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**What do recent Ombudsman cases reveal about scheme administration and trustee decision-making and the available remedies and defences?**

Jeanette Holland | 4 October 2022



# Agenda

**1** Context – evolution not revolution?

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**2** Some topical themes and governance implications for trustee decision making and administrators

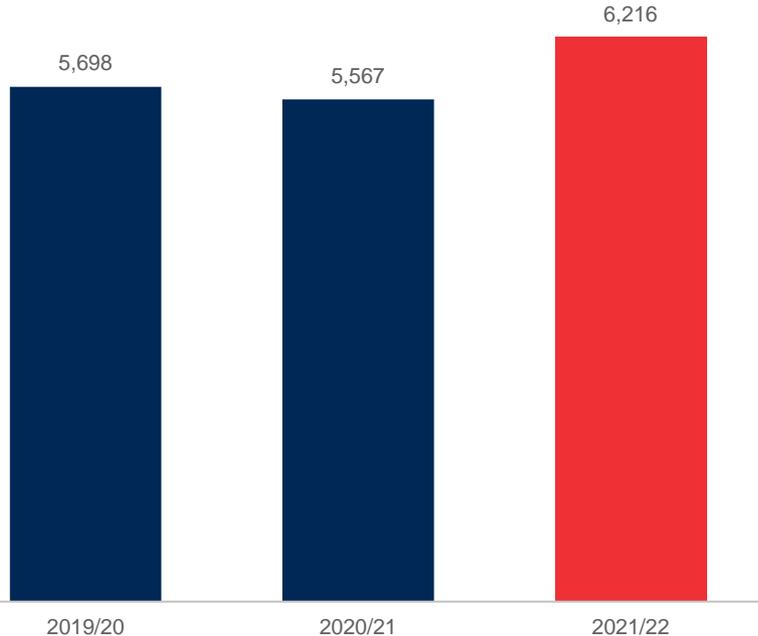
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**3** Where next?

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# Evolution not revolution?

## New pension complaints



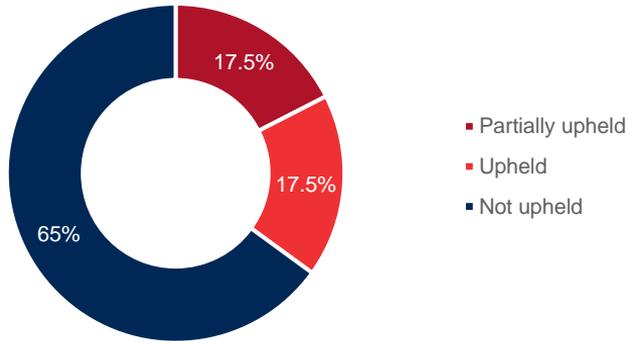
Taken from The Pensions Ombudsman, Annual Report and Accounts 2021/2022

The trend over four years has seen an increase of 18.3% in demand since 2018/19. We expect this upward trend to continue over the next three years as the growing number of people joining pension schemes become increasingly aware of pension issues. This increase will be more pronounced as the impact of Covid-19 on the financial landscape becomes apparent.

I was therefore delighted that we received a significant increase in our funding in the recent Spending Review. The increased budget will help us to recruit the additional staff we need.

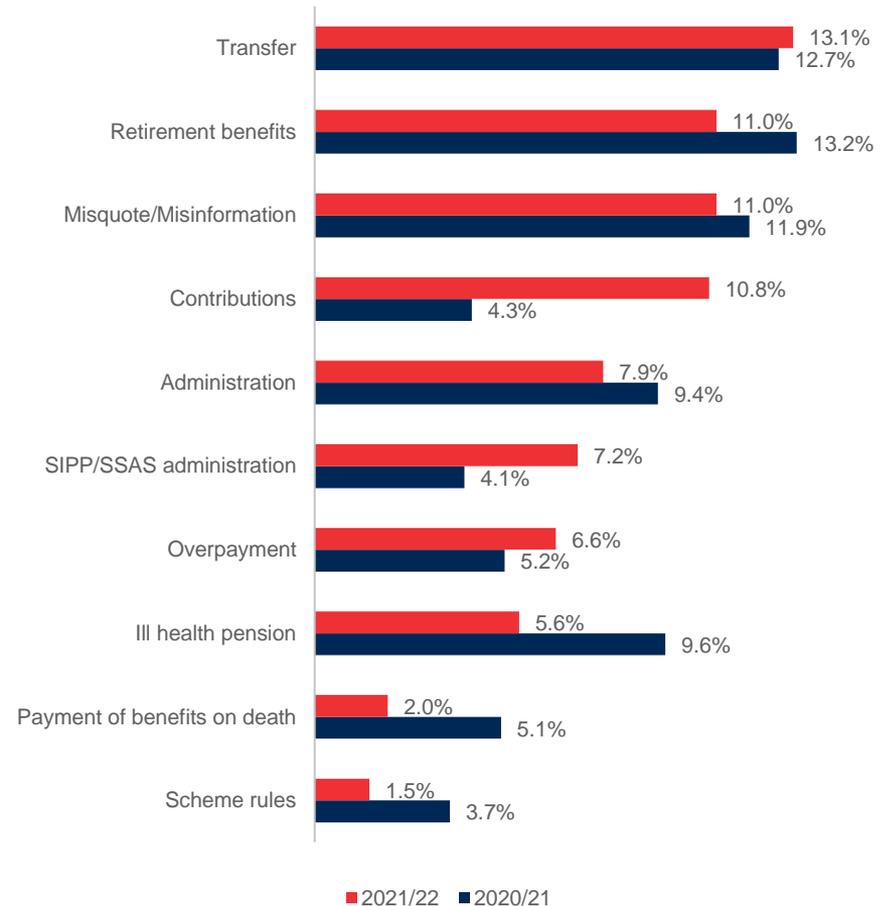
Of our overall closed pension complaints, we closed **257** through formal Determinations by the Pensions Ombudsman\* – this represents **4.9%**

### Outcome of Determinations



In the last few years, the number of complaints requiring the Pensions Ombudsman's involvement has been decreasing. This has been our aim.

### Subject matter of closed pension complaints



# Topical themes: exercise of discretions/powers

- Rapidly changing economic/market conditions: e.g., high inflation, increasing pressure on trustees/companies to consider/award discretionary pension increases?
- Bar for successful challenge remains high
- Edge principles remain key – Mr. D and others (CAS-27382-Q6L3)



# Topical themes: application of actuarial factors?

- For example in relation to provision of transfer values/early retirement quotes
- Interaction of Rules/statute
- Practicalities



# Topical themes: navigating guidance

- How quickly should trustees and administrators be updating their processes when new guidance is issued/existing guidance is updated?  
Mr. R (PO-24554)
- Practicalities



# Topical themes: navigating guidance

- What approach should trustees take when guidance is out of step with legislation? For example: transfers
- Increasing amount of "qualitative" decision making required as part of compliance with legislation
- Increasing room for confusion about the role of administrators v. trustees in practice?



# Topical themes: overpayments

- Uptick in cases
- Change of position defence and good faith – Mrs. E (CAS 30002) and Mrs. G (PO 27022)
- Developments in recoupment



# CMG Pension Trustees Ltd v. CGI IT UK Ltd

## Is the PO a competent court and the implications for recoupment

- Still debate about whether recoupment constitutes set off for purposes of s91 PA '95?
- Still debate about what constitutes a "dispute"?
- CMG has clarified that Pensions Ombudsman is not a competent court for the purposes of Section 91(6)
- Some questions

# Defences and remedies

- New Pensions Dishonesty Unit (PDU)
- Reinstatement
- Distress and inconvenience (not much change)



# Where next?

- Changing of the guard – 15 January 2023
- Single Code – will it (further) raise the bar?
- Other areas to watch





**Questions**

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