



THE PENSIONS OMBUDSMAN AND THE COMMON LAW

K v NHS West Yorkshire Integrated Care Board (CAS-81099-B2P1, 27 January 2026)

G v HSC Pensions and The Department of Health Northern Ireland (CAS-36051-K6P2, 20 January 2026)

By Allison Wu, Wilberforce Chambers

Introduction

This note discusses two recent determinations by the Deputy Pensions Ombudsman (“**the Ombudsman**”). The first Determination – *K v NHS West Yorkshire Integrated Care Board* – concerned the Employer’s failure to provide information in a timely manner, thereby causing Mr K to lose the opportunity to transfer his pension to another scheme on more favourable terms. The second Determination – *G v HSC Pensions and The Department of Health Northern Ireland* – concerned the DoH’s failure to make necessary adjustments when making a pay award which increased Ms G’s pension contributions and thereby reduced her take-home pay. Both determinations are notable because they illustrate the application of well-established common law principles in the pensions context.

*K v NHS West Yorkshire Integrated Care Board*¹

The Public Sector Transfer Club (“**the Club**”) allows members who move between Club schemes to transfer their pensions on special terms. Both the Tyne and Wear Pension Fund, a constituent fund of the Local Government Pension Scheme (“**LGPS**”), and the

¹ Unless the context otherwise requires, references in square brackets are to paragraph numbers of the relevant determination.

National Health Service Pension Scheme (“NHSPS”) were members of the Club. Mr K wanted to transfer his pension from the LGPS to the NHSPS.

In order for Mr K to exercise his right to request a Club transfer, his Employer was required to complete Part 2 of Form A and return Form A to Mr K. Mr K sent his copy of Form A to the Employer on 24 March 2021. However, the Employer did not return the completed Form A in time for Mr K to exercise his right to a Club transfer. Accordingly, Mr K brought a complaint that the Employer had failed to provide the necessary documentation in a timely manner and that he had therefore lost the opportunity to proceed with the Club transfer.

The Adjudicator found that the Employer had indeed failed to provide the relevant documentation in a timely manner. However, she decided that the Employer had not caused Mr K financial loss because Mr K could have acted with more urgency to progress the transfer. She nonetheless found that the Employer’s maladministration had caused Mr K to suffer significant distress and inconvenience, and therefore awarded Mr K a sum of £500 as compensation.²

On appeal, the Ombudsman held that the Employer breached its implied contractual duties and the common law of duty of care. However, contrary to the Adjudicator’s conclusion, the Ombudsman held that the Employer’s maladministration did cause Mr K to lose the opportunity to transfer his pension on Club terms.³

The Ombudsman started with an analysis of the Employer’s implied contractual duty to take timely action in respect of Mr K’s transfer request. In *Scally v Southern Health & Social Services Board*⁴ (“**Scally**”), the Court held that a term was implied into an employment

² [52]

³ [59].

⁴ [1992] 1 AC 294.

contract that required the employer to draw its employees' attention to a valuable benefit available to them through their employment contract. Applying the reasoning of *Scally*, the Ombudsman held that the Employer was under an implied duty to take timely action in relation to Mr K's request to transfer his pension. In particular, it was both reasonable and necessary to imply such a term into the contract so that Mr K could enjoy the benefit of his time-limited right to request a Club transfer.⁵ The Employer had therefore breached this implied duty because there was no reasonable explanation for its delay in providing the necessary documentation.⁶

Alternatively, the Ombudsman held that the Employer breached its duty of care to Mr K. The Employer had assumed responsibility for completing Form A to enable Mr K to transfer his pension on Club terms.⁷ Such an assumption of responsibility was derived from the fact that the Employer had explained to Mr K what was required in respect of Form A, advised Mr K that it would arrange for it to be completed, and assured him that it could be done by the relevant deadline.⁸ The loss of the benefit of a Club transfer right therefore fell within the scope of the Employer's duty of care.⁹

Having established that the Employer had breached both its contractual duties and duty of care to Mr K, the Ombudsman proceeded to consider the issue of causation. The Ombudsman held that, but for the Employer's failure to act promptly, Mr K would have obtained the benefit of a Club transfer.¹⁰ Applying *Baker v Willoughby*,¹¹ the Ombudsman held that, where A's negligent act causes harm to B and C's subsequent negligent act causes the same harm to B, A will be held liable for all the harm suffered by B and C's acts can be ignored. Therefore, even though the scheme administrators had subsequently also failed to

⁵ [76].

⁶ [79].

⁷ [84].

⁸ [85].

⁹ [84].

¹⁰ [92].

¹¹ [1970] 2 AC 467.

act promptly in respect of Mr K's transfer request, those acts could be ignored because they did not change the harm which Mr K had suffered as a result of the Employer's breaches.¹² Equally, any delays on Mr K's part could be ignored because there was no good reason for the Employer's failure to return Form A to Mr K promptly.¹³

Finally, in respect of remedies, Mr K asked to be given the opportunity to transfer his pension to the NHSPS as a Club transfer or, alternatively, to be compensated for any financial loss he may suffer if his pension transfer were completed on non-Club terms. The Ombudsman recognised that she could not make an order that was binding on the scheme administrators, as they were not parties to the Determination.¹⁴ However, the Ombudsman identified a possible legal route under Schedule 3 of the NHSPS Regulations for a late Club transfer in exceptional circumstances. Therefore, she ordered the Employer to submit a claim to the scheme administrator of the NHSPS on behalf of Mr K in accordance with those provisions.¹⁵ Alternatively, the Employer was liable to pay the difference in value between the benefits provided by a Club transfer and non-Club transfer, as calculated by an actuary and adjusted for tax liabilities.¹⁶

The practical effect of the Ombudsman's decision is the recreation of the transfer on Club terms. Interestingly, while Mr K's strict legal right under the Regulations was merely to request a Club transfer, it seems that the Ombudsman treated the right to request a Club transfer and the right to obtain a Club transfer as practically the same on these facts.

¹² [91], [93].

¹³ [94].

¹⁴ [100]-[101].

¹⁵ [106].

¹⁶ [110].

G v HSC Pensions and The Department of Health Northern Ireland

At the material time, Ms G was an employee of HSC (which was dissolved in 2022) and a member of the Health and Social Care Pension Scheme (“**the Scheme**”). The DoH is the manager of the Scheme and is also responsible for setting pay on behalf of the HSC.

The Scheme is designed in such a way that members whose earnings are just above a certain threshold pay disproportionately more than those whose earnings are just below that threshold, for nearly the same benefit.¹⁷ As noted by the Ombudsman, the effect of this design is that a small pay increase “*results in contribution obligations for that member materially exceeding the pay rise and the member suffers a reduction in taxable earnings and take-home pay*”.¹⁸ Therefore, instead of having a pay rise, the member in fact suffers a pay cut.

Ms G brought two complaints. First, that her pensionable pay for the 2017/2018 tax year was not adjusted for her salary sacrifice election. However, Ms G subsequently reversed her salary sacrifice, so no determination was made by the Ombudsman in respect of this complaint. Second, that the HSC and DoH had failed to take remedial action to avoid adverse financial consequences to her when she received a 1% pay award (“**the Pay Award**”) in the 2017/2018 tax year. The effect of the Pay Award was that Ms G’s gross earnings and the pension she accrued in respect of the period from 1 April 2017 increased by 1%, but her pension contributions increased by 3.2% of her previous gross salary plus 12.5% of the increase.¹⁹ Effectively, Ms G suffered a reduction in take-home pay, which was aggravated by the fact that the Pay Award had been retrospectively applied.²⁰

The Ombudsman started by determining whether the complaint should be upheld against the DoH. The Ombudsman accepted the DoH’s evidence that it was not Ms G’s direct

¹⁷ [162].

¹⁸ [163].

¹⁹ [174].

²⁰ [175]-[176].

employer; rather, it was HSC that was Ms G's direct employer.²¹ However, applying *James-Bowen v Metropolitan Police Commissioner*,²² the Ombudsman held that the DoH was Ms G's quasi-employer because it had a sufficient degree of involvement in setting the terms of the remuneration and pension terms for Ms G's employment with HSC.²³

The Ombudsman then proceeded to consider whether the DoH owed Ms G a duty of care to protect her from financial harm when determining the Pay Award. Applying the *Caparo* test,²⁴ the Ombudsman concluded that the DoH owed Ms G a duty of care not to irrationally or unfairly effect pay changes in a manner that causes financial harm, such as a reduction in take-home pay.²⁵

- First, the requirement of proximity was satisfied by the relationship of quasi-employment, although the Ombudsman noted that a quasi-employer's liability in tort closely mirrors and cannot exceed the liability which an employer would have for a breach of the duty of trust and confidence.²⁶ Moreover, the DoH had sufficient control to determine the pay award applicable to Ms G's employment²⁷
- Second, the requirement of foreseeability was satisfied because the DoH was or should have been well aware of the effect of the Pay Award on the take-home pay and pension contributions of employees.²⁸
- Third, it was fair, just and reasonable to impose a duty of care on the DoH. In particular, the DoH was already subject to public law duties not to act irrationally and to have regard to the reasonable expectations of employees when setting or varying

²¹ [184].

²² [2018] UKSC 40.

²³ [188].

²⁴ *Caparo Industries PLC v Dickman* [1990] 2 AC 605.

²⁵ [219].

²⁶ [189].

²⁷ [190].

²⁸ [191]-[192].

pay, so that imposing a duty of care on the DoH would not conflict with its public law obligations.²⁹

The Ombudsman also noted that there is no risk of floodgates because the duty is limited to take care not to effect pay changes in a manner that causes financial harm.³⁰

Accordingly, the Ombudsman held that the DoH acted in breach of its duty of care because it failed to make appropriate adjustments to the Pay Award to ensure that Ms G would not suffer a reduction to her earnings.³¹ Moreover, to apply the pay variation retrospectively was also “*irrational and unfair*” and was, in the Ombudsman’s view, “*a more serious breach*”.³² Therefore, the Ombudsman ordered the DoH to repay the excess pension contributions, take future steps to ensure that Ms G’s net pay would not be reduced by the Pay Award, and pay Ms G £1000 for the serious distress caused to her.³³

Turning to HSC Pensions, the Ombudsman held that there had been no maladministration by HSC Pensions. Its duty was to administer the Scheme under delegation from the DoH and it did not have discretion to alter the Pay Award.³⁴

Conclusion

Both determinations discussed in this note are of interest to practitioners because of their application of orthodox common law principles to the pensions context. In *K v NHS West Yorkshire Integrated Care Board*, the concept of an assumption of responsibility was applied to establish that the Employer had a duty of care to enable Mr K to benefit from his right to a Club Transfer. On the other hand, *G v HSC Pensions and The Department of Health Northern Ireland* is significant for the Ombudsman’s application of the *Caparo* test and its

²⁹ [194]-[197].

³⁰ [199].

³¹ [219].

³² [207]-[209].

³³ [226]-[228].

³⁴ [221]-[223].

conclusion that a quasi-employer owes an employee a duty of care not to irrationally or unfairly cause the employee financial harm by varying pay with the effect that her pension contributions would increase and total remuneration would decrease.

Published March 2026

This article was published on www.pensionsbarrister.com. Views expressed above are those of the author and are not necessarily those of Pensions Barrister. The article is provided for general information only and is made available subject to the Terms and Conditions found on www.pensionsbarrister.com (which contain amongst other things a disclaimer and further limitations on liability). Nothing in the article constitutes legal or financial advice nor may it be relied on as such advice.