

A pension scheme member, dependant or personal representative has, short of litigation, two main routes to obtain, or at least seek, a remedy. One is to the Pensions Ombudsman and the other to the Financial Ombudsman Service (TPO or FAS), between whose respective jurisdictions is a degree of confusing overlap – a reminder that pension are more about money that trust law and tax and the legislators' aims are seldom straightforward or clearly and consistently expressed.

the pensions route

The requirement for the trustees or managers of an occupational pension scheme to make arrangement for the resolution of disagreements in relation to the scheme was introduced by the Pensions Act 1995, s50. The original s50 has been repealed and the requirement is now in s50, s50A and s50B of the PA 1995 as inserted by s273 of the PA 2004 (as amended by s16 of the PA 2007) and the Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008, SI 2008/649. IDRPs is the common shorthand for an internal dispute resolution procedure

The trustees or managers of pension schemes must secure make and implement arrangements for the resolution of pension disputes between the trustees one or more persons with an interest in the scheme about matters relating to the scheme. The arrangements must provide for any of the parties to apply for a decision to be taken on the matters in dispute and for the trustees to take that decision.

The arrangements may provide (a) that an application may not be made to the trustees, unless it has been previously referred to a "specified person" who has given his or her decision on the matter, and (b) that the decision is confirmed or replaced by the decision taken by the trustees after reconsidering it. The decision, both by the trustees and, if applicable, the specified person, must be made and notified to the applicant within a reasonable period.

The requirement does not apply if every member of the scheme is a trustee of the scheme or a director or its corporate sole trustee, or if the scheme has only one member, or if the dispute is in connection with specified disputes in connection with the Police and Firefighters' schemes or of proceeding have been commenced in any court or tribunal or if TPO has commenced an investigation.

By the Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996, SI 1996/2476, reg 3, TPO shall not investigate or

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determine a complaint unless written notice of a decision in respect of it has first been issued by the trustees under s50 of the PA 2005. TPO may however act if he is satisfied that there is no real prospect of a notice being issued within a reasonable period and it is reasonable that he should do so.

On 1 April 2018 the dispute resolution service operated by TPAS (the Pensions Advisory Service) was transferred to TPO, with the expectation at the time that complaint resolution times would halve to just over five months. TPAS's former service is now named the Early Resolution Service (ERS), the purpose of which "is to provide an informal and streamlined approach to dispute resolution". The ERS may be used before the scheme's IRDP has been completed if the complaint has at least been raised with it.

the financial route

Rules made by the Financial Conduct Authority (FCA) are made by rulemaking instruments under s138G of the Financial Services and Markets Act 2000 (FSMA 2000). At www.handbook.fca.org.uk the FCA describes the FCA Handbook by stating that it "contains the complete record of FCA Legal Instruments and present changes made in a single, consolidated view". Disputes about financial services are dealt with in the "Redress" block of the FCA Handbook. The (financial) ombudsman scheme was established by the FSMA 2000, Part XVI (s225 to s234B), and details of its operation are in the Redress block of the FCA Handbook, sections DISP 2 and DISP 3.

overlap of jurisdiction

A memorandum of understanding signed on 1 December 2017 by the Pensions Ombudsman and the Financial Ombudsman Service recognises their different remits and provides for the handling of complaints and disputes where there is a potential overlap of jurisdiction. The scope and overlap of their respective jurisdictions are summarised in paras 6, 8 and 9, as follows, and illustrative examples of the types of complaint each ombudsman can consider are in an appendix.

6. The Pensions Ombudsman deals with matters which concern the administration (including transfers/conversion) and/or management of occupational and personal pension schemes.
8. The Financial Ombudsman Service deals with matters which predominantly concern advice in respect of the sale or marketing of Individual pension arrangements.
9. The Financial Ombudsman Service can also consider complaints about the administration of personal pensions and group personal pensions (but not complaints about the administration of occupational schemes). This means there is a jurisdictional overlap between the two ombudsmen.

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