

REVIEW OF THE PENSION LANDSCAPE

Paper from the Pensions Ombudsman

Introduction

1. The DWP's Better Regulation Simplification Plan included reference to the Government's intention to review the organisations involved in the regulation and protection of work-based pensions and to make recommendations about the most effective way to configure those functions to deliver Government policy going forward. In particular the Government intends to review the organisations established through the Pensions Act 2004 (identified as the Pensions Regulator and the Pension Protection Fund) and how the functions of other bodies fit with its reform proposals. Those others were said to include in particular, The Pensions Advisory Service, the Pensions Ombudsman, the Pensions Protection Fund Ombudsman, the Financial Ombudsman Service (in a pensions role) and the Pensions Regulator Tribunal. There is reference to making recommendations about the most effective way to configure those functions to deliver Government policy going forward. This mirrors similar intentions set out in the Pensions Reform White Paper.
2. I note that, omitted from the subsequent terms of reference of the Reviewer, is reference to the Financial Assistance Scheme. That Scheme cannot however entirely be ignored as my duties as the Ombudsman for the Pension Protection Fund (which is specifically an office within the terms of reference) include responsibilities for reviewing decisions made by the Financial Assistance Scheme.
3. A key point to note is that the proposed review does not extend to the role of the Courts. Whether designed as a Trust (as are most occupational pensions schemes) or as a contract (as are most personal pension plans) the Courts have jurisdiction to determine disputes and also, so far as Trusts are concerned, have an inherent supervisory jurisdiction.
4. In practice, because the Pensions Ombudsman's jurisdiction includes the determination of disputes of fact and of law, many more such disputes in relation to pensions matters are now dealt with by the Pensions Ombudsman rather than by the Courts. The decisions of the Pensions Ombudsman are enforceable as though they were decisions made by the County Court. There is a right of appeal to the High Court against the Pensions Ombudsman's determinations, but this is restricted to an appeal on a point of law. An appeal against a decision of a County Court Judge would normally be to the Court of Appeal, but the appellant would need permission to bring the appeal either from the first instance judge or from

the Court of Appeal; permission is unlikely to be given if the appeal was not based on a point of law.

The Role of the Ombudsman

5. It is not the primary role of the Courts, the Pensions Ombudsman or the PPF Ombudsman to “Deliver Government policy going forward.” The task is primarily to deliver a fair and just result about the particular dispute. In the pensions context, this will usually involve the determination of some dispute of fact or making an interpretation of the wording of particular Trust Deeds or Contract documents. There may be occasions when that interpretation needs also to reflect some extraneous factor based either on a Parliamentary provision (such as the Human Rights Act) or on a Common Law doctrine of Public Policy. But Public Policy need not be synonymous with Government Policy and either may at times be difficult to discern.
6. As PPF Ombudsman, I have a dual role in that I both review decisions made by the Board of the Pension Protection Fund, and also act in the same way as would the Parliamentary Ombudsman (although, as is DWP’s custom, governed by a great many more Regulations than is the Parliamentary Ombudsman who operates across the rest of the Government Landscape) as an investigator of complaints of maladministration. Save in so far as the Government has a policy of providing for such Ombudsman review, I do not see the purpose of that office as being to “deliver the Government’s Policy going forward”.

Relationships with other institutions

7. Across the different fields of Economic Activity in the UK, there is a pattern of having a Regulator (not always using such a title) and an associated Ombudsman. The latter might be established independently from the Regulator or by the Regulator, but the split of duties between the two can be consistently found: the Regulator deals with Strategic Policy and Control and is usually equipped with penal powers of enforcement. Such enforcement is increasingly (in order to be ECHR compliant) through the mechanism of an independent tribunal. The Ombudsman deals with individual disputes and seeks to provide redress for the individual. Looked at another way, the Regulator lays down and enforces at a strategic level, whereas the Ombudsman does so at a detailed level applying some rules of law and equity as well as interpreting the sector’s Codes of Practice.
8. In many areas there may also be other supervisory referees: the particular economic or commercial sector will probably employ some members of staff who also belong to a professional body which will usually have its own disciplinary processes to uphold its professional standards. Such professional processes are not usually concerned with the direct provision

- of redress for those who have been adversely affected by failures in the performance of the relevant professional.
9. Access to the Ombudsman is available without charge. Ombudsmen do not seek to impose any form of penalty on the Respondent body.
 10. Across the whole landscape, there is also some overlap with the Courts in that the Ombudsman is very often dealing with issues which could be regarded as breaches of contract or in some cases of claims in tort. There will usually either be a right of appeal to the Courts or, if not, the body (be it Regulator, Tribunal or Ombudsman) will be subject to judicial review.
 11. Ombudsmen differ from the Courts not only in not charging a fee to applicants, but also in being inquisitorial and investigative. The legislation governing the Pensions Ombudsman specifically provides that I am not bound by the usual rules of evidence. A self-adopted difference from the Courts is that, like most UK Ombudsmen, the Pensions Ombudsman allows the parties to comment on a draft of a proposed decision before it is finally made.
 12. Until the Financial Services and Markets Act 2000, the Pensions Ombudsman was unusual amongst Ombudsmen in having statutory power to make binding determinations and to be able to issue enforceable directions (my directions are enforceable as though they were judgments of a County Court). Since the Financial Services and Markets Act 2000 came into operation, there has also been power for the Financial Ombudsman Service to make decisions which are binding on and enforceable against Respondents. An important distinction however is that, unlike the determinations of the Pensions Ombudsman, such decisions are not binding on the Applicant and are subject to a financial cap.
 13. I respond below to the specific six topics identified by the Reviewer, although my answers are at times inter-related.

How I consider my institution is currently functioning in its work-based pensions role.

1. Like other Ombudsmen in the UK, and like the Courts, the Pensions Ombudsman has little direct control over the amount of incoming work. The resulting volatility in the workload coming into the office makes

business planning difficult and there have undoubtedly been difficulties at times in quickly securing the resources needed to cope with the workflow.

2. Since I was appointed in 2001, the output of the office has roughly doubled, but in some years the incoming work has more than doubled. The cost per complaint and per investigation has fallen significantly. Unlike the arrangements for the Financial Ombudsman Service, there is no automatic link between the number of cases received and the level of resources provided. (Part of the cost of the Financial Ombudsman Service is met by a cost per case charge being met by Respondents – this itself acts as an incentive for Respondents to seek to settle complaints without the matter needing to be raised with the Financial Ombudsman Service.)
3. The difficulties in receiving the necessary resources have been much less over the last two financial years. I have also been considerably helped by the appointment of a Deputy Ombudsman which was made possible by the Pensions Act 2004. Previously, the primary legislation did not permit me to delegate to any member of staff the determination of a complaint or dispute and, whilst my predecessor seemed to be able to operate comfortably when the output of the office was around 750 decisions a year, I was undoubtedly struggling when output increased to more than 1200 a year.
4. A problem throughout my time in office has been a lack of suitable IT systems. The office processes lend themselves to the application of Workflow and Document Management systems. Not only have these not so far been provided, but there has also been a lack of reliable management information and knowledge management systems. This is in the process of being redressed, although I fear that it will not be until after I have left office that the benefits will begin to flow through. I am however pleased that the DWP have, over the last two years, invested considerable sums in modernising my IT, improving my office accommodation, and increasing investigative resource available to me.
5. A particular feature of the casework of the Pensions Ombudsman is that there will usually be several Respondents to the same complaint: thus a complaint may lie against Trustees (either jointly or individually), against Managers of the Pension Scheme, or against Administrators of the Scheme. There may be more than one Manager or Administrator involved. It must be extremely frustrating for the individual complainant, for the various parties to recognise that an injustice has been caused to them but yet leave him without any redress whilst they argue amongst themselves as to where responsibility lies. It would in my view be better if legislation provided for the Trustees to be responsible, not only for their own actions, but also for action undertaken on their behalf, so that an award were primarily made against the Trustees (for payment out of the administrative

funding of the Scheme). There could then be a separate resolution of any dispute that there may be between the various Respondents.

6. Regulations (of which in my view there are far too many), basically provide for all written material coming into my office to be circulated to all of the parties. That involves much unnecessary circulation of paper and fails to recognise the investigatory nature of some of the work of the office. One would not expect the Police or Serious Fraud Office to supply those who may be in due course accused, with material at early stages of their investigation. Bearing in mind my practice of circulating a draft decision before any formal determination is made (a practice which could, if need be, be expressed as a legislative requirement), the Regulations requiring this paper chase should be repealed. For a suitable model, one could look to the provisions in the Local Government Act 2000 for the investigation of complaints against members of local authorities. If a less formal approach is preferred, one could also look to the provisions operated by the Parliamentary and Health Services Ombudsmen.
7. A further feature, which I share with the Courts, is that complaints may encompass a number of aspects, some more interrelated than others. Largely because of the way the previous case recording system was set up (but also taking account of a High Court judgment in my predecessor's time) there are administrative difficulties in my separating these into separate determinations, but that is an approach I am increasingly adopting.
8. There have been other tensions with the Courts, although these are perhaps less marked than they were five years or so ago. The High Court is, however, very reluctant to recognise that Parliament has provided a system whereby members of work-based pension schemes may obtain redress from an Ombudsman for injustice for which a remedy would not be provided by the Courts. Without any direct statutory authority, the Courts have indicated that such redress should be at a low level and have expressly quashed decisions which identify as maladministration the adoption of a wrong view of the law. That is in contrast to the approach taken by the Parliamentary and Local Government Ombudsmen.
9. There has also been a problem, exemplified in *Edge v Pensions Ombudsman*, whereby the Courts ruled that the Ombudsman could not make a direction which may affect the rights of others who are not directly party to the proceedings. The Courts themselves overcome this problem (at least in the field of Trust Law – in some other areas the Courts happily make decisions without all those who may be affected by them being represented) by appointing a representative whose costs are paid out of the Trust Fund or Pension Scheme. My understanding is that the Government, whilst wishing to overcome the problem caused by the *Edge*

decision, is reluctant to provide the Pensions Ombudsman with the same means as the court uses to overcome the problem. An alternative approach (inviting all possible interested persons to participate directly as individual parties) is provided for the PPF Ombudsman, which I fear will cause much administrative and practical difficulty. That is the approach which the Government at one stage proposed to apply to the Pensions Ombudsman but then withdrew.

10. The Courts have themselves developed, in other areas of work (particularly in relation to allegations of tortious liability), mechanisms for consolidating representative actions and test cases, which could usefully be explored to see if they offer a suitable model.
11. By comparison with the Courts, the Pensions Ombudsman is cheap, both in the sense of the direct cost to the applicant and in the overall cost of the institution. Most members of pension schemes, but perhaps not all of the Schemes themselves or those advising them, would see the Ombudsman's less formal processes as an advantage, as are the investigatory powers of the Ombudsman. The Courts are, however, as the law presently stands, able to give a decision in cases where the *Edge* judgement prevents the Ombudsman from so doing.
12. I am wary of making any claim that the Pensions Ombudsman produces a quicker decision than the Courts. Delays in obtaining a decision from a Judge are now much less than they were some years ago, in part because of a greatly expanded judiciary and in part as a result of case management procedures used by the Court and imposed on those using the Courts. Litigation in the Courts is overwhelmingly conducted by lawyers who marshal and sift the papers to identify the particular points on which a ruling is sought. Thus to move the Ombudsman's work into the Court is likely to lead to increased costs for the parties. However, once we realise the benefits of the improved IT, accommodation and new working practices recently introduced, I am confident that, for the huge majority of applicants coming to my office, the investigation leading to a decision will take considerably less time than may have been the case previously and, subject to any delays caused by the investigative process, determinations will probably be available in no longer timescale than could be found in the Courts and in many cases more quickly.
13. Increased costs would also be likely if a Pensions Tribunal were set up, as has been mooted from time to time. The suggestion comes, in my experience, largely from those who represent relatively large Pension Schemes or Insurers. The ability of those Respondents to pay for professional expertise and advocacy would contrast with the ability of individual members of pension schemes to afford similar representation.

14. I am concerned, under the present arrangements, by the costs which may fall upon a successful applicant to me if the Respondent seeks to appeal to the High Court as is provided by the legislation. Those using an Ombudsman service do not expect to be at risk of having to pay the other side's costs, but that is a possible outcome of the present system.
15. The Pensions Ombudsman is, I think, the only UK Ombudsman whose governing legislation provides directly for a right of appeal to the High Court. This is presumably a recognition that the office is expressly empowered to determine disputes of fact and law and is intended to be compliant with Article 6 of the ECHR. The legislation presently allows an appeal only on a point of law.
16. Finally I should point out that some matters before me, particularly those concerning delays in winding up schemes, may involve suggestions of delay on the part of HM Revenue and Customs. Complaints of maladministration there can be investigated by the Parliamentary Ombudsman, but the timescale for making such complaints to her is very much shorter than the time limits which apply for bringing complaints to me or to the Courts.

How I consider the other institutions under review are currently functioning.

1. With the possible exception of part of the work of the Pensions Advisory Service (TPAS) and the Pensions Regulator, I do not have, from my work as the Pensions Ombudsman, a wealth of experience of the work of the other institutions. Having previously had lengthy experience as Director of the Local Government Ombudsman service, I do have knowledge of the development of Ombudsmen systems in the UK including those in the financial sector.
2. The work of the PPF and Financial Assistance Scheme has not yet reached the point where it might be expected to give rise to many references to me. The only complaints I have had about FAS have not been within my jurisdiction: in effect they are complaints about the legislation.
3. I have not received a single complaint of alleged maladministration on the part of the PPF although it was, I think, always expected that complaints were more likely to come only when pensioners did actually begin to receive payments from the Fund, a point which has only just been

reached. It does seem to me to be premature to assess the effectiveness of its work.

4. I consider it is also premature to seek to assess the general effectiveness of the work of the Pensions Regulator. There are, however, two areas of its work where I do have reservations:
 - a. My understanding is that the Regulator has regard, in deciding how to use its resources, to the number of people who are likely to be affected if those responsible for Pension Schemes act in default. From the point of view of those who stand to lose benefits as a result of such defaults, their loss is the same whether or not 10, 100, 1000 or 10,000 others are similarly affected. I find it surprising and disappointing that, if a trustee of a small scheme has acted improperly, action by the Regulator either to prevent his participation at some later date in another scheme (of whatever size) or to monitor his future participation may be less likely because few people will be immediately affected. It seems to me to be only a matter of time before a bad apple will resurface and the Regulator will stand to be criticised for failing to prevent a foreseeable loss.
 - b. Secondly, I think the Pensions Regulator could take a more proactive role in raising standards, regulating, and capping costs of professional trustees.
5. Subject to those reservations, and with the caveat that my direct involvement with the Pensions Regulator is fairly limited, I have been impressed with the way it has started its work. I am comfortable with the model of an Ombudsman whose task is primarily to determine individual complaints on the basis of applying the general law and having regard to the Regulator's Codes of Practice. I am happy with the content of the Codes of Practice which have so far been produced and with their method of production. More could in my view be left to such a process rather than being subject to detailed Regulation by DWP.
6. The great bulk of the 12,000 telephone calls I receive annually are referred to TPAS, either to offer general advice, to seek to resolve the particular issue, or to give advice on how a complaint can be made to me. I would not myself be comfortable for the first two of those functions to be undertaken within my office: there would be too great a risk of the office being seen to take a view on the general or particular issue which could imperil the impartiality of the office should a particular issue come to be determined.

7. About a third of the 3000 to 4000 written enquiries I receive each year are also referred to TPAS, usually because the complaint to me is premature or because there are difficulties in identifying the respondent to the complaint. In turn, about three quarters of the 1000 or so investigations I commence each year are into matters in which TPAS has been involved.
8. I note from the TPAS annual report that it deals with around 6000 to 7000 disputes each year. My knowledge is thus effectively based on seeing about 10% of the work of TPAS. The sample is not representative because I only see those cases where TPAS has not been able to effect a settlement or provide advice which satisfies the complainant.
9. I am aware of suggestions that TPAS could undertake work which is presently done within my own office either in its own right or on my behalf. So far as concerns doing work on behalf of the Pensions Ombudsman, I have taken the view that this would not be desirable.
 - c. TPAS describes itself as an independent voluntary organisation providing information and guidance to members of the public. It says it helps any member of the public who has a problem, complaint or dispute with his or her occupational or personal pension scheme.
 - d. The problem with TPAS doing work for the Pensions Ombudsman, is the need for the latter to maintain impartiality between those who TPAS helps and those who are on the other end of the dispute. Just as I would not want my own staff to be advising one party as to whether or how to pursue their complaint, so I would not be willing to authorise some other organisation to do this on my behalf.
10. There has also been a suggestion that I should decline to accept any complaint for investigation unless there has first been an attempt by TPAS to settle the matter. I have not supported that suggestion. Parliament, through primary and secondary legislation has provided that complaints to me must be made in writing and has also specified what matters lie within my jurisdiction. Thereafter, I have a discretion as to whether to accept a complaint for investigation. I have taken the view that it would be improper for me to fetter my discretion by introducing a blanket requirement that TPAS should first be involved. I have also indicated to the DWP that it would be undesirable to impose such a requirement by legislation. My view is based on very long experience of Ombudsman schemes in the UK. Efforts to impose such filters on other schemes are generally unsuccessful. Would-be users of those other Ombudsman services tend, despite the published advice, to make contact direct with the office anyway and research showed that many of those who did not

subsequently pursue their complaint simply gave up because they regarded the system as obstructive and bureaucratic.

11. In co-operation with the Association of Pension Lawyers, TPAS also offers an arbitration scheme. I am certainly an advocate of mediation if that approach can lead to early resolution, and I have myself arranged for two matters to be referred into the TPAS/APL scheme. I am not aware what referrals have been made from elsewhere and, particularly, whether TPAS are referring would be complainants into that service as part of the work it does on complaints which are not referred to me. It is not a service to which any direct reference seems to be made on either the TPAS or APL website.
12. All that said, my office works very closely with TPAS – we occupy suites of offices in the same building and my staff liaise, on a daily basis, with TPAS staff. I know that my Deputy has had discussions with them, with a view to exploring how we may further improve that relationship without compromising our independence.

How I consider the interactions are working between the institutions.

1. Generally I would regard the interactions which operate at various levels as satisfactory. Those arrangements do recognise the need to manage possible conflicts of interest. Such conflicts partly lie behind my view that a suitably arms' length relationship should be retained with TPAS.
2. There is an overlap of jurisdiction between the Pensions Ombudsman and the Financial Ombudsman Service so far as concerns Personal Pensions. I have exclusive jurisdiction over Occupational pensions. From the point of view of the public, it would no doubt make more sense if a single Pensions Ombudsman dealt with all complaints about pensions, particularly as some such complaints (for example those arising from transfers of benefits) may well involve issues from both sectors.
3. Nevertheless, the overlapping jurisdiction does not, in my opinion, cause problems for the two offices. A memorandum of understanding between the two bodies provides for the Financial Ombudsman Service to deal with complaints about the mis-selling of pensions, and the Pensions Ombudsman to deal with other complaints. An irritant to that present arrangement is that the FSA, which regulates the work of Insurance Companies, has a requirement that, when determining a complaint, the Insurance Company must inform the complainant of a right to complain to the Financial Ombudsman Office. That requirement should be changed.

4. I have not had voiced to me any concern from Insurers that they are subject to two different Ombudsmen jurisdictions which will have slightly different processes. They are, of course, also subject to two different Regulatory Bodies. Insurers are also involved in the provision of occupational pension schemes, one model for which is to provide benefits from the proceeds of insurance policies. The position is further complicated because Insurers, and indeed Banks, who are also regulated by the FSA, may well, either directly or through subsidiary companies, provide Management and/or Administrative services to work-based insurance schemes and thus also be subject in that capacity to regulation by the Pensions Regulator.
5. Independent Financial Advisers (IFAs) may also sometimes provide similar services (sometimes without formal authority), and fall within the Pensions Ombudsman's jurisdiction. IFAs will be subject to Regulation by the FSA, but work they do in advising on pensions may not necessarily fall within the jurisdiction of the Financial Ombudsman Service.
6. There are also a number of detailed transactions which relate to the provision of pensions and which seem to fall within the jurisdiction of neither myself nor the Financial Ombudsman Service. Redress for any failures in those transactions would thus seem to lie with the Courts. The Government may wish to consider whether it would be desirable to make arrangements for those matters to fall within the jurisdiction of one or both Ombudsmen.

What future regulatory developments are key to the configuration of institutional functions, including those from Europe and beyond?

1. I am not sure whether it constitutes a "Regulatory Development", but I am conscious that I met with the Reviewer on the day when the European Court was due to pronounce on whether the UK had met its obligations, so far as Pension Schemes are concerned, with the EU Insolvency Directive. There will no doubt be a need to review existing arrangements in light of that decision.
2. Cross-Border Regulation and enforcement is now in place within the EU. An area where the pensions of UK citizens may be less secure is where their employer is controlled or may be taken over by a non-EU based organisation. I am uncertain as to whether existing Regulatory powers will prove adequate to protect those pensions: the Pensions Regulator may be better placed than I to comment on this.
3. There will also be a need to ensure that adequate dispute resolution mechanisms are put in place for the new National Pensions Saving Scheme. My understanding is that, if this is to be administered directly by the Government or by an Executive Agency of Government, then it is current

Government Policy for there also to be an Ombudsman with jurisdiction over such activity. To the extent that the Scheme is modelled on an occupational arrangement, the Pensions Ombudsman would be the obvious candidate.

What suggestions do I have - taking account of the Hampton principles - to improve the configuration of functions and responsibilities to best deliver effective regulation and protection of work-based pensions, with robust governance, in an effective efficient and affordable way, and most effectively to meet the Government's pensions objectives, encouraging people to save in work-based pensions?

1. In my view, it is too soon after the establishment of the institutions established by the Pensions Act 2004 to carry out a meaningful review of whether those institutions are achieving their purpose.
2. There is a sense, however, in which the landscape has moved on in a way which makes that legislation much less relevant. We are effectively moving into a period – inevitably with pensions a lengthy period - of running off the liabilities of final salary occupational schemes around which the existing institutions have largely been framed.
3. If the Government is going to encourage work-based pensions, then it does in my view have a moral obligation to ensure that money which is entrusted to such pension schemes is available for its intended purpose when required. It also has a responsibility to ensure that schemes which employees are encouraged to join, do have adequate arrangements in place to provide the promised pensions.
4. There may be scope of some consolidation of the various DWP non-departmental public bodies. Although the responsibilities and work processes of the Pensions Regulator, the Pension Protection Fund, the Pensions Ombudsman, the PPF Ombudsman and TPAS are different, is there any reason why they could not receive administrative and businesses servicing from a common body or share common IT systems? Do they need separate Managing Boards?
5. In practice, the Government has amalgamated the two separate statutory offices of Pensions Ombudsman and Pension Protection Fund Ombudsman in the same way as it has amalgamated the separate offices of the Parliamentary and Health Services Ombudsman. I am aware that, when the

Financial Services and Markets Act was under Parliamentary consideration, there was a debate as to whether the office of Pensions Ombudsman should become part of the Financial Ombudsman Service. The arguments which Treasury Ministers then advanced to Parliament against such a proposal seem to me still to have validity.

6. In that context, I would again draw attention to the widespread model of having both a Regulator and an Ombudsman for defined sectors of economic and commercial activity. Unless the Pensions Regulator is also to be merged with the FSA, I would not be in favour of merging the two Ombudsmen's offices.
7. However, with no legislative changes, the Pensions Ombudsman could take responsibility for the investigation and determination of all complaints and disputes relating to occupational and personal pensions, In other words, the Pensions Ombudsman could take on that relatively small sector of work in this field currently undertaken by FOS. The Pensions Ombudsman's jurisdiction already extends to such personal pensions. The converse does not hold true: FOS has no jurisdiction over occupational pensions.
8. If such a change were considered desirable, not only would it retain the existing statutory framework, it would simplify matters for the consumer: there can be little doubt that a "Pensions Ombudsman", dealing with all matters to do with pensions, is the most straightforward and understandable arrangement for the average consumer, and it would remove all of the issues which do arise in relation to overlaps between the respective functions. It would reduce the number of "players" on the pensions landscape if that were seen as a source of confusion and considered desirable.
9. Moreover, as indicated above, the Pensions Ombudsman's jurisdiction is unusual given the quasi Tribunal nature of the role and the availability of an appeal to the High Court, which is quite different to the situation for other Ombudsmen services, including FOS. That arrangement would remain intact, leading to a single legal chain in terms of onward appeal.
10. Similar jurisdictional issues arise in relation to the role of PPF Ombudsman, a role which also involves an appellate function, and which sits with that of Pensions Ombudsman. That also would require no change.
11. I stress however that, in my view, the FSA/TPR divide is one which works reasonably well, and I would, from preference, mirror that so far as the Ombudsmen are concerned. However, if despite the views the Government has previously expressed to Parliament, the particular FOS/Pensions Ombudsman split is to be changed, I would do that by transferring a small part of FOS's work to my successor.

What is my view of the capital market solutions that are currently being mooted?

1. I take the term “capital market solutions”, to be a reference to the provision of bulk annuities and the transfer to an Insurance Company of the risk associated with meeting the employer’s promise to provide pensions based on final salaries.
2. On a detailed level, I am concerned that there should be a clear transfer to the insurance company of **all** the liabilities of the scheme. This may include liabilities which have not properly been identified: there are examples of schemes winding up without all benefits properly being secured.
3. There is also a need to make clear, if existing institutions are maintained, whether future disputes about, for example, the length of service or what constitutes pensionable pay fall to be determined by the Pensions Ombudsman or Financial Ombudsman Service, should their respective functions continue as now.

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