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Pensions Ombudsman Update - Summer 2025

Welcome to the latest edition of our regular Pensions Ombudsman Update, designed to help you get to grips with the Ombudsman's thinking, keep track of decisions on individual topics and identify underlying trends. This edition focuses on his new Annual Report and other key developments (and Determinations) in the last six months.

Annual Report: pulling the right levers?

The Ombudsman's Annual Report reveals that while new pensions complaints in 2024/25 rose to 9,600 (a 39% increase) the office also closed more cases than ever before, resolving 9,400 complaints (up 42% year on year). The "step-change" promised last year appears to have materialised.

The Ombudsman credits the dramatic improvement in resolving complaints to efficiencies achieved through TPO's Operating Model Review (OMR) programme. *"As our funding is not within our control and does not change to reflect the demand for our services, we looked at what levers we could pull."* The OMR was the result.

A key mantra is that "*scheme level dispute resolution comes first*": the Ombudsman reminds stakeholders that TPO is an organisation of last resort, and it should be possible to resolve many complaints before they reach his door. The Report details how OMR also involved the deployment of:

- pensions expertise earlier in the process, to identify cases that would be better placed elsewhere (e.g. the ICO) or fall short of thresholds for investigation;
- Expedited Determinations (104 cases being closed this way between September and March);
- internal upskilling to deal with the older, complex cases that require more in-depth investigation;
- a 'lead case' approach, being used more than ever before - the Ombudsman has confirmed he is applying this to a current high-profile dispute about removal of unreduced early retirement options.

Despite these successes, the Ombudsman recognises the need to keep finding ways to increase efficiency. While 71% of pension complaints were closed within nine months and 84% within 18 months, there was a slight increase in the number of active complaints aged over 18 months, and customer satisfaction numbers fell below target.

Earlier this summer the Ombudsman's Chief Operating Officer therefore confirmed a target for this year to increase case closures by a further 4%. Additional OMR priorities for 2025/26 will include improving awareness and producing customer guidance on key topics, which can be shared with members.

> *Comment:* We have witnessed the positive effect of OMR reforms, but as the Ombudsman acknowledges more still needs to be done in light of an ever-expanding caseload. We must wait to see whether ongoing discussions with DWP, about a more sustainable financial settlement, might bear fruit.

PDU: the end of the line

Since 2021, the Ombudsman's Pensions Dishonesty Unit (PDU) has investigated a number of complex cases involving allegations of serious breaches of trust, misappropriation of funds and dishonest or fraudulent behaviour. In our last edition we reviewed the positive progress made, but warned that it remained to be seen whether substantial recoveries could be secured.

In June, the Ombudsman confirmed the wind-down of its PDU pilot, after DWP ended funding support. He explains how investigations proved resource intensive and some parties at fault managed to delay or avoid liability by filing for bankruptcy, or appealing Determinations. Actual recoveries were therefore "*substantially more modest*" than the £40m in payments which the Ombudsman had directed in PDU cases. Recent correspondence with the Work & Pensions Committee suggests that 50 active complaints will be discontinued.

The Ombudsman accepts that the threat of pension scams still looms and says affected customers will be signposted to alternative sources of redress. He reserves the right, in future, to investigate specific cases within occupational schemes where there is a reasonable likelihood of achieving redress, no prospect of alternative redress and/or the case involves a novel legal issue or type of scam.

> *Comment:* The PDU did good work and will be missed. However, we understand the logic behind the decision, which should free up resources for the Ombudsman's 'bread and butter' work, and hope that other organisations (such as the Fraud Compensation Fund) can take up the mantle.

Section 91 - the fix is in

We've explored in earlier Updates how section 91 of the Pensions Act 1995 permits trustees to recoup past overpayments from future pension instalments but provides that if the member objects, trustees require the order of a "*competent court*".

The Government's Pension Schemes Bill, laid in June and expected to receive Royal Assent next year, contains the promised provision to treat the Ombudsman as if he were a competent court for these purposes. It also makes clear that recoupment is permitted where a dispute had been raised, but has since been 'resolved' by the parties.

> *Comment:* Trustees will be relieved that, once this fix is in place, they will no longer have to take the additional procedural step of enforcement in the County Court.

Employer decision-making duties

In CAS-99766 Mr Y a scheme rule provided for pensions to increase by the lower of RPI and 5% but stated that:

- if RPI exceeded 5% the trustees could, at the employer's request, calculate the increase as if the rule referred to the lower of RPI and 10%; and
- both the employer and trustees must have regard to a 'Stated Aim' to increase at RPI up to 10% "*subject to the finances of the Scheme*".

The applicable RPI figure was 7.5% in 2022, and over 10% in 2023. As the employer made no request under the rule, increases in both years were restricted to 5%.

The Ombudsman held that the employer did not have a completely unfettered discretion to decide not to request increases: it was required to consider the Stated Aim as a relevant factor and attach some weight to it. It consequently had a "*constrained*" discretion.

The legal test for non-fiduciary exercise of a discretion, previously established at Court of Appeal level, was that a decision had to be exercised for a proper purpose, reached in a rational manner and be one that could have been reached by a reasonable decision maker.

The employer had taken professional advice and explained its reasoning. Although the scheme was in surplus on an ongoing basis there was a significant buy-out shortfall and it wanted to strengthen the financial security of the scheme for all members (many of whom would not benefit from higher increases). The Ombudsman accepted these factors and agreed that the employer's other stakeholders and business needs were relevant matters to take into account.

Comment: The topic of discretionary pension increases is a hot potato at present but the bar for the Ombudsman (or a court) to interfere in the employer's exercise of a scheme discretion is a high one.

Tailor those templates!

In CAS-87387 Ms Y a member complained that the pension provider failed to inform her of the two-month statutory time limit to provide information needed to activate her pension sharing provision, without which (under Scottish law) it was deemed never to have taken effect. She said that this forced her to seek an extension, incurring additional legal costs.

The Deputy Pensions Ombudsman found that the provider had no positive duty to advise Ms Y of the time limit: that was her solicitors' responsibility. However, it was guilty of maladministration in failing to identify that the case related to Scottish divorce proceedings and neglecting to amend its standard templates to reflect this (having sent an England & Wales template instead). As a large organisation, the provider *"should have had appropriate procedures and processes in place to deal with pension sharing on divorce, including those cases falling under Scottish law".*

Comment: Trustees may wish to consider reviewing member templates and procedures for divorce cases, to ensure they do not fall foul of the Ombudsman.

No re-litigation by the back door

Back in 2022 we looked at a case where a member chose not to appeal a Pensions Ombudsman determination, but then brought new High Court proceedings raising an essentially identical complaint. His claim was dismissed: a dissatisfied litigant could not escape the need to appeal by re-litigating the same point before a more senior judge.

A new case reinforces this outcome. The claimant was awarded only a lower tier incapacity pension from his scheme on the basis that although he could not follow his normal employment, he was capable of carrying out sedentary employment with another employer. In CAS-49357 Mr N, the Ombudsman found that the trustees properly considered his application and acted in accordance with the scheme rules.

The member did not appeal the determination but lodged a new claim in the High Court a few months later, which he framed as seeking a declaration as to the meaning of 'employment' in the scheme incapacity rule. However, the effect of the declaration would have been to overturn the trustees' verdict, which the Ombudsman had upheld.

The Court found that the proper construction of the scheme rules was intrinsic to the Ombudsman's determination. It had been open to the member to appeal that determination, but he did not. The claimant was seeking to go behind the Ombudsman's findings, and the claim would be struck out.

Comment: Ombudsman decisions are designed to be final and binding and to give parties certainty.

They can only be unwound where a formal appeal is made in a timely fashion; the High Court gives permission for the appeal to proceed; and the Court goes on to take the view that the original determination was incorrect as a matter of law.

Injury benefits - claims without a home?

The Ombudsman has disclosed that he has taken counsel's advice on his jurisdiction to determine complaints under statutory injury compensation schemes. This follows a Court of Appeal ruling last summer that a police disablement gratuity was not an "occupational pension scheme".

As the Ombudsman and the Pensions Regulator only have jurisdiction in respect of occupational and personal pension schemes, the Ombudsman may have to reject or discontinue up to 60 current cases, leading to some individuals having no access to any ombudsman.

Comment: This issue may affect members across a wide range of public sector injury benefit arrangements. We understand that DWP have been kept fully informed.

CMS and the Pensions Ombudsman

CMS has had a market-leading Pensions Ombudsman Unit for many years, regularly advising clients on how to manage and respond to complaints brought before the Ombudsman. CMS is also a founding stakeholder in the Pensions Ombudsman's Legal Forum.