



Ministry
of Defence

APPEALS AND DISPUTES

The Armed Forces Pension Scheme

A chronological summary of the appeal and dispute procedures available to members of the Armed Forces Pension Scheme with illustrative statistics.

Scheme Year 2022-23

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Introduction

1. The Armed Forces Pension Scheme (AFPS, the Scheme) provides discretionary awards to its members and dependants. Such discretionary awards relate to medical discharges, service-attributable benefits and early payment of a preserved pension (and many more). Discretionary decision makers gather evidence, engage scheme Medical Advisers as required, and make reasoned decisions.
2. Scheme Administrators (Armed Forces & Veterans Services, DBS) aim to get decisions right first-time, every time. However, there are occasions where customers believe we have come to the wrong decision, or that they have suffered maladministration. If this is the case, customers can submit formal appeals or complaints to the Scheme.
3. The appeals process will be explained in further detail here. This paper seeks to explain the appeal and disputes procedures available to customers who wish to appeal or raise a dispute; and to present statistics which demonstrate strong, robust decision making in what are complex and sensitive cases. Finally, it will demonstrate the lessons learned from appeals which were concluded during the year.

Executive Summary

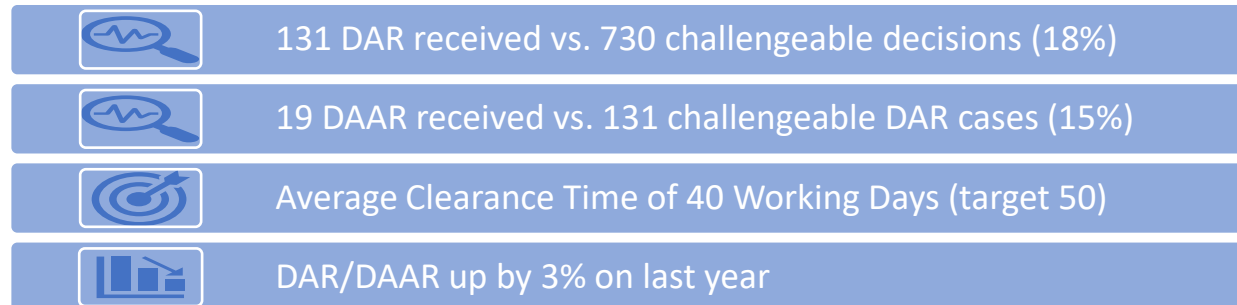
4. The evidence from this report demonstrates that the Scheme administers a transparent, supportive, and reliable appeals process. Routes of appeal are well communicated and accessible for all members. Members are supported by administrators through accessible forms, gathering evidence on members' behalf, and keeping them notified of progress. Members can rely on the Scheme to get decisions right first time, demonstrated by a low rate of appeal across all case types, and a low rate of overturning of original decisions.
5. The data presented in this paper also demonstrates decisions made by the scheme administrators stand up to challenge and scrutiny evidenced by the low rate of appeal (Appendix A). Clear explanations of evidence-based rationales for discretionary decisions enable members to understand outcomes and accept the Scheme's position. This is further evidenced in the outcomes of cases adjudicated during the year by the Pensions Ombudsman (tPO). Of the 14 member disputes adjudicated by tPO, just one was upheld in full, and only three partially upheld.
6. The Scheme has learned valuable lessons from the data analysed in this paper, and specifically from cases in which the Scheme's original decision or position was changed on appeal or following tPO adjudication. Further detail is provided in the following sections and subsections.
7. The Scheme recognises the need to continually improve its provision of service to members who dispute decisions or outcomes and will continue to give attention to how we can best support our members to provide even more comprehensive and useful evidence in support of future appeals.

General Appeal Process

8. Chronological summary of appeal/dispute process for the Armed Forces Pension Scheme:
 - a. Discretionary decision made
 - b. Review/Appeal:
 - i. Discretionary Award Review (DAR) followed by Discretionary Award Appeal Review (DAAR) for discretionary awards
 - ii. IDRP for Tier Awards and maladministration
 - c. Appeal outcome
 - d. Average Clearance Time (ACT) target of 50 working days for DAR and DAAR, 60 working days for IDRP
 - e. Referral to the Pensions Ombudsman (tPO) (within three years of decision/event)
 - f. Outcome of tPO investigation
 - g. Legal challenge

Discretionary Award (and Appeal) Review (DAR/DAAR)

Scheme Year 2022-23, at a glance:



Background:

9. If members disagree with a discretionary decision made by the Scheme, they can appeal through the Discretionary Award Review process (DAR); if they remain unsatisfied with the decision made at DAR, they can appeal to the second stage Discretionary Award Appeal Review (DAAR).
10. This appeal route therefore remains a two-stage appeal process prior to any referral to the Pensions Ombudsman.
11. Where the Armed Forces Compensation Scheme or War Pension Scheme make an award of compensation, the Armed Forces Pension Scheme automatically considers whether attributable benefits are payable. If the initial decision is negative (i.e., no award due), then these cases move straight to DAR. This accounts for the ostensibly high proportion of DAR cases compared with the volume of challengeable decisions (18%); the intention being to review these decisions automatically due to AFPS rejecting attributability, while the compensation scheme(s) accept attributability. The reason for this is that there are different standards of proof required by each scheme and each can reasonably come to different decisions.
12. Requests made under the DAR/DAAR should be made within six months of the original decision.
13. All appeals are acknowledged, and the customer is informed of the timescales and supporting documents/evidence requirements.
14. Evidence is obtained by Scheme Administrators on the member's behalf.

Performance and Statistics:

15. There is a low rate of review/appeal in this area. As an illustration, there were 730 received in the discretionary decisions category during the scheme year which could be challenged

through the first-stage DAR, and there were only 131 DAR cases registered, with 116 (89%) of these being automatic referrals to DAR in line with process above. 19 members challenged AFPS decisions at the second stage DAAR. This demonstrates that Scheme Administrators reached a satisfactory decision for most customers in this area in the first instance, and almost all by the review stage.

16. AFPS members receive a timely service when raising an appeal under the DAR/DAAR process too. The average clearance time (ACT) of DAR/DAAR was 39.7 working days against a target of 50 working days. This is roughly consistent with last year's figure which was 38 days, demonstrating an enduring timely service being provided to members.
17. Although this appeal route remains a two-stage process, the numbers show that the vast majority are resolved at the first stage, so within an average of 39.7 working days.

Lessons Learned & Looking Forward:

18. During the year, the Scheme upheld 10 member appeals/reviews and changed its decision on entitlement. This is from a total of 34 appeals against original Scheme decisions, i.e. **29% member appeal success rate**. In eight of the cases where decisions were changed, the claim related to Early Payment of Preserved Pension (EPPP); one case related to an attributable award paid to the widow of a member based on attributability of the cause of death to service; and one case related to the award of attributable benefits to a member due to their reason for discharge being attributable to service.
19. Generally, it can be difficult to extract lessons from individual cases in this case load due to the discretionary nature of decision making. A claim's chance of success (specifically relating to EPPP) increases with the passage of time due to treatment options being explored and completed, and a member moving closer to pension age. The decision regarding whether to award a pension early can be against a very different holistic context by the time a Deciding Officer is adjudicating on an appeal.
20. **More evidence means better decisions.** A common theme across cases is that further, more comprehensive, evidence is provided by members in support of their appeal. In all cases, the Scheme gathers medical evidence from a member's healthcare providers on their behalf and with their consent; however, members often speak directly with their healthcare providers and obtain evidence specifically supporting their claim (e.g. a report which deals with functional capacity until age 60 from their GP in support of an EPPP claim). The Scheme already requires a completed form which details the member's functional restrictions and impact of conditions from their GP on initial application for EPPP, for example. Administrators will now review the availability of these forms online, and bolster guidance for completion to improve evidence provision at the point of an initial claim. The Scheme guides and supports its members on appeal, including support with evidence gathering.
21. **Team-based intelligence has grown** and evidence gathering is more comprehensive at earlier (first decision) points in the overall journey from decision, through appeals routes. This has led to fewer appeals generally, but also contributes to a lower rate of reversal of previous discretionary decisions.

22. In 2023-24, Scheme Administrators will trial reduced Average Clearance Time (ACT) Performance Indicators (PIs), which will see the Scheme aim to make a decision on a DAR/DAAR case within 45 working days of receipt (down five days or 10% on the case previously). Whilst the Scheme aims to get decisions right first time, members can also be assured that their case will be dealt with in a timely manner, allowing them to plan appropriately for the future.

Internal Dispute Resolution Procedure (IDRP)

Scheme Year 2022-23, at a glance:



21 Ill-Health IDRP received vs. 1,982 challengeable tier award decisions (1%)



Average Clearance Time (ACT) 30.1 Working Days (target 60)



IDRP received is down 52% from last year, now 76 total

Background:

23. If members disagree with the Tier Award they are assigned on medical discharge, the route of challenge is through the Internal Dispute Resolution Procedure (IDRP). These challenges are referred to as 'IDRP Ill-Health'. Also challengeable under the IDRP are claims of maladministration; where members, former members, or dependants believe Scheme Administrators have maladministered their pension in some way. These challenges are referred to as 'IDRP Others'.
24. The IDRP was streamlined from April 2018, following engagement with the Pensions Ombudsman and members which concluded that a one-stage process with increased customer contact, and which reaches a final decision more quickly was in the best interest of members. The One-Stage IDRP process has received positive feedback from the Pensions Ombudsman and members alike.
25. Customer engagement is key to understanding complaints or appeals and managing expectations. An initial 'touch-point' phone-call is made to anyone who raises an IDRP, and they are then kept updated throughout the process by text message if the member opts-in to this service.
26. Requests made under the IDRP should be made within six months of the original decision, or discovery of alleged maladministration. All appeals are acknowledged, and the customer is informed of the timescales and supporting documents/evidence requirements.
27. Evidence is obtained by Scheme Administrators on the member's behalf.
28. For more general information about IDRP, please access [the IDRP Factsheet](#).

Performance and Statistics:

29. The rate of appeal against Tier Decisions under the 'IDRP Ill-Health' process is low. This can be demonstrated by the fact that over 1,982 Tier Awards were made during the last scheme year, compared with just 21 formal appeals against the decision taken at discharge. The rate of appeal is generally consistent with last year.
30. Another significant factor is the ability of members to make a claim of deterioration, and a request for review of their ill-health benefits on that basis, at a later date.
31. In this Scheme Year, total IDRPs received has decreased by 52% from 158 (last year) to 76 (this year). We have recognised a decline in the number of challenges to the Scheme regarding historic pension transfers. These types of complainants are typically represented by third party claims companies which allege a lack of due diligence in completing transfers. The Scheme has rejected all of these claims as it had reasonable measures in place to protect members from potential liberation. Some cases which have now been through the IDRPs process have now been referred to the Pensions Ombudsman and are awaiting a decision (125 cases relating to pension liberation outstanding with the Ombudsman, of 189 total cases – 66%, see para 52). Additionally, increased triaging of IDRPs received, and increased utilisation of the touch-point call to establish the basis for dispute has led to many cases being redirected to the more appropriate 'Tier Review' process, appropriate for cases where the member has requested their benefits are reviewed based on deteriorating health rather than a belief that the Scheme 'got it wrong' at the point of their discharge.
32. A smaller caseload has allowed the Scheme to deliver a better service overall to its members. The average clearance time (ACT) of IDRPs cases was 30.1 working days (down 20% from last year), against a target of 60 working days. This appeal route is a single-stage process, meaning that IDRPs outcomes are final and are challenged only via the Pensions Ombudsman.

Lessons Learned & Looking Forward:

33. During the year, the Scheme upheld 27 IDRPs appeals in full, finding that either maladministered the pension of a member, or had applied rules incorrectly, and two cases were partially upheld (i.e. **32% member appeal success rate**). 61 cases were rejected in full. This is from a total of 90 IDRPs adjudications, including appeals against Tier entitlement on discharge and maladministration appeals. The rate of appeal is therefore low, but the success rate of member appeals is high (one in three successful). To minimise error and to maintain consistency in decision making, the Scheme administers a full audit and assurance programme (detailed in the annual Pension Board Report), and administrators and business partners work together to continuously improve service provision.
34. Of the 29 cases upheld, 10 related to appeals against the Tier Award (ill-health benefits) assigned to a member on medical discharge. This was 34% of the total number of these appeals which were adjudicated in this category (29). The ten which were overturned were generally as the Scheme decided that it should have made a different decision at discharge. Appeals in this category are all seen by a medical advisor and adjudicated by a senior manager; there is therefore increased evidence and a higher degree of scrutiny, leading to a more robust

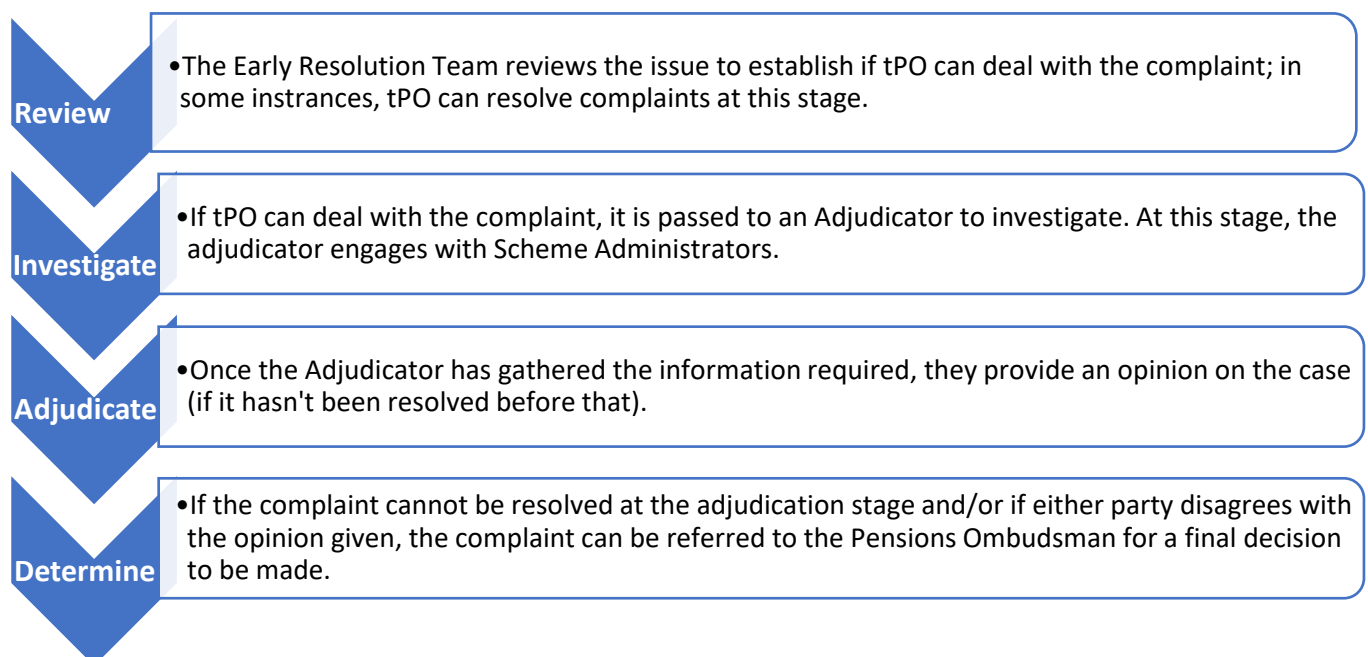
decision than the original Tier Award. Scheme discretionary decisions are lay decisions, and medical advisor advice is taken if required, to achieve the right outcome first time and within the Average Clearance Time PI. The Scheme is meeting its objective, with just 10 Tier Awards being overturned on appeal, compared with 1,982 challengeable Tier Award decisions (0.5%).

35. Of the 29 cases upheld, 19 related to claims of maladministration on the part of the Scheme, the most common complaint of this type remains pension transfer/liberation and Pension Sharing on Divorce. This was 31% of the total number of these appeals which were adjudicated in this category (61).
36. Where the Scheme accepts that maladministration has occurred, it may make an offer of compensation to address non-financial injustice (stress, inconvenience etc.). **Awards of compensation are made in line with the Pensions Ombudsman's guidance on redress for non-financial injustice.** Of the 19 cases where maladministration was accepted, members were offered a combined total of £20,500 in compensation payments, averaging £1,139 per case.
37. Increased involvement from senior staff within the Scheme in compensation payments has led to **more robust learning from each individual case.** Where an error was discovered, **the Scheme makes an assessment about whether other members may be affected by similar issues allowing identification and correction in the wider membership. Additionally, further instruction is given to the Scheme Administrator to bolster understanding and minimise future error** with process improvement and training.
38. Pensions Ombudsman management information on referrals relating to the Scheme demonstrates that the rate of further challenge following the conclusion of an IDRPs is low. For further information, see the following section. **This demonstrates that the IDRPs process leads to reliable outcomes which are communicated effectively.**
39. In 2023-24, Scheme Administrators will trial reduced Average Clearance Time (ACT) Performance Indicators (PIs), which will see the Scheme aim to make a decision on IDRPs cases within 50 working days of receipt (down 10 days or 17% on the case previously).

The Pensions Ombudsman (tPO)

Background:

40. If a member disagrees with the outcome of an appeal, they can refer their dispute to the Pensions Ombudsman (tPO). This is the final part of the Appeals and Disputes process before legal challenge.
41. **There are four stages to the complaints process with the Pensions Ombudsman.** Fine detail is provided on [the Pensions Ombudsman's website](#).



42. As can be seen, there are three stages before formal determination which provide opportunity for a referral to tPO to be withdrawn or resolved.
43. The Early Resolution Team within tPO often does an initial review to check that the case can be accepted. If it can, they may seek to clarify any issues with the Scheme. This is also the case at the Adjudication stage, where Adjudicators ask for a summary of the Scheme decision and a copy of the IDRPs appeal paperwork.
44. Scheme Administrators engage positively with the Ombudsman at each stage, resulting in very few cases reaching the formal Determination stage. This is because Adjudicators most often uphold the Scheme's decision, and their opinion is agreed and accepted by all parties. Where the opinion of the Adjudicator is that the Scheme could have/should have done something differently in the decision-making process, Scheme Administrators almost always accept and review the decision. Where either party disagrees with the opinion of the Adjudicator, they can ask for the Ombudsman to provide a final determination on the case. The Ombudsman's determinations are final, binding, and enforceable in court (unless appealed successfully on a point of law).

45. Where The Ombudsman either upholds the member’s complaint, or asks the Scheme to review its decision, the Scheme does all it can to ensure lessons are learned and the enduring decision-making process reflects tPO’s expectations.

Performance and Outcomes:

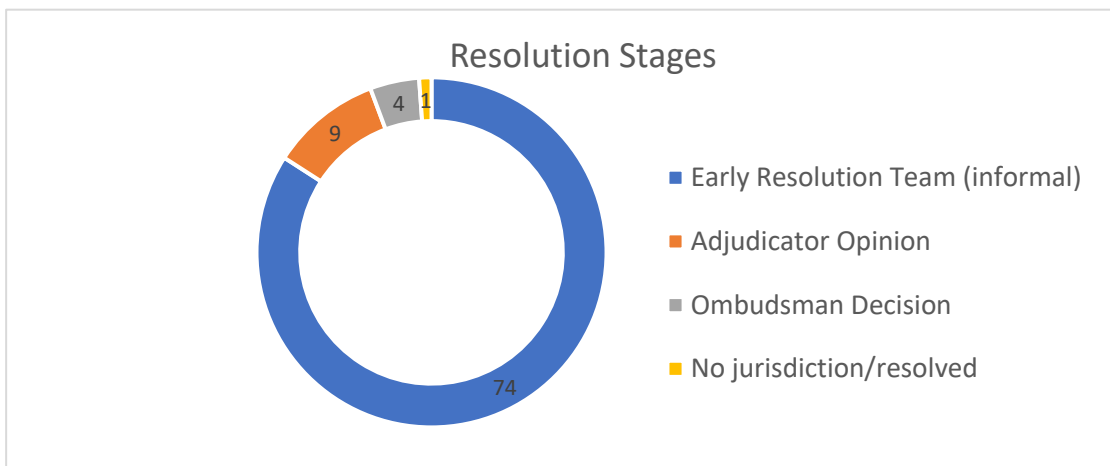
46. 88 complaints were closed by the Pensions Ombudsman between April 2022 and March 2023.

47. 74 disputes were resolved, with no further action on the Scheme following the provision of information and/or Scheme rules by Scheme administrators.

48. Nine AFPS cases reached adjudication by an Ombudsman adjudicator; one dispute was upheld in the member’s favour by the adjudicator opinion, three cases were partially upheld in the member’s favour, whilst five were not upheld by the adjudicator opinion.

49. Four cases were reached determination by the Ombudsman, with all not upheld and no further action on the Scheme.

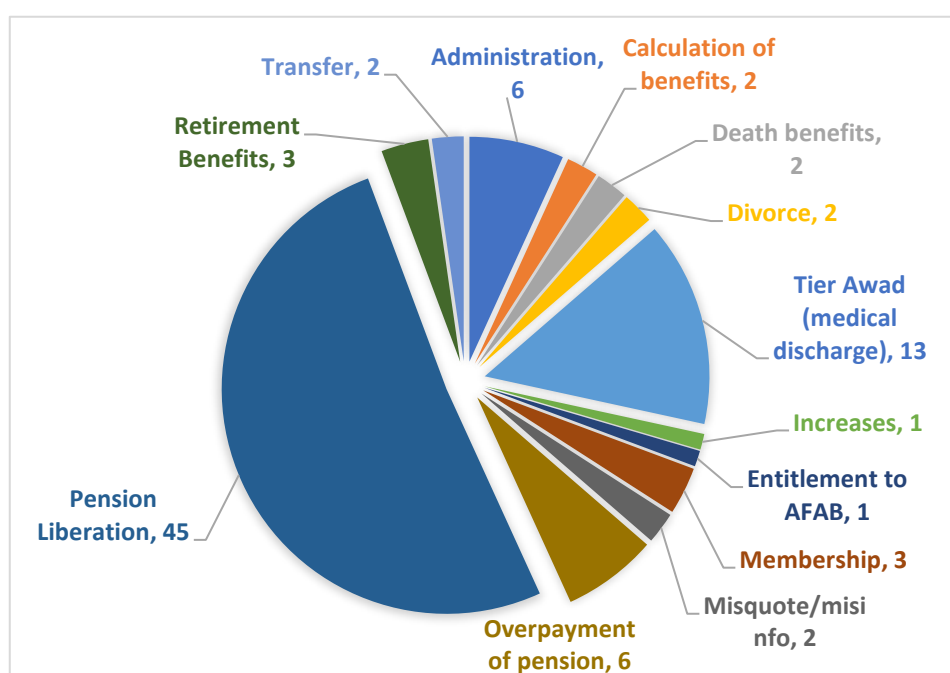
50. Disputes can be referred to the Ombudsman by members which tPO either has no jurisdiction to investigate (for example, issues relating to service/employment rather than pension administration), or the issues had been resolved already between parties (for example, complaint was made to tPO and IDR/DAR changed a decision before tPO investigated).



Resolution Stage	No. Cases
Early Resolution Team (informal)	74
Adjudicator Opinion	9
Ombudsman Decision	4
No jurisdiction/resolved	1

Complaint Types:

51. This year, there were various types of disputes dealt with by the Pensions Ombudsman, with the most common cause for dispute being Pension Liberation (45 of 88, 51% cases closed). It has been observed that a significant proportion of disputes on this subject (22 of 45, 49%) have been closed following a jurisdiction decision (complaint made out with three years of event/subject of complaint, for example).
52. There are currently 189 open disputes with tPO. Common themes among cases open with tPO are Pension Liberation and Ill-Health Pensions (see Annex D). To date, no decision has gone against the scheme, other than in one high-profile case which reached an Oral Hearing of evidence at the office of the Ombudsman (and this case did not set precedent).



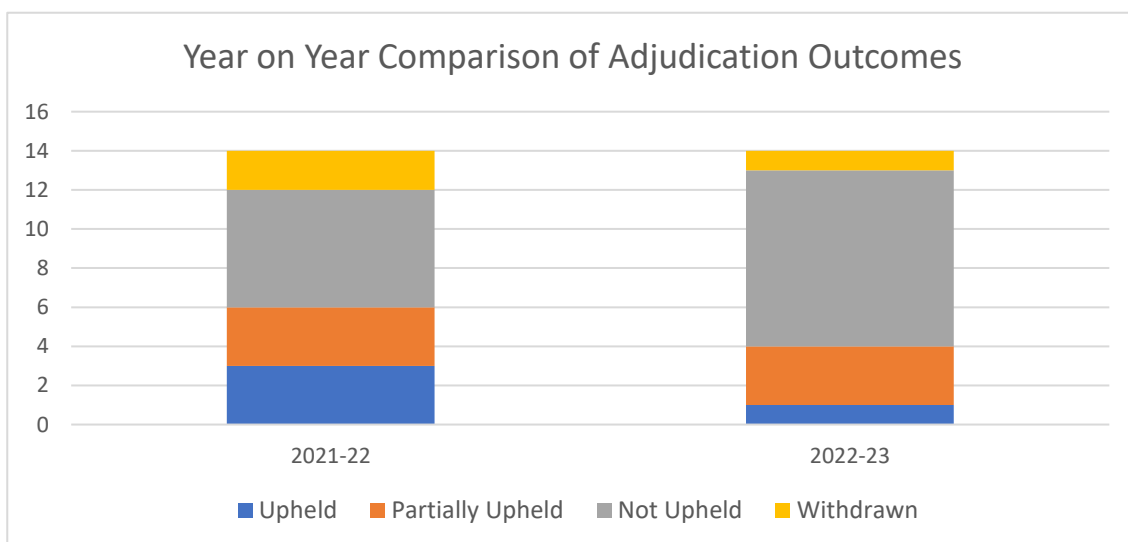
Complaint Type	No. Cases
Administration	6
Calculation of benefits	2
Death benefits	2
Divorce	2
Ill health Pension	13
Increases	1
Entitlement to AFAB	1
Membership	3
Misquote/misinformation	2
Overpayment of pension	6
Pension Liberation	45
Retirement Benefits	3
Transfer	2

Outcomes and Lessons Learned:

53. This year, tPO and his adjudicators have **upheld one member dispute**, and has **partially upheld three member disputes**. When compared with last scheme year, in which the same number of disputes were adjudicated by tPO (14), there were less cases upheld in the member's favour, more cases not upheld, and the same number of cases partially upheld.
54. The case in which tPO upheld the member's dispute related to the Scheme decision to reject a claim for early payment of a preserved pension. In this case, the Scheme accepted the Ombudsman adjudicator's opinion that the decision-making process was at fault and agreed to conduct a further review of the original decision, taking further advice from the Scheme Medical Adviser (MA) on a specific element of the case. The decision was reviewed, further MA advice was taken, and the decision was unchanged. In cases where tPO asks the Scheme to review its decision, this is generally due to some facts or justification being missing from the decision communication. Where this occurs, the review is carried out by different decision

makers/medical advisers from the original case (where possible) and the opinion given by tPO is used for ongoing training of decision-makers.

55. Two of the cases which were partially upheld related to an overpayment of pension, in which tPO found that overpayments arose due to maladministration on the part of AFPS. The opinions stated that compensation for distress and inconvenience would be appropriate but had already been offered in both cases following the Internal Dispute Resolution Procedure’s conclusions. The opinion of tPO was accepted and the overpayments were reduced due to compensation offered to the member. As a result of these cases, closer working relationships are developing between AFPS Authority and Debt Management teams to clarify issues as they arise and to enable Scheme decision making across the board to be consistent and fully sighted.
56. The final case partially upheld related to the failure of the Scheme to pay some of the benefits due to a member following their discharge. This was due to misunderstanding regarding Continuity of Service rules at that time, and this has since been addressed through the publication of a JSP, and a contractual change with the commercial business partner which has updated processes based on new understanding. In this case, the member was paid £1,000 for distress and inconvenience (agreed with tPO) plus interest on the late payment of the ill-health lump sum.
57. Although unfortunate for complainants, the low rate at which complaints are upheld by tPO (4 cases upheld/partially upheld vs 88 cases closed) demonstrates that Scheme Administrators are getting decisions right within our own processes, and relatively low rate of maladministration.

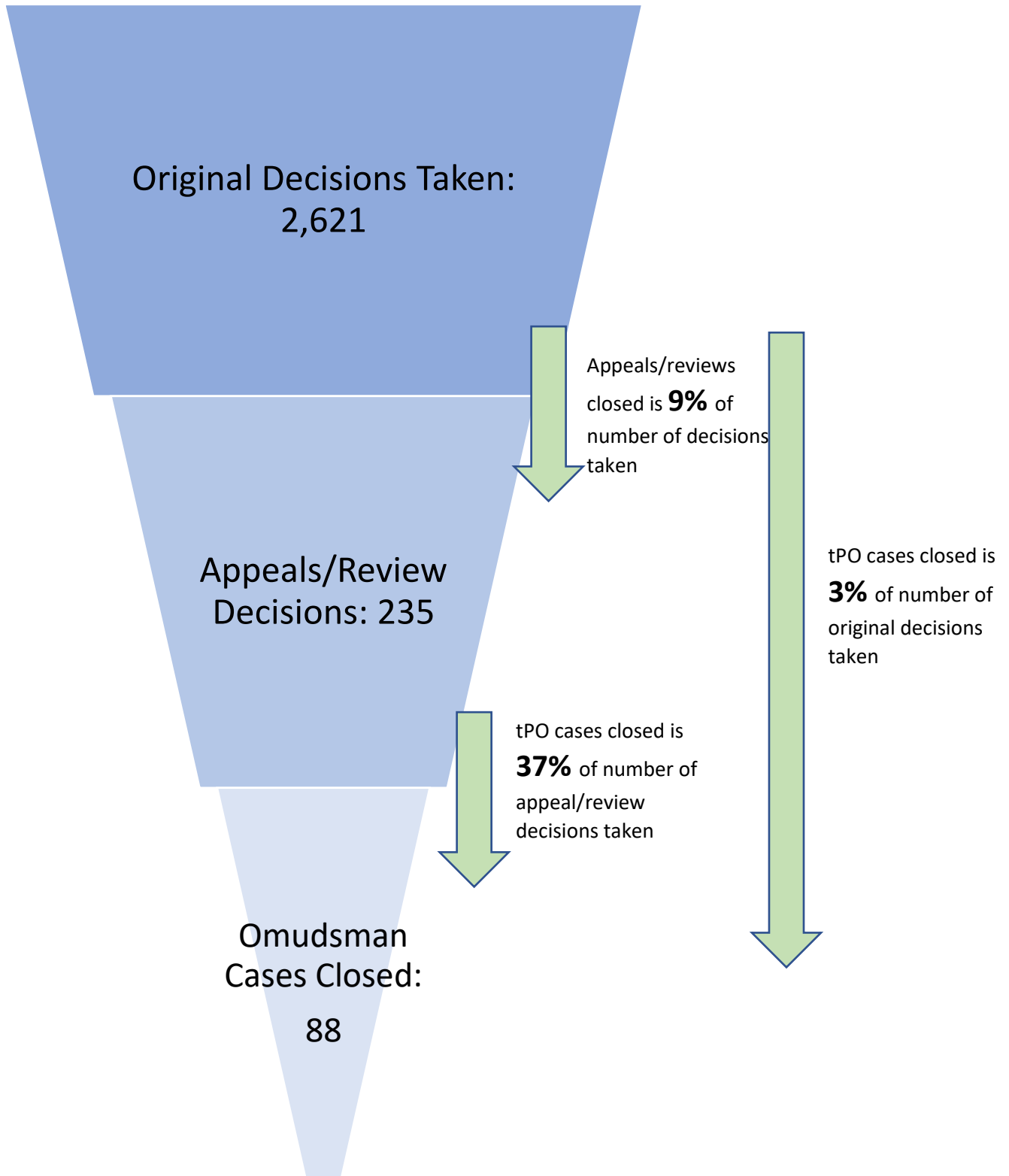


Legal Challenge

58. If the Pensions Ombudsman does not resolve a complaint to the satisfaction of the complainant, or if the Scheme wishes to challenge the decision, the route of legal challenge is available to the complainant and the Scheme.
59. Instances of legal challenge are rare. There is no monetary cost to challenge through each process already described; however, the legal route of challenge can be costly. In addition, this paper has demonstrated that decision making at each stage in the AFPS Appeals and Disputes procedures is robust and well communicated; so, decisions are very rarely challenged past tPO.
60. Where a legal challenge is made against the Scheme, the Scheme Manager (AF Rem) and Scheme Administrator (DBS) will agree levels of input/responsibility and MOD Legal Advisors and Government Legal Department will provide expert legal advice to MOD for either Scheme Managers or Scheme Administrators to direct on the case.

Appendix A

Chronological appeal process, illustrating decreasing volumes as process progresses. Based on Scheme Year 2022-23:



Appendix B

Statistical intake and clearance data for Scheme Year 2021-22 & 2022-23 (Scheme year ends 31 March):

	2021-22		2022-23		% Change	
	No. Received	No. Closed	No. Received	No. Closed	Received	Closed
Discretionary Award Decisions (challengeable under DAR)	746	739	730	655	-2%	-11%
Tier Award (challengeable under IDR)	1,266	1,260	1,982	1,966	+57%	+56%
DAR *	126	111	131	126	+4%	+14%
DAAR	19	22	19	19	-	-14%
IDRP (Ill-Health)	67	70	21	30	-69%	-57%
IDRP (Others)**	91	86	55	60	-40%	-30%
Pensions Ombudsman Referrals ***	20	15	67	69	+235%	+360%

*Any decision to reject the award of attributable benefits from the pension scheme, either to a living member, or a member's dependants on death are automatically reviewed under the DAR. They are appealed under the DAAR.

**'IDRP Others' are dispute cases where the customer claims that the Scheme has maladministered a pension or applied the rules of the Scheme incorrectly.

The significant % increase in 'IDRP Others' is due to complaints made about pension transfers which have increased substantially as third-party claims companies have taken on complaints on behalf of former AFPS members.

*** Pension Ombudsman Referrals are cases where tPO have made contact with AFPS and closed means AFPS action has been completed. As referrals do not always lead to a closure from tPO, these numbers are not consistent with tPO closed cases detailed within this paper and at Annex D.

Appendix C

Average Clearance Time (ACT) data (appeal caseload only) for Scheme Year 2021-22 & 2022-23 (Scheme year ends 31 March):

	Target	2021-22 Average Clearance Time (working days)	2022-23 Average Clearance Time (working days)	% Change (in ACT)
DAR/DAAR**	50	38.0	39.7	+4%
IDRP*	60	37.6	30.1	-20%
Pensions Ombudsman Referrals	N/A	18.1	6.2	-66%

*Total IDRPs, inclusive of IDRPs III-Health (challenges to Tier Award decisions) and IDRPs Others (challenges to the application of scheme rules or maladministration claims).

**DAR & DAAR grouped together for purposes of standard reporting – 50 day Average Clearance Time target applies to total cases across both DAR and DAAR.

Appendix D

Statistical information provided by The Pensions Ombudsman Stakeholder Engagement & Insight Manager relating to cases for Scheme Year 2022-23:

Closed cases - 2022/23		Top topics for open complaints		% of all open cases
Adjudication	14	Pensions liberation	125	66%
ERT	12	Ill health pension	29	15%
Pre-investigation	62	Administration	6	3%
Total	88	Overpayment	6	3%

Adjudication closures - 2022/23		% of all closed cases	
Determination	Upheld	0	0%
	Part upheld	0	0%
	Not upheld	4	5%
Opinion	Upheld	1	1%
	Part upheld	3	3%
	Not upheld	5	6%
Decision letter		9	10%
		1	1%

Closed cases - 2022/23 by primary topic	
Administration	6
Calculation of benefits	2
Death benefits	1
Divorce	1
Ill health pension	13
Increases	1
Injury benefits	1
Membership	3
Misquote/misinformation	2
Overpayment	6
Payment of benefits on death	1
Pensions liberation	45
Pension sharing	1
Retirement benefits	3
Scheme rules	0
Transfer	2
Total	88

Appendix E

Statistical information provided by the Pensions Ombudsman AFPS Stakeholder Manager for Scheme Year 2021-22:

Closed cases - 2021/22	
Adjudication	14
ERT	8
Pre-investigation	12
Total	34

Top 3 open complaints		% of all open cases
Pensions liberation	75	60%
IHER	25	20%
Overpayments	6	5%

Adjudication closures - 2021/22			% of all closed cases
Determination	upheld	2	6%
	partly upheld	2	6%
	not upheld	1	3%
		5	15%
Opinion	upheld	1	3%
	partly upheld	1	3%
	not upheld	5	15%
		7	21%
Resolved		2	6%

Closed cases - 2021/22 by primary topic	
Death benefits	3
Pension sharing	2
IHER	6
Injury benefits	1
Membership	2
Misquote/misinformation	5
Overpayment	5
Pensions liberation	4
Retirement benefits	4
Scheme rules	1
Transfer	1
Total	34