

Pensions in Dispute

November 2017

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 cases and Pensions Ombudsman determinations that have practical implications for schemes generally. For more information, please contact pensions.team@allenovery.com.

Higher compensation awards for repeated instances of maladministration

In a recent High Court appeal from a Pension Ombudsman determination, the judge awarded the claimant £2,750 for distress and inconvenience. The Pension Ombudsman (TPO) had only made the minimum level award of £500. In this case the member was misinformed numerous times over six years about her entitlement to retire with an unreduced pension from age 55. The judge noted that this amounted to repeated instances of maladministration over an extended period of time, which could have been easily corrected; this merited an award exceeding the normal compensation cap (£1,600). To read more about the case, [click here](#).

What does this ruling mean for trustees?

This case, together with the earlier High Court decision of *Baugniet*, will inform TPO's future guidance on compensation thresholds (click [here](#) for existing guidance and [here](#) to read more about *Baugniet*). Any new guidance will need to be considered when handling (and potentially settling) member complaints.

In the meantime, if you are considering where to set an offer of compensation for distress in respect of maladministration, you should take into account: (i) the number of instances of maladministration; (ii) how long the maladministration has been going on; and (iii) how easily the mistake could have been corrected.

Misstatements: financial loss v no financial loss

There are some key 'back to basics' principles to note when considering a misstatement case:

- trustees should only pay out what a member is entitled to under the scheme rules;

- a member must be able to show detrimental reliance on the information to have a claim for a higher benefit;
- the starting point for compensation is to put the member in the position that would have applied based on the correct information (not to treat the member as if the misinformation were correct); and
- the member is expected to try and mitigate the loss suffered.

It is easier for a member to demonstrate reasonable reliance on a misstatement at a critical decision point, such as retirement, and also if the statement is checked with the scheme. Where this is the case, TPO is prepared to make significant awards.

In two similar determinations this quarter, members were able to demonstrate reliance on incorrect benefit quotations which showed their pension unreduced for early retirement.

- In the [first case](#), the member specifically queried his right to an early unreduced pension, which TPO found created a higher expectation that the position communicated (in two benefit statements and by phone) was correct.
- In the [second case](#), the member applied for her pension and gave notice to retire immediately on receipt of the statement. When the member received a second statement post-retirement showing a reduced pension benefit she made prompt enquiries as to the discrepancy.

In both cases the members sought to mitigate their income shortfall by finding alternative employment. TPO was persuaded in both cases that the members would not have changed their employment or drawn their pension had the correct benefit statements been received. However, the two cases have different outcomes, based on the issue of financial loss.

In the first case the member sought to draw a deferred pension. TPO found no financial loss, on the basis that the member would receive the pension for longer and his overall entitlement was broadly the same. However, TPO awarded £2,000 for the considerable distress the maladministration had caused (significantly higher than the normal cap of £1,600).

In the second case, the member was, until retirement, an active member of the scheme. TPO was persuaded that she would not have retired had she received the correct information and had therefore lost the opportunity of accruing further benefits, causing financial loss. TPO awarded the member the benefits set out in the incorrect statement (plus interest), and commented that the member only needed to show that she would have had to continue working long enough to accrue and receive the higher level of benefits, not that she would have worked until her normal pension age of 65.

Misstatements: compensation for consequential losses?

This quarter we have seen two new lines of argument being tested in TPO claims. The [first](#) concerns a member whose misstated CETV valued his benefits above £30,000, which meant that he was legally required to seek independent financial advice in relation to his intended transfer. The member reluctantly appointed an IFA. However, the correct value of the member's benefits was below the £30,000 threshold. TPO awarded the member reimbursement of his IFA fees of £950 and £250 for the maladministration. TPO was persuaded that the member, who considered himself financially astute, would not have appointed an IFA had it not been a legal requirement and therefore the misstatement caused him a direct loss.

In another recent [determination](#), a member suggested that one aspect of his financial loss was that his wife had retired in reliance on a misstatement about his benefits. This is an unusual line of argument and TPO addressed it specifically, clarifying that the benefit statement was made to the member and it was not foreseeable that the statement would be relied on by the member's wife in her decision to retire early. Reliance on the incorrect statement could not reasonably be demonstrated in relation to the wife's retirement.

What do these decisions mean for trustees?

Misstatements are a popular theme in Pension Ombudsman cases. Errors are expensive where a member can prove reliance on the statement and financial loss, and they are becoming more so where a member can demonstrate distress. You should ensure you have a regular meeting agenda item to assess and challenge your scheme's procedures when processing any sort of benefit statement and consider adding another layer of checks and balances when a member is at a critical decision point (such as considering retirement or a transfer).

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