

The Pensions Ombudsman and the Fraud Compensation Fund

A factsheet for independent trustees.

The Fraud Compensation Fund

The Fraud Compensation Fund (FCF) pays compensation to occupational schemes where the FCF considers there are reasonable grounds for believing that there has been a scheme asset reduction attributable to an offence involving dishonesty. For example, this could be a payment made out of the scheme that is attributable to fraud by abuse of position by a trustee. A crucial element for FCF purposes is dishonesty (and not just a breach of trust or negligence, for example). Not all scheme losses are necessarily losses for FCF purposes.

The High Court has recently confirmed that occupational pension schemes defrauded by pension scams may be eligible for compensation from the FCF.

The Pensions Ombudsman

The Pensions Ombudsman (TPO) can provide redress and direct reimbursement where a pension scheme's assets have been reduced because of a breach of statute, trust or common law.

An investigation concerning a breach of trust involving, for example, misappropriation or mis-investment of assets of a pension scheme, might also lead to the Ombudsman determining that the trustee is personally liable and unable to benefit from any exoneration clause and/or statutory indemnity.

The Ombudsman recently found that the trustees of the [Norton Motorcycles](#) schemes (Mr Garner), the [Henry Davison](#) scheme (Mr & Mrs Davidson), and the [Grovesnor](#) and [Grosvenor](#) schemes (the Kench brothers) were personally liable for sums in excess of £10.9 million, £2.4 million and £1.3 million respectively. The Ombudsman directed that the monies should be repaid into the respective schemes for the benefit of the members.

TPO has been investigating an increasing number of dishonesty cases, with the aim (where upheld) of making scheme recoveries from the wrongdoer wherever possible.

Should I refer a dispute to TPO before applying to the FCF?

Before any FCF payment can be paid, an independent trustee (section 184(1) of the Pensions Act 2004) must obtain recovery of the reduced assets attributable to dishonesty, insofar as it is able to do so within a reasonable time and without incurring disproportionate cost.

So, an independent trustee's starting point should include consideration, when seeking to recover assets, of whether it should refer a dispute to TPO.

An independent trustee can refer a complaint/dispute to TPO **and also** make a claim under the FCF.

The monies that the Ombudsman may direct back into a scheme, may include (but are not limited to) monies in respect of offences that are also recoverable under the FCF. Where there is an overlap, steps can be taken by the FCF to prevent 'double-recovery' by the scheme.

The FCF and TPO are exploring how best to work together. An Ombudsman decision which makes a finding of dishonesty will likely be efficacious where the FCF is also reaching a decision as regards whether there has been dishonesty for the purposes of the FCF.

In determining which cases TPO will accept for investigation, a primary consideration will be whether the trustee responsible has personal assets.

TPO can consider a complaint/dispute brought by either an independent trustee or individual member/s (with or without the support of the independent trustee).

Advantages where an independent trustee refers to TPO, instead of or in addition to an individual member, include:

- better access to relevant information,
- possible access to legal advice to formulate the dispute for the benefit of all the members, and
- enabling the Ombudsman to make directions involving the independent trustee, to facilitate the recovery of monies.

However, similarly with an independent trustee, a member can also look for a direction restoring trust assets applied in breach of trust for the benefit of all the members.

If the claim is upheld, the Ombudsman has the power to order the trustee to pay the independent trustee costs in pursuing the complaint (this might even be so where the independent trustee is not a party to the complaint).

TPO will usually look to participate in any appeal concerning a dishonesty case. Additionally, TPO will now also look to take an active role in enforcing dishonesty case Determinations where its directions are not complied with.

There are time limits for referring a complaint/dispute, but the Ombudsman has discretion

to extend them where he or she considers it reasonable to do so.

Further information

TPO, has very wide-ranging powers, and issues such as, for example, whether a third party is acting *de facto* as trustee, and lifting the corporate veil of a company trustee, are matters for consideration.

If you think you have a case for referral, you are invited to contact James Collins, Senior Counsel at TPO to discuss the matter:

- James.collins@pensions-ombudsman.org.uk
- 020 7630 2202