

Tony King – Pensions Ombudsman

Speech at the AGM of OPDU – 27 January 2010

Good evening. I'm delighted to have been invited to speak at the annual general meeting of the Occupational Pensions Defence Union.

When I told my partner where I would be today, she expressed some surprise that such a body as the Occupational Pensions Defence Union should even exist.

It was the word "defence" that did it. I think somewhere in her mind was a vision of assorted Mainwarings, Wilsons and Pikes lined up on the besieged coast of Occupational Pensionland, broomsticks and pitchforks in hand, ready to give their all.

Then that thought turned my mind to a little volume of poems by Roger McGough essentially built on the premise that the Cats' Protection League is a feline mafia going from house to house threatening to dig up flowerbeds and do unspeakably malodorous things unless provided with tuna on demand.

But now that I stand here in front of you I see that you are neither Dad's Army nor the Sopranos. Which is, in its way, a source of relief.

To counteract that relief, however, is the potential discomfort of speaking alongside a politician – and much worse, a politician, Nigel Waterson, who knows a thing or two about pensions. Inevitably he comes at the subject from a particular angle. But OPDU isn't the BBC. It has no impartiality obligations – and even if it did, I'm not here as a counterbalance – because pensions ombudsmen do have, very strong, impartiality obligations.

But if that were not so, I still wouldn't take on policy matters, let alone politics. A few years ago I spoke at a Pensions Management Institute dinner on the subject of what ombudsmen are for (and yes – I did allow for an "absolutely nothing" joke.) I started by explaining that in my view ombudsmen aren't very good at policy. We have a very narrow view of the world. Inevitably we see what goes wrong at a day to day administrative level – which most of the time, thankfully, it doesn't. My office does not deal with what may go wrong with pension schemes or pension provision at a structural or policy level (though occasionally we may deal with some of the fallout). So in my view, we should not be pronouncing on those things.

Instead I thought today I'd spend a bit of time on explaining what I think we are for. And then a few thoughts about how we carry out our function in practice and where we might go in future. What I hope I'll persuade you of is that there is a real benefit to the pensions industry in having an ombudsman service able to deal with disputes that otherwise could remain unresolved. And I hope I will also give you some confidence that we are trying to provide that service in a modern, flexible, efficient way.

So – what's the point? Why bother with a pensions ombudsman at all?

Let me remind you, to start off with, that I am a more or less bog standard consumer complaints type of ombudsman. We don't police or regulate. In the main we deal with individual complaints about things that may have gone wrong in individual circumstances. We are essentially all about individual justice; an alternative source of redress to the Courts.

So part of the answer to why we exist lies in the area of consumer confidence. If everything else in the world of pensions was running smoothly then the fact that a scheme member with a grievance had somewhere to take it would be a significant comfort to him or her.

Now, there are those who might say that everything else in the world of pensions is not running entirely smoothly at the moment. And I doubt that the presence of my office offers much immediate reassurance to those whose defined benefits scheme has just closed for future accrual – or perhaps gone into the Pension Protection Fund. But we are there for those who need us and, with confidence building as much as anything else - as some supermarket or other might say, “every little helps”.

More fundamentally, I think that these days there is just a presumption that, for personal financial matters generally, there ought to be a body to provide redress. You may or may not think of your members as consumers – but the general expectation of modern consumers – that their rights should be acknowledged and given effect to - is bound to wash through to the way that pension scheme members think about their schemes. Whether they actually know that in particular there is a pensions ombudsman is neither here nor there. They think and expect that there is a safety net under their particular tightrope, though they may prefer not to look down to check. And I don't think there are too many serious suggestions from the ringside that the safety net should now be whisked away.

One of the reasons that there are not too many calls to have us abolished may be that an ombudsman arguably benefits those running schemes (including scheme employers) as much as scheme members. It's worth pointing out that although we are an alternative to the Courts, that's a bit notional. Generally, only the rich (whether in money or time) – or sometimes the obsessed – go to Court. More often than not we are only an alternative to persisting against the odds - to flogging a very reluctant or dead horse. And if you are that horse you may be pleased that there is an alternative. For a comparatively small cost (presently under £3m a year) the entire industry has somewhere it can send its disputes to be resolved.

Admittedly, before complaints get to us, there is a requirement for schemes to engage with the aggrieved person. But, with or without us, that would be unavoidable for all but the rudest scheme authorities. There is also a risk that the outcome will not be the one that the scheme wants or expects. But, across the board, that downside can be regarded as outweighed at least partly by no longer having to manage a complaint (that was unlikely to go to Court and achieve finality that way) right through to the (sometimes very) bitter end.

Some might argue that the extra burden of an ombudsman on already beleaguered private sector DB schemes is not justifiable – that my office is one of the very many straws that is breaking the camel's back. Leaving to one side that, in the context of everything else, we are very tiny straw indeed, I might respond by pointing out that, in fact, private sector DB schemes by no means provide the largest share of our business. Local Government, Teachers and NHS schemes inevitably head the list – purely due to the size of their membership. And at the other end of the scale we deal with a fair number of complaints against providers, about personal pensions (or the various individual arrangements that preceded them). So the burden on private sector DB scheme is much smaller than it might appear at first sight.

So, that's the direct benefit of our primary task of dealing with complaints.

But we provide a not inconsiderable – though perhaps unmeasurable – indirect value too; in relation to matters that never get to us. The long existence of the pensions ombudsman's office (nearly 19 years now) has meant that there is a considerable body of "ombuds-prudence". So, if a scheme member has a complaint without merit, it may be defused on the discovery of a relevant precedent (and that can happen without the scheme ever knowing anything about it). When schemes do know about the dispute, they themselves can use precedent to bring the matter to a resolution (whether in their favour or not). And it's worth emphasising that before the existence of the pensions ombudsman's office there was not a great deal of clarity across a range of potential areas of dispute. To mention a few in which there is now a far better level of understanding, there's the matter of giving advice (not usually necessary), the extent of recoverability of overpayments (more often than not, they can be recovered), a whole subset of cases about detrimental reliance on misinformation or mistake (or not) – and so on.

That indirect effect of our existence results from perhaps our most important secondary task: stopping complaints from coming to us at all.

It would, of course, be ridiculous to think we could (or should) ever do that completely. But it is an important part of our job to spread the word about what would happen if a complaint did get to us. Early resolution is one of our objectives – and resolution before a complaint form even lands on the mat is about the earliest we can aspire to.

And it's equally important that we should directly encourage good administration – so that complaints are less likely to arise in the first place.

So we publicise what we do – primarily through our website and annual report. And we rely on schemes and their advisers to keep an eye open and spread the word. And we tell schemes how they can best avoid us – though what we try not to do is preach.

On the point of publicising decisions, I'm on record as saying that recently we've become a bit boring. But there's no real surprise there. In the early years of our existence we were in effect the only show in town. There wasn't even a regulator to speak of. Now the Regulator, the PPF and many other bodies have an influence on behaviour. And, simply because we've been around for a while, we tend to be covering old ground. Previous ombudsmen made interesting decisions that were interesting because they were novel. That just doesn't happen so often these days.

We suffer from a slightly split personality. On the one hand we would like to limit complaints through developing an understanding of the strength or weakness of any particular case before it gets to us, and by encouraging good scheme management. On the other hand we want to be accessible (in the general sense of being easy to find when needed, and easy to use). If we succeed in the second aim then we may be encouraging complaints, not limiting them. Nevertheless it's that aspect of making ourselves accessible that is I think the third most important part of our work.

I occasionally mention the curious discovery that emerged from a survey of public awareness carried out some years ago by (if I recall correctly) the National Consumer Council – now defunct. It discovered that more people knew about the travel services ombudsman than the pensions ombudsman. The only problem was that there wasn't a travel services ombudsman.

That survey may have reflected the particular concerns of the time. Perhaps now people are as concerned about their pensions as they once were about their package holiday providers. And in a sense it may not matter from an access point of view whether the man in the street knows we exist – as long as they can find us when necessary. Anyway I suspect that a similar survey now would produce a different response.

We have been trying to smooth the path to our door for those who need us. We have been improving the signposting (in particular trying to reduce the number of cases that go to the Financial Ombudsman Service in error). We've improved our website. Next, we need to take a look at the experience of those who go to the Pensions Advisory Service and then on to us, to make sure that time with TPAS is used to best effect in the maximum number of cases.

A while ago I mentioned early resolution in the context of preventing complaints from getting to us at all. But when they do, we have a responsibility to deal with the matter effectively and proportionately – which is also likely to resolve the matter earlier rather than later. Of course one man's proportionate investigation is another man's cursory brush under the carpet. An easy way of resolving those different perceptions would be to subject everything to the same degree of examination – a “belt and braces” approach.

That would scarcely be satisfactory, though - particularly in times of public sector financial strictures. We may be small and not cost very much, but we want to keep it that way. So we will continue to make things simpler where we can; to actively push for quick resolution (“quick”, that is, not “quick and dirty”!) and to apply discretion in deciding how best to reach a resolution.

I hope that schemes will see the benefit of that. If we act disproportionately it's not just our own resources that we are committing – it's yours too. So it's in your interests not to push us towards that belt and braces approach, but to come along with us and accommodate a degree of flexibility and discretion in our dealings.

Handling cases proportionately will often mean dealing with them less formally – and so in a more user-friendly fashion. Being informal and friendly remains a significant challenge for us – and it's a hard nut to crack. For example as a retrograde step, for data security reasons we have recently all but stopped communicating on cases by email. Technologically speaking, others may be twittering away in the branches. For the time being we're back on the ground scratching on clay tablets.

But we have made some progress - for example, we've changed the format and some of the substance of our letters and our formal decisions. And those formal decisions are slowly becoming rarer, I think without harm to outcomes or the experience of the parties. And a rough survey indicates that where we do issue formal decisions they are now on average a third shorter than a couple of years ago - also without harm to the overall “product”.

So, to conclude.

I said at the start that I would try to persuade you that a Pensions Ombudsman was broadly a good thing - and that I would try to reassure you that we were trying to be efficient and flexible. I hope I've succeeded (though I'm also hoping the Chair won't put either to a vote!).

I also said at the start that I didn't think ombudsmen were good at policy. That's true, but there's a slight conflict with my general view that we ought to be promoting good administration. Inevitably at meetings such as this one of the first questions I'm asked is what schemes should be doing to avoid complaints being upheld. There's no short answer – and anyway it mightn't be a very reliable one given the distorted picture that we see.

But there is an answer to a slightly different question. What is the thing that most frustrates me when I see it? The answer is that I quietly put my head in my hands and weep whenever I see decisions by schemes that have been made on important matters without actually checking that administrative practice conforms with the scheme rules. So if I have one piece of advice for OPDU members it's this:

“Look at the Rules.”

“Properly!”

And with that I shall finish. That last piece of advice is as close as I intend to get this evening to policy, let alone politics – for which I refer you to this evening's other, and in that area far better qualified, speaker.

Thank you for listening.