



Getting the process right

How the Pensions Ombudsman deals with transfer complaints

The most recent Annual Report of the Pensions Ombudsman (TPO) reveals that a fifth of all complaints relate to pension transfers. In this article we consider three examples of TPO rulings which exemplify the issues that are typically raised regarding transfers and crucially, how TPO is likely to respond.

TPO is unsympathetic to administrators where loss is caused by their delays and maladministration. TPO increasingly expects administrators to rectify any losses and is awarding ever higher penalties. Also, repeat errors may lead to Pensions Regulator intervention. However, TPO does also recognise that members have a responsibility to take reasonable steps to help themselves.

These decisions show TPO is ready to hold trustees and administrators to account, morally and financially, where transfers have been delayed or hindered by maladministration. He takes a robust approach when slow transfer times or inadequate processes cause significant losses to members through no fault of their own.

TPO's comparative generosity in transfer delay cases seems to stem from the wider implications of the real-world losses this can cause to members. A key point to note is that in particularly problematic or worrisome cases, he is prepared to direct trustees to repay losses that he cannot yet quantify (because the transfer is still delayed).

That said, TPO's response isn't always so generous where a member fails to take reasonable steps to help themselves. In *Mr S*, the complainant sustained no loss, as he was never entitled to the amount he was claiming under the scheme rules. This is in contrast to, for example, the case of *Mr L*, where there was quantifiable loss that was directly caused by the delay.

Whilst poor administration and scheme governance can result in nominal awards as seen in all three of our examples, it appears that the unavoidable, tangible and direct losses that so often occur in delay cases inspire a more no-nonsense approach from TPO. Whatever the rationale though, trustees and scheme administrators who are dealing with transfers should certainly look to these decisions as a warning about what not to do when dealing with pension transfers, and the likely consequences when things go wrong.

Mr L (PO-19153)

Mr L was an employee of S, a deferred member of its defined benefit (DB) pension scheme, and an active member of its defined contribution (DC) scheme.

Mr L set up a Group Flexible Retirement Plan (GFRP) to consolidate his existing benefits and take payment of his future contributions. The Administrator provided Mr L with a guaranteed transfer value statement for his existing benefits, guaranteed for 3 months, expiring on 24 January 2017. The Administrator confirmed receipt of the transfer documentation on 9 February 2017. The Administrator told Mr L on 1 August 2017 (after much chasing by Mr L) that he was not entitled to a statutory transfer. It said the 6-month statutory transfer window did not apply because he was an active member. The transfer then completed on 2 August 2017.

Mr L completed both stages of the Administrator's IDR process (starting before the transfer, in July 2017). The Administrator acknowledged it had breached the 6-month time-limit, but Mr L did not agree with their overall response, arguing that they failed to address his loss of investment return.

The Deputy PO upheld Mr L's complaint, noting that he had missed out on investment opportunities, amounting to a loss of £18,156.04 (GFRP figures). She said he had the right to transfer his DB and DC rights separately, but the trustees advised him incorrectly on this, which was maladministration.

The trustees were directed to pay £1,500 to Mr L in line with an offer they had made previously. They also had to pay £18,156.04 into Mr L's GFRP to account for his investment loss.

Mr R (PO-22695)

In November 2012, Mr R transferred £115,890.83 to the Commando 2012 Pension Scheme (the "Commando Scheme"). Mr G (the "Trustee") was the sole trustee of the Commando Scheme, and the sole director, CEO and owner of Manorcrest Limited ("Manorcrest") (the scheme provider). Mr R had never been an employee of Manorcrest or any related employer.

In August 2017, Mr R decided to draw down on his pension due to chronic ill-health, to pay off a significant proportion of his mortgage. By February 2018, Mr R still hadn't received any payment, so he decided to transfer his pension to Pension Bee. The administrators of the Commando Scheme received the transfer request (dated 21 February 2018), and passed this to Mr G in March. By May 2018, the transfer had still not been completed, so Mr R complained to TPO. TPO made his decision in May 2019, by which point Mr R had still received no update from the administrators or from Manorcrest as the scheme provider.

TPO upheld the complaint against Mr G because he failed to pay the transfer payment within the statutory timeframe, and also due to the "exceptional level of distress and inconvenience due to the delay and ... additional expenses for which [Mr R] should be reimbursed". Mr R also made a complaint against the administrators for maladministration, which was upheld on the basis that they failed to keep adequate scheme records which delayed TPO's investigation.

Mr G was directed to pay £3,000 to Mr R for distress and inconvenience, and to pay the transfer value as at 31 May 2018 to Pension Bee. In addition, Mr G had to pay sums in relation to the additional mortgage interest payments that Mr R incurred from 31 May 2018 to the transfer date, and any loss on investment for the period from 31 May 2018 to the transfer date. The administrators also had to pay £2,000 to Mr R for distress and inconvenience.

This is not the only complaint in relation to transfer delays by this particular scheme that TPO has encountered (see, for example, *Mr N (PO-19196)*). TPO brought this issue to the attention of the Pensions Regulator (TPR), who appointed an independent trustee and fined the Commando Scheme as a result.





Mr S (PO-25912)

Here, the complainant chose to transfer his benefits from one pension scheme (referred to as "the Fund") to another (referred to as "the Plan") on the basis of an offer made by the trustee of the Fund. The trustee said that the "overall aim" was for Mr S' benefits under the Plan to be of broadly the same value as they were under the Fund. He was advised to take financial advice by the trustee of the Fund, but he chose not to do so.

The member felt he had been 'mis-sold' the opportunity to transfer because he believed that his benefits under the Plan should have been available unreduced from age 60. He also received an over-stated estimate of his benefits in the Plan, long after the transfer occurred, but upon which, he argued, he had based his decision to leave his employment.

The trustee offered £500 for the distress and inconvenience caused by the over-stated estimate, which TPO considered sufficient. TPO also found that Mr S did not make sufficient enquiries as to the terms of the transfer, and that he should have done so before making his decision, and that he was not entitled to the over-stated amount just by virtue of his receiving the estimate. He also pointed out that unreduced, early retirement was subject to consent of the employer under both schemes. As a result, Mr S' complaint was not upheld.



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