

Pensions Ombudsman

Annual Report

2005/2006



The Pensions Ombudsman David Laverick







**To: the Right Hon John Hutton,
Secretary of State for Work and Pensions**

I have pleasure in submitting the Annual Report of the Pensions Ombudsman for the year 1 April 2005 to 31 March 2006.

A handwritten signature in black ink that reads "David Laverick". The signature is written in a cursive style and is underlined with a single horizontal stroke.

David Laverick

Pensions Ombudsman – August 2006

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“ ...a marked fall in the amount of work coming into the Office...has had the welcome result that I have been able to bring down the number of investigations in progress.”

Introduction

This report is made in my capacity as both the Pensions Ombudsman and the Ombudsman for the Pension Protection Fund. The latter role also carries with it responsibility for reviewing (if requested) decisions made by the Financial Assistance Scheme.

My time in office has generally been marked by a considerable increase in the number of decisions made year on year, but marked too by a considerable increase in the number of complaints coming into the Office and the number of such cases accepted for investigation. Adequate resources to cope with those increases have not always been made available as readily as I would have liked.

My most important resource is my staff. They need to be backed up by adequate resources and adequate equipment. A year ago I expressed concern that the necessary changes to accommodation and IT, without which I could not employ sufficient staff, had not then been put in place. At first sight, the same can be said of my position at the end of the year. But I am conscious that there have been considerable efforts made during the year so that there is now a more realistic prospect of my frustration coming to an end. The refurbishment of my accommodation is almost complete and a contract is about to be let for replacement of the IT systems, delivery of which should do much to improve the efficiency of the Office.

Fortunately, the major element of my resource package – my staff – have largely overcome the adversities of coping with an IT system on the point of collapse and of camping out in temporary accommodation.

This has been the first year in which a Deputy has been in post following provisions in the Pensions Act allowing for such an appointment.



Charlie Gordon,
Deputy Ombudsman

Much of the time of the Deputy Ombudsman, has been taken up in seeking to resolve the resourcing issues. His arrival does, however, mean that, at Ombudsman level, we do now have the capacity to continue making determinations at, and indeed, beyond the previous level although the resource constraints have proved obstacles to achieving greater levels of productivity.

As in previous years, I am immensely grateful for the efforts of all other members of staff, and I am particularly grateful to my Deputy for his management of the Office.

A major feature of the past year, is that there has been a marked fall in the amount of work coming into the Office. This has had the welcome result that I have been able to bring down the number of investigations in progress.

During the year there has been a considerable amount of system planning and reorganisation of the Office to cope with expected work arising from changes made by the Pensions Act 2004. My website has been greatly expanded to encompass information about that work and appropriate literature has been produced. The website will be a source of real-time information on the progress of this casework.

Prompted by the Government's White Paper, *Transforming Public Services: Complaints, Redress and Tribunals*, there has been some interest in considering how the processes used by Ombudsmen differ from those used by Tribunals and by Courts. One such difference is the way feedback is provided by the body which is involved in determining disputes or appeals to those taking the original decisions. Ombudsmen tend to be at the most proactive end of that particular spectrum, seeing part of the purpose of the Office as being to improve the quality and fairness of decision-making.

For many years, my Office has made available on its website copies of all my determinations, together with a search engine which can be used to select those of interest to particular readers. As a further stage in the feedback process, I published a booklet during the year entitled, *How to avoid the Pensions Ombudsman*, which stressed the principles which should be used by trustees, managers and administrators of pension schemes. The publication was warmly endorsed at its launch by the then Minister for Pensions Reform and seems generally to have been welcomed by its intended audience. The initial print run has now been exhausted but the publication can be accessed via the website.

Annual Reports such as this are also another means of providing feedback based on the particular casework which I have dealt with over the past year.

During the year, the Government has been involved with negotiating changes to various public sector schemes. It is not for me to become involved with matters of policy, such as extending the age of retirement or the basic structure of the scheme, but public sector schemes do provide a considerable slice of my work. My work tends to lie more with matters of detailed application of the regulations than with the schemes' broad strategies. That experience suggests there would be merit in the Government undertaking a review of the detailed provisions of the various public sector schemes with the aim of having them all operate on a more uniform basis. There may be reasons why schemes for particular groups of workers need to have some special provision in place: but all too often it looks to me as if there is no objective reason to explain the lack of a common approach. My experience suggests there may be a particular need to overhaul the provision relating to the award of injury benefits.

The lack of a common approach is a comment which could also be made about the myriad of pension schemes which are outside the public sector, each of which is likely to have its own definition of what constitutes pensionable pay and its own criteria as to when a pension can be granted on grounds of ill health. It would be inconsistent with what I have to say below for me to press for some legislation to bring about uniformity. But perhaps efforts could be made to promote the production, and then implementation, of a limited number of Model Schemes. And, as I have suggested above, were the Government to see itself as a single employer, it could lead a drive for simpler and more uniform schemes.

Model Schemes, and the public sector schemes, should in my view, remove the present widespread practice of paying Death Benefits at the discretion of the Trustees or their equivalent in the public sector. A consequence of adopting my proposal may be to make such payments subject to Inheritance Tax, although for many members of occupational pension schemes, that would be a theoretical possibility rather than a practical reality. If the Government wishes to avoid that possibility – a matter on which I express no view – then to my mind that would be better done by having some express fiscal provision than by retaining the present position which puts Trustees in a difficult situation and is unsatisfactory for Members and their families.

As in previous years, I have welcomed the opportunity to publicise the work of the Office by speaking at various conferences, both to those directly involved in the provision of pensions, and to those from the consumer – as opposed to the supply – end of the spectrum. I have also contributed articles to various publications aimed at both kinds of readership. In such talks and articles, I make the point from time to time, that there is far too much primary and secondary legislation, particularly in the pensions field.

This has been a year when there has been considerable work involved in considering various consultation papers emanating from the Department of Work and Pensions and commenting on proposed Regulations. Whatever else the Pensions Act 2004 may have achieved (and I very much welcome the increased protection awarded by the Pension Protection Fund), I doubt whether it could be said to have simplified the law relating to pensions.

I noted with some despair the decision, after all, not to sweep away the complexities of the internal dispute resolution processes, on the grounds that to do so would be too complicated. What complication would there be in sweeping away that raft of regulation and replacing it with a single sentence which would not of itself involve any expense to schemes? To my mind, all that is required is a provision which says that, before I accept any complaint or reference for investigation, I should be satisfied that the particular respondents have themselves had a reasonable opportunity of responding to, or settling, the complaint. I do not accept the argument that secondary legislation is needed to spell out in great detail the processes which schemes need to use to deal with complaints made about them.

I was also disappointed to learn in the course of the year, that the Law Commission were unlikely to bring forward proposals to prohibit Professional Trustees from benefitting from clauses in Trust Deeds which exonerate Trustees from the consequences of their mistakes. At least in the specific context of pensions trusts, it seems to me to be quite wrong for a professional trustee who is being paid for his expertise, not to be required to provide redress for the consequences of any maladministration for which he is responsible.

My part in the feedback loop is to draw attention to those issues from casework which have wider implications. It is for the industry and the Government to take matters on from there.

“ For the trustees to reach their decision is hard enough. Explaining that decision to the parties is even harder. ”

Casework Review

Overview

The law requires those wishing to use the service I provide, to raise the matter in writing. That does not prevent the first approach from many people being by telephone: in a typical year I receive between 12,000 and 15,000 enquiries by telephone, the vast majority of which are passed on to the Pensions Advisory Service.

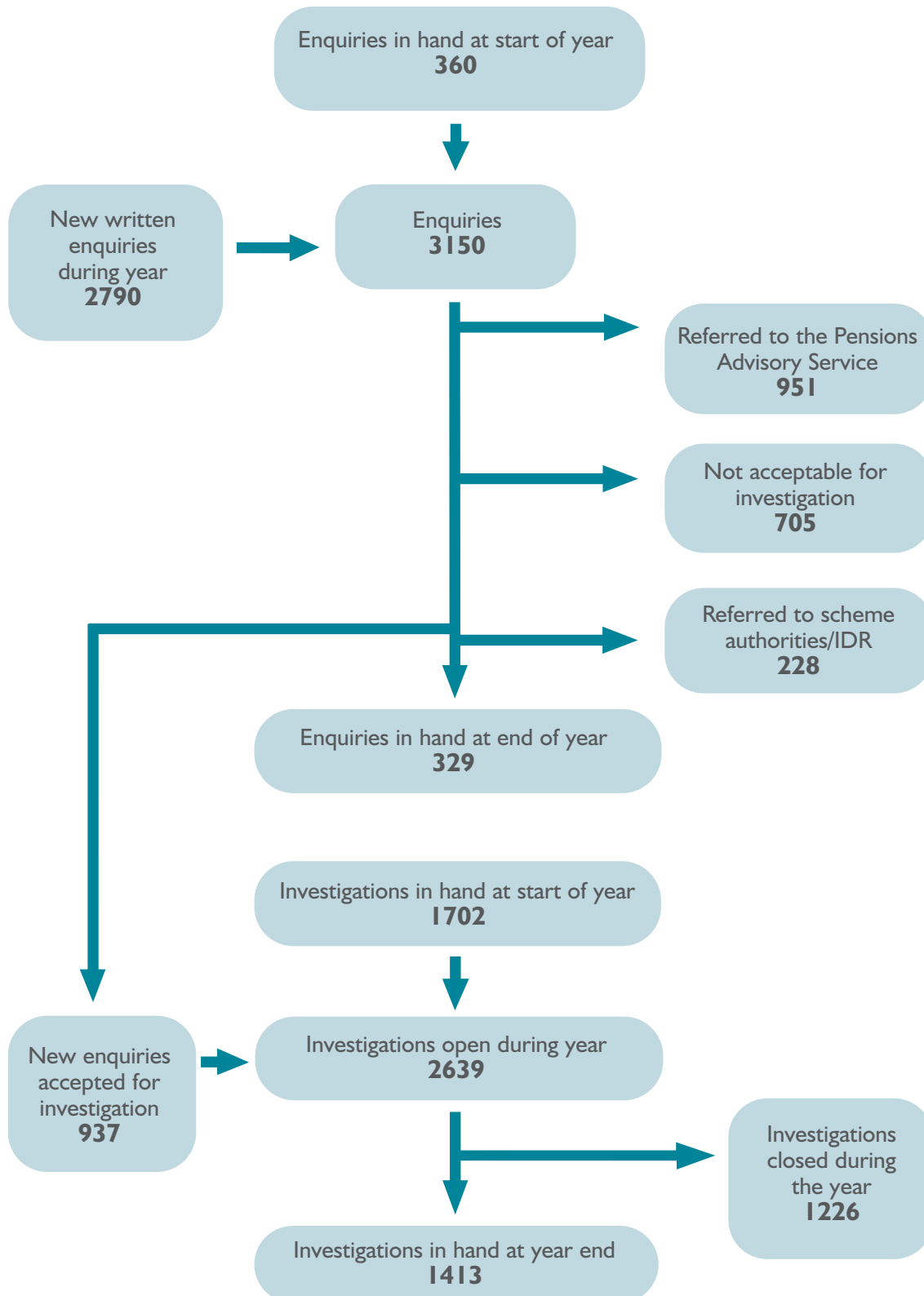
The number of written enquiries received last year has been at the low end of the range which has been experienced over the last few years. Many of these enquiries are made to me somewhat prematurely, for example, before the scheme or insurance company have themselves had the opportunity to resolve the matter. Others need clarifying before the issue in dispute or the respondents can be identified. A proportion of matters in both those categories will find their way back to me after initially being referred either to the schemes or to the Pensions Advisory Service. About three quarters of the matters accepted for investigation have been through that latter route.

Those whose complaints are not accepted for investigation are referred to alternative sources where appropriate. There are times, however, when people have to be advised that they have reached the end of the line and that redress for the injustice they claim is not going to be provided. That is not a message which is easily accepted, particularly where there are indications that there is some merit in their claim but the opportunity for redress has been lost as a result of past delay.

The number of investigations closed is much the same as last year, a result which has been achieved in the face of some difficulties and distractions due to vacating my usual premises while refurbishment takes place to allow a greater number of staff to be more effectively accommodated. Regrettably, the move to temporary premises has been for a much longer period than envisaged because of continuing delays in obtaining a new IT system, the absence of which severely hinders the efficiency of the Office.

The present rudimentary IT system also inhibits a more meaningful presentation of statistical information about casework.

Investigation flow chart 2005/6



Enquiries

In 2005–06, the Office received 2790 new written enquiries to add to the 360 brought forward from the previous year. Of the combined total, 2821 were dealt with during the year, leaving a balance of 329 in hand at the end of the year.

Figure 1 below shows the total number of new enquiries received in the Office over the last five years.

The 30% variation in this incoming workload, as illustrated by the bar chart below, can cause problems. Like most Ombudsmen, I need to respond to the amount of work which comes through the letter box, (or to a lesser extent into the e-mail in-tray). I am not generally in a position to control that incoming flow. Where fewer enquiries than expected are received, I am able to divert the staff who would normally deal with them onto other work. The reverse does not, however, hold true, leading to considerable difficulty if more complaints are received than business planning has assumed (as has been the case in two of the last four years).

Figure 1 - New enquiries received (last five years)

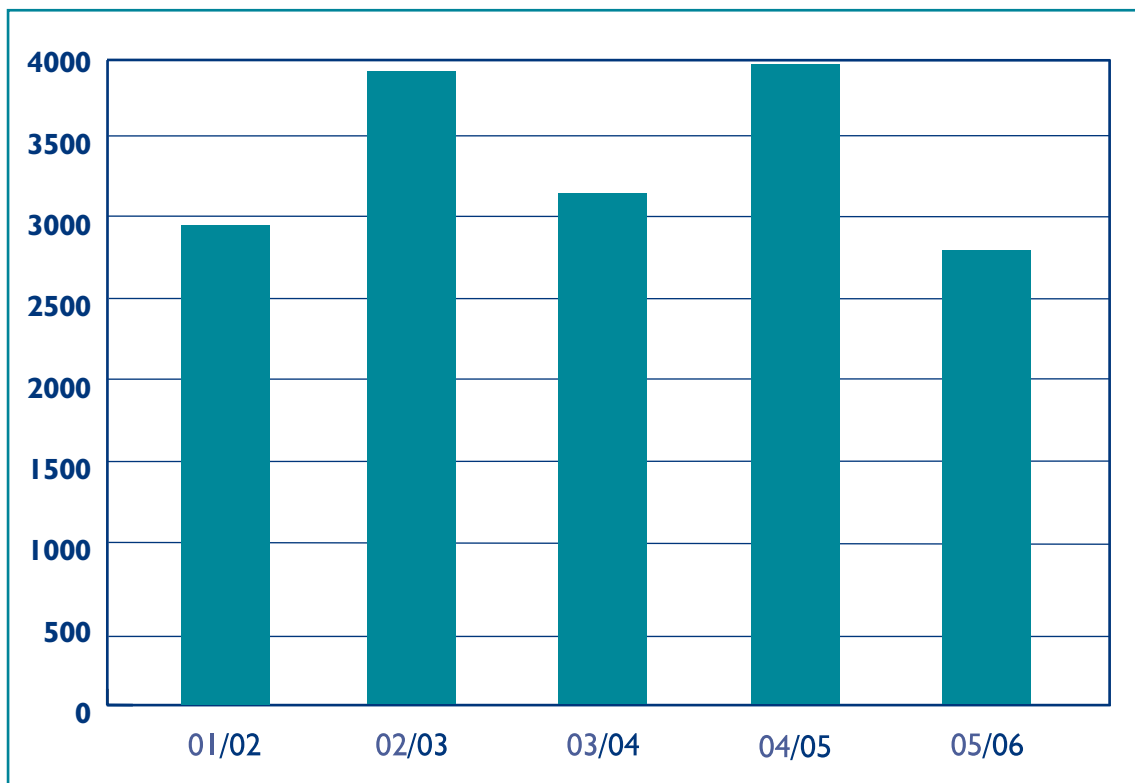


Figure 2 below shows the number of enquiries received per month over the last two years. On average, 233 enquiries per month were received in 2005–06, compared with 328 enquires in 2004–05. The monthly enquiry

rate was relatively consistent, with a seasonal dip in December 2005. Apart from one notable exception in April 2004, new enquiries have been received at a fairly steady rate over the last two years.

Figure 2 - Enquiries per month (last two years)

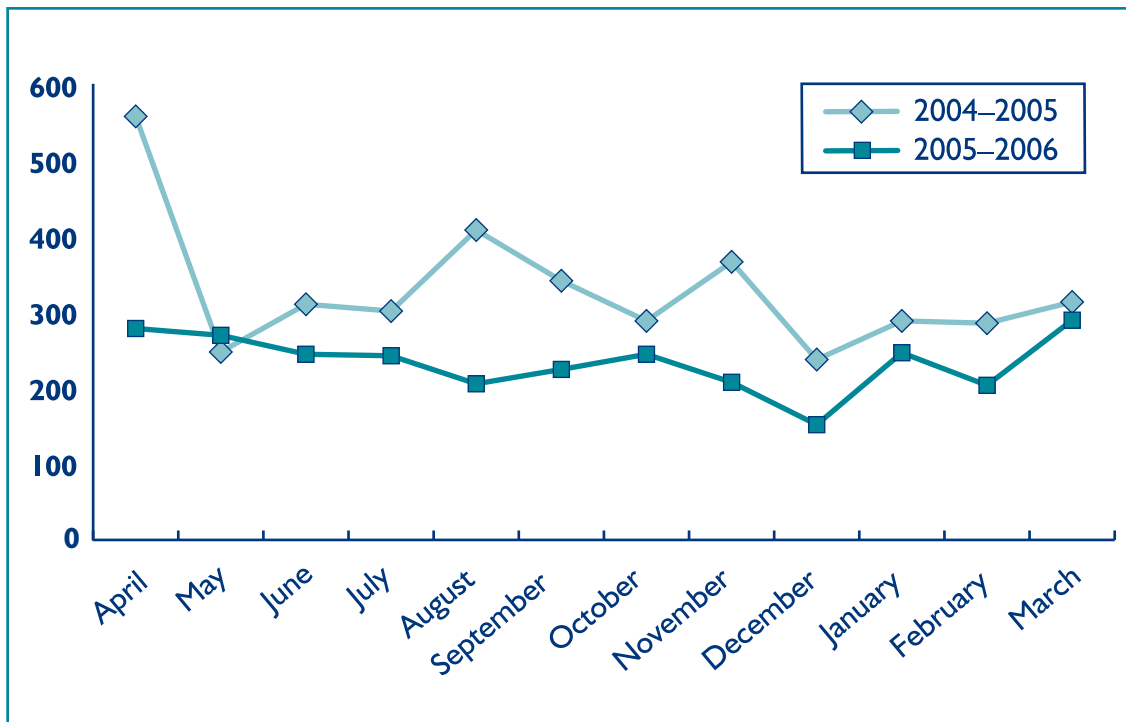


Figure 3 below provides a breakdown of the reasons why many enquiries were not accepted for investigation. Generally, the breakdown is similar to that in previous years. A similar proportion (around 60%) of total enquiries (new and brought forward from the previous year) were not accepted for investigation and referred elsewhere.

Compared with last year, there was almost a 50% reduction in the number of enquiries rejected because the scheme had not been contacted initially or because the Internal Dispute Resolution Procedure (IDRP) had not been followed. This would suggest parties are making greater use of internal processes before approaching my Office.

Enquiries that are clearly about matters which are outside jurisdiction, or where some preliminary steps need to be undertaken, are identified as such, and the applicant informed within 48 hours. The applicant may also be signposted to other, more appropriate, bodies, such as the Parliamentary Ombudsman or the Pensions Regulator. Enquiries about state pensions are referred to the Department for Work and Pensions, and those about the mis-selling of personal pensions to the Financial Ombudsman Service. Complaints about independent financial advisors are also usually referred to the Financial Ombudsman Service, unless the advisor concerned has been acting in the capacity of manager or administrator of a pension scheme.

Figure 3 – Referrals and rejections (last two years)

Reason	2005/06	%	2004/05	%
Appropriate for financial advisor	1	0.1	1	0
Appropriate for FSA or FOS	153	8.1	181	7.2
Appropriate for The Pensions Regulator	2	0.1	4	0.2
Appropriate for Pension Schemes Registry	26	1.4	24	1.0
Enquiry not yet put to scheme/IDR not used	228	12.1	564	22.3
Complainant outside jurisdiction	12	0.6	25	1.0
Discretion not to investigate exercised	7	0.4	9	0.4
Enquiry abandoned/no action needed	301	16.0	245	9.7
Not relating to pension scheme/plan	2	0.1	14	0.5
Outside time limit	83	4.4	138	5.5
Protective Complaint	6	0.3	11	0.4
Referred to the Pensions Advisory Service	951	50.5	1159	45.9
Respondent not in remit	8	0.4	17	0.7
State scheme benefits	98	5.2	123	4.9
Subject to prior court proceedings	6	0.3	8	0.3
Total	1884		2523	

Investigations

937 new investigations were started this year, 1226 were closed.

Figure 4 below shows the total numbers of enquiries to the Office and the number accepted for investigation, over the last five years.

Figure 4 - Enquiries accepted for investigation (last five years)

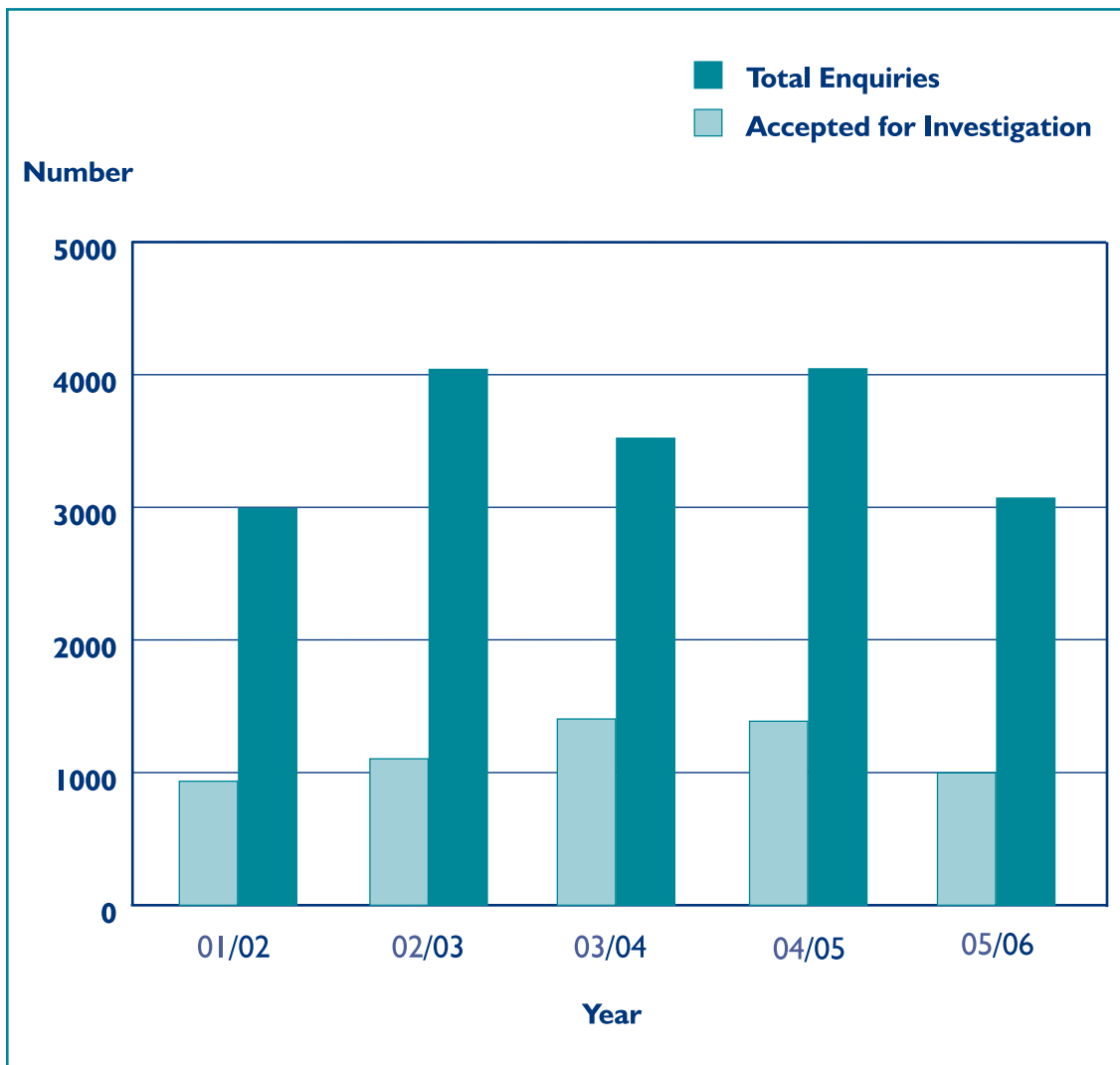


Figure 5 below shows the total number of investigations closed over the past five years.

Figure 5 - Investigations closed (last five years)

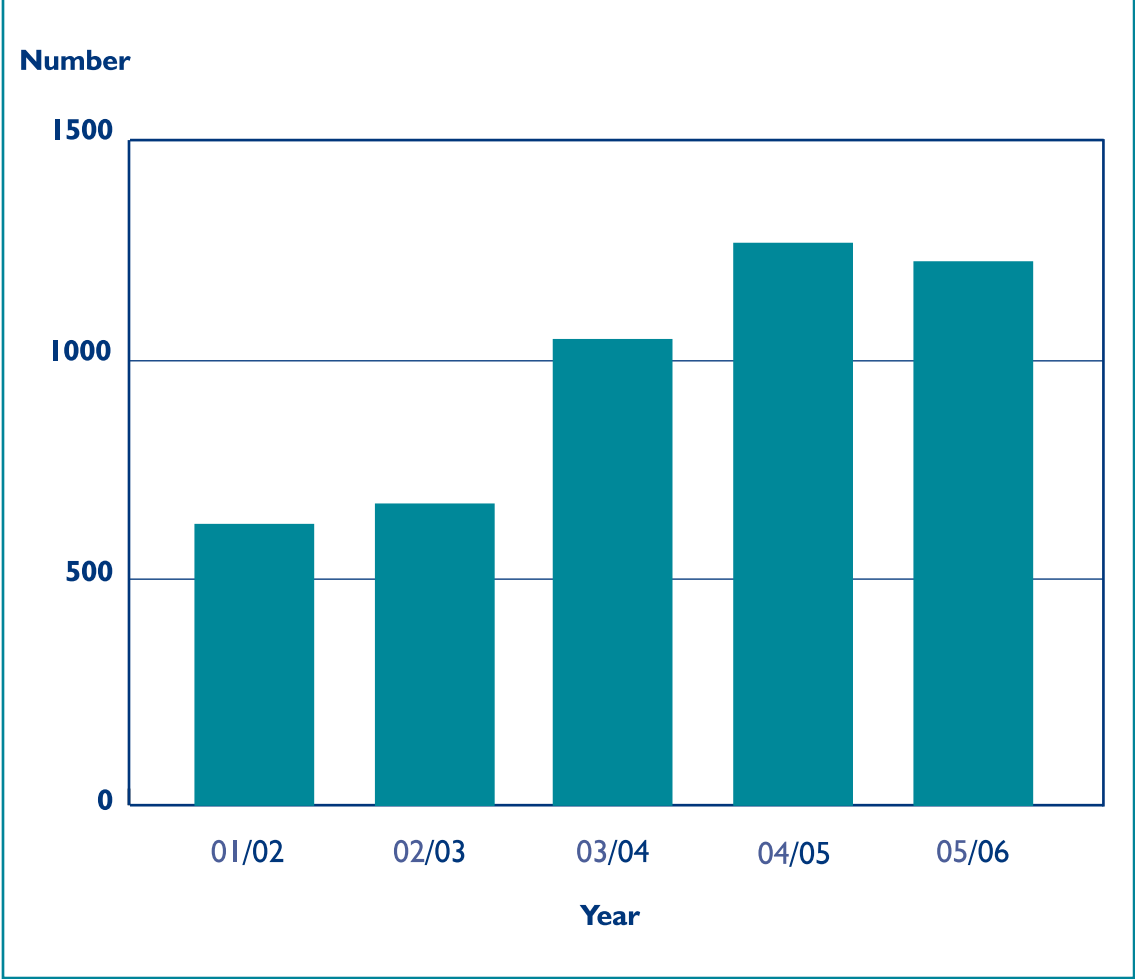


Figure 6 - Investigation Closures

Method of closure	2005/06 Total no	%	2004/05 Total no	%
Discontinued	83	7	136	11
Resolved	171	14	288	23
Caseworker's decision letter accepted	304	25	268	21
Determination following caseworker's decision	285	23	251	20
Full investigation and determination	383	31	324	25
Total	1226		1267	

Figure 6 provides a breakdown of the different methods used to conclude investigations during 2005–06 together with comparable figures for the previous year.

83 (7%) were discontinued. This will usually be as a result of evidence emerging during the investigation that the case cannot be or should not be investigated further. All parties involved are given an opportunity to express their views before the investigation is discontinued.

171 (14%) were resolved satisfactorily without the need to proceed more formally, usually as a result of the parties reaching a settlement, albeit one often prompted by my investigators.

304 investigations (25%) ended as a result of the caseworker's decision letter being accepted. This route is used where the issues are seen as straight-forward and not raising any new issue of principle. This will usually be where the complaint seems unlikely to be upheld. The complainant receives a letter detailing the caseworker's assessment and proposal, with an explanation. Unless the complainant indicates that he would like the issue to be formally resolved by either my Deputy or myself, the file is closed.

A matter referred to either my Deputy or myself will result in either a formal determination (which is published on my website) or a less formal letter, albeit a letter which can still trigger the right to appeal against the decision. 285 such letters (representing 23% of closed investigations) were sent out during 2005–06.

Formal determinations were made in respect of almost a third of investigations (383) closed this year. This process involves all parties being given an opportunity to comment on a draft determination setting out a summary of the evidence and the preliminary conclusions of either my Deputy or myself. The Final Determination is issued only after account has been taken of those comments. That final determination is published on the web site where a search engine can assist readers to find their way to cases of particular interest for them.

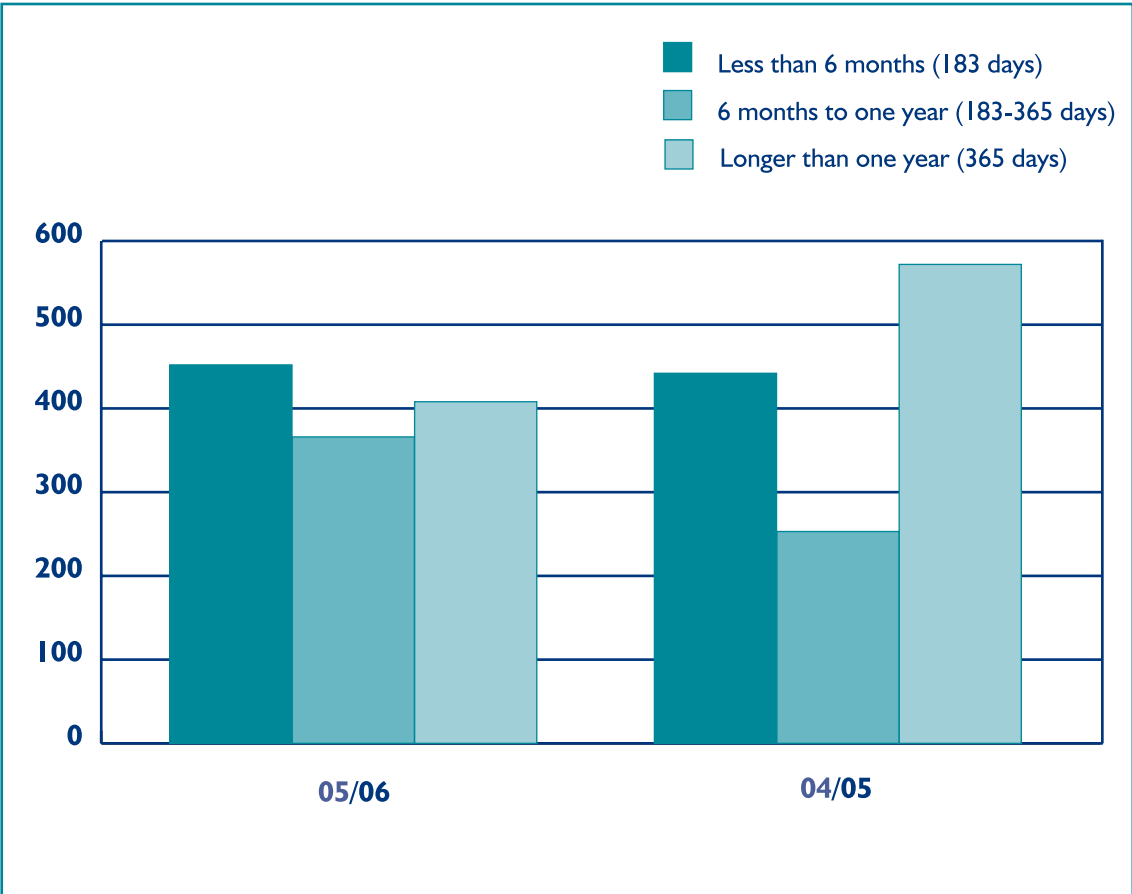
Figures 7 and 8 show the time taken to close investigations. This represents the time taken from the date the investigation was begun by the Office to the date of conclusion.

67% of investigations have been closed in less than one year, as compared with 55% during 2004–05.

Figure 7 - Age of investigations closed

Age of investigations	2005/06 No of investigations	%	2004/05 No of investigations	%
Less than 6 months (183 days)	452	37	442	35
6 months to one year (183-365 days)	366	30	253	20
Longer than one year (365 days)	408	33	572	45
Total	1226		1267	

Figure 8 - Age of investigations closed



Subject Matter

Figure 9 - Closed investigations by subject matter (last two years)

Subject matter	2005/06	%	2004/05	%
AVCs	37	3.0	46	3.6
Calculation of benefits	127	10.4	155	12.3
Contributions refunds and queries	53	4.3	65	5.0
Spouse's and dependants' benefits	42	3.4	28	2.2
Disclosure of information	9	0.7	6	0.5
Early retirement pension	100	8.2	73	5.8
Enhancement of pension	10	0.8	8	0.6
Equal treatment	8	0.6	3	0.2
Ill health pension	100	8.2	102	8.1
Incorrect/late or no payment	34	2.8	30	2.4
Membership conditions	17	1.4	20	1.6
Misleading advice	158	12.9	138	11.0
Non response from scheme	6	0.5	3	0.2
Preservation requirements	1	0.1	3	0.2
Transfers	172	14.0	158	12.5
Use of surplus	4	0.3	5	0.4
Winding up	64	5.2	133	10.5
Other	284	23.2	291	22.9
Total	1226		1267	

The current IT system allows for only one descriptive category to be assigned in respect of each decision. The reality, however, is that many decisions will be multi-headed, both in the sense of covering more than one subject category, and involving more than one respondent to the particular complaint. The breakdown in Figure 9 therefore needs to be approached with some caution. Nevertheless, it can be seen that the breakdown for the year generally followed a similar pattern to the previous year with one notable exception: the number of investigations completed about "winding up" halved. Once again, "pension transfer" was the individual category with the highest number of investigations.

Both the nature of the work and the inadequacies of the current management information system make it difficult to produce meaningful figures as to what proportion of matters referred to me are upheld. For example, some matters are referred for resolution of a point of interpretation and these are not readily classified as upheld or not upheld, other than by saying that one side's view has been upheld over the other's. Other complaints may be upheld as against one party, but not against others at whom the same complaints have been levelled.

I am concluding this chapter by highlighting two aspects of the casework undertaken by the Office.

Death Benefits

As in previous years, I have determined a number of complaints about the way death benefits have been distributed.

Most pension schemes provide for such benefits to be distributed at the discretion of the trustees of the particular scheme to one or more of a range of potential beneficiaries. Often the definition of who might be a beneficiary is cast very widely, making it difficult, if not impossible, for the trustees to ascertain the whole number of potential beneficiaries or to be aware of the needs and financial status of those beneficiaries.

Most schemes allow members to nominate the person or persons to whom the member would wish any death benefits to be paid, but such nominations are not usually binding on trustees. An exception is the Scottish Teachers' Superannuation Scheme, which provides that the death benefits are to be paid in accordance with the nomination or, in its absence, to the member's spouse or personal representative.

In addition to the difficulty I have mentioned above, about the trustees having information about potential beneficiaries, they often find themselves dealing with some very emotive issues. Estranged spouses and present lovers may each come within the definition of potential beneficiaries, as may children from either of such arrangements. Those potential beneficiaries, in my experience, find it very difficult to understand that there is a range of possible ways in which the trustees could have awarded the benefit at their discretion. Given that range of discretion, there is unlikely to be only one answer that is to be regarded as "right" with all others being wrong.

For the trustees to reach their decision is hard enough. Explaining that decision to the parties is even harder: on the one hand it is reasonable, for example, for a spouse to be given some indication of what lies behind a decision to pay the benefit elsewhere; on the other, the various individuals involved may have legitimate complaint if intimate details are made available to other people.

My own suggestion would be to make much more use of the kind of arrangement found in the Scottish Teachers' Superannuation Scheme, so that the element of discretion is removed and the members can themselves decide to whom such benefits should be paid.

Redressing injustice

Some applicants to me are disappointed to find that it is not my practice to make monetary awards in their favour simply because something has gone wrong.

Where mistakes have been made, or maladministration has occurred, it does not follow that injustice has necessarily been caused. Sometimes, for example, a delay in administration may nevertheless work to the advantage of the individual who has complained to me.

Many complaints are made to me about the provision of incorrect information: usually that a higher level of benefits would be available than turns out to be the case. The individual concerned often claims that a pension should be provided in accordance with that incorrect information. That is not a claim I usually uphold. The individual's entitlement will be to the level of benefit set out in the rules of the scheme, not to an amount quoted in error. But there may be cases where an individual has reasonably acted to his or her detriment on the basis of the erroneous information. He or she may, for example, have retired whereas, had the true levels of benefits been made known, he or she would have continued in employment. In those cases I seek to provide appropriate redress, although assessing what this should be is not always an easy task.

Where I am satisfied that injustice has been caused, my aim is to return the disadvantaged party to the position which he or she would have been in had the mistakes not been made or the maladministration not occurred. This may not always be achievable, and, if not, I may need to fall back on awarding some financial compensation to reflect this. But such an award is to compensate, not to apply a penalty to the particular respondent.

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“ It was nonsensical for the matter to have come as far as the Ombudsman, when maladministration was admitted from the outset. ”

Case Summaries

The full text of all formal determinations made during the year is published on the website, www.pensions-ombudsman.org.uk. What follows is a summary of some of the decisions made during the course of the year. They have been selected to illustrate the range of work undertaken and to highlight some points of principle.

Additional Voluntary Contributions

No1391: Delayed transfer of Additional Voluntary Contributions (AVCs)

Mr H complained that his additional voluntary contributions (AVC) benefits were transferred from one insurance company to another without his consent. This resulted in a loss of £2,000 (20% of the fund) arising from the charges incurred on transfer.

Outcome

His complaint was not upheld. When the Scheme of which Mr H was a member wound up, his benefits, to which his AVCs were linked, were transferred to the second Insurance Company. It is a requirement that the whole of a member's benefits, including AVCs, are transferred to the same pension arrangement. Unfortunately, due to an oversight, his AVCs had not been transferred to the second insurance company at the same time as his main Scheme benefits some years previously. The fact that a transfer had now been made merely corrected the previous error.

In summary, his AVCs had to be transferred to the second Insurance Company with his benefits from the Scheme. When the transfer was made there was no evidence that the charges were incorrectly applied.

P01328: Failure of the Pension Provider to bring an alternative option to the Applicant's attention

Miss B complained that the Pension Provider's sales representative improperly persuaded her to pay additional voluntary contributions (AVCs) and that he did not inform her that she could, as a possibly more beneficial alternative, purchase past added years (PAY) in the Scheme.

The Provider asserted that it was inconceivable for Miss B to have passed over a question in the AVC application form designed to establish whether she was purchasing PAY. But no such form was produced, and it could not therefore be concluded that she learnt of PAY by that route.

Outcome

The Provider had included information about PAY in literature introduced in January 1995 and January 1996. The failure of the earlier documents to do that lay at the heart of the complaint, which was upheld.

Q00362: Mis-selling

Ms S complained that the Pension Provider's sales representative improperly persuaded her to pay additional voluntary contributions (AVCs). She also alleged that he did not inform her that she could, as an alternative, purchase past added years (PAY) in the Scheme or to explain clearly to her the investment risks of AVCs. Ms S asserted that she was not told that the amount of pension she would receive through the AVC arrangement was going to be dependent on the performance of the fund to which she was contributing.

Outcome

The complaint was not upheld.

The Provider's representative had been obliged to ensure that Ms S was aware of the PAY option. The AVC application form completed by the representative and signed by Ms S included a question designed to establish whether she was purchasing PAY. An answer had been provided. This suggested that Ms S was asked about, and thus made aware of, the existence of that option. Ms S said that the representative did not provide a full explanation of PAY, but this did not mean that she was thereby unaware of the option.

The facts simply did not substantiate her allegation that the sales representative had not made her aware that her AVC pension at retirement would depend on the contributions paid, performance of the investment until retirement and then on annuity rates.

Q00157: Provision of misleading information

Ms R complained that the Pension Provider's sales representative improperly persuaded her to increase her additional voluntary contributions (AVCs). She alleged that he specifically advised against the alternative option of making a further purchase of past added years (PAY) in the Scheme and did not mention that no tax free lump sum would be available to her on retirement, from her AVCs.

Outcome

In the absence of evidence to the contrary, her assertion that the representative expressed the view that PAY was unsuitable for her at their meeting was accepted on the balance of probabilities.

Ms R should have been aware from the written AVC benefit illustrations, which she received from the Pension Provider, that no tax-free cash was payable. It was unnecessary for the representative to remind her of this fact during their meeting.

Death Benefits

N00247: Payment of a spouse's pension on a deferred member's death

Mr P's late wife left her employer's pension Scheme in 1991 and was provided with a leaver statement, by the Scheme's Trustees, advising that a spouse's pension would be payable in the event of her death before payment of her pension commenced. The Trustees said that Scheme members were advised in writing, in May 1994, that such statements were incorrect.

Following the death of Mr P's wife, he was told by the Trustees that he was only entitled to a refund of her contributions. Mr P contended that his wife had told him shortly before her death about the existence of the spouse's pension and that, had she been aware that a spouse's pension would not be provided, she would have made alternative arrangements. He said that his wife did not receive the letter sent in 1994.

Outcome

Although the provision of incorrect information in the leaver statement constituted maladministration, the fact that the Trustees wrongly advised that a spouse's pension would be paid did not, of itself, entitle Mr P to receive that benefit. There was no evidence to suggest that Mr P had acted in a way that showed he had relied on receiving the spouse's pension. It was uncertain whether his wife would have made alternative arrangements as he had suggested.

The Definitive Trust Deed and Rules that governed the Pension Scheme did not contain provision for a spouse's pension on death in deferment at the time Mr P's wife left the Scheme. The Scheme's Trustees had acted in accordance with the Trust Deed and Rules and provided appropriate benefits and it would be unjust to the remaining Scheme Members for the Trustees to have granted Mr P a benefit to which he was not entitled.

No1351: Procedural irregularity

Ms F claimed that a lump sum payable following the death of her former husband (Mr C) ought to have been paid to Ms F and her young son, Mr C's only child. Instead payment had been made to Mr C's new partner.

The Scheme Rules set out who could benefit and gave the Trustees an absolute discretion to decide which of the qualifying beneficiaries would benefit.

There was no dispute that the only class of qualifying beneficiary into which Mr C's new partner could fall was "an individual in respect of whom the Trustees shall have recorded in writing within two years after the date of death of the Member their opinion that he or she is a person for whom the Member concerned was under a moral obligation (with or without also a legal obligation) to make financial provision".

The requirement for the Trustees to make a written record was overlooked and, by the time the omission came to light, more than two years had already passed. Ms F claimed that the payment had been made in breach of the Scheme Rules and was therefore unlawful and that, in any event, the Trustees had not exercised their discretion properly.

Outcome

Applying the principle that equity regards as done that which ought to be done, the Trustees' omission to make a written record was not fatal. Neither was the decision perverse. The reality was that there was more than one person to whom the Trustees could have awarded the lump sum benefit. It was clear that the Trustees were aware of Mr C's son and did consider him as a potential recipient although, in the end, the Trustees decided to pay the benefit elsewhere.

P00184: Discretion vested in administrator to pay fund to someone other than a surviving spouse

At the time of his death, Mr H was still legally married although he had lost contact with his wife and had been cohabiting with Mrs P for 28 years. The Plan Rules stated that, on death, the fund should either be applied wholly to provide a survivor's annuity or alternatively, for 25% to be paid as a lump sum, with the balance being used to provide a survivor's annuity.

The Rules allowed Mr H to choose who should receive a survivor's pension: this could be his widow or a named dependant. Prior to his death, he had written a brief note to the Pension Provider, saying that Mrs P was to be the sole beneficiary of his Personal Pension Plan.

The Pension Provider did not consider that this note specifically required an annuity to be provided for Mrs P. The Pension Provider paid out 25% of the fund to her as a lump sum, retaining the remaining 75% against a possible claim from Mrs H. Mrs P complained.

The Pension Provider maintained that it was bound by the Rules to pay a benefit to Mr H's legal spouse.

Outcome

The Rules gave the Administrator discretion over to whom to pay the death benefits.

Evidence showed that Mr H had wished Mrs P to benefit from his estate and any survivor's benefits due under his Personal Pension Policies. Nothing indicated that he wished those benefits to be shared between his legal spouse and Mrs P. The case was remitted to the Pension Provider for reconsideration, with guidance that it would be perverse for the Pension Provider to maintain that they had no choice but to pay an annuity to a surviving spouse.

Poo973: Payment to estranged spouse

Mrs C's sister was a member of the Scheme who, at the time of her death, was separated but not divorced. The Administrator proposed to pay the lump sum death benefit to the estranged husband.

The Regulations provided for the lump sum to be paid to "the person nominated by the deceased to receive a gratuity or, in the absence of such a nomination, to the deceased's spouse, whom failing, to the legal personal representative." Mrs C submitted a claim for the lump sum as her sister's personal representative. She said that her sister would not have wanted the lump sum paid to the estranged husband.

Mrs C considered that the Scheme should recognise legal separation in the same way as it did divorce. She suggested that a 'Minute of Agreement' (as to the terms of the separation) signed by her sister and brother-in-law should be considered in lieu of a nomination. Mrs C felt that information provided for members at the beginning of their membership about making death benefit nominations would not be fresh in their minds some years later, and she pointed out that the Administrator did not remind people to make nominations.

Outcome

The Regulations provided for the lump sum to be paid to the spouse in the absence of a nomination. The 'Minute of Agreement' did not meet the requirement for a nomination. 'Spouse' was not defined in the Regulations, therefore the ordinary meaning of the word attached to it. The information provided in the Scheme booklet met disclosure requirements and was sufficient to alert members to the making of a nomination. Such information might not be fresh in members' minds in later years, but the absence of further advice did not amount to maladministration.

Poo350: Taking account of unsigned nomination form

Miss W's partner, Mr M, died on 6 January 2002. After his death the Trustee received an unsigned nomination form nominating Miss W as sole beneficiary. Mr M had completed and signed a nomination form in 1992 nominating his then partner, Miss S. At a meeting on 22 May 2002, the Trustee agreed to make full payment to Miss S. Miss W complained that the Trustee had failed to take into account Mr M's changed circumstances and his relationship with her.

Outcome

Miss S fell within the Scheme's definition of beneficiary by being nominated by Mr M. The evidence revealed that the Trustee was aware of Mr M's changed personal circumstances regarding Miss W, and did consider the unsigned nomination nominating her as sole beneficiary, but had decided that it did not supersede the earlier nomination.

The Trustee had acted properly and reasonably in accordance with the Scheme Rules.

N00036: Factors taken into account in determining to whom death benefits should be paid

Following the death of Mr J's daughter, the Trustees decided to award 50% of the lump sum death benefit to Mr J and 50% to his daughter's partner. Mr J was unhappy with that and with the length of time taken to make the payment. Delay was admitted and a payment of £1,239.90 (representing interest on the sum paid) was made to Mr J.

Before reaching a decision about the lump sum payment, the Trustees had made enquiries as to the daughter's personal and financial circumstances. Mr J was particularly concerned that the information received included information given in confidence by a family member.

Outcome

The Trustees knew that some of the information received was conflicting or in dispute and they took that into account in reaching their decision. It was for the Trustees to decide what weight should attach to particular evidence. The complaint was not upheld.

Ill Health

N00073: Choice of medical adviser; meaning of comparable employment

Mr C alleged that his application for ill-health retirement had not been considered properly and that the Scheme's regulations had not been applied correctly.

The Regulations provided for a member to be entitled to an ill-health pension if he was permanently incapable of discharging efficiently the duties of his employment or any other comparable employment with the employing authority. The Regulations defined 'permanently incapable' and 'comparable employment'. They required a certificate to be provided by a medical adviser holding certain specified qualifications as to whether the member met the definition of being permanently incapable.

Mr C had previously made a claim in an employment tribunal, alleging disability discrimination. The medical advisers who gave advice on whether he met the Pension Scheme's criteria had been involved in advising his employer in connection with the employment tribunal proceedings.

Outcome

That Mr C's Employing Authority used the same occupational health company to advise on eligibility under the Scheme, as had advised on the employment tribunal matter, was not satisfactory.

The medical evidence contained contradictory advice and, whilst the Employing Authority sought clarification at one stage, the contradictions were not satisfactorily addressed.

Neither the Employing Authority nor its medical advisers were sufficiently clear as to the meaning of "comparable employment". The medical advisers appeared to be confused, but the Employing Authority nevertheless accepted

their opinions. Comparable employment should be with the Employing Authority, but it was not necessary for there to be any specific comparable employment actually available to the member at the time of ceasing employment. The Employing Authority did not need to show that it offered Mr C alternative comparable employment.

The case was remitted for reconsideration by the Employing Authority.

No0922: Burden of proof

There was a dispute as to whether Mrs H had suffered a qualifying injury for the purposes of providing injury benefits.

For Mrs H to have any entitlement to benefits the medical evidence must show that, on the balance of probabilities, her injury met the criteria set out in the Regulations. At the relevant time, these were that the injury (a term which can include a disease) was solely attributable to the nature of her duty, or solely arose from an activity reasonably incidental to that duty.

The process was not a matter of the Member making a prima facie case for entitlement and the burden then shifting to the Scheme to show that the criteria were not met. The issue was always to be determined by the Scheme on the balance of probabilities.

Outcome

Mrs H's claim was denied because the first mention of her condition in her medical records pre-dated the episode for which she claimed. However, the commencement of Mrs H's employment significantly preceded the first recorded episode. The Employer (who was responsible under the Scheme for the decision in the first instance) failed to consider whether her official duty was the sole cause of the condition for which she was now claiming injury benefits.

A direction was made requiring the Employer to reconsider the matter.

No1036: Nature of injury and standard of proof

Mr G alleged that he had been openly and deliberately humiliated by his Chief Executive at a meeting with colleagues, at which he was relieved of certain of his management responsibilities. Following the meeting he suffered a mental health breakdown, which led to his retirement. He claimed injury benefits under a rule of the Scheme.

To be eligible, Mr G would have had to have suffered an injury (which could include a mental health breakdown) in the course of official duty which was solely attributable to the nature of his duties, or which arose solely from an activity reasonably incidental to those duties. Mr G had not submitted any additional information to support his claim, and had not lodged a complaint about the way the Chief Executive had treated him. His application to the Scheme was rejected on the grounds that the circumstances of his injury were not considered to have arisen solely from the nature of his duties. Mr G was told that it was his perception of the events at the meeting that was the source of his injury and that an award of injury benefits was not appropriate.

Outcome

Although the Employer had suggested that factors, other than the meeting could have been the cause of Mr G's breakdown, there had been no identification of these factors. Events that took place in a work-related meeting, and the actions of the attendees, were activities reasonably incidental to official duties.

Mr G's employer seemed to have applied an objective test to the question of whether the events at the meeting caused Mr G's injury. A more subjective test should have been applied. If Mr G's reaction to the events at the meeting was the sole cause of his injury, even if other people would not have reacted in the same way, he was entitled to an award under the

Scheme Rules. If the medical evidence was that Mr G's injury was as a result of his perception of events, the fact that his perception was wrong, and that there was no evidence to suggest that he had been deliberately humiliated, was irrelevant. That Mr G's reaction had to be reasonable was not part of the test under the Scheme Rules – the test was whether the injury arose solely as a result of the meeting.

The standard of proof in applying the correct test was that of the balance of probabilities – the Applicant did not have to prove beyond all reasonable doubt that there was no other cause for the injury.

The Employer was directed to reconsider whether Mr G was entitled to injury benefits under the Scheme Rules.

P00078: Failure to apply rules of scheme; misinterpreting medical advice

Mr D's employer completed an application form for ill-health retirement in July 2002, which stated that Mr D had been absent since March 2002 and gave 'stress' as the reason. Mr D's employment was terminated in October 2002 on the grounds of capability. The letter to Mr D terminating his employment mentioned that the only area in his employer's factory where the noise levels were acceptable for someone like Mr D, suffering from tinnitus, was the warehouse, and that he had said he would be unable to work there because the cold would aggravate his arthritis.

Incapacity was defined, in the Scheme Rules, as a physical or mental condition which prevents the Member from following his normal occupation, or any other occupation which the Employer or the Trustees consider appropriate, or which seriously impairs his earning capacity. The Trustees decided that Mr D did not meet that definition.

Outcome

It was for the Trustees to decide if Mr D met the criteria for an incapacity pension. The criteria for that decision were not the same criteria as those used by his employer to terminate his employment. The Trustees took the view that Mr D was not unfit for his normal occupation. This decision was based on advice from their medical adviser that his tinnitus could be expected to respond to treatment. This was also the opinion expressed by his specialist, but his specialist had not been asked if Mr D could be expected to undertake the duties of his normal occupation.

The Pensions Manager had said that the medical adviser's report had clearly stated that Mr D's condition would not prevent him from doing the job for which he had been employed. In fact, the report was not that clear or that specific. The medical adviser had said that Mr D's tinnitus should not prevent him from returning to gainful employment. This is not the same as the ability to undertake a specific job.

Neither the Trustees nor their medical advisers had asked for further information about Mr D's arthritis. That his employer had not mentioned it on the original application form should not be a bar to Mr D raising it on appeal. It was unfair to hold a member to a form which he had not completed himself.

The Trustees' decision had been taken without a clear understanding of the appropriate criteria, and without taking adequate account of the medical evidence. The case was remitted for the Trustees to reconsider.

P01200: Flawed consideration and failure to provide reasoned decisions

Mr M had received a temporary incapacity pension since October 1994, when he contracted dermatomyositis. His employer regularly obtained medical reports to ensure that Mr M was still entitled to the pension.

In February 2002, as a result of one of these reviews, his employer decided that Mr M's temporary incapacity pension should cease. No reasons were given. The Employer also decided that Mr M did not qualify for a permanent pension on incapacity grounds.

With the assistance of the Pensions Advisory Service (TPAS), Mr M sought to establish the rationale behind his employer's decision. It emerged that minutes had not been kept of meetings at which the matter was discussed and some medical reports had been destroyed. Following TPAS's intervention, reports were obtained from specialists in dermatomyositis. These were broadly supportive of Mr M's case. However, the Employer preferred the opinion of two doctors who worked for an occupational health care firm. These doctors had not examined Mr M and did not claim to have any specialist experience of dermatomyositis. However, they considered Mr M to be fit for work.

Outcome

The Employer's failure to provide any reasons for the decision to stop Mr M's pension constituted maladministration. There was no indication that the Employer or their doctors had paid any regard to the provisions of the Scheme Rules as to the qualifying criteria for incapacity pensions. The decision to stop Mr M's pension was quashed as perverse.

No0527: Delay

Mr M had been awarded an ill-health pension (IHP) from the Scheme, but claimed that the pension should have been awarded earlier. Mr M had received no pay from the Employer while deliberations about this continued.

Outcome

There was a delay between Mr M's application and the eventual outcome. The Employer's explanations for the delay were not convincing although Mr M had not helped his own cause.

Mr M had applied for an IHP in June 1999. The Trustees claimed that an IHP could not be awarded before January 2001, because the Employer had not consented to his retirement until then. However, the reasons why consent had not been obtained previously, were that it had not been sought earlier, and because the Employer had been dilatory. There was no evidence that Mr M's condition had worsened during 2000, or that it had altered materially since he had first applied. If the Employer and the Trustees had acted properly, an IHP would have been awarded with effect from 1 January 2000.

The Employer was directed to pay Mr M an amount equal to the IHP he would have received in 2000, less the amount of some ancillary payments Mr M had received from the Employer during the year.

Poo365: Failing to use the correct test

Mr W complained that the Scheme's Trustee improperly refused him an ill-health pension (IHP).

Outcome

The Trustee had misunderstood both what Mr W's job was and the relevant Scheme Rule.

The Trustee thought that the relevant test in the Scheme Rules was that a pension was payable only if Mr W was prevented from undertaking any employment; in fact the test was whether he could undertake his normal occupation.

The Trustee was directed to obtain the opinion of an independent medical examiner and reconsider Mr W's application for an IHP.

Qoo651: Reason for retirement

Mr B complained that he should have been awarded an ill-health early retirement pension (IHP) in 1998. He made the complaint several years later, having suffered poor health in the meantime, and having commissioned an opinion from a specialist that he would probably have satisfied the IHP requirements at the time he left employment.

The Rules provided for an IHP to be awarded if employment ended because of incapacity which was likely to severely affect future earning capacity.

Mr B had in fact left employment because of redundancy, and had received a redundancy payment.

Mr B accepted that some weeks before his redundancy took effect, his doctor had signed him off as fit to return to work.

Outcome

Despite his earlier illness, Mr B had been certified as medically fit for work and had in fact been working up to the date of his redundancy. Those were the facts before the Trustees and the Employer at the time, and they acted in good faith in reliance on his doctor's certificate. An opinion from a specialist given several years after the event did not alter these facts. His complaint was not upheld.

Noo383: Unreasonably delayed decision

Mr F went on sick leave and received full pay until 5 February 2002. He was then entitled to half pay until 5 August 2002. An annual statement of benefits showed that, if Mr F had retired from the Scheme on 1 April 2002, he would have received a pension of £6,148.20 pa. On 21 April 2002, he applied for ill-health early retirement. His application and supporting medical opinion of the Employer's medical officer were considered by the Scheme's Ill-health Early Retirement Committee at a meeting held on 30 July 2002. Minutes of the meeting stated that the Committee requested sight of the medical reports.

With effect from 11 August 2002, Mr F's employment was transferred to a new employer under a TUPE arrangement.

The Committee met again on 6 September 2002, and Mr F's application for ill-health early retirement was approved. However, the minutes of the meeting stated that his benefit entitlements would relate to his preserved benefits, as he had ceased to be an employee on 11 August 2002. He was notified that his ill-health early retirement pension would be £771.48 pa.

Outcome

Criticism was made of the failure to put the matter to the Committee before 30 July 2002, and of the failure to have any necessary medical reports available for that meeting. Any reasonable decision maker could, and should, have reached a decision in July 2002 on the information then available. This was not a case where the Trustees or the Employer were faced with conflicting medical assessments. The evidence pointed them only one way. Consequently, had the matter been dealt with expeditiously, Mr F could have retired before his employment with the Employer had ceased and his pension would have been substantially more.

The Trustees were required to provide Mr F with a pension on that basis.

Misinformation

N00144: Detrimental reliance

Mrs W fell into a privileged class of member that could take unreduced benefits at age 55 providing employment had been maintained in the immediately preceding five years.

In October 2001, she requested a benefit quotation from the Employer and said she indicated a definite leaving date of 30 November 2001. In November 2001, she was given an estimate of her benefits as at 30 November 2001, but based on service being maintained up to age 55. Details of the length of pensionable service up to age 55 were given in the estimate. In the event, she left employment in December 2001 at age 54.

When she later asked to take her benefits at age 55, she received less than had been quoted. She complained that the Employer should have advised her about the consequences of losing her special class status if retiring before age 55, and that she had relied on the estimate which was basically wrong and misleading.

Outcome

The complaint was not upheld. Firstly, Mrs W had not maintained employment in the five years immediately before her retirement, so was not strictly entitled to the beneficial terms. Secondly, there was no duty on the Employer to have advised Mrs W in the way she claimed. Thirdly, although the quotation was incorrect, it was only an estimate and she could not reasonably have relied on that estimate to expect the quoted benefits, if she retired before the relevant date.

Noo379: Calculating injustice

Mrs M complained that her employer provided her with incorrect information about the effects of rejoining the Scheme, having previously taken early retirement on grounds of redundancy.

Mrs M said she had been orally assured that, on rejoining the Scheme in 1994, her pension benefits would not be affected by the second period of membership. She received a benefit statement in 1997 that indicated that there would be no effect on her benefits. Mrs M made additional voluntary contributions (AVCs) from her date of rejoining until her retirement.

On retirement, Mrs M's benefits under the Scheme were subject to abatement in accordance with Regulations governing the Scheme. The effect of the abatement was that the full value of Mrs M's AVC fund could not be used to provide pension benefits.

Outcome

There was not enough evidence to support Mrs M's claims about the oral assurance given in 1994.

But the provision of the incorrect benefit statement in 1997 was maladministration. Had the maladministration not occurred, Mrs M would not have remained in the Scheme, or made AVCs. Therefore, the resulting financial loss to Mrs M was the value of her contributions made after receipt of the benefit statement issued in 1997.

A direction was made for a payment be made to Mrs M equivalent to the value of her contributions into both the Scheme and the AVC arrangement, from the date on which she received the incorrect benefit statement until the date on which she stopped making such contributions, plus simple interest. The direction required the deduction from the resulting figure of the proportion of the increased lump sum that Mrs M received under the Scheme attributable to the period in question, and the income tax relief originally received by Mrs M on her contributions.

Poo586: Pension sharing on divorce

Mrs L (formerly Mrs H) complained that incomplete or misleading information had been given by the Scheme administrator in connection with Mr H's Scheme benefits.

The financial arrangements in connection with Mr H's and Mrs L's divorce were agreed and dealt with by way of a Consent Order which recorded that Mrs L was entitled to a transfer of 50% of the value of Mr H's Scheme benefits. Mrs L had anticipated that, as Mr H's pension was already in payment when the divorce proceedings commenced, she would receive immediate payment of one half of Mr H's pension.

However, the relevant legislation provides that pension credit benefits, except in cases of serious ill health or where the benefits are trivial and can be commuted to a lump sum, are payable at "normal benefit age" which must be between age 60 and 65. Although Mr H's pension in payment was reduced by one half, Mrs L's benefits were not payable until she reached age 60.

The Scheme Administrator maintained that one of the schedules attached to its letter to Mr H had clearly set out that the pension credit member's pension would not normally be paid until he or she reaches age 60.

Mrs L said that the relevant schedule had not been included in the letter to Mr H, which he had forwarded to his solicitor who, in turn, had copied it to Mrs L's solicitor. The assertion that the relevant schedule had not been included was confirmed by Mr H's solicitor.

Outcome

The Scheme Administrator was under a statutory obligation to supply certain information including the date when the pension credit member's pension was payable. A failure to provide that information was maladministration.

However, Mrs L had not suffered any financial loss in that she had received 50% of the value of the pension benefits as at the date specified in the Consent Order. No information to the contrary was given and so both parties (who were legally represented) must be taken as knowing that was the position.

Noo434: Refusal to honour an agreement to pay a proportion of a widow's pension to a former wife

Mr and Mrs B separated in November 1985. The deed of separation provided that, if Mr B predeceased her, Mrs B would receive 35% of the widow's pension payable under the Scheme or £7,162.50 pa, whichever was the greater. Mr B was to make such arrangements as were necessary to effect this. Mr B wrote to the Trustees of the Scheme requesting their agreement to an arrangement, whereby Mrs B would receive 35% of the widow's pension on his predeceasing her. Two of the three Trustees at the time signed a letter to Mr B's financial adviser agreeing to this arrangement. Mrs B said that her ex-husband had been given a copy of that letter and had passed a copy on to her.

The Scheme Rules provided for the spouse's pension to be paid to the person to whom the member was married at the date of his death. There was provision for a member to make additional provision for a spouse or a dependant by surrendering part of his own pension. Such an election was to be made before the member retired. There was also provision for the Trustees to provide a dependant's pension under the augmentation clause.

Mr and Mrs B subsequently divorced and Mr B re-married. He retired in 1991. In 1993, Mr B made enquiries about the amount of widow's pension payable under the Scheme and mentioned the arrangement for his former wife. His letter was passed to the current

Administrators of the Scheme, who had no record of the arrangement. The former Administrators recalled advising Mr B, in 1991, that no part of his pension could be transferred to his former wife and that the whole of his pension had to be paid into an account in his name. The current Administrators subsequently advised the Trustees that it was not possible, under the Rules of the Scheme, to pay Mrs B part of the widow's pension. They said that Mr B could have elected to surrender part of his own pension, but that no such election appeared to have been made. They also advised the Trustees that it would be possible to provide a pension for Mrs B under the augmentation clause. This could not be done without the agreement of the Company, which was unwilling to agree to such or to provide the necessary funding.

Mr B died in 2001. The Trustees argued that they had been unaware that Mr and Mrs B had divorced and that, at the time of the agreement, she had been entitled to the widow's pension. Mrs B pointed out that two of the Trustees had socialised with her and her ex-husband and that his second wife had been his secretary. The Trustees argued that no contract or legally enforceable agreement existed between themselves and Mr B and, even if it did, Mrs B was not a party to such and could not enforce it. They also argued that they had no ongoing fiduciary duty to Mrs B when she was no longer even a contingent beneficiary of the Scheme.

Outcome

It was agreed that the Rules did not allow the Trustees to split the widow's pension in the way the agreement envisaged. The only way to provide Mrs B with a pension would have been for Mr B to surrender part of his own pension before retirement, or for the Trustees to exercise the power of augmentation. The Trustees had agreed to Mr B's request, even though it was not an option under the Rules. Although they were not obliged to advise him

to surrender his pension, they should have advised him that they could not agree to his request. Had they done so, it would have alerted him to the need to make alternative arrangements. Mr B had been paying maintenance regularly up until his death and there was no reason to suppose that he intended to default thereafter.

There was nothing to suggest that Mr B had ever been made aware that his arrangement with the Trustees was not possible. The Trustees had been aware, since 1993, that they could not comply with the agreement, but chose to “let sleeping dogs lie”.

The letter, of which Mrs B had a copy, did not give rise to an entitlement to benefit and was not a contract between the Trustees and Mr B. However, it had been foreseeable that Mr and Mrs B would rely on the misleading information in the letter. Had the Trustees not misled him, Mr B would have made alternative arrangements, or Mrs B could have enforced the terms of the deed of separation. Mrs B should be put in the position she would otherwise have been in had the misleading statement not been made. The measure of her detriment was the loss of the pension she had been led to expect. The Trustees were directed to pay this to her, together with a sum in recognition of the distress and inconvenience caused.

No1409: Information in staff handbook

Mr E had been on long-term sickness absence when, in February 2002, he requested information about the amount of pension he might receive if he was unable to return to work. He was quoted a pension of £10,275 pa and told there was some discretion for the Trustees and the Employer to enhance this. The Rules provided for a member to receive a scale pension reduced for early payment or of such higher amount as the Employer, with the Trustees' consent, shall decide.

In May 2003, Mr E requested up-to-date early retirement figures. The Pensions Manager approached the Company concerned about the possibility of enhancing Mr E's pension. The Company declined to pay additional contributions, saying that it was already under pressure to fund the existing scheme deficit. The Company did not, at that time, establish what the cost would be of enhancing Mr E's pension.

The scale pension was quoted as £9,717 pa. In response to queries from Mr E, the Pensions Manager explained that the Company had declined to pay the special contribution needed for enhancement, and that, as a result of advice from the Scheme Actuary in January 2003, different factors had been used to calculate the effect of early payment.

Mr E referred to the 1996 Staff Handbook, which stated that an ill-health pension would be based on prospective service to normal retirement age, but did not mention the Company's discretion. He said that the pension offered to him was not consistent with that statement. The 2002 Staff Handbook also referred to an ill-health pension based on prospective service to normal retirement age and did not mention the Company's discretion.

The Trustees agreed to Mr E's ill-health retirement, but decided that his pension could not be enhanced without an additional contribution from the Company.

Mr E said that, based on a projected figure in his annual benefits statement, he had been expecting a pension in the region of £18,000 pa. He said that he was unable to afford to pay his mortgage and was considering selling his house to clear his debts.

During the course of the investigation, the Company offered to reconsider Mr E's case. It obtained figures for providing an enhanced pension on different bases, the cost of which ranged from £200,000 to £500,000. The Company decided not to enhance Mr E's pension.

Outcome

Mr E's entitlement under the Scheme Rules was to the scale pension. The Handbooks were potentially misleading because there was no reference to any enhancement being at the Company's discretion. The pension quoted in February 2002 had been the scale pension. Mr E had, however, been informed that enhancement was at the discretion of the Company. The fact that he had been told about the Company's discretion in February 2002 cast doubt on how reasonable it was to rely, after that, on the statement in the Staff Handbook.

Mr E's state of health had dictated the date of his retirement. He had not acted differently as a result of a higher pension being quoted to him at one stage.

The financial circumstances of both the Company and the Scheme were relevant matters for the Company to take into account in the exercise of a discretion to pay enhanced benefits, even on the grounds of ill health.

No directions were made.

Oo0001: Reliance on incorrect early retirement quotes

Mrs A complained that her Pension Provider gave her an incorrect estimate of her early retirement benefits. She said that, in reliance on the figures that had been provided, she had irrevocably resigned from her job and had suffered financial loss as a result.

Mrs A's last day at work was 23 September 2003. On 22 September 2003, her Provider informed the Scheme Administrator that the early retirement quote, which Mrs A had

accepted, was in fact incorrect. The true figures were lower because the Provider had failed to apply an early retirement factor to benefits that had been transferred in from another pension scheme.

Mrs A left service as intended on 23 September 2003. Her position had been filled and her employer had restructured the department she had worked in.

Her pension was not paid to her immediately, as the Administrator sought to obtain the higher pension for her on the grounds that she had relied on the incorrect quote when she had made her decision to retire early.

Outcome

Had Mrs A been provided with the correct figures, she would not have resigned from her job. In giving up her job she had adversely altered her position in reliance on the incorrect quotation. The Provider was instructed to provide compensation based on treating Mrs A as a deferred member taking an early retirement pension up to her normal retirement date. Thereafter, she was to be treated as a deferred member, taking her normal (ie non-actuarially reduced) retirement pension from the Scheme.

Noo833: Assessing injustice

When Mr R was planning to take retirement benefits from his Self-Invested Personal Pension Plan (SIPP), he was informed by his Pension Provider as to how much of the fund he could take as a tax-free lump sum. Mr R said that, in reliance upon this information, he purchased a second property before retiring, using his own funds and a bridging loan.

In fact, the maximum tax-free lump sum to which Mr R was entitled was around £16,000 less than he had been told. The Provider explained that an error had been made and offered Mr R £1,500, in recognition of any inconvenience caused, which Mr R refused. The lower tax-free lump sum was paid to Mr R.

Mr R contended that the alleged misrepresentation had caused him approximately £30,000 of financial loss, together with great distress and disruption. He said that he had been unable to repay the bridging loan from the proceeds of the SIPP and instead, had to re-mortgage his home.

Outcome

There had obviously been maladministration. To assess what loss, if any, Mr R had suffered, a comparison was made of the situation that Mr R was actually in with the situation that he would have been in had the maladministration not occurred. Mr R had a new property but had needed to borrow against his home to repay the bridging loan and had to pay interest on that loan. As he had received a lower tax-free lump sum a higher proportion of Mr R's fund was available to provide a pension. Had Mr R known he would be receiving a lower tax-free lump sum, he may have purchased a less expensive second property. Mr R was unwilling to incur the expense of selling the second property when the true position became known to him.

The Provider's offer of £1,500 was considered reasonable, particularly when factoring in the knowledge that Mr R had chosen not to incur the incidental costs of selling, which the Provider might have been expected to bear.

Q00618: Failure to collect premiums

Mrs P established a personal pension funded by a £300 per month premium paid by direct debit. Three months after inception, premiums ceased to be collected. The Insurance Company admitted responsibility for this but could not establish how it had happened. Mrs P failed to notice the non-collection for some three years, but said that it was not her responsibility to identify the Insurance Company's failure to collect the direct debits. She claimed that the Insurance Company had an obligation to ensure collection of premiums, and that they should

therefore restore them to her. Additionally, she claimed that her financial position was such that she could not afford to make up the premiums, as the Company had offered to allow her to do, and that she had therefore changed her position irrevocably in that time.

Outcome

Mrs P had some responsibility to check her bank statements. The very fact that she said she could not find the money now to make up all the missed payments, demonstrated that they were of such a magnitude as she should reasonably have noticed not leaving her account. The change of position argument was dismissed, as she was not being compelled to repay money that she had received in error, but being invited to make voluntary contributions to a policy. The Company's offer, to allow her to make up her missed payments and to add any applicable growth, was reasonable.

P01271: Overpayment of pension: failure to provide redress

Mrs B retired from service with a local council and received a pension from the Local Government Pension Scheme. The Council then re-employed her. Mrs B asked the Scheme Administrator how much she could earn without her pension being affected. Despite Mrs B pressing the Administrator for an answer, none was forthcoming for nearly a year. It then emerged that her pension had been overpaid by £422.

Mrs B had needed to go through the Scheme's internal dispute resolution procedure (IDRP). This took nearly a year, partly due to the Scheme Administrator repeatedly asking Mrs B to restate her complaint, even though it was clearly made out.

The Scheme Administrator did not dispute that it was at fault, but told Mrs B that it could not pay her any compensation for distress and inconvenience without directions from the Ombudsman.

Outcome

The Scheme Administrator was ordered to pay Mrs B £500. The Scheme Administrator was criticised for needless delays in the IDR. It was nonsensical for the matter to have come as far as the Ombudsman, when maladministration was admitted from the outset.

Rights to Benefits

N00673: Unfunded, unapproved pension arrangement

After Mr T retired, he received monthly payments from his employer and, when his employer's business was sold six years later, the arrangement continued. After a further five years, the Company which had bought the business stopped making the payments claiming that they were "ex gratia" and could no longer be afforded.

Outcome

The first issue to be decided was whether the complaint concerned an occupational pension scheme and thus came within jurisdiction. When Mr T retired, his employer had offered him a lump sum payment or a monthly payment for life. Mr T opted for the latter. That constituted an occupational pension scheme.

The second issue was whether the Company was bound by the arrangement made between the Employer and Mr T. The words "ex gratia", appeared in the documents drawn up as part of the sale and purchase of the business, but that did not necessarily mean that the arrangement was voluntary and not binding on the Company. The Company, which had assumed the liabilities of the Employer, was contractually required to continue with the arrangement, to pay the arrears.

There were a small number of colleagues who had a similar complaint to Mr T. The Company agreed to settle those complaints on a similar basis as had been directed for Mr T.

Right to Information

M00949: Disclosure of legal advice

Mr C said that he had a right, as a trust beneficiary, to sight of the trust documents, including legal advice given to the Trustees.

The Trustees refused Mr C's request, arguing that such advice would ordinarily be regarded as confidential and privileged and, further, that a beneficiary's right to disclosure did not extend to legal advice relating to the exercise by Trustees of a discretionary power.

Outcome

In 2003 the Privy Council had determined that the decision whether disclosure ought to be ordered is an exercise of the court's inherent jurisdiction to supervise and, if necessary, intervene in the administration of a trust, and involved a balancing exercise.

Approaching the matter from that basis, the Trustees' arguments as to why disclosure should not be ordered were not persuasive. It was not clear that the legal advice in question related to the exercise by the Trustees of a discretionary power. Nor did it appear that the advice was taken in contemplation of legal proceedings and so potentially subject to litigation privilege. Disclosure of the legal advice was directed.

Transfers

No0932: Effect of delay in securing service credit in new occupational pension scheme

Mr C joined his new employer's Scheme on 16 October 2000. A transfer value quotation was issued by his old Scheme on 23 January 2001. The new Scheme's Administrators then requested the completion of a form, which was returned to them on 30 January 2001 by the old Scheme's Administrators. The new Scheme's Administrators advised Mr C, on the basis of the information on the form, that they could not accept the transfer.

In April 2001, the old Scheme's Administrators notified the new Scheme's Administrators that the information provided on the form had been incorrect. Mr C was informed that he could proceed with his transfer but that the new Scheme was waiting for information about his guaranteed minimum pensions (GMP). An up-to-date transfer value was provided, and Mr C was told by his new Scheme's Administrators that the value would secure 4 years' and 11 days' additional service. Mr C signed a form, on 24 October 2001, asking for the transfer to proceed.

Around that time, administration of Mr C's old Scheme changed hands. The former Administrators of his old Scheme passed correspondence concerning Mr C to the current Administrators in November 2001. They subsequently passed on further requests for the transfer value, but the current Administrators of the old Scheme said that the first time they became aware of Mr C's request to transfer was on 22 February 2002. By that time, the Trustees of the old Scheme had initiated an investigation into the way contributions had been invested. They decided not to pay transfer values while the investigation was under way. As a result of the investigation, Mr C's account in the old Scheme was later credited with additional units.

Mr C's transfer was eventually completed in July 2003. The transfer value was reduced by a market value adjustment recently introduced by the Insurer of the old Scheme. The service credit Mr C was able to secure in his new Scheme was also reduced, because the method of calculating it had changed. This was because the transfer value was received by the new Scheme more than 12 months after Mr C joined. In the first 12 months, a more favourable calculation method applied, which did not take into account subsequent salary increases. Mr C was only able to secure 2 years and 58 days in his new Scheme.

Outcome

The crucial date in this case was 16 October 2001, i.e. the anniversary of the date Mr C joined his new Scheme. The error in completing the form, in January 2001, had caused a delay of two months. There were further delays thereafter, but Mr C would have been able to sign his request to transfer before 16 October 2001, if the form had been completed correctly.

Had the transfer gone ahead in 2001, it is unlikely that the correct amount would have been paid. However, he would have been able to secure a service credit on the more favourable basis. The failure to complete the form correctly amounted to maladministration on the part of his old Scheme's former Administrators.

Mr C should not have been penalised for a failure on the part of the former Administrators of his old Scheme to administer that Scheme properly. They were directed to make a payment to his new Scheme, sufficient to secure the difference in the service credit.

No1146: Delay in transferring funds between insurers

Mr C wanted to transfer his funds between insurers. The second insurer wrote to the first Insurer on 23 May 2003, enclosing their own transfer and discharge forms. The first Insurer acknowledged receipt of these on 27 May 2003. They cancelled Mr C's policy and calculated the value based on the bid price of his units on the following working day. They added interest at the inter-bank rate until the date of transfer, which was 13 June 2003.

Part of the delay was due to the first Insurer checking whether a market value adjustment should be applied. Mr C's policy was not invested in a with-profit fund, so there was no need for this check. The first Insurer arranged to transfer Mr C's funds by telegraphic transfer on 13 June 2003, rather than using their normal process of effecting transfer by the Banks Automated Clearing System (BACS), which takes three to five working days.

Mr C's financial adviser calculated a loss of £11,620.22, based on the difference in the second Insurer's unit prices on 3 June and 13 June 2003. Mr C argued that the transfer should have been effected by telegraphic transfer anyway.

Outcome

There was no requirement under the terms of the policy to pay the transfer by telegraphic transfer. BACS was not inappropriate for such purposes.

Paying the transfer by telegraphic transfer, on 13 June 2003, was the equivalent of making a BACS payment on 9 June 2003, i.e. eight working days after receipt of the discharge forms. That was not an unreasonable timescale the first Insurer to have taken.

They had disinvested Mr C's funds on the first working day following receipt of the discharge forms in accordance with the terms of the policy. There was no maladministration in this respect.

P01075: Assessing whether injustice was caused by delay

Mr E instructed the Administrator of his Self-Invested Personal Pension Plan (SIPP) to transfer his funds to a new investment manager. Mr E was dissatisfied with the lack of active management of his portfolio and required more active trading. Mr E claimed that there were delays by the Administrator in effecting the transfer and that he had suffered a considerable loss of investment opportunity.

Outcome

There had been delays by the Administrator, which amounted to maladministration. However, there was no evidence of actual financial loss. Mr E's claimed loss of profit was considered to be too speculative.

L00617: Information provided on transfer from a public sector scheme

Mrs W was a member of a public sector pension scheme. When her area of employment was privatised, she transferred her benefits accrued over nine years to her new employer's Scheme. The transfer took place as part of a bulk transfer arrangement and on advantageous terms to the members. Mrs W had been told that she would receive a service credit in the new Scheme of "equivalent value" to her old Scheme membership. Six months later, Mrs W rejoined the public sector and her old Scheme. On enquiring about transferring her pension benefits back to the former Scheme, Mrs W was told that she would receive an additional five years' pensionable service in the Scheme in return for the transfer value.

Mrs W maintained that she should have been made aware of the potential loss in pensionable service in the event of transferring back to her former Scheme. She believed she had been misled into making the transfer in the first place.

Outcome

Staff such as Mrs W had been encouraged to join the new Employer's Scheme on privatisation, but nowhere in the material supplied to transferring staff was it made clear that, although they benefited from a bulk transfer on advantageous terms from the public sector Scheme, such an arrangement did not apply in reverse.

Mrs W was not given a piece of relevant information which, had she received it, might well have persuaded her not to transfer to her new Employer's Scheme on privatisation.

However, on the balance of probabilities, it could not be said that, had she received that information, she would have opted not to transfer. Therefore, no injustice had been sustained as a result of the maladministration.

Moo831: Discrimination

Miss C was a member of a pension scheme under which she enjoyed "special class" status, which enabled her to retire at the age of 55, taking a pension without actuarial reduction. Miss C changed employment, leaving her benefits preserved in the Scheme.

Miss C subsequently discovered that, as she had not remained in service until age 55, she was not entitled to take benefits from the Scheme before age 60 without an actuarial reduction. At this time, Miss C was a member of another, public sector, scheme. She was made aware that, if she transferred her benefits to the new Scheme, she would lose the right to retire at 55 because her transferred-in service would then be subject to the new Scheme's Regulations, which did not allow this facility. Miss C decided

to transfer her benefits to the new Scheme, however, in order to benefit from contributions related to her higher pay scale.

Miss C went on to complain, amongst other things, that, in losing her right to retire at 55, she suffered "indirect" sex discrimination.

Outcome

Discrimination can occur where provisions, criteria or practices which, although applied equally operate to the detriment of a considerably larger proportion of women than men. Miss C had maintained that the transfer provisions were discriminatory, because 72% of the employees in the same position as she were women. But the transfer provisions simply provide a benefit for both men and women, namely a "reserved right" to retire at age 55. There is no rule or hurdle to be complied with which is more difficult for women to fulfil than men. Nor is there any evidence that it is more difficult for women than men to achieve the age of 55.

The essence of the complaint turned on the fact that Miss C was not able to make a second transfer without losing her reserved right. This was because there was no legislation or subordinate legislation in force permitting the new Scheme to accept that reserved right. The absence of such a right was not discriminatory for the purposes of the 1975 Act.

Poo944: Who should provide redress for delay?

There was a delay in paying a transfer value from an earlier arrangement into Mr Q's present pension scheme. Before the transfer was completed, the Trustees of the receiving Scheme suspended transfers (both into and out of the Scheme) on legal and actuarial advice. When transfers were allowed again, a few months later, the new calculation basis was generally less favourable to incoming transfers than the previous basis had been, and Mr Q was offered some three years worth less

additional pensionable service than would have been offered to him, had the transfer been accepted prior to that moratorium.

The Trustees had delegated the processing of Mr Q's transfer application to their administrators, who had done nothing with the application for five months after receiving it. This alone should not have been enough to prevent the transfer from being completed before the moratorium, but the Administrators then subsequently filed the papers in error.

The Administrators submitted that the loss was caused, not by their maladministration, but by the Trustees' decision to alter the basis for calculating what service the transfer value would purchase, and that there would be no real cost to the Scheme in awarding Mr Q the additional benefits calculated on the old basis.

Outcome

The Administrators were found to be the cause of Mr Q's loss. They were directed to make a payment to the Trustees, which would enable Mr Q to be credited with the longer period of service at no net cost to the Scheme.

N00422: Bulk transfer undertaken despite outstanding transfer request

The company for whom Mr B worked, and of whose pension scheme Mr B was a member, was sold. A new pension scheme was set up by his new employer. The new Scheme was said to provide the same or better benefits.

An announcement about the new Scheme said that membership was voluntary and non-contributory for members. Membership of the old Scheme would cease on 2 September 2000, with benefits earned in respect of service up to that date transferred to the new Scheme. The announcement went on to say that benefits would change in line with future changes in salary.

Mr B did not want to join the new Scheme. He requested a transfer value, which was provided on 15 December 2000, guaranteed for three months. However, the wrong salary details had been used and Mr B asked for the transfer value to be recalculated. No revised transfer value was provided before Mr B was informed, on 14 May 2001, that his accrued benefits were to be transferred to the new Scheme by way of a bulk transfer (which went ahead on 29 May 2001).

Mr B requested a fresh transfer value. His salary had reduced which, because of the linkage between pension benefits and current salary, had impacted on his transfer value. Mr B complained that his benefits had not been adequately protected causing him financial loss.

Outcome

It was maladministration to allow Mr B's request for a transfer value to be overridden by the subsequent bulk transfer. The transfer value provided to Mr B was incorrect, and that too was maladministration, as was the failure to provide him with a revised, correct, transfer value. Further, Mr B had not been given at least one month's notice of the proposed bulk transfer as required by the Occupational Pension Schemes (Preservation of Benefits) Regulations 1991.

The directions made provided for Mr B's transfer value to be recalculated as at 15 December 2000 and, if Mr B elected to transfer his benefits, for the transfer value paid to be "topped up" to the transfer value as at 15 December 2000.

Noo834: Assessing injustice caused by delay

Mr S complained that the Pension Provider's failure to provide transfer value quotations on time resulted in financial injustice. Mr S had two Personal Pension Policies and required quotations for both policies with a view to transferring to another provider. He first requested transfer value quotations on 23 March 2002. The transfer finally proceeded in November 2002. Mr S said that the delay prevented him from making a transfer at an earlier date and that he suffered financial loss in the form of the investment return he could have enjoyed from the new Provider.

Outcome

It was not unreasonable of Mr S to have expected to receive the quotations for both policies at the same time in order to be in a position to make an informed decision. The failure to provide the quotations on time, and to ensure that they were accurate, amounted to maladministration.

Mr S would have transferred his benefits had he received the quotations for both plans when first requested, in March 2002.

At the outset, Mr S was of a mind to transfer his investments to funds which carried a higher than average risk. He later said that, by April 2002, he would not have made this choice but would instead have chosen a low-risk, deposit-based Fund in the short term and considered his investment portfolio at a later date. The evidence did not suggest that this would have been the case. Therefore, redress for financial injustice was based on a calculation using the portfolio he had proposed in March 2002.

Loo124: Provision of information prior to transfer

Following the acquisition of the business of his employer, Mr R decided to join his new employer's pension scheme and transfer benefits from his previous employer's pension arrangement to it. About two years after Mr R joined the Scheme, the Employer went into receivership and the Scheme was found to be underfunded. Mr R was made aware that, given the Scheme's poor funding position, he would receive a pension, including his transferred-in benefits, that would be lower than expected.

Mr R claimed he was encouraged to transfer as a result of information provided to him by the Administrator. That information was primarily an announcement issued to staff, setting out details of the Scheme, and inviting them to join. The announcement was drafted by the Administrator and issued in the name of one of the Trustees of the Scheme.

Mr R also asserted that he had been told that the Scheme was in a good financial position. This complaint opened up the wider issue of whether Mr R, as a prospective member, should have been provided with information as to the funding position of the Scheme when he was considering his options.

Outcome

There is no specific duty under which an Administrator is obliged, without prompting, to furnish a prospective member with information regarding the Scheme's financial standing.

There was nothing in the announcement to staff that could properly be interpreted as advice, since it only provided information.

N00759: Assessment of compensation caused by delay

Mr C was a self-employed chartered accountant and a member of a Self-Invested Personal Pension Plan (SIPP). He instructed the Administrator of the SIPP to arrange for the transfer of his investments to another SIPP provider. As a result of substantial delay by the Administrator in completing the transfers, Mr C claimed that he had lost the opportunity to pursue a more pro-active investment policy, which was the reason why he had wanted to change provider in the first place.

Outcome

The complaint of maladministration by the Administrator was upheld. The more difficult issue to be decided was the way in which compensation was to be calculated. It was accepted that Mr C had lost the opportunity to pursue a more pro-active investment strategy and that this was reasonably foreseeable by the Administrator. Although the value of the investments had dropped substantially during the period of delay, Mr C was able to provide evidence from another comparable account which he managed which, although also reducing in value during the same period, had lost proportionately significantly less than the account in which his funds had been held. Compensation for financial loss was assessed, principally, on the difference between the loss he had suffered and an assessment of the lesser loss, which he would have suffered, had there been no delay.

N00464: Benefits lost on transfer

Mr M had requested a transfer of his benefits from his Occupational Pension Scheme to a Personal Pension Plan. The Transferring Scheme completed the formalities needed to effect the transfer, and recorded the transfer payment as having been made, and the relevant account as having been debited, in its ledgers. Formalities were also undertaken by the Personal Pension Provider to receive the payment.

Eleven years' later, Mr M reviewed his pension arrangements and discovered that his Personal Pension had never been credited with the transfer value. After spending some time trying, without success, to ascertain with both the Transferring Scheme and the Personal Pension Provider what had become of his pension, he made a complaint. The Transferring Scheme maintained that it had provided evidence to show that the payment had been sent. The Personal Pension Provider, while expressing sympathy for Mr M, said that the transfer value had never been received and contended that the onus lay on the Transferring Scheme to prove that its cheque had been banked.

Outcome

On the balance of probabilities, the payment was found to have left the Transferring Scheme's account. The Personal Pension Provider should have queried its non-receipt (if indeed that were so) as it knew the payment was due to be sent to it.

A direction was made for the Personal Pension Provider to add to Mr M's personal pension, a sum equal to the transfer value at 1989, together with an extra sum representing some of the growth of the fund which would have occurred had the transfer value been credited at the time.

Had Mr M noticed earlier that the payment had not been paid into his Personal Pension, the Respondents might have had more success in tracing the whereabouts of the payment, and he should bear some responsibility for the fact that the funds were now untraceable. The payment reflecting growth in the fund was therefore limited to three years.

Winding Up

Noo640: Trustees accepting enhanced benefits

Mr L had been the Company Accountant, and a member of the Company's insured final salary Scheme. When the Company had been doing well, the Directors (two brothers, who were still Trustees of the Scheme) agreed, without the knowledge of the other Members of the Scheme, to provide enhanced benefits to the limit allowed by the Inland Revenue at 60, rather than the normal retirement age. When the Company went into liquidation, an Independent Trustee was appointed, though the two brothers also remained as Trustees, and the Scheme entered wind-up. Once the elder brother reached age 60, he was granted, by the Independent Trustee, as an initial measure, half his pension entitlement, as the Scheme's funding position on wind-up was still being investigated. The younger brother then also reached age 60, and was also granted half his pension entitlement.

Mr L complained that the brothers had acted in breach of trust, in accepting, as Trustees, enhanced benefits at an earlier than normal retirement age, and that they had also been granted excessive salary rises in recent years, that other employees had not received, in order to enhance their pensions. This had involved a switch from remuneration via low basic salary with high bonuses (averaged over three years for pension purposes) to a high basic salary and low bonuses.

Mr L complained particularly that the bulk of the Scheme's assets would be used up in providing retirement benefits for the Directors. Even if only 50% of such pensions were paid, there would be little money left for the other Members, including himself.

Outcome

The salaries declared for pension purposes were checked with the Company's accountants and auditors and were found, if anything, to have been slightly understated. They were not found to be excessive, and the switch in salary structure was not considered to have been brought about with the intention of increasing the Directors' pensions.

In accepting these salary rises, the Directors, as Trustees, had not acted in breach of trust.

The augmentation of the Directors' benefits, and the reduction in normal retirement age for them, had been properly documented, and had taken place some years earlier, when the Company had been doing well and the Scheme had been in surplus.

It was most unfortunate that, because the Directors' benefits would use up a large proportion of the Scheme's assets, little would be left for the other members, such as Mr L, but this had not come about as the result of any maladministration.

No1070: Incorrect details used to calculate benefits

Mr W complained that incorrect personal details had been used to calculate his deferred benefits when the Scheme wound up, which resulted in an additional payment being required in order to maintain the correct level of benefits. The Scheme had completed winding up in 1994, at which time Mr W was provided with a policy document which showed an incorrect date of birth for him. The error only came to light in 2001 when Mr W informed the Provider that the date of birth they held for him was incorrect.

The financial advisers, who acted for the Trustees of the Scheme, said the details given to the Provider, who was to be responsible for provision of deferred benefits, were correct. The Provider disputed that.

There were two Schedules for the deferred members, one of which was hand-written, and showed Mr W's date of birth incorrectly. The other, a typed Schedule, showed Mr W's correct date of birth. The financial advisers contended that the Schedule they sent to the Provider was the typed Schedule, which showed the correct date of birth, and that Mr W's date of birth was corrupted by the Provider. The Provider said that the only Schedule they had ever received was the hand-written one.

Outcome

The provision of incorrect information, or the corruption of information to render it incorrect, is maladministration. Whilst there was some merit in the argument that Mr W should have noticed that his date of birth was incorrect on the policy document, when he received it in 1994, this did not absolve either respondent from the initial maladministration.

From the evidence, it was decided that the Provider had been given incorrect information. Additionally, the financial advisers on behalf of the Trustees, had failed to check that the information on the policy document was correct, prior to it being issued to Mr W.

The financial advisers were required to pay to the Provider the amount required in order to maintain Mr W's benefits at their correct level.

No1128: Failure to pay full transfer value

The Independent Trustees appointed to wind up the Scheme, paid Mr G only 80% of the transfer value previously quoted to him. Mr G claimed he should be paid the full value of the quotation he had accepted. He claimed that his acceptance of the guaranteed quotation represented a contract for payment of that amount.

Outcome

Regulation 9(3) of the Transfer Regulations provided that, where a Scheme is winding up, a guaranteed cash equivalent may be reduced to the extent necessary for the Scheme to comply with section 73 of the 1995 Act (which set out the order for securing benefits under a pension scheme on winding up).

Mr G's acceptance of the quotation did not give him a statutory right to a benefit greater than that to which he was entitled under the winding up priority list.

Mr G did not acquire a contractual right to the unreduced transfer value. A contractual relationship was not formed where one person was bound to supply, and another entitled to receive, a statutory benefit.

Mo0529: Role of Independent Trustee in winding up

Mr W complained that the Independent Trustee had caused unnecessary delays in the winding up, had failed to provide benefit statements, had charged excessive fees and had unlawfully withheld the remaining 10% of his transfer value.

Outcome

There had been delays, but these had in the main been caused by difficulties in obtaining information from the National Insurance Contributions Office.

Examination of the ledger and billing guide of the Independent Trustee, along with details of duties undertaken, did not show the fees charged as being excessive.

Some criticism was levelled against the Independent Trustee for appointing another professional to carry out duties that the Independent Trustee could himself be expected to undertake.

The Independent Trustee was not justified in withholding the remaining 10% of Mr W's transfer value and had failed to provide benefit statements in accordance with Disclosure Regulations. Directions were made requiring the Independent Trustee to make the remaining payment.

Noo687: Recovery of overpayment

After Mr T's pension had been put into payment, the Scheme of which he was a member went into deficit. The Trustees decided to cut Scheme costs by transferring its guaranteed minimum pension (GMP) liability back into the State Earnings Related Pension Scheme (SERPS).

Such a procedure would extinguish the deficit and enable the Trustees to meet members' full entitlement, but was only possible, in relation to pensions in payment, if SERPS assumed responsibility for the payment of the GMP from each member's state pension age. The Scheme would pay an accrued rights premium to the Inland Revenue National Insurance Contributions Office, and the Benefits Agency (which was responsible for paying state pensions) would issue pensioners in payment, with a payment equal to the arrears which would be due to them had they received their pension from SERPS rather than the Scheme.

The Trustees wrote to all affected members, explaining the position, and asking that, on receipt of the payment of arrears from the Benefits Agency, they should reimburse the Scheme with that amount. Members would not be out of pocket, as they had already received such an amount from the Scheme; they would also receive £200 for their trouble.

After receiving the Trustees' letter of explanation, Mr T telephoned the Department for Work and Pensions (DWP) to check that what the Scheme proposed was in order. He understood from his conversation with DWP that the arrears due from the Benefits Agency were his to keep. Seeing the payment as an unexpected windfall, he spent it on home improvements and a new car. When the Trustees sought reimbursement of the sum received, he told them he was unable to comply, and referred his dispute with them for determination.

Outcome

It would be unjust to the other Members to allow Mr T to benefit in this way at their expense. While it might be difficult for the Trustees to argue, as a matter of law, that they were entitled to the arrears of SERPS paid by the Benefits Agency, there was no difficulty in finding that they were entitled to recover the amount of the GMP already paid, from future payments of pension falling due to Mr T.

Safeguarding trust property

NO1396 & NO1387: “Acting as Landlord”

The Applicants had jointly invested in a Self-Investment Retirement Fund operated by an insurer. The Insurer provided administrative services, which were specified to include “rent demands and collection” and “acting as Landlord”. The Applicants alleged that the insurer acted with maladministration when it made the decision to accept post-dated cheques for rent on a commercial property (an asset of the Fund) and refund rent monies paid by standing order.

Outcome

The normal standard of care to be exercised by a Trustee is “to take such care as an ordinary prudent man would take if he were minded to make an investment for the benefit of other people for whom he felt morally bound to provide.” However, as a professional corporate Trustee, the Insurer owed a higher duty to exercise the special care and skill it professed to have.

The Insurer made the decision to accept the post-dated cheques in the knowledge that the Tenant was suffering from cash flow problems at the time; but that the Property had been difficult to let; and that the amount in issue was, in relative terms, not great (two-thirds of one quarter’s rent).

The Insurer believed it was acting in the best interests of the Fund (and thus the beneficiaries) by reaching an agreement, which would allow the landlord and tenant relationship to continue. Had it refused to agree to accept the post-dated cheques, based on the information it held, there was a real risk to the Tenant’s ongoing viability and the consequent risk of the Fund being without rental income for a lot longer than the immediate risk assumed of two-thirds of one quarter’s rent.

In its capacity as the Landlord of the property, the Insurer did not need to consult the Applicants about the decision. Whether to agree to the requested concession could be seen as a finely balanced judgement for which the Insurer should not be criticised.

Market value reduction

Q00521: Retiring later than stated date

Mr L complained that his Pension Provider had unfairly applied a Market Value Reduction (MVR) when he took his benefits before the Normal Retirement Date (NRD). He had confirmed in writing that he intended to retire on that date. No MVR would have been payable if he had taken his benefits then. However, when that date passed and he had not returned the relevant paperwork to them, the Pension Provider moved his NRD back by five years. When he came to take his benefits a few months' later, a MVR was applied. The Provider maintained this constituted an early retirement.

Mr L stated that he knew nothing of any MVR, and that he had not been informed that a delay beyond his NRD in taking his benefits could have this result. The policy documents mentioned the possibility of a MVR applying, but these were 12 years' old. Annual statements had alluded to it, but no paperwork in the few weeks between his sending back the retirement options pack and his NRD had referred to the consequences of delay past NRD.

Outcome

The Pension Provider could not rely solely on aged policy conditions and oblique references within annual statements. It should have been made clear to Mr L that, if he did not take his benefits at his NRD, there could be potentially serious consequences for him. The complaint was upheld and the Provider directed to offer him an annuity backdated to his original NRD based on the full fund value.

“ Appeals are relatively uncommon: out of a total of 1,226 cases determined this year only 14 new notices of appeal were received. ”

Appeals to the Courts

There is a right of appeal on a point of law against my determinations, or those of my Deputy. In England and Wales such an appeal lies to the High Court, in Scotland to the Court of Session and in Northern Ireland to the Court of Appeal. There may of course be further appeals from the decisions of those Courts.

Appeals are relatively uncommon: out of a total of 1,226 cases determined this year only 14 new notices of appeal were received. There have been three notices of appeal to the Court of Appeal. Two of those cases are mentioned below (*Suggett v NHS Pensions Agency* and *Steria Pension Trustees v Hutchison*); the third has since been settled.

Appeals heard during the year ended 31 March 2006 are summarised below. Some appeals lodged during the year have not yet been heard and some have been withdrawn or settled.

My policy has been to participate in an appeal only if an issue is raised the determination of which by the Court might adversely affect the future effectiveness of the Office. This year, I participated only in the *Suggett* appeal.

Waller v Cornwall County Council [2005] EWHC 1166 (Ch)

Local Government Pension Scheme

- *ill-health benefits*
- *whether ill health permanent*
- *alleged failure to consider all relevant factors and interpret and apply correctly relevant scheme regulations*
- *whether denial of oral hearing a breach of Human Rights.*

My determination

Mrs Waller's application for ill-health benefits had been refused on the basis that her ill health was not permanent. Her complaint that she had been wrongly refused was not upheld. The relevant scheme regulations provided for the granting of ill-health benefits where members left service by reason of being permanently incapable of discharging the duties of their employment. The local authority, before making a decision, was required to obtain an occupational health adviser's certificate as to permanent incapacity. The adviser had consistently taken the view that Mrs Waller's health problems were linked to employment difficulties and if those improved so would her health. I decided that the Council could not reasonably have concluded that Mrs Waller's ill health was permanent.

Mrs Waller's appeal

Her main grounds of appeal were that I had not:

- considered all the relevant factors, in particular, whether the Council had applied pressure on the occupational health adviser to reach a conclusion favourable to the Council;
- afforded her a fair trial, in that I had failed to consider the independence and impartiality of the adviser and had not acceded to Mrs Waller's request for an oral hearing;
- interpreted correctly the relevant scheme regulations.

The Court's decision

Mr Justice Blackburne dismissed Mrs Waller's appeal.

Whether the Council had applied pressure on its adviser, and the adviser's independence or

impartiality, were issues which had not been raised squarely before me so it was not open to Mrs Waller to criticise my determination for not having dealt with those matters. In any event there was an almost total absence of any evidence that the adviser had been pressured and the fact that he had some part-time employment with the Council did not mean that he could not be regarded as independent for the purposes of the relevant regulations.

There was no evidence of differences between Mrs Waller's recollection of events and the Council's version such as to imply that Mrs Waller's credibility was in doubt and an oral hearing required.

I had correctly directed myself on the issue of whether Mrs Waller's ill health was permanent and was entitled to come to the conclusions that I did.

NHS Pensions Agency v Suggett [2005] All ER (D) 331 (Apr)

Refusal of Permanent Injury Benefit

- ***National Health Service (Injury Benefits) Regulations 1995***
- ***whether injury wholly or mainly attributable to employment***
- ***appeal against Ombudsman's challenge to findings of fact and against directions made***

My determination

Mrs Suggett's claim for permanent injury benefit (PIB) under the National Health Service (Injury Benefits) Regulations 1995 was refused by the NHS Pensions Agency on the grounds that her back injury was not wholly or mainly attributable to her NHS employment. The Agency took the view that the presence of similar symptoms prior to a work-related incident in 1975, upon which Mrs Suggett's claim for PIB was based, indicated a pre-existing degenerative condition which meant that her condition could not be wholly or mainly attributed to her employment.

I considered the Agency's approach was flawed. The existence of previous symptoms did not necessarily mean that her condition was not wholly or mainly attributable to her employment. The Agency had not properly considered whether any pre-existing condition was itself work-related.

I directed that the Agency either appoint a suitable medical practitioner who had no association with the medical advisers previously involved, to whose appointment Mrs Suggett should consent or, failing agreement on such an appointment, to revert to me for a suitable practitioner to be selected; and to reach and convey a further decision after receiving the new medical advice.

Finally, I directed that a small compensatory payment should be made.

The Agency's appeal to the High Court

The Agency appealed that I had been wrong to fault the Agency's conclusion that Mrs Suggett failed to satisfy the conditions for PIB and, in particular, the Agency's conclusion that Mrs Suggett's condition was not the result of an injury contracted in the course of her NHS employment and which was wholly or mainly attributable to that employment.

Secondly, the Agency said that I had exceeded my powers in making the particular directions.

The High Court decision

Mr Justice Etherton dismissed the first ground of appeal, holding that I was able to challenge the Agency's findings of fact if, as in this case, I concluded that the Agency had not asked itself the correct questions and taken into account all relevant factors. The Agency had not dealt with whether Mrs Suggett's back pain was connected with an earlier incident at work or whether Mrs Suggett's pre-1975 symptoms might have resolved completely, so making the 1975 incident the sole cause of her condition. I was

entitled to conclude that the Agency's final decision had failed to take into account its earlier decisions and medical evidence.

On the issue of directions, the Scheme's Regulations included provision for the Secretary of State to require an applicant for PIB to be examined by a doctor selected by the Secretary of State. Mrs Suggett had never been requested to undergo such an examination so there was no issue of my directions undermining or conflicting with the power expressly conferred on the Secretary of State. If there was ground for believing that an adviser might be selected whose advice might result in maladministration, there was no reason why I could not give directions aimed at preventing recourse to such an adviser. But such directions must not interfere more than was reasonably necessary with the Secretary of State's discretion. While it was a legitimate exercise of my powers to direct that the use of doctors employed by the same company as previously used should be avoided, the second part of my direction, requiring Mrs Suggett's consent, failing which I would myself select a doctor, was not justified and circumscribed the Secretary of State's discretion in an unwarranted manner. Mr Justice Etherton substituted a direction that the Agency appoint, for the further consideration of Mrs Suggett's claim to PIB, a suitable medical practitioner who was not employed by and had no other association with the previous medical advisers.

A direction to pay £200 compensation for distress and inconvenience was set aside on the basis that errors of law are not in themselves maladministration for which compensation should be paid and there was no evidence in this case of other maladministration (for example, delay).

The Agency's appeal to the Court of Appeal

There were three issues for the Court of Appeal to consider:

- Did I err in my construction of the Agency's notification by which they refused Mrs Suggett's claim?
- If not, was I entitled to make a direction which fettered the Agency's own discretion to appoint a new medical adviser when reconsidering Mrs Suggett's claim?
- Was the judge entitled to uphold my directions on different grounds and to vary it?

The Court of Appeal's decision [2006] All ER (D) 118 (Jan)

The Court of Appeal (Lords Justices Mummery, Latham and Gage) dismissed the Agency's appeal. On the first issue, they held that my decision displayed no error of law. On the second issue, I had been entitled to conclude that there had been a pattern of wrong decision making by the medical advisers. The perception of fairness and independence required in this particular case a doctor from outside the company previously used to deal with the reconsideration of Mrs Suggett's claim. As to the varied direction, the judge was doing no more than expressing in a different way the same reasoning as myself. The finding that part of the direction should be deleted was justified because it did unreasonably fetter the Agency's discretion to appoint an adviser of the Agency's own choice. The judge had power (under the Civil Procedure Rules) to vary the direction: the effect of the variation was no more than a reduction in the restriction imposed on the Agency's exercise of its discretion.

The Agency unsuccessfully sought leave to appeal to the House of Lords. The House of Lords has since confirmed that refusal.

Jugdaohsingh v NHS Pensions Agency [2005] EWHC 3289 (Ch)

NHS Injury Benefits Scheme

- *refusal of Injury Benefits*
- *whether incidents relied upon occurred*
- *whether condition attributable to NHS employment*
- *no allegation on appeal of error in law by Pensions Ombudsman*

My determination

In order to be eligible for injury benefits, Mr Jugdaohsingh had to establish that his condition (back and shoulder stiffness) was attributable to his NHS employment. I did not uphold Mr Jugdaohsingh's application that the NHS Pensions Agency had wrongly refused to grant him injury benefits. Aside from Mr Jugdaohsingh's recollection of events, there was little other evidence of the three incidents relied upon by him having taken place. Further, I was in some doubt as to whether such incidents had caused the back and shoulder problems from which Mr Jugdaohsingh suffered.

The High Court's decision

Mr Justice Laddie dismissed Mr Jugdaohsingh's appeal. The Court's powers were restricted to reversing a decision where I had erred in law. Mr Jugdaohsingh's complaints related to findings of fact. That did not amount to a challenge that I had erred in law and so the Court had no power to overturn my decision. The Judge went on to say that he could in any event see no reasonable basis upon which my conclusions of fact could be impugned.

Faulkner v Pensions Ombudsman and another [2005] EWHC 3227 (Ch)

Teachers' Pension Scheme

- *recovery of overpayment of benefits*
- *new evidence*
- *whether matter should be remitted for reconsideration*

My determination

Premature retirement benefits had been paid to Mrs Faulkner incorrectly and recovery was sought. She considered that she had not been properly advised and that the overpayments should not be recovered. I did not uphold her application.

Mrs Faulkner's appeal

On appeal, Mrs Faulkner sought an order setting aside my determination on the grounds that it was perverse, unfair, contrary to natural justice and unreasonable and remitting the matter for reconsideration taking into account new material and arguments.

The High Court's Decision

Mr Justice Park remitted Mrs Faulkner's application for reconsideration, taking the view that Mrs Faulkner, in presenting her own case to me, had not done herself full justice and that it would be unacceptably harsh, particularly in the absence of opposition from Teachers' Pensions Agency (or myself), to deny her the opportunity to have her case properly presented.

Ward v South Yorkshire Pensions Authority and another [2005] EWHC 2711 (Ch)

Local Government Pension Scheme

- redundancy
- notification of benefits payable included discretionary added years
- member also a member of another public sector scheme
- added years element not payable
- benefits payable less than amounts notified
- whether oral hearing necessary

My determination

An estimate of benefits supplied to Mr Ward, whose service was to be terminated by redundancy, included discretionary added years which were not payable where the member was in receipt of other pension income. Mr Ward was in receipt of an army pension, details of which he was not asked to supply until a few days before his redundancy took effect. After Mr Ward's employment had terminated, he was informed that the added years element could not be paid and, in consequence, the pension he received was about £2,000 per annum less than the estimate he had received.

I did not uphold Mr Ward's complaint that the estimate should not have been supplied without the caveat that entitlement depended on income received from other pensions. Nor did I agree with Mr Ward that he would not necessarily have accepted dismissal on the grounds of redundancy: his decision (to accept redundancy and retire) had been made before the estimate had been supplied to him.

Mr Ward's appeal

Mr Ward's grounds of appeal were that I:

- had not dealt with his claim for non-financial loss and had not given reasons for dismissing it;
- had given inadequate reasons for dismissing the claim for financial loss;
- could not reasonably have reached a decision on the disputed facts without an oral hearing.

The High Court's decision

Mr Justice Hart dismissed the appeal. Although the claim for non-financial loss had not been dealt with, there were a number of reasons why that was the case (for example, maladministration had not been found so that I had no jurisdiction to award compensation for distress and inconvenience). Care had been taken during the investigation to establish the background to Mr Ward's redundancy and it was not difficult to see why I had dismissed Mr Ward's claim for financial loss. Even if the determination had been insufficiently reasoned, there was no reason to give Mr Ward the only remedy available, namely an order resubmitting the complaint for reconsideration.

It was for me to decide the procedure to adopt in conducting an investigation. The procedure adopted (deciding Mr Ward's application on the basis of documents alone) was not one which no reasonable decision maker would have followed. Mr Ward had not requested an oral hearing and requiring him to make orally the assertions, which had been made in correspondence, would not have added to the picture before me.

Brennan v LRT Pension Fund Trustee Company Limited [2005] All ER (D) 119 (Nov)

Withdrawal of ill-health benefits

- *previous appeal*
- *remitted for reconsideration*
- *not upheld*
- *further appeal*
- *whether Ombudsman had erred in law*

My determination

The determination followed an appeal to the High Court by Mr Brennan against a previous determination.

Mr Brennan had contended that, at a meeting, assurances had been given to him that at no time in the future would his ill-health benefits be stopped, providing he did not resume work for LRT. Mr Brennan's application was remitted to me to consider whether the representation alleged by Mr Brennan had been made, and, if so, to determine its effect.

I reconsidered Mr Brennan's application but did not accept the validity of part of his evidence and indicated that, in any event, even if Mr Brennan had received the assurance he claimed he had not acted to his detriment in reliance on that assurance.

Mr Brennan's appeal

Mr Brennan contended that, in relation to the meeting, I had overlooked facts which pointed in Mr Brennan's favour.

The High Court's decision

Mr Justice Mann dismissed the appeal. An appeal against my determination lies only on a point of law. Mr Brennan's appeal was an attempt to re-argue questions of fact. I would have erred on a point of law if I had acted on the basis of non-credible evidence or rejected plainly credible evidence. But the line of argument and fact advanced by Mr Brennan did not fall

into that category. I had made no finding as to what representations had been made at the meeting referred to and, although that could be seen as unsatisfactory, I was entitled to conclude that, even if matters had happened as Mr Brennan said, Mr Brennan could not or would not have taken any other course of action. It had not been shown that I had erred in law.

Hainge v Northern Electric [2005] All ER (D) 114 (Dec)

Electricity Supply Pension Scheme

- *amendment to scheme rules relating to increases to pensions in payment*
- *whether amended provisions correctly applied*
- *whether trustees failed to consider issues raised by member*

My determination

Mr Hainge, a pensioner member of the Scheme, complained that increases to pensions in payment in accordance with an amendment to the Scheme Rules introduced in 1999, had not been correctly applied to his pension and, in consequence, he had received less than he should have done. He was also concerned that the Scheme Rules operated so as to provide different benefits to different categories of members, an issue which had been dealt with by the Employer rather than the Trustees. Mr Hainge considered that, if a member alleged that the Scheme Rules had not been properly applied, that member ought to have a right of access to the Trustees.

I did not uphold his application. I agreed with the Employer that the Scheme Rules, as amended, had been properly applied. Mr Hainge was only entitled to the increase on the balance of his pension over his Guaranteed Minimum Pension (GMP) and not to an increase on the whole of his pension. As the increases were granted by the Employer, it had been appropriate for it to respond to Mr Hainge, which response had been expressed to be on behalf of the Trustees as well.

Mr Hainge's appeal

Mr Hainge maintained that increases should be paid in accordance with his interpretation of the relevant Scheme Rules and that the Trustees should have dealt with his concerns about the unfair operation of the Rules themselves.

The High Court's decision

Mr Justice Warren dismissed the appeal. Mr Hainge had failed to make out his contentions. The relevant Scheme Rules, correctly construed, provided for increases only to the excess over the amount of the GMP and not to the whole of the benefits received. On that basis I was entitled not to uphold Mr Hainge's first complaint.

Nor had I made any error of law in relation to Mr Hainge's second complaint. The Trustees had been informed by their legal adviser that any alleged unfairness between different categories of members was a matter for the Employer. When the Trustees had come to consider the complaint, they had rejected it.

Steria Limited and others v Hutchison and others [2005] EWHC 2993 (Ch)

Representations by letter and in scheme booklet as to normal retirement date

- *whether trustees bound by representations*
- *whether representations overridden by reference to trust deed and rules*
- *whether detrimental reliance*
- *estoppel by representation*

My determination

On promotion, in 1994, Mr Hutchison had become a member of, and had transferred accrued benefits into, the Scheme. He had received a letter from his employer's pension department saying that, provided he had 20 years' service, he could retire at 62 without

reduction to his benefits. That was repeated in a scheme booklet given to him, although the booklet did say that the Trust Deed and Rules prevailed over the booklet. Mr Hutchison was told, in 2002, that his normal retirement date (NRD) was 65, which was in accordance with the Scheme Rules. Retirement after age 50, with consent and subject to actuarial reduction, was permitted and certain members with 20 years' service could retire at 60 on unreduced benefits, but the Rules did not mention retirement at age 62.

I upheld Mr Hutchison's application about his NRD although not about other issues he raised. I determined that Mr Hutchison was entitled to conclude that, on completing 20 years' service, his NRD was age 62. I directed that Mr Hutchison's benefits be enhanced accordingly, with the Employer and the Trustees to agree between them how that should be funded. I also made a small award to redress his distress and inconvenience.

The Trustees' and the (new) Employer's appeal

The determination was challenged on four main grounds:

- the Trustees were not a party to the representations made as to Mr Hutchison's NRD;
- such representations did not bind the Scheme;
- the representations were insufficiently clear and unambiguous;
- there had been no detrimental reliance upon the representations.

The High Court's decision

Mr Justice Peter Smith dismissed the appeal. The (then) Employer clearly believed that it was making representations and issuing documentation on behalf of the Trustees and in order to discharge the Trustees' duty of disclosure. The Trustees were party to the

representations as to Mr Hutchison's NRD. Although the Trustees could not, by estoppel, enlarge the Scheme, they could do so with the participation of the Employer, at whose behest the letter and booklet had been issued. The letter and booklet were clear and unambiguous. Detrimental reliance had been established: by joining the Scheme, Mr Hutchison had lost the opportunity to reduce his pension contributions, had he so wished. Estoppel by representation had been established.

Although the booklet stated that the Scheme Rules would prevail, it was not reasonable to expect Mr Hutchison to have looked at the Rules to satisfy himself that no error had been made in the relatively simple task of telling him concisely what his entitlements were. The court would be slow to allow the Trustees to avoid the consequence of their clear and unambiguous statements by reason of an oblique reference to the Scheme Rules.

The sum of £250 was an unobjectionable award to compensate Mr Hutchison for the self-evident distress and inconvenience caused to him.

Appeal to the Court of Appeal

Leave has been given for an appeal to the Court of Appeal. The case has been listed for hearing in Autumn 2006

Chapman v South Holland District Council [2006] EWHC 27 (Ch)

Local Government Pension Scheme

- *redundancy*
- *Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000*
- *discretionary added years*
- *adoption of less favourable policy*

My determination

Mr Chapman was to be made redundant and was offered early retirement with, at the Council's discretion, added years being granted to his pensionable service. He complained that discretionary added years had been calculated in accordance with a policy formulated by South Holland District Council which was less favourable than the policy which had previously applied and that there had been a procedural error by the Council.

I did not uphold Mr Chapman's complaint that the added years' element ought to be calculated in accordance with the policy that had previously applied. But there was maladministration on the Council's part in prematurely implementing the new policy: the relevant regulations stated that a change could not be effected until a month had passed since the publication of a new policy. But Mr Chapman had suffered no injustice in consequence: although his redundancy had taken effect before the requisite month had elapsed, that was at his own request (to which the Council acceded) to leave as soon as possible. This was at a time when he knew that the Council's policy had changed.

Mr Chapman's appeal

Mr Chapman appealed that I had erred in law in failing to agree that the discretionary added years payment had been incorrectly calculated.

The High Court's decision

Mr Justice Patten dismissed the appeal. He held that it was well established in law that public bodies were entitled to adopt a policy in relation to the exercise of a discretionary power provided that they were not bound to apply that policy regardless of the circumstances of any particular case. Although in applying its new policy prematurely, the Council had acted unlawfully, the Council was justified in this case in departing from its earlier policy so the end result would have been the same. A decision to adhere to an outdated and unjustifiable policy would itself have been open to challenge.

Maclaine v Prudential Assurance Company Limited [2006] All ER (D) 121 (Feb)

Tax-free cash sum incorrectly calculated

- *reliance*
- *whether any consequential financial loss*
- *whether compensation offered of £500 for distress and inconvenience adequate*

My determination

Mr Maclaine complained about a retirement illustration sent to him by Prudential indicating that he was entitled to a tax-free cash sum of £47,127. After Mr Maclaine had signed an agreement to purchase a property in Portugal, and paid a deposit of £26,850, a revised illustration was sent to him showing a maximum tax-free cash sum of £27,124. Mr Maclaine (who had been intending partly to fund the purchase from his lump sum) had been able to secure alternative finance, so he had gone ahead with the purchase and had not since felt compelled to sell the property. I did not uphold Mr Maclaine's claim that he had suffered financial loss. I considered that the £500 offered by Prudential as redress for his distress and inconvenience was appropriate.

Mr Maclaine's appeal

The grounds of Mr Maclaine's appeal were that he was entitled to compensation for financial loss caused by maladministration by Prudential, and that the sum of £500 was not adequate compensation for distress and inconvenience suffered.

The High Court's decision

Mr Justice Warren dismissed Mr Maclaine's appeal. Although the possibility was acknowledged that Mr Maclaine might have incurred higher costs in relation to the loan he took out, this was balanced by other factors. There was insufficient evidence to demonstrate that Mr Maclaine had suffered any financial loss. Neither was the court inclined to interfere with my decision as to the appropriate amount of compensation for distress and inconvenience.

“ All complaints are a valuable source of customer feedback... ”

Management

The past year has been dominated in management terms by three key issues: accommodation, IT and planning for work as the Ombudsman for the Pension Protection Fund (PPFO). As mentioned in my Introduction, another year has ended without my having an IT system which is fit for purpose. I am presently housed in temporary accommodation. The expectation was that the refurbishment of the premises in Belgrave Road would have been completed within four months allowing me to operate from open plan environment equipped with new IT system, including much needed case and document management systems. Although the work on the premises was completed on schedule, my move back has been delayed, pending the installation and commissioning of the IT system.

The new office layout will significantly enhance team-working. In the meantime however, my staff have had to cope with the disruption of the move itself and with working in temporary surroundings, serviced by the existing, inadequate system and with only rudimentary telephone links.

A great deal of time and effort has gone into the specification of IT requirements and liaison with prospective suppliers and the DWP. The latest indications are that only the new hardware and basic software will be in place by October 2006 when my staff and I will move back into the refurbished premises. Further work will then need to continue to develop the new case and document management systems ready for use by the end of this calendar year. Despite having raised the need for this system with the then Minister at my first meeting with him after taking up office, I am not confident that it will be up and running before I retire next year.

The number of staff in my Office has increased, partly as a result of the additional PPF and FAS workstreams (see Chapter 6) and partly to accommodate the growth over the years in the number of enquiries and investigations that are being dealt with.

The day to day management of the Office is now in the hands of the Deputy Ombudsman. He is in the process of restructuring the teams within the Office in order to help him better monitor and move forward older cases, as well as improving the way we keep parties informed of the progress of their complaint. The restructuring was devised with the new office layouts and IT systems in mind, and thus the postponement of these coming on stream will delay some of the benefits of this restructuring.

Complaints

24 complaints were recorded about the service provided by my Office.

The time taken to deal with applications received is the main recurring theme raised by such complaints, often with justification. The greatly increased amount of work coming into the office in two of the past four years has led to the office being under very real pressure. Despite the increased productivity which has been achieved, matters do remain in hand for a great deal longer than would be the case had adequate numbers of staff always been available.

It is often extremely difficult to disentangle a complaint about the level of service we have provided, from dissatisfaction with the outcome of the matter which has been referred to me. The only way that outcome can be challenged is by way of an appeal to a Court on a point of Law.

All complaints are a valuable source of customer feedback, as of course are expressions of appreciation which are also received from time to time. Just as complaints are more likely to come from those whose application to me has not been upheld (or whether the complainant can see indications emerging that this is likely to be the outcome), so expressions of appreciation are more likely to come from those whose approach to me has produced the outcome they are seeking.

In addition to considering whether any specific action needs to be taken in relation to the individual complaint, we look also to see whether more general lessons can be learnt for the future to help us improve the service we provide.

Costs

Inevitably, as the Office expands and takes on more expensive IT and accommodation charges, there have been, and will be, associated higher costs. A summary of expenditure follows.

Office Expenditure

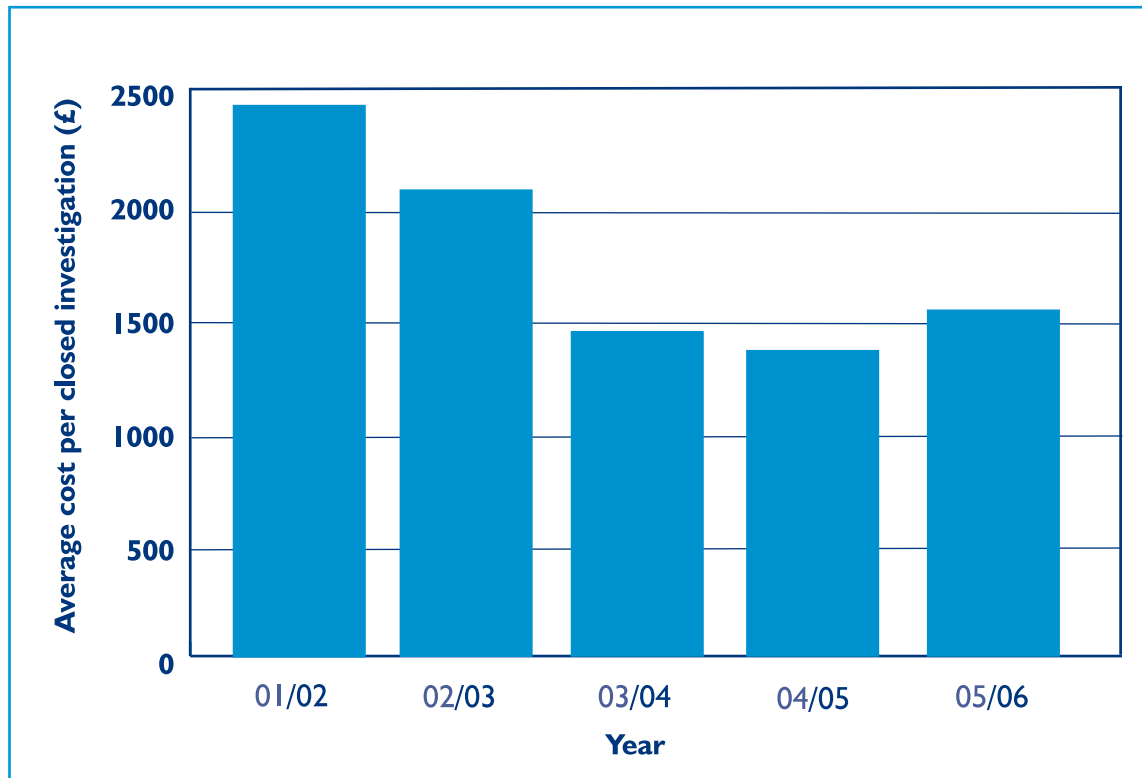
	2005/06	2004/05
	£'000	£'000
Staff*	1,748	1,429
Telecoms/IT	63	84
Printing /Stationery /Postage	44	55
Legal Costs	30	19
Other	232	166
Total running Costs	2,117	1,753
Capital Expenses	0	2
Total Expenditure	2,117	1,755
Adjustment re PPFO and FAS**	100	N/A
Net PO expenditure	2,017	

* Staff costs are higher than previously because I have recruited additional staff to deal with PPF and FAS cases. Although these staff are strictly a PPFO cost, I have shown them here, as they will continue to work on PO cases pending receipt of sufficient PPF and FAS cases.

** The adjustment relates to costs incurred in the preparatory work needed to put in place the infrastructure for taking on the role of PPFO in dealing with appeals and complaints about the PPF and appeals against decisions of the FAS. Significant PO time was devoted to this and an appropriate deduction has been made from the running costs of the PO.

The table below outlines the average cost per closed investigation over the past five years

Figure 2 - Average cost per closed investigation (last five years)



“ ...this split of functions is not user-friendly from the point of view of people who may have cause to complain or appeal. ”

Pension Protection Fund and Financial Assistance Scheme

During the year I have participated in discussions with the Department of Work and Pensions, leading to the introduction of a number of Regulations governing the role of the Ombudsman for the Pension Protection Fund (PPFO). I have also made appropriate arrangements to carry out that role.

As the PPFO, I will be carrying out the following functions:

- reviewing decisions issued by the Board of the Pension Protection Fund about what the Pensions Act 2004 defines as reviewable matters;
- investigating complaints that injustice has been caused by maladministration on the part of the Pension Protection Fund;
- determining appeals against decisions issued by the Scheme Manager of the Financial Assistance Scheme.

The Financial Assistance Scheme is being administered by a unit of the Department of Work and Pensions. As such, any complaint of maladministration by that unit will fall within the jurisdiction of the Parliamentary Ombudsman. I suspect that it may not be easy to disentangle complaints of maladministration from appeals about the decisions. I fear that this split of functions is not user-friendly from the point of view of the people who may have cause to complain or appeal.

The same may also be said of the Regulations governing the role of the PPFO in relation to the Pension Protection Fund. The Regulations seem to be written on the basis that the potential complainant or appellant will recognise that his or her grievance will fall neatly into one of two categories (a complaint about the merits or a complaint about maladministration). The reality is that such a neat division is unlikely, and it is even less likely that it will be understood by the person concerned. However, there is provision in those Regulations (but not those governing the Financial Assistance Scheme) which will enable me to deal with both kinds of matter within the one decision.

During the year, I have not received any applications that required consideration by me in my role as the PPFO.

However, a significant amount of work has been done to provide information to people who might want to approach my Office with such applications. Literature has been produced which provides comprehensive information about the role of the PPFO, and how an application can be made. That literature includes forms on which an application or complaint can be made.

The literature is also available on a new website: www.ppfombudsman.org.uk. This website can also be accessed from the Pensions Ombudsman's website: www.pensions-ombudsman.org.uk. Both websites also give access to pages which deal specifically with my role in relation to the Financial Assistance Scheme.

The website will be the primary means by which interested parties can be informed of those matters in which they have an interest. The law requires me to publicise details of some matters which are under consideration. All of the information that I am thereby required to disclose will be available on the website.

Because of the way both the Pension Protection Fund and the Financial Assistance Scheme work, it seems likely that when applications and appeals do begin to be made, they are likely to come in batches rather than as a smooth flow. Future actions of both the Fund and the Scheme may need to be put on hold until the particular issues are determined. I therefore envisage a need to be flexible in the way that I deploy my staff.



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