

A report to the Treasury

On the activities of the Isle of Man Pensions Ombudsman

**Made at the request of the Treasury pursuant to section 145(6) of the
Pension Schemes Act 1993 (as applied to the Island)**

**Isle of Man Pensions Ombudsman
Dated May 2022**

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About the Isle of Man Pensions Ombudsman

The Pensions Ombudsman investigates and determines complaints and disputes concerning occupational and personal pension schemes.

The Pensions Ombudsman acts independently and impartially and his or her determinations are final and binding (subject to an appeal to the Manx courts on a point of law) and any directions are enforceable as if they had been made by the High Court.

The Pensions Ombudsman is appointed by the Isle of Man Treasury under Part X of the Pension Schemes Act 1993 (as applied to the Isle of Man). The Pensions Ombudsman holds (and vacates office) on such terms and conditions as the Treasury may think fit and the Pensions Ombudsman may resign or be removed from the office in accordance with those terms and conditions.

This report on the discharge of the Pensions Ombudsman's functions has been prepared at the request of the Treasury under section 145(6) of the Pension Schemes Act 1993 (as applied to the Island).

Where does the Pensions Ombudsman fit into the Isle of Man regulatory and compensatory system?

The Isle of Man financial services authority is responsible, among other things, for regulating pension schemes, pension scheme trustees and administrators and financial institutions and financial advisers operating in or out of the Isle of Man.

The Isle of Man also has a financial services ombudsman scheme operated by the Office of Fair Trading that can, subject to the detailed provisions of the scheme, determine complaints about financial institutions and financial advisers operating in or out of the Isle of Man.

The Pensions Ombudsman's jurisdiction complements the jurisdiction of the financial services ombudsman scheme. The Pensions Ombudsman's jurisdiction relates primarily to disputes and complaints by pension scheme members against trustees, managers and administrators in connection with occupational and personal pension schemes. Generally, if the financial services ombudsman scheme can investigate and determine a complaint the Pensions Ombudsman does not have jurisdiction, except in the case of disputes and complaints relating to the management of a personal pension schemes.

There are important differences in the way the two compensation schemes operate (see below for more information). The powers of the two ombudsman schemes and remedies and amount of compensation that can be awarded are not the same.

A brief history of the office of the Pensions Ombudsman in the Isle of Man

There has been an Isle of Man Pensions Ombudsman since early 1996 when provisions equivalent to the UK provisions (that created the office of the UK Pensions Ombudsman) were applied to the Island.

The provisions governing the office of the Isle of Man Pensions Ombudsman can be found in the Pension Schemes Act 1993 as applied to the Island. These provisions are applied to the Island by orders made under the Pension Schemes Act 1995, of Tynwald. This Act gives the Treasury, among other things, power to apply the UK Pension Schemes Act 1993 (and certain related legislation) to the Island with such exceptions, adaptations and modifications as may be specified in the relevant application orders. The UK Pension Schemes Act 1993 has been applied to the Island with minimal adaption and modification with effect from 1 January 1996.

The main difference between the UK and Isle of Man applied provisions is that there is no statutory requirement in the Isle of Man for a complaint to go through an internal disputes resolution procedure (IDRP) before being considered by the Ombudsman, as is the case in the UK. However, as Ombudsman I have a general discretion whether or not to investigate and determine any complaint I would otherwise be able to consider under section 146 of the Pension Schemes Act 1993. I will usually still expect the pension scheme member to have made reasonable efforts to attempt to resolve a complaint with the scheme administrators (or managers or trustees) using any available IDRP procedure before I will agree to investigate and determine the complaint.

The remaining legislation relating to the Pensions Ombudsman's jurisdiction in the Island can be found in the Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996 (SI 1996 No 2475) and the Personal and Occupational Pension Schemes (Pensions Ombudsman) (Procedure) Rules 1995 ((SI 1995 No 1053) as applied to the Island.¹ These two sets of regulations are again almost identical to the UK regulations governing the jurisdiction of the UK Pensions Ombudsman.

Historically, until 2015, the individual appointed as UK Pensions Ombudsman also acted as Isle of Man Pensions Ombudsman (albeit in a separate capacity) – so there was one person performing both roles. The appointment as Pensions Ombudsman on the Island was largely honorary in the early years of the office as there was only a very small number of complaints. Until about 2001 (when Mr David Laverick was appointed as both Pensions Ombudsman for the UK and the Isle of Man) it is understood that there had been no determinations of complaints at all at that time. Since then there have only been a few determinations in any year, as would be expected given the much smaller population of the Island compared with the UK. Any Isle of Man disputes/complaints were consequently dealt by the UK Pensions Ombudsman (but acting in his capacity as the Isle of Man Ombudsman) in the past with support of UK based staff. When Mr Tony King was appointed as Pensions Ombudsman in

¹ The Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996 are applied to the Island by the Pension Schemes Legislation (Application) (No 4) Order 1998 (SD341/98) made 13 May 1998 and approved by Tynwald on 16 June 1998. The Order applies the above regulations to the Island as set out in Schedule 4. The Personal and Occupational Pension Schemes (Pensions Ombudsman) (Procedure) Rules 1995 are applied to the Island by the Pension Schemes Legislation (Application) Order 1996 (SD1 39/96) made on 6th March 1996 and approved by Tynwald on 16th April 1996. The Order applies these regulations to the Island as set out in Schedule 6 to that order.

September 2007, he again was appointed separately as both the UK Ombudsman and the Isle of Man Ombudsman with a clear demarcation of roles.

When Mr King retired as UK Pensions Ombudsman in 2015, he agreed to remain in office as the Isle of Man Pensions Ombudsman. Accordingly, since 2015 different office holders have performed the role of the Pensions Ombudsman for the UK and Pensions Ombudsman for the Island.

I was appointed as Deputy Pensions Ombudsman for the Island in June 2018 and continued in this capacity for a short period up to Mr King's retirement in April 2019, when I fully took over day to day handling of complaints as the Isle of Man Pensions Ombudsman for a five year period from 6 April 2019 onwards.

The amount of time spent dealing with complaints and other Ombudsman-related issues initially amounted to about two days a week but has now settled down to between half a day and one full day a week. It is very much a part-time role essentially because there are not many complaints and disputes in relation to occupational and personal pension schemes on the Island.

Although I had not previously acted as an Ombudsman before taking up the role, I have 30-years' experience as a pension lawyer advising on all aspects of pensions law, including many ombudsman complaints. I was a pensions partner at a leading city law firm in the UK before being appointed to this role and have in the past been a member of the Association of Pension Lawyers main committee and a member of the PLC pensions advisory committee for many years. As a member of the Association of Pension Lawyers, I was involved in giving talks as part of the training programme for the Association of Pension Lawyers. I was also a member of the Association of Pension Lawyers' Parliamentary and Legislative Committee for 7 years.

I have written several books and articles on pension legislation, including contributing to the Pensions Law Handbook for many years, and have given many talks to professional bodies on pensions.

Unlike the UK Pensions Ombudsman (who has a staff of over 100 and the support of almost 200 volunteers in its early resolution team) I have no staff and perform all the tasks relating to the determination of complaints from initial enquiry, investigation through to determination. The Treasury provides the Ombudsman with support functions such as IT and some administration support.

I can be contacted either by post via the Treasury or directly by email. I am willing to arrange an appointment to telephone complainants, and persons who are the subject of a complaint, if they want to discuss any complaint or dispute or indeed whether I may be able to investigate a complaint or dispute.

Legal advice is available to the Isle of Man Pensions Ombudsman from the Attorney General's Chambers on issues of Isle of Man law where this may be necessary. In the event of a conflict of interest the Treasury has power to enable the Ombudsman to instruct external Isle of Man advocates to assist if needed.

Types of Complaints that can be dealt with by the Pensions Ombudsman

The Isle of Man Pensions Ombudsman's jurisdiction and powers can be found in Part X of the Pension Schemes Act 1993 (as this Act is applied to the Isle of Man) and the Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996 and the Personal and Occupational Pension Schemes (Pensions Ombudsman) (Procedure) Rules 1995, as applied to the Island (see above).

The most common type of complaints the Pensions Ombudsman deals with are complaints that an actual or potential beneficiary has sustained injustice as a consequence of maladministration relating to the management or administration of a pension scheme (occupational or personal). Maladministration is capable of including breaches of law although not all breaches of law necessarily amount to maladministration.

The Isle of Man Pensions Ombudsman can also deal with disputes of fact or law relating to occupational or personal pension schemes, and associated determinations and directions are legally enforceable by complainants in the High Court and can be appealed to the High Court on a point of law. This is not typical for an ombudsman. In consequence, the role of the Isle of Man Pensions Ombudsman might perhaps be better regarded as a combination of the role a traditional ombudsman with an investigative function and a single person tribunal.

Typical complaints and disputes might include, among other things:

- taking too long to do something without good reason;
- failing to do something that should have done;
- not following the scheme rules or the law;
- breaking a promise;
- giving incorrect or misleading information; and
- not making a decision in the appropriate way.

Complaints or disputes under the Pension Ombudsman's jurisdiction generally have to be brought by or on behalf of beneficiaries or potential beneficiaries of a pension scheme.

The persons responsible for the management of the pension scheme against whom complaints of maladministration can be made comprise the trustees, managers, administrators (in certain circumstances) and employers of occupational or personal pension schemes.

A manager is a person who is responsible for the management of all or part of the scheme. The UK courts have held that insurers providing a bundled package of investment, administrative and documentation services were capable of being managers of a trust based occupational pension scheme. Following the *Britannic* case in the UK when it was held that an insurer providing only investment services to the trustees of an occupational pension scheme was not within the original definition of administrator as they were not concerned with the administration of the scheme, the definition of administrator was extended to cover a person who is involved in a single act of administration in relation to a pension scheme and the same change was made to the definition in force in the Isle of Man (section 146(4A) Pension Schemes Act 1993 (as applied to the Island)). This is a very wide definition. If a person performs a single act of administration in relation to the administration of the scheme they are potentially within jurisdiction.

In relation to personal pension schemes, persons authorised by the financial services authority to manage/administer a personal pension scheme will generally be managers for the purposes of my jurisdiction. Other persons who are performing administrative functions or singled acts of administration in relation to the personal pension scheme can be administrators even though they are not managers. In certain circumstances the definition of administrator of a personal pension scheme can potentially extend to that of an insurer offering an investment platform to a personal pension scheme provider.

In relation to public sector schemes the PSPA will generally fall within the definition of manager for the purposes of my jurisdiction.

The Pension Ombudsman's jurisdiction is, however, wider than just investigating complaints of maladministration against trustees and managers, administrators and employers and disputes of law between actual or potential beneficiaries and trustees, managers and employers of the pension scheme. The Pensions Ombudsman may also be able to assist with certain types of complaints or disputes between:

- Trustees (or managers) of different occupational pension schemes;
- Trustees (or managers) and an employer of the same occupational pension scheme;
- Independent trustees and other trustees of the same occupational pension scheme;
- An employer and the trustees (or managers) of the same occupational pension scheme.

And the Pensions Ombudsman is also able to look at disputes between trustees of the same occupational pension scheme if the dispute is referred by at least half of them. Where there is a sole trustee of an occupational pension scheme, the Pensions Ombudsman may also be able to assist in answering any questions relating to the carrying out of the functions of that trustee.

The Pensions Ombudsman can generally look at complaints made by persons who are not resident in the Isle of Man if they relate to their membership of an Isle of Man pension scheme). In very limited circumstances the Pensions Ombudsman may also be able to deal with complaints relating to non-Isle of Man schemes if they relate to Isle of Man section members or against an Isle of Man based administrator or manager of the scheme as long as there is a sufficient Isle of Man connection. It would be necessary to examine the precise circumstances of the case however to satisfy myself that I have jurisdiction. This can be far from straightforward legally as the scheme may contain exclusive jurisdiction clauses ousting my jurisdiction and there can be issues in relation to enforcement of my determinations which may make it appropriate for me to decline jurisdiction using my general discretion to do so under section 146 of the Pension Schemes Act 1993 (as applied to the IoM). Under section 146 I "may" investigate and determine any complaint of maladministration or dispute of law. While there is a reasonable expectation that I will investigate and determine most complaints and disputes within my jurisdiction there may be valid reasons why it is not appropriate for me to do so e.g. if I cannot offer an effective remedy.

Complaints outside the jurisdiction of the Pensions Ombudsman

The Pensions Ombudsman cannot deal with complaints about mis-selling in relation to setting up a pension scheme or the transfers of funds into a pension scheme, and/or financial advice given to members about their investments in the scheme.

The Financial Services Ombudsman Scheme operated by the Office of Fair Trading can, however (subject to the detailed provisions of the scheme) consider complaints made by individuals against financial services providers (e.g. a financial adviser) operating in or out of the Isle of Man. This may include:

- (1) complaints in relation to financial advice given by an Isle of Man authorised financial adviser in relation to a transfer from one pension scheme to another;
- (2) complaints in relation to financial advice given by an Isle of Man authorised financial adviser to a member on the investments in a pension scheme;
- (3) certain other complaints about financial service providers operating in or out of the Isle of Man.

The Financial Services Ombudsman Scheme will not generally consider complaints about the management of a personal pension scheme by an Isle of Man authorised manager or administrator. This type of complaint will be referred by the Financial Services Ombudsman Scheme to the Pensions Ombudsman.

The Financial Services Ombudsman is not generally able to investigate complaints brought directly by individual members of a pension scheme against financial service providers operating into or out of the Isle of Man (e.g. insurance companies where a corporate pension scheme trustee invests on behalf of the members or a member via an insurance wrap product or other authorised financial product). This is because the insurance policy issued by the insurer will be held by the scheme trustees and not the individual member. The powers of the Financial Services Ombudsman service were however extended from 1 January 2015 so that it has power to investigate a complaint brought by a corporate trustee (but not a member) of a “self-invested pension scheme” as defined in the Financial Services Disputes (Corporate Bodies) Order 2014 (2014/0404) against a financial provider operating in or out of the Island. This is however quite a tightly worded definition and not all personal pension schemes will fall within the definition of “self-invested pension scheme”.

The Pensions Ombudsman also cannot generally help with complaints about:

- The types of benefits a pension scheme offers;
- A decision made by an employment tribunal, court or other Ombudsman;
- State Pension or national insurance queries;
- Pure employment law matters unless they relate to the exercise of a power or discretion by the employer in relation to a pension scheme (for example a decision by an employer not to grant an ill-health pension or they relate to the breach of an employer of a legal obligation it owes in relation to the pension scheme e.g. failure to pay contributions due contractually to the pension scheme); and
- Pure investment products (e.g. insurance policies) which do not come within the definition of personal or occupational pension schemes

The Pensions Ombudsman also cannot deal with complaints brought by employers against trustees, or managers or administrators of a personal pension scheme. The Pensions Ombudsman can however deal with complaints of maladministration or disputes of fact or law by employers against the manager or administrator of an occupational pension scheme (see above).

The trustees, managers or employers of a pension scheme also cannot ask the Pensions Ombudsman to determine dispute of law between themselves and a beneficiary. Only the beneficiary can ask the Ombudsman to determine a dispute of law or fact with trustees, managers and trustees.

My approach to determining complaints and disputes – applicable law

If I am to determine a dispute of law relating to a pension scheme and the complaint relates to an Isle of Man statutory provision, I am required to determine this complaint or dispute in accordance with the applicable Isle of Man statutory provisions.

In relation to questions concerning the interpretation of Isle of Man statutory provisions, if there is any Manx case law, I will follow the applicable case law. If there is no relevant Manx case law, in a similar manner to the Manx courts, I can have regard to UK case law (as persuasive authority) when determining the complaint where it relates to an identical or similar statutory provision in the UK.

The statutory provisions governing my jurisdiction and powers that have been adopted by Tynwald are very similar (but not identical) to the Pension Schemes Act 1993 enacted in Great Britain and the equivalent statutory provisions adopted in Northern Ireland. I will have regard to any UK case law relevant to my jurisdiction or powers where an issue relating to my jurisdiction has previously been looked at by the UK courts. There is a rich body of useful case law and analysis by the UK courts on the powers and jurisdiction of the UK Pensions Ombudsman with well over 150 appeals against UK Ombudsman decisions (with about 15 which in turn were then considered by the Court of Appeal). There are typically a number of appeals each year against UK ombudsman determinations. To date there has only been one Isle of Man appeal against one determination which did not have to decide any issue relevant to the general scope of the Ombudsman's powers.

The legal advice from the Attorney General's Chambers is that the Pensions Ombudsman may have regard to the English, Scottish and Northern Ireland case law relating to the UK Pensions Ombudsman's jurisdiction. The UK case law is not binding on the Isle of Man Ombudsman but, in the same way as would be the case in relation to the Isle of Man High Court, it is potentially persuasive authority which I can have regard to in the absence of any specific Isle of Man decision relevant to the issue and Court of Appeal and House of Lords decisions are of particularly persuasive authority.

The Isle of Man, however, is not, and never has been, a part of the UK and its public policy can differ from the UK. It should not therefore be assumed that the Manx Courts or Pensions Ombudsman will follow the decisions of the English or Scottish or Northern Ireland Courts if there is an Isle of Man public policy reason for not doing so).²

² Please see the decision of His Honour Deemster Doyle in AB v CD - CHP [2016] 7 for a comprehensive discussion of the earlier case law on the status of English and other common law authorities in the Isle of Man. In particular his Honour Deemster Doyle discusses the status of the dicta of Lord Ackner in the Privy Council decision of Frankland v R [1987-89] MLR 65 where it was said that decisions of English courts, particularly those of the House of Lords and the Court of Appeal, whilst not binding on Manx courts were of high persuasive authority and "generally should be followed unless there is some provision to the contrary in a Manx statute, or there is some clear decision of a Manx court to the contrary or exceptionally there is some local condition which would give good reason for not following the particular English decision". His Honour

Generally, however, in the absence of specific Isle of Man authority or differences in the statutory provision, which is the subject of the dispute, I am likely to take the same legal approach as the UK Pensions Ombudsman would take on the same issue. I will however always consider whether there is any particular reason why this may not be an appropriate course to take on the Island. For example, in determining whether an Isle of Man administrator has met the standard of care expected of an Isle of Man administrator in relation to due diligence on transfer requests I will have regard to the standard of care reasonably expected of an Isle of Man administrator having regard to Isle of Man regulatory guidance and not a UK administrator having regard to UK regulatory guidance. Transfer requirements in the Isle of Man also differ in certain respects from the UK. My approach to the exercise of any of my discretionary powers will also not necessarily be the same as the UK Pensions Ombudsman as I have responsibility for exercising the discretion having regards to the facts of the case and I cannot fetter my discretion. Also all complaints referred to me are different and have to be determined by reference to their own facts.

Some key UK Case law which may be relevant to the IoM Pension Ombudsman's jurisdiction

The UK cases have decided, among other things, that:

- (1) the UK Pensions Ombudsman must decide disputes of law in accordance with established legal principles rather than by reference to what he considers fair and reasonable (*Henderson v Stephenson Harwood* [2005] PLBR 209);
- (2) In general the UK Pensions Ombudsman does not have the power to make an order that the court could not make (*Wakelin v Read* [2000] OPLR 277), although the Pensions Ombudsman has greater flexibility than a court in certain circumstances and is not tied to the precise form of relief a court would grant (*Henderson v Stephenson Harwood*));
- (3) The amount of an award the UK Pensions Ombudsman can direct to be paid where there has been an infringement of legal rights and loss has been suffered is unlimited if the court could make an order in the same circumstances;

Deemster Doyle noted that Manx law had developed significantly since *Frankland* (citing his own decision in *Bitel v Kyrgyz Mobil* 30 November 2007 paragraphs 529-541; *Dominator Limited v Billberson SL Appeal Decision Judgment* 1 May 2009, the Appeal divisions decision in *Spirit of Montpelier v Lombard* 2DS 2014 9 18 June 2015). Deemster Doyle said in *AB v CD* that it is to be hoped that Manx law would develop independently in accordance with the needs, requirements and interests of the inhabitants of the Isle of Man and indeed the international community of which the Island is part. Deemster Doyle hoped that Deemsters will not slavishly follow English decisions when they are not in the best interests of the Island, in areas where it would be more appropriate to develop Manx law in a different way in which English law. It is important therefore to recognise that the Isle of Man's public policy in certain areas is different to the UK. Based on the above authorities it should therefore not be assumed that the Isle of Man courts will automatically follow a decision driven by UK policy. It should also be noted, however, that when a matter is referred to the Judicial Committee of the Privy Council as the ultimate appellate court from the Isle of Man High Court the Judicial Committee is sitting as an Isle of Man court and is determining matters in accordance with Manx law. Any Privy Council decision is therefore binding in the Island and forms part of Isle of Man law.

- (4) There is no statutory definition of maladministration. Maladministration is a broad concept and can include breach of law but the expressions maladministration and breach of law are neither synonymous nor co-terminous. There can be maladministration even if a person's legal rights are not infringed and breach of law will not always amount to maladministration. Maladministration can include bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude, arbitrariness concerning the manner in which the decision is reached or discretion exercised (*Arjo Wiggins v Ralph* [2009] EWHC 3198). The Courts will not generally interfere with the Ombudsman's decision on what amounts to maladministration other than on public law principles if the Ombudsman has made an error of law (*Metropolitan Police v Hoar* [2002] 47 PBLR and *Police and Crime Commissioner v Butterworth* [2017] 001 PBLR (020));
- (5) Injustice resulting from maladministration not involving infringement of legal rights (pure maladministration) may be afforded a remedy, such as an apology and/or reasonable compensation for distress and inconvenience (*Westminster City Council v Haywood* [1998] Ch 277) Recent cases indicate that higher levels of compensation may now be appropriate – see *Baugniet v Capita Employee Benefits (Teachers' Pensions)* [2017] 059 PBLR (019) and *Smith v Sheffield Teaching Hospitals* [2018] 004 PBLR);
- (6) The UK Limitation Act 1980 (the equivalent provisions can be found in the IoM Limitation Act 1984) does not apply to the Pensions Ombudsman. The time limits for looking into complaints are set out in the Pensions Ombudsman regulations which generally would prevent me going back more than 3 years from the date of knowledge of the acts or omissions that are the subject of the complaint or, if later, the date the applicant ought reasonably to have been aware of the of those acts or omissions but I do have power to go back further if in the circumstances I consider it would be reasonable to do so. However, in relation to complaints of maladministration (involving an infringement of a legal right) and disputes of law I cannot go back further than the Limitation Act 1984 would permit. There is no hard coded statutory limit in relation to how far back I can go in relation to disputes of pure maladministration not involving an infringement of a legal right (*Arjo Wiggins Limited v Henry Thomas Ralph* [2009] 079 PBLR) but I would still need to consider whether it was reasonable not to have referred the complaint or dispute within 3 years of the date the knew or ought reasonably to have been aware of the acts or omissions that are the subject of the complaint and then also consider what further period is reasonable to have referred the complaint within (Regulation 5(3) of the Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996 (as applied to the IoM).

The Pensions Ombudsman does have power/discretion under direction making powers under section 151 of the Pension Schemes Act 1993 to make an award for legal expenses of the complainant in appropriate cases (*Nichol & Andrew Limited v Brinkley* [1996] OPLR 361 and *Sheffield v Kier* [2009] 052 PBLR (023)). However, in the UK the practice of the UK ombudsman is not to generally make such awards on the basis that it ought to be possible to

make a complaint without instructing a lawyer. I intend to adopt a broadly similar approach but recognise that in the Isle of Man complainants do not have access to the early resolution service offered by the UK Pensions Ombudsman to assist them in making a complaint so I may be more receptive to arguments that awards for legal or other professional expenses should be made where I uphold a complaint. I also recognise, however, that complainants are, unlike the situation if they made an application to the court to determine the dispute, not at risk of having to pay the legal costs of the person who the complaint is made if the complaint is not upheld. I therefore do not consider that awarding costs is going to be appropriate where a complaint succeeds generally but may be more flexible than the UK Pensions Ombudsman on this issue when exercising my discretion to award costs.

Relevance of other Common law decisions

There may be categories of complaints or disputes which the Pensions Ombudsman may be asked to determine where it has been alleged that legal rights have been infringed involving issues such as an alleged invalid exercise of a power or discretion is in breach of public law or where there is an alleged breach of contract, breach of the terms of a pension trust deed, breach of trust, failure to exercise reasonable skill and care in performance of their investment duties or where there has been alleged negligent mis-statement of a member's benefits. Defences of estoppel and change of position may also be raised for example in relation to overpayment cases on unjust enrichment grounds.

Much of common law in the Isle of Man relating to the above issues is the same or similar to the common law in England and Wales or in other common law jurisdictions. For example the legal basis on which the Manx courts will overturn a decision of a public authority or trustees are broadly the same as in the UK (applying similar *Wednesbury* public law principles) and there is extensive Manx authority on this issue in various petition of dolence cases which take a very similar approach to the approach taken in UK Ombudsman cases.³ To the extent that the common law is the same and I am satisfied the Manx courts would take the same approach, I will generally treat the relevant UK cases as persuasive authority when making any decision.

³ See for example the Manx cases of *Baccaret v Department of Local Government and the Environment High Court of Justice (Appeal Division) 2008 27*, at paragraphs 44 to 46; *Arragon Properties v Minister of Local Government and the Environment CP 2007 116*, paragraph 28; *The Financial Supervision Commission v Molyneux Roche Corporation CP 2008 49* at paragraphs 17-19 applying *Wednesbury* principles; *MTM (Isle of Man) Ltd v the Financial Supervision Commission CP 2003 119* at 32-44; *Manx National Heritage v John Rimmington CP 2006 46* at paragraph 129. The law relating to UK Pensions Ombudsman jurisdiction to interfere with a discretionary exercise of power or discretion is based on *Wednesbury* type principles and is helpfully summarised in *Sampson v Hodgson [2008] All ER (D) 395 (Apr)* at paragraph 19. Generally the decision can only be set aside if the Trustees acted improperly in reaching their decision in that (1) they asked themselves the wrong questions; (2) they misdirected themselves on a point of law (e.g. they adopted an incorrect interpretation of the scheme rule) (3) they arrived at a perverse decision (i.e. a decision no reasonable body of trustees could reach) (4) they failed to take into account all relevant factors or took into account irrelevant factors (See *Harris v Lord Shuttleworth [1994] PLR 47* at para 37, applying *Lee v Showman's Guild [1952] 2 QB 329* and endorsed by the Court of Appeal in *Edge v Pensions Ombudsman [2000] Ch 602*. Furthermore, if the Trustees acted within those limits when reaching their decision, it was not for the Ombudsman to substitute his own view for those of theirs. See also the recent Supreme Court decision in *Braganza* which has confirmed that similar principles apply to employers where they are making a factual determination in relation to a pension scheme).

It needs to be appreciated, however, that I am determining the issue in accordance with established principles of Manx law, not English, Scots or Northern Ireland law or the law of any other common law jurisdiction, where there is case law which is persuasive authority. All my determinations on points of law are appealable to the Manx courts who will review my decisions in accordance with Manx law.

The Ombudsman's powers to put things right

If I make a finding of maladministration or make a finding that there has been a breach of law, I have very wide powers to direct that matters should be put right. These powers can be found in section 151(2) of the Pension Schemes Act 1993 (as applied to the Island). This includes directing that the person responsible for the management of the scheme to which the complaint relates take, or refrain from taking such steps as the Ombudsman may determine. This is a very wide-ranging power that enables the making of a direction that payments should be made for financial loss suffered as well as for non-financial loss where an individual has sustained injustice as a consequence of maladministration. On one occasion I have directed that an apology should be made by the administrator and in other cases I have directed that monetary payments should be made to the complainant for financial loss plus a distress and inconvenience award or a non-financial injustice award alone.

My process for dealing with complaints and disputes

As Ombudsman the process I must adopt for investigating and determining complaints or disputes is set out in Part X of the Pension Schemes Act 1993 (as applied to the Island) and the accompanying regulations. The procedure I adopt is generally a paper or email-based approach although I do have the power to hold oral hearings if I consider this appropriate. I would generally only consider holding an oral hearing if there is a real conflict of evidence or an issue of a credibility of the evidence of one of the parties to the complaint or I consider that the interests of justice to treat the applicant fairly require an oral hearing. To date there have been no oral hearings in the Isle of Man. In the UK, which has far more cases, until recently there typically only used to be about one or two oral hearings a year, although this has become more frequent over the last couple of years in relation to cases where dishonesty has been alleged or alleged misappropriation or misapplication of pension scheme assets (e.g. the UK Norton Motorcycle determination).

To the extent that the process for investigating and determining a complaint is not specifically dealt with under Part X of the Pension Schemes Act 1993 (as applied to the Island) and the accompanying regulations, I have wide discretion to determine my own process subject to principles of natural justice (149(4) of the Pension Schemes Act 1993). I also have wide powers to require information to be provided.

Given that I do not have staff to deal with enquiries and investigate a complaint and no adjudicators to assist me, I deal with all aspects of the complaint myself. This has advantages and disadvantages. It means that I investigate and determine all aspects of the complaint which means that there is greater continuity dealing with the complaint or dispute. It also enables me to deal with inquiries more quickly given that I deal with all the stages of the complaint or dispute.

The Pensions Ombudsman’s role is to consider complaints fairly and impartially. The Ombudsman’s role is however intended to provide a more flexible and more informal method of determining disputes and complaints than a court. It was notably said in one of the early English court decisions on the exercise of the UK Ombudsman’s jurisdiction by Robert Walker J in *Westminster Council v Haywood* (1996) 2 All ER 467 at 475, that:

“The Pensions Ombudsman’s task is delivering rapid, unlegalistic justice, without cutting too many corners, it is a dauntingly difficult one.”

The Ombudsman’s role does, however, differ from a Deemster’s role in the High Court. A Deemster has to rule on the arguments put forward to him by the advocates about the merits of the case in an adversarial system. The Ombudsman has an investigative or inquisitorial role, his proceedings are more informal, and the issues are defined by the complaint and the response to it. The Ombudsman can invite the complainant to add to his complaint and may suggest new matters of defence to either party, but is not bound to do so and cannot be criticised if he does not (see English cases of *Hamar v French* [1998] Pensions LR 321 and *Wakelin v Read* [2000] PLR 319). It has also been held in English cases that where a complainant does not raise a specific legal defence which might apply in a particular case (e.g. estoppel or change of position or contract), it may be appropriate for the Pensions Ombudsman to do so (*Grievson v Grievson* [2011] 066 PBLR). The Pensions Ombudsman is expected to make generous allowance for a complainant who does not have legal representation.

The process I adopt for determining complaints is set out in more detail in a guide I have drafted and attached as a link to the Isle of Man government webpage on the Pensions Ombudsman. I have also produced various guides to the approach I generally take to determining the more common types of complaint that are likely to be referred to the Ombudsman including complaints and disputes about: ill-health retirement decisions; recovery of overpayments, inaccurate information (such as inaccurate early retirement quotes), failure to provide information, transfers, charges, investments and self-directed schemes.

Overview of Activity of Pensions Ombudsmen

The UK Pensions Ombudsman dealt with 16,673 contacts and closed 4,853 pension complaints and disputes in its financial year 2020/2021 alone. In comparison the Isle of Man Pensions Ombudsman only deals with a handful of cases a year.

There is limited historical statistical information on the number of cases dealt with by previous IoM Pensions Ombudsmen. However from a past report of the previous Isle of Man Pensions Ombudsman complaints made during the years 2010 to 2014 were as follows.

	2010/2011	2011/2012	2012/13	2013/14
Brought forward	1	1	3	5
Opened	1	2	4	2
Closed	1	0	2	3
Carried forward	1	3	5	4

The previous Isle of Man Pensions Ombudsman indicated in his 2013/2014 report to the Treasury that there was no theme or common topics in these complaints. The cases concerned a range of administrative matters, mostly in relation to defined benefit arrangements and, in all but two cases, matters specific to the individual bringing the complaint. The two exceptions concerned a dispute between an employer and a complaint concerning a group of members about their scheme.

I have incomplete historical information about the level of complaints from 2014 until 2018 when I was appointed as Deputy Pensions Ombudsman but my general understanding is that the level of complaints determined were at a similar level to 2012/2014 probably at no more than about 3/4 a year reaching determination stage (many complaints are often resolved without going to full determination). There have however been significantly more enquiries and contacts with the office of the Pensions Ombudsman since I was first appointed than I understand to historically have been the case.

Also, many requests for assistance relate to matters I cannot help with or do not result in a determination as they may be resolved in other ways. In 2018, 2019, 2020 and 2021 there have been between 50 and 70 contacts. Many of these contacts relate to non-Isle of Man schemes or matters in relation to which I do not have jurisdiction and did not result in any need for further investigation. Also I receive quite a few enquiries about the State Pension and National Insurance related matters which I refer onto the Social Security Division of the Treasury. In this type of situation I will always do my best to help by giving guidance about who the individual should contact. However, there have been 12 published formal determinations in the first four years of my appointment (so, about 3 a year). So, there does seem to have been a general increase in the level of complaints resulting in determinations since I was appointed, but this has reduced since about July 2019. The level of activity in 2018 and 2019 may therefore represent a one-off spike in the number of complaints which have now settled down to a lower level.

Some of these determinations have raised some difficult and interesting issues which are going to be relevant to my jurisdiction going forward (for example, the scope I have to investigate non Isle of Man schemes with a link with the Island). I have recently begun publishing decisions so that they are available generally to complainants, trustees, managers, employers and administrators on the Island in a similar manner to decisions of the High Court. This is consistent with principles of open justice and, among other things the aim of publication, is to assist in improving standards of administration of pension schemes on the Island.

The complaints and disputes referred to me since I was appointed are very varied and include the following:

- (1) **Inaccurate transfer and early retirement quotes** – I have dealt with various complaints about inaccurate transfer and early retirement quotes/estimates – an inaccurate retirement quote will not as a matter generally give a member a right to the overstated benefit under the general law. The complainant is only entitled under general principles of negligence to be put in the position he or she would have been in if the inaccurate statement had not been made. The member would therefore need to demonstrate financial loss resulted from the inaccurate statement under established principles of law for me to make an award for financial injustice or breach of law. In one complaint I concluded that the member would not have retired and given up their job if they had been given the correct quote and they

had sustained financial loss which they were not able to mitigate by taking up further comparable employment. In other cases I have not been satisfied there has been any loss when inaccurate information has been provided but have made non-financial injustice awards for distress and inconvenience/loss of expectation and disappointment;

- (2) **Ill-health complaints** about whether an ill-health pension is payable – I have received three of this type of complaint. In one of these cases the wrong Ill-health test had been applied in the Teachers' Pension Scheme and I was able to resolve this without the issue of a formal determination. The PSPA agreed to reconsider the application without a formal determination being issued. In another an Ill-health application was initially refused by the PSPA on the basis of the medical evidence at the time but later accepted about 10 months later. The member argued, among other things, that they satisfied the ill-health test earlier and should have been granted an ill-health pension from an earlier date. I concluded that the original decision by the PSPA not to grant the ill-health pension was within the range of what a reasonable decision maker could have made properly directing themselves and applying the correct test and having regard to all relevant factors and no irrelevant factors and the decision was not perverse. I did however make distress and inconvenience awards for the manner in which the application had been dealt with and in relation to certain inaccurate information provided;
- (3) **Failure by employers to pay contributions to a pension scheme** – I have had about three cases where contributions which were due contractually to a pension scheme were not paid due to administrative errors. In all these cases my intervention resulted in the arrears of contributions being paid with interest plus a small distress and inconvenience award without the need to go to full determination;
- (4) **Charges** – I have received a couple of complaints about charges levied by personal pension scheme managers – generally it is not going to amount to maladministration or breach of law to charge the agreed charges in accordance with any agreed fee schedule. I am also generally not able to look at the reasonableness of charges if they have been fairly disclosed;
- (5) **Breach of duty of care** I have received a number of complaints where it is alleged that there has been a breach of a duty of care by the personal pension scheme manager in an execution only self-directed pension plan in relation to due diligence on the investments made or on the introducer or financial adviser assisting the member. Generally the primary complaint is against the financial adviser who is often located in another jurisdiction. However, as the member often cannot obtain redress against the adviser in that jurisdiction the complaint is made against the manager. A manager of a self-directed pension scheme is not able to give financial advice to members can still, in limited circumstances, owe a duty of care to the member. For example if the manager has contractually confirmed it will ensure that the investments made are consistent with the members stated attitude to risk or allowed an investment in an investment not permitted under the scheme investment powers. To date I have not on the facts upheld any of this type of case but potentially I could uphold a future case on different facts. This is very much a developing area of law in the UK and there have been a couple of recent cases on the extent to which a manager owes a duty of care;

- (6) **Isle of Man Insurers** – I have received a number of complaints against Isle of Man Insurers which offer fund investment platforms for members of IoM personal pension schemes to invest in. Given the width of the definition of administrator for the purposes of my jurisdiction I may in certain circumstances potentially have jurisdiction to investigate complaints about failures to invest or divest contributions under the platform. In a self-directed pension scheme on the basis that the divestment, investment or switch may amount to a single administrative act relating to the personal pension scheme. However, it will generally make more sense for this type of complaint to be dealt with by the financial services ombudsman scheme. Under IoM legislation however the complaint would need to be brought by the trustees as policyholder on behalf of the member. I would expect the trustees to bring such a complaint on members behalf where it has a basis in law and the member requests them to do so;
- (7) **Pure Maladministration cases** – I have received various complaints which can be characterised as pure maladministration cases including complaints of delay, ineptitude, provision of inaccurate information and alleged treatment of the member with utter contempt where there has been no actual financial loss. In some of those cases I have made awards for distress and inconvenience.

In the UK the Pensions Ombudsman has sought over time to re-engineer the complaints process so a much higher proportion of complaints and disputes are resolved informally earlier on in the process by agreement by the parties though its early resolution service (formerly The Pensions Advisory Service which was merged into the UK Pensions Ombudsman). The UK Pensions Ombudsman also has over 30 adjudicators who (were possible) seek to resolve a dispute informally by issue of an opinion which, if accepted by the parties, results in the withdrawal or discontinuance of the complaint. Clearly with no early resolution service or adjudicators this is not possible in the Island. However, over time since I have been appointed I have sought to intervene more pro-actively to encourage the parties to resolve the dispute themselves without going to formal determination. Sometimes the complaint has arisen due to lack of information or frustration about members' benefit options. In a couple of cases I have encouraged the administrator to provide information or assist the complainant which has resolved the matter. In a number of cases my intervention alone has encouraged the parties to reach a compromise in particular in one recent case where it was clearly going to be in the interest of neither party for the dispute to go to full determination. I will also, where appropriate, give a preliminary view early on in the process where on the facts I am unlikely to uphold the complaint which has resulted in the discontinuance of the complaint. Also in other cases where I have explained the scope of my jurisdiction to make awards for non-financial injustice and the award already offered is in line with my guidance of the level of awards the member has agreed to discontinue the complaint. My role however as Pensions Ombudsman is to offer a mechanism to investigate and determine complaints. I am not able to perform an arbitration function. If a complaint or dispute which is within my jurisdiction is referred to me there is generally going to be a legitimate expectation I will investigate and determine it if requested to do so.

Appeals

To date there has only been one appeal against an Ombudsman decision in the Isle of Man (Kniveton v Public Sector Pensions Authority (Case Reference 2019 – Ord – 5) where my decision was upheld. This decision was itself appealed to the High Court of Justice of the Isle of Man (Appeal Division (Case Reference Kniveton v PSPA 2DS – 2019-10). The original

determination concerned a complaint by a member of the Unified Scheme that she was entitled to retire under the Flexible Early Retirement Category [FER] under the Interim Compensation Scheme 2012 on the termination of her employment by mutual agreement by the Public Services Commission (formerly the Civil Service Commission). It was also argued, among other things, that the Public Sector Pensions Authority (the PSPA) had made an error of law when interpreting the meaning of the Flexible Category by making a decision to grant a pension on the basis of a 2009 guide, while under the legal definition in the regulations and the member satisfied the definition of FER.

I found broadly that the PSPA had discretion to determine how the FER category should be delineated and under the definition it had operated the member did not meet the criteria for the payment of a FER pension. The member was not, on the facts, invited by her employer to retire early due to restructuring, limited posting opportunities or limited efficiency under the criteria described in the FER guide. The evidence I reviewed showed, that while this option was requested, it was not on offer. All the 2009 guide did was to set out how in practice the PSPA had been operating the category.

I partially upheld the complaint in relation to certain elements of the decision-making process by the PSPA to determine her FER application. I concluded that in certain respects the PSPA had misdirected itself as a matter of law and had not properly considered whether the member was entitled to FER as it has assumed, among other things, that the determination of entitlement to FER was a matter for the PSC. However, on the facts even if the process had been followed correctly the complainant still did not meet the criteria for the payment of a FER pension.

The member also alleged that the information provided to her by the PSPA that the determination of her entitlement to FER was an issue for her employer (the PSC) and not the PSPA to determine was incorrect and misleading. I partially upheld this part of the complaint. The information provided did complicate and add to the cost of the earlier Court proceedings against the PSC. I was satisfied that the member has suffered distress and inconvenience (and should be compensated for non-financial loss). I concluded, however, that there wasn't any legal loss for which she was entitled to be compensated for under established principles of negligent misstatement or otherwise).

The complainant appealed to the High Court of Justice of the Isle of Man (as she was entitled to do so in relation to a point of law) and the case was heard by His Honour Deemster Rosen QC in 2019 (*Kniveton v Public Sector Pensions Authority* (Case Reference ORD 2019 – 5)). His Honour Deemster Rosen held, among other things (at paragraph 34 of his judgment), in relation to the issue of entitlement to a FER pension that I was entitled to conclude as a matter of law that the flexible category was constituted by persons invited by management to retire early due to restructuring, limited posting opportunities and I was entitled to decide as a question of fact that the complainant was not in that category. His Honour Deemster Rosen also held that where there is uncertainty as to the meaning of the FER the PSPA was entitled to exercise its discretion when determining the meaning of the category (paragraph 40).

The decision of His Honour Deemster Rosen was subsequently appealed by the complainant to the High Court of Justice of the Isle of Man (Appeal Division) and the appeal was heard on 26 June 2019 by His Honour Judge of Appeal Storey QC. Generally, under Rule 14.4 of the Rules of the High Court of Justice permission is required from the Appeals Division for any appeal to that Division from any decision which was itself made on appeal. The Appeal

Division will not give permission unless the appeal would raise an important point or principle or practice or there is some other compelling reason for the Appeal Division to hear it. After reviewing the relevant case law, it was held by his Honour Storey QC (at paragraph 32 of the judgment) that the above test was not satisfied in the case and it was “time to call it a day” (paragraph 33).

Update of the gov.im Webpage

Since I have been appointed, I have, with the assistance of Treasury officers, updated the webpage on the IoM Government website for the Pensions Ombudsman and produced:

- (1) A general guide to my powers and jurisdiction with answers to frequently asked questions about what I can and cannot investigate and determine;
- (2) Produced a guide to the approach I will take to common types of complaint including:
 - a. Ill-health complaints;
 - b. Overpayment cases;
 - c. Inaccurate information;
 - d. Failure to provide information;
 - e. Charges;
 - f. Transfer related complaints; and
 - g. Self-directed scheme complaints;
- (3) Produced a guide for trustees, managers, administrators and employers on how to respond to complaints.

The purpose of these documents is to assist both complainants and persons who are subject to a complaint in understanding the Ombudsman investigation and determination process and to make the provision of information I need to supply each time a complaint is received more efficient. It is also to help promote the general understanding of my role in assisting with complaints and disputes on the Island.

In order to standardise the procedure for setting out details of a complaint, who it is against and the redress sought, I have introduced a form designed to assist the complainant in setting out details of the complaint to facilitate a more efficient process for determining disputes.

The IoM Government webpage on the Ombudsman also has a link to the updated data protection policy for the Ombudsman and a link to the published determinations to date.

The new IoM Government webpages on the Ombudsman went live in March 2022.

My desire to promote a greater understanding of the role of the IOM Pensions Ombudsman

I am keen to publicise the powers and jurisdiction of the Pensions Ombudsman more widely and accordingly I updated the IoM Government Ombudsman webpage and produced several supplementary guides as to the Ombudsman’s role which are linked to the webpage (see above). I gave a talk to any interested members of the association of pension scheme providers in the Isle of Man in early April 2022.

I have engaged with the Public Sector Pensions Authority in the Isle of Man to explain my role and my expectations of administrators in the Isle of Man when determining complaints. This was done via a Microsoft Teams link due to the Coronavirus crisis.

I am always willing to talk or communicate directly with anyone if they want more information on my role generally.

General policy on publication of complaints

Until 2015 in the UK it was the policy of the UK Pensions Ombudsman to publish the full names of the complainant and the person complained about and put copies of any determinations on the Ombudsman website. This is similar to the approach a court would adopt and is consistent with principles of open justice adopted by the Isle of Man High Court.⁴ The policy however differs from the policy of the Isle of Man Financial Services Ombudsman, Channel Island Financial Services Ombudsman and certain other ombudsman services whose policy is not to publish the name of either the complainant or the respondent to a complaint.

In 2015 following the appointment of Mr Anthony Arter as UK Pensions Ombudsman, the UK Pensions Ombudsman changed his policy. The complainant is now only referred to by an initial. Full details of the person or body complained about are still published. I decided, following my appointment, to adopt the same policy on anonymisation of complaints as was adopted by the UK Ombudsman in 2015.

I also have decided to change the policy of not publishing the full determinations that had previously been adopted by my predecessor. The only times determinations have been published previously was as summaries in the last report of my predecessor.

The advantage of publishing details of determinations in any report to the Treasury on my activities and in documents linked to the website is that it assists complainants and persons complained about as it provides information about the approach I am likely to adopt in future cases. It also potentially assists in shaping behaviour as, if trustees or pension administrators, appreciate that in a particular type of situation an award may be made for financial or non-financial injustice they may seek to settle the case at a much earlier stage. My expectations of the level of care and skill expected of administrators in exercising their functions should also hopefully be of some assistance to administrators generally.

The policy on publication is designed to try to achieve a balance between protecting the identity of the individual and promoting understanding of my decision making process and ensuring open justice. Ombudsman complaints can sometimes contain personal information about the health of the complainant and also personal financial information to the extent that it is relevant to the determination of the complaint.

The difficulty with applying the same policy in the Isle of Man is that, given the much smaller population, it is much easier to identify the individual complainant. I can partially address this issue by redacting the amount of personal information where it is not necessary

⁴ See the Oxford Lecture – 2018 – by His Honour Deemster Doyle – The Rule of Law and Open Justice on 28th June as part of the Small Countries Financial Management Programme. Available on Isle of Man Courts of Justice Website – Lectures and Transcripts section.

to understand the determination. This is, however, not always possible if reference to the information is necessary to demonstrate why a conclusion is reached on an issue. Also, the names of individuals may already be publicly available if the complaint then becomes the subject of court proceedings. I have concluded that the principle of open justice and the need to publicise reasoning in decisions to shape behaviour and the need to give more information about the approach I am likely to adopt in future cases does justify publication in exercise of my statutory discretion to do this. I will however, particularly in ill-health cases, listen to and where appropriate depart from my general policy and may not publish any determination if requested in certain circumstances, or redact personal details if appropriate.

I considered very carefully the guidance given by Mr Deemster Doyle in his excellent Oxford Lecture on the Rule of Law and Open Justice in 2018 on the importance of open justice, the need for clear justice and the need to promote understanding of the rule of law in arriving at the above policy.

Any ombudsman determination published or included in a report is absolutely privileged (section 151(7) of the Pension Schemes Act 1993) and I have a statutory power to publish determinations where I consider this to be appropriate (section 151(6) of the Pension Schemes Act 1993).

Data protection

Following my appointment, I reviewed the steps taken to ensure compliance with the data protection legislation introduced on the Island with the assistance of the Treasury's data protection officer.

It was concluded that, as the Treasury has a statutory power to provide support functions (including IT services) to the Ombudsman, the Treasury and the Ombudsman were joint data controllers. The Treasury and the Ombudsman therefore have joint responsibility for ensuring data protection compliance.

There is an agreement in place between the Ombudsman and the Treasury relating to the processing of data in compliance with Isle of Man data protection legislation.

The emails sent and received by the Ombudsman are sent and received on the IOM Government IT network. I have shredding facilities and policies in place on the appropriate time limits in place for retention of data. IT facilities are also in place so that I can send encrypted password protected emails and attachments.

A copy of the agreed data protection policy and fair processing notice has been linked to the relevant gov.im webpage.

My role going forward

The IoM is internationally recognised for its sound legal system and independent judiciary and commitment to the rule of law.

In addition to its internationally recognised Deemsters, the IoM also has several other ombudsman and commissioners including a Commissioner for Administration; the Social Security Commissioner and the Financial Services Ombudsman Scheme. The number of

complaints and disputes I am likely to be called upon to investigate and determine will be fewer than those of the other commissioners and ombudsman. I hope, however, that I can play a small part in assisting in upholding the rule of law in the IoM in a fair and impartial manner. Also, while recognising, that in the words of Warren J in *Westminster City Council v Hayward* this “*may be a dauntingly difficult task, my aim is to deliver rapid, unlegalistic justice, without cutting too many corners...*”. I hope to be able to go some way towards achieving this objective. I have discovered very early on that generally only one party will ever be happy with any determination I make. However, as I am required to, I always seek to deal with all disputes in a fair and impartial manner.

I am very privileged to have been appointed by the Treasury to perform the role of Pensions Ombudsman for the Isle of Man and look forward to continuing to perform this role over the remainder of the term of my appointment.

Ian Greenstreet
Pensions Ombudsman for the Isle of Man
May 2022

Appendix 1 - Useful Information about Isle of Man Pensions

A quick overview of the pension system in the Isle of Man

To understand the types of complaint or dispute the Pensions Ombudsman can consider it is necessary to understand more about the pensions system in the Isle of Man.

While every care has been taken to ensure that the information set out in this Appendix and the following appendices is accurate and up to date, no responsibility is accepted for reliance on these Appendices. If appropriate, legal advice should be taken on the application of Manx law to the facts of a case.

State pension/non-State pensions

Isle of Man residents may be entitled to:

- (1) Since April 2019: The new Manx State pension - if they have paid enough national insurance contributions and reach State Pension Age on or after 6th April 2019. This is a single tier pension, available for anyone with at least 10 years' qualifying service. To obtain the full new Manx State Pension an individual needs 35 years qualifying service.

Before April 2019: A Retirement Pension (available to individuals who reached State Pension Age before 6th April 2019) - which comprises two components; a 'basic' pension based on the number of qualifying years in their working life and an 'additional' earnings related pension. The additional pension comprised an earnings-related pension (SERPS) based on earnings between 6th April 1978 and 5 April 2002 and a Second State pension (also known as S2P) based on earnings between 6 April 2002 and 5 April 2019.

The Isle of Man also has its own Manx Pension Supplement (which has no equivalent in the UK) and this is payable by way of increase to the Manx State Pension or Retirement Pension but which is being phased out over time;

The Pensions Ombudsman does not have jurisdiction to investigate and/or determine complaints and disputes relating to the new Manx State pension, the Retirement Pension or the payment of national insurance contributions. Further information about the Isle of Man's state pension schemes can be found on the IoM Government's benefit and financial support page.

<https://www.gov.im/categories/benefits-and-financial-support/social-security-benefits/retirement-pension/>

There is a detailed guide to all Manx social security benefits (including State Pensions) in the "*Social Security Benefits Information Guide: A guide to all social security benefits and state pensions and State Pension Age in the Isle of Man*" also available via the Isle of Man Government Website at gov.im

- (2) public sector statutory occupational pension schemes benefits: if an individual is employed or previously employed by the Public Services Commission (formerly the Civil Service Commission) or other public authority;
- (3) occupational pension scheme benefits: under an occupational pension scheme set up by a sponsoring employer;
- (4) personal pension scheme benefits: these can be under grouped personal pensions or individual personal pension schemes. Employers can also contribute to personal pension schemes.

The Pensions Ombudsman is able to consider complaints and disputes about private sector pension schemes and public sector statutory pension schemes (but not State pensions), relating to both personal and occupational pension schemes.

Public/private sector pension schemes

Public sector statutory pension schemes are set up by statute and typically have rules set out in regulations. The main public sector statutory occupational pension scheme in the Isle of Man is the Government Unified Scheme (“GUS”) into which several public sector schemes were merged into on 1 April 2012. The Public Sector Pensions Board is the administrator of the Unified Scheme.

The following other public sector pension schemes are also administered by the Public Sector Pensions Authority (in addition to the Unified Scheme):

- The Police Pensions Regulations 1991 Scheme;
- The Police Pensions Regulations 2010 Scheme;
- The Teachers’ Pension Scheme⁵;
- The Manual Workers No 1 Pension Scheme;
- The Public Sector Injury Benefit Scheme 2015;
- Public Sector Compensation Scheme 2013; and
- The Judicial Pension Scheme (2004) closed to new membership from 19 February 2020.

The Pensions Ombudsman also generally has jurisdiction to look at complaints in relation to the Public Sector Compensation Scheme and the Public Sector Injury Benefits Scheme (as both fall within the definition of occupational pension scheme) which are wide enough to cover, not only benefits payable on retirement, but benefits paid on reaching a particular age or termination of office.

The other main Isle of Man public sector pension scheme is the Local Government Pension Scheme⁶. The manager of the Local Government Pension Scheme is Douglas Borough Council which has appointed Capita to deal with day to day administration of the scheme. Again, the Pensions Ombudsman has jurisdiction to investigate complaints in relation to this scheme.

⁵ The Teachers’ Pension Scheme is a statutory public sector scheme governed by the Teachers’ Superannuation Order 2011 (SD 0134/11) as amended by the Teachers’ Pension (Amendment) Order 2012 (0688/2012) and the Teachers’ Superannuation (Amendment) Scheme 2018 (2018/9240)

⁶ The Local Government Superannuation Scheme 2012 (SD No 0104/12) applies various UK LGPS regulations to the Island with various amendments to the applied regulations.

Private sector occupational pension schemes are set up under trusts by a sponsoring employer and will have trustees who are responsible for managing the scheme in accordance with its rules and investing its assets. Trustees will generally appoint administrators to assist them in this task and, in the case of a funded defined benefit occupational pension scheme, must appoint an actuary. Private sector occupational pension schemes will in consequence be governed by a trust deed and rules. Manx trust law has its roots in English Law. It is based on common law principles, supplemented by legislation, which for the most part mirrors its English equivalents.

Many of the large banks and other large employers in the Isle of Man have set up trust based occupational pension schemes for their staff. Like the UK many of the Isle of Man occupational pension schemes are now closed to future accrual or new members.

As well as occupational schemes, employers may participate in and make employer contributions to personal pension schemes (often referred to as grouped personal pensions)..

The Isle of Man has several major firms of pension scheme administrators who have set up various group or individual member personal pension schemes; which may be available to Isle of Man residents and non-residents. The Isle of Man is a major centre for the provision of pension benefits to non-residents under international pension schemes.

Private sector occupational pension schemes

Private sector occupational pension schemes can be further sub-divided into:

- (a) defined benefit occupational schemes: where the member is promised a pension of a defined amount (for example typically a pension of 1/60th of final pensionable salary might build up for each year of pensionable service so if a member worked for 40 years they will be entitled to a pension of 40/60ths or a two thirds pensionable salary). Sometimes an occupational career average scheme is provided where a member builds up a credit equal to a percentage of their salary each year and the accumulated credits are revalued each year until retirement to provide a defined pension at retirement;
- (b) defined contribution occupational pension schemes (also known as money purchase schemes): where the employer agrees to pay a contribution of X per cent of contribution salary and the employee may typically pay a contribution of Y per cent of contribution salary. These contributions are invested and the resulting fund (with any investment return) is used to provide a pension or associated benefits on retirement.

The key difference between defined contribution and defined benefit schemes is that in a defined benefit scheme the employer bears the funding risk that there will be sufficient funds to provide the promised benefit while in a defined contribution (money purchase) scheme it is the employee who bears the funding risk. The amount of pension depending upon whether the investments do well or if investments perform badly.

Personal pension schemes

Personal pension schemes are always defined contribution arrangements (also known as money purchase schemes). Personal pension schemes are authorised by the Financial Services Authority and approved in the Isle of Man by the Assessor of Income Tax under the Income Tax Act 1989. Personal pension schemes will be established under trust (as it is a requirement of authorisation under the Retirement Benefits Schemes Act 2000 that that pension scheme assets should be held on irrevocable trust and most of the applicable tax regimes for approval of schemes in the Isle of Man also require this) and will have both trustees and a pension scheme manager/administrator.⁷

The pension scheme manager/administrator must be duly registered with the Financial Services Authority in the Isle of Man. In addition to the trust deed there will usually be a contractual agreement between the manager/administrator and the member(s)/employer(s) setting out the terms on which the manager/administrator/trustees provide services in relation to the pension scheme.

It is possible to have:

- (1) grouped personal pensions under a single scheme with multiple members; and
- (2) individual member personal pension schemes.

Many personal pension schemes are established as “self-directed pension schemes” or “self-invested personal pension schemes” where the member (or the member’s appointed investment adviser, acting as agent or investment adviser) directs how the contributions should be invested on his or her behalf by the trustees. In this type of scheme, the trustees have a limited role in the choice of investments.

International pension schemes

It is possible for pension schemes to be set up as tax approved international pension schemes in the Isle of Man for non-Isle of Man residents. Separate tax approval provisions apply for different types of pension under the Income Tax Act 1970 (primarily section 50B schemes). There are also different authorisation regimes operating for international and domestic pension schemes.

International pension schemes can be set up as either occupational or personal pension schemes. They may be multi-member or single member schemes. International Personal Schemes are typically set up as “self-directed” or “self-invested” personal pension schemes where the member (or appointed investment adviser) directs how the contributions are invested. Usually there is very wide flexibility as to the range of funds and other assets which the member can invest in.

Sometimes the investments will be made through an “open architecture” fund platform or insurance wrapper. It is understood that there are many such pension schemes in the Isle of Man with several billion pounds worth of assets.

⁷ There is an exception from the requirement to set up a scheme under trusts where a personal pension scheme is approved under section 2 of the Income Tax Act 1989 and is written under a deed poll established by an insurer.

Domestic pension schemes and QROPS Transfers

Domestic pension schemes are set up under the Income Tax Retirement Benefits Act 1978 and the Income Tax 1989 (see below).⁸

Generally local domestic schemes meet the UK HMRC “Recognised Overseas Pension Scheme” requirements and many have been registered as Qualifying Recognised Overseas Pension Schemes (QROPS): thus enabling tax efficient transfers to be received from UK Finance Act 2004 registered pension schemes. Due to changes in UK tax law the number of schemes used for QROPS transfer receipts following the introduction of a new “overseas” transfer charge (effective from 9th March 2017) from UK registered pension schemes has diminished, both to the Island and elsewhere. For individuals moving from the UK and becoming resident in the Isle of Man, QROPS domestic scheme tax efficient transfers are still available to such individuals. To qualify as a QROPS the scheme has to meet certain UK legislative requirements and the person responsible for the management of the scheme has to give a number of undertakings to HMRC. There can however be UK tax charges if a scheme ceases to qualify as a QROPS or a member’s residency status changes and, in consequence, tax advice should always be taken as this is a very complicated area.

Domestic pension schemes in the Isle of Man similarly usually also meet the UK requirements to be treated as a Qualifying Non-UK Pension Scheme (QNUPS). If a scheme meets the QNUPS requirements generally it will be exempt from UK inheritance tax requirements. Again this is an area where detailed tax advice should be taken.

Public sector schemes and QROPS transfers

Isle of Man public sector schemes should generally qualify as QROPS for the purposes of transfers from UK schemes but again advice should be taken.

Numbers of Different types of Scheme

There is information on the numbers of different types of registered pension schemes on the Financial Services Authority webpage. As at 31 March 2019 the webpage stated that there were 992 authorised domestic schemes; 151 authorised international pension schemes, 3 permitted domestic schemes and 54 recognised domestic schemes for authorisation purposes under the Retirement Benefit Schemes Act 2000. There were also about £11.3 billion of assets under management in the pensions sector in the Isle of Man as at 31 December 2018.

⁸ Prior to these acts domestic pension schemes were set up under section 49 of the Income Tax 1979 (retirement annuities).

Appendix 2 - A quick overview of the law relating to pensions in the Isle of Man

Introduction

This overview is intended to provide a general overview of the law relating to pensions in the Isle of Man at the date of preparation of the report to the Treasury. Information on the best way to access further information on the legislation relation to Isle of Man pension schemes via IoM government webpages is set out in Appendix 3.

If you need more information about the benefits payable under your scheme your first port of call should generally be to contact the trustees or administrator of your scheme. The trustees or administrator cannot however give you financial advice as they are not authorised to do so. It is also always open to any individual member to take detailed financial advice from an IoM authorised financial adviser or legal advice from an Isle of Man qualified advocate.

You can find more information on pensions in the Isle of Man by following the links in Appendix 3.

Legislation relating to pension schemes and social security generally

The bulk of the Pension Schemes Act 1993 provisions applied to the Isle of Man by Tynwald were broadly the same as those in the UK Pension Schemes Act 1993.

Under the national insurance contracting-out provisions for the old Manx Additional State Scheme, where a pension scheme provided sufficiently good benefits, it was possible to pay reduced national insurance contributions and contract-out of the Manx Additional State Scheme. Contracting out is no longer possible since the adoption of the single unified new Manx State pension from 6th April 2019.

The requirements relating to preservation, revaluation of deferred pensions and indexation of pensions in payment and transfers-out are also broadly similar to those in the UK Pension Schemes Act 1993.

Under preservation, like the UK, a right to transfer arises after 3 months of being in qualifying service in an occupational pension scheme and local members are generally entitled to full preserved vested benefit after 2 years qualifying service.⁹ In a personal pension scheme generally members will have vested accrued rights immediately.

In relation to revaluation and indexation a similar regime to the UK applies in the Isle of Man. Like the UK the IoM switched from the Retail Prices Index to the Consumer Prices Index as the statutory measure of indexation of preserved benefits in final salary occupational pension schemes subject to the relevant caps specified in the legislation

In relation to transfers the cash equivalent transfer legislation is similar to the UK. It is not however possible to exercise a right to a cash equivalent transfer separately in relation to

⁹ The preservation requirements applicable to international retirement benefit schemes differ slightly and, depending on the scheme rules, the member may not have vested accrued rights until they have completed seven years pensionable service. See definition of vested accrued rights in regulation 1 of the Retirement Benefits Schemes (Internationals Schemes) Regulations 2001 and also regulation 15 of those regulations

money purchase and defined benefits/cash balance benefits. The general prohibition on transfers from defined benefit schemes to money purchase schemes, without first taking independent financial advice, where the transfer exceeds £30,000 that applies in the UK does not apply in the Isle of Man: though it may be anticipated that scheme trustees would expect members to obtain such advice. There is, however, a complete prohibition on transfers from Isle of Man defined benefit schemes directly to the new Pension Freedom Schemes introduced in April 2018 under Part 5A of the Income Tax Act 1970. Consent from the Assessor of Income Tax is also required for certain types of transfer. Transfers from an Isle of Man public sector scheme can generally only be made to other Isle of Man or UK public sector schemes and certain other analogous public sector schemes in certain other countries. The new traffic light system on transfers in the UK in December 2021 does not apply to transfers from IoM schemes.

Tynwald will usually be asked to consider whether it is appropriate for a particular legislative change made in the UK to be applied in the Isle of Man. Tynwald has applied parts of (but not all of the) the UK Pensions Act 1995 and UK Pensions Act 2004 to the Island and parts of subsequent UK pension statutes. Since the early 1990s there has, however, been increasing divergence between the legislative provisions adopted for Isle of Man and UK pension schemes.

The Isle of Man, for example, has not adopted the same approach to regulation of Isle of Man schemes as has applied in the UK since 6th April 2006 under the UK Pensions Act 2004. The IoM adopted a separate regulatory regime earlier under which the financial services authority regulates pension schemes, their trustees and administrators under the Retirement Benefit Schemes Act 2000 (see below).

Tynwald also chose not to adopt provisions directly equivalent to the statutory minimum funding regimes in the Pensions Act 2004, but there is a requirement for Isle of Man domestic defined benefit schemes to appoint an actuary and in practice regular funding valuations are carried out in a similar manner to the statutory funding requirements operating in the UK. Actuarial funding requirements also operate in relation to international schemes.

The Isle of Man has an employer debt regime for funded occupational pension schemes requiring employers to stand behind the funding of a scheme if it is wound-up, but this is not identical to the employer debt regime in force in the UK. The IoM has not established a Pension Protection Fund as it does not have a scheme levy base to support a fund of this type. The Isle of Man also has not introduced mandatory automatic enrolment provisions such as has been introduced in the UK. Certain of the recent changes to the transfer regime in the UK have not been applied to the Island.

Legislation catering for earmarking of pensions and pension sharing for divorcing couples has been adopted similar to that operating under the Welfare Reform and Pensions Act 1999. Provisions for the protection of pensions on bankruptcy under the Welfare Reform and Pensions Act 1999 have similarly been adopted in the Island.

The Isle of Man has sex equalisation legislation which broadly imposes a sex equality rule into pension schemes. The non-discrimination provisions on grounds of sex can currently be found in the Equality Act 2017. The Equality Act 2017 also generally prevents discrimination on grounds of disability, gender reassignment, marriage/civil partnership, race religion or belief, sex, sexual orientation and pregnancy and maternity.

Age discrimination legislation in relation to pensions, as was introduced in the UK with effect from 1 December 2006, was not originally adopted in the Isle of Man at that time. However, age is now a protected characteristic under the provisions of the Equality Act 2017 and provisions outlawing age discrimination (subject to permitted exceptions set out in the Equality Act 2017 (Age Exceptions for Pension Schemes Order 2019) in relation to employment and occupational and personal pension schemes were brought into operation from 1 January 2020.

Many of the detailed regulations relating to pensions which apply on the Isle of Man are still, however, the same or similar to those applicable in the UK or based on earlier versions of current UK legislation.

The application of certain IoM legislation is modified in relation to schemes with an overseas element and/or sectionalised schemes. For example:

- (a) The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991/167 (as applied to the Island by The Social Security Legislation (Application) (No 12) Order 1992 (GC 494/92), regulation 23 modifies the application of the regulations to schemes with an overseas element;
- (b) The Occupational Pension Schemes (Revaluation) Regulations 1991/168 (as applied to the Island by the Social Security Legislation (Application) (No 9) Order 1993 (SD364/93), regulation 11, modifies the application of the regulations to schemes with an overseas element;
- (c) The Occupational Pension Schemes (Transfer Values) Regulations 1996/1847 as applied to the Island by The Pension Schemes Legislation (Application) (No 3) Order 2006 (SD147/06), regulation 13 modifies the application of the regulations to schemes with an overseas element;
- (d) The Occupational Pension Schemes (Employer Debt) Regulations 2005/678 as applied to the Island by the Pension Schemes Legislation (Application) (No 5) Order (SD149/06), regulation 14 modifies the application of IoM employer debt legislation to schemes covering Isle of Man and foreign employment so broadly the debt provisions only apply to the Isle of Man section;
- (e) The Occupational Pension Schemes (Winding up) Regulations 1996 as applied to the Island by The Pension Schemes Legislation (Application) (No 5) Order 2006 (SD149/06), regulation 13 modifies the application of the winding up provisions of section 73 to 74 of the Pensions Act 1995 so in the case of a sectionalised scheme or dual tax approved scheme these provisions only apply to the IoM section or IoM tax approved part of the scheme
- (f) The Occupational Pension Schemes (Winding up etc) Regulations 2005/706 as applied to the Island by the Pension Schemes Legislation (Application) (No 5) Order 2006 (SD149/06), regulation 13 (multi-employer sectionalised schemes and partly foreign schemes) modifies the application of the regulations in cases where section 73 to 74 of the Pensions Act 1995 apply to a scheme as if the Isle of Man section or approved part of the scheme were also separate schemes.

The fact that IoM legislation may only apply to the Isle of Man section or tax approved part of the scheme can be important in the case of dual IoM and UK tax approved and authorised schemes which are wound up with an insolvent employer. For example in the case of the Flybe scheme which was governed by IoM trusts but had dual tax approved sections and the sponsoring employer then became insolvent this meant that the IoM winding up provisions

applied to the IoM section and the UK winding up provisions applied to the UK section. There are different statutory winding up priority orders under the different sections.

Legislation relating to public sector schemes

Most Isle of Man public sector schemes in the past had very similar governing provisions to UK public service pension schemes and were operated by analogy to the equivalent UK public service schemes for the same types of public sector workers.

Many of the old “by analogy” public service schemes (including the Principal Civil Service Pension Scheme, the NHS Pension Scheme and the Firefighters Pension Scheme) have been merged into a single Unified Scheme. The Unified Scheme is administered by the Public Sector Pensions Authority which was established in 2012 under the Public Sector Pensions Act 2011 (the 2011 Act).

The PSPA is an independent Statutory Board responsible for the management, administration and governance of most public sector pension arrangements on the Isle of Man. In addition to the Unified Scheme these comprise:

- The Police Pensions Regulations 1991 Scheme;
- The Police Pensions Regulations 2010 Scheme;
- The Teachers’ Pension Scheme;
- The Manual Workers No 1 Pension Scheme;
- The Public Sector Injury Benefit Scheme 2015;
- Public Sector Compensation Scheme 2013;
- The Judicial Pensions Scheme (2004) (now closed to new members)

There is also a local authority pension scheme for local authority staff which is managed by Douglas Borough Council which delegates day to day administration of the scheme to Capita.

In March 2019 Tynwald considered the Cabinet Office report entitled “Public Sector Pensions- Legacy Funding Update: A Second Cabinet Office Report (GD 2019/0014). One of the recommendations of the report was the establishment of a new voluntary defined contribution scheme as an alternative to the Unified Scheme, the Teachers’ Pension Scheme and the two police schemes. It is expected that the scheme will be available to new public employees from 2022 and that it will be an Isle of Man (Pensions Freedom) type scheme or something similar. It is currently proposed that the contribution structure will be 2:1 matched contribution structure with a maximum level of 15%:7.5% of basic pay. More information on this arrangement is available on the PSPA webpages on the IoM Government website.

Financial Service Authority - Regulatory regime

The Retirement Benefits Schemes Act 2000 confers on the financial services authority its position as an independent regulatory body governing certain aspects of the operation and management of retirement benefits schemes in or from the Isle of Man. It also sets out various conditions that must be complied with before a retirement benefit scheme may operate in or from the Isle of Man, or a trustee or administrator may act for such a scheme. A “retirement benefit scheme” is broadly any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having effect so as to provide relevant benefits. Relevant benefits are broadly any pension, lump sum or gratuity to

be given on retirement or death, or in anticipation of retirement, or to be given on or in anticipation of or in connection with any change in the nature of the service of the employee in question.

Different regulatory regimes apply to domestic¹⁰ and international¹¹ authorised “retirement benefit pension schemes”. It is also possible for the Isle of Man financial services authority to recognise a UK or Republic of Ireland retirement benefit scheme. There is also a further category of “permitted scheme” for FSA authorisation purposes.

To be authorised the scheme documents must generally provide for the trustee or administrator to hold all property of the scheme in trust for scheme beneficiaries. The regulatory requirements applicable to Isle of Man authorised retirement pension schemes are set out in the Retirement Benefit Schemes Act 2000 and regulations made under that Act. The key regulations include The Retirement Benefits Schemes (Domestic Schemes) (General Administration) Regulations 2004 (SD589/04), the Retirement Benefit Schemes (International Schemes) Regulations 2001 (SD645/01) and the Retirement Benefit Schemes (Management and Miscellaneous Provisions) Regulations 2001.

These regulatory requirements include, among other things requirements for: registration of schemes and their administrators, for preparation of accounts, audit requirements, preparation of annual returns, disclosure duties and record keeping, preparation of schedules of contributions; the appointment of an actuary, auditor and investment manager, whistle blowing requirements and requirements on trustees to open and maintain bank accounts.

The person responsible for the management of the scheme (the Administrator) must be registered with the FSA as either a registered scheme administrator (with minor exemptions) (e.g. the managers of public service and war service schemes).

To be registered as a scheme administrator, a person must:

- (a) Have adequate knowledge and experience fitted for the management of retirement benefit schemes for which the authorisation application was made; and
- (b) Be a fit and proper person and carry on business as a scheme administrator at a place of business in the IoM (section 36 of RBSA 2000).

Among, other requirements, the FSA also has to be satisfied that each trustee is a fit and proper person to undertake their functions (section 3(7)(b) RBSA 2000).

Tax Approval by Assessor of Income Tax

The Isle of Man has similar provisions relating to the discretionary tax approval of “retirement benefit schemes” to those that existed in the UK until 6th April 2006. The Isle of Man has not adopted the changes made in the UK by the Finance Act 2004 and did not introduce the new regime introduced in the UK from 6th April 2006.

¹⁰ A domestic retirement benefit scheme is any retirement benefits scheme other than a retirement benefits scheme which is registered as an international benefits scheme

¹¹ An international retirement benefit scheme is a retirement benefit scheme which has or is capable of having effect so as to provide relevant benefits in respect of employees or individuals treated as not residing in the IoM for the purposes of the Income Tax Act 1970, engaged in a trade or undertaking carried on wholly outside the IoM (apart from duties performed in the IoM which are merely incidental to the performance of other duties outside the IoM) and which is not a scheme which is approved under sections 1 or 2 of the Income Tax (Retirement Benefit Schemes) Act 1978 or under section 2 of the Income Tax Act 1989; and

Isle of Man occupational retirement benefit schemes continue to be approvable on a discretionary basis by the Assessor of Income Tax under the Income Tax (Retirement Benefit Scheme) Act 1978 (the “1978 Act”). To be approved a retirement benefit scheme has, among other things, to be set up under irrevocable trusts with the sole purpose of providing “relevant benefits”. Public sector statutory schemes are made by Tynwald and the Assessor of Income Tax recognises the statutory schemes for tax purposes. There are specific provisions relating to the exemptions and reliefs applicable to statutory schemes and non-statutory schemes in the 1978 Act.

Broadly under the above tax regime applicable to occupational pension schemes (other than Pension Freedom Schemes which are discussed further below):

- Income tax relief is available to Isle of Man residents at their marginal rate up to a maximum of contributions;
- Contributions to a pension scheme are limited to the level of the individual’s “relevant earnings” or the annual allowance (from 6 April 2018 £50,000) whichever is the lower of the two amounts;
- There is however a minimum allowance of £3,600 pa for contributions;¹²
- Investment return can roll up tax free;
- A one-off tax free pension commencement lump sum of up to 30% can be taken;
- Relevant benefits generally can be taken in the form of an annuity or a number of income withdrawals payable for the remainder of an individual’s life, from age 50¹³ (or earlier in ill-health cases) other than in cases where the pension falls within the triviality limit at date of retirement or later falls below that limit and the fund remnant requirements apply ;
- from 6th April 2018, however, the trivial commutation limit was significantly increased to £100,000 so if the total value of the pension fund is below £100,000 at date of retirement all of the pension benefit can be paid as a lump sum of which 30% is paid tax free and with the remainder subject to income tax (initially deducted at 20% but the actual liability will be determined in the tax assessment (taking into account personal allowances and the 10% tax band). The tax must be deducted before the trivial commutation lump sum is paid. Under the “ fund remnant” requirements in cases where income withdrawals have commenced and the level of the fund remnant falls below the £100,000, a lump sum can be paid extinguishing the member’s and any dependant’s entitlement at any time from age 55¹⁴ (taxed as income). It follows that if no pension commencement lump sum has been taken at retirement a fund of approximately £142,800 could be repaid in this way. To commute a pension under the triviality or fund remnant rules the individual must be aged 55 or over, There are some quite complicated legislative requirements relating to trivial commutation and fund remnant requirements and reference should be made to the Guidance that the Assessor of Income Tax has published,

¹³ Under section 2 of the Income Tax (Retirement Benefits Schemes) Act 1978 the Assessor of Tax will not generally approve a scheme on a discretionary basis if benefits can be taken more than 10 years before the specified age.

¹⁴ Income Tax (Approved Pension Schemes) (Withdrawal of Funds) Regulations 2005 (SD No 2015/0180) approved by Tynwald on 16 June 2015 and coming into operation on 19 June 2015 as amended by the Income Tax (Approved Pension Schemes) (Withdrawal of Funds) Amendment Regulations 2016 (SD No 2016/0047) approved by Tynwald on 16 February 2016 and coming into operation from 6 April 2016

- Pension annuities and income withdrawals will be included in an individual's income tax assessment and taxed (or not taxed) depending on the individual's income level after taking into account his or her allowances, deductions and tax rates under the ITIP payment system;
- On death of a member after commencement of drawdown there is generally a 7.5% tax charge on undrawn funds which are not used to provide pension benefits for a spouse or dependant.
- There may be an additional unauthorised payment charges of 20% if unauthorised payments are made and potentially a further supplementary charge of 20%.

Following the introduction of personal pension schemes in the UK the Isle of Man also introduced an approval regime similar to the original UK approval regime for personal pension schemes. This approval regime can be found in the Income Tax Act 1989 and again the Assessor of Income Tax is responsible for granting tax approval to these schemes.

The tax treatment of personal pension schemes approved under the above regime is broadly similar to the tax regime described above. The earliest date benefits can generally be taken is age 50 (or earlier in ill-health cases). The tax coding system is used to grant tax relief on personal pension scheme contributions.

Two alternative tax approval provisions are available under the Income Tax Act 1970: under section under Part 5A (pension freedom schemes) and under section 50C:

Section 50C: tax approved schemes can be either personal or occupational pension schemes and are available to both IoM and non IoM residents. No income tax relief is available on contributions made into a section 50C schemes. Payments made on retirement in excess of the 30% tax free pension commencement lump sum have to be used to provide an income for life. Pension payments from a section 50C scheme are made without deduction of tax at source by the scheme trustees but are income in respect of which income tax may be imposed under the Income Taxes Act on the Island (section 50C(6)). Such payments will be taxable income when received by an Isle of Man resident individual. They may not be subject to Isle of Man income tax in the hands of a non-resident individual but are potentially subject to tax under the laws in the country of residence instead.

Under a new Part 5A of the Income Tax Act 1970: a new flexible (pension freedom scheme (PFS), was introduced in 2018. Again, these schemes (occupational or personal) must be set up under irrevocable trusts and are often set up as wholly separate ring fenced sections of an existing authorised schemes under one of the other tax approved regimes. The legislation was introduced by the *Income Tax (Pensions) Temporary Taxation) Order 2018* which is now included in the Income Tax Act 1970.

Broadly under pension freedom schemes:

- Pension transfers can be made into a PFS from other Isle of Man approved schemes (with the exception of defined benefit schemes) but subject to the payment of a 10% transfer fee;
- Income tax relief is available to Isle of Man residents at their marginal rate up to a maximum of contributions made to a PFS;
- Contributions to a pension scheme are limited to the level of the individual's relevant earnings or the annual allowance (from 6 April 2018 £50,000) whichever is the lower of the two amounts;

- Investment return can roll up tax free;
- pension commencement lump sums of 40% can be taken;
- Relevant benefits are in the form of a total fund commutation or a number of income withdrawals can be taken, from age 55 (earlier in ill-health cases);
- Income withdrawals will be included in an individual's income tax assessment and taxed or not taxed depending on the individual's income level after taking into account his or her allowances, deductions and tax rates.

The Isle of Man also has a tax regime for the approval of international pension schemes which can be found in sections 50B of the Income Tax Act 1970. Section 50B approved schemes can either be occupational or personal pension schemes but they are only available to individuals and trading undertakings that are not resident in the Isle of Man.

There are restrictions on the types of investments which can be held by an approved scheme and restrictions on transfers in certain circumstances (see Practice Notes PN 166/10 and PN165/10 published by the Assessor of Income Tax and available on the IoM Government Website).

The above is only intended to be a brief overview of the applicable pensions' tax regime in the Isle of Man. Reference should be made to the underlying legislative provisions. Also there is some very helpful detailed guidance contained in the Income Tax section of the IoM Government website. Tax advice should be taken where appropriate. The tax treatment of payments made to non-residents in particular is very complicated and may depend on the terms of any applicable international tax treaty and the laws of the country in which the non-resident is resident and the domicile of the non-resident.

Appendix 3 –Finding Isle of Man legislation – relevant to the jurisdiction of the Pensions Ombudsman

Legislation Relating to Pensions – Accessing Generally

Copies of the Isle of Man statutes and subordinate legislation which are relevant to pensions and the jurisdiction and powers of the Pensions Ombudsman can all be accessed via the Isle of Man legislation website.

<https://www.legislation.gov.im/cms/>

Secondary legislation (regulations and orders) can be accessed via the following link www.tynwald.org.im/links/tls/SD/Pages/default.aspx

Social Security and Pensions Legislation

The bulk of the statutes relating to pensions law on the Island can most easily be accessed through the external link section of the site to the “Social Security Legislation Volumes” via the following link

<https://www.legislation.gov.im/cms/external-links/related-legislation.html>

The PDF list of pensions legislation that can be accessed through this link in turn has hyperlinks to pensions and social security and subordinate legislation.

Pensions Regulation on the Island

Information on the regulation of pension schemes by the Financial Services Authority under the Retirement Benefit Schemes Act 2000 can most easily be accessed via the following link

<https://www.iomfsa.im/regulated-sectors/pensions/legislation/>

The associated webpages contain a helpful summary of how pensions regulation operates on the Isle of Man.

Trust Law

Manx trust law has its roots in English trust law. It is based on common law principles supplemented by legislation which, for the most part, mirrors its English equivalents. Various statutory provisions relating to trusts which may apply to trust based pension schemes can also be found via the same link

<https://www.legislation.gov.im/cms/>

(e.g. the Trustee Act 1961, Trusts Act 1995 and Trustee Act 2001).

Pensions Tax Approval

Further information on the tax treatment of pension schemes on the Island can be accessed via the Income Tax section of the IoM Government website

<https://www.gov.im/categories/tax-vat-and-your-money/income-tax-and-national-insurance/>

The underlying legislation can be accessed via the main IoM legislation website. Various practice notes relevant to the approval of pension schemes for tax purposes can be found via the Income Tax section of the IoM Government website.

Public Sector Pensions

The easiest way to access statutory instruments and other information relation to public sector pension schemes on the Island is via the Public Sector Pensions Authority website (in relation to most public service schemes). The PSPA helpfully has published a number of informal consolidations of the regulations governing many of the Isle of Man public sector schemes.

<https://www.gov.im/about-the-government/statutory-boards/public-sector-pensions-authority/>

Documents and other information about the Local Government Pension Scheme can most easily be accessed via the Douglas Borough Council website or via the following link web-link. Under the LGPS Scheme various UK LGPS regulations are applied to the Island and it may be necessary to look at the applied UK LGPS regulations (these are broadly all regulations in force before the 2015 UK public sector pension scheme changes which were not adopted in the Isle of Man).

Iomlgps.im