

Pensions in Dispute

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Welcome to our quarterly pensions litigation briefing, designed to help pensions managers identify key risks in scheme administration, and trustees update their knowledge and understanding. This briefing highlights recent Pensions Ombudsman determinations that have practical implications for schemes generally. For more information, please contact pensions.team@allenoverly.com.

Reducing risk – misunderstandings can lead to complaints

As the UK pensions landscape evolves, so does the nature of member complaints. The Deputy Pensions Ombudsman has recently considered a relatively new area, rejecting a complaint ([decision relating to Mr N](#)) by a pensioner member about a buy-in undertaken by his scheme and his subsequent exclusion from a pension increase exchange (PIE) exercise.

The member complained that the buy-in took place without consultation or his consent, and that he was denied the option of taking up the PIE offer because of the influence of the insurer, to whom he believed the control and financing of his pension benefits had been transferred. The member learned about the offer from another scheme member – in this case, his wife – who was within the scope of the exercise.

The Deputy Ombudsman held that the decision to undertake the buy-in was a discretionary decision by the trustee and that member consultation was not required. The trustee had not acted incorrectly or perversely; it had taken appropriate advice on the buy-in, and members' benefits arguably became more secure as a result. The complainant had misunderstood the effect of a buy-in (an investment decision by the trustee) and believed that the insurers had control over the powers exercised by the trustee.

The complaint in relation to the PIE exercise was also rejected, with the Deputy Ombudsman concluding that it was not the role of the Ombudsman's office to decide whether a member should be included in a PIE exercise.

Both the decision to undertake the exercise, and the determination about which members to include, were within the employer's discretion. The trustee had not breached its duty to treat members fairly; the employer had taken advice and decided which members to include based on its own commercial interests (ultimately to reduce the cost of future buyout). The complainant had suffered no loss. The Deputy Ombudsman rejected arguments that the trustees should have refused to execute the deed facilitating the PIE exercise, and noted that the deed did not rule members in or out of the exercise itself, but referred to members chosen by the company.

What does this ruling mean for trustees?

The determination illustrates the need to plan and implement a clear communications strategy around derisking exercises. Much of the member's complaint was based on a misunderstanding of how the buy-in and PIE exercise operated, and the roles and responsibilities of the various parties in the process.

Transfers: due diligence, delays and overseas schemes

Transfers have become an increasingly complex area, particularly where QROPS are concerned. The Pensions Ombudsman has backed an administrator's decision not to transfer a member's benefits from the NHS Pension Scheme to an overseas arrangement ([decision relating to Ms P](#)).

Background

Ms P had requested a transfer in October 2014 to a scheme on HMRC's QROPS list – it appears that the scheme was eligible at the time of the application. By February 2015, she had provided all the paperwork necessary to process her request – however, as a restriction on transfers from the NHS Scheme was coming into force on 6 April 2015, the scheme administrator was experiencing a backlog in making payments due to a high volume of requests.

HMRC introduced a new 'pension age test' in April 2015, extending the requirements that most overseas pension schemes have to meet in order to be a QROPS. Essentially, the benefits payable to the member under the scheme, to the extent that they relate to the transfer, cannot be payable earlier than age 55 (except in cases of ill health). The new test resulted in large numbers of overseas schemes (including the one in this case) no longer meeting HMRC requirements, meaning that a transfer would be an unauthorised payment.

What did the Ombudsman decide?

- There was no finding of maladministration for failing to make the payment prior to April 2015 or within the six-month time limit, perhaps in recognition of the high volume of requests at the time. The introduction of the pension age test superseded any delay outside the statutory time limits.
- The non-payment of a transfer value to the overseas scheme was upheld – the Ombudsman commented that 'It is not in the interest of the Scheme, or Ms P as a member, to risk an unauthorised payment and a possible tax charge of 70% of Ms P's benefits'.
- The Ombudsman also rejected the member's claim that the administrator should help her find an overseas scheme to which she could transfer her pension, since it is not the administrator's role to provide such advice, and they are not regulated to do so – this is equally applicable to trustees.
- The Ombudsman was, however, critical of the handling of the case. In late April 2015, the administrator had

responded to a query from the member in a way that led her to believe that her transfer would proceed, when this was not the case. In addition, the scheme administrator was at fault in noting only at a late stage that the receiving scheme would be ineligible and that a transfer would not be made. Ms P was awarded GBP500 as compensation for maladministration.

What does this ruling mean for trustees?

It's good news for trustees and administrators that the Ombudsman considered it reasonable to suspend the processing of, and subsequently to refuse to make, the transfer payment.

When communicating with members, however, trustees and administrators should be mindful of the need to avoid raising expectations that a transfer might proceed if this is not the case, or where there is some doubt. The status of a transfer request should be checked carefully before responding to a member's query.



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