

TPAS Response to the Review of Pensions Institutions

Is there a good case for bringing the PPF and TPR closer together?

Given the PPF role to determine which schemes are eligible for entry, administer those schemes and pay benefits in accordance with PPF rules, balance the books of the PPF and determine and collect the levy, if this function was to be subsumed into TPR, it would have to be run as a separate department. It is hard to see why this function would be carried out in a more expeditious manner because it comes under the TPR board rather than the PPF board.

While there appears to be no confusion in the public's mind over PPF's role as against that of TPR in administering the compensation scheme, there does appear to be some confusion as to why the function of protecting the PPF from future claims should rest with TPR rather than PPF. It would seem to those who contact us on the subject that the protection role should go along with the operational role and reside in one body, be that PPF or TPR.

There is also a perception expressed to us that there may, at times, be a conflict between TPR's objective "to protect the benefits of members of work-based pension schemes" and its objective "to reduce the risk of situations arising that may lead to claims for compensation from the Pension Protection Fund". This was particularly so in the case of the Kvaerner Pension Fund. Many of those who contacted us were former members who did not believe that the deal agreed to by TPR was in their best interests.

It is the need to bring the function of protecting the PPF from future claims and the operation of the fund that seems to us is the main driver towards amalgamation. However, the integration of the functions can occur within TPR or within the PPF.

Is there a good case for bringing FSA and TPR closer together?

The question clearly envisages a closer working relationship rather than a merger. We would support that view. One problem we see is the lack of consumer protection for those who join an occupational pension scheme as the result of advice from a regulated financial adviser.

The problem lies in the exclusion of this area of advice from the Financial Services and Markets Act 2000 (FSMA) and its predecessor. We understand that this was a deliberate exclusion but we have seen many instances where the net result has been to the severe financial detriment of the consumer. Most commonly, this has occurred

when an employer either winds up or closes a final salary pension scheme and offers a replacement occupational Defined Contribution (DC) scheme. Members have been persuaded to convert their deferred pension into a transfer value which is then paid into the DC scheme. In most instances this is clear misselling.

Members in this situation have no remedy other than the law. Few, if any, would feel able to follow this route. An amendment to the FSMA is clearly needed with appropriate powers of redress given to FSA and the ability to award compensation to FOS.

Another problem area is the sale of Group Personal Pension Plans and Stakeholder Schemes. The actual sale is made to the employer rather than the member. This activity is also exempt from the FSMA as the employer is not the policyholder. The member is then often invited to join a product that is expensive and has inappropriate terms and conditions, on the basis of non-regulated generic financial information and advice. In this way the whole sales process leaves the consumer devoid of the protection that applies to the sale of other financial products.

Many employers are choosing the contract route rather than trust schemes to avoid the regulatory responsibilities and costs that come with trust schemes. This should not be to the detriment of the protection of employees. This is the sort of problem that the FSA and TPR should be working together to solve.

Is there a good case for bringing the PO and the FOS closer together?

We believe that there are a number of arguments for keeping the PO's service separate from that of the FOS. The FOS experience in pension complaints has been limited to misselling in relation to personal pensions. Most of these cases, in our experience, are reasonably straightforward and require little detailed pensions' knowledge to resolve. What is required is knowledge of the FSA rules which govern the giving of investment advice.

The sort of case handled by the PO is, on average, much more complex and the investigations are much more involved. Having said all that, we acknowledge that if the PO's jurisdiction were to be taken over by the FOS, the necessary skills and knowledge base could be acquired by the FOS.

The legal status of the PO's determinations is different from those of the FOS. All the parties to a PO's determination are bound by it whereas in the case of a FOS determination the complainant is not. In our experience this is a very important aspect of the PO's legislation. Currently 60% of the cases that go to the PO via TPAS do not in our opinion have merit but still go on the basis that "I have nothing to lose" and sometimes with vindictive intent, particularly against the employer. These cases need an 'end-point' which is what the determination provides.

Another factor in favour of bringing complaints to an 'end-point' is the high cost to schemes and employers in defending them.

The PO publishes his determinations whereas the FOS does not. We believe that this insight into the PO's thinking is very valuable for the whole industry. It is a valuable contribution to preventing complaints from developing and has made the IDRPs more effective. We believe it is one of the factors behind the decrease in pension complaints and has certainly been a valuable assistance to us in successfully resolving disputes and complaints.

We do not see much benefit arising from a merger of the PO into the FOS. We have not had any problems with regard to determining the split of jurisdiction between both bodies.

There is, however, a problem for the general public who have a maladministration dispute with their pension provider or a financial adviser relating to a personal pension arrangement. If their provider or adviser is unable to resolve the matter, they advise the complainant to take their complaint to the FOS. The FOS then passes the file onto TPAS. We have pointed out to the FOS that the provider or adviser should be instructed to tell the complainant who wants to take matters further that they should then go to TPAS. Unfortunately, the FOS say they are unable to do this as their regulations only allow them to instruct those within their jurisdiction to advise complainants to take their case to the FOS.

We can see some rationale in having all pension complaints, irrespective of their nature or who they are against, come under one roof. Given that the PO's jurisdiction covers all areas of complaint other than those relating to advice on personal pensions, it would seem logical that any consolidation should come under the PO rather than the FOS. They also have the necessary experience and the expertise. If an ombudsman needs to be involved, members of the public expect that the PO is the obvious place to go to with a pensions complaint.

This change would overcome the problem of financial advisers and pension providers having to send complainants to FOS when they are not the appropriate body. We believe that the best course is that all complainants should be directed to TPAS as the first port of call. Only if TPAS cannot resolve the case does an ombudsman need to become involved.

Are any changes to PPF Ombudsman functions or boundaries needed?

We do not believe that complaints to either PPF or FAS (the situation here is even more complicated with the potential involvement of the Parliamentary Ombudsman) should require a separate ombudsman and see no reason why they should not fall within the same complaint process as applies to all other aspects of occupational pensions. This would mean going through an IDRPs with FAS and PPF and then having access to the PO within the PO's normal time limits. At any stage of this process complainants would have the ability to seek help from TPAS.

The current arrangements could be confusing. Take the example of an individual who initiates a complaint about his benefit entitlement with the trustees of a scheme which is in the assessment period for entry into the PPF. With the help of TPAS he has completed stage 1 of the IDRPs but before getting to stage 2 the scheme is accepted

into the PPF. Now his dispute is with the PPF and presumably that means starting all over again under the PPF regulations and time limits.

Having one Pensions ombudsman could help.

Are any changes to TPAS functions or boundaries needed?

If the ultimate decision is for the FOS to absorb the PO, there will have to be considerable legislative changes. We would ask that legislation should require all complainants to submit their complaints to TPAS before being able to access the FOS. We would want this prescribed in legislation rather than left to some sort of voluntary agreement.

Otherwise the effect on our service would be extremely serious. We currently receive 1300 cases a year from the FOS and about 500 cases a year from the PO which would no longer be remitted to us. The loss of so many substantial cases is likely to lead to a significant reduction in the number of volunteers.

While the FOS claims to perform a mediation service, we do not believe that an investigator advising the parties to a complaint how he believes the ombudsman would rule and inviting them to settle on that basis, is mediation as we know it.

Arguments in favour of TPAS continuing the role it has played in pensions disputes for the past 24 years are;

- our service is carried out mainly by unpaid volunteers which means that we operate on a cost basis with which no other operation could compete
- these volunteers are experienced pensions professionals drawn from every discipline within the industry
- the volunteers provide a level of expertise which no paid service could replicate
- although mainly conducted by a mixture of correspondence and telephone, we believe our service is more akin to mediation as people would expect it to operate
- we also operate a formal mediation service which has proved to be very successful and is free
- we generate an enormous amount of goodwill with both complainants and respondents
- we have a resolution rate of almost 90%
- TPAS is able to provide independent advice to all the parties involved in a dispute.

Most of the above arguments equally apply to TPAS's role in providing information and generic financial advice. We believe that if TPR wishes to improve its understanding of member concerns it could achieve this without taking over the functions of TPAS.

To get involved in our complaint work would create for it too many conflicts of interest and compromise its relationship with its natural constituency, trustees, employers, pensions practitioners and providers. We also believe that trying to perform our role of providing information and advice to the general public could lead to similar conflicts. One of the key elements that the public seek is independence and we think that many members of the public would consider that TPAS could fulfil that requirement better than TPR.

Are any changes to FSCS functions or boundaries needed?

One change we would like to see is a lifting of the £48000 compensation limit on personal pension plans. This should be brought into line with the limit that applies to occupational schemes.

Impact of pension reforms

There will be considerable work involved in ensuring that employers are complying with the automatic enrolment in personal accounts. It's likely that this role will fall to TPR although it could be given to the Authority responsible for the operation of personal accounts.

It's also envisaged that there may be a whistle-blowing helpline for members of the public. This could also rest with TPR or the managing Authority. On the other hand, it is a function that could be better left with TPAS who may be able to get the employer to comply and make good any losses.

We also believe TPAS, with the experience and expertise it has, is the best choice for providing the information and generic advice service that will be required by those eligible for personal accounts.