

THE FUTURE OF THE PENSIONS OMBUDSMAN

COMMENTARY BY [PAUL NEWMAN QC](#), 20 SEPTEMBER 2019

At the end of August, the DWP published its first dedicated in-depth review of the Pensions Ombudsman ("TPO"), looking at its remit, governance, efficiency and effectiveness. The recommendations of the review give an interesting insight into the future direction of TPO in these fields. This article focuses on the aspects of the review which directly affect the relationship between TPO and its primary users.

The full review can be found [here](#).

TPO and FOS

Of particular concern over the last few years has been the relationship between TPO and the Financial Ombudsman Service ("FOS"), particularly in relation to disputes over personal pensions. The review noted that the overlap in jurisdictions is anomalous and does not aid clarity or consistency. Although hampered by a lack of data, the review criticised the lack of consistent guidance for complainants as to which was the relevant Ombudsman body for their complaint, as well as the fact that different conclusions could be reached for the same case, due to the differences in the underlying legislative frameworks. However, the review stopped short of calling for a change in legislation, and instead recommended a renewed effort to strengthen relationships between the Ombudsman bodies and to develop a collaborative process.

The review also considered whether TPO and FOS should merge, and decided – in line with the views of previous review bodies – that this was not desirable, given the different statutory and regulatory regimes governing pensions and financial services. The review stressed that any future merger must be focused on delivering a clear and consistent approach to dispute resolution, and that cost savings should not be a paramount consideration.

Early resolution

TPO now facilitates the resolution of complaints before they go through the scheme's IDR, following the transfer of the Early Resolution Team ("ERT") from TPAS to TPO. The review noted the potential for confusion for complainants arising from the ERT's roles in resolving disputes and giving guidance on how to make complaints, and recommended that the ERT's latter role be clarified to complainants, although not at the expense of TPO's adjudicatory independence. The review also called for TPO's early resolution work to be underpinned by legislation.

The review considered the progress of the stakeholder engagement programme launched by TPO in 2016 and noted that this had been positively received, in that it had increased knowledge about TPO's functions, and allowed it to collect valuable feedback from the organisations with whom it works. The review recommended that this programme be enhanced, highlighting a suggestion that TPO produce guidance tailored to pension providers and trustees which would focus on ways for schemes to avoid common problems, and clarify TPO's processes and expectations of respondents.

Funding

The review considered whether there should be a move away from the current levy-based funding system, to the system used by FOS, which charges case fees on pension providers who receive more than a prescribed number of complaints. This idea was rejected, on the basis that there was little evidence that it incentivised better administration, and that such an approach was difficult to apply now that TPO's emphasis had shifted to the early resolution of disputes.

Comment

The review was broadly positive about TPO, both in terms of its internal operation and its relationship with its users. However, the review failed to grasp the nettle of the inconsistent treatment by TPO and FOS of cases which overlap their jurisdictions. This has been controversial, most notably in the case of complaints against SIPP providers, and has led to ordinary investors losing out on potential redress for loss, as well as a degree of forum-shopping by more sophisticated investors. It is unfortunate that the review did not recommend legislation to end this inconsistency, and its call for greater collaboration between TPO and FOS is unlikely to solve the problem: only a review of both TPO and FOS is likely to lead to proper reform in this area.

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