Welcome to the 46th edition of the Pensions Ombudsman Focus for the period June 2015 to August 2015. You may notice that we have updated the format and going forwards our aim is to provide you with a monthly review of important determinations of the Pensions Ombudsman and alert you to Ombudsman related issues of practical relevance.

This edition considers a range of issues including the Ombudsman’s views on awards for non financial injustice and determinations in relation to pensions liberation, deciding if someone is a dependant and the provision of incorrect information at the time of redundancy.

Please do not hesitate to get in touch if you would like to discuss any of these issues and how they might affect you or indeed any contentious issues on which the Linklaters Pension Dispute Resolution Group may be able to assist.
The current Pensions Ombudsman, Anthony Arter, has published a factsheet about redress for non-financial injustice caused as a result of maladministration. Non-financial injustice includes inconvenience or distress suffered by the applicant.

The factsheet, issued as guidance, states that for the Ombudsman to consider an award for non-financial injustice, the injustice suffered must be caused directly by the maladministration.

The factsheet states that if a complaint is upheld, the redress for non-financial injustice should be commensurate with the distress and inconvenience suffered. The Ombudsman will always take account of the individual circumstances of a case. If the non-financial injustice is not “significant”, then he is unlikely to make a monetary award. However, where the non-financial injustice is significant, the Ombudsman’s starting point for awards will be £500 or more, which is “in line with industry practice”. The Ombudsman states that in most cases redress is likely to range from £500 to £1000 (although higher awards may be necessary). The Ombudsman notes a “recognised general shift in attitudes to make higher awards”.

From past experience with Pensions Ombudsman awards, Linklaters notes that this £500 starting point is higher than we have usually encountered. The Ombudsman has not clarified what “industry practice” he has based his starting point on.
30 June 2015
The Ombudsman provided guidance on how the Trustee should balance its responsibilities when it suspects that a transfer request is for the purpose of pension liberation.

Miss Hughes complained that, following her application, Royal London refused to transfer her pension fund to another registered scheme.

Miss Hughes submitted her transfer application and accompanying paperwork on 23 July 2014. The transfer request was processed after the Pensions Regulator issued its guidance to providers about pension liberation in February 2013 ("Pension liberation fraud: an action pack for pension professionals", i.e. the Scorpion leaflet). This is important because in other cases on pensions liberation decided earlier in 2015, the Ombudsman has stated that he views the Regulator’s guidance as a “point of change in what might be regarded as good industry practice”.

Royal London replied on 8 September 2014 stating that it was not prepared to transfer Miss Hughes’ pension to the requested scheme because they were not satisfied that the scheme would provide appropriate pension benefits under a registered pension scheme.

Miss Hughes complained to the Ombudsman that Royal London had refused to act on her request to transfer.

The Ombudsman provided guidance on how the Trustee should balance its responsibilities when it suspects that a transfer request is for the purpose of pension liberation. The Ombudsman stated that first the Trustee must determine whether the member has a statutory right to transfer. This means looking at the member’s rights under the Scheme Rules and under statute. Only then should the Trustee look at the tax and regulatory questions. If the Regulator’s guidance or rules are ever inconsistent with statutory rights, then the statutory rights will always take precedence.

If the Trustee concludes that the member does not have a statutory right to transfer, then it must refuse the transfer.

If the Trustee concludes that the member does have a statutory right to transfer, then it is entitled to exercise its discretion and consider whether to permit the transfer or whether it would be in the member’s interests to refuse the request. It is at this stage that the Trustee should consider any legitimate concerns it might have, and examine any information it has obtained about the receiving scheme.

The Ombudsman dismissed Miss Hughes’ complaint, finding that Miss Hughes did not have a statutory right to transfer and therefore Royal London was entitled to decide whether to permit the transfer. The information they had gave them concerns about the transfer, and therefore they could exercise their discretion under the Scheme Rules and refuse the transfer. However, if Miss Hughes had had a statutory right to transfer, then Royal London could not have overridden it, even if it they thought it was in Miss Hughes’ best interests.
The Trustee had asked itself the correct questions and taken into account all relevant factors.

**29 May 2015**

This determination reiterated the principle that Trustees must consider all relevant factors before reaching a decision on whether a person was “dependent” on a member before his death, and if they have done so, the Ombudsman will not overturn a decision unless it is actually “perverse”. In particular, they can look at bank statements to establish dependency.

Mr Brown was a pensioner member of the Scheme. He died in December 2009. Mr Brown had lived with Ms Askew as a couple since 1991 but they separated in 2008. After they separated Ms Askew stayed with friends and family and paid them rent, and remained unemployed until after Mr Brown’s death. Ms Askew had a bank account in her sole name into which she received her jobseeker’s allowance, and another bank account held jointly with Mr Brown. Mr Brown used his income to fully fund their joint account, and Ms Askew made withdrawals from it up until his death.

The property which they previously lived in was owned in both their names, and Ms Askew received half the proceeds when it was sold in August 2009. This amounted to nearly £70,000. In July 2010 Ms Askew bought a new property for £93,000.

The Trustee considered whether Ms Askew was a dependent. The Trustee looked at the statements from Ms Askew’s personal bank account and the joint bank account, to determine how she was supporting herself and whether she was financially dependent on Mr Brown at the time of his death.

The Trustee decided not to award Ms Askew a dependent’s pension. This is because they considered that she had the means to pay for her own home from the proceeds of the sale of her previous home, and she was not dependent on Mr Brown at the time of his death. There was also a drop in withdrawals from the joint account by Ms Askew both before and after Mr Brown’s death, which indicated that she was no longer using this money to support herself. She was only using this money for emergencies and when she was not receiving jobseeker’s allowance.

Ms Askew complained that the Trustee had not paid her a dependent’s pension. The complaint was not upheld. The Ombudsman held that it is at the Trustee’s discretion who to pay the dependent’s pension to, and he was satisfied that they had exercised their discretion properly in this case. It was not perverse for the Trustee to decide that Ms Askew was not wholly or mainly dependent on Mr Brown at the time of his death.

The Trustee had asked itself the correct questions and taken into account all relevant factors. It had examined bank statements and looked at Ms Askew’s bank accounts and income. It obtained all relevant information needed to form an understanding of the situation.

The Ombudsman decided that even though Ms Askew was still using some of Mr Brown’s funds to supplement her income at the time of his death, it was not unreasonable for the Trustee to conclude that nevertheless she was not dependent on Mr Brown.
Mr Philip Sherratt against Cheshire West and Chester Council

July 2015
The Ombudsman said a member could not claim loss of earnings as compensation for redundancy if there was no certainty that another position was available.

Cheshire East Council (Mr Sherratt’s former employer) offered redundancy and early retirement to Mr Sherratt on 5 September 2011. The Council, the administering authority, quoted Mr Sherratt a pension of £28,987 with a £50,542 lump sum or a reduced pension of £21,342 with a £142,283 lump sum. Mr Sherratt accepted voluntary redundancy and early retirement on 10 October 2011.

On 25 January 2012, the Council told Mr Sherratt that they had given him the wrong figures and that his correct entitlement was a pension of £22,054 with a £57,341 lump sum or a reduced pension of £17,249 with a £114,999 lump sum.

Mr Sherratt accepted the revised quote and the Council paid the pension on 29 February 2012. However, Mr Sherratt complained that he had received the wrong figures and that his correct entitlement was a pension of £22,054 with a £57,341 lump sum or a reduced pension of £17,249 with a £114,999 lump sum.

Mr Sherratt accepted the revised quote and the Council paid the pension on 29 February 2012. However, Mr Sherratt complained that he had based his early retirement decision on the figures supplied by the Council in September 2011. Mr Sherratt said that if he had received accurate figures, he would have remained employed with Cheshire East Council. He would then have earned between £531,000 and £652,000 in the period before 65. He therefore claimed the loss of income together with the shortfall between the pension he was initially quoted and the pension that was paid.

The Council argued that Mr Sherratt had shown willingness to consider redundancy before they supplied the pension figures. In addition, Mr Sherratt had previously received annual benefit statements which were accurate. These should have made him realise that the Council’s first pension quote was incorrect.

The Ombudsman said that Mr Sherratt was not guaranteed a new position at Cheshire East Council had he not retired early. Also there was no evidence to show that he was interested in applying for one of the vacant positions. As there was no certainty of a new position, Mr Sherratt could not claim loss of future earnings as compensation. However, the Ombudsman decided that Mr Sherratt suffered a loss of expectation and directed the Council to pay £750 as compensation for the distress and inconvenience suffered.
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