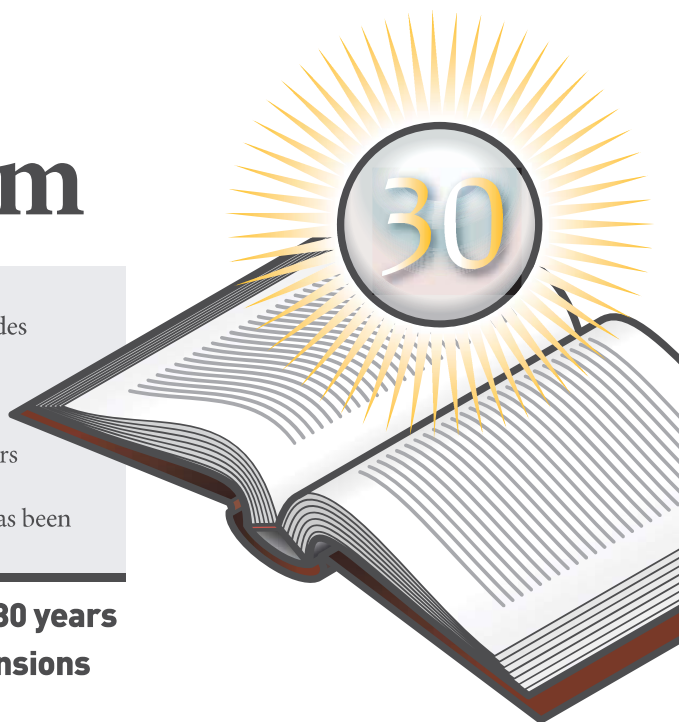


A pearl of wisdom

Summary

- The Pensions Ombudsman is celebrating its 30th birthday, three decades in which it has had a huge impact on the pensions industry.
- Soon to be outgoing ombudsman, Anthony Arter, says it's a key strategic goal to have a good relationship with the industry.
- The service is first and foremost there to help pension scheme members resolve disputes with the industry.
- Despite its 30-year history, there have been times when its existence has been under threat, but it remains strong going forward.



▶ The Pensions Ombudsman service is celebrating 30 years in operation, but what has been its impact on the pensions industry? Natalie Tuck reports

Thirty years of marriage is symbolised with a pearl, representing purity, honesty and wisdom. The 1 April marked 30 years of The Pension Ombudsman (TPO), three decades in which it has been wedded to the pensions industry.

TPO was created after the Occupational Pensions Board concluded there was a need for a body to adjudicate pensions disputes. Since its establishment, over 100,000 written enquiries have been received, more than 25,000 disputes have been resolved and almost 9,000 determinations have been issued by five ombudsmen and four deputy ombudsmen.

Industry impact

The ombudsman's impact on the pensions industry has clearly been significant and several of its rulings have shaped industry policy. It is also well-respected by industry stakeholders.

TPO's most recent independent tailored review in 2019 found that it is a "well-respected and effective organisation". In particular, the review found strong support from stakeholders across the board for TPO's "quality, clarity and impartiality of its determinations on

pension disputes".

Pensions ombudsman, Anthony Arter, believes the service's reputation in the pensions industry is "no accident" adding that one of its key strategic goals is to support and influence the pensions industry and the wider alternative dispute resolution sector to deliver effective dispute resolution.

"We work closely with key strategic partners and stakeholders across the industry to meet this goal; building relationships, sharing information and highlighting good practice to raise awareness and further increase our impact," he says.

Bevan Brittan partner and pensions specialist, Nigel Bolton, notes that the ombudsman's practice of publishing its determinations, and reasoning for, provides a "treasure trove" of knowledge for trustees and employers.

Sackers partner, James Bingham, also says TPO has given schemes confidence in the way they approach a number of issues as, "whilst the ombudsman judges each case on its merits, the public nature of the determinations provides guidance as to how TPO would view similar cases".

In an example of a decision shaping industry practice, Bolton highlights TPO's transparency over releasing

meeting notes, something that has been required since the Hedley case in 2008, which has "transformed how trustees deal with and respond to members' queries".

"The case was not well received at the time, and it means that TPO is running counter to the law courts. However, although the transparency required may have been challenging for some trustees and employers, I see the decision as overall a good thing," he says.

Not all cases are well received however. A ruling in 2019 on the Shell Contributory Pension Fund's climate risk policies was criticised by environmental lawyers at ClientEarth. Concerns were raised as TPO did not ask the SCPF to release information to the claimant about how it deals with the financial risks posed by its investments in fossil fuels and its sponsorship by an oil and gas company.

SCPF member, Christoph Harwood, had been seeking reassurance that the scheme was properly dealing with risks posed to members' pension as a result of their policies. Harwood sought answers from the scheme for two years before taking his case to TPO at the end of 2018.

ClientEarth pensions lawyer, Joanne Etherton, said at the time that

the wording of the decision suggested that TPO “may not have fully read the complaint” and that its failure to engage with the case law in the submission “raises serious concerns about TPO’s decision-making process and access to justice for members of pension schemes.”

Going forward, Arter expects a case involving Dalriada Trustees Limited, Stuart Garner and LD Administration Ltd to have a wider industry impact. Garner was found to be personally liable for breaches of trust causing significant financial losses to three schemes with 300+ members. “Our approach allows the case to be resolved for all members of a scheme, not just the complainants,” Arter says.

Members

TPO’s relationship with the wider pensions industry is key but it is pension scheme members that TPO is there to serve, offering a free and impartial service for people to resolve their pension complaints.

TPO is unique in that its determinations are legally binding and can put people back into the same position they would have been in had their need for complaint never arisen, regardless of the cost, Arter notes.

Bingham comments: “The availability of an independent forum for complaints to be considered has allowed members to challenge a wide variety of issues regarding their pension benefits. This has enabled members to engage with their pension to a greater extent and, where appropriate, seek to challenge trustees, employers and administrators on their actions.”

In addition, Burges Salmon partner in the pensions practice, Clive Pugh, says TPO has played a “vital role” in not just protecting individual pensions but also ensuring that the industry “does not lose sight of the core importance of members”.

“TPO has provided a readily accessible and clear avenue for members to raise concerns and be heard. The

ombudsman’s judgements are followed closely by the industry and have helped guide thinking as to what constitutes appropriate conduct,” Pugh says, adding that the service’s findings act as a “moral touchstone for the entire pensions industry”.

Challenges

As the current pensions ombudsman, Arter highlights that there have been many challenges to the services’ existence over the years. Examples include the 2001 Leggatt Review, which sought to introduce a more integrated tribunal system.

“At the time consideration was given to transferring the Pensions Ombudsman’s jurisdiction to the new tribunal system but this proposal was rejected in the end,” Arter says. There was also the 2007 Thornton Review that recommended functions of TPO should be combined with the Financial Ombudsman Service (FOS).

“More recently, the 2014 Triennial Review considered whether The Pensions Regulator, TPO, Pension Protection Fund and The Pensions Advisory Service (TPAS) should continue as separate entities and, to the extent they do, whether there is an alternative means of delivering their functions that would be more efficient and effective.

“The review concluded that the functions performed by the bodies under review were necessary and that the current bodies remain best placed to deliver those functions, although consideration should be given to simplification,” Arter explains. He notes that in each of these situations, with the support from the industry, TPO has overcome these challenges and in many cases the ombudsman has ended up having its powers extended.

Evolution

The ombudsman has come a long way since its creation in 1991, when it had just 14 members of staff, compared to its 113 employees today. The number of people

approaching TPO with an enquiry has increased by 44 per cent over the past five years – from 4,998 in 2015/16 to 8,977 in 2019/20.

Since Arter joined in 2015, a significant change has been to resolve complaints informally, at an earlier stage. In May 2015, 100 per cent of cases were resolved formally, by February 2016 70 per cent of cases were resolved informally. The Early Resolution Team transferring over from TPAS in 2018 has further assisted this new approach, so that in 2019/20, 95 per cent of cases were resolved informally.

Arter’s term as pensions ombudsman will end on 31 July 2021 and a new pensions ombudsman will be appointed. As for Arter’s tenure, Bolton says that each ombudsman brings their own style, but he has been encouraged by Arter’s “much less confrontational approach and emphasis on resolving disputes”.

“It will be interesting to see what changes the new ombudsman will bring later this year and how that integrates with the need for continuity for the service,” Bolton adds.

For now, however, Arter says TPO’s strategic goals remain the same. These are to provide a customer-focused service for the resolution of occupational and personal pension complaints; support and influence the pensions industry and the wider alternative dispute resolution sector to deliver effective dispute resolution; and transform and improve its services and processes.

“We expect demand for our services to continue to increase, especially as the impact of the Covid-19 pandemic evolves and we will continue to review our processes to enable us to meet increased demand and collaborate with key strategic partners and stakeholders, sharing good practice, to improve dispute resolution standards across the pensions industry,” Arter concludes.

Written by Natalie Tuck