

Pensions Ombudsman  
Pension Protection Fund Ombudsman

# Annual Report and Accounts **2017/18**



**Pensions Ombudsman  
Pension Protection Fund Ombudsman**

## **Annual Report and Accounts 2017/18**

The Pensions Ombudsman's Accounts presented to Parliament pursuant to section 145(9) of the Pension Schemes Act 1993 and the Pensions Ombudsman's report presented to Parliament by Command of Her Majesty.

The Pension Protection Fund Ombudsman's Accounts presented to Parliament pursuant to section 212A of the Pensions Act 2004, and the Pension Protection Fund Ombudsman's report presented to Parliament by Command of Her Majesty.

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We are an independent organisation set up by law to investigate complaints about pension administration. We can also consider complaints about the actions and decisions of the Pension Protection Fund and about some decisions made by the Financial Assistance Scheme.

We look at the facts without taking sides. And we have legal powers to make decisions that are final, binding and enforceable in court. Our service is free.

The Pensions Ombudsman combines, in one organisation, the functions of two statutory bodies, the Pensions Ombudsman and the Pension Protection Fund Ombudsman.

## ■ Pensions Ombudsman

The Pensions Ombudsman investigates and determines complaints and disputes concerning occupational and personal pension schemes. The establishing legislation is Part X of the Pension Schemes Act 1993 and Part X of the Pension Schemes (Northern Ireland) Act 1993.

## ■ Pension Protection Fund Ombudsman

The Pension Protection Fund Ombudsman deals with complaints and “reviewable matters” connected with the Pension Protection Fund (a statutory corporation) and appeals against decisions of the manager of the Financial Assistance Scheme. The establishing legislation is sections 209 to 218 of the Pensions Act 2004.

## ■ Funding

The organisation is funded by grant-in-aid paid by the Department for Work and Pensions (DWP). The grant-in-aid is substantially recovered from the general levy on pension schemes that is invoiced and collected by The Pensions Regulator. The levy is set by and owed to the Secretary of State for Work and Pensions.

In 2017/18 the organisation received £5,131,000 grant-in-aid, incurred net expenditure of £4,535,880 and had net assets at 31 March 2018 of £562,005. Full details are in the accounts.

We are a non-departmental public body sponsored by the Department for Work and Pensions. Our principal place of business is 10 South Colonnade, Canary Wharf, London E14 4PU.

## ■ Our vision

A trusted, fair, impartial service that makes it easy for everyone to resolve pension complaints.

## ■ Our aims

**Get the right outcome every time and in good time** – by being proportionate, efficient and consistent with the law.

**Make it easier to resolve complaints about pensions** – by ensuring more people know where to go for help and by working closely with our stakeholders and partners.

**Provide a trusted, accessible service** – by listening, delivering on promises and being honest about what we can and cannot do.

**Deliver value for money** – by making a difference to how pension schemes are run and by continually reviewing and improving the way we work.

**Ensure everyone who works here is supported to succeed** – by being a good employer and helping people develop their potential.

## ■ Our values

**We are:** **Fair** – we look at the facts, without taking sides and we are always impartial. We take our responsibilities seriously.

**Collaborative** – we share what we know so everyone can do a better job. We seek out opportunities to work with others and then take action to make it happen.

**Open** – we are approachable and make it easy for people to get the help they need. We are honest and transparent about how and why we make our decisions.

**We:** **Show respect** – we are considerate and take people's needs into account. We believe in treating people with dignity and we welcome different points of view.

**Build trust** – we take pride in our work and do our best to get it right. We always do what we say we will.

**And we:** **Keep learning** – we are open to change and want to find better ways of doing things. We stay positive, take charge of our own development and support people trying something new.

## Ombudsman's introduction

The Pensions Ombudsman (TPO) has had a momentous year with further changes to our working practices, processes, technologies, workplace and culture. This is transforming TPO into a more modern, accessible service where pension disputes can be dealt with quickly, efficiently and impartially.

As reported in last year's Annual Report, a dedicated team started working on a backlog of cases in January 2017. Further cases were added in March 2017 which meant that we had, overall, identified a backlog of 730 cases which we committed to clearing by March 2018. I am delighted to say that by 31 March 2018 we had completed 710 of those 730 cases; the remainder could not be completed for reasons outside our control. This was a major achievement, especially in light of the increasing number of new investigations accepted during the past year.

The forefront of my vision has always been to shorten and simplify the customer journey while maintaining quality and reaching the right outcome. This means not only providing the best possible service we can, but also pulling together the fragmented pension disputes landscape. All this set against the background of increasing demand means we have needed to work as efficiently as possible in order to meet the growing demand for our service.

In March 2018, we finally completed the project to integrate into TPO the dispute resolution work previously carried out by The Pensions Advisory Service (TPAS). This is a historic change as this service has been delivered by TPAS since its inception in the 1980s. With the merger of the dispute resolution function we also inherited 240 volunteers. We are the first ombudsman service to have volunteers engaged in delivering their service. The 2014 Triennial Review recommended that simplifying the customer journey was a necessity, we have now successfully delivered an important part of that simplification.

This is a major step forward for customers and also the pensions industry; it ensures that pension disputes are handled in one place, instantly transforming the customer journey and the way in which pension disputes are resolved.

We have also continued to refine our processes and approach in order to improve our performance in terms of quality of output and the time taken to bring disputes to a conclusion. We are beginning to see positive results from the changes we have implemented. Although we experienced a 26% increase in the number of cases accepted for investigation we have maintained our average, reached the previous year, of resolving around 70% of cases informally; and average timescales have been halved to five months. This is good news for complainants and respondents, as it reduces the considerable

stress and inconvenience suffered by a complainant through the delay in settling their dispute; and for the respondent, in respect of the amount of resource they have to expend on the matter, and perhaps, their reputation.

In March 2018 we rolled out phase one of our Digitalisation Programme. This included a new cloud platform, new laptops for all staff, Windows 10, Office 365, innovative softphone technology and collaboration tools, to enable our new agile ways of working.

Phase two will be delivered later in 2018 and will include an integrated case management and knowledge management system, which should shorten the time caseworkers spend on administration tasks, but will also enable our customers to monitor the progress of their disputes online.

In anticipation of our move to the Government Hub in April this year, we developed and implemented a new smarter working policy. This delivered a major culture change which now enables staff to operate flexibly, whether they are working from the office, home, or another location. Although early days, our latest staff survey shows that 95% of staff feel positive about the introduction of smarter working.

The last year has seen a continuation of the total transformation of our service and I am certain that the diversity of our dynamic workforce has contributed to our success in changing the culture of our organisation. I want to thank all the staff, old and new, for their dedication, enthusiasm and support in coping with our 'new world'. Our success is dependent on us working cohesively together as one and I am very fortunate in having such a fantastic team.



**Anthony Arter**

Pensions Ombudsman  
Pension Protection Fund Ombudsman

# The year in summary

## Key facts and figures

Pensions Ombudsman	
<p>We received <b>6,319</b> contacts (new or repeat) from people who thought we might be able to help them</p>	<p>We completed <b>1,591</b> investigations</p>
<p>The most <b>common reasons</b> for not taking complaints on for investigation:</p> <ul style="list-style-type: none"> <li>• the complaint was referred to us outside our time limits</li> <li>• the party complained about was not within our jurisdiction</li> </ul>	<p>We took on <b>1,676</b> new investigations</p>
<p><b>70%</b> of all completed investigations were investigations completed by informal routes. For example, by resolution</p>	<p>The most <b>common topics</b> of completed investigations:</p> <ul style="list-style-type: none"> <li>• transfers – general issues around calculation of transfer values or delays in payment</li> <li>• incorrect calculation of benefits</li> <li>• failure to provide information or act on instructions</li> </ul>
<p>Around <b>29%</b> of complaints determined by an Ombudsman were upheld, at least in part</p>	

## Key performance indicators

### What we said we would do

Complete new investigations within, on average, **seven months** from the date on which we had a valid application

(See page 16)

Complete **1,800** investigations which would mean eliminating a backlog of 600 investigations and dealing with 1,200 new investigations

(See page 14)

End the year with **700** investigations in hand

(See page 15)

### What we did

The average time to complete new investigations was **five months**

We completed **1,591** investigations

There were **1,105** investigations in hand

### Pension Protection Fund Ombudsman

Pension Protection Fund Ombudsman referrals form a very small part of our work. We received **14** referrals in the year and accepted **3** for investigation

## Finances

In 2017/18 the organisation received £5,131,000 grant-in-aid and incurred net expenditure of £4,535,880. This increase in expenditure from £4,139,502 in 2016/17 links to the increased workload and associated increase in headcount.

The Statement of financial position shows net assets of £562,005. The financial statements are prepared on a going-concern basis.

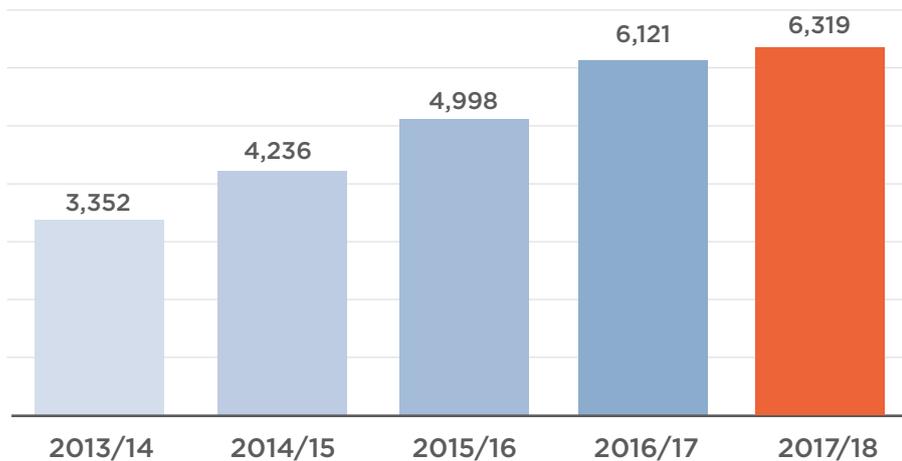
The following sections cover the work we did in 2017/18, including our work as the Pension Protection Fund Ombudsman. Please refer to the financial statements at the end of this report for further information about our finances.

## Casework review

### Our workload – enquiries

By ‘enquiries’ we mean requests for our help that we received in writing or electronically.

#### Enquiries received and reopened – five years



We received or reopened 6,319 enquiries in 2017/18. This is 5% more than in the previous year. Over the last five years, we have seen a steady growth in enquiries.

We had a small number of enquiries in hand going into 2017/18. We closed 4,651 written enquiries. A significant proportion of these were closed at a very early stage by, for example, being referred elsewhere or because they did not represent a complete application. The remainder went on for a decision to be made as to whether or not they could be taken on for investigation.

We accepted 1,676 enquiries as complaints for investigation. Those not investigated were rejected for a number of reasons but the main one was, as usual, not meeting our time limit requirements. The three main reasons for an enquiry not being taken on for investigation are illustrated below:

#### Main reasons that enquiries did not become investigations



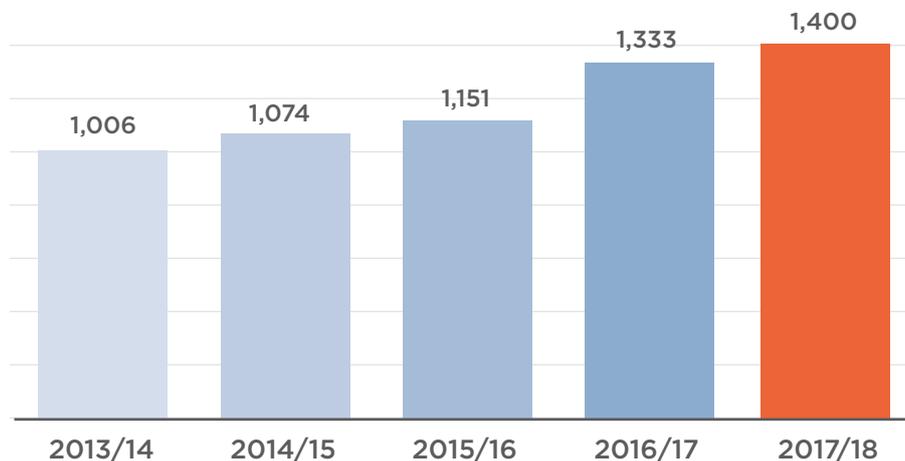
## Our workload – investigations

### New investigations

We accepted 1,676 complaints for investigation in the year; an increase of 26% when compared with 2016/17.

We took on a number of complaints in 2017/18 that could be grouped together because their subject matter was similar and they were about the same pension scheme. This is not unusual. Discounting these groups of complaints changes the position, in that the investigations taken on in 2017/18 would represent a 10% increase from the previous year. But the trend is still upwards as the chart overleaf illustrates.

### Underlying trend – new investigations with groups removed – five years



### Completed investigations

We completed 1,591 investigations in total, which was less than planned. But it still represents an increase of 13% when compared with 2016/17, with a very similar adjudicator resource for most of the year. This increase can be attributed to changes in casework procedures and approach which were implemented in May 2016. Some reasons for not reaching our objective are:

- **Resourcing.** At the beginning of 2017/18 we had resources to deal with the planned number of investigations. However, we operated through the year with resources at around 9% less, on average, than planned at the start of the year.
- **Change.** 2017/18 was a year of considerable change for us. Dispute resolution work transferred to us from TPAS, we introduced new Information Technology (IT) and telephony, and we moved office.
- **IT issues.** Before the IT refresh, issues escalated during 2017/18. We started to experience a significant number of outages. Although generally short in duration, the cumulative effect of these outages impacted on all of our work.

### Backlog cases

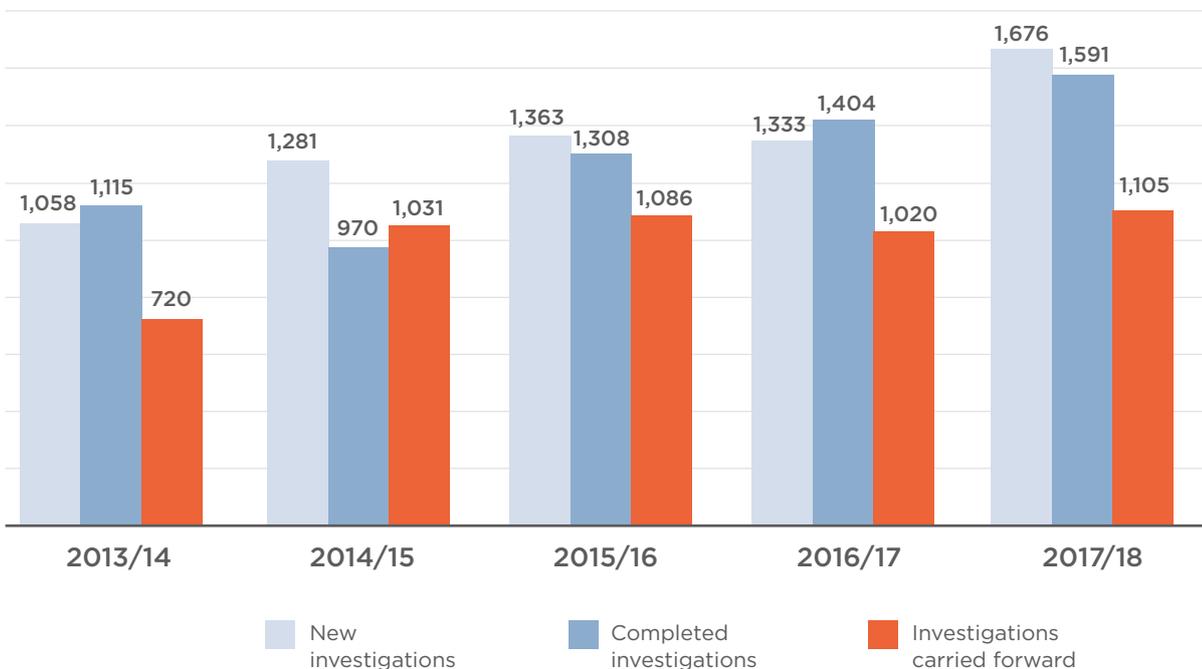
In late 2016, we decided to take steps to clear our oldest investigations. We had identified a backlog of 730 cases which was finally ringfenced in April 2017. Our objective was to complete these investigations by 31 March 2018.

By the end of 2017/18, 710 of the cases were completed. The remainder could not be completed for reasons outside our control (for example, we are waiting for the outcomes of court cases).

### Investigations in hand

At the end of 2017/18 we had 1,105 investigations in hand. This is more than planned and is a direct result of new investigation numbers being higher than we had predicted at the start of the year by around 20%, and completed investigations being 11% lower than expected – for the reasons already explained.

### New, completed and carried forward investigations – five years



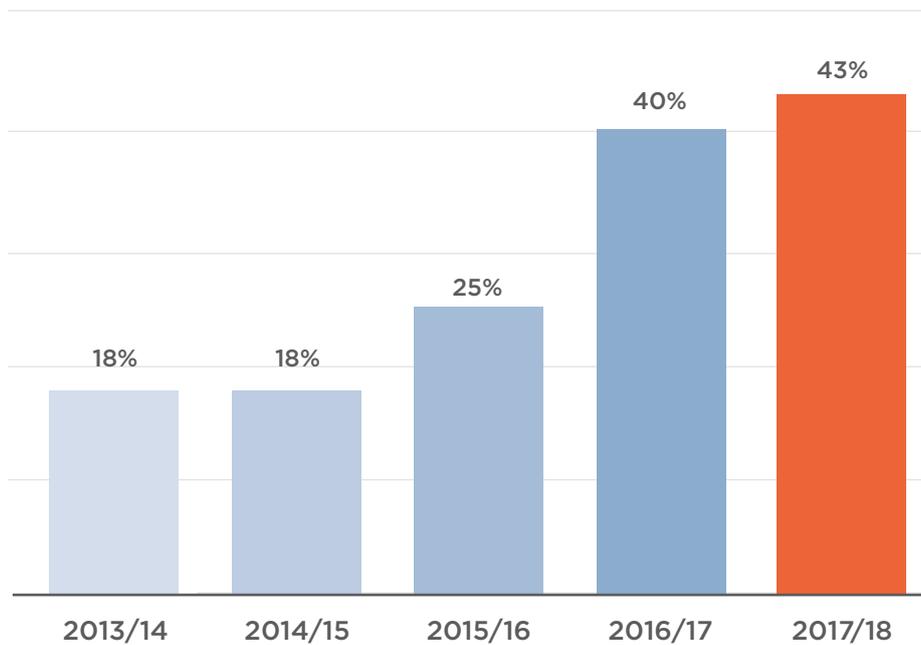
### Investigation timescales

We measure time from the date on which we have enough information to make a jurisdiction decision. For 2017/18, we set ourselves an objective to complete investigations received in the year within seven months of that date, on average.

The average time for new investigations to be completed was five months.

We were working through the backlog cases so the average time to complete investigations across the whole population of cases was higher than for new investigations alone. Nonetheless, we saw a slight reduction in timescales for all cases and we again saw an increase in the proportion of investigations completed in six months or less, as illustrated in this chart (showing experience over five years).

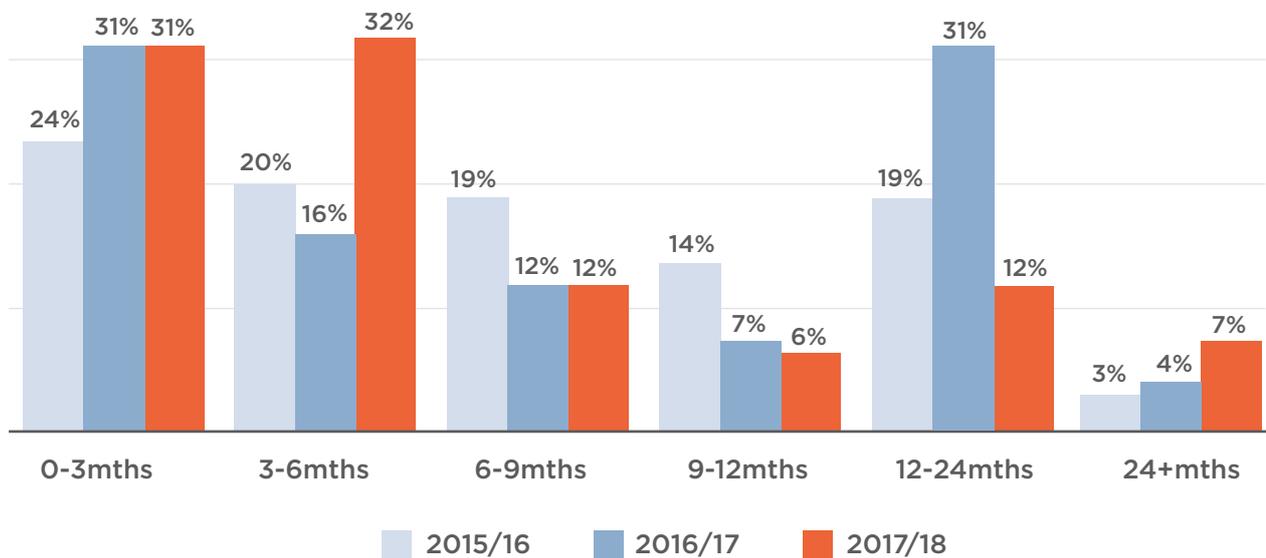
#### Investigations completed in six months or less – five years



The work we have done in clearing the oldest cases has significantly improved the age profile of our open investigations. The proportion of cases in the 9 to 24 month bracket is much lower than before, which means that people are not waiting as long for their complaints to be investigated.

We always have a number of investigations in hand that cannot be moved on for reasons outside of our control; for example, pending or ongoing court proceedings which could affect our investigation. These cases are contributing to the increase in the proportion of investigations in the oldest age bracket.

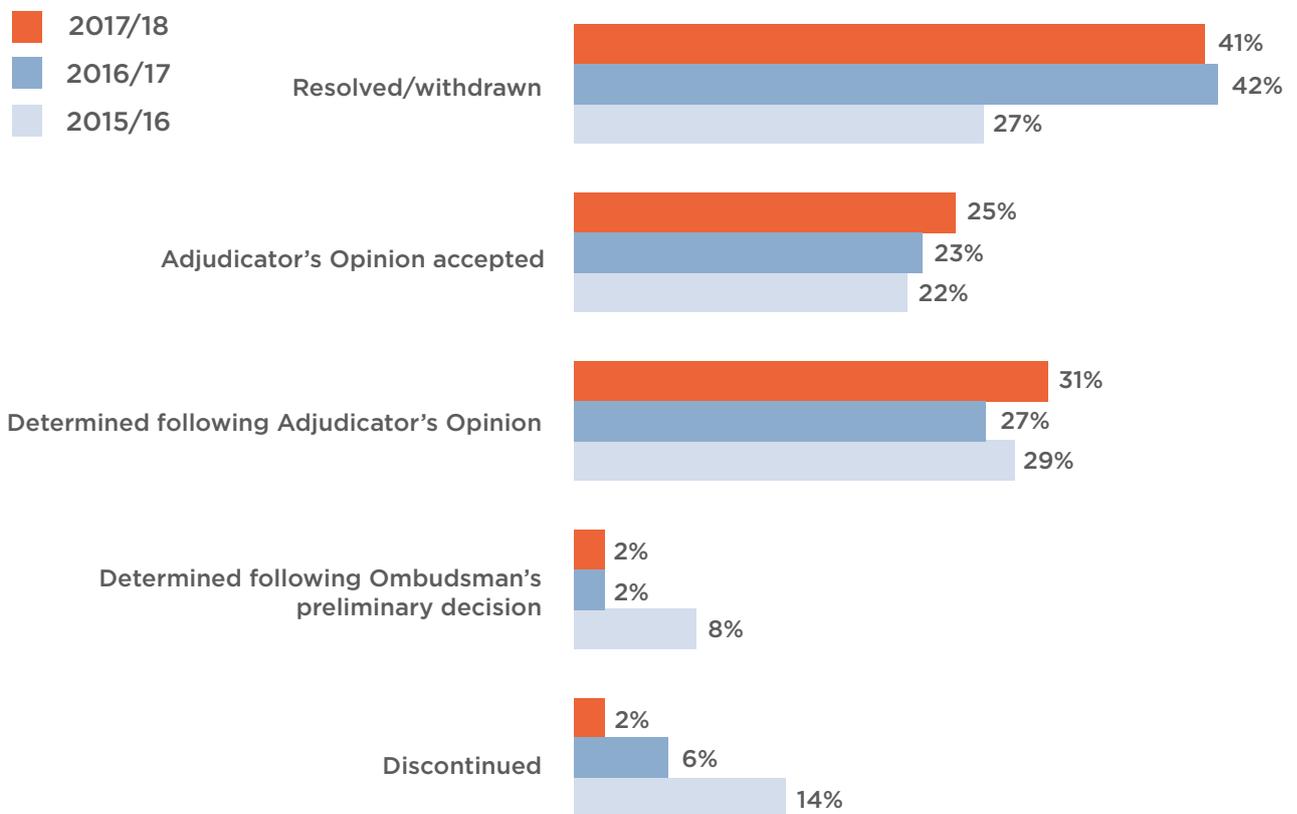
### Age profile of open investigations at year end – three years



## Decision-making process

There are several ways in which an investigation can be concluded. In recent years we have worked hard to ensure we apply the most efficient and proportionate decision-making process to every investigation. We have been seeing the results of this, as almost 70% of all investigations are concluded without an Ombudsman’s intervention. This means that, for the majority of investigations, timescales and effort for the people involved in the complaint are kept to a minimum.

### Decision process – three years



## **Resolved or withdrawn complaints**

In these cases, an adjudicator will give an explanation of the position to the applicant, and possibly others involved in the complaint, with a view to resolving the matter informally. The proportion of complaints completed in this way in 2017/18 was similar to the previous year. This is the second year running in which a significant proportion of complaints were concluded in a way which was quick and efficient for everyone concerned.

## **Adjudicator's Opinion accepted**

In these cases, an adjudicator will give everyone involved in the complaint their written view (or 'Opinion') of the outcome. Where investigations can be concluded by agreement; timescales and effort for the people involved in the complaint are kept to a minimum. The proportion of complaints that have ended through acceptance by the parties of the Opinion has remained steady in recent years.

## **Complaint is determined following Adjudicator's Opinion**

This happens when some or all of the people involved in the complaint do not accept the Adjudicator's Opinion. The complaint is referred to an Ombudsman and if they agree with the Opinion, a final Determination is issued. The proportion of complaints ended with a final Determination following an Opinion has remained fairly steady over the last three years.

## **Complaint is determined following an Ombudsman's preliminary decision**

In some cases, an Ombudsman might issue a preliminary decision and then go on to make a final Determination, for example, where the complaint is highly complex with many issues to be addressed.

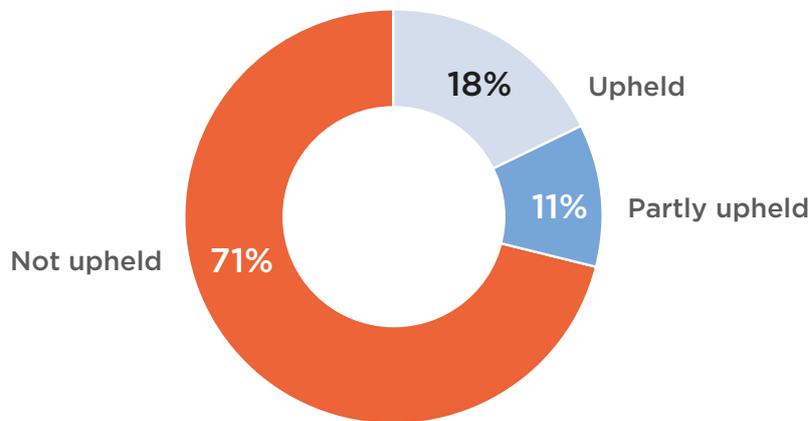
For the second year running just 2% of all investigations were dealt with using this formal process. We see this as a success because, although highly beneficial in the right cases, this process is also the most lengthy and labour intensive for everyone involved in the complaint.

### Complaint is discontinued

In these cases, an Ombudsman decides that the investigation should not continue. Usually, the number of complaints that are discontinued is fairly low and 2017/18 was no exception with 2% of completed investigations ending in this way.

### Outcome of complaints determined by an Ombudsman

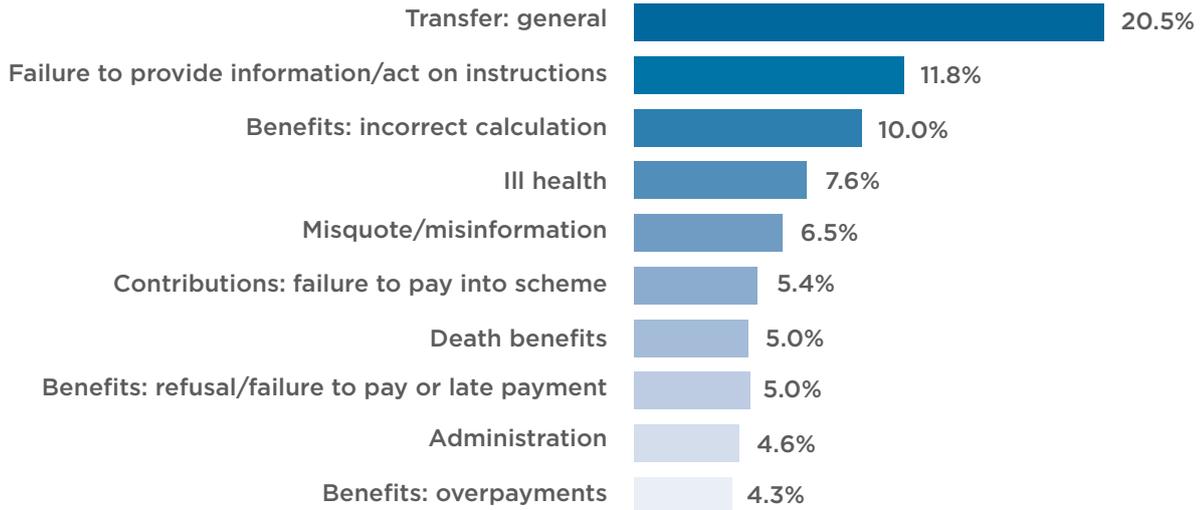
Only complaints determined by an Ombudsman can be said to have been upheld, or not. This is the position for 2017/18, and it is very similar to previous years.



## What complaints were about

### New investigations

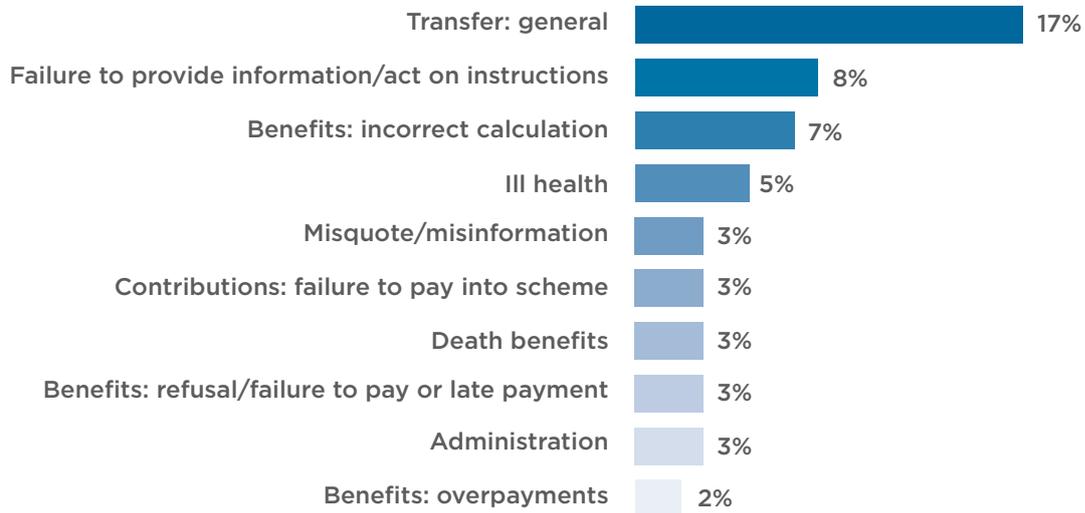
Subject matter of new investigations (top 10)



The subject matter of new investigations was very similar to previous years, with one exception. During the year we took on a large group of similar complaints about the calculation of transfer values.

## Closed investigations

### Subject matter of closed investigations (top 10)



The subject matter of closed investigations was broadly similar to previous years, again with the exception of those about transfer values.

## Some summaries of completed cases

These simplified accounts of our cases give a flavour of what we do. We publish Ombudsman’s Determinations in full on our website along with some Adjudicator’s Opinions which are considered to be of particular interest.

### Interpretation of scheme rules

Mr A was a retained firefighter and he is now a deferred member of the New Firefighters’ Pension Scheme (England). He complained that the Warwickshire Fire and Rescue Authority (**the Authority**) was not treating his disturbance, work activity and training attendance payments as pensionable.

The relevant regulations are set out in the Firefighters’ Pension Scheme (England) Order 2006. In short, Part 11 Rule 1 states that pay for work performed in relation to the duties of a firefighter’s role, which is not temporary, should be considered pensionable. Neither party disputed whether the disturbance, work activity and training attendance payments were emoluments for work performed in the duty of Mr A’s role. Instead, the dispute was whether the elements of pay were temporary and therefore not pensionable on that basis.

Both parties cited case law to support their position, with particular references to Kent & Medway Towns Fire Authority v Farrand<sup>1</sup> and Norman v Cheshire Fire & Rescue Service<sup>2</sup>.

Mr A relied on case law to argue that the pay elements in question need only to be paid regularly in order to be pensionable. He then highlighted that his contract required him to regularly carry out duties attracting the relevant pay elements.

The Authority relied on case law to argue that pay must have an element of permanency in order to be pensionable. The Authority added that Mr A’s disturbance, work activity and training attendance pay varied in terms of how much was paid and when. As such, the pay was unpredictable and in this way, it was temporary and not permanent.

The Ombudsman agreed that the pay elements in dispute must be regular to be considered pensionable. However, he did not agree with the Authority that regular must mean predictable in every way rather than simply expected.

The Ombudsman agreed that Mr A’s disturbance, work activity and training attendance payments were not temporary, and as such the Authority was instructed to treat them as pensionable.

1 [2001] OPLR 357

2 [2011] EWHC 3305 (QB)

### Failure to pay compensation

Ms N was a member of the Tesla Motors Limited Pension Scheme (**the Scheme**). In early 2016, Ms N raised a complaint because her employer had failed to pay employee and employer contributions into the Scheme. The complaint was investigated by this office and was treated as resolved when the respondent agreed to pay the unpaid employer and employee contributions into the Scheme in July 2016. Ms N accepted this proposed resolution.

In July 2017, after checking her pension statement, Ms N found that the unpaid contributions had not been paid into the Scheme as promised. Ms N raised a further complaint with the respondent. The unpaid contributions were finally paid in September 2017.

Ms N made a further complaint to this office about the delay in the payment of the contributions. The respondent argued that by transferring the unpaid contributions to the Scheme, and compensating Ms N for lost investment growth, it had provided her with sufficient redress for its maladministration.

The Deputy Ombudsman disagreed and said that the failure to transfer the unpaid contributions to the Scheme, as promised in July 2016, caused Ms N to suffer significant distress and inconvenience. The respondent was ordered to pay Ms N £500 for the significant distress and inconvenience caused.

### Ill health

Ms S is a member of the Local Government Pension Scheme (**the Scheme**). She was made redundant by her employer, the London Borough of Hammersmith & Fulham, (**the Council**) in October 2010. In March 2012 Ms S' psychiatrist wrote to the Council. He said he had been reviewing her situation regularly, but her depressive disorder meant she was unable to work and her mental health needed to be considered when settling her pension.

In September 2012, Ms S requested the early release of her deferred pension on grounds of ill health. She was then aged 55. Ms S was asked to submit doctors' reports and was informed that once the information was received the Council would, at its discretion, decide whether she was entitled to claim her pension early. Ms S submitted the relevant reports in February 2013.

The reports were considered by an independent registered medical practitioner and, in September 2013, Ms S was informed that her application had been turned down. No reason was given for the Council's decision. In December 2013, a further request was made for the early release of Ms S' pension. Ms S' medical practitioners said Ms S remained significantly disabled by the symptoms of her illness. No response was received.

Ms S got help from The Pensions Advisory Service (TPAS) and Ms S' internal dispute resolution procedure (IDRP) stage one appeal was submitted in December 2014. The appeal was upheld in January 2015 and the Council was asked to review its decision on Ms S' application. In July 2016, the Council confirmed that it had forwarded Ms S' request for the early release of her deferred pension to its occupational health advisers. Ms S was seen by another independent registered medical practitioner in August 2016. Ms S did not hear anything further from the Council until March 2017 despite having chased them in December 2016.

The Council said that as Ms S was now 60 (in December 2016), it had asked its administrators to write to her with her pension options. The Council said if, after receiving the certificate from its occupational health advisers, it decided that Ms S' pension should be brought into payment before age 60, her pension options at age 60 could be amended. During the investigation, the Council informed this office that it had now received a copy of the independent registered medical practitioner certification and it had agreed the early release of Ms S' pension backdated to August 2016.

Ms S' complaint was considered by an adjudicator. The conclusion was that the Council should consider whether Ms S satisfied the criteria for the early release of her deferred pension on grounds of ill health before 16 August 2016 and to pay Ms S £1,500 for the distress and inconvenience caused.

Ms S did not agree with the Adjudicator's Opinion as she did not think £1,500 was sufficient compensation for the distress and inconvenience she had been caused.

The Ombudsman agreed with Ms S. He said the delays and repeated failure to respond in a timely manner were inexcusable, as was the unprofessional way in which Ms S' application had been handled over many years. The Ombudsman recognised this must have been extremely distressing to Ms S, especially given her medical condition, causing her further unnecessary suffering. He directed that Ms S should be awarded £2,500 for the very significant distress and inconvenience that she had suffered.

## Death benefits

Mrs T's late husband took out a personal pension plan (**the Plan**) with Zurich in October 2002 and nominated Mrs T to receive the benefits payable upon his death. Mr T's health began to suffer in December 2012. In November 2013, Mrs Y, a relative of Mr T, wrote to Zurich on his behalf to notify it that Mr T had decided to change his nominated beneficiary to her. She also instructed Zurich to correspond only with her going forward. Mr T died in September 2015.

Zurich requested a copy of Mr T's final Will from Mrs Y, in order to establish if its contents substantiated the change of nomination he had made in November 2013. Mrs Y provided Zurich with a certified copy of Mr T's final Will, which was dated 7 July 2010. Whilst the Will made no reference to who should stand to receive death benefits derived from the Plan, Zurich noted that the Will said "I declare that I have made no provision for my wife, having regard to the substantial provisions I have already made for her in my lifetime and to the fact that she has substantial resources of her own." Zurich did not make any enquiries of Mrs T and paid the Plan death benefits to Mrs Y.

After the death benefits had been distributed, Mrs T wrote to Zurich and said that she should have received the death benefits derived from the Plan. She enclosed a copy of a Court of Protection Order (**the Order**) dated 25 January 2013, which appointed an interim deputy for Mr T. Mrs T claimed that the Order demonstrated that Mr T did not have mental capacity to nominate another beneficiary in her place in November 2013 and so the change of nomination to Mrs Y should be disregarded. She said she had been alienated from Mr T by his family prior to his death. Zurich said that, in deciding who should receive the death benefits, it had taken account of the nomination form submitted in November 2013 and the late Mr T's Will. Zurich acknowledged that Mrs T considered any documents submitted after the Order was implemented should be disregarded, but said that it was unaware of the Order when it paid out the death benefits.

The Deputy Ombudsman noted that the Trust Deed and Rules governing the Plan provide that the Plan death benefits were payable to any of the eligible beneficiaries at Zurich's absolute discretion. As a spouse, Mrs T was within the class of potentially eligible beneficiaries, regardless of whether or not she was the subject of a valid nomination.

It was noted that Zurich did not make any enquiries of Mrs T, even though she was a spouse and the nominated beneficiary before the change of nomination in November 2013. The Deputy Ombudsman concluded that, taking into account Mrs Y had written to Zurich to instruct it to change the nomination to herself, evidence should have been sought from Mrs T before paying the Plan death benefits in full to Mrs Y.

The Deputy Ombudsman directed that Zurich should reconsider Mrs T's application to receive the Plan death benefits.

## Qualifying Recognised overseas pension scheme transfer

Mrs Y is a member of the Principal Civil Service Pension Scheme (**the Scheme**). In late 2014 she decided to transfer her benefits to an overseas scheme in Australia. There had been two recent changes made to legislation that affected Mrs Y's right to transfer. From 6 April 2015, members of unfunded occupational schemes were only allowed to transfer to other defined benefit arrangements. In addition, a pension age test was also introduced requiring overseas schemes to confirm that benefits would not be paid to members before age 55 (except in the case of ill health). As a result of the introduction of the pension age test, many Australian schemes disappeared from the new recognised overseas pension scheme (ROPS) list, as Australian legislation allows members to access benefits, outside of ill health, before age 55.

MyCSP (administrator for the Scheme) was responsible for a number of delays in the lead up to the legislative changes which meant that Mrs Y was unable to return the transfer paperwork until 30 March 2015. However, by the time MyCSP began processing the transfer, Mrs Y's chosen receiving scheme was no longer listed on the new ROPS list. Following the IDR, Mrs Y's complaint was upheld, but the transfer could not proceed as the receiving scheme was a non-ROPS scheme (meaning any transfer would be considered by HM Revenue & Customs as an unauthorised payment).

The Deputy Ombudsman upheld the complaint. She agreed that the delays by MyCSP meant that Mrs Y had lost the opportunity to transfer. It was not possible for her to put aside the relevant legislation and direct the transfer to proceed, as this would still result in the transfer being an unauthorised payment (the scheme regulations do not allow for an unauthorised payment to be made authorised). Taking into account Mrs Y's expectation of having access to a higher lump sum following the transfer, her time until her retirement age and having to work longer to achieve her retirement plans, the Deputy Ombudsman directed MyCSP to pay Mrs Y £2,000 in recognition of the significant distress and inconvenience caused.

## Transfer from an occupational scheme to a personal pension arrangement

Mr S was a member of his employer's occupational pension scheme, the Aspen UK Pension Plan (**the Scheme**). When his employment ended he had accrued less than two years' service, and in accordance with the Scheme rules, he was required to either transfer out his accrued benefits or have the funds returned to the employer. Mr S decided to transfer his benefits out of the Scheme. He informed the scheme administrator, Fidelity, that he would do so and completed the relevant paperwork within the three-month time scale.

On completing the transfer paperwork, Mr S was informed that he had a further three months to complete the transfer (this was on 26 October 2015). The receiving scheme administrator, Virgin Money Unit Trust Managers Ltd (**Virgin**), wrote to Fidelity enclosing the transfer discharge form on 3 December 2015 and asked for the money to be sent. Fidelity claimed it never received the letter of 3 December 2015 and as a result, the three-month deadline passed and the funds were returned to the employer.

The case was considered by the Ombudsman who decided that it was more likely than not that the letter of 3 December 2015 was sent and received. It was commented that, as the letter was addressed correctly, it was therefore unlikely that the letter had not been sent and that it had not reached its intended recipient. It was more likely that Fidelity had failed to act on the instructions due to human error. Having considered how long it might have taken to receive the letter and process the request, the Ombudsman directed that Fidelity should pay the transfer value of his benefits to Virgin at the value on 8 December 2015 and make good any loss of investment return in the receiving scheme.

## Exercising discretion

Miss H is a member of the Local Government Pension Scheme (**the Scheme**). In August 2014, she was made redundant, but before this, she had asked her employer, Nottingham College, if pension contributions would continue to be paid until her 65th birthday (the Scheme's normal retirement age). Nottingham College confirmed before, and after, Miss H had left service that this would happen.

However, on receiving details of her retirement benefits from the administering authority, Miss H was told that the employer would not award any additional benefits beyond her redundancy date. Miss H raised a complaint with Nottingham College and asked for it to be considered under the Scheme's IDR. Nottingham College responded, but failed to do so under the IDR. The complaint was finally considered under the second stage of the IDR by the administering authority following representation from Miss H's union representative. The complaint was upheld and remitted back to Nottingham College on the basis that the Scheme regulations allowed for a discretionary payment of up to £6,500 to augment members' benefits following redundancy.

It also noted that Nottingham College had “unlawfully fettered its discretion by applying a blanket policy not to award additional pension in reaching its original decision.”

Nottingham College considered the matter again and decided not to make any further awards to Miss H. Its main reasoning related to costs, but it did not provide any evidence of what these costs were. Miss H disagreed with the new decision and asked for the matter to be considered again under the Scheme’s IDR. After some time, Nottingham College decided not to consider the complaint under the IDR and the complaint was passed to the administering authority. The administering authority upheld the complaint again and remitted the decision back to the employer. This time, it highlighted that the employer could not state that costs were the reason for rejecting Miss H’s claim, as it had failed to evidence what the level of additional costs would be and why the additional costs would not be acceptable. On reconsidering the matter, Nottingham College again rejected Miss H’s claim, but failed to give an adequate reason for its decision.

Miss H made a complaint to this office and the Adjudicator’s Opinion was that it should be upheld. The view was that Nottingham College had failed to exercise its discretion correctly in line with the Scheme regulations; it had failed to take into account relevant information; and it had failed to show, repeatedly, how it reached its decisions. The Adjudicator also raised concerns with the way in which Nottingham College had ignored the IDR process and failed to take into account Miss H’s health when dealing with her. The Adjudicator said the decision should be remitted back to Nottingham College, with specific instructions on what to do, and to pay Miss H £1,000 to recognise her significant distress and inconvenience. Nottingham College accepted the Opinion and thanked the Adjudicator for the guidance provided.

## **Transfer value**

Mr G’s complaint was about missing pension benefits following a transfer value in 1995. Zurich said they paid a transfer value to Aegon in 1995. Aegon said they had no record of receiving or investing the transfer value and therefore they were not holding any benefits relating to Mr G.

Following investigation, the Adjudicator concluded that there was evidence that a transfer had taken place from Zurich to Aegon 22 years previously, but there was no record of a policy having been set up by Aegon and the transfer value being invested. The transfer value in 1995 amounted to £79,000.

The Adjudicator explained the position to Aegon and asked it to consider a resolution, because on balance, the evidence suggested that the transferred funds had been banked by Aegon. After consideration, Aegon accepted liability. It agreed to set up a pension plan and pay a sum of £169,000 into a plan for Mr G.

## Misinformation

Mrs Y was a member of the HSC Pension Scheme (**the Scheme**). In June 2015, Mrs Y's employer provided her with an estimate of her retirement benefits. A mistake was made in calculating Mrs Y's final pensionable pay which resulted in overstated pension benefits. Mrs Y said she relied upon this information in making her decision to retire early and care for her elderly father who was terminally ill.

Following investigation, the Adjudicator provided the employer with his general observations and asked the employer to consider a resolution on the basis that the mistake was maladministration. He said it was not unreasonable to conclude that Mrs Y would not have been able to easily identify the pensionable pay figure used was incorrect or that her decision to leave her job and income of around £22,000 per annum was a significant lifestyle change. Further, Mrs Y relied on the misinformation to her detriment as had she known the correct position, she says she would have delayed her retirement and made alternative arrangements for her father's care.

The employer agreed to resolve matters with Mrs Y and offered £5,100 (the difference between the incorrect and the correct tax-free cash lump sums) and a further £250 for the distress and upset caused.

## Permanent injury benefit

Mrs L complained that the NHS Business Services Authority (**NHS BSA**) had not considered her application for permanent injury benefit (PIB) correctly.

Mrs L left NHS employment on the grounds of ill health in November 2013. In February 2015, she applied for PIB on the basis that she was suffering from "recurrent psychotic depression" triggered by a move from one ward to another.

NHS BSA's medical advisers considered Mrs L's claim and rejected her application. Mrs L appealed via both stages of the IDRPs and NHS BSA did not uphold the complaint. NHS BSA's medical adviser had accepted that Mrs L's perceptions about aspects of her work were a trigger for her psychological symptoms, but without the underlying condition it was unlikely that the perceived stress factors would have led to the severity of Mrs L's symptoms. It concluded that the long-term psychological ill health and related incapacity was wholly or mainly due to a longer term underlying constitutional psychiatric condition.

At the time Mrs L's complaint was brought to this office, the courts were considering an appeal regarding a Determination of a previous Deputy Ombudsman and her decision not to uphold a PIB claim (*Young v NHS BSA*). Following an appeal, NHS BSA agreed to reconsider cases in line with the Court of Appeal's findings, which included Mrs L's complaint. However, NHS

BSA later said that Mrs L’s case was not one which it would reconsider as it was a case decided under Regulation 3 of The National Health Service (Injury Benefits) Regulations 1995 (**the Regulations**) and, in its view, was not affected by the recent judgment (which it considered to be restricted to Regulation 4 decisions only).

In summary, Regulation 3 provides for a member who has sustained an injury or disease in the course of employment which is wholly or mainly attributable to their employment, and it is wholly or mainly attributable to the duties of their employment. Regulation 4 sets out the scale of benefits which may be paid and provides that a benefit is paid if the member’s earning ability is permanently reduced by more than 10% because of the injury or disease.

The Adjudicator upheld the complaint and remitted it back to NHS BSA to reconsider. She said that although NHS BSA did not accept that Mrs L had sustained an injury wholly or mainly attributable to her NHS employment, the evidence suggested otherwise. NHS BSA had accepted that the move to the new ward had caused Mrs L stress which triggered symptoms of anxiety and depression. However, it was of the view that the stress experienced by Mrs L would not have resulted in symptoms of such severity in someone who was not suffering from an underlying mental health condition. This was not the question NHS BSA should have been asking, but instead it should have separated the question of the injury from the consequences. Therefore, Mrs L was entitled to have NHS BSA reconsider whether the stress she suffered was wholly or mainly attributable to the move to the new ward. The Adjudicator concluded that Mrs L’s PIB application had not been considered in accordance with the relevant regulations.

NHS BSA disagreed and so the Ombudsman determined the case and upheld Mrs L’s complaint. The Ombudsman commented on the Court’s judgment that while the decision was primarily focused on the interpretation of Regulation 4, this did not mean that it could not assist in the interpretation of Regulation 3. It was noted that Regulation 3 uses the phrase “wholly or mainly” which indicates that Mrs L’s NHS employment does not have to be the sole cause of the injury. NHS BSA needed to determine whether Mrs L had experienced stress which was, at least, mainly caused by her move to the new ward. The Ombudsman concluded that NHS BSA had looked at the effects of the injury rather than whether there was an injury that was attributable to Mrs L’s employment. The Ombudsman referred the case back to NHS BSA and asked it to consider if Mrs L sustained an injury which was wholly or mainly attributable to her NHS employment or the duties associated to her employment. In doing so, it should not make reference to Mrs L’s underlying health. If NHS BSA found that Mrs L had a qualifying injury, then it should then consider if Mrs L’s earning ability has been permanently reduced by more than 10%.

## Refusal to grant mental health officer status

Mr T was a member of the HSC Pension Scheme and his complaint was about the refusal of HSC to recognise his employment between 1984 and 1993 as eligible for mental health officer (MHO) status.

The Health and Personal Social Care (Superannuation) Regulations (Northern Ireland) 1995 (**the Regulations**) set out the definition of a MHO. In particular, the Regulations state that the member must work full time on the medical or nursing staff of a hospital wholly or partly devoted to the treatment of people suffering from a mental disorder and their role must be all, or almost all, devoted to the treatment and care of mental health patients.

Mr T's request for MHO status was rejected by HSC on the basis that before 1993 his employment was not hospital based. However, he did hold MHO status from 1993 onwards but had not yet built up enough years to be able to retire without being subject to an early retirement reduction.

The interpretation of the Regulations was central to this complaint. The general rule of statutory interpretation is that the words are given their plain and ordinary meaning.

The Regulations that govern the scheme require a worker to be part of the medical or nursing staff of a hospital. The Ombudsman determined that as Mr T worked in a community-based setting from 1984 to 1993, this was not hospital-based employment. The Regulations were not ambiguous and, therefore, HSC had not erred in its refusal not to award him MHO status for that period of employment.

## Casework review – Pension Protection Fund Ombudsman

This part of our report describes the small part of our work concerning the Pension Protection Fund (PPF) Ombudsman’s jurisdiction.

**PPF maladministration.** We can investigate and determine complaints of maladministration on the part of the PPF.

**PPF reviewable matters.** We can review decisions made by the Board of the PPF, but only after they have been reviewed by the Board of the PPF and then considered by its Reconsideration Committee.

**Financial Assistance Scheme appeals.** We have jurisdiction to determine appeals against decisions made by the PPF, as scheme manager of the Financial Assistance Scheme (FAS), relating to eligibility to receive compensation. FAS appeals can be subdivided further into two main categories: whether a scheme is eligible to be accepted by the FAS, and whether a member has received the correct entitlement.

### The year’s cases

	In hand at 01/04/17	New/reopened matters	Completed investigations	In hand at 31/03/18
PPF maladministration	3	1	2	2
PPF reviewable matter	11	5	14	2
FAS appeal	3	8	8	3
<b>Total</b>	<b>17</b>	<b>14</b>	<b>24</b>	<b>7</b>

In 2017/18 we again saw a reduction in the number of new matters referred to us and, significantly, none of the new matters were taken on for investigation.

## Some summaries of completed cases

### Referral to the Pension Protection Fund Ombudsman

Mr N made a referral of a reviewable matter to the PPF Ombudsman in relation to an entitlement to enhanced early retirement benefits.

Mr N became a deferred member of his employer's occupational pension scheme (**the Scheme**) in August 1995. At the time, the Scheme rules stated that, with the consent of the employer, a man at age 60 could request early payment of his deferred benefits (which would normally be payable from age 65).

However, the 1994 valuation showed the Scheme to be in surplus, so in order to comply with tax legislation at the time, the Trustees put in place a remedial plan. Amongst other things, the remedial plan referred to the steps taken to equalise retirement ages for men and women. Normal retirement age had been equalised from May 1995. It stated men now had the right to retire at age 60 without employer consent but only pension accrued between May 1990 and May 1995 would not be reduced for early payment.

Mr N contacted the Scheme in September 1999 as he was turning 60 and wanted information about his pension options. He was advised of two options, but this was only if the consent to retire early was granted by the employer. Mr N was informed in December 1999 that the Trustees had consented, but as the employer had gone into administration, employer consent was required from the company administrator.

Following this, an Independent Trustee was appointed, who was unsure if the power to grant consent rested with the employer (now the administrator) or itself. Legal advice was sought and the administrator was asked to provide consent, but in the meantime, Mr N was offered the option of taking a lower pension and lump sum whilst the matter of consent was clarified.

In September 2012, the Independent Trustee wrote to Mr N to say that legal advice had confirmed that consent to early retirement could only come from the employer. As the employer had gone into liquidation in 2011 there was no prospect of consent being given and, subject to PPF compensation rules, Mr N would continue to receive his benefits in line with what was set up in 2001. The Scheme entered the PPF in April 2014.

Mr N asked the PPF Board to consider his entitlement to increased benefits. The PPF Board's Reconsideration Committee rejected the claim, essentially because there was not an unconditional promise that if Mr N accepted the lower amount that he would later be entitled to enhanced early retirement benefits.

The Ombudsman did not uphold the referral on the basis that the Reconsideration Committee appeared to have considered Mr N's claim to increased benefits on the grounds that he had relied on incorrect information, but that this claim was unlikely to succeed because the information provided by the Independent Trustee was correct. At the time Mr N took his benefits, he was fully aware that there was an issue relating to the giving of consent. While he may have hoped that such consent would be forthcoming, the Ombudsman did not consider that he could reasonably believe that, without such consent, an unreduced pension would be paid. The Ombudsman concluded that when the Scheme entered the PPF, Mr N became eligible for PPF compensation. This compensation is based on the pension he was entitled to under the rules of the Scheme and, in taking his benefits early without the consent of the employer, Mr N is only entitled to the reduced benefits.

### **Complaint of maladministration made to the Pension Protection Fund Ombudsman**

Mr R made a complaint of maladministration to the PPF Ombudsman in relation to the PPF Board's interpretation of the relevant legislation regarding the payment of survivors' benefits in the event of his death.

Mr R was a member of an occupational pension scheme (**the Scheme**) which transferred into the PPF in April 2014. In 2015, Mr R enquired what benefits would be paid in the event of his death as he was single with no dependants. The PPF Board explained that once a scheme is transferred into the PPF, members' scheme benefits are no longer paid from the Scheme but are replaced with compensation administered by the PPF. The Board said the Scheme rules ceased to apply and were replaced by the PPF rules. It said, where there were no eligible dependants, entitlement to compensation would cease.

Mr R raised a complaint with the PPF Board's Review Committee. It concluded that the PPF Board could only pay compensation in accordance with the rules set out in the relevant legislation, which allowed compensation to be paid to certain individuals. The Board also explained that it pays compensation at a statutory minimum level and does not replicate the previous scheme rules. It does not profit by not paying survivors' benefits.

Mr R asked for the decision to be reconsidered by the PPF Board's Reconsideration Committee, and again it was not upheld. Mr R remained unhappy on the basis that the money should legally belong to him and his estate. He disputed that the PPF funds were not attributable to individual members, as it is aware of each member's entitlement and dealt with each member separately.

The Ombudsman did not uphold the complaint. He explained that as the original scheme had wound up, and did not have sufficient funds to pay benefits to members, it was accepted into the PPF. Instead of receiving benefits from the Scheme, members would receive compensation from the PPF. The compensation Mr R receives is governed by the appropriate legislation and the PPF Board can only pay benefits in line with that legislation. While Mr R had argued that the relevant legislation did not expressly state that compensation could not be paid to an estate, the legislation does not operate in that way. The Board can only make payments for which it is given express authority.

## The courts

### Appeal figures

Determinations of the Pensions Ombudsman and the Pension Protection Fund Ombudsman are final and binding, subject to appeal on a point of law to the High Court in England and Wales, the Court of Appeal in Northern Ireland and the Court of Session in Scotland.

### Pensions Ombudsman appeals

Outstanding at the start of the year	6
New	8
Heard/settled/withdrawn during the year	9
Remaining at year end	5

### Pension Protection Fund Ombudsman appeals

Outstanding at the start of the year	2
New	0
Heard/settled/withdrawn during the year	1
Remaining at year end	1

### Right of appeal

Appeals to the High Court in England and Wales against a Determination of either the Pensions Ombudsman or the Pension Protection Fund Ombudsman are subject to the Civil Procedure Rules. Since 6 April 2014, a party applying to the court has required the consent of the High Court for any appeal against a Determination or direction in England and Wales. The requirement seeking consent to appeal came about because the judiciary had expressed concerns about appeals made by litigants-in-person seeking to reopen issues of fact rather than raising issues of law, and about the risks they then face of having costs awarded against them.

## Notification of appeals and updates

In previous annual reports we highlighted the work we have carried out over the years to improve notification of appeals to this office. The consequent changes to the Chancery Guide in 2016 have clarified the process, which now references PD 52D paragraph 3.4(1) of the Civil Procedure Rules under which the appellant must serve notice on the person from whose decision the appeal is brought. It also states that where the appellant is unrepresented, the respondent should take it upon themselves to confirm both that the Ombudsman has been served with the appellant's notice and that the material put before the court includes all material that was before the Ombudsman and is potentially relevant to the appeal.

Over the past 12 months we have continued to liaise with the courts and parties to appeals and are pleased to report continued improvement in the notification of new appeals to this office. However, we are still not always notified about new appeals or kept updated by the parties about developments in existing appeals which can be problematic for us, as illustrated below.

Appeal updates remain a key priority for us, especially considering two recent appeals which, though filed at the Royal Courts of Justice, were transferred to the High Court Registry at locations closer to the parties. It is not yet entirely clear whether transfers outside of London will be a trend going forward with appeals against Ombudsman Determinations, but it emphasises the importance of the parties keeping our office up to date.

In October 2017, Mrs Chamberlain<sup>3</sup> served a copy of her unsealed appeal notice on us intimating an appeal at the Royal Court of Justice. Mrs Chamberlain had complained to us that Rhondda Cynon Taf County Borough Council (**the Council**) refused her application for tier one ill health benefits on the basis of an unsubstantiated medical report. The Ombudsman did not uphold this complaint and Mrs Chamberlain sought to appeal the Ombudsman's Determination.

After the initial notification of appeal from Mrs Chamberlain, we heard nothing further from the parties to the appeal or from the Court until we contacted the Council seeking an update. The Council informed us that the claim had been transferred to the Cardiff District Registry of the High Court. The Cardiff High Court had issued the claim and granted Mrs Chamberlain permission to appeal. It had also listed the case for a hearing due to take place in a few days' time.

By the time we received this update, it was too short notice for us to attend a hearing in Cardiff. More importantly, we had not received the complete case papers and we were not in a position to fully consider our stance in relation to the appeal. The late notice of the hearing and late service of documents could

<sup>3</sup> (Judgment unreported)

have placed us in a difficult position if we had wanted to participate and instruct external counsel. In this particular case, we did not wish to participate but the issue does cause concern about our involvement in future appeals. We also recently received notification of another appeal made in August 2017, in respect of which we had not previously been notified, but in the event, permission was refused so it did not cause a concern about our potential involvement.

We will continue working with the courts and parties to appeals to improve communication and ensure that they: keep us informed if there has been an appeal; keep us updated as to the progress of the appeal; send us copies of any key documents; and notify us of any hearing dates. Once the appeal is concluded we ask that the parties please also ensure that The Pensions Ombudsman is sent a copy of the relevant judgment. The overarching objective being to support the smooth running of these cases.

### **Ombudsman participation in appeals**

In last year's Annual Report, we discussed our more proactive policy of intervening in appeals of Determinations. Our participation is intended to "seek to assist the court" and each case will be considered on its own facts and circumstances. This was a change from our previous policy of generally only participating in appeals where there is an issue of wider importance, in particular, one that may impact on jurisdiction or process.

Since we changed our policy on participation, we intervened in the case of Mrs Butterworth<sup>4</sup>, which was discussed in last year's Annual Report. This year we have considered participating in a couple of appeals. However, one of those consequently settled and it is currently unclear whether the other appeal will proceed to a formal hearing, so our participation is still under review. Sometimes we do not have the opportunity to participate because an issue does not get raised until the matter is heard in court (for example, the cases of Dr Baugniet and Mrs Smith, which are discussed below).

### **Appeals updates**

#### **Non-financial injustice**

Recent appeals involving awards for non-financial injustice have indicated a move by the courts towards higher awards to reflect the impact of inflation on previous market levels and the extent of actual injustice. In the appeal of Dr Baugniet<sup>5</sup>, which we mentioned in last year's Annual Report, His Honour Judge Simon Barker QC commented that reconsideration of the upper limit for unexceptional cases was overdue. He considered that the judicial guidance

4 [2016] All ER (D) 99

5 [2017] EWHC 501 (Ch)

that was issued by Hart J in 1999 (*City and County of Swansea v Johnson*<sup>6</sup>) needed to be increased to take inflation into account. Factors for cases falling into the 'exceptional' category were also discussed.

The High Court in the case of Mrs Smith<sup>7</sup> also considered the appropriate level of an award for non-financial loss. Mrs Smith had alleged, in her complaint to us, that her employer Sheffield Teaching Hospitals Trust (**the Trust**) misled her about whether she would retain her special class status under the scheme when switching between a role that qualified for special class status and two other roles that did not qualify. The special class status entitled Mrs Smith to retire at age 55 with a full unreduced pension. On approaching age 55, Mrs Smith requested a pension quotation and was provided with an estimate which was calculated on the basis that she had special class status. She retired following this quotation, but her annual pension and lump sum in payment was less than the amount quoted. The reduction was made because she had not been in a job that qualified for special class status for five complete years before retiring, as required by the relevant NHS pension scheme regulation.

Mrs Smith complained to the Trust alleging she would not have retired early had she been given the correct information. The Trust offered Mrs Smith £5,000 in recognition of the distress and inconvenience that the incorrect information had caused her. Mrs Smith did not accept this offer and complained to us.

The Deputy Pensions Ombudsman decided that the Trust had provided Mrs Smith with incorrect information which amounted to maladministration. However, the maladministration did not cause Mrs Smith financial loss because it appeared she would have retired anyway – as retiring at age 55 had been her long-term aim. The Deputy Pensions Ombudsman awarded Mrs Smith £500 for the significant distress and inconvenience experienced.

Mrs Smith appealed the decision on two grounds. Firstly, that the Deputy Pensions Ombudsman was wrong in law to decide that the maladministration had not caused her actual financial loss and secondly that the award of £500 was so low as to be perverse and unreasonable. The Judge dismissed the first ground of appeal, but allowed the appeal against the award of £500 for distress and inconvenience. The Judge found that there had been more than one instance of maladministration over several years and the number of instances of maladministration was material to the likely level of distress. Mrs Smith's distress was prolonged for a further period of around four months while the Trust considered whether she was entitled to a full or reduced pension. Additionally, the Trust had many opportunities to correct the misinformation and could have ascertained the correct position with relative ease. The Judge decided that in these circumstances, an award of £500

6 [1999] 1 All ER 863

7 [2017] EWHC 2545 (Ch)

embodied an error of fact and/or principle and an appropriate award ought to be above the top end for unexceptional non-financial injustice, which could now be considered to be around £1,600. The Judge decided on the facts of this case to award £2,750.

Following the Baugniet and Smith appeals, and review of our existing policy more generally, the Ombudsman considers that an increase to the upper limit for non-exceptional awards to £2,000 is appropriate. Although this is higher than the amount of £1,600 suggested in Baugniet and Smith, it is within the Ombudsman's remit to award what he considers appropriate. We are not looking to increase the lower limit because this was reviewed and increased to £500 quite recently to bring us in line with industry practice. Awards above £2,000 will be made in exceptional circumstances. We are drafting guidance outlining fixed levels of awards (including those falling within the £500 to £2,000 range) and in which circumstances these are likely to be made. However, every case will be considered individually on its facts. Although we want to encourage the application of fixed increments to non-financial injustice awards to promote predictability and consistency, the Ombudsman will, if appropriate, award such other amounts as he thinks fit.

### Statutory interpretation

In a decision handed down in November 2017, the High Court upheld a Determination of the Ombudsman and provided useful guidance on the limits of public policy arguments in the interpretation of legislation. This was the case of Mr Jossa<sup>8</sup>, which concerned the interpretation of Regulation 74 of The Local Government Pension Scheme (Administration) Regulations 2008. Regulation 74 entitled an employing authority (in this case Enfield Council) to retain a former member's pension rights where that member left employment as a "consequence of a criminal, negligent or fraudulent act or omission on his part in connection with that employment."

Mr Jossa had complained to us that Enfield Council was wrongly seeking to withhold his pension rights in reliance on Regulation 74. This followed his criminal conviction for theft from the Council, which was only uncovered after he left its employment. Mr Jossa argued that as he had left employment with the Council because of redundancy, not in consequence of any criminal or fraudulent act, he therefore did not meet the requirement of Regulation 74 and the Council did not have the power under that regulation to retain his pension. The Ombudsman decided that the wording of Regulation 74 was clear and precise and, on a literal interpretation, did not allow the Council to withhold Mr Jossa's pension rights. The Ombudsman also acknowledged that there were means for the Council to recover debts Mr Jossa owed to them other than a set off pursuant to Regulation 74.

8 [2017] EWHC 2749 (Ch)

The Council appealed this decision. The Council accepted that, on a literal interpretation of Regulation 74, it did not have the authority to withhold Mr Jossa's pension rights as proposed. However, the Council invited the Court to adopt a purposive construction of Regulation 74 based on the public policy principle that a wrongdoer should not benefit from their wrongdoing. The Court did not accept this argument, but rather agreed with the Ombudsman that the wording of Regulation 74 was clear and precise in its requirement.

In dismissing the appeal, Deputy Judge Mark Anderson QC stated:

*"I agree with the Ombudsman that the wording of regulation 74 is clear and precise in its requirement that the person left employment in consequence of the misconduct. Yet Enfield asks me to construe it to include the opposite scenario as well, where the person does not leave the employment in consequence of misconduct. In effect, I am asked to conclude that in stipulating that the person must have left in consequence of the misconduct, the author was intending to mean, and was impliedly saying, "or would have done so if the misconduct had been discovered in time.....this is a very ambitious submission in light of the express wording of the regulation."*

The Deputy Judge held that the principle that a person must not benefit from their own wrongdoing has a limited role to play in interpreting provisions which are aimed at identifying which wrongdoers should face set off and which should not. Mr Jossa fell outside the category of wrongdoers covered by Regulation 74 because the regulation expressly provides for set off only in cases where a person leaves employment in consequence of fraudulent conduct.

The Deputy Judge accepted that the purpose of Regulation 74 may be better served by allowing a set off than refusing it, but he decided that the regulation was clear in its intention to draw a line between conduct that attracts set off and that which does not. Further, the fact that the outcome in a case:

*"...may appear absurd or anomalous or unjust is not of itself a reason to read implied words into a legislative provision..."*

and there was nothing to suggest that the Minister of State intended otherwise.

## Overpayment cases

In last year's Annual Report, we discussed the long running case of Mr Webber<sup>9</sup> which considered how the Limitation Act 1980 applied in respect of the recovery of overpayments when such complaints were made to our office. More specifically, in relation to the 'cut-off date' for such a complaint before the Pensions Ombudsman. Mr Justice Bartley Jones QC held that the cut-off date was when Teachers' Pensions (the respondent to the complaint) brought

9 [2016] EWHC 2519 (Ch)

its claim during The Pension Ombudsman’s complaints procedure. On the facts of that case, it was when our office received Teachers’ Pensions’ response to the complaint. In the past year we have been working to adapt our processes for dealing with overpayment complaints, considering the judgment and the practical issues for our office.

More recently, Mr Justice Arnold has handed down judgment in the High Court case of *Burgess & Others v BIC Limited*<sup>10</sup> (BIC). This was not an appeal against an Ombudsman Determination. However, one issue in the BIC case, namely whether the Limitation Act 1980 applies to the equitable right of recoupment, was relevant to an appeal against an Ombudsman Determination in respect of the same scheme<sup>11</sup>. This appeal has been stayed by the High Court pending the outcome in the related BIC case.

In respect of the limitation issues, Mr Justice Arnold has held that equitable recoupment is not subject to a six-year limitation period under section 5 of the Limitation Act 1980. So offsetting past overpayments against future instalments of pension was not restricted by the Limitation Act 1980 because recoupment amounted to a future account adjustment rather than a claim for repayment of monies by a member. Mr Justice Arnold rejected the Trustees’ argument that a six-year limitation period should be applied, following the *Webber* case.

From our perspective, the judgment does not really deal with the practical side of how these types of complaints are presented to us. In practice we deal with many complaints from public sector schemes that are arguably trying to recoup from pensions in payment as opposed to simply recovering a debt. Also of note in the judgment was the Judge’s view about The Pensions Ombudsman not being a “competent court” for the purposes of ruling on a disputed lien/charge over pension money allegedly owed. We are currently considering how to deal with overpayment complaints made to us against the backdrop of those decisions. The Ombudsman appeal remains, at the time of writing, stayed.

### Death benefits

In the case of *Eric Dutton v Alan Hughes and Alma Bell*<sup>12</sup>, the High Court dismissed an appeal against a Determination of the Ombudsman which had ordered Mr Dutton to repay £212,797.55 of misappropriated scheme funds. The appeal arose from a complaint to us brought by Mr Hughes and Mrs Bell, the brother and sister of a deceased member, in relation to Mr Dutton’s conduct as sole trustee of the Manflex Limited Executive Pension Plan (**the Plan**). Mr Hughes and Mrs Bell alleged that Mr Dutton had misappropriated scheme funds accrued under their late brother’s Plan which ought to have been paid out in accordance with the Plan rules and their brother’s 2010 nomination.

<sup>10</sup> [2018] EWHC 785 (Ch)

<sup>11</sup> PO-1918

<sup>12</sup> [2017] EWHC 3591 (Ch)

In response to this complaint to the Ombudsman, Mr Dutton submitted that as the Plan was non-contributory, the deceased was bound by a set of Plan rules agreed in 1988 which made no provision for transfer values and bound by a nomination the deceased made in 1988 for a 90:10 distribution in favour of Manflex. In Mr Dutton's view, it was up to him to decide what happened to the deceased's fund and he had decided the deceased was not entitled to a pension because he passed away at age 55 whereas the Plan only provided a pension at age 60. Mr Dutton also submitted that he could explain, at an oral hearing before the Ombudsman, the close bond he had with the deceased and how the deceased would have intended that the funds be paid to Manflex employees.

The Ombudsman upheld the complaint on the basis that the Plan rules and relevant statutory provisions required Mr Dutton to comply with the transfer request the deceased made prior to his death, but he had failed to do so. On the deceased's death, Mr Dutton was required as Trustee to consider the deceased's wishes as stated on the 1988 and 2010 nomination forms, make enquiries to ascertain the appropriate class of beneficiaries and exercise his discretion in relation to that class. He had, however, failed to exercise any discretion whatsoever but had completely ignored the deceased's wishes. The Ombudsman did not consider that an oral hearing was necessary given the weight of contemporaneous evidence he had before him. The Ombudsman did not believe that remitting the matter to Mr Dutton to make a further distribution decision would serve any useful purpose, given Mr Dutton's conduct over a long period. He therefore decided to order Mr Dutton to pay Mr Hughes and Mrs Bell £212,797.55 plus interest in equal shares.

This decision was upheld on appeal by the High Court. In dismissing Mr Dutton's appeal, the Honourable Mr Justice Newey said:

*"It was incumbent on Mr Dutton to exercise a genuine discretion and, in that context, not to limit his consideration to the 1988 document. The Ombudsman was evidently, as it seems to me, right to consider that Mr Dutton had failed in his duties in this respect. It is of course to be noted that the 1988 nomination was stated to be irrevocable, but I cannot see how that can in fact have precluded Mr Hughes from expressing different views subsequently and cannot have excused Mr Dutton as trustee from considering a later nomination. In all the circumstances, it seems to me that, in this respect as well as the others that I have mentioned and that Mr Dutton has raised, the Ombudsman's decision must stand.*

...

*I am satisfied that the Ombudsman was entitled to reach the factual conclusions he did in fact reach and, in the light of those conclusions, to take the views he did as to the legal implications."*

In relation to the Ombudsman’s decision not to hold an oral hearing, Mr Justice Newey quoted a passage from the judgment of Mr Justice Nugee in the case of *Webber v Department for Education*<sup>13</sup> stating:

*“Nugee J said in paragraph 46 of his judgment: ‘To those used to the court system, which has long placed a particularly high value on oral evidence tested by cross-examination, some of these statements may seem surprising, but the Pensions Ombudsman is not a court, and his procedures are not trials but investigations in which he can pursue lines of inquiry until he is satisfied that he has sufficient information to resolve the complaint. I am wary of laying down any hard and fast rules as to when it is or is not appropriate for the ombudsman to hold oral hearings, particularly in the absence of any argument on the point. It seems to me that it is prima facie a matter for the ombudsman (or in this case the DPO) to assess whether and to what extent an oral hearing is necessary either to enable the investigation to be satisfactorily completed or out of fairness, and that such decisions can only be challenged on appeal on the familiar basis that they exceeded the generous ambit within which reasonable disagreement is possible.’”*

Mr Justice Newey went on to say:

*“In the circumstances of the present case, I do not think it can be said that the Ombudsman’s decision not to have an oral hearing, ‘exceeded the generous ambit within which reasonable disagreement is possible’. To the contrary, I can well understand how the Ombudsman came to take that view. Having looked at the materials that were before him, it is, I think, perfectly comprehensible that the Ombudsman considered that the documentary material sufficed for the purposes of the decisions that he had to make.”*

## Other appeal updates

### Scottish appeal

We are reluctantly having to continue our involvement, and face mounting costs, in a Scottish appeal case brought by Mr Lilburn, who asked us to state a case relating to a Determination made by a previous Deputy Ombudsman in 2008. Mr Lilburn missed the usual appeal timeframe by around eight years but, because he comes under the Scottish court system, he has managed to have numerous hearings pursuing his claim. Even if we considered it was appropriate in these circumstances to state a case, we have no material with which to do so, having long since destroyed our file. The Determination is all that remains.

<sup>13</sup> [2014] EWHC 4240 (Ch)

Mr Lilburn has now petitioned the Supreme Court to hear his case. All the hearings are made more complex by the fact that Mr Lilburn has been denied legal aid so is representing himself. Representations also need to be produced to court via videolink from a prison hospital where he remains under sentence for murder.

Once Mr Lilburn's case has come to an end, we plan to build upon our relationship with the Scottish courts and highlight the considerable difficulties faced in cases like Mr Lilburn's and see what action our office can take to bring about change.

## Information Rights Tribunal

In October 2017, the First-tier Tribunal dismissed an appeal against a decision of the Information Commissioner. This appeal concerned an information request made by the appellant Dr Turner<sup>14</sup> to our office which we dealt with in 2016. Dr Turner had complained to us that the information he received in or around the 1990s when his pension was being transferred from one scheme to another was misleading. For a number of jurisdictional reasons we were unable to investigate Dr Turner's complaint.

The Information Commissioner's Office (ICO) dismissed this complaint. The ICO was satisfied with the explanation we provided about the way our systems operated.

Dr Turner appealed the ICO's decision to the First-tier Tribunal. The Tribunal dismissed the appeal and in doing so, commented that:

*"[The Pensions Ombudsman] carried out a legal analysis of the information provided by Dr Turner and [the lawyer's] letter is the result of that analysis. As the ICO properly points out the staff dealing with Dr Turner will be exceptionally well versed in the relevant law governing [TPO's] jurisdiction to conduct investigations.*

...

*[TPO] provided the ICO with a very clear explanation of how their systems work and the ICO had no reason to doubt such a clear, transparent and probable explanation.*

...

*The argument as to the legal robustness of the decision not to investigate his complaint is simply irrelevant to the question of whether further information is held or not."*

14 EA/2017/ 0048

## Reference to the European Court of Justice by the Court of Appeal in respect of a Pension Protection Fund Ombudsman Determination

In the last Annual Report, we provided an update on Mr Hampshire's appeal<sup>15</sup> in respect of which judgment was handed down in the Court of Appeal on 28 July 2016. We noted that the Court of Appeal had ordered a reference to the European Court of Justice (ECJ) on two points: the meaning of Article 8 of the EU Insolvency Directive; and whether it has direct effect in the UK.

The ECJ conducted its review of the matter this year and, just after year end, in April 2018, the Advocate General (AG) at the ECJ said in a written Opinion that it is unlawful for the Pension Protection Fund (PPF) to provide compensation equivalent to less than half a member's accrued benefits in the event of their employer's insolvency. In giving her Opinion, the AG said: "Every individual employee – subject to specific cases of abuse – is entitled to compensation of at least 50% of the total value of his accrued rights or entitlements to old-age benefits in the event of the insolvency of his employer." This is contrary to the previous Ombudsman's Determination and that of the High Court. We note that a full judgment of the ECJ is not expected for around three months.

### Judicial reviews

We received no new judicial reviews this year. However, the appeal case of Dr Baghdjian initially started life as a pre-action protocol letter for judicial review. We resisted and indicated that we may have to pursue a costs application if we had to defend a judicial review application because it was clear to us that the statutory appeal route was the appropriate one. The case of *Legal & General Assurance Society Ltd v The Pensions Ombudsman, CCA Stationery Ltd*<sup>16</sup>. 1524 suggests that where a statutory right of appeal is available, this should be the route rather than judicial review.

Dr Baghdjian's legal representatives agreed that the statutory appeal route was appropriate and so the matter then proceeded toward an appeal at the High Court. The parties subsequently agreed for a Consent Order to be made by the Court to remit the case back to us for re-Determination. However, as we were not notified by the parties, the status of our Determination was left unaddressed by them.

<sup>15</sup> Our ref PPFO-750; *Grenville Holden Hampshire v The Board of the Pension Protection Fund* [2014] EWHC 4402 (Ch)  
<sup>16</sup> [2000] 1 W.L.R

## Other key developments

### **The Pensions Advisory Service transfer of dispute resolution to The Pensions Ombudsman**

In 2014 the Triennial Review of Pension Bodies recommended that the customer journey for pension disputes should be simplified. Shortly after taking up office in 2015, the current Ombudsman submitted a report to the Department for Work and Pensions (DWP) recommending, in light of the 2014 Triennial Review, that disputes handled by The Pensions Advisory Service (TPAS) should be transferred to The Pensions Ombudsman (TPO) in order to simplify the customer journey and reduce duplication as TPAS and TPO were now both offering informal resolution. In 2016 government ministers agreed this approach.

We worked closely with TPAS to decide how best to merge the two existing informal resolution services to deliver the best service to customers. We also conducted wider engagement to gather views of the industry and relevant stakeholders.

On 19 March 2018 the TPAS dispute resolution service transferred to TPO. This has ensured that the customer journey is now more straightforward and there is a clearer boundary between the services of TPO and TPAS.

As well as the 15 staff transferring, over 240 volunteers have also transferred. This well-established volunteer network will continue to provide essential support in resolving disputes and ensuring that we use the vast expertise within the sector.

### **Office relocation**

On 28 March 2018 TPO moved to a new office within the Government Hub building in Canary Wharf. The new office provides brand new facilities for staff in a modern fit-for-purpose office space.

A small project team managed all aspects of the move including Human Resources' (HR) issues such as updating contracts; communications aspects including reprinting materials and staff engagement; ensuring contracts were decommissioned at our old site; logistics such as moving equipment and files; and liaising with the Government Hub's team to ensure a smooth move into the new premises.

At the same time, we introduced a number of new working practices including a move to hotdesking, a new flexible working policy and a new IT system. The flexible working policy gives staff the opportunity to work at the most effective locations at the most effective times, responding to the needs of the task, the customer, the individual and the team. New technology enables flexible working in various locations (see below).

Our move to new offices in March 2018 is recognised in the Statement of financial position as a lease premium of £792,545 with the costs spread over the life of the lease. See note 7 of the financial statements for further detail.

### **Move to a new IT managed service**

During 2017 we ran a procurement process to find a new Information Technology (IT) supplier to provide our managed service. This resulted in us signing a contract with the new supplier in December 2017 and the new service going live on 9 March 2018.

The new service provides a transformed IT-managed service to better fit our current and future operations. The new service provider was required to deliver services in our previous office and at the appropriate point switch these services over to the new site.

The new service covers all aspects of our IT provision including providing a platform on which our application services are delivered and run; identification management; provision of laptops; provision of hardware and software which provide the key components that interact with the user; hardware provision to support the service; telephony; migration to ensure that service levels were maintained during transition from the existing provider and on the transfer to the new offices; integration and interfaces with other applications, including the case management system; and a commitment to innovation.

### **Website**

Phase two of our Digitalisation Programme will include further developments to our website. Alongside a more intuitive online application process, there will be a secure facility for users to upload and share documents as well as track the progress of a case. The search functionality will be enhanced to make sure users can quickly and easily find what they are looking for.

In addition to technical developments, the content will be reviewed and 'ease of use' tested. Improvements will be user-led, based on existing feedback and ongoing user testing.

### **Work with partners**

The Financial Conduct Authority (FCA) has updated its Handbook to reflect that complaints about occupational pension schemes should be referred to TPO and guidance requests to TPAS.

In December 2017, TPO and the Financial Ombudsman Service (FOS) signed an updated Memorandum of Understanding to improve the framework for cooperation and the exchange of information on complaints that fall within

their respective remits. Against that backdrop the FCA changed its Handbook (effective from 1 April) for authorised firms in respect of signposting customers to TPO as well as to FOS.

Suggested standard signposting wording for the referral of complaints to TPO (and TPAS) is available from TPO.

In March 2018, TPO and The Pensions Regulator (TPR) signed an Information Sharing Agreement, aiming to: mutually enhance our knowledge and understanding of developing pension issues; support the achievement of higher standards across the industry; and ensure a safe pensions-saving environment.

### **Legal Forum**

In September 2017 TPO hosted its first Legal Forum. By further developing our stakeholder engagement, we aim to improve communication and achieve a better understanding of the needs of our customers. There was a good cross section of legal representation present at the Legal Forum.

### **Stakeholder Engagement**

We launched our Stakeholder Engagement Programme last year, with the objective of working more closely with private pension providers and public-sector pension schemes. This year that important work has grown significantly with valued input from our key stakeholders, working collaboratively with us and informing how we can work with them and improve the customer journey. Our stakeholder managers are now working directly with 33 schemes, providers and administrators.

In November 2017 we hosted an inaugural stakeholder event bringing together people from across the pension industry. The feedback was extremely positive and we plan a second event later this year.

One of our key objectives is to promote a one stage internal dispute resolution procedure (IDRP) and work with the industry to resolve more complaints at source. Through visits, presentations and our Stakeholder Newsletter, we have been talking about how we are resolving more cases informally and the benefits for everyone in having a faster, more streamlined approach to resolving disputes.

Looking forward, we want to build relationships with consumer groups, unions, master trusts and trustees. Working with the industry, we want to identify and share emerging issues more quickly, and work with them to reduce and avoid complaints. Through our essential work with stakeholders, we are beginning to share good practice and better signposting to our services with the ultimate aim of improving the customer journey.

# Accountability report

## Statement of Accounting Officer’s responsibilities

Under Section 145(8) of the Pension Schemes Act 1993 and Section 212A of the Pensions Act 2004, the Secretary of State for Work and Pensions (with the consent of HM Treasury) has directed the Pensions Ombudsman and Pension Protection Fund Ombudsman to prepare for each financial year a statement of accounts in the form and on the basis set out in the Accounts Direction. The accounts are prepared on an accruals basis and must give a fair view of the state of affairs of the Pensions Ombudsman and the Pension Protection Fund Ombudsman and of its net resource outturn, application of resources, changes in taxpayers’ equity and cash flows for the financial year.

In preparing the accounts, the Accounting Officer is required to comply with the requirements of the Government Financial Reporting Manual and in particular to:

- observe the Accounts Direction issued by the Secretary of State for Work and Pensions, including the relevant accounting and disclosure requirements, and apply suitable accounting policies on a consistent basis
- make judgments and estimates on a reasonable basis
- state whether applicable accounting standards as set out in the Government Financial Reporting Manual have been followed, and disclose and explain any material departures in the accounts
- prepare the accounts on a going-concern basis.

The Accounting Officer of the Department for Work and Pensions (DWP) has designated the Pensions Ombudsman as Accounting Officer of The Pensions Ombudsman (TPO) and Pension Protection Fund Ombudsman (PPF). The responsibilities of an Accounting Officer, including responsibility for the propriety and regularity of the public finances for which the Accounting Officer is answerable, for keeping proper records and for safeguarding TPO and PPF Ombudsman’s assets, are set out in the non-departmental public bodies (NDPB) Accounting Officers’ Memorandum and in Managing Public Money issued by HM Treasury.

So far as the Pensions Ombudsman is aware, there is no relevant audit information of which the auditors are unaware, and the Pensions Ombudsman has taken all the steps that he ought to have taken to make him aware of any relevant audit information and to establish that the auditors are aware of that information.

The Pensions Ombudsman confirms that the Annual Report and Accounts as a whole is fair, balanced and understandable and takes personal responsibility for the Annual Report and Accounts and the judgments required for determining that it is fair, balanced and understandable.

## Governance statement

### Scope of responsibility

The statutory role of the Pensions Ombudsman is primarily determined by Part X of the Pension Schemes Act 1993 and Part X of the Pension Schemes (Northern Ireland) Act 1993. The statutory role of the Pension Protection Fund Ombudsman is primarily determined by sections 209 to 218 of the Pensions Act 2004.

The Pensions Ombudsman and Pension Protection Fund Ombudsman is a statutory commissioner appointed to both posts by the Secretary of State for Work and Pensions. As post-holder, I am the designated Accounting Officer, accountable (through the DWP Principal Accounting Officer) to Parliament for regularity and propriety in use of public finances. I therefore have responsibility for maintaining a sound system of internal control that supports the statutory functions of The Pensions Ombudsman.

### Governance framework

#### Framework agreement with the DWP

The Framework Document identifies the differing responsibilities of the DWP Accounting Officer and The Pensions Ombudsman Accounting Officer. In particular it describes the requirements for the keeping of records and access to them, preparation of corporate and business plans and annual reports, arrangements for audit, spending controls and delegations, and in-year reporting.

The DWP receives reports on performance, finance and risk at quarterly accountability meetings.

#### Corporate governance

The Pensions Ombudsman and Pension Protection Fund Ombudsman is a statutory commissioner and The Pensions Ombudsman is not a corporate body, however, we comply with HM Treasury's Corporate Governance Code as far as possible for a small NDPB.

The Executive Board has been in place since early 2016 but in 2017, I strengthened it by adding a Non-Executive Director to provide support and advice on leadership and good governance. This is a non-remunerated post. The addition has provided influence, advice, support and challenge to the executive team on issues including:

- performance including key performance indicators (KPIs) and effective management of the service
- governance arrangements
- strategic direction, aims, objectives and targets
- effectiveness of key business policies.

The remaining managers are responsible for the day-to-day operational running of the service.

Executive Board	Operational Managers
Pensions Ombudsman – Anthony Arter	Business Manager
Casework Director – Fiona Nicol	Casework Manager x 3
Business Director – Jane Carey	Deputy Casework Manager x 3
Legal Director – Claire Ryan	HR Manager
Non-Executive Director – Mark Ardron	Legal Manager

### Internal governance

The overarching aim of the Executive Board is to take a long-term strategic view in order to meet the challenges facing us in the months and years ahead.

The role of the Executive Board:

- set strategy – for casework handling, finance, HR, legal and communications (internal and external)
- initiate policies
- plan for the mid and long term
- monitor and measure achievement
- provide leadership – which will include modelling behaviours
- be outward facing – maintaining and further developing links with stakeholders
- monitor progress against the Corporate Plan.

Responsibility for the day-to-day running of the service rests with the operational managers and the directors meet with their respective operational managers at least monthly to discuss relevant operational issues.

The operational managers’ role is to:

- develop and implement measures to deliver the objectives and meet the strategic aims as generated by the Executive Board
- generate ideas to feed into the Executive Board
- share good practice across the service, develop consistency in output.

The operational managers report to their respective director who in turn reports to the Executive Board monthly.

The Executive Board and the operational managers meet quarterly.

In the year there were 12 meetings of the Executive Board and 4 joint meetings with the operational managers. Out of the 12 meetings held in 2017/18 Anthony Arter attended 10; Jane Carey attended 11; Fiona Nicol attended 11; Claire Ryan attended 12; and Mark Ardron attended 12.

The monthly Executive Board meetings include updates from all the directors on casework statistics, legal issues, business updates and how we are performing against our strategic objectives.

## **Risk assessment**

The system of control is designed to manage risk to a reasonable level rather than to eliminate all risk of failure to achieve policies, aims and objectives. It can therefore only provide reasonable, not absolute, assurance of effectiveness. The system of internal control is based on an ongoing process designed to identify and prioritise the risks to the achievements of our policies, aims and objectives. It allows us to evaluate the likelihood of those risks being realised and the impact should they be realised, and to manage them efficiently, effectively and economically. The system of control has been in place throughout the year and accords with HM Treasury guidance.

The Executive Board has determined, in the light of the size of the organisation and our relatively straightforward functions, that risk should be managed proportionately and reasonably in order to ensure that value is added to the office's objectives. We seek to avoid risk, but we do not expect to eliminate all risk. We do expect to manage risk so as to be able to fulfil our functions effectively and efficiently in order to maintain public confidence.

Being a small organisation, those engaged in strategic risk management are also close to operational matters. We adapt to change by identifying and managing risks both informally and formally at operational level, recording and acting on any strategic implications of those risks.

I am confident that the quality of the data used by the Board is reliable. All reports prior to submission to the Board are subject to quality assurance processes and are sponsored by a Board member. The effectiveness of the systems that generate the financial and performance data contained within the reports is evidenced through positive internal and external audit results. None of these results this year, were of a low or inadequate opinion. We aim to keep reports clear, concise and focused on the purpose of the Board's review.

The risk register defines those risks that are regarded as strategic – and so within the Executive Board's remit and those that are operational – and dealt with in operational managers' meetings.

Within that structure, risk is controlled through the following steps:

- Key risks to the achievement of strategic and/or business delivery, aims, objectives and targets are identified and assigned to named individuals.
- The causes and consequences of those risks are identified.
- There is a consistent scoring system for the assessment of risks on the basis of likelihood and impact.

- We determine appropriate controls and activities to mitigate the risks identified, having regard to the amount of risk deemed to be tolerable and justifiable.
- Risks are measured, at both inherent and residual level, to assess the reliance placed on mitigating controls and activities and the office's exposure should they fail.
- Measures and indicators are identified to provide assurance that the mitigation actions are appropriate and effective.
- Regular monitoring and updating of risk information to ensure new and emerging risks are captured.

### The Audit Committee

In the year, the Audit Committee consisted of two independent members, Roy Field, Chair (appointed March 2010, Chair from April 2014) and Mark Ardron (appointed April 2014) who is Head of Finance at The Pensions Regulator. They are unpaid volunteers, with board level experience in public bodies. In 2017, Roy Field was reappointed for three years and Mark Ardron was reappointed for two years.

The Business Manager, Business Director, and other staff, the external auditors (National Audit Office), the internal auditors (Government Internal Audit Agency) and a DWP observer, attend meetings by invitation.

The Committee's role is to advise the Accounting Officer on the strategic processes for risk, control and governance of:

- the accounting policies, the accounts and the Annual Report of the organisation, including the process for review of the accounts prior to submission for audit, levels of error identified, and management's letter of representation to the external auditors
- the planned activity and results of both internal and external audit
- the adequacy of management response to issues identified by audit activity, including external audit's management letter
- assurances relating to the corporate governance requirements for the organisation
- proposals for tendering, for either internal or external audit services, or for purchase of non-audit services, from contractors who provide audit services
- anti-fraud policies, whistleblowing processes and arrangements for special investigations.

The Committee met four times during 2017/18. Roy Field and Mark Ardron attended all four meetings.

### Whistleblowing

Our Whistleblowing Policy is contained within our staff guide. No issues were raised in the year.

### Information security

In accordance with our responsibilities under the Data Protection Act and HMG Security Policy Framework, TPO has in place arrangements for data security. In particular, we have assessed our casework-related data as requiring to be treated as 'official'. Staff are security cleared to a minimum of baseline clearance (BPSS), receive annual training, and are contractually required to follow documented security operation procedures.

There were no breaches requiring notification to the Information Commissioner in the year.

### Review of effectiveness

As Accounting Officer, I have responsibility for reviewing the effectiveness of the system of internal control.

I am satisfied that the arrangements described above are fit for purpose and effective, having themselves been subject to appropriate review during the year.

My review of the effectiveness of our internal controls is informed by the work of the internal auditors, and comments made by the external auditors, in their management letter and other reports. I have been advised on my review concerning the effectiveness of the system of internal control by the Audit Committee, and a plan to address weaknesses and ensure continuous improvement is in place.

At the end of 2017/18, our internal auditors, in their assurance report, gave an overall assurance level of "moderate", however it is worth noting that the specific reviews carried out in the year were given a rating of "substantial".



**Anthony Arter**

Pensions Ombudsman  
Pension Protection Fund Ombudsman  
29 June 2018

## Directors' report

The composition of the Executive Board and its function is outlined on page 53.

A Register of Interests of the Executive Board is available on our website at: [www.pensions-ombudsman.org.uk/publications-and-policies/roi](http://www.pensions-ombudsman.org.uk/publications-and-policies/roi)

There were no personal data related incidents where these have been formally reported to the Information Commissioners Office as per our statement on Information Security on page 56.

## Remuneration and staff report

### Ombudsman remuneration policy

In accordance with Sections 145 and 145A of the Pension Schemes Act 1993, the current and future remuneration of the Pensions Ombudsman and the Deputy Pensions Ombudsman is determined by the Secretary of State for Work and Pensions. The current and future remuneration of the Pension Protection Fund Ombudsman and Deputy Pension Protection Fund Ombudsman, is determined by the Secretary of State in accordance with Sections 209(4) and 210(6) of the Pensions Act 2004.

Directors salary ranges are determined by The Pensions Ombudsman pay scales.

### Ombudsman service contracts

The length of service contracts is determined by the Secretary of State for Work and Pensions.

Anthony Arter was appointed as Pensions Ombudsman and Pension Protection Fund Ombudsman for four years on 23 May 2015.

Karen Johnston was appointed Deputy Pensions Ombudsman and Deputy Pension Protection Fund Ombudsman for three years from 1 July 2015. In March 2018 she was reappointed for a further two-year period from 1 July 2018 until 30 June 2020.

Name	Date of appointment	Unexpired term as of 31/03/18	Notice period
Anthony Arter	23 May 2015	1 year 2 months	6 months from employee
Karen Johnston	1 July 2015	2 years 3 months	3 months from employee

The Pensions Ombudsman and Deputy Pensions Ombudsman’s appointment may be terminated early by the employer on the following grounds:

1. misbehaviour
2. incapacity
3. bankruptcy or arrangement with creditors.

Any decision to remove on one or more of the above three grounds will be taken by the Secretary of State with the concurrence of the Lord Chief Justice. No compensation will be paid if the appointment is terminated on any of the grounds set out above. Should the appointment be terminated on the basis of misbehaviour, one month’s notice will be given. Where conduct is so serious as to warrant immediate removal from office, pay in lieu of notice will be paid.

The notice periods shall not prevent the Ombudsman, Deputy Ombudsman or Secretary of State waiving the right to notice, or the Ombudsman or Deputy Ombudsman accepting a payment in lieu of notice.

### Salary and pension entitlements

The following sections provide details of the remuneration and pension interests of the Pensions Ombudsman, Casework Director, Legal Director and Business Director.

The Deputy Pensions Ombudsman is not part of the Executive Board and is not involved in the management of the organisation so her salary and pension details are not reported here.

The information in this table is subject to audit.

Single total figure of remuneration										
Officials	Salary (£'000)		Bonus payments (£'000)		Benefits in kind (to nearest £100)		Pension benefits (£'000) (Note 1)		Total (£'000)	
	2017/18	2016/17	2017/18	2016/17	2017/18	2016/17	2017/18	2016/17	2017/18	2016/17
Anthony Arter	130-135	130-135	-	-	-	-	-	-	130-135	130-135
Jane Carey	65-70	65-70	0-5	0-5	-	-	16	67	80-85	130-135
Fiona Nicol	65-70	65-70	0-5	0-5	-	-	11	21	75-80	85-90
Claire Ryan	55-60* 65-70**	50-55* 65-70**	0-5	0-5	-	-	25	63 (Note 2)	85-90	115-120

\* actual salary \*\* full time equivalent salary

**Note 1:** The value of pension benefits accrued during the year is calculated as (the real increase in pension multiplied by 20) plus (the real increase in any lump sum) less (the contributions made by the individual). The real increases exclude increases due to inflation or any increases or decreases due to a transfer of pension rights.

**Note 2:** 2016/2017 figure recalculated due to retrospective update in final pensionable earnings.

## Bonuses

Bonuses are based on performance levels attained and are made as part of the performance review process. Bonuses relate to the performance in the year in which they become payable to the individual. The bonuses reported in 2017/18 relate to performance in 2016/17.

## Pay multiples

The information in this table is subject to audit.

	2017/18 (£'000)	2016/17 (£'000)
Band of highest paid director's total remuneration	130-135	130-135
Median total remuneration	38	37
Ratio	3.5	3.6

Reporting bodies are required to disclose the relationship between the remuneration of the highest-paid director in their organisation and the median remuneration of the organisation's workforce.

The banded remuneration of the highest-paid director in the organisation in the financial year 2017/18 was £130-135,000 (2016/17, £130-135,000). This was 3.5 times (2016/17, 3.6) the median remuneration of the workforce, which was £37,844 (2016/17, £36,757).

No employees received remuneration in excess of the highest paid office holder. Remuneration ranged from £15-20,000 to £130-135,000 (2016/17: £15-20,000 to £130-135,000).

Total remuneration includes salary, non-consolidated performance-related pay and benefits in kind. It does not include severance payments, employer pension contributions and the cash equivalent transfer value of pensions.

## Pension benefits

The information in this table is subject to audit.

	Accrued pension at age 65 as at 31/03/18 (£'000)	Real increase in pension at age 65 (£'000)	CETV at 31/03/18 (£'000)	CETV at 31/03/17 (£'000)	Real increase in CETV (£'000)
Jane Carey	25-30 plus a lump sum of 60-65	0-2.5 plus a lump sum of 0	429	396	4
Fiona Nicol	15-20	0-2.5	289	259	10
Claire Ryan	15-20 plus a lump sum of 35-40	0-2.5 plus a lump sum of 0-2.5	254	225 (Note 1)	13

Note 1: 2016/2017 figure recalculated due to retrospective update in final pensionable earnings.

Related lump sum at 31/03/18 and at pension age is nil.

Anthony Arter nominated not to receive any pension benefits as the result of his appointment.

## Cash equivalent transfer values

A cash equivalent transfer value (CETV) is the actuarially assessed capitalised value of the pension scheme benefits accrued by a member at a particular point in time. The benefits valued are the member's accrued benefits and any contingent spouse's pension payable from the scheme. A CETV is a payment made by a pension scheme or arrangement to secure pension benefits in another pension scheme or arrangement when the member leaves a scheme and chooses to transfer the benefits accrued in their former scheme. The pension figures shown relate to the benefits that the individual has accrued as a consequence of their total membership of the pension scheme, not just their service in a senior capacity to which disclosure applies.

The figures include the value of any pension benefit in another scheme or arrangement which the member has transferred to the Civil Service pension arrangements. They also include any additional pension benefit accrued to the member as a result of their buying additional pension benefits at their own cost. CETVs are worked out in accordance with The Occupational Pension Schemes (Transfer Values) (Amendment) Regulations 2008 and do not take account of any actual or potential reduction to benefits resulting from Lifetime Allowance Tax which may be due when pension benefits are taken.

## Real increase in CETV

This is the element of the increase in accrued pension funded by the Exchequer. It does not include the increase in accrued pension due to inflation, contributions paid by the employee (including the value of any benefits transferred from another pension scheme or arrangement) and uses common market valuation factors for the start and end of the period.

## Civil Service pensions

Pension benefits are provided through the Civil Service pension arrangements. From 1 April 2015, a new pension scheme for civil servants was introduced – the Civil Servants and Others Pension Scheme or alpha, which provides benefits on a career average basis with a normal pension age equal to the member's State Pension age (or 65 if higher). From that date all newly appointed civil servants and the majority of those already in service joined alpha. Prior to that date, civil servants participated in the Principal Civil Service Pension Scheme (PCSPS). The PCSPS has four sections: three providing benefits on a final salary basis (classic, premium or classic plus) with a normal pension age of 60; and one providing benefits on a whole career basis (nuvos) with a normal pension age of 65.

These statutory arrangements are unfunded with the cost of benefits met by monies voted by Parliament each year. Pensions payable under classic, premium, classic plus, nuvos and alpha are increased annually in line with pensions increase legislation. Existing members of the PCSPS who were within 10 years of their normal pension age on 1 April 2012 remained in the PCSPS after 1 April 2015. Those who were between 10 years and 13 years and 5 months from their normal pension age on 1 April 2012 will switch into alpha sometime between 1 June 2015 and 1 February 2022. All members who switch to alpha have their PCSPS benefits 'banked', with those with earlier benefits in one of the final salary sections of the PCSPS having those benefits based on their final salary when they leave alpha. (The pension figures quoted for officials show pension earned in PCSPS or alpha – as appropriate. Where the official has benefits in both the PCSPS and alpha, the figure quoted is the combined value of their benefits in the two schemes.) Members joining from October 2002 may opt for either the appropriate defined benefit arrangement or a 'money purchase' stakeholder pension with an employer contribution (partnership pension account).

Employee contributions are salary related and range between 4.6% and 8.05% for members of classic, premium, classic plus, nuvos and alpha. Benefits in classic accrue at the rate of 1/80th of final pensionable earnings for each year of service. In addition, a lump sum equivalent to three years initial pension is payable on retirement. For premium, benefits accrue at the rate of 1/60th of final pensionable earnings for each year of service. Unlike classic, there is no automatic lump sum, classic plus is essentially a hybrid with benefits for service before 1 October 2002 calculated broadly as per classic and benefits for service

from October 2002 worked out as in premium. In nuvos, a member builds up a pension based on his pensionable earnings during their period of scheme membership. At the end of the scheme year (31 March) the member's earned pension account is credited with 2.3% of their pensionable earnings in that scheme year and the accrued pension is updated in line with pensions increase legislation. Benefits in alpha build up in a similar way to nuvos, except that the accrual rate is 2.32%. In all cases members may opt to give up (commute) pension for a lump sum up to the limits set by the Finance Act 2004.

The partnership pension account is a stakeholder pension arrangement. The employer makes a basic contribution of between 8% and 14.75% (depending on the age of the member) into a stakeholder pension product chosen by the employee from a panel of providers. The employee does not have to contribute, but where they do make contributions, the employer will match these up to a limit of 3% of pensionable salary (in addition to the employer's basic contribution). Employers also contribute a further 0.5% of pensionable salary to cover the cost of centrally provided risk benefit cover (death in service and ill health retirement).

The accrued pension quoted is the pension the member is entitled to receive when they reach pension age, or immediately on ceasing to be an active member of the scheme if they are already at or over pension age. Pension age is 60 for members of classic, premium and classic plus, 65 for members of nuvos, and the higher of 65 or State Pension age for members of alpha. The pension figures quoted for officials show pension earned in PCSPS or alpha – as appropriate. Where the official has benefits in both the PCSPS and alpha, the figure quoted is the combined value of their benefits in the two schemes, but note that part of that pension may be payable from different ages.

Further details about the Civil Service pension arrangements can be found at the website [www.civilservicepensionscheme.org.uk](http://www.civilservicepensionscheme.org.uk)

Further staff cost disclosures are included in the notes to the accounts in note 3. The financial disclosures within the remuneration report are subject to audit.

## Our people

### Ombudsman

The holder of the posts of Pensions Ombudsman/Pension Protection Fund Ombudsman and Deputy Pensions Ombudsman/Pension Protection Fund Ombudsman are statutory commissioners. They are excluded from the figures below.

## Staff

The information in this table is subject to audit.

Staff numbers at year end				
	2017/18	2016/17	2015/16	2014/15
Full time equivalent	72.26	53.64	45.14	40.3

We have increased our investigation resources given the increase in our workload. Towards the end of 2017/18 the Early Disputes Resolution function of The Pensions Advisory Service (14 FTE) merged into TPO. During the year we engaged a very small number of short-term temporary staff to carry out administrative duties. None were engaged as at year end.

There were no exit packages paid during the year.

The information in this table is subject to audit.

Staff costs at year end				
	2017/18	2016/17	2015/16	2014/15
Staff costs	£3,109,807	£2,728,467	£2,223,816	£2,077,857

A breakdown of staff costs between permanently-employed staff and agency staff is contained in Note 3 of the financial statements on page 81.

## Pay

We are bound to follow HM Treasury guidance for the public sector, so the maximum consolidated increase in total payroll allowed was 1%. For non-consolidated awards we were able to use up to an equivalent sum to the performance pot from the year before.

To be eligible for an award in 2017/18 staff needed to have been in post on the 31 March 2017. All staff received a consolidated 1% increase.

## Consultants engaged on the objectives of the entity

During the year we engaged one new person (2016/17: nil) on an off-payroll basis for more than £245 per day. This appointment lasted more than six months. TPO assessed this appointment as not being caught by IR35. The total consultancy spend for the year was £133,470.

## Gender of our staff

	Year end 2017/18		Year end 2016/17		Year end 2015/16	
	Male	Female	Male	Female	Male	Female
Ombudsmen	1	1	1	1	1	1
Directors*	0	3	-	-	-	-
Managers	9	2	6	5	3	6
Other employees	31	30	19	26	23	16
<b>TOTAL</b>	<b>41</b>	<b>36</b>	<b>26</b>	<b>32</b>	<b>27</b>	<b>23</b>

\* Not distinguished in previous years

## Diversity

We ran a staff diversity survey at the end of 2016. Due to our small size we were unable to say if the results were representative of our staff as a whole. We commit to monitoring our staff diversity figure biennially and plan to run another diversity survey towards the end of 2018.

## Staff policies for disabled persons

During the year TPO was recognised as Disability Confident Committed having signed up to the Disability Confident commitments. These commitments are:

- inclusive and accessible recruitment
- communicating vacancies
- offering an interview to disabled people who meet minimum requirements
- providing reasonable adjustments
- supporting existing employees.

## Staff survey

We run a staff survey every April/May. Our staff survey provides us with valuable information and insights into how people feel about working for The Pensions Ombudsman, where we can improve and how things are changing.

Our 2018 staff survey looked at:

- the work people do
- team and individual objectives
- staff engagement
- pay and reward
- management
- personal development.

Overall the results of this year’s staff survey are very positive with a number of upward trends compared to previous years. However, there are a few areas of note and we will act to address these areas throughout 2018/19.

### Highlights from the staff survey

The work people do	<p>93.5% of staff find their work interesting, challenging and stimulating.</p> <p>91% of staff can balance their work and personal lives - greatly improved compared to previous years.</p>
Team and individual objectives	<p>Only 59% of staff are clear about the organisation’s plans for the next 12 months - so there’s work for us to do here.</p>
Staff engagement	<p>79% of staff would recommend TPO as a good place to work and although this is greatly improved compared to previous years, we’d like to do better.</p> <p>81% understand and agree with the direction the organisation is moving.</p>
Pay	<p>Pay isn’t the most important factor for our staff (only 29% state pay is the most important factor). However only 47% of staff believe their pay is fair for the work they do.</p>
Management	<p>84% of staff believe their manager inspires them to perform at their very best. Generally, line managers are viewed very positively at TPO.</p>
Personal development	<p>77% of staff have accessed suitable learning and development opportunities over the past 12 months and 84% believe their skills and knowledge have improved over the same period.</p> <p>However, only 52% of staff believe there are opportunities for career development at TPO - again something we need to consider.</p>

### Sickness

The average absence for the year was 3.5 days per employee. This figure has reduced slightly from 5.8 days per employee in the previous year.

## Parliamentary accountability and audit report

The Pensions Ombudsman is a statutory commissioner appointed by the Secretary of State for Work and Pensions under section 154 of the Pension Schemes Act 1993. The jurisdiction and powers of the Pensions Ombudsman are derived from Part X of the Pension Schemes Act 1993 and regulations thereunder.

The Ombudsman for the Board of the Pension Protection Fund (the Pension Protection Fund Ombudsman) is a statutory commissioner appointed by the Secretary of State for Work and Pensions under section 209 of the Pensions Act 2004. The jurisdiction and powers of the Pension Protection Fund Ombudsman are contained in sections 209 to 218 of the Pensions Act 2004 and regulations thereunder.

The respective legislation also provides for the appointment, by the Secretary of State for Work and Pensions, of a Deputy Pensions Ombudsman and a Deputy Ombudsman for the Board of the Pension Protection Fund (Deputy Pension Protection Fund Ombudsman).

At present the postholder of Pensions Ombudsman also holds the post of Pension Protection Fund Ombudsman. Similarly, the Deputy Pensions Ombudsman also holds the post of Deputy Pension Protection Fund Ombudsman.

### Other interests

Neither the Pensions Ombudsman nor the Deputy Pensions Ombudsman had any significant external interests that conflicted with their management responsibilities.

### Accounting and audit

The accounts have been prepared under a direction issued by the Secretary of State for the Department for Work and Pensions in accordance with Section 145(8)-(10) of the Pension Schemes Act 1993 and section 212A of the Pensions Act 2004 as inserted by the Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2008.

There are no significant future net liabilities that will be financed by grant-in-aid. Details of the treatment of pension liabilities in the accounts can be found in the Remuneration report, in the accounting policies and note 3. This is subject to audit.

There were no remote contingent liabilities at the year end. There were no losses or special payments made in the year. This is subject to audit.

The office has a policy of paying invoices within 10 days and monitors compliance with it.

The auditors did not receive any remuneration for non-audit work.

So far as the Pensions Ombudsman is aware, there is no relevant audit information of which the auditors are unaware, and the Pensions Ombudsman has taken all the steps that he ought to have taken to make him aware of any relevant audit information and to establish that the auditors are aware of that information.

The Pensions Ombudsman confirms that the Annual Report and Accounts as a whole is fair, balanced and understandable and takes personal responsibility for the Annual Report and Accounts and the judgments required for determining that it is fair, balanced and understandable.



**Anthony Arter**

Pensions Ombudsman  
Pension Protection Fund Ombudsman  
29 June 2018

## The Certificate and Report of the Comptroller and Auditor General to the Houses of Parliament

### Opinion on financial statements

I certify that I have audited the financial statements of the Pensions Ombudsman and Pension Protection Fund Ombudsman for the year ended 31 March 2018 under the Pensions Schemes Act 1993 and the Pensions Act 2004. The financial statements comprise: the Statements of Comprehensive Net Expenditure, Financial Position, Cash Flows, Changes in Taxpayers' Equity; and the related notes, including the significant accounting policies. These financial statements have been prepared under the accounting policies set out within them. I have also audited the information in the Accountability Report that is described in that report as having been audited.

In my opinion:

- the financial statements give a true and fair view of the state of Pensions Ombudsman and Pension Protection Fund Ombudsman's affairs as at 31 March 2018 and of net expenditure for the year then ended; and
- the financial statements have been properly prepared in accordance with the Pensions Schemes Act 1993 and the Pensions Act 2004 and Secretary of State directions issued thereunder.

### Opinion on regularity

In my opinion, in all material respects the income and expenditure recorded in the financial statements have been applied to the purposes intended by Parliament and the financial transactions recorded in the financial statements conform to the authorities which govern them.

### Basis of opinions

I conducted my audit in accordance with International Standards on Auditing (ISAs) (UK) and Practice Note 10 'Audit of Financial Statements of Public Sector Entities in the United Kingdom'. My responsibilities under those standards are further described in the Auditor's responsibilities for the audit of the financial statements section of my certificate. Those standards require me and my staff to comply with the Financial Reporting Council's Revised Ethical Standard 2016. I am independent of the Pensions Ombudsman and Pension Protection Fund Ombudsman in accordance with the ethical requirements that are relevant to my audit and the financial statements in the UK. My staff and I have fulfilled our other ethical responsibilities in accordance with these requirements. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

## Responsibilities of the Accounting Officer for the financial statements

As explained more fully in the Statement of Accounting Officer's Responsibilities, the Accounting Officer is responsible for the preparation of the financial statements and for being satisfied that they give a true and fair view.

## Auditor's responsibilities for the audit of the financial statements

My responsibility is to audit, certify and report on the financial statements in accordance with the Pensions Schemes Act 1993 and the Pensions Act 2004.

An audit involves obtaining evidence about the amounts and disclosures in the financial statements sufficient to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or error. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISAs (UK) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

As part of an audit in accordance with ISAs (UK), I exercise professional judgment and maintain professional scepticism throughout the audit. I also:

- identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Pensions Ombudsman and Pension Protection Fund Ombudsman's internal control.
- evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Pensions Ombudsman and Pension Protection Fund Ombudsman's ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention

in my auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my auditor's report. However, future events or conditions may cause the entity to cease to continue as a going concern.

- evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the consolidated financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

I communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.

In addition, I am required to obtain evidence sufficient to give reasonable assurance that the income and expenditure reported in the financial statements have been applied to the purposes intended by Parliament and the financial transactions conform to the authorities which govern them.

## **Other information**

The Accounting Officer is responsible for the other information. The other information comprises information included in the annual report, other than the parts of the Accountability Report described in that report as having been audited, the financial statements and my auditor's report thereon. My opinion on the financial statements does not cover the other information and I do not express any form of assurance conclusion thereon. In connection with my audit of the financial statements, my responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or my knowledge obtained in the audit or otherwise appears to be materially misstated. If, based on the work I have performed, I conclude that there is a material misstatement of this other information, I am required to report that fact. I have nothing to report in this regard.

## **Opinion on other matters**

In my opinion:

- the parts of the Accountability Report to be audited have been properly prepared in accordance with Secretary of State directions made under the Pensions Schemes Act 1993 and the Pensions Act 2004;

- in the light of the knowledge and understanding of the Pensions Ombudsman and Pension Protection Fund Ombudsman and its environment obtained in the course of the audit, I have not identified any material misstatements in the Performance Report or the Accountability Report; and
- the information given in the Performance Report and Accountability Report for the financial year for which the financial statements are prepared is consistent with the financial statements.

**Matters on which I report by exception**

I have nothing to report in respect of the following matters which I report to you if, in my opinion:

- adequate accounting records have not been kept or returns adequate for my audit have not been received from branches not visited by my staff; or
- the financial statements and the parts of the Accountability Report to be audited are not in agreement with the accounting records and returns; or
- I have not received all of the information and explanations I require for my audit; or
- the Governance Statement does not reflect compliance with HM Treasury’s guidance.

**Report**

I have no observations to make on these financial statements.

Sir Amyas C E Morse  
 Comptroller and Auditor General  
 National Audit Office

9 July 2018

Pensions Ombudsman  
Pension Protection Fund Ombudsman

# Financial statements

## Financial statements

### Statement of comprehensive net expenditure

Year ended 31 March 2018

	Note	2017/18 £	2016/17 £
<b>Expenditure</b>			
Staff costs	3	(3,132,004)	(2,728,467)
Other expenditure	4	<u>(1,403,876)</u>	<u>(1,411,035)</u>
<b>Operating deficit</b>		<u>(4,535,880)</u>	<u>(4,139,502)</u>
<b>Total comprehensive expenditure</b>		<u>(4,535,880)</u>	<u>(4,139,502)</u>

#### Transfer of functions

On 19 March 2018 the dispute resolution team of The Pensions Advisory Service transferred to The Pensions Ombudsman. This team provides a service to resolve pension disputes at an earlier stage without the need for a more formal procedure. As the transfer took place late within the financial year there is limited impact on these financial statements in 2017/18.

The notes on pages 77 to 87 form part of these accounts.

## Statement of financial position

31 March 2018

	Note	As at 31 March 2018 £	As at 31 March 2017 £
<b>Non-current assets</b>			
Property, plant and equipment	5	137,684	16,675
Intangible assets	6	200,682	32,166
Trade and other receivables	7	<u>736,893</u>	<u>-</u>
<b>Total non-current assets</b>		<b>1,075,259</b>	<b>48,841</b>
<b>Current assets</b>			
Trade and other receivables	7	147,767	71,312
Cash and cash equivalents	8	<u>198,870</u>	<u>20,323</u>
<b>Total current assets</b>		<b><u>346,637</u></b>	<b><u>91,635</u></b>
<b>Total assets</b>		<b><u>1,421,896</u></b>	<b><u>140,476</u></b>
<b>Current liabilities</b>			
Trade and other payables	9	<u>859,891</u>	<u>173,591</u>
<b>Total current liabilities</b>		<b><u>859,891</u></b>	<b><u>173,591</u></b>
<b>Assets less liabilities</b>		<b><u>562,005</u></b>	<b><u>(33,115)</u></b>
<b>Capital and reserves</b>			
General reserve		<u>562,005</u>	<u>(33,115)</u>

The financial statements on pages 73 to 76 were approved on 29 June 2018 and signed by



**Anthony Arter**  
Pensions Ombudsman  
Pensions Protection Fund Ombudsman  
29 June 2018

The notes on pages 77 to 87 form part of these accounts.

## Statement of cash flows

Year ended 31 March 2018

	Note	2017/18 £	£	2016/17 £	£
<b>Cash flows from operating activities</b>					
Net expenditure		<b>(4,535,880)</b>		(4,139,502)	
Depreciation	5	<b>16,675</b>		14,888	
Amortisation	6	<b>26,035</b>		73,182	
(Increase)/decrease in receivables	7	<b>(813,348)</b>		(7,106)	
Increase/(decrease) in payables	9	<b>686,300</b>		(6,053)	
Loss on disposal of fixed assets		<b><u>6,131</u></b>		<u>-</u>	
Net cash outflow from operating activities		<b>(4,614,087)</b>		(4,064,591)	
<b>Cash flows from investing activities</b>					
Purchase of non-current assets	5,6	<b><u>(338,366)</u></b>		<u>(2,414)</u>	
Net cash outflow from investing activities		<b>(338,366)</b>		(2,414)	
<b>Cash flows from financing activities</b>					
Grants from sponsor department		<b><u>5,131,000</u></b>		<u>3,900,000</u>	
<b>Net financing</b>		<b>5,131,000</b>		3,900,000	
Net increase/(decrease) in cash and cash equivalents in the year		<b><u>178,547</u></b>		<u>(167,005)</u>	
Cash and cash equivalents at the beginning of the year		<b><u>20,323</u></b>		<u>187,328</u>	
Cash and cash equivalents at the end of the year		<b><u>198,870</u></b>		<u>20,323</u>	

The notes on pages 77 to 87 form part of these accounts.

## Statement of changes in taxpayers' equity

Year ended 31 March 2018

	General reserve £
Balance at 1 April 2016	<u>206,387</u>
<b>Changes in taxpayers' equity</b>	
Comprehensive expenditure for the year	<u>(4,139,502)</u>
Grant from sponsor department	<u>3,900,000</u>
<b>Balance at 31 March 2017</b>	<u>(33,115)</u>
<b>Changes in taxpayers' equity</b>	
Comprehensive expenditure for the year	<u>(4,535,880)</u>
Grant from sponsor department	<u>5,131,000</u>
<b>Balance at 31 March 2018</b>	<u>562,005</u>

The notes on pages 77 to 87 form part of these accounts.

## Notes to the accounts

Year ended 31 March 2018

### 1. Accounting policies

#### Basis of accounting

These financial statements have been prepared in accordance with the 2017/18 Government Financial Reporting Manual (FReM) issued by HM Treasury. The accounting policies contained in the FReM apply International Financial Reporting Standards (IFRS) as adapted or interpreted for the public sector context. Where the FReM permits a choice of accounting policy, the accounting policy which is judged to be most appropriate to the particular circumstances of the Pensions Ombudsman for the purpose of giving a true and fair view has been selected. The particular policies adopted by the Pensions Ombudsman are described below. They have been applied consistently in dealing with items that are considered material to the accounts.

#### International Financial Reporting Standards Amendments and Interpretations effective in 2017/18

No Amendments or Interpretations that have been issued but are not yet effective, and that are available for early adoption, have been applied by the Pensions Ombudsman in these financial statements.

Certain new standards, amendments and interpretations to existing standards have been published that are mandatory for the Pensions Ombudsman's accounting periods beginning on or after 1 April 2018 or later periods and which the Pensions Ombudsman has decided not to adopt early. These are:

- IFRS 9 Financial Instruments (effective for periods beginning on or after 1 January 2018). Among other changes IFRS 9 introduces an expected credit loss model for impairment which will replace the current incurred loss model in IAS 39. An impairment loss may now be recognised prior to a loss event occurring. TPO has assessed that the impact of IFRS 9 will not be material to the financial statements.
- IFRS 15 Revenue from contracts with customers (effective for periods beginning on or after 1 January 2018). The standard's core principle is that an entity will recognise revenue when it transfers goods or services to customers at an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. The standard provides a single, principles based five-step model to be applied to all contracts with customers. TPO has assessed that the impact of IFRS 15 will not be material to the financial statements.

## Notes to the accounts

Year ended 31 March 2018

### 1. Accounting policies (continued)

- IFRS 16 Leases (effective for the periods beginning on or after 1 January 2019). The new standard replaces IAS 17 Leases and introduces a new single accounting approach for lessees for all leases (with limited exceptions). As a result, there is no longer a distinction between operating leases and finance leases, and lessees will recognise a liability to make lease payments and an asset representing the right to use the underlying asset during the lease term. TPO are assessing the impact on the financial statements and are awaiting details of HM Treasury's assessment of IFRS 16 in relation to FReM bodies.

#### Going concern

Future financing of the Ombudsman will be met by grant-in-aid from the Department for Work and Pensions, as the Ombudsman's sponsoring department. It has accordingly been considered appropriate to adopt the going-concern basis for the preparation of these financial statements.

#### Grant-in-aid

Grant-in-aid is used to finance activities which support the statutory and other objectives of the entity. It is treated as financing, credited to the General Reserve, because it is regarded as a contribution from a controlling party. Grant-in-aid is accounted for on a cash basis.

#### Cash and cash equivalents

Cash and cash equivalents comprise cash at bank and in hand.

#### Other income and expenditure

Other income and expenditure is recognised on an accruals basis. Where income received relates to the period of time covering more than one accounting period that part extending beyond the current accounting period is treated as deferred income.

#### VAT

The Ombudsman was not registered for VAT during the financial year 2017/18. All costs are inclusive of VAT.

#### Property, plant and equipment

Property, plant and equipment are stated at historic cost less depreciation. The Ombudsman is required to remit the proceeds of disposal of non-current assets to the Secretary of State. Non-current assets are recognised where expenditure is in excess of £500.

## Notes to the accounts

Year ended 31 March 2018

### 1. Accounting policies (continued)

#### Depreciation

Depreciation is calculated so as to write off the carrying value of an asset, less its estimated residual value, over the useful economic life of that asset as follows:

- leasehold improvements – Straight line over estimated remaining life of the lease
- office equipment – Straight line over 5-11 years
- assets are not depreciated until they are commissioned or brought into use.

It is the Ombudsman's view that this is an accurate estimate of the remaining life of the lease.

#### Intangible assets

Intangible assets are stated at historic cost less depreciation. The Ombudsman is required to remit the proceeds of disposal of non-current assets to the Secretary of State.

#### Amortisation

Amortisation is calculated so as to write off the carrying value of an asset, less its estimated residual value, over the useful economic life of that asset as follows:

- Information Technology – Straight line over three to five years
- intangible assets are not amortised until they are commissioned or brought into use.

#### Leases

Leases are classified as finance leases whenever the terms of the lease transfer substantially all the risks and rewards of ownership to the lessee.

All other leases are classified as operating leases. Rentals payable under operating leases are charged to the Statement of comprehensive net expenditure on a straight-line basis over the term of the relevant lease.

Payments in relation to lease premiums are recognised as an asset in accordance with IAS 17 and amortised on a straight-line basis over the remaining term of the lease and credited to the Statement of comprehensive net expenditure

## Notes to the accounts

Year ended 31 March 2018

### 1. Accounting policies (continued)

#### Pension arrangements

Past and present employees are covered by the provisions of the Principal Civil Service Pension Scheme (PCSPS) which is a defined benefit scheme and is unfunded and non-contributory, except in respect of dependants' benefits, but the Ombudsman is unable to identify its shares of underlying assets and liabilities. The Ombudsman recognises the expected cost of providing pensions on a systematic and rational basis over the period during which it benefits from employers' service by payment to the PCSPS of amounts calculated on an accruing basis. Liability for the payment of future benefits is a charge on the PCSPS.

#### Financial instruments

The Pensions Ombudsman determines the classification of financial assets and liabilities at initial recognition. They are derecognised when the right to receive cash flows has expired or when it transfers the financial asset and the transfer qualifies for derecognition.

The Pensions Ombudsman assesses at each Statement of financial position date whether there is objective evidence that financial assets are impaired as a result of one or more loss events that occurred after the initial recognition of the asset and prior to the Statement of financial position date and whether such events have had an impact on the estimated future cash flows of the financial instrument and can be reliably estimated.

Interest determined, impairment losses and translation differences on monetary items are recognised in the Statement of comprehensive net expenditure.

#### Critical accounting judgments and key sources of estimation uncertainty

The preparation of financial statements in conformity with IFRS requires management to make judgments, estimates and assumptions that affect the application of policies and reported amounts in the financial statements. We consider there to be no areas of critical judgment used in applying the accounting policies.

There are no significant sources of estimation uncertainty.

#### Operating segments

The Pensions Ombudsman only reports one operating segment to management for the entire organisation. As such there is no additional analysis requiring disclosure in the accounts.

## Notes to the accounts

Year ended 31 March 2018

### 2. Pension Protection Fund Ombudsman (PPF) element of costs

PPF Ombudsman activity continues to be of relatively limited scale. An informal time recording arrangement is in place to support the split of costs. During the year ending 31 March 2018, 16 PPF Ombudsman cases (2016/17: 7 cases) and 1,591 TPO cases (2016/17: 1,404 cases) were closed. Approximately 1% (2016/17: 0.4%) of expenditure and total net liabilities (corresponding to £45,359 for the year ended 31 March 2018) is deemed attributable to the PPF Ombudsman (2016/17: £16,941).

No further analysis of costs is made between PPF Ombudsman and TPO cases and these costs are not separately reported to management. Therefore the Ombudsman is considered to only have one operating segment and as such there is no additional segmental analysis requiring disclosure in the accounts.

### 3. Staff costs

	Year ended 31 March 2018			Year ended 31 March 2017
	Permanently employed staff	Others	Total	Total
	£	£	£	£
Wages and salaries	2,410,191	22,197	2,432,388	2,111,618
Social security costs	261,419	-	261,419	226,562
Other pension costs	<u>438,197</u>	<u>-</u>	<u>438,197</u>	<u>390,287</u>
	<u>3,109,807</u>	<u>22,197</u>	<u>3,132,004</u>	<u>2,728,467</u>

The average number of staff employed during the period was 62 (2016/17: 54).

## Notes to the accounts

Year ended 31 March 2018

### 4. Other expenditure

	Note	Year ended 31 March 2018	Year ended 31 March 2017
		£	£
Rent and rates		419,071	338,487
Computer expenses		390,819	438,265
Legal and professional fees		257,744	208,735
Subscriptions		84,491	75,461
Staff recruitment		48,343	79,577
Printing, stationery and postage		43,811	41,930
Auditors remuneration		20,500	20,500
Sundry expenses		17,690	11,836
Staff training		16,338	34,623
Accountancy fees		14,190	16,170
Travel and subsistence		12,145	13,290
Hire of equipment		12,000	29,575
Telephone		8,152	5,493
Business continuity		7,140	7,140
Insurance		2,189	1,506
Bank charges		412	377
Non-cash items			
Amortisation	6	26,035	73,182
Depreciation	5	16,675	14,888
Loss on disposal of fixed assets		6,131	
		<u>1,403,876</u>	<u>1,411,035</u>

The auditors did not receive any remuneration for non-audit work (2016/17: £nil).

## Notes to the accounts

Year ended 31 March 2018

### 5. Property, plant and equipment

	Office equipment	Leaseholder property	Hardware	Total
	£	£	£	£
<b>Valuation</b>				
At 1 April 2017	47,321	35,668	-	82,989
Additions	-	-	137,684	137,684
Disposals	(47,321)	(35,668)	-	(82,989)
<b>At 31 March 2018</b>	<u>-</u>	<u>-</u>	<u>137,684</u>	<u>137,684</u>
<b>Depreciation</b>				
At 1 April 2017	43,412	22,902	-	66,314
Charge for the year	3,909	12,766	-	16,675
Depreciation on disposals	(47,321)	(35,668)	-	(82,989)
<b>At 31 March 2018</b>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
<b>Carrying amount</b>				
<b>At 31 March 2018</b>	<u>-</u>	<u>-</u>	<u>137,684</u>	<u>137,684</u>
At 31 March 2017	<u>3,909</u>	<u>12,766</u>	<u>-</u>	<u>16,675</u>
<b>Valuation</b>				
At 1 April 2016	44,906	35,668	-	80,574
Additions	2,415	-	-	2,415
<b>At 31 March 2017</b>	<u>47,321</u>	<u>35,668</u>	<u>-</u>	<u>82,989</u>
<b>Depreciation</b>				
At 1 April 2016	42,352	9,074	-	51,426
Charge for the year	1,060	13,828	-	14,888
<b>At 31 March 2017</b>	<u>43,412</u>	<u>22,902</u>	<u>-</u>	<u>66,314</u>
<b>Carrying amount</b>				
<b>At 31 March 2017</b>	<u>3,909</u>	<u>12,766</u>	<u>-</u>	<u>16,675</u>
At 31 March 2016	<u>2,554</u>	<u>26,594</u>	<u>-</u>	<u>29,148</u>

## Notes to the accounts

Year ended 31 March 2018

## 6. Intangible assets

	Information Technology £	Total £
<b>Valuation</b>		
At 1 April 2017	<u>324,212</u>	<u>324,212</u>
Additions	200,682	200,682
Disposals	(324,212)	(324,212)
<b>At 31 March 2018</b>	<u><b>200,682</b></u>	<u><b>200,682</b></u>
<b>Amortisation</b>		
At 1 April 2017	292,046	292,046
Charge for the year	26,035	26,035
Depreciation on disposals	(318,081)	(318,081)
<b>At 31 March 2018</b>	<u>-</u>	<u>-</u>
<b>Carrying amount</b>		
<b>At 31 March 2018</b>	<u><b>200,682</b></u>	<u><b>200,682</b></u>
At 31 March 2017	<u>32,166</u>	<u>32,166</u>
<b>Valuation</b>		
At 1 April 2016	<u>324,212</u>	<u>324,212</u>
<b>At 31 March 2017</b>	<u><b>324,212</b></u>	<u><b>324,212</b></u>
<b>Amortisation</b>		
At 1 April 2016	218,864	218,864
Charge for the year	73,182	73,182
<b>At 31 March 2017</b>	<u><b>292,046</b></u>	<u><b>292,046</b></u>
<b>Carrying amount</b>		
<b>At 31 March 2017</b>	<u><b>32,166</b></u>	<u><b>32,166</b></u>
At 31 March 2016	105,348	105,348

## Notes to the accounts

Year ended 31 March 2018

### 7. Trade and other receivables

	31 March 2018	31 March 2017
	£	£
<b>Due after more than one year</b>		
Lease premium	<u>736,893</u>	-
Lease premium	<u>736,893</u>	-
<b>Due within one year</b>		
Other receivables	6,481	18,139
Prepayments	85,634	53,173
Lease premium	<u>55,652</u>	-
	<u>147,767</u>	<u>71,312</u>

A lease premium has been recognised for advanced payments made to the landlord at 10 South Colonnade where TPO relocated in March 2018. The total payment is estimated at £792,545 and relates to recovery of fit-out costs incurred by the landlord.

### 8. Cash and cash equivalents

	31 March 2018	31 March 2017
	£	£
Balance brought forward	20,323	187,328
Net change in cash and cash equivalent balances	<u>178,547</u>	(167,005)
Balance carried forward	<u>198,870</u>	<u>20,323</u>

All cash balances are held in commercial banks.

### 9. Trade and other payables

	31 March 2018	31 March 2017
	£	£
Trade payables	30,840	-
Accruals	<u>829,051</u>	173,591
	<u>859,891</u>	<u>173,591</u>

Included in other payables are accruals for lease premium (£429,808) and IT services (£179,463). Both of these accruals are due to the office relocation during the year.

## Notes to the accounts

Year ended 31 March 2018

### 10. Commitments under operating leases

The total future minimum lease payments under operating leases are given below, analysed according to the period in which payments fall due:

#### Buildings

	31 March 2018	31 March 2017
Obligations under operating leases comprise:	£	£
Not later than one year	182,250	281,179
Later than one year and not later than five years	729,000	-
Greater than five years	<u>1,685,813</u>	-
	<u>2,597,063</u>	<u>281,179</u>

#### Other

	31 March 2018	31 March 2017
Obligations under operating leases comprise:	£	£
Not later than one year	6,930	83,625
Later than one year and not later than five years	<u>1,735</u>	<u>27,846</u>
	<u>8,665</u>	<u>111,471</u>

The large increase in operating lease commitments is due to a new lease agreement following an office relocation during the year.

### 11. Other financial commitments

The future minimum payments under the TPO IT contract are given below, analysed according to the period in which the payments fall due:

#### Information Technology

	31 March 2018	31 March 2017
	£	£
Not later than one year	288,989	-
Later than one year and not later than five years	505,731	-
Greater than five years	-	-
	<u>794,721</u>	<u>-</u>

A new IT contract was entered into in December 2017 with the service going live in March 2018.

## Notes to the accounts

Year ended 31 March 2018

### 12. Related party transactions

The Department for Work and Pensions (DWP) are our sponsor department and grant-in-aid is received from them. The amounts are disclosed in the Statement of changes in taxpayers' equity. Service charges in respect of the accommodation were reimbursed to the DWP in the sum of £26,291 during the year (2016/17: £21,284). At 31 March 2018 £2,003 was due to the DWP (2016/17: £1,954) in respect of service charges. During the year the office accommodation was rented from HM Revenue and Customs at an annual cost of £389,617 (2016/17: £314,066). At 31 March 2018 £91,965 was due to HM Revenue and Customs (2016/17: £57,145) in respect of office accommodation.

Lease premium of £792,545 relating to office relocation in the year have been capitalised. At 31 March 2018, £429,808 (2016/17: £nil) was due to Cabinet Office in respect of these fitting costs. At 31 March 2018, £1,188 (2016/17: £nil) was due to Cabinet Office in respect of pension admin charges. The Ombudsman's internal audit services are provided by the Government Internal Audit Agency and invoiced by HM Treasury Group. The annual cost was £26,208 for 2017/18 (2016/17: £18,412). At 31 March 2018, £6,552 was due to HM Treasury Group (2016/17: £2,418) in respect of internal audit work.

### 13. Financial instruments

It is, and has been, the Pensions Ombudsman's policy that no trading in financial instruments is undertaken. The Ombudsman does not face the degree of exposure to financial risk that commercial businesses do. In addition, financial assets and liabilities generated by day-to-day operational activities are not held in order to change the risks facing the Pensions Ombudsman in undertaking its activities. The Ombudsman relies upon the Department for Work and Pensions for its cash requirements, having no power itself to borrow or invest surplus funds and the Ombudsman's main financial assets and liabilities have either a nil or a fixed rate of interest related to the cost of capital (currently 3.5%). The fair values of the Ombudsman's financial assets and liabilities for both the current and comparative year do not differ materially from their carrying values.

### 14. Events after the reporting date

No material events have occurred since the reporting date that have an effect on the accounts. The Accounting Officer authorised these financial statements for issue on the same date as the Certificate and Report of the Comptroller and Auditor General.



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