

Channel Islands Financial Ombudsman Annual Report 2019:

A summary of key issues for Jersey pension schemes

UPDATE

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In May 2020, the Channel Islands Financial Ombudsman (the CIFO) published its annual report and accounts for 2019. A quarterly update released in October 2019 noted an uptick in complaints from members and beneficiaries of relevant pension schemes, particularly with regard to pension scheme transfers.

Whilst the jurisdiction of the CIFO in respect of trustees of approved Jersey schemes depends on the scheme itself, the points flagged by the CIFO may be helpful markers of good practice for all Jersey pension scheme trustees.

Issue 1: Pensions transfers generally

The CIFO states in its annual report:

"In 2019 CIFO dealt with a number of complex complaints involving pension transfers, an issue that has received great attention in other jurisdictions like the United Kingdom. These complaints can involve an assessment of the performance of a trustee's fiduciary duty and the actions, decisions, or potential conflicts of interest of other parties outside of the Channel Islands... The potentially competing interests of many, if not all of the parties involved in a pension transfer, raise significant issues for the protection of individual pension plan members".

These points build on issues first reported by the CIFO in its newsletter from October 2019. This report identified three types of common complaint, as follows:

(a) Overseas pension transfers

The CIFO describes this type of complaint as arising where 'the local pension provider and the new proposed pension provider located outside of the Channel Islands are unable to agree the terms of a customer-requested pension transfer' and each provider seeks to secure its position by way of indemnification.

Issues can arise, however, where a pension provider seeks an indemnity that goes beyond what may be considered fair and reasonable in the circumstances, thereby thwarting the pension transfer. The CIFO also notes that such a provider may also be seeking to avoid liability for an unsuitable future action taken by another provider with the pension assets.

The position can be complicated further where overseas pension providers are concerned as CIFO can only review the provision of pension services in or from the Channel Islands. There may, however, be an equivalent regulatory authority or separate pensions ombudsman in the jurisdiction of the relevant provider.

(b) Written assurances

This type of dispute arises where the current pension provider requires a 'letter of undertaking' before approving the transfer, which the new pension provider refuses to accept. This can in turn lead to delays and frustration for the beneficiary concerned.

(c) Refusal to transfer

The CIFO has heard complaints of pension providers refusing to complete a beneficiary's transfer request. Whilst the reasons for such refusals are not always disclosed, the CIFO refers to instances where trustees do not consider the transfer to be in the beneficiary's best interest, meaning that their fiduciary obligations prevent them from carrying out the transfer.

The CIFO concedes that, unless the current provider is being demonstrably unreasonable in delaying the transfer or in its approach to the transfer to the new pension provider, it is not possible for CIFO to obtain the evidence required to resolve the complaint based on the fairness and reasonability test set out in our law.

Whilst a pension provider may have genuine concerns regarding the proposed transfer, the CIFO notes that, in all transfer requests, there is often a conflict of interest between the various parties involved. Furthermore, local pension providers also stand to benefit from refusing to make the transfer as the assets remain in place, and fees continue to be earned.

Common to all three types of complaint are that the delays and frustrations of the transfer process are born by the relevant beneficiary. The CIFO refers to 'unacceptable delays' being encountered by beneficiaries seeking to transfer their benefits between pension arrangements.

Whilst some transfer requests can prove to be complex in their implementation, the CIFO's findings highlights the need for solid, transparent administrative processes and clear and frequent communication with pension scheme members.

Issue 2: Public sector pension plan transfers

The CIFO has highlighted specifically the issue of public sector bodies offering their pension scheme's members substantial sums to transfer their pension pots to other arrangement. Many members are not then offered financial advice as to whether or not such a transfer is in their best interests and requires members to make complex financial decision regarding their long-term income without effective guidance.

Although this is problematic in itself, the CIFO has also flagged that the most prevalent complaint issue in investments is unsuitable investment advice followed by complaints regarding private pension plans.

This is a matter potentially relevant to trustees of other defined benefit pension schemes, particularly where the scheme's sponsor has proposed an incentive exercise. Trustees in such situations should be confident that their members have been adequately informed with regard to the relevant decision-making exercise.

This matter has been considered in much greater detail in the UK and trustees may wish to refer to the guidance published by the Pension Regulator on DB to DC transfers for more assistance.

Issue 3: Covid-19 and its impact on pension funds

In view of the on-going Covid-19 situation, the CIFO has flagged that many pension plan members are concerned about the current and future effects on their pension funds following significant drops in the value of their investment and pension funds. This is a particular concern given defined contribution pension scheme have become the default pensions saving vehicle for many employers, meaning members are particularly vulnerable to significant market changes.

There is, anecdotally at least, evidence that trustees and administrators of pension schemes have been proactive in contacting their members to provide reassurance and highlight the long-term nature of such investments. Such timely, clear and transparent communications with members is likely to foster stronger relations with members and represents good governance.

Issue 4: Future pension regulation

The CIFO also confirms that it has responded to the Jersey Government's pension regulation consultation. There is currently no date set for the publication of the Government's response.

As a general point, it is hoped that this consultation will result in greater clarity as to the remit of the CIFO in respect of pension schemes and their trustees. There is, however, a risk that more pension schemes will become subject to the jurisdiction of the CIFO.

Lessons to learn for 2020 and beyond

It is clear from the CIFO's report that the pension transfer process can be a difficult and frustrating experience for some pension scheme members. The lessons to be learnt from the CIFO's report speak to the importance of good communication and efficient processes being in place to handle member requests on a more general basis.

Whilst the actions of a receiving scheme may be beyond the control of the trustees of the transferring scheme (particularly where there are unreasonable demands for assurances or indemnities present), each scheme can strive to be timely and clear in its communications with members. Even where a delay is beyond the control of the trustees, members can still be kept updated of the progression of the transfer and what is being done to resolve the delay.

It is therefore important to ensure that trustees and administrators work together to ensure that there are efficient systems in place to effectively manage transfer requests and flag where issues may arise.

If a trustee has a genuine concern regarding the transfer (for example, where the trustee suspects a member may have been induced by a pension scam), it is correct that the trustee considers its own position. As a first step, it may be possible to request further information on the receiving arrangement from the member. Should it become necessary, legal advice should be sought with regard to the trustee's position and the rights of a member to request a transfer.

Mourant Ozannes would be happy to assist trustees in advising on complex transfer requests and reviewing their existing transfer processes

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