

OPDU (Occupational Pensions Defence Union)

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How to avoid the Pensions Ombudsman

I was asked by OPDU to give a talk earlier this year with the title “How to avoid the Pensions Ombudsman”. I tried not to take the suggestion personally. After all, why should anyone want to avoid me? Do people flatten themselves against walls as I walk by? Why have I not noticed?

Rather than taking offence, in giving my talk, while accepting that having a complaint against a pension scheme that goes to the Pensions Ombudsman is, in principle, undesirable, I suggested that in practice, if it does happen, we are not all that unpleasant to deal with. That mission led me first to offer some background to the office, for those fortunate souls who had so far completely succeeded in avoiding us.

Who is the Pensions Ombudsman?

I am! – but as the fourth occupant of the post. The office has been open for business since 1991. We were the first ombudsman service to be established by statute dealing with private matters (following the Parliamentary Ombudsman and the Local Government Ombudsmen, dealing with public sector matters). We were by no means the first private sector ombudsman, though – that honour went to the Insurance Ombudsman, originally a voluntary ombudsman scheme having no statutory backing, now subsumed into the Financial Ombudsman Service.

And although I am the Pensions Ombudsman, I am not the only one. Since 2005 there has been power to appoint a “deputy” Pensions Ombudsman, with identical powers. The present (part time) Deputy Pensions Ombudsman is Jane Irvine.

What do we do?

To simplify considerably, we deal with complaints and disputes about personal and occupational pension schemes (which includes statutory schemes for public sector employees). Our powers are investigative and inquisitorial. Determinations and directions made by one or other of the ombudsmen are final and binding on all the parties – including the person making the complaint. That is extremely unusual for an ombudsman. Consistently (and just as unusually) our determinations are subject to appeal on a point of law to the High Court (England and Wales), Court of Session (Scotland) and Court of Appeal (Northern Ireland).

How much do we do?

We receive between 3,000 and 4,000 “enquiries” a year. Not all of them are complaints, though.

So we get letters from people who are genuinely annoyed, but not at the pension scheme. For example someone wrote recently and said “My pension has been cut by that fat idiot Gordon Brown”, to which, in the interests of neutrality he added “David Cameron is Tony Blair in disguise” and then for further balance “– and a Nazi.” Or we get letters from people who misunderstand our role: for example schemes occasionally try to “lodge” documents with us. And not infrequently people think we are the pensioners' ombudsman and so might write to us about their cold weather supplements (or lack of them). However, even when we cannot help people, we do our best to tell them who can. So in the last example above we would have referred the person to the DWP's Pension Service.

Where enquiries do relate to matters potentially within jurisdiction, they do not necessarily go on to be considered by us. Over 40% of enquiries either have not been through the relevant internal complaints procedure (we always expect that a complaint has been taken up with the “accused” party before we'll look at it) – or could benefit from the involvement of the Pensions Advisory Service. In the end, something under 1,000 enquiries a year become cases that are suitable for investigation.

What do people complain about?

All sorts of things. But the two biggest single categories are complaints about ill-health pensions and transfers.

In the case of ill-health pensions the reason is fairly obvious. It may be a matter of huge financial and emotional importance to the pension scheme member – and cost to the scheme. There may be difficult issues of judgment and discretion involved. Such cases are anything but black and white.

Transfers are a source of complaint for a number of reasons – but the most common is probably delay, typically resulting in being out of the market, or in missing an annuity guarantee deadline.

But it would be of no help to suggest that to avoid us you should avoid retirements and transfers. You might as well avoid pensions! No – in the words of the song “It ain't what you do, it's the way that you do it.”

Good administration

We have jurisdiction over complaints of “maladministration”, a term with no statutory definition. But it follows that for those seeking to avoid us, the answer must be to concentrate on good administration. When it comes to managing a business well and provide good service there is no shortage of sources of expertise, training and advice. More specifically, in the world of pensions there is regulatory guidance, industry guidance, support from professional and trade bodies – and more.

As examples of guidance from the world of ombudsmen, these are the Parliamentary Ombudsman's six principles of good administration – equally applicable in the private sector as the public sector:

- Getting it right
- Being customer focused
- Being open and accountable
- Acting fairly and proportionately
- Putting things right
- Seeking continuous improvement

Each is further developed on the Parliamentary Ombudsman's website. It is all very straightforward and uncontroversial stuff – but perhaps one option (out of many) as a starting point for anyone wanting to develop their own high level principles and think about how they may apply to day to day business.

The value of good communication

Somewhere behind a good number of the complaints we see will be a communication issue.

For example, there may be a conflict between the explanatory literature and the rules. In most cases the rules will prevail – but perhaps at the expense of unhappy scheme members and the financial cost of handling complaints. Or an estimate or quotation may be unclear (or even plain wrong). Where the scheme member has reasonably taken a step on the basis of wrong information, for the provider of the information that can be expensive indeed.

Communicating to manage expectations is important too. The complaints about ill-health retirement that I have already referred to often have, as an undercurrent, a complete mismatch between an employee's expectation of what will happen if they lose their job due to incapacity and what the pension scheme provides.

The key must be to put clarity first. That is not always easy – pensions are not simple! But sometimes schemes and providers may put themselves unnecessarily at risk. Take, for example, a recent complaint concerning two sub-funds in an open ended investment company (OEIC). The sub funds and the OEIC all had connected names, each only slightly different. The similarity was, in part at least, the cause of an investment in a wrong sub fund, followed by prolonged confusion about what had gone wrong and how to correct it. Clearer naming (and, in that case, better training) might have prevented the problem arising.

Dealing with complaints

Since I took up the post of Pensions Ombudsman in 2007 I have spent a great deal of my time pushing for proportionate approaches to complaints. It is easy to have a single process and use it for every case. It is unlikely to be as effective – whether in satisfying an unhappy customer or in cost terms – as thinking about what method of dealing with the matter best suits the circumstances. So there are some cases where a swift apology is all that is needed; there are others where the matter will never be resolved until the dissatisfied scheme member has their “day in court”; there those in which the parties are so far apart that an independent adjudication is the only practical option – and so on.

A difficult decision is when to use the formal process. We see cases in which a simple enquiry about whether something has gone goes straight to the complaint team and escalates from there. We also see cases where questions are answered repeatedly without anyone realising that something may have gone wrong.

Here are a few points to think about:

- informality may be the best starting point (but not for too long)
- don't hang about – delay adds insult to injury and it gives time for the parties to become entrenched
- keep an open mind – it is easy to be defensive
- be ready to apologise - that may go a long way to resolving the matter
- play it straight – even if you think the other party is deluded, or devious, or just plain wrong.

Putting it right

If you find that something has gone wrong, the rule of thumb is, of course, that the person should be put, as near as possible, in the position that they would have been in had everything gone smoothly. It is often much harder to achieve that than it may appear, though. There may well be judgments to be made over what would have happened without the error – and eliminating hindsight is a real difficulty. People understandably find it very difficult to say what they would have done, perhaps several years ago, in circumstances that did not actually arise.

In addition to reinstating matters as they would have been, there may be a case for modest compensation for distress, inconvenience, disappointment and so on. The long standing yardstick has been that awards by the Pensions Ombudsman should only exceptionally exceed £1,000. But that was said in a Court judgment in 1998 – so some adjustment for inflation (whether by RPI, CPI or any other measure) is perhaps due.

Dealing with us

As I suggested at the top of this article, it is our intention that when it is necessary to deal with us, doing so should not be an unpleasant experience for the parties (or indeed, for us!). I have two suggested rules.

Rule number one is (as helpfully set down by both Corporal Jones and Douglas Adams) is “Don’t Panic!” I referred above to the need for proportionality. We may be able to sort the matter out informally. Increasingly, instead of immediately asking for a full response accompanied by chapter and verse (for which lawyers may be employed), we will make informal enquiries – for example about the terms of rules in a particular circumstance, or about why a certain procedure was adopted. They may make the formal approach unnecessary.

Rule number two is to remember that we are not the enemy. We will ask the parties to comply with certain timescales; if you need more time, ask. Also, we may test the stance of either side – sometimes robustly; but we really are impartial. And when we put forward one party’s arguments to the other side, that does not mean we accept its validity.

Finally

There will always be mistakes; swift acknowledgment and correction is the best cure where possible. Despite what I said at the beginning of this article, there are all sorts of very good reasons to try to avoid the Pensions Ombudsman. In the end, though, there will always be matters on which two sides (or more) cannot agree. While we do not expect pension schemes and their staff and advisers to clap their hands with glee if a complaint is made to us, we would hope that we can work amicably and professionally with the parties to resolve it proportionately and without avoidable pain or expense.



Tony King

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