August 2019, after she attained her NPA of 60 in September 2018.

50. In the Adjudicator's Opinion, as Ms N had not satisfied the requirements outlined in the 2014 Regulations and the Memorandum, TP was not compelled to accept her application to transfer into the TPS on Club terms.
51. Ms N contended that TP should accept her Club transfer application despite it being made outside the 12-month period, given previous errors made by TP. Specifically, TP's provision of incorrect benefit statements during the period 2006-2013. However, as the incorrect statements were not within TPO's jurisdiction to investigate the Adjudicator reached no conclusion as to whether or not it was reasonable for Ms N to have relied on them. She did note however that the statements were corrected from 2014 onwards and Ms N had not provided substantiated evidence as to why she took no action after receiving the corrected statements. Also, having previously transferred her benefits on Club terms she expected Ms N to have realised that the transfer she requested in 2005 had not been completed and followed this up.
52. The Adjudicator concluded that in her view, TP was correct to refuse to accept Ms N's Club transfer application. TP was strictly bound by the Memorandum and the TPS Regulations and could only act in accordance with their provisions. While she appreciated Ms N's argument that TP should exercise discretion in her case. The Adjudicator disagreed as, in her opinion, Ms N had ample opportunity to query the status of her 2005 transfer request and could have reasonably realised earlier that this request had not been acted upon. For these reasons, the Adjudicator considered that Ms N's complaint could not be upheld.
53. Ms N did not accept the Adjudicator's Opinion and asked the Adjudicator to reconsider. Ms N provided the following comments:
 - She submitted completed transfer application forms to Ashcroft School in 2005 which she believed had been submitted to TP. She then received incorrect benefit statements from TP in subsequent years which indicated that her transfer had been successfully completed. Had it not been for the failure of Ashcroft School initially and then TP, she would have transferred her preserved LGPS benefits into the TPS within the 12 month statutory timeframe. Allowing this transfer now on discretionary grounds would prevent her from being penalised and suffering a significant injustice as a result of Ashcroft School's and TP's failings.
 - The Adjudicator had attached disproportionate weight to the steps Ms N did or did not take, whereas no such weight was applied to TP's provision of the incorrect benefit statements between 2006 and 2013. While she had accepted that TPO would not provide a ruling of maladministration on the issue of the incorrect statements, this was based on the understanding that the statements would still

be taken into account when considering whether it was reasonable for TP to refuse her Club transfer application.

- She has provided a letter from the former business manager of Ashcroft School (**the business manager's letter**) which detailed the administrative challenges faced by Ashcroft School when Ms N rejoined the TPS in 2005. This letter was, she said, of evidentiary value as it directly addressed the question of whether she submitted a Club transfer application to Ashcroft School in 2005 and explained that there may have been errors which arose in the transfer process, which were not attributable to her. However, the business manager's letter was not referenced or considered by the Adjudicator in the Opinion.
- There were, in her view, discretionary grounds available to TP that would allow it to accept her Club transfer application. Also, if the conclusion is that she is unable to request the Club transfer now in view of the fact that doing so is outside the 12 month timeframe, then it follows that any prior steps which she could have taken would have been ineffective in any event.
- The Adjudicator did not mention or reference TPO's previous decision made in the case of *Bennett* (PO-7182) in her Opinion. In this case, Ms Bennett had made two past service transfers between the LGPS and NHS pension scheme (**NHS PS**) in 1994 and 1998 before rejoining the NHS PS in 2000 but did not request a further Club transfer at that point until 2011. Ms Bennett argued that when she rejoined the NHS PS, her employer should have taken steps to tell her about the option to transfer her past service benefits back into the NHS PS, and, further, that this transfer should be allowed on Club Transfer terms. Considering the extent of the legal duties on employers set out in the House of Lords decision in *Scally*¹, Ms Bennett's complaint was upheld, and NHS Business Services Authority (**NHS BSA**) was directed to offer her a transfer on Club terms.
- Considering that, the facts and circumstances of the *Bennett* (PO-7182) case are so closely aligned with those of her case it would be reasonable for TPO to consider the decision taken in that case and to conclude that the conclusions reached are also applicable in her case.
- In accordance with the 2014 Regulations, she has full protection member status in the TPS. The terms applicable to full protection members for taking a transfer into the TPS on a Club basis do not contain a 12 month limitation on such a transfer being accepted.

54. The Adjudicator took Ms N's comments into consideration but concluded that these did not change her Opinion. She stated the following:

- The error in the benefit statements was corrected by TP in November 2013. So, from 2014 onwards it should have been apparent to Ms N that her 2005 transfer

¹ *Scally v Southern Health and Social Services Board* [1992] 1 AC 294

request had not been actioned. Particularly as, she had not received any transfer correspondence from Ashcroft School, the Bedfordshire Fund or TP that confirmed the completion of the supposed transfer.

- After reviewing the timeline of Ms N's case, it was evident that TPO had made it clear to her, from the outset, that Complaint 1 and Complaint 2 were not accepted for investigation. Ms N was informed that the only complaint we would be able to investigate would be in relation to TP's refusal to accept a Club transfer of her preserved LGPS benefits into the TPS.
- She was unable to comment on what the outcome of Ms N's complaint would have been had she raised it at a different time. The outcome outlined in the Opinion was based on the fact that, as Ms N had not submitted her transfer application forms to TP within the required 12 month timeframe, and because her retirement benefits had become payable under the TPS, it was correct for TP to refuse her Club transfer application.
- TP had confirmed that Ms N had been treated as a full protection member in the TPS. However, full protection did not allow for an application to transfer in to be accepted outside of the 12 month timescale.
- Paragraph 26 of Part 5 Schedule 3 of the 2014 Regulations dealt with actions to be taken on receipt of a 'club transfer value'. The purpose of Part 5 of Schedule 3 related to members who joined the career average scheme but were allowed to transfer previous benefits into the old final salary scheme and retain a link to their salary in the career average scheme. This, however, was not relevant to Ms N as, since 2015, HM Treasury ruled that a scheme could not accept a Club transfer where the gap between the sending scheme and the receiving scheme was more than 5 years. Hence, even if Ms N had joined the TP career average scheme, there would have been more than 5 years between leaving the LGPS and joining the career average scheme.
- Regulations 212 to 214 contained in Section 3 Part 10 of the 2014 Regulations dealt with applications for the acceptance of a club transfer value where a transfer was accepted on 'inner Club transfer terms'. These stipulated that in order for a Club transfer application to be accepted, the application must be made within 12 months of entering pensionable service in the TPS and that an application may not be accepted if retirement benefits have become payable under either the TPS or the ceding scheme.
- She did not refer to the *Bennett* (PO-7182) case in the Opinion because she was required to consider each complaint on its own merits and in her view, the facts presented in that case did not align with the facts presented in Ms N's case.
- It was difficult for her to conclude that TP should exercise discretion in Ms N's case considering, there was no evidence that it had made any errors other than

the provision of the incorrect benefit statements which was not within TPO's jurisdiction to investigate.

55. Ms N disagreed with the Adjudicator and the complaint was passed to me to consider. Ms N provided some additional comments reiterating the complaint points she had previously raised with the Adjudicator.
56. I note the additional points raised by Ms N, but they do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

57. The crux of Ms N's complaint is that TP should retrospectively accept her Club transfer application, despite it falling outside of the 12 month statutory timeframe. Ms N maintains that she requested this transfer in 2005, which unbeknown to her was not actioned by Ashcroft School. She says that the incorrect benefit statements she received from TP between 2006 and 2013 misled her into believing that her 2005 transfer request had been processed.
58. My powers are set out in Part X of the 1993 Act² and subsequent regulations. This legislation sets out what I can and cannot do. In particular, I must apply the law that applies at the relevant time and determine whether it has been applied correctly. I must decide complaints and disputes in accordance with established legal principles rather than by reference to what I may consider fair and reasonable.³
59. My jurisdiction for investigating and determining complaints is governed by legislation. Of particular relevance to this case is the Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996 (the **Ombudsman Regulations**). While my office carries out an initial jurisdiction assessment before a complaint is accepted for investigation, it is necessary to continue to consider my jurisdiction throughout the investigation process because additional information may become available, or further submissions are made, which could alter the initial jurisdiction decision.
60. Regulation 5 of the Ombudsman Regulations (see Appendix 3) deals with the time limits for making complaints and referring disputes to me. Under Regulations 5(1) and 5(2), a complaint to my office must be made no later than three years from the date the events complained about occurred, or within three years of when the applicant knew or ought reasonably to have known of those events. I also have the discretion, under Regulation 5(3), to consider a complaint made outside the three-year time period. However, in order for me to look at a complaint under Regulation 5(3), it has to be considered reasonable that an application was not made within the three year period following the occurrence (or awareness) of what is being complaint about; and

² See <https://www.legislation.gov.uk/ukpga/1993/48/part/X/enacted>

³ *Henderson v Stephenson Harwood* [2005] Pens LR 209 (s12)

if the complaint was not brought within three years, it has to be brought within a further period that can be considered reasonable⁴.

Complaints 1 and 2

61. For the reasons already provided to Ms N in my office's earlier jurisdiction decision, Complaints 1 and 2 are out of time, and not within my jurisdiction. Ms N's complaint, that TP provided incorrect benefit statements to her between 2006 and 2013 is out of time under Regulation 5(1) and Regulation 5(2) because she did not bring it to me within three years of the event or within three years of when she knew, or ought to have reasonably known, about the event. Regulation 5(3) allows for the exercise of discretion where the delay in making the complaint is reasonable. However, I do not consider that there are reasonable grounds for the delay in this case, and I agree with my office that there is no basis for the exercise of my discretion.
62. Similarly, Ms N's complaint that Ashcroft School failed to carry out her 2005 transfer request falls outside my jurisdiction under Regulation 5 of the Ombudsman Regulations. This is because Ms N brought the complaint to me more than three years after the event, and I do not consider that there are reasonable grounds for the delay in bringing the complaint (and, in any event, the time limits contained in the Limitation Act 1980 would also result in me being unable to award a remedy even if I were to take on the complaint under the Ombudsman Regulations).

Complaint 3

63. Ms N's complaint about TP's refusal to accept her late application to transfer into the TPS on Club terms is within my jurisdiction under Regulation 5 of the Ombudsman Regulations as it was brought to me within the required time limits.
64. In short, I find that TP has acted in accordance with the TPS Regulations when declining to accept the transfer of Ms N's preserved LGPS benefits to the TPS on Club terms.
65. The TPS Regulations specify that Club transfers are subject to strict time limits and members can only apply to make such transfers, by written notice to the scheme manager (i.e. TP), within 12 months of first joining or rejoining the TPS (Regulation 212 of the 2014 Regulations). In my view, it is clear that Ms N was aware of this requirement, and that the issue is that she thought an application to transfer had been made in January 2005, when in fact it had not. Accordingly, this first hurdle was not cleared – as an application was not received by the scheme manager in the first 12 months of Ms N rejoining the TPS.
66. Rather, the application was received by TP on 26 October 2018, by electronic means. This was more than 13 years after her start date with Ashcroft School, and so the

⁴ Notwithstanding that discretion, it is also important to note that, in most circumstances, I cannot make a finding that a court would not be able to make - and so I must also have regard to other legislative time limits (for example, the Limitation Act 1980).

application was rejected on 30 October 2018. I find this to be in accordance with the requirements of Regulation 212 of the 2014 Regulations.

67. Ashcroft School appealed that decision, but not until later the following year – on 11 September 2019. I understand that TP considered whether to exercise a discretion to allow the transfer at that point⁵. However, as by that stage Ms N's benefits had become payable (on the basis that she had left pensionable service on 31 August 2019, which was after her NPA), TP decided that discretion was not applicable in those circumstances.
68. This was because of a further hurdle, contained in Regulation 213 of the 2014 Regulations, that sets out that “on receipt of the application, the scheme manager may accept payment of a club transfer value...” only if the member's retirement benefits have not ‘become payable’ under the ceding scheme or the TPS. Notwithstanding that Ms N had failed to meet the first requirement of applying within the first 12 months, it is clear that Ms N did not satisfy this requirement at the point of her appeal. Accordingly, at that point I agree that a Club transfer could not be accepted under the Regulations (and it is not clear to me that paragraph 4.2 of the Memorandum would override that restriction in these circumstances, although that does not in any event effect my overall conclusion) either.
69. Ms N's representatives have also argued that Paragraph 26 of Part 5 of Schedule 3 of the 2014 Regulations provides a discretion to accept a Club transfer in these circumstances. However, in my view, it does not assist Ms N. Paragraph 25(2)(b) of Part 5 sets out that this Part (i.e. the whole of Part 5) “does not apply if ... (b) retirement benefits have become payable to [Ms N] under this scheme or under the sending scheme”. This is the same wording used in Regulation 213 that has already been identified as preventing a Club transfer where a pension has become payable from TPS and, on the face of it, would therefore also restrict the applicability of Part 5 of Schedule 3 to Ms N.
70. Therefore, I find it appropriate that TP refused to accept Ms N's Club transfer application.
71. Ms N and her representative raise a number of issues associated on the face of it with Complaints 1 and 2, that they argue should, notwithstanding that those complaints are out of time, be considered as a part of my assessment of Complaint 3. In my view these would not, in any event, result in a different outcome to Complaint 3.
72. Firstly, Ms N's representatives argue that the circumstances of Ms N's failure to make a transfer application in 2005, in the 12-month time limit specified in the 2014 Regulations, are such that I should direct TP to exercise a discretion to allow a late transfer. For the reasons given above, I am not convinced that such a discretion

⁵ Reference is not made to the basis of that discretion, but I note that Regulation 222 of the 2014 Regulations provides a discretion to the scheme manager to extend the time within which anything is required under the 2014 Regulations – such that the 12-month limit contained in Regulation 212 could be extended.

continues to exist now that Ms N's benefits have become payable. However, even if it did exist, I would not find that the circumstances are such that I would direct TP to exercise that discretion in Ms N's favour.

73. Notably, I agree with the view expressed by the DfE that Ms N was, or ought to have been, aware of the existence of the transfer formalities in place at the time of her 2005 transfer request. She could have reasonably identified that her transfer request had not been carried out by Ashcroft School in 2005 and therefore I would not direct that TP is obligated to now accept her Club transfer application. For example, Ms N's previous experience with transferring her preserved TPS benefits to the LGPS in 2000/2001 provided her with an understanding of the necessary steps involved in such transfers. One key aspect of the transfer procedure is receiving transfer quotes, completing paperwork and receiving confirmation correspondence in relation to the transfer. The absence of that chain of paperwork regarding her 2005 transfer request should, in my view, have prompted Ms N to seek further clarification from Ashcroft School, the Bedfordshire Fund or TP.
74. For example, Ms N ought to have recalled that when she requested a Club transfer on 16 October 2000, the Bedfordshire Fund provided her with a transfer value which clearly outlined the amount of TPS benefits she would be transferring to the LGPS so that she could make an informed decision before going ahead with the transfer. As such, it is reasonable to expect that Ms N would have anticipated that TP would contact her and provide her with a similar transfer value before processing any transfer to the TPS. Given that Ms N did not receive any transfer value following her 2005 transfer request, she ought to have been concerned about the status of this transfer and to have followed up on her request with the Bedfordshire Fund or TP. She failed to take the necessary steps to ensure that this transfer was complete.
75. Secondly, Ms N and her representative argue that she did everything that she needed to do to make a transfer, and point to a letter from the former business manager of Ashcroft School as having evidentiary value on the basis that it corroborated that she had made her 2005 transfer request. I have read the letter, but do not agree that it is of particular assistance in this complaint. For example, the business manager points to failings in Ashcroft School at the time "she commenced employment as Business Manager in January 2008" and then looks to set out "why [Ms N] believes she made a past service transfer application of her LGPS benefits when rejoining the TPS in 2005". While it paints a picture of Ms N as a professional and methodical individual, it does not provide direct evidence of Ms N having made an application.
76. Thirdly, while Ms N's complaint against TP in relation to the incorrect benefit statements has been found to be out of time (Complaint 1), her representative argues that they should still be taken into account when deciding whether or not to direct TP to exercise its discretion (to the extent it now has one) to accept a late transfer. However, I am not persuaded that I would consider them to be a factor of significant weight in exercising such a discretion or that Ms N relied on them to such an extent that it would be proper to direct TP to exercise a discretion in Ms N's favour.

77. For example, I have been asked to consider incorrect benefit statements received between 2006 and 2013, the first of those being dated 29 December 2006. I note that benefit statement was dated after the closure of the 12-month window for making Club transfers contained in Regulation 212 of the 2014 Regulations and so, even if it contained the correct information, and had alerted Ms N of a failure in the application process, it still could not have allowed Ms N to make an application in that 12-month window. Furthermore, in my view, it was unreasonable for Ms N to have relied on the incorrect benefit statements she received from TP to suggest that a successful transfer of her LGPS benefits to the TPS had taken place in 2005. While the statements erroneously showed the TPS service Ms N accrued between 1 September 1981 and 31 December 1999, they did not show the service she had accrued with the LGPS between 1 January 2000 and 31 December 2004. Ms N, exercising reasonable diligence, should have noticed this discrepancy, as it suggested the Club transfer had not taken place, and queried the missing LGPS service instead of placing unwavering reliance on the TP statements. Unfortunately, there is no evidence of Ms N raising such an enquiry with TP.
78. Additionally, the Bedfordshire Fund claims to have provided Ms N with annual benefit statements from 2005 to 2018. If this was the case, then it is unusual that Ms N did not question receiving these statements if during this period she steadfastly believed that her preserved LGPS benefits had been transferred to the TPS in 2005. If a transfer had taken place as Ms N believed, she would not have retained any benefits in the LGPS for the Bedfordshire Fund to include in a statement. Given that Ms N had access to statements from both the Bedfordshire Fund and TP during the same period, I would have expected her to have given equal consideration to both sets of statements and to have compared the information they contained. If Ms N had taken this approach, she would have realised earlier that her 2005 transfer request had not been carried out.
79. Finally, Ms N has also argued that an earlier decision by one of my predecessors, in the *Bennett* (PO-7182) case, should have a bearing on her case. However, the circumstances of that case are different to Ms N's. While both cases involved Club transfers, in the case of *Bennett* (PO-7182) it was established that the member was unaware that a Club transfer could only be effected if the application was received within 12 months of joining or rejoining the relevant Scheme. Ms N, on the other hand has never refuted the fact that she had knowledge of the 12 month statutory timeframe and her knowledge on the matter is evidenced by the fact that she submitted a transfer request to Ashcroft School in 2005 when she rejoined the TPS. Additionally, in the *Bennett* (PO-7182) case, the refusal to accept the Club transfer application stemmed solely from the failure to meet the 12 month timeframe. Conversely, in Ms N's case, not only did she submit her Club transfer application to TP outside of the 12 month window but her retirement benefits had also become payable under the TPS at the point she made her later appeal.
80. Accordingly, while I sympathise with Ms N, I do not find grounds to compel TP to exercise discretion to accept her Club transfer application.

CAS-62073-B3T7

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

Dominic Harris

Pensions Ombudsman

13 May 2024

Appendix 1

The Teachers' Pension Scheme Regulations 2014

Section 3 Transfers in

212 Application for acceptance of a club transfer value

(1) A person (P) may apply for payment of a club transfer value to be accepted from another club scheme.

(2) The application must—

- (a) be made within 12 months after the day on which P enters pensionable service under this scheme;
- (b) be by written notice to the scheme manager;
- (c) specify the pension scheme from which the club transfer value is to be received; and
- (d) meet any other conditions the scheme manager requires.

213 Acceptance of a club transfer value

(1) On receipt of an application, the scheme manager may accept payment of a club transfer value from another club scheme ("the sending scheme") if—

- (a) P has not reached 75;
- (b) retirement benefits have not become payable to P under this scheme or under the sending scheme; and
- (c) the sending scheme was a money purchase arrangement to which P's previous employer made contributions.

Appendix 2

The Teachers' Pension Scheme Regulations 2010

Regulation 60

Retirement Benefits

(1) A person (P) falls within this paragraph if P satisfies either the condition for retirement or the condition for retirement following further employment.

(2) P satisfies the condition for retirement if—

- (a) P is qualified for retirement benefits, and
- (b) a Case applies to P's reckonable service or, if P is a person with mixed service, to part of P's reckonable service.

(3) P satisfies the condition for retirement following further employment if—

- (a) P is qualified for retirement benefits following further employment,
- (b) a Case applies to P's reckonable service or, if P is a person with mixed service, to part of P's reckonable service,
- (c) where P is under 75, P makes an application under regulation 107 (payment of benefits on application to Secretary of State) for benefits under this regulation, and
- (d) after making the application, P does not re-enter pensionable employment before the day which would be the entitlement day if P were to satisfy the condition for retirement following further employment.

(4) A retirement pension is payable to a person (P) who falls within paragraph (1) from the entitlement day.

(5) Except as otherwise provided in these Regulations, the pension is payable for life.

(6) Where P is a pre-2007 entrant or a person with mixed service, a retirement lump sum is payable to P on the entitlement day, but this paragraph is subject to regulation 124 (general prohibition on unauthorised payments).

(7) The annual rate of the retirement pension and the amount of any retirement lump sum are to be calculated in accordance with regulations 61 (annual rate of phased retirement and retirement pension) and 62 (amount of phased retirement and retirement lump sum).

(8) The entitlement day is the entitlement day for the Case which applies to P's reckonable service.

(9) If P is a person with mixed service and Case A applies to P's NPA 60 reckonable service and another Case applies to P's NPA 65 reckonable service—

- (a) the entitlement day for that part of P's retirement pension mentioned in regulation 61(5)(a), (c) and (d) (annual rate of phased retirement and retirement pension) and for P's retirement lump sum is the entitlement day for Case A, and

(b) the entitlement day for that part of P's retirement pension mentioned in regulation 61(5)(b) is the entitlement day for the Case which applies to P's NPA 65 service.

(10) Schedule 7 (retirement benefits) has effect for the purpose of determining whether a Case applies to P's reckonable service and, if so, the entitlement day for the Case.

(11) In these Regulations references to a Case followed by a letter are references to the relevant case as specified in Schedule 7.

Case A: retirement on or after reaching normal pension age

(1) Where a person (P) satisfies the condition for retirement, the entitlement day for Case A is—

(a) if P is not in pensionable employment on the day on which P reaches the normal pension age in relation to the reckonable service, the day on which P reaches that age, and

(b) if P is in pensionable employment on the day on which P reaches the normal pension age in relation to the reckonable service, the day after P ceases to be in pensionable employment.

(2) Where a person (P) satisfies the condition for retirement following further employment, the entitlement day for Case A is the earliest of the following—

(a) if P is in pensionable or excluded employment on the day on which P makes an application under regulation 107, the day after the cessation of the employment;

(b) if P is not in pensionable or excluded employment on the day on which P makes an application under regulation 107, such day as P specifies in the application, which must be no earlier than 6 weeks after the day on which P's application is made;

(c) the date of P's 75th birthday.

Appendix 3

The Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996

Time Limit for making complaints and referring disputes

5.---

- (1) Subject to paragraphs (2) and (3) below, the Pensions Ombudsman shall not investigate a complaint or dispute if the act or omission which is the subject thereof occurred more than 3 years before the date on which the complaint or dispute was received by him in writing.
- (2) Where, at the date of its occurrence, the person by or in respect of whom the complaint is made or the dispute is referred was, in the opinion of the Pensions Ombudsman, unaware of the act or omission referred to in paragraph (1) above, the period of 3 years shall begin on the earliest date on which that person knew or ought reasonably to have known of its occurrence.
- (3) Where, in the opinion of the Pensions Ombudsman, it was reasonable for a complaint not to be made or a dispute not to be referred before the end of the period allowed under paragraphs (1) and (2) above, the Pension Ombudsman may investigate and determine that complaint or dispute if it is received by him in writing with such further period as he consider reasonable.