



CONGRUENT

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# PENSION COMPLAINTS





## BACKGROUND

Not all consumers have the appropriate skills, knowledge and experience on pension matters that affect them and may seek professional advice from specialists e.g. Independent Financial Advisors (“IFA”). Where the product or service is regulated by the Financial Conduct Authority (“FCA”) these advisors need to be authorised and suitably qualified - in some cases requiring specialist training e.g. for pension transfers according to the FCA’s training and competence manual.

However, pension complaints are becoming increasingly common due in part to pension freedoms - which give consumers more choices with their pension savings. This is particularly true for pension transfers; involving consumers giving up safeguarded benefits for a more flexible arrangement e.g. defined benefit (“DB”) transfer to self-invested personal pension (“SIPPs”). Sometimes the proposed flexible arrangement may have unsuitable investments e.g. illiquid investments which may further compound losses for the consumer.

Pension complaints typically involve one or more of the following elements:

- advice to take out a personal pension, stakeholder pensions, SIPP or to make free-standing voluntary contributions;
- advice to transfer from a defined benefit occupational pension scheme to a personal or other defined contribution pension scheme (i.e. loss of safeguarded benefits);
- advice to someone with a personal pension to take out an annuity or go into drawdown;
- advice on investments in SIPPs, Executive Pension Plans (“EPPs”) or Small Self-Administered Pension Schemes (“SSASs”);
- advice on management of a personal pension portfolio e.g. under a discretionary management agreement;
- advice on taking out an annuity or section 32 buy-out policy where the buy-out is in the individual consumer’s name;
- administration of SIPPs, EPS, SSASs or group personal pensions or annuities in payment;

If a consumer has a pension complaint and he remains unhappy with the final response he receives from the provider or adviser he is able to take his complaint either to the Financial Ombudsman Service (“FOS”) or to the Pensions Ombudsman Service (“POS”). The FOS deals with complaints about taking out a pension, transferring a pension or the investment element e.g. investments held in a SIPP. The POS is there to assist with complaints regarding the administration or management of personal or occupational pension schemes.

There are eligibility criteria for both the FOS and POS and there is an award limit of £150,000 for the FOS (to be increased to £350,000 for acts or omissions after 1 April 2019) – however there is no award limit for POS. If an award is made against the firm then this is legally binding and enforceable in the courts by the consumer.



## OUR SERVICE

To enable us to assist you fully in your pension complaint we are required to investigate the merits of the claim, draft the complaint and provide you with support during the complaints process. Our service consists of the following stages:

### INFORMATION REQUEST

This involves the determination of what additional information is required and, if you do not have that information, advising you how to obtain it or requesting it on your behalf. Where we ask the firm on your behalf you will be required to provide us with a letter of authority. This will enable us to carry out the investigation and analysis into the merits of the claim.

### INVESTIGATION AND ANALYSIS

We will investigate whether the firm's actions were fair, reasonable and appropriate at the time of the act or omission with regard to the customer risk profile, demands and needs and the communication from the firm - in particular if it was fair, timely and not misleading. We will review the firm's suitability report (if applicable) and if there was a recommendation to transfer safeguarded benefits whether the transfer was appropriate given the customer's circumstances and the regulator's rules and guidance in force at the time.

### PENSION COMPLAINT

When we have completed the above steps and we have found that a complaint is justified we will:

- Determine any direct losses and heads of loss for any consequential loss claim (if any) based on established legal principles applicable to this area i.e. causation, foreseeability and remoteness of loss. We will quantify each head of loss using our financial and risk expertise without the need for further expert assistance.
- Preparation of a loss report including redress calculations using our proprietary software and submission to the firm providing the required evidence to support each head of loss and, where evidence is not readily available, providing the necessary arguments why the head of loss should be included in the claim.
- Provide any additional information requested by the firm or assist with any request for clarification that the firm may have on the original submission.
- Review the firm's outcome letter and provide you with our opinion on whether the determination is fair and reasonable.
- If relevant, review the outcome letter and provide you with our opinion on whether the determination is fair and reasonable according to your circumstances.
- If you remain dissatisfied with the firm's response assist with any referral to the Ombudsman providing the necessary support through the process or If you decide to pursue the matter through the courts we can provide you and/or your solicitor with the support through our expert evidence service.



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## FAQS

*How do I know if I have a complaint against the firm?*

The starting point for most pension transfers (according to FCA guidance) is that the transfer is not in the best interest of the consumer. You may have a complaint if you have transferred your safeguarded benefits e.g. a DB scheme to a flexible arrangement and/or you have suffered a loss or find it difficult to liquidate any investments held in your flexible plan e.g. a SIPP - then you may have been poorly advised or the firm may not have carried out sufficient due diligence on the investments held in your flexible pension arrangement.

*What does the Financial Ombudsman Service have to say about pension complaints?*

The number of pension complaints that the FOS has received has increased in recent times – this is particularly true for pension transfer complaints. The main allegation was the transfer was not suitable and the firm did not pay due regard to the consumer's demands and needs at the time of the transfer. Where a complaint is upheld the FOS is currently able to award up to £150,000 in compensation.

*What does the Financial Conduct Authority have to say on the matter?*

Due to the extent of misconduct found from its supervisory work (it found that only 47% of advice on pension transfers could be shown to be suitable), the FCA recently changed the rules around pension transfers – the significant changes coming into force on 4 October 2018. Pension transfers where guaranteed benefits are in excess of £30,000 require FCA authorised independent financial advice in the form of a personal recommendation – the starting position being that the transfer is not in the consumer's best interests unless it can be demonstrated otherwise.

*What if the firm does not uphold my complaint – what options do I have?*

If the complaint is eligible you are able to take the matter to the relevant Ombudsman scheme. For pension transfers and investment complaints the Financial Ombudsman Service has jurisdiction and for complaints regarding the administration or management of schemes the Pensions Ombudsman Service has jurisdiction. Depending on the quantum of the claim you may consider litigation but this can be a very time-consuming process with a large financial risk and you would be best advised to seek legal advice from a suitably qualified legal professional e.g. a solicitor.



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## FAQS (CONTINUED)

*Why should I use you – can I not just refer the complaint directly to the firm?*

You are always entitled to refer the complaint directly to the firm. Where we can help is that pension transfer complaints can be difficult to understand for the typical consumer. Not all consumers have the skills, knowledge and experience to understand the complexity of pensions. The Ombudsman will not raise a complaint for you – in the first instance a complaint will need to be raised to the firm. You can only refer a complaint to the Ombudsman if you have received a final outcome letter from the firm. We think that a precisely formulated complaint backed up by technical argument can sometimes achieve a better outcome.

*I have been offered compensation from the firm as a result of an Ombudsman direction – how can I check that the amount offered is correct?*

Unless you are versed in financial and actuarial mathematics it may be difficult to verify the results. Congruent have developed calculators (through the Congruent Calculations™ platform) that may assist a registered user to perform these redress calculations or we offer a service of doing it for you.

## ABOUT US

Congruent was established in 2013 in response to a growing demand from corporate clients seeking independent, professional advice on banking services and financial product risk management and hedging arrangements. We advise businesses directly or through their professional advisors. We also provide expert witness services.

### **ROGER GRENVILLE-JONES - DIRECTOR**

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Roger has held a senior position as a 'Head of Actuarial Function' within a global insurance company and since then has been a consulting actuary for over twenty-five years. He has a wealth of experience in dealing with specialist financial products and is particularly experienced as an expert witness for financial complaints. Roger was appointed by the Financial Conduct Authority ("FCA") to provide expert evidentiary analysis on the risk of certain financial products in disciplinary proceedings against a regulated firm.

He holds an MA in Mathematics from Cambridge University and is a Fellow of the Institute and Faculty of Actuaries. He has also been a university lecturer in actuarial science.

### **NASAR ZAMIR - DIRECTOR**

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Nasar has held senior positions in institutional sales for a number of global investment banks (including head of Hedge Funds sales). His career in investment banking also includes positions in risk management and trading and spans more than two decades. He has considerable experience dealing with banking products - particularly derivatives and structured products and the banking and risk management processes associated with these products.

Nasar holds a BSc (Hon) in Mathematical Sciences from the University of Bath, an MSc in Actuarial Science from City University (London) and a postgraduate certificate in Corporate Finance from the London Business School. He is an Affiliate of the Institute and Faculty of Actuaries.

### **BUSINESS INFORMATION**

Congruent group of companies comprises a holding company Congruent Holdings Limited 09465766, and Congruent Management Limited 09465853 that employs staff and purchases services for the group, and the following operating companies:

- Congruent Actuarial Limited 08709494: Regulated by the Claims Management Regulator in respect of regulated claims management activities - authorisation number CRM33563; Regulated by the Institute and Faculty of Actuaries in respect of a range of investment business activities - FCA Register for exempt professional firms - reference number loA120; Subject to the jurisdiction of the Legal Ombudsman; Licensed by the Bar Standards Board to instruct the Bar directly for advice and for representation
- Congruent Administrators Limited 11328182 and Congruent Trustees Limited 11328118 : These companies provide scheme administration and professional trustee services to Small Self-Administered Schemes ("SSAS's")
- Congruent Risk Limited 09465877: Congruent Risk owns Congruent's proprietary software
- Congruent Analytics Limited 11328238 and Congruent Financial Limited 09467628 : These companies have been incorporated to reserve the names and for future use
- Each contracting company is solely responsible for execution of its contracts
- Professional Standards and Code of Conduct: Institute and Faculty of Actuaries
- Professional Indemnity Insurance: Insured through Pembroke Managing Agency Limited with Lloyd's Syndicate 4000
- Registered address of all companies: 141-142 Fenchurch Street, London, EC3M 6BL, United Kingdom
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