

THE PENSIONS OMBUDSMAN

INSTRUCTIONS AND GUIDANCE FOR RESPONDENTS

You have been named as a respondent to a complaint or dispute referred to the Pensions Ombudsman. These instructions tell you what you should do in responding to the complaint or dispute, and what the procedure is for an investigation by the Pensions Ombudsman. The Pensions Ombudsman has statutory powers to investigate and determine the matter. In some respects the Ombudsman has the same powers as a court (they are explained in more detail below). As a respondent, there are certain steps that you are required by law to take. You should therefore take the complaint or dispute and these instructions seriously, reading the instructions fully before responding.

Cases are determined by either the Pensions Ombudsman or Deputy Pensions Ombudsman. The Deputy Pensions Ombudsman has the same statutory powers as the Pensions Ombudsman. For the sake of brevity, any reference in the following paragraphs to the Pensions Ombudsman is also a reference to the Deputy Pensions Ombudsman.

I HOW TO RESPOND

I.1 Time limit for response

You are required to acknowledge receipt of the complaint or dispute with which these notes were enclosed, and to provide a written response to the complaint or dispute to the Pensions Ombudsman's office within 21 days of receipt. If a representative (eg a solicitor) is to respond on your behalf, please advise the Pensions Ombudsman's office yourself, in writing, even though your representative may be dealing with the matter generally.

I.2 Information to be provided

In your response you should state:

- (a) the facts relating to the complaint or dispute;
- (b) whether you oppose the allegations made;
- (c) if you oppose the allegations, any details relied on in doing so;
- (d) whether, in your opinion, any other person has a direct interest in the subject matter of the complaint or dispute, and if so their name and address;
- (e) the name and address of your representative (if any) for the purposes of the investigation, and whether you wish the Ombudsman's office to correspond with your representative. If you choose to be represented the Ombudsman's office will normally only correspond with your representative.

Please provide copies of all relevant documents and correspondence, including those specifically requested in the covering letter. It is not, however, necessary to supply further copies of documents or correspondence already enclosed with the complaint or dispute.

1.3 Amendment of response

Your reply can only be amended or supplemented with the Ombudsman's leave (which shall not be unreasonably refused).

1.4 Right to request further particulars/determination of preliminary issue

In your reply (or separately, but within the 21 days) you may request:

- (a) further particulars of the complaint or dispute, and/or
- (b) a determination of any question as a preliminary issue.

If you wish to make a request, please do so clearly, and at the outset of your response. This will help the Ombudsman's office to identify as quickly as possible what steps must be taken to deal with the request.

1.5 Number of copies of response

The covering letter tells you how many copies of your response are required. You should supply identical signed copies, and the same number of copies of any supporting documents, plus sufficient copies of each for any person you believe has a direct interest and whom you have identified under 1.2 (d) above. If you have been asked in the covering letter for any specific documents, then the same number of each of these is required.

1.6 Joint responses

If you are one of a number of respondents, then you may agree amongst you to respond jointly if you wish. Your reply should make it clear who is responding. In particular, if you are a scheme trustee you may want to consult your co-trustees before submitting a response. Normally the Ombudsman expects trustees to respond jointly.

2 FAILURE TO RESPOND

2.1 Determination without response

If no reply is received from you within the 21 days (or any extension allowed by the Ombudsman) the Ombudsman may determine the complaint or dispute forthwith.

2.2 Powers to require evidence to be produced

In the absence of a response, as an alternative to immediately determining the complaint or dispute, the Ombudsman may use statutory powers to require you to furnish information or produce evidence (see 4 below).

3. THE INVESTIGATION

3.1 Opportunity to comment and further enquiries

Your response will be supplied to the other party or parties for their observations (and you will, of course, receive copies of others' responses). When the observations on responses have been received, you and/or the other parties may be asked for further information and/or comment and further investigations may need to be pursued until the Ombudsman considers that there is sufficient information to determine the complaint or dispute. All materials sent to the Ombudsman must be treated as confidential by the parties (see 3.4), but you cannot ask for the letters and papers that

you provide not to be copied to the other parties. Thus, you cannot correspond with the Ombudsman's office on a strictly confidential or 'without prejudice' basis.

3.2 Oral hearings

As part of this process you are entitled to request that the Ombudsman holds an oral hearing before making the formal Determination. If you do not, you may not later complain if no hearing is held.

If you do request an oral hearing, the Ombudsman may or may not accede to your request. It is for the Ombudsman to decide whether it is an appropriate case in which to hold a hearing. A hearing may be held even if this has not been requested by you or any other party to an investigation.

The Ombudsman would usually only hold an oral hearing in the following circumstances:

- (a) where there are differing accounts of a particular material event and the credibility of the witness needs to be tested;
- (b) where the honesty or integrity of a party has been questioned and the party concerned has requested a hearing;
- (c) where there are disputed material and primary facts which cannot properly be determined from the papers alone.

The Ombudsman may, however, decide that it is appropriate to hold a hearing in cases which do not fall into any of these categories.

If an oral hearing is held then the hearing will be in public (unless there are good reasons why it should not be). The respondents (as well as yourself) will be entitled to be present and to call and cross-examine witnesses. Also the respondents (as well as yourself) will be allowed to be represented by a lawyer or other appropriate person.

3.3 Early Resolution

If the investigator reaches a view that the Ombudsman is likely to uphold part or all of the complaint, he or she will write to you giving reasons why together with a proposed remedy for any injustice. If you agree with the investigator's view, provided that the applicant also agrees with the remedy, the matter is treated as being resolved. However, should you disagree with the investigator's view you can request that the matter be reviewed by the Ombudsman, but you will be expected to provide reasons, backed up with evidence if necessary, as to why you disagree. If the Ombudsman agrees with the investigator's view he will write to you formally determining the matter. The Ombudsman's Determination is final and binding on the same basis as explained in paragraph 3.4 below. Alternatively he may feel that further investigation is needed before letting you have his decision. If, as a result, his conclusions are likely to be materially different to those of the investigator, the Ombudsman will usually proceed in accordance with the following paragraph.

3.4 The Determination

When the Ombudsman feels able to form a preliminary view on the complaint or dispute, it is usual practice to send notification of the Ombudsman's preliminary conclusions to all parties, inviting further comments. The Ombudsman considers the comments made and decides whether any additional information or comment should be called for or the preliminary view is otherwise affected. When the Ombudsman is satisfied, the formal Determination is issued to all parties. This Determination is final and binding on all parties, subject only to an appeal on a point of law to the High Court in England and Wales, the Court of Appeal in Northern Ireland or the Court of Session in Scotland.

3.5 Confidentiality

During the course of the investigation, all papers and other information received by you relating to it must be treated as confidential, although they may be disclosed to anyone from whom advice is being obtained in connection with the investigation. The adviser will then be under a similar obligation. When the investigation is complete, the Ombudsman's final Determination is not confidential. However, any papers or information provided to you and not contained in the Determination remain so. **Failure to comply with the restrictions as to confidentiality may result in the person responsible being found in contempt and in consequence subject to penalties imposed by the courts.**

3.6 Personal Information

Please see the Notice in the Appendix

4. ABOUT THE PENSIONS OMBUDSMAN

The Pensions Ombudsman is a statutory commissioner appointed by the Secretary of State for Work and Pensions. The Ombudsman's appointment and powers are derived from Part X of the Pension Schemes Act 1993 (or in Northern Ireland, the corresponding legislation, ie the Pension Schemes (Northern Ireland) Act 1993). The Ombudsman can investigate complaints of injustice due to maladministration or disputes of fact or law referred to him by members and dependants of members of occupational or personal pension schemes against the trustees, managers of the scheme, or an employer in relation to the scheme, or an administrator of an occupational pension scheme. The Ombudsman can also investigate complaints of maladministration or disputes of fact or law between trustees or managers of different occupational schemes, or between trustees or managers and employers in relation to the same occupational scheme. In some circumstances, disputes between trustees of the same occupational pension scheme or questions referred by a sole trustee can be determined.

The Pensions Ombudsman has the same powers as a court in relation to the attendance of witnesses and the production of evidence. Where there is a failure to comply with the Ombudsman's requirements the Ombudsman may certify to the court that the person concerned is in contempt and the court may impose penalties accordingly.

A Determination by the Pensions Ombudsman is final and binding on all parties, subject only to appeal on a point of law to the High Court in England and Wales, the Court of Appeal in Northern Ireland or the Court of Session in Scotland. It can be enforced in the County Court (in England and Wales) as if it were a County Court order, and there are similar enforcement provisions applicable in Scotland and Northern Ireland.

APPENDIX

This notice explains how the Pensions Ombudsman uses personal information in carrying out his work.

Under the Data Protection Act 1998, the Pensions Ombudsman is a data controller for any personal information that he holds about individuals. This means that he must comply with various duties; for instance, he must use personal information fairly, and keep it safely and securely.

By “personal information”, we mean information that is about identifiable living individuals. Some complaints to the Ombudsman are specifically about individuals. Other complaints are about organisations; but these complaints may well refer to individuals who are connected with the relevant organisations. Either way, complaints will often include a considerable amount of personal information such as their names, where individuals work or used to work and their roles. In investigating complaints we are likely to be given further information about individuals, both by the complainant and by those who are responding to any complaint.

We use personal information of this kind in order to help us reach decisions about complaints, and we may need to share such information with other people in order to carry out our investigation. For instance, he may need to share information with the complainant about individuals who were involved in dealing with the complainant’s pension, so that the complainant can comment on that information. As we have a duty to deal with personal information securely, we do not usually share personal information by email or encourage others to do so (unless the information is encrypted).

By law, the Ombudsman also has the power to share information about complaints with a small number of other organisations, if he thinks it necessary in helping them carry out their own functions, but he will always consider this carefully before doing so.

We aim to carry out our work openly and transparently. For this reason, we usually publish the Ombudsman’s decisions on our website. The published decisions give the complainant’s name (but not address) and will include personal information about both the complainant and possibly other individuals who have been involved in the case, in order to explain what decision the Ombudsman has reached and why.

In some cases, before publishing a decision, the Ombudsman may edit it, so that individuals cannot be identified or so that particular information is not disclosed. For example, he might: remove names and/or other information that might enable individuals to be identified; he might also remove particularly sensitive material such as medical information; or, in an exceptional case, publish the decision in summary form only, while making more information available to anyone who requests it.

The Ombudsman would consider editing a decision before publication include where, for example, a case involves: details of an individual’s medical history; information about a complainant’s family members (particularly children); serious and unfounded allegations where publication would give them wider circulation; information about other sensitive matters (such as an individual’s sexual life).

If you are involved in a complaint that is being investigated, and you think that the Ombudsman should edit his decision before publishing it, then you should let his office know as soon as possible, giving your reasons. He will not always agree, but will always consider a request very carefully.