

Distress and Inconvenience Awards

The Pensions Ombudsman has published [revised guidance](#) about redress for non-financial injustice caused by maladministration.

The Ombudsman has introduced fixed amounts for non-financial injustice awards (commonly referred to as 'distress and inconvenience' awards).

This approach takes immediate effect for all open and new cases.

In this issue: [Background](#) | [The Revised Guidance](#) | [Comment](#)

Background

For many years, the Ombudsman has granted awards for maladministration causing "distress and inconvenience", where the complainant has not suffered any financial loss as a result of the maladministration. Originally these awards amounted to a few hundred pounds, but the amounts awarded have tended to creep up over recent years. The awards have always been assessed on a case by case basis.

The Revised Guidance

The Ombudsman has now decided to introduce fixed amounts for distress and inconvenience awards as, in his view, this will enhance transparency, create consistency and manage expectations for all parties to a pension scheme maladministration complaint.

Awards will now usually fall into one of the following five categories of awards: nominal, significant, serious, severe and exceptional.

The Ombudsman will assess the level of injustice by looking at the particular circumstances of the individual, such as the person's individual characteristics. But he will also take a wider view and ask whether a reasonable person (with those characteristics) would have reacted the same way. Thus a person claiming a high level of distress might not receive an award if the distress is not justified, foreseeable or credible. However, if an applicant is vulnerable, for example due to their mental health, then it might be reasonable that they are more likely to suffer distress,

Relevant factors include:

- Was maladministration obvious and could it have been avoided or resolved at an early stage?
- How well was the complaint handled?

- Were there excessive delays that were extensive or avoidable by those handling the complaint?
- Did the maladministration (and the arising distress or inconvenience) take place on a single occasion or over many occasions, and how long did it take to correct it?
- What level of distress or inconvenience was caused?

The Ombudsman's guidelines for the level of the award are as set out in the table below.

Award	Category	Description (one or more factors may apply)
No award	Nominal	<ul style="list-style-type: none"> • minimal, or no, distress and/or inconvenience established • very limited distress and duration • single occasion • an apology would be adequate redress.
£500	Significant	<ul style="list-style-type: none"> • starting point – where some significant distress and/or inconvenience has been caused to the applicant • one or more occasions • effect was short-term • respondent took reasonable steps to put matters right.
£1,000	Serious	<ul style="list-style-type: none"> • a serious level of distress and/or inconvenience that has materially affected the applicant • several occasions • lasting effect over a prolonged period • respondent was slow to put matters right.
£2,000	Severe	<ul style="list-style-type: none"> • a severe and adverse, but not quite exceptional, level of distress and/or inconvenience caused to the applicant • chronic situations • numerous and/or repeated or compounded errors over a prolonged period but opportunities to notice and remedy those mistakes were missed (more so if ease of true position could have been ascertained) • lasting effect over a prolonged period • applicant's wellbeing affected, for example, serious detriment to health • applicant prevented from making informed life decisions at critical times, for example, a decision to retire early or resigning from employment that might not have otherwise been taken • respondent failed to respond to the applicant • respondent failed to take steps to put the matter right • respondent failed to understand the applicant's distress and/or inconvenience.
Higher than £2,000	Exceptional	<ul style="list-style-type: none"> • one or more severe factors above apply plus • an aggravating factor, as listed below for example, could push a severe award of £2,000 up to exceptional level: <ul style="list-style-type: none"> ➢ applicant was persistent in explaining to respondent their distress and/or inconvenience ➢ respondent wilful or reckless ➢ repeated failure by respondent to engage with the Ombudsman on one or more complaints ➢ widespread failure by respondent to address complaints ➢ grave adverse health consequences for the applicant ➢ disregarding IDRPs recommendations.

Where a scheme is underfunded, winding up or transferring to the Pension Protection Fund, the Ombudsman will not, in his words, look to “rob Peter to pay Paul”, and no award may be made in these circumstances.

Non-financial awards are usually treated as “scheme administration member payments” and assessed to tax under the tax rules generally, rather than the registered pension scheme tax rules.

Comment

The timely treatment of complaints from their receipt, and in particular under a pension schemes independent dispute resolution procedure (IDRP), is important and will be scrutinised by the Ombudsman in any case he deals with.

Authors

Gary Crockford, Head of Knowledge Resource Centre

John Dunkley, Senior Technical Consultant

Produced by the Knowledge Resource Centre

The Knowledge Resource Centre is responsible for national multi-practice compliance consulting, analysis and publications, government relations, research, surveys, training, and knowledge management. For more information, please contact your consultant or call us on 0800 066 5433.

This publication is for information only and does not constitute legal advice; consult with legal, tax and other advisors before applying this information to your specific situation.

Buck is a trading name in the UK for Buck Consultants Limited (registered number 1615055), Buck Consultants (Administration & Investment) Limited (registered number 1034719), and Buck Consultants (Healthcare) Limited (registered number 172919), which are private limited liability companies registered in England and Wales. All have their registered office at 160 Queen Victoria Street, London EC4V 4AN. Buck Consultants (Administration & Investment) Limited and Buck Consultants (Healthcare) Limited are authorised and regulated by the Financial Conduct Authority.

©2018 Buck Consultants, LLC.