

## **Pension transfers and early exit charges: consultation**

### **Response from the Financial Ombudsman Service**

Date 21 October 2015

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#### **About the Financial Ombudsman Service**

Our service was set up under the Financial Services and Markets Act 2000 to resolve individual complaints between financial businesses and their customers, fairly and independently. We resolve most things informally or, if requested, can issue an ombudsman's decision (which, if accepted by a consumer, is legally binding).

We can investigate a wide range of complaints and, as a general rule, we deal with complaints about businesses regulated by the Financial Conduct Authority. In relation to pensions, our service can consider matters which concern advice relating to the sale or marketing of individual pension arrangements. Since April this year, we have also been able to consider advice relating to transfers from defined benefit to defined contribution schemes within occupational pension schemes. We are not able to investigate matters that concern the administration and/or management of personal and occupational pensions, nor can we consider complaints about state pensions, which are the responsibility of the Pensions Ombudsman and The Pension Service, respectively.

We resolve complaints by considering what is fair and reasonable in the individual circumstances. In considering what is fair and reasonable, we are required to take into account the relevant law and regulations, rules and guidance and what constitutes good practice in the industry.

#### **Executive summary**

We have reviewed our data for the first six months of the pension freedoms (6 April – 6 October) and although we appear to have seen an increase in the numbers of pension enquiries and pension complaints relative to previous years, the numbers we are seeing at this early stage remain relatively modest. We have seen from public data that over 200,000 people have accessed the pension freedoms and at this stage, we have received 760 enquiries and 150 complaints about the freedoms. We have resolved 76 complaints.

The enquiries and complaints fit mainly into three categories: delays and administration; misinformation; and the requirement to take advice.

As the reforms bed in, it is difficult to predict the volumes or types of future complaints. We are monitoring incoming enquiries and complaints carefully, and liaising with Government, regulators, industry and consumer representatives to contribute to as full an understanding of the impact of the changes as possible.

### **Our response**

This consultation follows the implementation of the pension freedom changes which were introduced in April 2015 and we welcome the opportunity to respond to it. We understand HM Treasury is seeking responses on issues in the operation of the pensions market following those reforms, and options to address these, including - but not limited to - potential barriers to switching.

In making this response, we have sought to provide evidence from our casework on how consumers are experiencing the post-reform pension market, with most of our pension freedoms insight drawn from data received over the six month period following the implementation of the freedoms (6 April – 6 October). It should be noted that we are just one part of a wider landscape, and that our evidence reflects those instances where the consumer sought clarification about how the reforms work or felt something went wrong. Because of this, we are not able to provide answers to all questions raised in the consultation, but we would be happy to talk through any aspect of the evidence we have provided.

### **Context**

#### ***How consumers come to us***

There are two main ways in which consumers come to us:

*enquiries* – last year, we answered 1,786,973 enquiries, where consumers got in touch with us via our contact centre or social media. This equates to around 5,000 each working day (with seasonal variation). Many of these enquiries will be consumers who want to make a complaint. However, not everyone who calls us is ready to complain and many people who contact us are looking for information or support about how to proceed. We respond by explaining what we do and how we can help, or by signposting the consumer to other sources of information.

*complaints* – last year we received 329,509 new complaints and resolved 448,387 complaints. If a consumer brings a complaint to us, it will firstly be investigated by an adjudicator who will come to a view on the case. If either party is unhappy, the case will then be looked at by an ombudsman, who will make a decision which is binding if the consumer accepts it. If a consumer does not accept it, they have the option to pursue the matter through the courts.

#### ***Overview of pension complaints at our service***

We tend to see fewer pension complaints compared with other product areas. The tables below show the number of enquiries and complaints that the service has received over the past three financial years (1 April – 31 March):

Pensions enquiries		
2012/13	2013/14	2014/15
2,456	7,871	7,537

Pensions complaints		
2012/13	2013/14	2014/15
4,401	4,361	4,290

It is interesting to note that while the number of new pension complaints we are seeing is slowly declining, the number of enquiries we received significantly increased in 2013/14 and remained close to that level last year. It is hard to attribute this increase to any one factor; though we note that, even before the pension freedoms were announced, there was increasing public and media interest in pensions. This was especially so for annuities, given the FCA, industry and Government work in this area, such as the FCA thematic and market reviews and wider discussions about the Open Market Option.

Once the freedoms were announced in the 2014 spring budget, we saw a significant increase in the number of pension enquiries we received, with many consumers mentioning the budget announcement when they contacted us. In terms of complaints, personal pension plans, self-invested personal pensions (SIPPs) and annuities have remained the top three most enquired-about and most complained-about pension products since 2013. Annuity complaints increased by 29 percent last year despite fewer pension complaints overall, again highlighting the increased interest in this particular area of pensions policy.

The majority of complaints we looked at last year tended to result from administrative problems and delays. We also heard from many people who were unhappy about being offered a much smaller annuity than they had expected. We also saw a significant rise in the number of complaints relating to SIPPs, with 75 percent of these complaints relating to advice to invest in an Unregulated Collective Investment Scheme (UCIS).

### **Pension enquiries and complaints so far this year**

The data that we will be using throughout the rest of the consultation is information on enquiries and complaints received between 6 April – 6 October this year.

Given the ongoing level of media and public interest in the new pension freedoms that came into force in April, we have seen a significant, but not unexpected, increase in pension-related enquiries and complaints. For the first time, pension enquiries appeared in our list of top ten product areas by enquiry.

We received 4,717 pension *enquiries*, an increase of 775 enquiries (20 percent) on the same period the previous year, as shown in the table below. 760 of these enquiries (16 percent) relate to the pension freedoms.

Pension enquiries 6 April – 6 October	
2014/15	2015/16
3,942	4,717

When looking at pension *complaints* over the same period, we can see that we have received 2,435 pension complaints, an increase of 95 complaints (4 percent) on the same period the previous year as shown in the table below. Of these complaints, 149 are about the pension freedoms. Pension freedom complaints represent 6 percent of all pension complaints received in this timeframe which roughly correlates with the increase in complaint numbers.

<b>Pension complaints 6 April – 6 October</b>	
<b>2014/15</b>	<b>2015/16</b>
<b>2,340</b>	<b>2,435</b>

Of the 150 complaints received, 76 have been closed, with 52 of these being rejected, i.e. we found that the business had not done anything wrong. The remaining 23 complaints were resolved as being upheld in the consumers' favour due to a variety of reasons including complaint merits (4 upheld on the basis of small awards for delays and misinformation); the business made an acceptable offer (11 complaints); or, the consumer withdrew the complaint (8 complaints). We dismissed one complaint as being better suited for consideration by the Pensions Ombudsman.

## **Chapter 2: Exit charges and fees**

To date, we have not received many enquiries and complaints concerning exit charges and fees. 14 of the 760 enquiries between 6 April - 6 October and seven of the 150 pension freedom complaints from 6 April- 6 October were about fees. In a very small number of complaints, consumers are complaining about the level of the fees being too high. However we have found that in the majority of these complaints, consumers were unhappy about the very fact of being charged a fee, which they considered to be unfair and unreasonable. We have also heard from a few consumers who have complained about a Market Value Adjustment applying because they have not taken benefits at their planned retirement date.

Given the small numbers and nature of these complaints, we have limited insight to share at this stage on the issue, but we will continue to monitor this issue.

## **Chapter 3: Pensions transfers**

We have reviewed the enquiries and complaints which we have received to gauge the extent of concern about the transfer process and whether consumers have experienced barriers to utilising the new freedoms. This shows three main sources of concern arising from how the transfer process has been conducted. The nature and extent to which this has featured in enquiries and complaints to the service is set out below:

- *Delays* – 48 percent of the enquiries (361) and about 25 percent of the complaints (37) we have received about pension freedoms have related to delays. Consumers have expressed dissatisfaction over a number of different issues. In the early days of the reforms, concerns related to being able to contact providers and access the forms needed to begin the transfer process. As the freedoms have bedded in, and the initial push from consumers to take advantage

of them has ebbed, we are hearing less about these initial delays and consumers are focusing more on provider delays in releasing money.

*Administration*- we have also received 144 enquiries (19 percent of total pension freedom enquiries) and 19 complaints (13 percent of total pension freedom complaints) concerning poor administration. These issues are similar to those mentioned above such as dissatisfaction with the fund value, wrong forms being sent, taxation and failure to follow instructions. However the main difference is that these issues have not been cited as causing delays.

We understand from firms that many of these delays and administrative issues have occurred as a result of the rapid adjustment to the new policy environment and the need to respond to unexpectedly-high consumer demand. As such, we may expect to see fewer complaints in these categories in the future.

- *Misinformation* – we have received 55 enquiries (7 percent of pensions freedom-related enquiries) and 14 complaints (9 percent of pension freedom related complaints) where consumers felt they were provided with incorrect or misleading information about the pension freedoms.

For example, we have heard from those who say they were told that they could access their funds, even though they were not going to be 55 at the time of these changes. Other consumers have told us that feel they were given incorrect information about the tax position on withdrawals. We have also heard from consumers who were told they would be able to access their pension, but circumstances changed. For example, we have received around 13 complaints (9 percent of pension freedom related complaints) where consumers are complaining about providers not offering the full range of pension freedoms (such as uncrystallised fund pension lump sum or flexi drawdown options) and this means consumers may have to transfer their pension to access this freedom.

As much of the contact in this area has been enquiries and the complaint numbers are fairly low, it is difficult for us to confirm the causes of these concerns. However, we have heard anecdotally from industry representatives that despite best efforts, there were incidents of initial confusion amongst front line staff in the early days of the freedoms, as they were still trying to understand the changes and apply them to consumers' circumstances.

#### **Chapter 4: Financial advice**

We have received a number of enquiries and complaints regarding the requirement for consumers to take financial advice in order to be able to transfer from a defined benefit to defined contribution pension scheme.

In terms of enquiries, 82 consumers (11 percent of all pension freedom enquiries) contacted us to seek clarification about whether they were required to take advice; about when the requirement was triggered; or to express concern at having to pay for advice. Some consumers have also got in touch to express concerns over the difficulty of finding an Independent Financial Adviser (IFA) willing to provide advice or to say that firms will still not release the funds despite the consumer obtaining advice.

In terms of complaints, nearly a quarter of the pension freedom complaints we have received (23 complaints) have been about financial advice where consumers have complained about the requirement to take advice and how it has been applied.

In September, we issued our first ombudsman's decision relating to pension freedoms, specifically about the requirement to seek advice and the difficulty in finding an adviser. Mr S complained that he was not allowed to take a lump sum from his plan without financial advice. Mr S approached a number of advisers but none would advise him. The final decision highlighted that we understood the difficulties which Mr S had experienced in finding an adviser, but concluded that we could not hold the firm responsible for this, as it appeared to be consistent with the pension freedom rules. A copy of the decision accompanies this response.

### ***Insistent clients***

There has been considerable interest in the issue of 'insistent clients'. We appreciate that the industry is keen to ensure that consumers and advisers alike are protected, and as such is looking for clarity as to how we may approach these complaints.

Parliament established the Financial Ombudsman Service to resolve disputes by deciding what was fair and reasonable in all the circumstances, taking into account the law, regulation and industry practice. The FCA's existing rules on fact finds and suitability documents already provide scope for a financial adviser to record what they've recommended (or not) and why. The FCA also released guidance in July that provides further information as to its expectations when handling insistent customers. We work closely with the FCA to ensure there is clarity around its rules.

Although our remit is to look at individual complaints, we try to ensure that we give financial services firms as much information as possible so they are aware as to how we may approach certain types of complaints and the information and evidence we would expect from them if we received a complaint. We provide a range of information online, such as our database of ombudsman decisions, technical guides on approaches (such as suitability and communication of advice) and case studies. We also hold events for industry and attend external events and conferences to ensure businesses have a chance to engage with the service.

At this stage, we have met with a range of organisations, including the regulator, trade bodies and individual firms to understand their concerns and share what we have seen and our thinking, and we will continue to do so. Given that the pension freedoms are still evolving, at this stage it is hard to predict if we will receive complaints about pension transfers. However, if we do begin to receive these complaints, we will engage with the regulator and the industry to build our understanding of the issues and develop a fair and reasonable approach that takes regulation and best practice into account.

## **Chapter 5: Next steps**

### ***Annuities***

The consultation asks if there are any wider issues that are impacting on, or being impacted by, the freedoms. To date, we have had a number of enquiries and complaints about the freedoms from consumers with annuities. We are aware that the Government is currently looking at consulting on a secondary annuity market, and we feel that some of the issues we are seeing may be of interest.

37 of the pension freedom enquiries we have received (5 percent) are from people with annuities. The vast majority of these enquiries are from consumers who believed they could cash in their annuities for a lump sum, which is similar to some of the misinformation issues we refer to earlier in this document.

Twenty of the 149 (13 percent) pension freedom complaints we received from 6 April and 6 October were from people with annuities, 17 of those (85 percent) were from consumers expressing their dissatisfaction that they were not able to utilise the freedoms. The remaining 3 complaints are from those who annuitised following the 2014 Budget announcement but say they may not have done so if they had known about the changes.

As well as complaints about existing annuities not being able to be cashed we have also received complaints about section 32 policies, a type of deferred annuity policy with strict legislative requirements such as not being able to take cash lump sums or before the age of 65. We have received 15 complaints (10 percent of pension freedom complaints) relating to these policies where consumers are complaining about not being able to access these in light of the freedoms.

### ***Future trends***

At this stage, it is difficult to anticipate future developments in complaint trends, as the new market is still evolving. We will continue to monitor what we see in this area and work with relevant stakeholders to share our insight to enhance understanding of the pension and retirement landscapes.