

Failure to provide information or advise the member on their options or rights under the Scheme

The Pensions Ombudsman's approach

The Pensions Ombudsman may receive complaints where a pension scheme member didn't realise that they have a valuable right (which they have then lost the opportunity to exercise). This is because their employer or the trustees or managers should have told them about the valuable right but have failed to do so. The member considers that they should be compensated for this loss.

Trustees' duties to provide information

Trustees and managers of occupational and personal pension schemes generally have duties under the disclosure requirements in the Isle of Man¹ to provide pension scheme members with certain basic information about their scheme benefits within 2 months (in the case of occupational pension schemes) and 13 weeks (in the case of personal pension schemes) of becoming a member. This information will often be set out in the scheme booklet and in some circumstances can be provided via a website. If this basic information changes the trustees also generally have a duty to notify members of the change in the basic information within one month of the change.

Trustees and managers of retirement benefit schemes also have a duty to tell members about their leaving service options generally within 2 months of ceasing to be in pensionable service². Trustees also have a duty to provide certain information on the death of a member.

Trustees of personal pension schemes also have various disclosure duties under Manx law.

Trustees also have obligations to provide information to members on request both under the disclosure requirements and under general trust law.

Failure to provide any of the above information within the permitted time limits may give rise to claims for maladministration which can result in the Pensions Ombudsman making an award for distress and inconvenience and, if it can be shown that there has been a breach of a duty of care which resulted in financial loss, an award to compensate the member for that loss.

It's been held in a number of UK cases (which the Isle of Man courts may have regard to if the matter was considered) that trustees generally have no legal duty (over and above their duty to provide basic scheme information under the disclosure requirements or under trust law), to inform members about how to best exercise their rights or to advise the member when it may be in their best financial interests to exercise a right or to exercise a right in a particular way.

It is possible, however, that trustees can assume a duty of care to members if they do provide guidance or other information about how best to exercise rights or if any information provided under the disclosure requirements is inaccurate. If trustees provide

¹ The Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (as applied to the Isle of Man) and the Personal Pension Schemes (Disclosure of Information) Regulations 1987 (as applied to the Isle of Man). The Retirement Benefit Schemes (International Schemes) Regulations 2000 (SI 645/01), Regulations 16-21 and the schedules.

² Regulation 27A (information to be furnished to early leavers) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (as applied to the Isle of Man).

information or guidance trustees must exercise reasonable care in providing this guidance or advice and ensuring this is accurate otherwise this may give rise to a claim for negligent misstatement³. If any loss can be shown to result from the misstatement under normal legal principles the Pensions Ombudsman may make an award to compensate the member for the loss.

Employer's duty to provide information

The Courts in England and Wales have in certain circumstances imposed a limited duty under contract on employers to bring to the attention of their employees the existence of a valuable right which they otherwise could not establish. It is likely that the Isle of Man courts would take a similar approach.

If the employee did have access to the information to work out whether the valuable right exists, employers will generally not have any duty to advise members of their rights. Employers can, however, also assume a duty of care in relation to the accuracy of any information provided under the law of negligent misstatement.

Failure to provide information – Example of complaint in the UK

In a recent UK Deputy Pensions Ombudsman decision in England and Wales Mrs S complained against NHS PSL, her employer, concerning the impact of NHS PSL's actions and omissions on the calculation of her benefits. Mrs S considered that, as she submitted her application for an ill-health early retirement pension (IHRP) before 1 April 2015, she should have been entitled to higher benefits. This is because her pension would then have been calculated under an older more generous version of the NHS Regulations (the 2008 Regulations) applicable in England and Wales instead of the replacement regulations (the 2015 Regulations). Mrs S argued that her employer failed to inform her of the transitional provisions with regard to her benefits, and failed to deal with her application to take an ill-health retirement pension more quickly in time for her to take advantage of those transitional provisions.

In this case the UK Deputy Pensions Ombudsman found that as Mrs S already knew of the right in question (i.e. her right to apply for an ill-health retirement pension) the NHS PSL, as her employer, was under no general duty to provide information or advice to Mrs S about the Scheme in order to prevent economic loss.

The Deputy Pensions Ombudsman nevertheless concluded that, from the point at which Mrs S informed the NHS PSL that she wished to apply for an ill-health retirement pension, NHS PSL assumed a duty to act with reasonable care and skill and without undue delay in processing Mrs S' IHRP application. Further, in its response to Mrs S' stage one internal dispute resolution complaint, the NHS administrator informed Mrs S that employers under the Scheme had agreed to disseminate to their staff, information concerning the 2015 Regulations coming into effect. On that basis, the Deputy Pensions Ombudsman considered that NHS PSL, as Mrs S' employer, had voluntarily assumed a duty of care to inform her that changes to the regulations governing the Scheme were imminent, and that there would be a deadline after which she would no longer be able to apply for an ill-health pension under the 2008 Regulations.

NHS PSL knew of the deadline which was soon to be imposed. Therefore, the UK Deputy Pensions Ombudsman considered that NHS PSL's duty to process Mrs S' application without undue delay extended to requiring the NHS administrator to deal with Mrs S' application

³ See UK cases of *Hamar v Pensions Ombudsman* [1996] Pens P LR 1 and *NHS Pensions Authority v Be* See UK cases of *Hamar v Pensions Ombudsman* [1996] Pens P LR 1 and *NHS Pensions Authority v Beechinor* [1997] Pens LR 95 [1997] Pens LR 95

more quickly with the deadline in mind. The Deputy Pensions Ombudsman also considered that NHS PSL was able to take action which would have speeded up Mrs S' application sufficiently to meet the deadline but didn't do so. Accordingly, the Deputy Pensions Ombudsman upheld the complaint.