

## Pensions Ombudsman Update - March 2026

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 key themes in Determinations over the last few months.

### Regret claims just got harder

Probably the most significant recent development in Determinations has been the Pensions Ombudsman revisiting his approach to 'transfer regret' cases. We've [previously](#) explored this phenomenon, where a member who transferred their funds to another scheme discovers that the receiving scheme was a scam arrangement, and claims the original scheme should not have let the transfer happen.

For some years, the Ombudsman applied a two-stage test. The member needed to demonstrate maladministration by the transferring trustees; without which they would not have transferred. This was illustrated in PO-12763 [Mr N](#) in which the then-Ombudsman ordered a member's reinstatement to his original scheme following due diligence failures, holding that appropriate review of Mr N's transfer application required taking into account law and regulatory guidance to ensure the member transferred "on a fully informed basis".

However, the Ombudsman has now stepped back from this. A [news release](#) sets out his revised expectations to trustee obligations when considering statutory transfer-out requests made between February 2013 and November 2021 (when new, stricter transfer tests were introduced by the [Conditions for Transfers Regulations](#)). We precis the key Determinations below.

#### No obligation to follow TPR guidance

In CAS-81940 [Mr D](#), the member had transferred from his occupational scheme to a suspected liberation arrangement. He now complained about the transferring trustees' failure to carry out adequate due diligence and flag up scam warning signs, in line with TPR's Scorpion guidance at the time.

The Ombudsman said that he did not have to reach a landing on whether the member would have transferred anyway. Instead, the Determination turned on the fact that it was not mandatory for trustees to comply with the steps set out in TPR's Scorpion action pack. Where a member had a statutory transfer right, there was no legal obligation on trustees to conduct additional due diligence, and failure to comply with the guidance could not found a cause of action against the scheme - even if further warnings might have stopped the transfer happening. Any duty of care to the member was overridden by the statutory requirement to make the transfer.

In contrast with his predecessor, the Ombudsman said: "I cannot see how a trustee of an occupational pension scheme that meets its obligations to pay a statutory transfer value, when the conditions for payment have been met, is required to go further and conduct additional due diligence".

While it could be argued this was "an unsatisfactory outcome", he was bound to decide disputes in accordance with the established legal principles.

#### No "earnings" required

Next came CAS-78486 [Mrs T](#). The reasoning in this Determination followed that in [Mr D](#), but also departed from the former Ombudsman's position in another critical respect.

The member's transfer-out had followed an unsolicited call offering a free pensions review. The funds were then invested in fractional property investments abroad which proved worthless. She claimed the transferring trustees had failed to conduct sufficient due diligence checks. She also argued - citing the High Court decision in the [Hughes](#) case - that she had no statutory transfer right as she was not, at the time of transfer, in receipt of "earnings".

The Deputy Ombudsman held that, properly analysed, [Hughes](#) could be distinguished. She concluded that there was actually no requirement under the pre-2021 transfer regime to have "earnings" at the time of transfer, whether from an employer under the receiving scheme or any other source.

The transferring trustees had therefore given effect to Mrs T's statutory right, which was all the law required them to do.

#### Discretionary transfers

The re-examination of regret claims is not confined to statutory transfer cases. In CAS-54901 [Mr S](#), the Deputy Ombudsman accepted that Mr S had no statutory transfer right, as he purported to exercise his right to a cash equivalent transfer value after expiry of the three-month guarantee period in legislation. However, the scheme had a discretionary power to make non-statutory transfers on a member's "written request".

In the Deputy Ombudsman's view, the transfer application signed by the member was worded widely enough to cover both statutory and non-statutory transfers. At the time, neither party considered whether Mr S was exercising a statutory right and it did not matter: the transfer amount, the receiving scheme and the rights he would receive under it were the same.

The trustees had a duty not to unreasonably refuse a non-statutory transfer request, and Mr S could not complain there was no proper exercise of discretion when the discretion was exercised in accordance with his wishes.

*Comment:* Between them, these Determinations underline how hard it will now be for members to succeed with a 'transfer regret' claim before the Ombudsman (where the transfer was before November 2021).

Trustees and providers should reflect this in responding to such cases, which may now be less time-consuming to deal with.

## When is recoupment 'equitable'?

Another evergreen topic for the Ombudsman is recoupment: the recovery of past overpayments to members from future pension instalments.

Back in 2024 we [considered](#) the Ombudsman's ruling in CAS-55100 [Mr E](#), which held that the right to recoup could only be exercised "in a just and equitable manner". Although the legal defences of change of position and estoppel could not be relied on as free-standing defences to the equitable remedy of recoupment, the principles underlying them - in particular, 'unconscionability' - remained relevant to determining whether it was equitable to recoup in the first place.

Two recent Determinations - both on the same scheme - demonstrate how this can lead to contrasting results.

In [Mr & Mrs D](#) the trustees sought to recoup £31,000 from Mr D's pension, and £16,000 from Mrs D's pension, over a 22-year period - reflecting the considerable length of time for which the members had been overpaid. The Deputy Ombudsman found that it was not equitable for the trustees to recoup the overpayments built up over most of the relevant period because the members had acted in good faith by continuing to spend money which they would not otherwise have spent. The effect of this was that the trustees could recoup a mere £800 in total.

However, the Deputy Ombudsman arrived at a different verdict in CAS-52655 [Mr M](#) where overpayments were again made over 20 years. The main distinction on the facts was that Mr M continued to work between his pension coming into payment in 1999 and his actual retirement in 2019 and had sufficient means from other sources to maintain his standard of living. He had not suffered legal detriment, because he had not irreversibly spent money on general expenditure as a result of the overpayments.

It was therefore equitable in all the circumstances for the trustees to recoup the £12,600 of overpayments in full.

*Comment:* Trustees considering IDRPs in relation to recoupment must take these rulings into account. Whether they can exercise a right to recoup will depend on the facts of each individual case.

## Overpayment cases - help is at hand

As can be seen, the law on recovery of overpayments is complicated - but the [Mr & Mrs D](#) Determination above contains a helpful overview, aimed at trustees and administrators, of the Ombudsman's general position.

The summary acknowledges that while defences to recovery of past overpayments are available, different considerations apply to recoupment, as distinct from repayment. In addition, it confirms that trustees should not seek to exercise the right to equitably recoup where there is a dispute as to the amount or timing of recovery, without the order of a competent court. Note that the [Pension Schemes Bill](#), which contains provisions to treat the Ombudsman as a competent court for these purposes, is expected to pass this Spring.

Just before Christmas, the Ombudsman also issued a long-awaited [information sheet](#) to help members understand the key issues that arise when a pension has been overpaid. The information includes the possible legal defences, and the requirement to engage with the scheme and provide evidence to support those defences.

The Ombudsman would like schemes to share the information with members, ideally when informing them of an overpayment, or when a member queries the scheme's attempt to reclaim an overpayment.

*Comment:* We welcome this factsheet, which provides a balanced summary of the overpayments position (despite its complexity) and will hopefully reduce the extent of disputes around these issues.

Trustees and administrators should be building distribution of the factsheet into their overpayments and IDRPs policies and processes.

## Assessing the balance of evidence

A perennial problem on member complaints is how to deal with evidence issues, especially as the events complained about often lie in the distant past.

CAS-13126 [Mrs R](#) concerned a member employed between 1972 and 1990. She wrote to the scheme trustees in 2016 asking for her pension to be put into payment, but the trustees said that they were no longer liable for her benefits as she had transferred out of the scheme in 1992. The available evidence was - not untypically - inconsistent:

- The [trustees](#) pointed to a guaranteed CETV illustration for the member from January 1991 and a ledger entry from 1992 stating that her benefits had transferred to a personal pension;
- [Mrs R](#) said she had no memory of requesting a transfer to the personal pension plan, while the pension provider's successors in business had no record of her;
- According to [HMRC](#) records, some of Mrs R's benefits had transferred to the personal pension provider, but others remained in the scheme.

The Deputy Ombudsman emphasised that the starting point was that "the liability remains with the original pension scheme, unless it can be shown, on the balance of probabilities, that the deferred pension benefits were successfully transferred to another arrangement."

It was inherently unlikely that Mrs R would have initiated a substantial financial transaction and have no memory of it. This was supported by the complete absence of documentary evidence in respect of the alleged receiving plan. The trustees had provided no evidence of payment such as a cheque, receipt or bank record. And the HMRC files could not be solely relied upon in this case because they were either incomplete, inconsistent or incorrect.

The most plausible explanation was that no transfer had ever successfully completed and that an administrative error occurred in updating the ledger entry and in updating HMRC.

The Deputy Ombudsman also made a distress award of £1,000, saying that the matter stemmed essentially from the trustees' failure to maintain complete and adequate records.

*Comment:* The Determination warns that trustees must take steps to protect themselves from expensive future claims by keeping a clear record of the transfer-out process.

It also reminds us that while HMRC records can prove a useful "tie breaker", they are not always a reliable record of events.

## Provider undone by beneficiary's fraud

CAS-84909 [Ms N](#) was a discretionary lump sum death benefit case. Mr C, the member's son, notified the death and completed the provider's standard claim questionnaire, telling them he was the member's only child and there were no other surviving potential beneficiaries.

The provider paid Mr C the whole of the £60,000 lump sum. Unfortunately, it later transpired that the member had three other adult children one of whom, Ms N, informed the provider of Mr C's fraudulent claim. The provider defended itself by explaining that it had paid Mr C in good faith: his name appeared on the death certificate and he had furnished evidence that he was the member's son.

The Deputy Ombudsman upheld Ms N's complaint. The provider's need to understand who potential beneficiaries were was a factual question, not a matter of discretion. A pension scheme could adopt a proportionate approach when distributing lump sum death benefits (and carry out more limited investigation for lower value claims) but it still had to gather enough information to make fair and rational decisions. It was not necessary to "*exhaustively identify every possible beneficiary*" but if the range of beneficiaries was not properly considered, the discretion could not be validly exercised.

The Deputy Ombudsman added that if unverified information was provided by a person claiming to be the sole beneficiary, "*it may be prudent to consider the possibility of fraud and the need to take extra steps to ensure that proper information is obtained*".

The provider was ordered to exercise its discretion afresh.

*Comment:* This determination is a reminder that to validly exercise a death benefit discretion, trustees and providers must take reasonable and proportionate steps to establish the class of potential beneficiaries. It also flags up that in doing so, they should not close their eyes to the possibility of fraud.

## The OMR beds in

We've covered the Ombudsman's ongoing Operating Model Review (OMR) in past Updates. The OMR is designed to improve the customer journey, tackle historical caseload and reduce waiting times through initiatives such as:

- requiring complainants to have exhausted IDRPs - "*scheme level dispute resolution comes first*";
- deploying [Expedited Determinations](#) for complaints assessed as having a clear outcome; and
- the use of a ['lead case' approach](#).

*The information in this publication is for general purposes and guidance and does not purport to constitute legal or professional advice. It is not an exhaustive review of recent developments and must not be relied upon as definitive. The Update is intended to simplify and summarise the issues which it covers. It represents the law as at 9 March 2026.*

These innovations are all now in play and there is evidence that they are having an impact. Last year's [Annual Report](#) revealed that the office had closed more cases than ever before, and the Ombudsman [hailed](#) a "*flying start*" for the 2025/26 OMR. The latest [blog](#) says that OMR changes helped to drive a casework closure rate at the end of 2025 which was 12% up on the last year.

Nevertheless, the volume of complaints shows no sign of abating: new applications were up by over 30% over the same period.

*Comment:* The OMR's success to date is welcome, although in our experience there are still delays which could be usefully addressed. We hope that the Ombudsman's office will be given the resources it needs to help it pursue the remaining backlog.

## Refusing reasonable redress

Finally, a trend worth noting in relation to distress awards, often a key issue for trustees to wrestle with at IDRPs stage. The Ombudsman has used several Determinations to reiterate that even where maladministration has taken place, he would offer no more than (and in some cases, less than) had already been offered by trustees.

In CAS-72134/5 [Mrs E & Mr R](#), describing the trustees' settlement offer of £1,500 as having been "*surprisingly rejected*", the Ombudsman made his point by awarding the applicants just £500 instead. In another case (CAS-99744 [Mr E](#)) the trustees' earlier offer had "*more than generously*" recognised any distress the member might have suffered: where maladministration had been remedied, and there were no negative financial consequences or loss of expectation then "*there is nothing further to consider*".

The Ombudsman also continues to play down the chances of a complainant being awarded their legal fees. In CAS-121348 [Mrs N](#) he reminds us that this could only happen "*in rare and exceptional situations*".

*Comment:* The Ombudsman's messaging here is aimed to encourage members to settle early and realistically, and in doing so take pressure off his caseload. Ultimately this expectation-setting should mean less work for both complainants and respondents!

## 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.