

## Professional Pensions®...An Interview with Mr. Anthony Arter

"Arter has been the Pensions Ombudsman since May this year. He retired from a senior partner position at Eversheds in 2014. He joined the law firm in 2001 and was head of pensions from 2005 to 2013.

He has also served as an independent member of the Pensions Management Institute committee overseeing its accredited adviser programme.

Arter has acted for more than 40 pension schemes over the course of his career, including British Airways, John Lewis, the Railways Pension Scheme and Sainsbury's.

Pensions Ombudsman Anthony Arter explains why and how the service needs to change to cope with growing demand.

In his two decades in the pension industry, Anthony Arter had never considered going for the position of Ombudsman. He says he was not even aware the job was up for grabs until he was approached by recruiters last year.

"But when I thought about it, I thought this would be something I would really enjoy doing," he says. "I felt I could do some good - I could actually make a difference doing this job."

Arter says his experience as a pensions lawyer (the first to take the role), an independent trustee, and a scheme member has equipped him to see the cases that now come before him from every angle.

"I understand the legal issues, the stresses and strains from the trustees' and insurance companies' points of view," he explains. "I have a lot of respect for the majority of trusts because they do try to deal with matters in the right way. But on occasion it goes wrong, and when it does, I'm there to try to help in an impartial way."

He is keen to uphold this impartiality - the Ombudsman has a "pretty much 50/50" record of upholding complaints - and to get a message out clearly to trustees, professionals and members about what is expected from them, and what they can expect from the organisation.

### URGENT CHANGES.

But Arter had to hit the ground running when he took over from the outgoing Ombudsman, Tony King, in May. "The pressure was really building when I took over, so I needed to make some urgent changes," he says.

The organisation lost its three top people at the same time, while the number of cases it accepted last year was a fifth higher than in the previous year, and 42% up on five years earlier. With more cases being opened than closed, a backlog was beginning to build.

"It is vital to reverse this trend," says Arter. "To improve the time taken to resolve a complaint and ensure the customer journey through the complaints process isn't worsened."

Arter says tweaks made to internal processes are already beginning to pay off. Separate teams have been set up to deal with more or less complicated complaints, meaning simple cases are being resolved quicker. More investigators are being hired, and the office's online presence is also being spruced up. This process was begun by King, but which will gather pace with the introduction of videos to its website, and the use of social media platforms.

But now he has a more fundamental overhaul in mind. He wants to increase the number of cases resolved informally, without reaching his desk. There are currently three ways in which a complaint can be addressed: an informal opinion from an investigator, a slightly more formal decision letter, or a provisional decision with a full-blown determination from the Ombudsman or his deputy. The last route is a long one, with a three-week delay between letter and determination.

Arter is proposing doing away with the middle option. He explains: "I think we should stop using decision letters, because I don't see the point, and increase the use of opinions, which in the past have only been used sparingly for very simple decisions."

The only types of case that would automatically be resolved by a determination would be those that concern a novel legal point, are representative of a large number of complaints, are very complicated, or will almost definitely be appealed anyway. But the vast majority of cases can be dealt with by an opinion, according to Arter, although all parties will be able to reject an opinion and seek a determination from the Ombudsman.

"The present system is lengthy and confusing," he says. "The drafting of a provisional decision, and then waiting three weeks before a determination is issued lengthens the process, in most cases unnecessarily."

Arter adds that the new system will be fairer as well as quicker. "If an opinion is appealed to me, I will be looking at it for the first time and will have an open mind, unlike a provisional decision and determination, where I have already decided on the matter at the provisional decision stage. Unless some completely new information has come out of the woodwork, I'm not going to do a somersault and make a different decision."

To keep the industry in the loop, Arter proposes publishing opinions that he thinks will be useful, alongside his own determinations.

#### MINIMUM REDRESS.

Another area where Arter wants to be clear with schemes is the compensation he expects them to offer for the stresses and strains caused by errors. Over the summer he put schemes and advisers on notice that the minimum redress he would order was doubling from £250 to £500.

Although this move was questioned by some, the Ombudsman says it is broadly in line with rising prices: there has been 82% inflation since the minimum award was set at £250 in 1995. Arter also says he is raising the bar on the level of distress that complainants must show to qualify for an award.

But he says: "If you have a genuine complaint - you've gone through an internal dispute procedure, you've been on the telephone, you've collected all the documents from the dusty attic, you've spent days and days on this, you've gone through two years, and we've upheld your complaint - it's a long period of time, and it's very stressful. To be given £250 - it's almost an insult."

#### PENSION LIBERATION.

Arter is also hopeful that his workload will be eased slightly by a fall in the number of cases relating to pensions liberation. About one in seven new complaints involved suspected liberation fraud at the moment (*see chart*).

The vast majority of these complaints are against insurance companies rather than trust-based schemes, and most concern blocked transfers rather than cases where money has been switched into fraudulent schemes. Of the 254 investigations started so far more around 90% have been over blocked transfers, but just 17 have been against trust-based schemes.

Arter says trustees are now well equipped to deal with suspicious transfers, thanks to The Pensions Regulator's scorpion campaign, and the code of conduct developed by the Pensions Liberation Industry Group. But he says the whole industry must be vigilant for new types of fraud, especially as freedom and choice shifts the focus to over-55s.

"It is essential for all those involved in pensions to keep a close eye on any new development, and that we work together to provide information, protections and warnings, while still giving people flexibility over how they access their savings," he says.

But the Ombudsman thinks complaints around this have peaked, and will soon be replaced by auto-enrolment issues in his to-do tray.

#### TRUSTEE DISCRETION.

Another area which is keeping Arter busy is the exercise of discretion by trustees. Complaints around ill-health pensions alone counted for one in ten cases last year, while making sure death benefits go to the right recipients is a concern for trustees.

While the facts in each case differ, and Arter recognises that gathering and interpreting the relevant information can be tricky, there are broad principles that can be applied, and there is plenty of leeway for trustees.

"They have to make sure their decision isn't so out of kilter that no other reasonable body of trustees would have made it," says Arter. "There is quite a margin they have to exercise their discretion."

Broadly speaking, trustees have to make sure the right tests have been applied, the relevant factors have been considered, and irrelevant factors have been discounted.

In the case of ill-health benefits this might involve weighing up two different opinions, or a situation in which a member has refused treatment which cures their condition, but is risky. This

can put trustees in a difficult position. But Arter says: "They just have to apply common sense. They don't necessarily have to agree with the individual, they have to look at the facts they have got and ensure they are making a decision within a range of decisions that a reasonable body of trustees would have made."

When it comes to death benefits, the Ombudsman says in many cases trustees will have to dig a bit further than a member's expression of wish form, especially if that form was signed a long time ago.

"Say you have an expression of wish form saying 'I want to leave all this to my dear wife' that was signed in 1995," he says. "You need to make sure they were still living together, you need to ask a few questions. Quite often somebody has written that expression of wish form, forgotten all about it, got divorced, moved in with someone else, had some children with them - the whole thing can be very complicated."

Again, it comes down to discretion. Trustees must take the forms into account, but must show they asked the right questions about the information they contain.

In all these cases - from fraud, to maladministration, to interpretations of trustee discretion - Arter says the Ombudsman has a vital role to play.

"It's in everybody's interest to make sure complaints are dealt with properly," he says. "And it is the role of the Ombudsman to provide a trusted, fair, impartial service that makes it easy for everyone to resolve pension complaints."

ENDS.