



Department
for Work &
Pensions

The Pensions Ombudsman: dispute resolution provisions and widening of jurisdiction

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Introduction

1. This consultation concerns measures: to **make new provision for dispute resolution by the Pensions Ombudsman**, in particular a function for early resolution of disputes before a determination; to **allow an employer to make a complaint or refer a dispute to the Pensions Ombudsman on behalf of itself, where for example the employer chooses a group personal pension arrangement as the vehicle for pension provision for their employees**; and to make provision in relation to **associated signposting provisions**.

About this consultation

Who this consultation is aimed at

2. We would expect this consultation to be primarily of interest to persons dealing with pension schemes including pension scheme members. However, the Government welcomes views from any interested parties.

Purpose of the consultation

3. The purpose of this consultation is to establish how the following measures should be legislated for. It is expected that they will improve customer service and experience, enabling The Pensions Ombudsman to centralise decision making and to ensure cost effectiveness. The measures are:
 - a) How best to make new provision for dispute resolution by the Pensions Ombudsman including:
 - Provision for an Early Resolution Service, including a function for resolution of disputes before a determination;
 - Provision to allow the Pensions Ombudsman to 'mediate' and 'resolve' complaints and disputes;
 - Provision to allow the Pensions Ombudsman to make such directions or any awards as he thinks fit at the end of any new process;
 - Provision in relation to the status of any agreement reached by the parties at the end of any new process and for enforcement of any agreement;
 - Provision to allow the Pensions Ombudsman to close cases at the end of the new process where agreement has been reached by all parties; and
 - Provision to allow the Pensions Ombudsman to accept a complaint or dispute before an occupational pension scheme's internal dispute resolution procedure (IDRP) has commenced. Where the parties are already going through the IDRP and this is to continue, provision so that the Early Resolution Service could continue The Pensions

Advisory Service's original (dispute resolution) service of assisting the parties to completion.

b) Provision to allow employers, who choose a group personal pension arrangement for their employees, to be able to make complaints or refer disputes on their own behalf to The Pensions Ombudsman against the person responsible for the management of the scheme; and also to make changes in relation to associated signposting provisions, in particular for members of personal pension arrangements to The Pensions Ombudsman.

4. Many of our proposals would require primary legislation and we will seek to legislate in due course when parliamentary time allows.

Scope of consultation

5. This consultation applies to England, Wales and Scotland. It is envisaged that Northern Ireland will make corresponding regulations.

Duration of the consultation

6. The consultation closes on 18 January 2019.

How to respond to this consultation

7. Please send your consultation responses to:

Alison Humberstone
Department for Work and Pensions
ALB Partnership Division
1st Floor
Caxton House
London
SW1H 9NA

Email: tpo_measures_2018.consultation@dwp.gsi.gov.uk

Government response

8. We will aim to publish the Government response to the consultation on GOV.UK. Where consultation is linked to a statutory instrument, responses should be published before or at the same time as the instrument is laid. The report will summarise the responses and say what the Government intends to do as a consequence.

How we consult

Consultation principles

9. This consultation is being conducted in line with the revised Cabinet Office consultation principles published in March 2018. These principles give clear guidance to Government departments on conducting consultations.

Feedback on the consultation process

10. We value your feedback on how well we consult. If you have any comments about the consultation process (as opposed to comments about the issues which are the subject of the consultation), including if you feel that the consultation does not adhere to the values expressed in the consultation principles or that the process could be improved, please address them to:

DWP Consultation Coordinator
Legislative Strategy Team
4th Floor
Caxton House
Tothill Street
London
SW1H 9NA

Email: caxtonhouse.legislation@dwp.gsi.gov.uk

Freedom of information

11. The information you send us may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.
12. All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.
13. To find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact the Central Freedom of Information Team:

Email: freedom-of-information-request@dwp.gsi.gov.uk

14. The Central FoI team cannot advise on specific consultation exercises, only on Freedom of Information issues. Read more information about the Freedom of Information Act.

Background

15. The Pensions Ombudsman combines, in one organisation, the functions of two statutory commissioners - the Pensions Ombudsman and the Pension Protection Fund Ombudsman. Its primary function is handling pension complaints. It acts impartially and its service is free.
16. For the purposes of this paper, references to the Ombudsman means the Pensions Ombudsman including the Deputy Pensions Ombudsman. References to **TPO** mean the Pensions Ombudsman's office, adjudicators and volunteers who investigate and determine complaints and disputes concerning occupational and personal pension schemes. The governing legislation is Part X of the Pension Schemes Act 1993 (with corresponding legislation for Northern Ireland).
17. In line with other ombudsman services, TPO has increasingly looked to bring about the resolution at adjudicator level before bringing before the Ombudsman for a formal determination.

Measure 1 – Provision for dispute resolution function by TPO, including a function for early resolution of disputes before a determination, following the move of resolution work from The Pensions Advisory Service (TPAS) to TPO

18. The 2014 Triennial Review of the Department for Work and Pensions (DWP) pensions arm's length bodies noted that the dispute resolution process for pensions could be convoluted. It recommended that DWP, TPAS and TPO should:

“work together to assess the extent to which each stage of dispute resolution is an effective filter for the next one, and the relative cost-effectiveness of closing cases at each stage, so as to ensure that the system as a whole maximises value for money and the quality of the customer experience”.

19. In 2016, the Government agreed with this recommendation and decided that pension dispute resolution should be centralised with TPO to avoid duplication of services. In March 2018, TPAS's dispute resolution work moved to TPO, along with TPAS staff and volunteer advisers, forming an Early Resolution Service (ERS). TPAS (and the Single Financial Guidance Body going forward) would continue with the function of providing information and guidance on pensions to members of the public.

20. TPO's functions provide that they may 'investigate' and 'determine' complaints and disputes (s146 Pension Schemes Act 1993) after (in the case of occupational pension schemes) a scheme's internal dispute resolution procedure has been attempted, if not completed (The Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996, regulation 3).

21. TPO's determinations in paragraph 19 above are final and binding, and cases closed after investigation and determination would normally only be re-opened where a court upholds an appeal on a matter of law and remits the matter back to TPO for reconsideration.

Question 1

(a) How can Government best make provision for dispute resolution by TPO, including a function for early resolution before a determination?

For example, where a settlement might be achieved anywhere between the parties' starting points, not necessarily depending on the strength of their case but perhaps due to the overriding considerations of:

- time,
- expense,
- publicity, and
- commercial interests.

(b) Should there be a provision for TPO to make awards or to make such directions as they think fit at the end of any new early resolution process?

In other words, should TPO be able to make directions that are legally binding at the end of an early resolution process?

(c) At the end of any early resolution process, what should the legal status be of any agreement reached between the parties?

At present, the Ombudsman's determinations after investigation are final and binding, and any "early resolutions" would not be. Government is interested in views on whether there should be legal status where agreement/settlement has been achieved using an early resolution route.

Question 2

(a) At the end of an early resolution process where agreement has been reached by all parties, does there need to be provision for TPO to close the case?

(b) Where agreement has not been reached or the process fails, should parties have a right to proceed to a full investigation or determination by TPO?

(c) Should there be specific types of enforcement after the conclusion of any process eg where one party breaches an agreement?

Question 3

How should any early resolution process work with an occupational pension scheme's internal dispute resolution procedure (IDRP)?

Question 4

Should provision be made to more clearly signpost who can make complaints to TPO?

Measure 2 – Provision to allow an employer to bring a complaint or refer a dispute to TPO on behalf of itself, where it chooses a group personal pension (GPP) arrangement for its employees; and provision for associated signposting provisions.

22. It is anticipated that the requirements on employers to make auto enrolment pension provision for their employees, means that there will be an increase in small and microenterprises choosing GPP's as the qualifying scheme, in line with their staging dates.
23. Under the Pension Schemes Act 1993, an employer cannot bring a claim against the provider or administrator on behalf itself, for example in respect of maladministration of a GPP. An employer may do so on behalf of employees against a person responsible for the management of the scheme; or in respect of a member against a person who is an administrator.
24. In April 2018 the FCA amended the FCA Handbook to permit authorised firms to signpost consumers with complaints about personal pension schemes to TPO, as well as to the Financial Ombudsman Service.
25. Basic information requirements in respect of occupational pension schemes are set out in schedule 2 to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013. There is express requirement to signpost complainants to TPO concerning occupational pension schemes.

Question 5

Should an employer be able to bring a complaint on behalf of itself to TPO?

Question 6

In light of the proposed measures in this consultation, should there be any changes in relation to signposting to TPO, in particular with regards to dealing with disputes/complaints relating to personal pension arrangements?

Question 7

Are there any additional considerations in relation to provision for resolution functions of TPO that you feel have not been captured in the measures above?

Question 8

Are there any other functions that could be introduced that would further improve the customer journey?

Question 9

In light of the proposed measures in this consultation, do you envisage any specific impacts to any individuals with protected characteristics? (a link to the list of protected characteristics can be found [here](#))

If so, what impacts would these be?

Question 10

In light of the proposed measures in this consultation, do you envisage any particular impacts (costs or benefits) to business or any other parties?

If so, could you please give us any insights or detail you think is relevant?