CMS Pensions Briefing
DC Schemes and Master Trusts

April 2022

Welcome to our regular briefing on topical issues facing defined contribution (DC) pension arrangements, including DC Master Trusts.

In this briefing we're "future-gazing" – exploring the Government's new consultation on the case for greater consolidation of defined contribution pension arrangements, progress with dashboards, proposals to implement the "Stronger Nudge", and the evolution of the regulatory landscape to facilitate DC investment in illiquid asset classes.

But it's not all about what's coming up on the horizon. In this briefing, we also review the Work and Pensions Committee's reflections on the impact of the pensions freedoms five years on, and consider what happens when "things go wrong", by taking a look at recent Pensions Ombudsman complaints in the auto-enrolment space.

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Your guide to...

Pensions Dashboards: Where are we now?

The Government has recently consulted on a range of policy questions about the creation of dashboards and the draft Pensions Dashboard Regulations 2022. The consultation closed in early March and the response is still awaited, but we know that trustees and administrators of relevant occupational pension schemes will be required to co-operate with and connect to the Money and Pensions Service (MaPS) digital architecture and provide data on individuals. With the staging expected to happen in "waves" starting in the summer of 2023, now is the time for trustees and managers to start thinking about the implications for their schemes and what they need to do to get ready.

How will dashboards work in practice?

A dashboard is an online platform that allows active and deferred members to see all their pension savings in one place, including state scheme and private arrangements. Pension schemes will be required to make data available to the dashboards. It is intended that a non-commercial pensions dashboard will be offered by MaPS, but there will also be dashboards offered by commercial providers.

The underlying architecture for pensions dashboards is complex and involves various parties, including not only the individual and the trustees, but also separate service providers who will each perform specific tasks at certain points in the process. We understand that the process will work along the following lines:

— Step 1: the individual accesses a dashboard and submits a request for information - this is known as a "find request".

— Step 2: an identity service provider will then confirm the identity of the individual.

— Step 3: the individual consents to information being used through the consent and authorisation service.

— Step 4: the Pension Finder Service, a piece of technology that sends out an instruction to all pension providers to search for a user's pension, will send the member's "find request" to all pension schemes. A pension scheme with a "match" registers a Pension Identifier with the Consent and Authorisation Service (the Pension Identifiers work like an address or postcode – and tells the dashboard service where it needs to go to retrieve the pensions information. It identifies all separately identifiable pensions that an individual who submits a find request may have an interest in).

— Step 5: the Pension Identifier will be confirmed to the member through the dashboard and the member will request to view the information.

— Step 6: the scheme checks the authorisation and then sends the "view data" to the dashboard. The "view data" includes administrative data (i.e. name of the scheme, description of the nature of the benefit, status of the member), signpost data (i.e. information on member-borne costs and charges for DC schemes), the scheme's statement of investment principles, the scheme's implementation statement and value data (i.e. accrued and, in some cases, projected pot value).

— Step 7: the member accesses the "view data" on the dashboard.

What should trustees be doing now?

Whilst there are still some policy decisions to be made, the draft regulations help to flesh out the requirements for trustees.

Guidance published for trustees by PASA (the Pensions Administration Standards Association) in March 2021 includes a one-page helpful list on what can be done now in anticipation of pensions dashboards going live. It suggests that loading any non-digital records on to the scheme's administration systems and talking to administrators to understand their ideas and plans for connecting information to the pensions dashboards service are two steps that can be taken now. This will enable trustees to understand where their administrators are in the process and what steps they are taking internally to ensure their trustee clients will be ready to stage at the appropriate time.

Trustee obligations

Trustees of relevant schemes will be required to register with and connect to MaPS and will need to comply with technical and security standards and guidance published by MaPS and TPR. Schemes will need to remain connected to MaPS and notify it of any scheduled downtime or systemic issues (e.g. cyber-attacks).

Trustees will be required to:

- apply matching criteria immediately on receiving a find request;
- resolve potential matches within 30 days; and
- return "view data" within certain timescales (i.e. within a maximum of 10 working days for defined benefit or hybrid schemes and 3 working days for defined contribution schemes).

These obligations will be overseen by MaPS and TPR and the draft regulations allow TPR to take enforcement action in relation to schemes that do not comply.

Staging

As there are around 32,000 pension schemes potentially in scope, connecting to the pensions dashboard will be phased in, in stages, with the larger schemes (1,000+ relevant members) connecting first, between 30 June 2023 and 30 September 2024. Medium sized schemes will stage between 31 October 2024 and 31 October 2025 and will comprise occupational pension schemes with fewer than 1,000 members. Small and micro schemes (i.e. schemes with fewer than 100 members) will stage later from 2026. Of course, for those schemes that are keen to connect, they may do so early.

As the priority is to focus on benefits not yet in payment to support retirement planning, it is proposed that for initial dashboards, pensioner members are out of scope, but they may be brought into scope in the future. Non-UK based schemes are also out of scope.

Our thoughts on…

Direction of Travel – but at what pace? DC consolidation in the age of Master Trusts

In the summer of 2021, the DWP published a call for evidence on barriers to further consolidation of medium and large DC schemes – those with assets between £100 million and £5 billion. In his introduction, Guy Opperman (Minister for Pensions and Financial Inclusion) noted that there was:

"no doubt in my mind that there must be further consolidation in the occupational [DC] pensions market. This is the direction of travel. … scale is the biggest driver in achieving value for money for savers and ultimately better retirement outcomes. Further consolidation will drive better outcomes for members through better governance and greater investment in illiquid assets."

And whilst it seems certain to all in the industry that there will be further consolidation, the question remains as to whether this will happen at a steady pace in any event, or whether Government will ultimately opt to move up a gear and drive things forward faster.

Will medium and large schemes consolidate?

The Government response to the call for evidence was published on 30 March 2022. As anticipated, many of the respondents urged caution against pushing consolidation for larger schemes before properly analysing the impact of consolidation on smaller schemes, as this would risk a "race to the bottom" of consolidator offerings.

While there is some interest in the potential benefits of consolidation, a recent XPS survey concluded that, as of January 2022, only one third of DC schemes with assets in excess of £100m expected to consolidate. The majority of those planning to do so expect consolidation to happen within the next two to five years.

When asked why they were planning to continue as they are, rather than consolidate, the most popular response was that the scheme already provided appropriate value for members. There was also a general concern that consolidation results in a standardised approach, and a lack of tailored options for members, with responses demonstrating that current schemes' ability to provide bespoke solutions for current and former employees was also a popular reason not to consolidate.

The response to the call for evidence echoed this, and prompted the Government to confirm that it will not "*introduce any new regulatory requirements with the sole purpose of consolidating the market in 2022*". We note, however, that this is a narrow statement with a short end date, and it remains to be seen whether the Government's appetite for driving forward further consolidation of the DC market has been much reduced by the consultation response.

What about Master Trusts?

The preferred vehicle for consolidation continues to be the authorised Master Trust, but among larger DC schemes there may be a fear that, in a competitive market, Master Trusts will race to provide low pricing without consideration of the long-term effects on members and the employer. Master Trusts that can provide genuinely tailored options for members may therefore find themselves the preferred choice for larger schemes.

Interestingly, we have seen recent movement which suggests that the Master Trust market itself is looking to consolidate. In January 2022, Cushon acquired Creative (manager of the Creative Pension Trust), marking its third Master Trust acquisition in the last two years. In the face of a consistently strengthening regulatory regime, it is perhaps unsurprising that there is increased competition for economies of scale even among Master Trusts.

Although we would not expect consolidation of Master Trusts to have a negative impact on members, it may frustrate some employers and trustees who, having undergone a lengthy and detailed process to select the Master Trust provider that they feel is perfect for their membership, discover that their provider is subsequently acquired by another. For some employers and trustees, potential consolidation may become a factor to bear in mind at the beauty parade stage.

There had been concerns that the consolidation of Master Trusts would lead to a capacity squeeze, with too few providers available to process the volume of schemes looking to transfer into Master Trusts over the short and medium term. With larger DC schemes having been granted a reprieve until at least 2023 to consider consolidation it will be interesting to see what happens to competition in the Master Trust market in the meantime, and whether offering bespoke options for members becomes as much of a selling point as pricing.

An update on…

DC Investment in Infrastructure

In our November 2020 publication, we considered the growing impetus among policy makers to encourage the investment of defined contribution funds in long-term, illiquid assets classes.

Since then, developments in this area have continued apace. As "normal life" begins to resume following the end of mandatory COVID-19 restrictions, we're seeing more evidence of the Government's focus on re-building the UK economy, and a desire to foster sustainable growth and innovation. DC pension scheme investment in infrastructure is increasingly seen as a way to achieve this.

Two areas where we've seen developments since our last publication are:

— The Long Term Asset Fund proposal.

— Performance fees and the charge cap.

The Long Term Asset Fund

The Long Term Asset Fund, or the "LTAF", was originally proposed by the "Productive Finance Working Group", a group convened by the Treasury, the Bank of England and the FCA to investigate the challenges and potential barriers to investment in illiquid assets.

The LTAF is an open-ended fund structure, designed to enable efficient investment in long-term, illiquid assets, including venture capital, private equity, private debt, real estate and infrastructure. Whilst not purely targeted at trustees of occupational DC pension schemes, the LTAF does provide an attractive fund structure through which DC schemes can invest scheme funds with greater confidence.

FCA rules for the LTAF came into force in November 2021. They embed longer redemption periods, high levels of disclosure, and strong liquidity management and governance features – all of which are intended to ensure sufficient investor protection, and so provide reassurance to trustees of DC pension schemes looking at this investment option.

Performance fees and the charge cap

Changes to the legislation governing the operation of the "charge cap" – a cap on the charges that can be borne by pension scheme members – have also come into force.

Essentially, funds that offer access to illiquid investment – such as venture capital and infrastructure – usually levy a performance-related fee that is paid on top of the ordinary management fee. These fees are levied because such investments can often involve specialist active management relying on extensive research, niche expertise and greater ongoing engagement with business managers.

The existence of performance-related fees is considered to be one of the factors discouraging DC pension scheme trustees from investing in illiquid asset classes.

To address this, the Government consulted on a mechanism to allow schemes to smooth performance fees within the charge cap – and regulations came into force in October 2021 to allow schemes to do just that. And, since then, the Government has been looking at further reforms in this space. In November 2021, it published a further consultation – "Enabling Investment in Productive Finance" – looking for feedback on a proposal to add well-designed performance fees (paid when an asset manager exceeds pre-determined performance targets) to the list of charges that fall outside the scope of the charge cap.

But what does the industry think about this? In March this year, the Government published its response to its November consultation, in which it acknowledged the mixed response to its proposals about performance fees. It accepted that "*most responses…were negative to the proposed change*". Respondents noted that the exclusion of performance-based fees from the charge cap was unlikely to have much of an impact, with some seeing other concerns – such as lack of economies of scale, expertise and resource required to access and manage more complex investments – being equally difficult barriers to DC scheme investment in illiquid asset classes.

That doesn't seem to have halted the Government's intentions, though. Whilst, in this latest publication, it recognises that it needs to take the time to fully understand all the concerns raised, and that any reforms should be "*careful but precise*", there still seems to be a desire to introduce changes. What we're seeing – in this most recent consultation response – is more of a "stock take", to ensure that any further changes proposed address the industry's comments. .

So, it's clear that there's momentum building, amongst policy makers at least. And the Government hasn't stopped coming up with new proposals either, the most recent relating to a requirement for DC scheme trustees to disclose and explain their policies on illiquid investments for their default arrangements. How this is shaped by industry response and reaction remains to be seen….

What about...

Nudge, nudge, think, think...

New disclosure requirements oblige trustees to facilitate Pension Wise appointments before actioning member pension requests - but questions remain about the process.

For some time, trustees have been subject to 'signposting' duties to inform members who are considering accessing their flexible benefits that pensions guidance is available and explain how to obtain it. In our April 2021 brochure we flagged the DWP's intention to create a 'stronger nudge', to push members towards guidance before proceeding.

That nudge is now imminent – in the form of regulations applying from 1 June 2022 to trustees of occupational pension schemes when dealing with applications from 'relevant beneficiaries' (members or survivors) to access flexible benefits, including where transferring to another scheme to do so.

The requirements in a nutshell

On receiving an application, or even just a 'communication in relation to an application', trustees must not only signpost the pensions guidance, but also:

- offer to book a guidance appointment with Pension Wise and take reasonable steps to book it, or - where the beneficiary doesn't accept the offer, or is unable to make a suitable appointment - provide the beneficiary with details of how to book directly;
- explain they cannot proceed unless the beneficiary has confirmed that pensions guidance has been received or provided an opt-out notification in a standalone communication, e.g. via telephone call or online opt out form (some exceptions apply to this standalone requirement); and
- keep records of beneficiaries who have received pensions guidance or provided opt-out notifications.

The stronger nudge requirements won't apply to transfer requests where the beneficiary is under 50, where the sole or main purpose of the transfer is not to access flexible benefits (e.g. the individual is just consolidating pension pots) or where the transferring trustees have received confirmation that the receiving scheme is regulated by the FCA. Neither will they apply where confirmation is given that the receiving scheme trustees have already referred the beneficiary to the guidance and they have either taken it or opted out of that process.

A breach of the new requirements could give rise to Pensions Ombudsman complaints and/or civil penalties under the disclosure regulations – but should not affect the validity of a transfer.

What we were expecting

The regulations will form part of an updated disclosure regime, having been released alongside the DWP's response to last year's consultation, and supplemented in March by guidance from TPR which has added to its 'Communicating and reporting' materials for DC schemes.

Does this new regime reflect industry views? Well, the regulations have some leeway for scheme-specific design. The guidance reinforces that point, advising trustees "how you do it is up to you, so you retain some flexibility in how you engage with your members". As long as the criteria detailed in the guidance are met, trustees may choose which form of communication best suits their members. So trustees will not have to organise a Pension Wise booking and coordinate diaries via a purely online or postal route, as originally proposed in the consultation. So far, so good. Furthermore, confirmation that transferring trustees will not be required to deliver the stronger nudge if the receiving scheme has already done so (and the beneficiary has received guidance or opted out) – should reduce the likelihood of duplication. That said, one side effect of the regulations is that for defined benefit schemes with money purchase AVCs, both the independent advice requirements (for defined benefits) and the "nudge" requirements (for the AVCs) will apply.

The regulations come into force on 1 June 2022, rather than 6 April as originally proposed, in order to ensure they are introduced simultaneously with equivalent changes introduced by the FCA for contract-based schemes. Note that TPR's Guidance suggests that applications already being processed before 1 June 2022 are excluded from the requirements – though that does not seem to be supported by the regulations, which could conceivably catch applications already in train on 1 June.

Key areas, potential problems

Other practical concerns persist. Aspects of the regulations have been queried, particularly around how the nudge and opt-out communication process will work in practice - from triggers to record-keeping - and here TPR's Guidance does not shine much light, and may add to the murk. TPR notes that it is good practice to offer to book a Pension Wise appointment as early as possible in the process – but in giving its own nudge that trustees "may wish to consider" encouraging beneficiaries to "take some time" to fully consider their decision before opting out – there is another layer of potential delay, which is unlikely to be welcome news for trustees, many of whom have already expressed concerns about further process roadblocks.

— Impact on other transfer rights: it's not clear how failure to comply with the nudge requirements – which is part of the disclosure regime - might affect a right of transfer under a scheme's rules or the statutory right of transfer, because the nudge requirements don't expressly override those rights. That makes telling beneficiaries that trustees cannot proceed without complying with the nudge (which is a new requirement) problematic - because that may in fact be untrue. The integration with existing transfer legislation may need to be reworked, and in the meantime, trustees will likely want to keep repeating the nudge process until the necessary confirmations have been received, before processing applications.

— Triggers: the nudge obligation is triggered where a communication is made "in relation to an application" to access flexible benefits (as well as an actual application being made). So the requirement could be engaged where members simply contact the scheme to discuss options.

— Transfer exemptions: we have already started seeing questions from trustees about how they can determine the "purpose" of a transfer. Beneficiaries could be asked to confirm whether receiving flexible benefits is the purpose of the application; without that, trustees are likely to proceed cautiously.

Final thoughts

Last year we said that the intention to promote Pension Wise guidance much more actively was welcome, particularly as it has become clearer over time that those not taking the guidance have typically been those most in need of it. However, accommodating changes to the flexible benefits regime - and in particular the transfer process - is not simple, and despite supporting guidance from TPR, the form of these changes reflects that complexity. The industry will no doubt query the additional resource and cost associated with the new requirements – a common theme in the consultation responses.

It may be that some of the deficiencies in the regulations will be rectified either through legislative changes or supplementary guidance. More immediately, trustees have a limited period to decide which format for the nudge materials suits their needs best, and to liaise with administration teams to ensure that scheme literature and processes are updated ahead of 1 June. Further ahead, it will be interesting to see whether these changes make much difference to member experiences – which will of course rely on Pension Wise offering something of real value. After all, whether the nudge is a win or just another spin will depend on whether the guidance received actually improves decision-making and reduces the chances of pension regret.

Where are we now?...

Work and Pensions Committee inquiry into the Pensions Freedoms

More than five years on from the pensions freedoms, the Work and Pensions Committee is asking what's next for DC savers.

We all remember that infamous comment from Steve Webb, the then pensions minister, that people could now use their DC pot to buy a Lamborghini and end up on the state pension if that was their choice.

More choice can, of course, lead to greater risks and, now that we are a few years on, the Work and Pensions Committee (WPC) has taken the opportunity to reflect on progress with a three-stage inquiry. The WPC recommendations from the first two stages were published in March and November 2021, and they focused on pension scams and accessing pension savings respectively (see the boxes on page 13).

The third and final part of the ongoing inquiry is looking into saving for later life more broadly. In particular, the WPC has requested evidence on the adequacy of savings, whether further advice and guidance is needed and how the Government can widen the scope of support available for retirement saving. It is also seeking views on whether a new pensions commission is needed to work through some of the complexities.

The first two oral evidence sessions took place on 23 February 2022 and 23 March 2022, with witnesses from the Pensions Policy Institute, the Association of British Insurers, the Pensions and Lifetime Savings Association, NEST Members' Panel and the Society of Pension Professionals, among others. We have outlined below some of the issues discussed.

Adequacy of savings

It appears to be a truth universally acknowledged that auto-enrolment is a success, at least in the sense that most people are staying in a pension scheme rather than opting-out. There is far more debate around whether the prescribed contributions made into DC schemes through auto-enrolment (broadly, 3% of pensionable salary for employers and 5% for employees) are adequate. On this point, some of the witnesses advocated a gradual increase in the contribution rates up to 12%, including a levelling up of the employer contributions to match those of employees resulting in contributions of 6% from each. Others argued that higher employee contributions could lead to more opt-outs. Member engagement was also considered important (if challenging) and the relevance of the forthcoming pensions dashboard was referenced in this regard alongside digital tools designed to help individuals link their pension savings to living standards in retirement.

Gaps in the system

The witnesses acknowledged that auto-enrolment is not working for everyone and that particular groups remain at risk, including younger workers and the self-employed. There was overall support voiced for the Government's ambition to amend primary legislation to reduce the minimum age for auto-enrolment from 22 to 18 by the mid-2020s. One option suggested for improving pension provision for the self-employed was the use of a sidecar savings scheme, such as the model being trialled by NEST Insight whereby a savings account is linked to a DC pension pot.

It was also discussed how part-time workers, often women, can be at a disadvantage due to a greater propensity to have lower earnings and work fewer hours, even where they have two or more part-time jobs which together could provide an income above the auto enrolment threshold. The witnesses suggested that the system could be adjusted to accommodate such cases. It was also proposed that making pension sharing on divorce more automatic (for example by making it a required rather than optional element of divorce proceedings), could help to close the gender gap.

Appropriate guidance and advice

It was generally agreed that guidance and advice at the point of retirement was key, although it was also recognised that the cost of obtaining tailored, personal advice was often prohibitive. One witness suggested that it might be possible to commoditise guidance and create a regulated product or solution for retirement designed to support individuals to choose a combination of cash, drawdown and guaranteed income to suit their personal circumstances. There was a further proposal that the pensions dashboard might have a role to play in signposting people to appropriate sources of help and guidance in the future.

It was acknowledged that a lack of clarity in relation to the boundary between providing guidance (unregulated) and advice (regulated) might be resulting in some of the free or more affordable guidance available to individuals being less helpful than it could be. The witnesses expressed support for the WPC's recommendation made in stage 2 of its inquiry for the FCA to adopt clear definitions for "enhanced guidance" and "limited advice". In general, they also supported a proposal to trial automatic Pension Wise appointments at age 50.

Pensions commission

Given the multi-layered aspect to many of the issues covered over the course of its inquiry, the WPC also asked witnesses whether they thought a new pensions commission should be established, in a similar vein to the Turner Commission. This question received a mixed response, with some witnesses stating that a new commission was unnecessary while others strongly advocated for one, even proposing the creation of an ongoing independent commission tasked with providing recommendations every five years.

We will continue to follow with interest this final stage of the WPC's inquiry and the Government's response to its recommendations.

Stage 1: Pension scams

WPC recommendations include:

- improving the service provided by Action Fraud;
- facilitating increased industry reporting on scam activity;
- Government review of the new transfer rules for DB to DC transfers within 18 months of the provisions coming into force;
- legislative protections against online investment fraud, e.g. targeting advertisements on social media;
- centralised pension scams enforcement body with a statutory remit;
- enhanced support for pension scam victims.

Stage 2: Accessing pension savings

WPC recommendations include:

- improving advice and guidance services and supporting individuals to choose a mix of annuities, lump sums and drawdown, rather than a single product;
- Government goal for the Money and Pensions Service (MaPS) to encourage individuals to combine Pension Wise guidance and paid-for advice when accessing pension pots for the first time;
- trialling automatic Pension Wise appointments;
- full review and overhaul of the Pensions Advice Allowance;
- annual government review of progress made to increase the uptake of advice;
- FCA adoption of clear definitions for “enhanced guidance” and “limited advice” to provide clarity for the industry on where the boundary lies between guidance and regulated advice;
- developing a framework for assessing the success of early collective defined contribution schemes;
- joint oversight of all consultations relating to pensions regulation by TPR and the FCA;
- joint evaluation of policy measures intended to support the pension freedoms by HM Treasury and the Department for Work and Pensions.

And finally…

Member complaints and auto-enrolment: What happens when things go wrong…

The introduction of statutory auto-enrolment in 2012 – to ensure that more workers have easy access to a pension scheme – has certainly driven up the number of employees saving into a workplace pension arrangement.

But it hasn't been without its problems, and we continue to see the Pensions Ombudsman being kept busy. Here are a couple of recent determinations…

1. Miss Y (PO-23113)

Facts:

— The employer was required to auto-enrol eligible jobholders into a qualifying pension arrangement.

— The employer believed that the employee in question did not qualify for auto-enrolment as her wages were below the relevant thresholds. However, payslips that she provided indicated that she had become eligible for auto-enrolment during the period as a result of overtime pay.

— The employer said that, during a staff meeting, the employee had said that she did not wish to become a member of its pension arrangement which amounted to an effective opt-out.

Decision:

— The Pensions Ombudsman said that the payslips provided by the employee showed that her wages did trigger her eligibility for auto-enrolment.

— As such, the employer's failure to automatically enrol the employee into a qualifying pension arrangement amounted to maladministration.

— The employee could not have verbally opted-out of the scheme during the staff meeting, as the legislation requires opt-outs to be in writing.

Result:

— The employee's complaint was upheld and the Pensions Ombudsman directed the employer to retrospectively enrol her into its workplace pension arrangement.

— The employer was also required to pay a distress and inconvenience payment of £500.

Key takeaways:

— The case illustrates the risk that a breach of the auto-enrolment regime will lead to the Pensions Ombudsman making a finding of maladministration against an employer.

— The fact that the Pensions Ombudsman stood firm against the employer's argument that a verbal opt-out was sufficient indicates that there's limited leeway if the correct processes haven't been followed.

2. Miss X (PO-29179)

Facts:

— Despite being an eligible jobholder the member's first employer failed to auto-enrol her into its pension scheme in November 2016 due to an administrative error in its payroll system. The employer was advised not to import any further employee data until the scheme administrator had carried out a data cleansing exercise (which wasn't completed until February 2018).

— The first employer did not pay any contributions into the scheme or deduct employee contributions from the member's salary between November 2016 and March 2017.

— The member transferred to another employer within the same group of companies in April 2017 but due to another error the member didn't join its pension scheme until a month later. Also, whilst her employer and employee contributions were deducted from her wages, they were held in a bank account (not the plan).

— In early 2018 when the error was discovered the member's pension contributions in the employer's bank account were paid into the scheme. The member requested that her former employer also pay the missing pension contributions into the scheme. The employer did so and included an amount to cover any investment return for the period.

— The member complained that both of her employers had failed to fulfil their auto-enrolment duties and that the delay caused her financial loss. She also complained that her employers had fraudulently profited from the interest earned on her contributions whilst they were in their bank accounts.

Decision:

— The Pensions Ombudsman said that the failure of her first employer to auto- enrol her into its scheme and deduct or pay contributions into her account between November 2016 and March 2017 had amounted to maladministration.

— In addition, the failure of her second employer to auto-enrol her into its scheme by April 2017 and holding her deducted contributions in its bank account also amounted to maladministration.

— However, it was acknowledged that her first employer had paid the missing contributions to the scheme and included interest to ensure that she had not suffered financially. Her second employer had now invested all of her contributions into the scheme and had promised to perform a unit adjustment calculation to determine the loss of investment that arose from the delayed contribution payments. As such, the Pensions Ombudsman was satisfied that both employers had rectified their errors and put the member back into the position she would have been had there been no maladministration.

Result:

— The Pensions Ombudsman agreed with the Adjudicator's view that the distress and inconvenience suffered was not sufficient to justify the minimum £500 award.

— However, the Pensions Ombudsman also said that any allegations about fraud were not within his jurisdiction and they were a matter for TPR or the police to investigate.

Key takeaways:

— Where employers acknowledge there has been a mistake and take steps to remedy the error and restore the member's position, the Pensions Ombudsman is unlikely to uphold complaints against employers.

— Even where maladministration is found, the injustice suffered may not always be sufficient to lead to the minimum award of £500 for distress and inconvenience.