

Ombudsman case insights

*How are recent Ombudsman cases on scheme administration
and trustee decision-making influencing current practice?*

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23 November 2023



2023 – All change

2023 – a difficult year?

- Cyber Attack
- CoA decision in *Pensions Ombudsman v CMG Pension Trustees Ltd* [2023] EWCA Civ 1258:
 - Upheld Leech J at first instance ([2022] EWHC 2130 (Ch)) and Arnold J in *Burgess v BIC UK Ltd* [2018] Pens. LR 17
 - PO is not a “competent court” within the meaning of section 91(6) PA 1995

Trustee discretions

Discretions- analytical framework

- Summarised in *Mrs S - Royal Mail Defined Contribution Plan* (CAS-45582-S0J0) (12 Oct 2023) at para 42:
 - Function of PO is to consider:
 - Rules of Scheme;
 - Propriety of decision-making process.
 - PO will interfere only if improper decision because of trustees' failure to:
 - Direct themselves correctly in law;
 - Take into account all relevant matters, disregarding irrelevant ones;
 - Ask the correct questions; or
 - Arrive at a position that is not perverse.

Death benefits - complaints upheld

- Failure to recognise conflicts of interest (*Ms E - Allen, Allen & Ms E SSAS (PO-22369) – Dec 2022*)
- Failure to understand will (*Mrs S - Swansea City & County Pension Fund (CAS-45793-J6Y3) – Feb 2023*)
- Failure to adequately enquire as to beneficiaries' circumstances (*Mrs S - Swansea City & County Pension Fund (CAS-45793-J6Y3) – Feb 2023*)
- Failure to pay out death benefits within the relevant two- year period (*The Railway Pension Scheme Greater Anglia Section (CAS-55335-N3F2) – Apr 2022 and Ms E - Allen, Allen & Ms E SSAS (PO-22369) – Dec 2022*)

Death benefits – best practice

- Act in a timely manner – actively chase outstanding information – be mindful of tax deadlines
- Obtain detailed information about eligible beneficiaries and dependants (as applicable) under the Scheme Rules
- Take appropriate advice on the provisions of the Will where necessary
- Manage conflicts of interest – particularly acute in small schemes
- Have an organised system for recording both administrative steps taken and the reasons for exercising any relevant discretion.

III Health Early Retirement

- Two cases where procedural complaints partly upheld:
 - *Ms N - Teachers' Pension Scheme (CAS-36953-V4C6 – Jan 2023)*
 - Discretion to extend time limits not exercised properly
 - Decision remitted
 - *Mr D - LGPS – Staffordshire County Council Pension Fund (CAS-52488-R2F3 – Apr 2023)*
 - Failure to submit specialist report to the Scheme's appointed expert
 - Decision remitted for review following expert consideration of the specialist report

Transfer requests

Transfers – Liberation – general approach

- Industry standards applicable at the time:
 - Feb 2013 – tPR’s Scorpion Campaign
 - Jul 2014 – tPR Action Pack
 - Mar 2015 – PSIG Code
 - Apr 2015 – Indpt advice s 48 of PSA15

Combating Pension Scams

A Code of Good Practice

March 2015

Pension scams

Don't get stung.



- Statutory transfers – acknowledged that limited rights to refuse.
- Trustees with good record keeping will find it easier to defend claims.

Transfers – Liberation - Examples

- *Mr S - Lloyds Bank Personal Pension Plan* (CAS-50392-S0T8 – Aug 2023)
 - 2016 statutory transfer case –
 - Industry standard **not** met, no scorpion leaflet
 - However, multiple simultaneous transfers – see also *Mr S - Legal & General* (CAS-50391-H3V6 – Aug 2023)
 - Not upheld
- *Ms T - Ladbrokes Pension Plan* (CAS-37159-M4B6 – Apr 2023)
 - 2014 statutory transfer case –
 - Scorpion leaflet provided – tPR guidance followed
 - Complaint raised in Aug 2019
 - Not upheld
- *Mrs G - Teachers Pension Scheme* (PO-26616 – Dec 2022)
 - 2015 discretionary transfer case
 - £217k pension transferred
 - Smaller pensions refused
 - Upheld after oral hearing in May 2022

Transfers – delays and incorrect information

- Minor delays outside the SLA but still within the statutory transfer period did not result in an award, delay was partly attributable to necessary due diligence (*Mr N – Natwest GPF (CAS-57256-T1V5) Nov 2023*)
- Maintaining clear records of when transfer packs and quotations are sent out can be key in demonstrating that any alleged delay is attributable to the member (see e.g. *Mr N – Aviva Personal Pension Plan (CAS-51069-J3T4) Feb 2023*).
- Sending incorrect instructions to receiving schemes causing even a short delay may be sufficient to expose to a liability to make good any losses attributable to a fall in the market in respect of those assets during the delay (see e.g. *Mr Y - AJ Bell Youinvest SIPP (CAS-43661-G4N2) Mar 2023*)
- A combination of incorrect information and delay may result in a non-financial award where it is not clear that a specific investment opportunity has been missed (see e.g. *Mr N – Aviva Personal Pension Plan (CAS-69704-Z0J8) Dec 2022*)

Misquotes and Incorrect Information

Incorrect Information

- Use of disclaimers continues to protect on benefits quotations in the majority of cases (see e.g. *Mrs B – NHS Pension Scheme* (CAS-80217-C7M2) Oct 2023 for a typical example of the Ombudsman’s approach).
- The Ombudsman will consider carefully whether the error is something that should have been apparent to the member (see e.g. *Dr R – SPAA* (CAS-68743-S6K4) Feb 2023)
- Distress and inconvenience awards likely when there has been a sustained error or a series of errors (see e.g. *Mrs Y – Cornwall Pension Fund* (CAS-72356-P5L7) Aug 2023).
- In serious cases the distress and inconvenience award can be high (see e.g. *Mr S – Aviva* (CAS-14193-K6Y0 and CAS-47697-N3Q4) where £3,000 was awarded).

Information about tax

- FAILURE TO MENTION - When advising members as to their options under the Scheme the duty does not extend to advising members as to their individual tax considerations, which arise under the general law and do not relate to the terms of the Scheme – (*Mr Y – United Utilities Pension Scheme* (CAS-44123-K4V8) March 2023)
- INCORRECT INFORMATION – Even where the scheme provides an incorrect figure relating to tax in a quotation, giving rise to maladministration, the Ombudsman may still find that it wasn't reasonable to rely upon that information, particularly if the member and/or their IFA had the necessary information to arrive at the correct answer – (see e.g. *Mr N - UBS (UK) Pension and Life Assurance Scheme* (CAS-52923-Q2C8) March 2023)

Conclusions

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