

## The Early Resolution Service

**This factsheet is guidance about The Pensions Ombudsman's Early Resolution Service (ERS) explaining what it is, how it operates and options the parties to a complaint have.**

### What is the Early Resolution Service?

The ERS provides an informal and streamlined approach to dispute resolution. It relies on the willingness of all parties to resolve a complaint informally and is run on the basis of consent and cooperation.

Our Early Resolution Team is made up of staff and volunteers. All our volunteers are pension professionals with many years of pension experience. Our staff and volunteers ("caseworkers") will consider the issues without taking sides.

### When will a complaint be looked at by the ERS?

We assess every complaint received and confirm whether it is something we can look at. When we accept a complaint, we will consider whether it would be better dealt with under the ERS or our more formal Adjudication process.

Broadly, we propose that the ERS is used for any complaint we consider can be resolved informally, by all parties agreeing to a proposed resolution.

Frequently, the ERS is used where the complainant has not completed the respondent's formal complaints procedure (for occupational schemes this is the Internal Dispute Resolution Procedure (IDRP)). However, we do require a complaint to have at least been raised informally with the respondent before we will consider it.

Where we consider that informal resolution would not be possible, or where any of the parties tell us that they do not want to use the ERS, the complaint will pass to our Adjudication Team to formally investigate the complaint (subject to IDRP being completed, if applicable).

### What happens in the ERS process?

The caseworker will carefully consider the application and all of the documents included. They will use their experience to explore the issues and possible options. If necessary, they may ask for more information from the complainant and the party complained about.

The caseworker will then advise the complainant on the merits of their complaint. This may mean that they come to the view that the party complained about does not need to take any further action. If they come to that view, they will explain why.

If, however, the caseworker considers more should be done by either party, they will assist by presenting the outstanding issue(s) clearly and work with both parties to see if an informal resolution is possible. This helps ensure that the focus is on the key issue(s) that really matter, making it clearer for all parties to understand and, hopefully, resolve.

As part of this, the caseworker will often tell the parties how they think the Pensions Ombudsman would determine the complaint, and what directions the Pensions Ombudsman might make.

### **What happens if the parties agree a resolution?**

If both parties agree how to resolve the complaint, the ERS will close the case and we will take no further action.

It is each party's responsibility to take any step agreed as part of the resolution. The ERS is not responsible for enforcing what has been agreed.

In the rare situation that agreement is not honoured, the caseworker may attempt to clarify the agreement that was reached and ensure that any outstanding issues are resolved between the respective parties. If the agreement is still not honoured, the complainant can make a new complaint and we will allocate this to our Adjudication Team in accordance with the section below.

### **What happens if the ERS does not resolve a complaint?**

Whatever our caseworker's opinion, if a resolution cannot be reached, or if any of the parties tell us that they no longer want to use the ERS, the complaint will move to our Adjudication Team to conduct a formal investigation. Except in exceptional circumstances, complaints are allocated to Adjudicators in order of receipt to ensure fairness. Due to a high demand for our service, there may be a wait for a complaint to be allocated to an Adjudicator, and the parties will be told about our expected timescales at that time.

If not already completed, the complainant may have to complete the respondent's IDRP before the formal investigation can begin. We will also complete a full assessment to confirm that the case is something we can formally investigate.

If we decide not to progress a complaint to a formal investigation, we will explain the reasons for this decision.

### **What happens to a complaint in the Adjudication process?**

If the complaint progresses to a formal investigation, the Adjudicator will conduct a new, independent investigation, although they will have access to a copy of the ERS case file. The Adjudicator will give the parties the opportunity to submit additional information and arguments, as they would for a complaint which had not been through the ERS.

The Adjudicator will write to all parties and give their view on the complaint including, if appropriate, their proposal to put things right. This is called the Adjudicator's Opinion. If all parties accept this Opinion, the case will close.

If any one of the parties to the complaint does not agree with the Adjudicator's Opinion, they can ask for the complaint to be referred to the Pensions Ombudsman. The Pensions Ombudsman can issue a Determination which is final, binding and enforceable in court, unless there is a successful appeal on a point of law.

## **Will the Adjudicator and the Pensions Ombudsman follow the view previously given by the ERS?**

Any opinion or decision made by an Adjudicator or the Pensions Ombudsman will be reached completely independently of any view previously expressed by a caseworker in the ERS.<sup>1</sup>

Where a party expressly acknowledges or confirms a fact during the ERS process, this will be taken into account in any investigation by the Adjudicator and Pensions Ombudsman. However, any attempt to resolve a complaint during the ERS process, such as one party making an offer to the other, will not otherwise be treated as an admission of wrongdoing or weakness in the party's position.<sup>2</sup>

## **Do the parties have to use the ERS?**

No. The ERS is voluntary and all parties must agree for it to be used.

We do, however, believe that the ERS can be of great value and benefit to both complainants and respondents, and we hope that where we suggest using the ERS, both parties will wish to participate and explore whether informal resolution at an early stage is possible.

## **Does the ERS have legal powers?**

The ERS does not have any legal powers to determine complaints or make directions against parties. Only the Pensions Ombudsman has those powers.

## **Can the ERS look at complaints that cannot be formally investigated by Adjudication and the Pensions Ombudsman?**

We assess every complaint received to confirm whether it is something we can look at. The basic assessment we carry out before a case is dealt with by the ERS considers the main points to help us decide. The full assessment we carry out before accepting a complaint for formal investigation by our Adjudication Team is more in-depth.

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<sup>1</sup> Similarly, the Pensions Ombudsman will make their decision independently of the Adjudicator's Opinion.

<sup>2</sup> The Pensions Ombudsman will also adopt this approach to any attempt made by a party to resolve a complaint during the Adjudication process.

The ERS will only deal with cases which pass the basic assessment, and we will reject cases that we decide we can't look at. However, it is possible that the ERS will deal with a case and a resolution will be agreed by the parties where the case has passed the basic assessment but the full assessment process would have concluded that we would not have been able to take the case on for formal investigation.