

Ombudsman's Determination

Applicant	Mr R
Scheme	Hamble Homes Ltd SSAS (the SSAS)
Respondent	PIM Trustees Limited (PIM)

Outcome

1. Mr R's complaint against PIM is partly upheld, but there are several parts of the complaint I do not agree with. To put matters right (for the part that is upheld) PIM shall take whatever actions may be required by the SSAS's bank, to allow PIM to be removed as signatory to the bank mandate.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr R complains that PIM has acted in maladministration by refusing to:
 - resign as Trustee to the SSAS;
 - remove itself as signatory to the SSAS bank account;
 - set up a new SSAS bank account which pays higher interest, and;
 - allow Mr R to take benefits from the SSAS without attaching onerous conditions.
4. Mr R also complained that PIM should not have approved a loan the SSAS made to Hamble Homes Ltd (**Hamble Homes**), the Principal Employer. He also says that PIM should have resigned as Trustee when it issued court proceedings against the SSAS.

Background information, including submissions from the parties

5. The SSAS originated from what was initially the Hamble Homes Limited VIP Plus Pension Plan, which was established under a Declaration of Trust dated 19 December 1991. The sole Trustee was Hamble Homes which was also the Principal Employer. Mr R was the sole member of the original pension.
6. On 6 January 2006, a Deed of Amendment (**the 2006 Deed**) was executed. This changed the Hamble Homes Limited VIP Plus Pension Plan into a small self-

administered scheme (**SSAS**). The effect of the 2006 Deed was to resign Hamble Homes as Trustee and to appoint Mr R as the member Trustee and PIM, an unconnected professional trustee, as the Pensioner Trustee.

7. Mr R has said the 2006 Deed was executed so that Hamble Homes could take advantage of the ability to borrow money from the SSAS.
8. Relevant extracts from the 2006 Deed are set out in Appendix 1. Clause 5 contains the power to appoint and remove Trustees.
9. On 6 April 2006, a new HM Revenue and Customs (**HMRC**) tax regime for pensions came into effect. The new tax rules, commonly referred to as 'Pension Simplification', removed the need for SSAS's to have a Pensioner Trustee. The rules also strengthened the requirements for loans made by SSAS's, in particular requiring that loans made after 6 April 2006 be secured on an asset.
10. On 16 May 2006, a loan agreement, dated 1 February 2006, was signed between the Trustees and Hamble Homes. Although the loan agreement was not signed until May 2006, the loan was drawn down in March 2006.
11. In April 2009, Mr R took partial benefits from the SSAS, in the form of a tax free cash lump sum.
12. On 3 June 2009, a Deed of Amendment was drafted. This purported to remove PIM as the Pensioner Trustee and appoint another Trustee, Ms P, in PIM's place.
13. On 16 July 2009, a further document, intended to be a Deed of Amendment, was drafted. The intention of this document was to transfer the power to amend the SSAS's rules from the Trustees, back to the Principal Employer.
14. On 22 August 2011, another document, intended to be a Deed of Amendment was drafted. This was ostensibly executed by Hamble Homes as the Principal Employer. The document stated that there must be one Trustee with at least one of them being a "Pensioner Trustee." This was in contrast to Clause 5.1 of the 2006 Deed of Amendment which made reference to a "Pensioner Trustee."
15. In February 2012, Hamble Homes entered administration and the company was dissolved on 18 July 2016. As a result of Hamble Homes entering administration, the loan taken out in 2006 was written off, causing a loss to the SSAS.
16. In 2013 there was a dispute between Mr R and PIM about the payment of PIM's professional fees. This was referred to, and dealt with by, the courts. The court ruled in favour of PIM in relation to the outstanding fees.
17. On 7 July 2015, Mr R wrote to PIM asking it to agree to the opening of a new SSAS bank account which would pay higher interest. PIM wrote to Mr R on 22 July 2015, 1 September 2015 and again on 8 April 2016, requesting details of the account. PIM said this information was required so it could satisfy itself that the account had been

established in accordance with the Trust Deed, but the information was not provided and so the new bank account was not opened.

18. On 12 August 2015, Mr R asked PIM to sign the necessary paperwork to allow him to start taking benefits from the Scheme. PIM responded asking further questions about the format the benefits would take. To date Mr R has not taken any further benefits from the SSAS, other than the tax free cash he took in April 2009.

Summary of Mr R's position

19. Mr R says that PIM should not have approved a loan the SSAS made to Hamble Homes. Mr R says, he was naïve of the implications and was reliant on PIM's experience as a professional Trustee. Further, that because the loan was made after 'Pension Simplification', the loan ought to have been secured on an asset.
20. When PIM instigated court proceedings against the SSAS, Mr R says this created a conflict of interest. Mr R considers that PIM ought to have resigned as Trustee at this stage so as to prevent any conflict.
21. Mr R has also complained that PIM has acted in maladministration by refusing to resign as Trustee to the SSAS and by failing to remove itself as signatory to the SSAS bank account. Mr R has said that all that was required of PIM was for it to write a simple letter of resignation.
22. Repeated attempts have been made by Mr R to remove PIM as the Trustee and to encourage it to resign. At one stage this included making an application to the courts seeking to have PIM removed as a Trustee and from the bank mandate. This action was adjourned as Mr R was ill, but the action was subsequently struck out and the proceedings were not restored.
23. As a consequence of the failure to set up a new SSAS bank account, Mr R says that the SSAS has foregone the opportunity to earn higher interest on cash balances, resulting in a financial loss to the SSAS.
24. Mr R also says that in refusing to pay him benefits from the SSAS, PIM has caused him a personal financial loss, by preventing him from structuring his income in a tax efficient way.

Summary of PIM's position

25. PIM says that the documents, purporting to be Deeds of Amendment, which Mr R has submitted have been crudely drafted, apparently without the benefit of professional advice. As a consequence PIM is reluctant to be resigned until it can be satisfied that the Deeds of Amendment Mr R has submitted are operative.
26. Provisions within the 2006 Deed require that PIM be signatory to the bank mandate, therefore PIM says it cannot be removed as signatory to the mandate until it is properly resigned as Trustee.

27. PIM maintains that it has a duty to ensure the SSAS does not breach HMRC rules. It has said that it requested further information in relation to the instruction to switch the bank account and to pay benefits, to ensure that the instructions would not fall foul of HMRC's rules. However, PIM says that Mr R did not respond to its requests therefore it was unable to carry out his instructions.

Adjudicator's Opinion

28. Mr R's complaint was considered by one of our Adjudicators who concluded that no further action was required by PIM. The Adjudicator's findings are summarised briefly below:

- The loan which Mr R says PIM should not have authorised was taken out in 2006, and there is evidence that repayments had been missed since 2009. Both of these events were more than three years ago. Further, Hamble Homes entered into administration in February 2012, at which point the Adjudicator thought it would have become apparent that there was little prospect of the loan arrears being repaid.
- The Adjudicator considered that Hamble Homes entering administration would have given Mr R the awareness that he had cause for complaint about the loan. Mr R's application to this Office was made in July 2015, and, because more than three years had passed since Mr R ought reasonably to have known there were issues with the loan, the Adjudicator concluded that this aspect of Mr R's complaint was subject to our time limits and so, falls outside of this Office's jurisdiction.
- The dispute in 2013 between Mr R and PIM, about the payment of PIM's professional fees, was referred to the courts. As this matter has already been considered by the courts it is not appropriate for this Office to revisit this, or to comment on this further. The Adjudicator did however acknowledge that the dispute and subsequent legal action is indicative of the obvious breakdown in relations between the Trustees.
- The validity of the 2006 Deed has not been disputed, so this is a sensible starting point for establishing what provisions of the Trust Deed are in force.
- Prior to 6 April 2006, it was an HMRC approval condition that Trustees of a SSAS appoint a Pensioner Trustee. So, when the 2006 Deed was executed, it was a requirement for there to be a Pensioner Trustee to the SSAS.
- One of the Rules under the 2006 Deed, consistent with HMRC's approval conditions, is that the SSAS must have at least two Trustees, one of which must be a Pensioner Trustee. [Clause 5(1)].
- The document dated 3 June 2009, which was intended to be a Deed of Amendment, sought to replace PIM with Ms P. But there is no persuasive

evidence that Ms P was a Pensioneer Trustee, or that another, valid, Pensioneer Trustee was appointed.

- Although the appointment of a Pensioneer Trustee is now no longer necessary under the current HMRC rules, the wording of the operative, 2006 Deed, requires there to be a Pensioneer Trustee. For this reason the June 2009 document did not meet the requirements of Clause 5(1), was not properly executed and was therefore invalid.
- It consequently follows that the subsequent documents, claiming to be Deeds of Amendment, dated July 2009 and August 2011, must also fail on the basis that Ms P had no power or standing as a Trustee, by virtue of the June 2009 document being inoperative. Further, the June and July 2009 and the August 2011 documents are poorly constructed and lack the certainty required to be operative.
- If Mr R presents a Deed of Amendment which has not been correctly drafted, there is a risk that it will subsequently transpire that the Deed is inoperative, which could result in PIM remaining liable for the SSAS, after it has relinquished control of the way in which the SSAS is operated. This represents a considerable risk to PIM therefore there are benefits to both parties of having a properly constructed Deed of Amendment to remove PIM. This will provide both parties with the confidence that the Deed can be executed properly.
- The 2006 Deed requires that there be two Trustees, so PIM cannot simply resign, or be resigned as Mr R has suggested. Doing so would leave Mr R as the sole Trustee which is contrary to the requirements of the Trust Deed. For PIM to be permitted to resign, the 2006 Deed would first need amending to allow there to be a sole Trustee.
- Similarly, Clause 8(2) of the 2006 Deed of Amendment requires PIM, as the Pensioneer Trustee, to be signatory to the SSAS's bank account. So PIM cannot remove itself from the bank mandate, the provisions within Clause 8(2) would first need amending to permit this.
- Until a correctly drafted Deed of Amendment is presented, which removes PIM as Trustee, PIM cannot be properly removed from the SSAS bank account mandate.
- Mr R has already taken tax free cash from the SSAS. Consequently any further lump sum benefits Mr R now takes from the SSAS would be considered as an uncrystallised funds pension lump sum (**UFPLS**). The SSAS is subject to the current HMRC tax regime which requires that a pay as you earn (**PAYE**) system is operated on any UFPLS paid from the SSAS.
- Any payments made to Mr R which are not in accordance with HMRC's rules would be considered as an unauthorised payment. Unauthorised payments made by the SSAS will incur a punitive tax charge of up to 55% along with a scheme sanction charge of between 15 and 40%.

- The SSAS was not registered with HMRC for PAYE at the time Mr R requested that PIM process his request for further benefits from the SSAS. By refusing to permit further benefits to be taken, when the SSAS was not registered for PAYE, PIM was preventing the SSAS from breaching HMRC rules, thereby protecting Mr R and the SSAS from financial penalties. This is entirely consistent with PIM's responsibilities as Trustee, so it cannot be said that PIM was acting unreasonably.
 - As Trustee, PIM is obliged to ensure that the SSAS is operated in accordance with the governing Trust Deed and the relevant legislation. It was not unreasonable for PIM to refuse to switch the SSAS bank account, until it had satisfied itself that the bank account Mr R proposed complied with the requirements of the SSAS. PIM made repeated attempts to do this, however there is no evidence to indicate that Mr R was prepared to provide this information to PIM.
 - The terms and conditions of the bank account Mr R proposed suggest that the account is a personal bank account, intended for retail customers. Based on the evidence, there is nothing to suggest that the bank account proposed by Mr R was available to Trustees, or was capable of being held as part of a SSAS. So it was not unreasonable for PIM to refuse to carry out Mr R's instruction without first seeking clarification.
29. Following the Adjudicator's involvement further work was undertaken by Mr R in relation to the SSAS. This is relevant insofar as it amends some of the background to this complaint, which has been outlined above.
30. On 16 February 2017, the SSAS started operating, and was registered with HMRC, for PAYE tax.
31. On 20 May 2017, a Deed of Amendment and Removal (**the Deed of Removal**), drafted by Mr R's solicitor, was executed. The effect of this Deed was to amend some of the Clauses within the 2006 Deed to remove the requirement for a pensioner trustee and to cause PIM to cease to be a trustee.
32. The validity of the Deed of Removal has not been disputed by either party. PIM has now ceased to be a Trustee and is granted a discharge of its obligations, subject to a continuing obligation to execute such documents and do all such things as may be necessary to give effect to such cessation.
33. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr R provided his further comments, summarised below, which do not materially change the outcome: -
- Mr R said that the loan falling into arrears did not bring about the awareness that he had cause for complaint about the fact it was not secured on an asset. Mr R said this knowledge only came about in, around 2013, when he spoke with a pensions professional.

- The 2006 Deed of amendment has, Mr R alleges, been prepared by PIM without any professional input. Mr R questions why, if this is the case, PIM can demand that any Deed of Amendment he provides must be professionally drafted. Mr R is unhappy that he had to pay around £1,200 for the Deed of Removal to be drafted by his solicitor.
- In addition to PIM's refusal to agree to the SSAS bank account being changed, Mr R has also said that PIM refused to carry out an instruction he provided to invest in a fund with Fidelity. Mr R argues that this is further evidence of PIM's maladministration and has contributed to the financial loss the SSAS faces.

34. I broadly agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr R for completeness.

Ombudsman's decision

35. I am not free to investigate every complaint referred to me. Regulations made by Parliament impose time limits on complaints which may be investigated and determined by the Pensions Ombudsman and the Deputy Pensions Ombudsman.
36. Regulation 5 of The Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996 [SI 1996 No. 2475], provides that for me to be able to accept a complaint for investigation, the matter must be referred to me within three years of the events that gave rise to the complaint; or within three years of the date that the Applicant became aware of it, or ought to have been aware of it. The relevant parts of Regulation 5 are set out in Appendix 2.
37. Mr R's complaint about the loan, which was taken out in 2006, was referred to this Office in July 2015, so clearly more than three years have passed since the event being complained of. The matter therefore for me to decide is when Mr R became aware, or ought reasonably to have become aware, that he had cause for complaint.
38. Mr R has said this occurred in 2013 when he consulted a financial adviser and found that the loan should have been secured on an asset. But it seems to me that the catalyst for this part of the complaint, is the loan falling into arrears. I say this because as soon as Hamble Homes defaulted on the loan repayments, Mr R had cause to consider how the loan was secured.
39. I consider that it would be reasonable to expect Mr R to have made enquiries about the security of the loan in 2009 when it first fell into arrears. Further, I find that someone acting prudently would have found, at the very latest in February 2012 when Hamble Homes went into administration, that the loan was not secured.
40. Here I acknowledge Mr R's point that until speaking with his adviser in 2013, he was unaware that it was a requirement that loans taken after April 2006 be secured on an asset. But, by 2009 and certainly by 2012 this knowledge was not new or uncommon insofar as it related to SSAS's.

41. I find that in February 2012 Mr R could, with reasonable diligence, have acquired the knowledge which he says brought about his awareness that he had cause for complaint. In making this finding I am bearing in mind that Mr R was also Trustee of the SSAS, so there is the expectation that he ought to be conversant with the requirements in relation to acting as a Trustee to, and operating, a SSAS.
42. I have given careful consideration to Mr R's arguments about when his awareness that he had cause for complaint started, but, having done so, I have concluded that there are no grounds for me to exercise my discretion, in Mr R's favour, under section (3) of Regulation 5.
43. The requirement that SSAS's appoint a Pensioner Trustee has not existed since April 2006, however the change in HMRC rules does not change the requirements imposed by Clause 5(1) of the 2006 Trust Deed, which requires there to be a Pensioner Trustee. Clause 5(2) makes it plain that a Trustee can resign even if this results in the scheme having fewer than two Trustees as a result, but it does not make the same explicit concession if the result is the lack of a Pensioner Trustee. Consequently it was arguable that PIM could not resign as Trustee without the rules of the SSAS first being amended to permit this. It would have remained at risk that its resignation was ineffective and therefore I conclude that it was reasonable for PIM to seek the clarity provided by its removal as Trustee by Deed rather than simply standing down.
44. There is question as to whether the documents Mr R provided in 2009 and 2011 were operative as Deeds of Amendment and were capable of removing PIM as Trustee
45. Given the question over the efficacy of the 2009 and 2011 documents Mr R submitted, I do not find that PIM has acted in maladministration by refusing to be removed as Trustee on the basis of those documents.
46. Subsequent to the Adjudicator issuing his Opinion, and seemingly as a result of the documents he had previously submitted being ineffective, Mr R decided to consult a solicitor to obtain an operative Deed of Amendment. However, as no maladministration has occurred in relation to this part of the complaint, I cannot award Mr R any costs in relation to the professional advice he sought.
47. For reasons similar to PIM's removal, I agree that PIM could not be removed as a signatory to the SSAS's bank account mandate until it had been properly removed as Trustee, but I will return to this point later.
48. I appreciate Mr R's frustration at being unable to access his pension benefits during the tax year in which he wished to draw them down, but until the SSAS was registered with HMRC to operate PAYE, any payments made to him may have been liable to punitive tax charges.
49. Here I should clarify that the SSAS was crystallised in April 2009 when Mr R took his tax free cash lump sum. So the Adjudicator was incorrect to say that any further payments made to Mr R by the SSAS would be considered an UFPLS; if Mr R

wanted to take lump sum payments from the SSAS, this would be considered as flexi-access drawdown. However, I conclude that nothing turns on this because HMRC would still require the SSAS to operate PAYE in order that flexi-access drawdown payments be made.

50. I have given consideration to the argument that PIM could have been more proactive and registered the SSAS for PAYE in advance of Mr R asking to draw further benefits, but I am mindful of the previous dispute between PIM and Mr R regarding PIM's remuneration, which was sufficiently serious that it was escalated to the courts. I am not persuaded that PIM was acting in maladministration as a consequence of not carrying out pre-emptive work in relation to the SSAS, since it was unclear if it would be remunerated for this.
51. In response to the Adjudicator's Opinion, Mr R has said that PIM had earlier refused to carry out an instruction he provided to invest in a fund with Fidelity. However this complaint point was raised after Mr R's complaint had been accepted for investigation, therefore it is not appropriate for me to comment on this further.
52. Finally, to return to PIM's removal as a signatory to the SSAS's bank account mandate; it has not been disputed that the Deed of Removal has retired PIM as Trustee. It therefore follows that it would be improper for it to remain as a signatory to the existing mandate.
53. It is not entirely clear what the SSAS's bank requires in order that PIM be removed from the mandate, whether Mr R providing a copy of the Deed of Removal is sufficient, or whether PIM needs to provide this instruction itself.
54. Subsequent to its removal, PIM said the following in relation to the bank mandate: -

"I think it is reasonable to presume that the change of mandate at the bank is within the competencies of a sole Trustee. I considered the ongoing administration of the scheme to have been assumed by [Mr R] from the date of our retirement at the latest. Any professional support he might need would have been part of his considerations in acting as a sole Trustee. A simple change of mandate is not something we would normally be asked to sign on as there are well established processes for this. I would wish to avoid any blurring of the activity around our retirement from the scheme."
55. However, section 1.1 of the Deed of Removal replaces the relevant part of Clause 5.(3) of the 2006 Deed to provide that: -

"5.(3) Every Trustee shall, on ceasing to be a Trustee, execute such documents and do all such things as may be necessary to give effect to such cessation."
56. Therefore, I uphold Mr R's complaint to the extent that PIM remains unwilling to initiate its own removal from the bank mandate and make the following direction requiring it to secure that outcome.

Directions

57. Within 21 days of this Determination, and only if the SSAS's bank confirms that it will not accept Mr R's instruction to remove it, PIM shall take whatever action is necessary to facilitate its removal as a signatory to the SSAS's bank account mandate.

Karen Johnston

Deputy Pensions Ombudsman
27 June 2017

Appendix 1

Relevant extracts from the 2006 Deed of Amendment

1. Appointment of Trustees and alteration of the Scheme

With effect from the date of this Deed the Scheme shall be called the Hamble Homes Ltd SSAS and the terms of the Scheme set out in the Original Declaration and in the provisions of the Original Rules are hereby amended by the Principal Employer by the deletion of the same and their replacement by Clauses 2 to 17 of this Deed and by the rules attached hereto (hereafter called "the Rules").

To retire Hamble Homes Limited as Trustee to the Scheme.

To appoint [Mr R] as the Trustee and PIM Trustees Limited as the Pensioner Trustee of the Scheme.

...

5. Appointment and removal of Trustees

5.(1) Subject to Clause 5.(4) hereof and to the provisions of Appendix I to the Rules the Principal Employer may by deed appoint new or additional Trustees of the Scheme and may remove from office any of the Trustees and unless a body corporate be appointed sole Trustee of the Scheme the number of Trustees shall not be less than two Provided that at least one Trustee shall be a Pensioner Trustee.

5.(2) The Trustees or any of them may subject to the provisions of Appendix I to the Rules resign their appointment as the Trustees or Trustee hereof by serving on the Principal Employer one month's notice in writing to that effect even if as a result the number of Trustees is reduced to or remains below two and at the expiration of any such notice the Trustees or Trustee so resigning shall be deemed to have retired from the trusts of the Scheme and the Principal Employer and the Trustee or Trustees so resigning shall execute such documents and do such things as may be necessary give proper effect to such retirement.

5.(3) If the Principal Employer is wound-up or dissolved or if a liquidator or receiver is appointed to the Principal Employer or if the business of the Principal Employer is transferred to another employer then unless the Trustees in their absolute discretion agree otherwise from the date of such winding up dissolution appointment transfers or change in control the powers and obligations of the Principal Employer under Clauses 5.(1) and 5.(2) hereof shall be vested in the Trustees.

5.(4) Notwithstanding anything in this Clause to the contrary, the Trustees shall ensure that the requirements of the Pensions Act insofar as the appointment of Member-nominated trustees of the Scheme are concerned are complied with at all times and from time to time and the powers exercisable by the Principal Employer to appoint and remove Trustees shall be subject to the said requirement.

...

6. Power of delegation and Advisers

6.(1) The Trustees may delegate any business to any one or more of their number or to any other person or corporation appointed or employed by the Trustees in connection with the Scheme and may from time to time make such arrangements as they think fit for one or more individuals (any of whom may be a Trustee) to draw and endorse cheques to give receipts and discharges and to sign forms and certificates in connection with the Scheme on behalf of the Trustees provided that:

- a) all such arrangements shall be made by the Trustees in writing
- b) the Scheme may not be wound up without the consent of all the Trustees
- c) no employer related investment as defined in the Occupational Pension Schemes (Investment) Regulations 1996 shall be made unless all Members are Trustee and agree in writing to the making of the investment
- d) unless a statement of investment principles, conforming to Section 35 of the Pensions Act, is in place before an investment of the resources of the Scheme is made, each of the Members shall agree in writing to the making of that investment and
- e) unless a payment schedule, satisfying the requirements prescribed pursuant to Section 89 of the Pensions Act is in place, all decisions of the Trustees shall be made unanimously by the Trustees who are Members.

6.(2) Notwithstanding the provisions of Clause 6.(1) above all decisions on the investment and disinvestment of the Fund shall be made by the Trustees (or by persons appointed by them) other than PIM Trustees Limited which Company shall have no responsibilities or duties relating to such decisions and no liability resulting therefrom other than any duties required of it by reason of its position as the Pensioner Trustee of the Scheme.

...

8. Power of investment

8.(1) The Trustees shall prepare and maintain such written statement of investment principles (if any) as may from time to time be required by the Pensions Act having first (a) obtained and considered the written advice of a person believed by them to be suitably qualified in this respect and (b) consulted with the Employers.

8.(2) The Trustees must operate at least one bank account with an institution authorised under the Banking Act 1987 (or any statutory amendment or modification thereof) for the purposes of the Scheme and the Pensioner Trustee must be a signatory of any such account.

Appendix 2

The Personal and Occupational Pension Scheme (Pensions Ombudsman) Regulations 1996 (Statutory Instrument 1996 No. 2475)

Regulation 5

5.- (1) Subject to paragraphs (2) and (3) below, the Pensions Ombudsman shall not investigate a complaint or dispute if the act or omission which is the subject thereof occurred more than 3 years before the date on which the complaint or dispute was received by him in writing.

(2) Where, at the date of its occurrence, the person by or in respect of whom the complaint is made or the dispute is referred was, in the opinion of the Pensions Ombudsman, unaware of the act or omission referred to in paragraph (1) above, the period of 3 years shall begin on the earliest date on which that person knew or ought reasonably to have known of its occurrence.

(3) Where, in the opinion of the Pensions Ombudsman, it was reasonable for a complaint not to be made or a dispute not to be referred before the end of the period allowed under paragraphs (1) and (2) above, the Pensions Ombudsman may investigate and determine that complaint or dispute if it is received by him in writing within such further period as he considers reasonable.