

Summer 2015: Pensions Ombudsman's Determinations

Anthony Arter, the new Pensions Ombudsman, has had a busy summer. We summarise below some of his more interesting determinations issued during July and August, 2015.

1. Calculation of CETVs: Ombudsman's Determination in relation to Kenworthy

On 10th July, 2015, the Pensions Ombudsman decided that the trustees of a DB scheme (the "Scheme") were entitled:

- to rely on the Scheme Actuary's method for calculating a CETV, and
- to defer taking any action to equalise GMPs until required to do so by the Government.

The member, **K**, left service aged 62 in 2010 and was provided with details of his deferred pension (i) on leaving service; and (ii) on reaching normal retirement age ("NRA").

The Scheme closed to future accrual on 1st January, 2011. It had equalised NRA for men and women at age 62.5 from 17th November, 1999. It subsequently increased this to 65 for both sexes and reduced the accrual rate on 1st January 2003 while retaining an underpin for service before that date.

B was dissatisfied with the calculation method used in the illustration, arguing it did not properly reflect the 2003 underpin or the statutory requirements for equal treatment. He also claimed that the trustees had a duty to equalise GMPs.

The Ombudsman dismissed **K**'s complaint. It was not for the Ombudsman to decide which calculation method should be used to calculate **K**'s

deferred pension at NRA. The Institute and Faculty of Actuaries had its own professional conduct standards to which all actuaries must conform.

Further, the trustee could continue to defer taking action to equalise GMPs until the issue had been resolved by Government.

Comment: This is a helpful confirmation from the Ombudsman that, until the Government legislates to clarify the extent of the requirement to equalise GMPs, trustees may choose not to equalise when calculating CETVs.

2. Delays in transfers

2 determinations relate to complaints about trustees' delays, one in relation to transfers out and the other in relation to distribution of lump sum death benefits.

Delay in providing statement of entitlement and in effecting transfer: On 29th July, 2015 the Pensions Ombudsman held that breaches by the administrator of a DB scheme of:

- the 6 month deadline for supplying a Statement of Entitlement to a member wishing to transfer his benefits to a Guernsey QROPS, and
- the 6 month deadline for effecting the transfer

were not maladministration. This was so even though new legislation prohibiting transfers to Guernsey QROPS meant that the member was eventually unable to make the transfer.

The administrator had "valid reasons" for the delay in supplying the Statement of Entitlement, including completion of a GMP reconciliation exercise and obtaining and applying legal advice on the correct revaluation rate. Without the delay, the administrator would not have been able to supply the correct CETV figure.

Delay in payment of lump sum death benefits: the Ombudsman decided that it was reasonable for the trustees of the Hargreaves Lansdown SIPP to give the deceased member's adult children time to provide further information. The children had made allegations of financial irregularities against the member's current partner, who he had nominated to receive the death benefits 6 months before he died.

The Pensions Ombudsman dismissed the complaint by the current partner, who was eventually awarded the member's death benefits nearly a year after his death, that the delay had caused her financial loss and considerable distress.

HMRC rules allowed the trustee a period of up to 2 years after the member's death to make the payment of death benefits. The Ombudsman noted that trustee must act reasonably and must set aside any moral or any other prejudices in exercising its discretion. It must consider all relevant facts but ignore anything that was irrelevant. In particular, it should:

- check whether there have been any changes in the member's domestic or financial circumstances which must cast doubt on the validity of the nomination form,
- ask itself if there were any reasons not to award the death benefits to B and determine whether there were any other parties financially dependent on the member who had not been nominated and might have been deserving of the pension or lump sum,
- investigate the member's family background carefully before deciding, fairly and reasonably, who should receive the death benefit, and

- handle the investigation of personal and financial information following a death and against a potentially acrimonious background with "appropriate sensitivity" whilst balancing the need to obtain accurate information against the "legitimate desire to protect people's confidentiality".

In the circumstances it was reasonable of the trustee to allow the children additional time to conclude their investigation. The Ombudsman noted it would have been preferable for the trustee to have been more proactive by, for example, discreetly checking the truth of the information presented by the children where possible. He also noted that the partner had not mitigated the loss as she had refused an interim payment and the Ombudsman did not think she needed to engage a solicitor. The £500 offered by the trustee was a reasonable amount in the circumstances.

Comment: This determination highlights once again the importance of having the correct processes in place, and making sure these are followed, when considering to whom to pay lump sum death benefits.

For a note setting out the procedure to follow please get in touch with your usual pensions contact at Slaughter and May.

3. Pensions liberation

On 30th June, 2015, the Pensions Ombudsman held that there was no maladministration by Prudential when it transferred a member's scheme benefits to the Capita Oak Pension Scheme where the member had a statutory right to take a CETV.

Mr Johnson ("J"), who was unable to contact Capita Oak about the transferred funds, totalling £18,643, complained to the Ombudsman. His complaint was dismissed on the basis that he had a statutory right to a CETV which could not be supplanted by regulatory or other guidance.

In any event, the transfer took place before the Pensions Regulator had issued its Scorpion

guidance and the Ombudsman could not apply current good industry practice to past situations. Any duty of care owed by Prudential to the member was similarly overridden by J's statutory right, as were Prudential's contractual responsibilities to him under the Prudential scheme rules. Even if Prudential had carried out further due diligence or expressed concern to J, he might have insisted on the transfer anyway.

Although the Ombudsman expressed his "great sympathy" for J, there had been no administrative failure by Prudential in complying with his request.

Comment: This is the latest in a series of determinations which show that the Ombudsman is unlikely to find maladministration by a provider in making a transfer where the member's right to a CETV was established and the transfer took place before the Regulator's Scorpion guidance was issued in February, 2013.

531397686