

The Trustee toolkit downloadable

Pensions law

Tutorial four: Internal dispute resolution procedure

By the end of this tutorial you will better understand:

- ▶ the legal requirement to have an internal dispute resolution procedure (IDRP)
- ▶ the steps involved in an effective IDRP
- ▶ what a 'reasonable period' is in relation to dispute resolution
- ▶ the roles of The Pensions Advisory Service (TPAS), the Pensions Ombudsman and the Financial Ombudsman

This tutorial is part of **Scenario two**.

Glossary

A detailed glossary of technical terms can be downloaded from the Resources tab when you log in at www.trusteetoolkit.com

The Pensions
Regulator

Legal requirements

Trustees are legally obliged to have a formal written procedure for dealing with members' complaints. This procedure must be fully documented in the scheme's 'Internal Dispute Resolution Procedure', known as the IDRP. Trustees must then follow this procedure.

Trustees must make members aware that a written complaints procedure exists and who to contact to use the procedure. Trustees must make it available to any member who requests it.

What should an internal dispute resolution procedure include?

Inform applicant about TPAS

When the trustees receive a complaint, they must inform the applicant (the person raising the complaint) of The Pensions Advisory Service (TPAS) and their contact details as soon as reasonably practicable. Although TPAS cannot help with the complaint until the member has tried to resolve it in writing, they can contact them for help or advice at any time.

One or two-stage process

The IDRP can be either a one-stage or a two-stage process. If there is a two-stage process, then the first stage in the IDRP may be dealt with by someone other than a trustee. This person is often known as the 'nominated person' for complaints.

Inform applicant of timescales

The applicant must also be informed of the timescales for dealing with the complaint so that they are aware when they can expect a reply. All responses to complaints must be given within a 'reasonable' time. They must be in writing as must be the calculations/evidence supporting them. The Pensions Regulator has published the 'Dispute resolution – reasonable periods' code of practice which provides practical examples of the reasonable time periods stated in the legislation relating to IDRP.

Time periods for a decision

These time periods are:

- ▶ a decision is expected to be made on a dispute within four months of receipt of the complaint
- ▶ the applicant should receive the notification of the decision about the dispute no later than 15 working days after the decision has been made

If the scheme has chosen to maintain a two-stage process, the above mentioned periods apply to each stage separately, rather than the overall process.

Trustees may incorporate what they consider to be 'reasonable' time limits for their IDRP, ie shorter time scales than set out above, if they wish.

TPAS and Pensions Ombudsman

Only after the process has been exhausted can the member go to TPAS or the Pensions Ombudsman to try to resolve the complaint.

View the 'Dispute resolution – reasonable periods' code of practice at www.tpr.gov.uk/code11.

Case study: Lola's complaint

Here is an example of a complaint raised by Lola which is resolved via the IDRP.

Simon lives with Karen but they are not married. Sadly Karen gets very ill and passes away. Karen has been a member of her employer's pension scheme and the trustees need to make a decision about what will happen to her death benefits. The trustees discover that Karen has not completed an 'expression of wish' form to nominate a beneficiary in event of her death.

The trustees decide that since Simon and Karen have been living together as husband and wife, they would be seen as relying financially on each other. Karen's death benefits from the scheme are therefore paid to Simon.

However Karen has a daughter, Lola, by a previous marriage who is now aged 46. She complains to the trustees that she as Karen's daughter should have been entitled to a share of the benefits.

The trustees follow the scheme's IDRP and advise Lola that the case is being reviewed and that she can seek assistance from TPAS. The IDRP has a single stage process and the trustees take the matter up for discussion during their next trustee meeting.

The trustees decide that although Lola is Karen's daughter, they have no evidence that Lola was financially dependent on her mother. Simon, on the other hand, had been living with Karen for over 10 years and they shared their finances throughout this time.

The trustees consult with their scheme lawyers and decide to reject the complaint. Lola is informed of the outcome of the IDRP process and decides not to take it any further.

Case study: John's complaint

But what if the complaint is not resolved through the IDR? There are two organisations that members can contact to pursue their complaint. Take a look at John's story to find out about his complaint.

John is still in good health but has recently become unemployed and has since then been living off his savings. He is looking for employment but also considers the option of taking benefits early from an occupational pension scheme where he is a deferred member. He therefore asks the scheme for an early pension illustration and is pleased to see that he can afford to access the benefits immediately.

However six months after taking the pension, John receives a letter from the scheme to inform him that they made an error in the illustration and his pension will be reduced by £950 a year. This has a significant impact on John's finances and he appeals against the scheme's decision and asks for details of the scheme's IDR.

The scheme acknowledges John's dispute and provides him with details of TPAS. The scheme trustees review the case under the scheme's IDR and ask John for evidence that he would not have taken the pension early if he had known the correct value of his pension.

The scheme's trustees come to the decision that John's complaint cannot be upheld, on the basis that John is unable to show that he has suffered financial detriment and has continued to seek employment, following the reduction of his pension.

The notification of the decision includes a statement referring John to the Pensions Ombudsman, how the organisation may help him and the contact details.

The Pensions Advisory Service (TPAS)

TPAS are the first point of call where the scheme's IDR cannot resolve the dispute. It is an independent non-profit organisation that also appoints volunteer pension experts. The organisation can provide information and guidance on the whole spectrum of pensions, including occupational pension schemes. You can learn more at www.pensionsadvisoryservice.org.uk.

The Pensions Ombudsman

At the end of the IDR, when the trustees notify the applicant of their decision, the notification must include a statement referring the member to Pensions Ombudsman and how the organisation may help them. The contact details for the Pensions Ombudsman must also be provided.

Members usually approach the Ombudsman after they have exhausted the scheme's disputes resolution procedure as well as any efforts made by TPAS on their behalf. TPAS does not have statutory powers and can only affect a resolution through persuasion and conciliation, but the Ombudsman has similar powers to a court of law.

The Pensions Ombudsman's decision is final and binding on all the parties to the complaint or dispute. The decision can only be changed by appealing to the appropriate court on a point of law. You can learn more about the Pensions Ombudsman at www.pensions-ombudsman.org.uk.

The Financial Ombudsman Service (FOS) arbitrates in disputes between personal pension policyholders and their advisers or pension providers. It too, has a regime of negotiating an agreement where it can. It does not concern itself with occupational pension schemes so it is only included here for completeness.

Case study: John's complaint

The legislation requires that schemes always try to resolve a dispute by referring to the IDR of the scheme. However, there are occasions when matters cannot be settled internally, and scheme members may take such issues to TPAS and/or the Pensions Ombudsman. Let's take another look at John's complaint to see what he did next.

When John consults TPAS for advice regarding his complaint, he must provide a copy of all correspondence between him and the scheme trustees which relate to the dispute. If the TPAS adviser does not believe John has a sustainable case, he or she will say so. If the adviser thinks the case is sustainable, TPAS can mediate with the scheme trustees. On this occasion, TPAS attempts to mediate with the trustees but they refuse to change their decision.

John refers the matter to the Pensions Ombudsman which contacts the scheme for further clarification of the matter. The trustees defend their decision to reduce John's pension on the basis that he did not supply compelling evidence to support his claim. They argue that John has suffered no financial loss in his decision to access the benefits early and question why a relatively small amount of reduction of the pension (on an annual basis) could cause him significant financial detriment. They believe that had he received the correct illustration, he would still have accessed the benefits early.

However the Pensions Ombudsman rules that the complaint against the scheme should be upheld because it is satisfied that John would have waited until his normal pension age to take the benefits, had he been provided with the correct illustration of the pension payable.