

Duties, decision-making and remedies – tales from the Pensions Ombudsman's casebook

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Who and what is the Pensions Ombudsman?



Not a one man band!



Duties – to give member full information on Trustee’s climate change policy?

Facts:

- Member wanted to see investment strategy, risk management framework, employer covenant monitoring framework or internal management processes
- Trustee chair and Investment Committee secretary met the member
- Trustee agreed climate change a big risk
- Had considered its impact regarding investment strategy
- Trustee shared actuarial valuation, SIP and responsible ownership policy

Held (DPO):

- No duty to disclose the extra information
- Trustee took relevant factors into account including confidentiality, commercial sensitivity and resource
- Trustee was later criticised in a press release by ClientEarth (10 December 2019)



[PO – 27469 Mr D (Shell Contributory Pension Fund) – 15 August 2019]

Duties, decision-making and remedies – information gathering for death benefit

Facts

- No enquiries made of member's daughter (one of five beneficiaries in scope)
- Daughter argued matter should not be remitted to the sole trustee for reconsideration

Held:

- Trustee's decision-making process was procedurally unfair
- *"I accept that the Trustee had knowledge of certain wishes of the deceased but these did not extend to Ms D [ie the member's daughter]. In any event, his role was not to give effect to the wishes of the deceased, whether expressed through a form or not. It was to make his own decision under the rules having weighed the claims of all potentially entitled beneficiaries at the date of the decision. While the wishes of the deceased were relevant, they could not be solely determinative."*
- Was remitted to sole trustee as a reasonable prospect of it being dealt with fairly, BUT Trustee must **"state his reasons for distributing in the shares which he decides appropriate"**
- £500 for non-financial injustice



Decision-making – was Trustee’s ill health pension grading system too rigid?

Facts:

- Trustee invented ill health pension grading system with 5 tiers
- Unreduced pension only if life expectancy below one year (ie similar to Finance Act 2004 test for totally commuting a pension)

Held:

- Trustee not able to fetter its discretion
- Should not have imported the Finance Act serious ill-health commutation definition into scheme rules
- Failed to exercise independent judgement based on the member’s position
- Ordered to review decision and to provide the member with a decision **setting out its reasons**



Decision-making – was actuarial equivalence needed when converting pension to lump sum?

Facts:

- Member challenged Trustee’s lump sum factors

Held:

- Trustee entitled to rely on actuarial advice in setting the factors
- Member had a choice of whether to take a lump sum
- *“there is nothing in the Plan Rules to say that commutation factors should reflect actuarial equivalence, merely that they should be certified as reasonable by the Plan Actuary”*



Duties – should employer have been more helpful to the member?

Examples of Ombudsman being helpful to employers:

- Employer entitled to refuse early retirement on cost grounds [*PO-23729 Mr S (Rolls Royce and Bentley Pension Fund) - 24 January 2019*]
- No duty to warn member that putting pension into payment might make her financially worse off overall [*PO-19996 Miss Y (Local Government Pension Scheme) - 10 January 2019*]
- No obligation on employer to advise terminally ill member on the impact of taking serious ill health lump sum on death benefits [*PO-19080 Mrs T (Turning Point Scotland) - 20 February 2019*]
- No duty on employer to warn new joiners that they might lose tax protection [*PO-23961 Mr T (Teachers' Pension Scheme) - 11 June 2019*]

Duties – protecting members from scams

Relevance of industry standards and TPR guidance:

- The checks made were in line with industry standards at that time, and the member's loss was not “reasonably foreseeable” *[PO-20134 Mr R (Aegon, 9 March 2020)]*
- Member signed transfer form on 14 March 2013 (a month after TPR's guidance on scam safeguards) but reasonable for Trustee to take until May 2013 to put new safeguards in place *[PO-12324 Mr S (NHS Scotland, 14 October 2019)]*
- A reasonable timeframe for providers to have implemented any changes arising from it would have been three months *[PO-16475 Mr T (Prudential, 20 March 2019)]*

Remedies - Distress and inconvenience (a.k.a. non-financial injustice) awards

- Not given automatically:
 - No award given for “a letter sent in error and a delay... the starting point is that there has to be a significant level of distress and inconvenience”
 - Not enough that member was annoyed or frustrated

PO-25831 Dr Y (BAE Systems Pension Scheme, 25 October 2019)]

- It's good to say sorry:
 - Trustee accepted that administrators hadn't provided acceptable service standards on a transfer-out
 - But PO held that although there was distress and inconvenience, it wasn't enough to justify an award; the trustees' apology was enough

[PO-26022 Mr T (British Steel, 27 March 2020)]

In overview...

- Not acting as the members' champion
- Trying to reach fair decisions in the light of the legal framework
- Good at sensing when members are 'chancing their arm'
- But not sure PO has power to direct giving of reasons!

