

# 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@allenovery.com](mailto:pensions.team@allenovery.com).

## Benefit arrears and forfeiture: *Axminster*

The High Court has provided further guidance on issues relating to arrears of benefits, in a decision that will be of interest to those undertaking GMP equalisation and other benefit correction exercises.

In this case, the court was asked to approve a compromise of a number of technical issues about the validity of amending deeds. The effect of the compromise was that there would be arrears of payments (in relation to pension increases and/or equalisation), and as a result the court went on to consider issues around limitation, forfeiture and interest payable.

The aspects of the case concerning forfeiture will be of particular interest. The judge was asked to consider whether the arrears fell within the scope of two 'forfeiture' rules:

- A 1992 rule permitted the trustee to apply monies that were payable but not claimed within six years for other purposes, at the trustee's discretion – the judge concluded that this was *not* a forfeiture rule.
- On the other hand, the subsequent 2001 rule was an automatic forfeiture rule (subject to a trustee discretion to apply forfeited benefits in several ways, including to the beneficiary). The judge was also asked to consider whether this rule was in breach of the amendment power in the 1992 Deed. He concluded that it was not an alteration that 'would diminish the benefits ... already accrued'.

Guidance was provided on factors that the trustee should or might take into account when deciding whether to exercise a discretionary forfeiture power (for example, the absence of fault on the part of the beneficiaries in failing to claim unpaid arrears of which they were unaware, and/or the presence of fault on the part of the trustee). Administrative difficulties (such as calculating corrections when data is incomplete) were also considered.

The judge provided a pragmatic view: he stopped short of suggesting that every case had to be examined individually in all circumstances and said that a rational and proportionate response to administrative difficulties was required:

'I can see that it might be appropriate... to say that the difficulty involved in examining a particular case on an individual basis to see if it presents the same generic difficulties as other cases might be such that a case by case examination is not considered appropriate'.

## Read the decision.

### What does this ruling mean for trustees?

The decision will be of interest to schemes grappling with GMP equalisation, as well as other benefit correction exercises.

Trustees may wish to review and take advice on their forfeiture rules, and the application of those rules, in the light of the ruling.

## Death benefits: defective decision remedied during IDRP

A recent Pensions Ombudsman (TPO) decision illustrates some of the issues that can arise in death benefit decision-making, as well as the potential for problems to be resolved during the IDRP process.

In this case, the administrator had approved payment of a lump sum death benefit to the deceased member's sister, purportedly under delegated authority from the trustee. However, the administrator had not followed the scheme's guidance to make workplace enquiries to identify potential beneficiaries; two possible claimants (including a child) were not identified and a complaint was later made. The trustee took legal advice before making the Stage 2 IDRP decision.

TPO concluded that:

- The administrator's decision was invalid, as it was outside the scope of the delegated powers.
- The trustee had reconsidered the matter and made the decision afresh at Stage 2 IDRP.
- There were no grounds to set aside the Stage 2 IDRP decision. Given the available evidence, the trustee's decision was within the range of decisions that a reasonable trustee could have made and was not perverse. The trustee had taken legal advice, given due consideration to the exercise of the power to pay the lump sum, and taken into account only relevant and no irrelevant factors in reaching the same decision as the administrator. In doing so, it had effectively replaced the previous faulty decision-making processes.

The complainant was awarded £500 (payable by the administrator for the distress and inconvenience caused by its failure to follow the guidance).

**Read the decision.**

### What does this ruling mean for trustees?

TPO will only set aside a death benefit decision in limited circumstances.

There were a number of problems with the initial decision-making in this case. However, TPO considered that the Stage 2 IDRP decision had been made properly, and that there were no grounds to set it aside, meaning that the defect in the earlier decision was effectively fixed.

The case is a reminder of the need to:

- Ensure that decisions made under delegated authority are within the scope of the delegation.
- Follow scheme guidance and procedures before making a decision.
- Keep detailed records of trustee decisions, including the factors that were taken into account in reaching the decision.
- Seek legal advice during the IDRP process.

## Contact us



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Jason is a Counsel in the Pensions Litigation group. He specialises in all aspects of pensions disputes, including advising clients in relation to internal disputes and disputes before the Pensions Ombudsman, the Financial Ombudsman Service, the Pensions Regulator, the PPF Ombudsman and the courts. The Chambers & Partners Directory includes quotes from clients that Jason is 'very confident, very able and very knowledgeable' and that he 'has a lot of experience and he knows his stuff'.

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