



Unite the Union response to consultation on Internal Disputes Procedures

(1) DWP Consultation on The Occupational Pension Schemes (Internal Disputes Procedures Consequential and Miscellaneous Amendments) Regulations 2008

(2) The Pensions Regulator Consultation on the Code of Practice on Dispute Resolution – reasonable periods

1. Introduction

- 1.1. This response is submitted by Unite the Union. Unite is the UK's largest trade union with 2 million members across the private and public sectors. The Union's members work in a range of industries including manufacturing, financial services, print, media, construction, transport and local government, education, health and not for profit sectors.
- 1.2. Unite believes that the efficient operation of an internal disputes procedure is a valuable safeguard for members and welcomed and supported the legislation which required Schemes to maintain a procedure meeting prescribed standards.
- 1.3. In previous consultation Unite has opposed the removal of the requirement for a two stage procedure, which these new Regulations implement. This is because it is felt that the two stage procedure makes sure that the issues in dispute are fully clarified and responded to and because it requires the involvement of the Trustees at the second stage.
- 1.4. In these consultations Unite, in the light of the new legislation, argues that all complaints should be acknowledged and that the proposed reasonable periods need to be refined if they are not to undermine the operation of best practice complaints procedures and further prejudice members' hopes of their complaints being addressed in a satisfactory manner.

- 1.5. Unite rejects the general notion implicit in these consultations that the current requirements are too complex and burdensome, given the important objective which they are designed to address.
- 1.6. There are dangers in simplification which by its nature creates scope for a poor standard of practice in dealing with complaints. The requirements were brought in primarily to address shortcomings in poorly managed schemes and to place a check on arbitrary and unaccountable behaviour by managers of pension schemes, and these are faults which could re-emerge. A wish to create more flexibility for well managed schemes is not an adequate reason for change, given this evident danger.

2. The Regulations

- 2.1. Unite believes it is reasonable that schemes should be obliged to acknowledge receipt of all applications. The numbers of complaints should in most cases be small and an acknowledgement represents good practice and can be argued to be in the interests of the scheme as it will help put often annoyed and/or anxious complainants at their ease. It would also provide an opportunity for schemes to manage expectations as to when a full response will be forthcoming.
- 2.2. The move away from the initial two month limit for the first stage of a disputes procedure means members could, in future, find themselves waiting until or beyond the proposed four month reasonable period before they even knew whether their complaint has reached the right place. This would clearly be poor practice and a licence for poor practices detrimental to the members' interests.
- 2.3. At present it is a requirement for schemes to include reference to TPAS (and the Pensions Ombudsman) in their internal disputes procedure and in their scheme booklet. This has been a welcome development which gives members confidence that if complaints are left unresolved they can seek independent advice and adjudication. Unite sees no reason for this practice not to be continued.
- 2.4. Schemes are required now at the end of their disputes procedure to remind complainants of the availability of TPAS and the Pensions Ombudsman. Unite believes that this is the right time for this to happen and a more appropriate stage than when the complaint is first acknowledged.

3. The Code of Practice

- 3.1. Under the current two stage procedure members are supposed to be given a first stage response within two months. Members have six months to consider whether they wish to submit an 'appeal' or clarification of their complaint and, if they press the matter to a second stage, the scheme has a further two months to respond.

- 3.2. Under the Code of Practice the first/final response, whether of a one or two stage procedure is deemed reasonable if it is received within four months and fifteen days. Unite considers this to be too long for a first response and too short for a final response from a two stage procedure.
- 3.3. Unite has argued (above), in response to the consultation on the Regulations that schemes should be obliged to acknowledge all complaints. This would be all the more vital in the circumstances of this longer proposed time limit in the Code of Practice. In the absence of an acknowledgement, Unite believes that four months and fifteen days is not a reasonable period.
- 3.4. The time limit proposed would appear to be driven by a wish to allow a reasonable time during which complaints might, if the scheme procedure required it, be looked at by trustees. It does not seem clear why, in a procedure which only involves the pensions manager, such a long period would be required. A distinction in the period might be made between procedures which involve the scheme trustees and those which do not.
- 3.5. In a two stage procedure, the first stage often allows for the facts, issues and arguments in the dispute to be clarified. Members have an opportunity to reflect on the first stage response and consider whether they wish to press the original argument or refine the basis of the complaint in the light of new information which has emerged. It is not clear how this beneficial opportunity for reconsideration can be accommodated within a single time limit for the completion of the whole process.
- 3.6. There is a danger that the reasonable period proposed will push schemes into moving away from a two stage procedure or finding themselves unable to operate it satisfactorily if, say, a month within the period is taken up by the member considering and responding to the first stage.
- 3.7. There would appear to be a case for 'stopping the clock' at the date the first response is sent to the member and starting it again when they decide to pursue the second stage. Alternatively, a different specification of reasonable periods should be made where a two stage procedure is maintained, with the first stage having a shorter time limit than four months.

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For further information contact:
bryan.freake@unitetheunion.com