



The Pensions Ombudsman

The Pensions Ombudsman (TPO) is an independent organisation set up by statute to investigate complaints about the administration of pension schemes. TPO is a neutral party with the power to investigate the facts and to make legally binding decisions which are enforceable in court.

TPO does not charge for dealing with complaints and is funded by a general levy on pension schemes that is invoiced and collected by the Pensions Regulator. As well as an adjudication service for formal complaints, TPO also offers an Early Resolution Service (**ERS**) with two main features:

- providing members with information and assistance in relation to potential complaints;
- hearing matters without the internal dispute resolution process (**IDRP**) being completed, where the parties agree.

The government has recently consulted on TPO's early resolution processes; there will likely be further developments in this area.

Who can make a complaint and against whom?

Members of occupational pension schemes and personal pension schemes can make maladministration complaints to TPO against the scheme's trustees, the scheme's administrators or the sponsoring employer.

It's also possible, although much more rare, for employers and the trustees or managers of a scheme to make a complaint to TPO.

Common maladministration complaints by members relate to repayment of (disputed) overpayments; entitlement to ill-health pensions; discretionary decisions by trustees; and wrong or misleading information provided by the trustees or administrators, which members claim has caused them to suffer a financial loss.

Procedural steps for complaints

The complaint

The member first needs to complete a complaint form from TPO's website and attach the supporting documents.

Following receipt of the complaint, TPO's gateway team will decide whether TPO can investigate the relevant complaint. TPO cannot investigate a claim which is being considered by a tribunal, court or other ombudsman, or a claim which deals with a prohibited area of law (mainly pension trust compliance issues that are handled by the Pensions Regulator). The gateway team will also usually refuse to investigate a complaint where the member has not completed the IDRP. However, TPO has discretion to investigate claims that haven't completed the IDRP if the member is unlikely to receive a decision within a reasonable time. To read more about the IDRP process, visit www.allenoverly.com/IDRP.

Investigation

If the gateway team decides that TPO can investigate the complaint, it will assign the case to an adjudicator to begin investigations. The adjudicator will begin by asking the respondent to respond to the complaint, normally requiring a response within 21 days of the request, and parties may be asked to submit additional information. The response and additional information will usually be shared between the parties. The adjudicator will often encourage the parties to settle the dispute and close the case.

Disclosure

Unlike in a court action, parties are generally only required to disclose the documents on which they intend to rely. TPO does, however, have the ability to require parties to disclose other documents. In this regard, TPO's powers are the same as those of the court.

Oral hearings

Oral hearings before TPO are rare. Generally TPO will only call an oral hearing if there are questions about a party's honesty or integrity, or if there is conflicting evidence that needs to be tested.

Adjudicator's decision

Once the investigation is complete, the adjudicator will prepare an adjudicator's opinion. This opinion is non-binding and either party can request that the complaint be decided by TPO. The parties will have the opportunity to explain to TPO why they think the adjudicator's opinion is correct or not.

TPO determination

After considering the complaint, TPO will issue a final determination which can be enforced in the courts. A determination may contain directions, directing the trustees, administrators or employer to take or refrain from taking certain action, and/or it may contain an award of compensation for financial loss or for

distress suffered by the member. These damages for non-financial loss are normally around £500-£1,000. To read more about how TPO awards compensation, visit www.allenoverly.com/TPOcompensation.

The successful party is not usually entitled to its costs (should it choose to take legal advice or other expert advice); however, there have been cases where TPO has, at its discretion, allowed a complainant to recover these costs.

Appeal

TPO's determination can only be appealed to the High Court on a point of law and the High Court must give its permission for the appeal. TPO has a right to appear as a party to the appeal and the current Ombudsman has expressed a desire to participate more actively in appellate proceedings.

What limitation periods apply?

A member must bring a complaint for maladministration within three years of the act or omission which gave rise to the complaint. In cases where the member was not aware of the act or omission for some time, TPO may extend the limitation period so it begins to run from the time when the member became aware of, or should reasonably have become aware of, the act or omission that gave rise to the maladministration.

For more information on avoiding and managing pensions disputes, please visit our Pensions in Dispute site at www.allenoverly.com/pensionsindispute

Key contacts



Neil Bowden
Partner
+44 20 3088 3431
neil.bowden@allenoverly.com



Jane Higgins
Partner
+44 20 3088 3161
jane.higgins@allenoverly.com



Andy Cork
Partner
+44 20 3088 4623
andy.cork@allenoverly.com



Jason Shaw
Counsel
+44 20 3088 2241
jason.shaw@allenoverly.com



Jessica Kerslake
Counsel
+44 20 3088 4710
jessica.kerslake@allenoverly.com

Allen & Overy means Allen & Overy LLP and/or its affiliated undertakings. Allen & Overy LLP is a limited liability partnership registered in England and Wales with registered number OC306763. Allen & Overy (Holdings) Limited is a limited company registered in England and Wales with registered number 07462870. Allen & Overy LLP and Allen & Overy (Holdings) Limited are authorised and regulated by the Solicitors Regulation Authority of England and Wales.

The term partner is used to refer to a member of Allen & Overy LLP or a director of Allen & Overy (Holdings) Limited or, in either case, an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Allen & Overy LLP's affiliated undertakings. A list of the members of Allen & Overy LLP and of the non-members who are designated as partners, and a list of the directors of Allen & Overy (Holdings) Limited, is open to inspection at our registered office at One Bishops Square, London E1 6AD.

© Allen & Overy LLP 2019. This document is for general guidance only and does not constitute definitive advice. | CO:27910213.9