



Department
for Work &
Pensions

The Pensions Ombudsman

Dispute resolution and widening of jurisdiction

Government Response to the Consultation

August 2019



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Chapter 1: Introduction

1. The consultation paper *The Pensions Ombudsman: dispute resolution provisions and widening of jurisdiction* discussed the Government's proposals relating to the function and jurisdiction of The Pensions Ombudsman (TPO):
 - How best to make provision for dispute resolution including an early resolution function within TPO;
 - Widening the jurisdiction to allow employers, who choose a group personal pension (GPP) arrangement for their employees, to be able to make complaints or refer disputes on their own behalf to TPO against the person responsible for the management of the scheme.
2. The expectation is that the proposals would improve customer service and experience, enabling TPO to centralise decision making and to ensure cost effectiveness.
3. We asked for views on how to best make provision for an early resolution function within TPO, as well as views on the widening of TPO's jurisdiction and any associated signposting to the service.
4. This response document summarises the answers we received to the questions we posed in the consultation document, and sets out the Government's response to those answers.
5. The Department received 25 formal written responses. These were from trustees, pensions industry bodies, pensions professionals (including lawyers and actuaries) and pension scheme administrators. A list of all those who responded can be found at Annex A. One further response was received that did not address the questions posed in the consultation. The comments have been noted but are not reflected in this response.
6. The Department would like to thank all those who responded to the consultation for their time and expertise.

7. Overall, the responses were very supportive of both proposals with a few concerns highlighted and suggestions of how respondents felt these may possibly be mitigated. These are covered in the respective questions below.

Chapter 2: Provision of dispute resolution

8. 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, The Pensions Advisory Service (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”.

9. 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, dispute resolution work carried out by TPAS moved to TPO, along with the staff and volunteer advisers that carried out this role, forming an Early Resolution Service (ERS). The function of providing information and guidance on pensions to members of the public continues to be carried out by TPAS (albeit now as part of the Money and Pensions Service).
10. The first proposal covered by the consultation document sought views on how best to make new provision for dispute resolution within TPO, in particular through an early resolution function.

We asked:

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

11. Seventy-six per cent of respondents were supportive of some form of early resolution function, recognising this as an effective way of dealing with less complex cases and also allowing parties to explore whether dispute could be resolved by agreement before going down a more formal route.

12. Twenty per cent were less in favour of such a function with the key concern that early resolution taking the form of mediation would compromise a process where a dispute is determined on merits and awarding compensation in accordance with established principles. In addition, concern was highlighted over cases where a decision based on factors such as time rather than merit could have a disproportionate (detrimental) impact on a scheme as a whole.

13. Four per cent did not respond to this question directly.

14. Other concerns raised included:

- Increased costs to trustees if such a process were to run in parallel with a scheme's own process;
- Potential conflicts of interest if a case subsequently went down the formal determination route;
- Clarity of the process and the role of TPO in mediation as well as a distinction from its other role; and
- Ability for staff at TPO to carry out this function.

Government response:

15. The Government is keen to ensure that TPO's service reflects not only its traditional role in the investigation and determination of complaints, but also to ensure that the customer journey in respect of earlier stages of dispute resolution is not lost and that the service evolves to reflect the changing needs of members of the public.
16. The Government believes that it is important to ensure that members of the public continue to be supported with their pensions both through the general guidance provided by MAPS and also by the more tailored guidance on complaints through TPO.
17. It is envisaged that early resolution offered by TPO would offer a route for resolving complaints that are less complex in nature, allowing parties to explore a route to resolution that is relatively quicker and therefore more cost-effective, in a potentially less formal manner.
18. It is not Government's intention to water down the rights of the parties involved and, if the parties were to decide not to participate in early resolution, they are able to choose the current more formal routes, being a scheme's internal dispute resolution process and/or investigation and determination by the Ombudsman.
19. TPO currently has processes that are transparent and, where necessary, use different staff at the early resolution and formal investigation and determination stages to avoid conflicts of interest. It should also be noted that any decisions that are made as part of the formal adjudication process will continue to be based on detailed investigation and evidence.
20. The staff and volunteers who previously delivered the dispute resolution service on behalf of TPAS have moved across to TPO so a wealth of knowledge and experience are available to their Early Resolution Service.

We asked:

1(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?

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

21. Most respondents were agreeable to early resolution providing some direction as part of the process, with one response highlighting the benefit it would provide to the most vulnerable customers.

22. There were mixed views on whether an agreement should be binding with some respondents suggesting that making it binding was contrary to the “conciliatory spirit” of earlier resolution and did not distinguish it from the more formal investigation and determination process.

Government response:

23. The Government supports an early resolution function which is able to offer conciliation at the earliest possible juncture which it envisages including, for example:

- giving a steer on the position;
- facilitating the process by which parties can engage in meaningful discussions regarding a settlement; and
- assisting the applicant to make a complaint through the IDRP process, if necessary.

24. While TPO may facilitate early resolution, it is not the Government’s intention to formalise any agreement reached during the process by giving it a specific legal status as this is against the spirit of having an informal early resolution service. The expectation is that parties involved could enter into their own settlement which could be enforced by other means (eg court proceedings for a breach of contract).

25. If no settlement is reached, it is envisaged that the parties should still have access to the more formal investigation and determination process, including a determination by the Ombudsman.

We asked:

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?

2(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?

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

26. The majority of respondents agreed that it should be possible for TPO to be able to close cases, with a few not seeing the need beyond TPO's procedural requirements.

27. All respondents unanimously agreed that parties to a dispute should have the right to proceed to the full investigation and determination route if settlement under early resolution is not achieved.

28. Most respondents agreed to some form of enforcement at the conclusion of any process with views ranging from this being via County Courts, to those who suggested the case being reopened and moving to the more formal stage.

Government response:

29. The Government agrees that TPO should be able to close cases with finality where a settlement has been agreed by both parties.

30. As already highlighted above, the Government also supports the view that the parties to disputes that cannot reach a settlement should have the option to choose to go down the formal investigation and determination route, providing the complainant confirms their wish to proceed with their dispute.

We asked:

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

31. Respondents by and large saw value in a scheme's IDRP.

32. The views of the respondents to this question were mixed with a slight majority stating that a pension scheme's IDRP should be the first stage of the dispute resolution process. The reasons provided included allowing a scheme to look into and possibly remedy any complaints first without the need to involve TPO and maintaining visibility of issues.

33. Most of the remaining respondents envisaged the early resolution process being pre-IDRP for most cases, with a small minority suggesting an option to skip a scheme's IDRP should be made possible.

Government response:

34. The Government considers that any early resolution process should be available at any stage of the IDRP process. It is expected that the majority of the cases seeking early resolution will be before a dispute has been through a scheme's own IDRP. This is consistent with the service that TPAS provided prior to the transfer in March 2018 and provides complainants with the continuity of this, albeit slightly different, early resolution service. It also provides the flexibility for TPO to provide general guidance to individuals who require support during the IDRP process.

35. It is not the Government's intention to undermine the IDRP offered by occupational pension schemes, which is acknowledged as a valued and integral part of the

formal complaints process. While it is recognised that, in most cases, a scheme's IDRPs should and will have been carried out before going down the formal investigation and determination route with The Pensions Ombudsman, the Government is willing to consider some flexibility, subject to all parties in the process agreeing, that the IDRPs are bypassed. An example of such a scenario would be where a dispute (Dispute A) has been through IDRPs but several other disputes which raise an issue that are identical to the issue in Dispute A have not.

36. The Government would be seeking to ensure that all parties involved in a dispute are kept aware, at all times, of the timescales involved at different stages of the TPO and/or IDRPs process and how these interact and affect any options available to them.

We asked:

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

37. The vast majority of respondents agreed that signposting could be clearer although not necessarily through legislation. The general consensus was that:

- Any early resolution process should be clearly detailed on TPO's website; and
- Clear wording should be provided that can be shared with members in respect of signposting including the differences between TPO and the Financial Ombudsman Service (FOS).

Government response:

38. The Government is keen to ensure that the customer journey remains as smooth and effective as possible for the persons that use the early resolution service. It is recognised that further work relating to the jurisdiction of TPO and FOS, as well as MAPS, will be required to help ensure this.

39. The Department will continue to work with these organisations and the Financial Conduct Authority (FCA) to see how signposting can be best improved.

40. The feedback from these responses has also been shared with TPO to help facilitate any possible improvements to its website and communications in respect of the customer journey.

Chapter 3: Widening of jurisdiction

41. In the consultation we highlighted that, with the requirement on employers to make auto enrolment pension provision for their employees, it was anticipated that there would be an increase in small and micro-enterprises choosing group personal pensions (GPP's) as the qualifying scheme.

42. The law does not allow an employer to bring a claim against the provider or administrator of their employees' GPP on behalf of itself, for example in respect of maladministration of the GPP. An employer can, however, bring complaints to TPO about the maladministration of occupational pension schemes.

43. 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 FOS.

44. 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.

We asked:

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

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?

45. We received 14 responses to questions 5 and 6.

46. The majority of respondents were supportive of employers being able to bring a complaint on behalf of themselves to TPO albeit that TPO should not consider contractual or commercial arrangements in place between an employer and the pension provider.

47. One respondent highlighted that small employers already have recourse to the FOS.

48. The general consensus in relation to signposting was that if TPO's jurisdiction was being widened, then it followed that signposting should be made clearer.

Government response:

49. The Government is keen to ensure that employers are able to bring disputes of law or complaints relating to maladministration of GPPs on behalf of themselves to TPO, which is consistent with what is possible for employers that provide occupational pension schemes.

50. While it is recognised that there may be some "overlap" between what may be considered to fall within TPO's jurisdiction and the FOS's jurisdiction, it is expected that the Memorandum of Understanding between the two organisations will help clarify which of the two organisations is better placed to help with specific complaints.

51. This is an area, together with signposting, that the Department will be working in and will collaborate with HM Treasury and the FCA to ensure the services work to support the best interests of parties that will use those services.

Chapter 4: Other considerations

We asked:

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?

52. A summary of the additional considerations received from ten respondents included:

- Timescales for providing responses to avoid prevarication;
- Case handlers following consistent processes when dealing with dispute resolution (particularly with regard to the expansion of the early resolution process);
- Balance and independence provided by TPO valued – TPO should not act as advocates for complainants;
- It should be made clear that the early resolution service is separate from TPO's adjudicatory function;
- It would be helpful for trustees to have the ability to transfer a complaint to early resolution;
- Where without prejudice discussions are used with a view to resolving complaints as part of the early resolution process, details of these discussions should not be made available to the investigation and determination process in cases where early resolution fails;
- Care should be taken to ensure that complaints without merit are still dismissed as part of the early resolution process (as was the case under the former TPAS service), and that the early resolution facility does not become a means to apply pressure for paying members off (particularly given the increased quantum of distress and inconvenience awards) on commercial or convenience grounds; and
- Widening TPO's jurisdiction to include any recourse an individual would have against a pensions dashboard provider if a dispute arose (for example, as a result of being provided with incorrect or misleading information or as a result of a data breach).

Government response:

53. A number of considerations were suggested which were, in the main, areas that could be reviewed by TPO outside of potential legislative changes as part of any improvement of the processes and procedures within the organisation.

54. The Department will work with the stakeholders and TPO on these helpful suggestions to ensure the customer journey can be improved.

55. The Government is keen to ensure that TPO continues in its role to remain neutral and impartial while helping complainants in achieving a resolution in a timely fashion.

56. The Department will work with TPO to ensure that its processes are transparent to parties using its service, and that assurance is provided, where necessary, that any potential conflicts are managed effectively.

We asked:

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

57. Key themes to consider that were received from 11 respondents are summarised below:

- A submission document setting out the details required, a summary of the dispute, supporting documents submitted and/or required would enable those unaccustomed to dealing with pension matters to formulate their thoughts;
- Online dashboard showing case summary/stage of complaint, respondents able to upload documents rather than having to send them in the post;
- Greater clarity as to the likely timeframe needed to resolve a particular complaint. Regular updates on progress would go a long way to managing the expectations of all involved;
- Understanding the timeframe involved with resolving complaints submitted to TPO;

- Streamlining administrative processes relating to investigation, in particular, in relation to the disclosure of documents;
- Online portal for managing disclosure to enable documents to be shared and accessed online;
- Improving functionality on the TPO website;
- Adding additional (legally vetted) factsheets/advice to assist in setting members' expectations and improving their understanding;
- Clearer signposting on the TPO website;
- Processes and procedures - flow chart so that customers can readily understand the options and how the process all fits together; and
- A clear and consistent approach to matters, would be useful to both members and schemes in managing expectations and assessing likely outcomes.

Government response:

58. The Government is aware that TPO is in the process of introducing a new case management system which is expected to considerably improve the customer journey including some of the areas covered above.

59. The Government will continue to work with TPO and stakeholders to find further ways of improving the customer journey as highlighted in the comments received.

We asked:

9 In light of the proposed measures in this consultation, do you envisage any specific impacts to any individuals with [protected characteristics](#)? If so, what impacts would these be?

60. There were no specific impacts to individuals with protected characteristics envisaged with regard to the proposals in the consultation.

Government response:

61. The Government is not aware of any specific impacts upon any individuals with protected characteristics.

We asked:

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?

62. Of the ten responses to this question, the majority felt that the introduction of a well-run and effective early resolution function was likely to reduce timescales and cost for all parties involved in a potential dispute by resolving issues at the earliest opportunity.

63. One respondent felt that the cost to pension schemes may increase where the agreement of a settlement was legally binding due to the potential of having to involve legal advisers.

64. Another respondent suggested that the introduction of an early resolution service that bypassed a scheme's IDR process risked duplication of work and resource at the scheme end.

Government response:

65. The Government believes that TPO having an early resolution function should help to reduce the timescales and costs associated with dispute resolution because it will lead to less complex issues being resolved at the earliest stage possible.

66. In addition, this service, albeit slightly different to that provided by TPAS, has always been available and therefore does not add to the cost of business or any other parties.

Chapter 5: Next Steps

67. We are grateful for the quantity and quality of the responses we have received to our consultation. We have analysed these responses carefully in order to strengthen our understanding of the issues and solutions and further develop the framework within which the dispute function would operate.

68. We will be seeking to bring forward legislation to provide a framework for the proposals in due course.

69. Any amendments to signposting requirements will need to be set out in secondary legislation (regulations). If needed, we will bring draft regulations forward to follow on from the necessary primary legislation following further conversations with the FCA.

Annex A

The following individuals and organisations responded to the consultation:

Aegon

Allen and Overy LLP

Armed Forces Pension Schemes

Association of Member-directed pension schemes

Association of Pension Lawyers

Aviva

BT Pension Scheme Trustees

Herbert Smith Freehills

Law Debenture Pension Trust Corp

Law Society of Scotland

Mercer

National Federation of Occupational Pensioners

NHS Pension Scheme

Northern Ireland Local Government Officers' Superannuation Committee

Pinsent Masons

Sackers & Partners

SAUL Trustees

Scottish Public Pensions Agency

Smart Pension

Society of Pension Professionals

Teacher's Pensions (administrator of TPS)

The Pensions Advisory Service

Willis Towers Watson

2 individuals

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