



Pension Schemes (Northern Ireland) Act 1993

1993 CHAPTER 49

PART X

INVESTIGATIONS: THE PENSIONS OMBUDSMAN

141 The Pensions Ombudsman

- (1) In this Part “the Pensions Ombudsman” means the person appointed under section 145 of the Pension Schemes Act 1993.
- (2) The Department may make available such staff and other facilities as it thinks fit for the Pensions Ombudsman and any function of the Pensions Ombudsman, other than the determination of complaints made and disputes referred under this Part, may be performed by any member of that staff who is authorised for that purpose by the Pensions Ombudsman.
- (3) The Department may reimburse the Pensions Ombudsman in respect of any expenses incurred by him in the performance of his functions.

142 Functions of the Pensions Ombudsman

- (1) The Pensions Ombudsman may investigate and determine any complaint made to him in writing by or on behalf of an authorised complainant who alleges that he has sustained injustice in consequence of maladministration in connection with any act or omission of the trustees or managers of an occupational pension scheme or personal pension scheme.
- (2) The Pensions Ombudsman may also investigate and determine any dispute of fact or law which arises in relation to such a scheme between—
 - (a) the trustees or managers of the scheme, and
 - (b) an authorised complainant,and which is referred to him in writing by or on behalf of the authorised complainant.

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- (3) Subsection (2) does not have effect in relation to any scheme constituted under—
- (a) Part XIII of the County Courts Act (Northern Ireland) 1959;
 - (b) the Resident Magistrates' Pensions Act (Northern Ireland) 1960;
 - (c) Schedule 10 to the Social Security (Northern Ireland) Act 1975;
 - (d) the Judicial Pensions Act 1981; or
 - (e) the Judicial Pensions and Retirement Act 1993;
- (4) The Department may by regulations provide that, subject to any modifications or exceptions specified in the regulations, this Part shall apply in relation to—
- (a) the employer in relation to any description or category of employment to which an occupational pension scheme relates or has related, or
 - (b) any prescribed person concerned with the financing or administration of, or the provision of benefits under, any occupational or personal pension scheme, as it applies in relation to the trustees or managers of such a scheme.
- (5) The Pensions Ombudsman may investigate a complaint or dispute notwithstanding that it arose, or relates to a matter which arose, before 1st October 1990 (the date on which the provisions under which his office was constituted came into force).
- (6) The Pensions Ombudsman shall not investigate or determine a complaint or dispute—
- (a) if before the making of the complaint or the reference of the dispute, proceedings have been begun in any court in respect of the matters which would be the subject of the investigation;
 - (b) if the scheme is of a description which is excluded from the jurisdiction of the Pensions Ombudsman by regulations under this subsection; or
 - (c) if and to the extent that the complaint or dispute, or any matter arising in connection with the complaint or dispute, is of a description which is excluded from the jurisdiction of the Pensions Ombudsman by regulations under this subsection.
- (7) The persons who, for the purposes of this Part are “authorised complainants” in relation to a scheme are—
- (a) a member of the scheme;
 - (b) the widow or widower, or any surviving dependant, of a deceased member of the scheme;
 - (c) where the complaint or dispute relates to the question—
 - (i) whether a person who claims to be such a person as is mentioned in paragraph (a) or (b) is such a person, or
 - (ii) whether a person who claims to be entitled to become a member of the scheme is so entitled,
 the person so claiming.
- (8) In this Part—
- “employer”, in relation to a pension scheme, includes a person—
- (a) who is or has been an employer in relation to the scheme, or
 - (b) who is or has been treated under section 176(2) as an employer in relation to the scheme for the purposes of any provision of this Act, or under section 181(2) of the Pension Schemes Act 1993 as an employer in relation to the scheme for the purposes of any provision of that Act;
- “member”, in relation to a pension scheme, includes a person—

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- (a) who is or has been in pensionable service under the scheme, or
- (b) who is or has been treated under section 176(4) as a member in relation to the scheme for the purposes of any provision of this Act or under section 181(4) of the Pension Schemes Act 1993 as a member in relation to the scheme for the purposes of any provision of that Act;

“trustees or managers”, in relation to a pension scheme which is a public service pension scheme or a United Kingdom public service pension scheme, includes the scheme’s administrators;

“United Kingdom public service pension scheme” means a public service pension scheme as defined in section 181(1) of the Pension Schemes Act 1993;

and in this subsection “pensionable service” includes pensionable service as defined in section 181(1) of the Pension Schemes Act 1993.

143 Death, insolvency or disability of authorised complainant

(1) Where an authorised complainant dies or is a minor or is otherwise unable to act for himself, then, unless subsection (3) applies—

- (a) any complaint or dispute (whenever arising) which the authorised complainant might otherwise have made or referred under this Part may be made or referred by the appropriate person, and
- (b) anything in the process of being done by or in relation to the authorised complainant under this Part may be continued by or in relation to the appropriate person,

and any reference in this Part, except this section, to an authorised complainant shall be construed as including a reference to the appropriate person.

(2) For the purposes of subsection (1) “the appropriate person” means—

- (a) where the authorised complainant has died, his personal representatives; or
- (b) in any other case, a member of the authorised complainant’s family, or some body or individual suitable to represent him.

(3) Where a person is acting as an insolvency practitioner in relation to an authorised complainant, investigations under this Part shall be regarded for the purposes of the Insolvency (Northern Ireland) Order 1989 as legal proceedings.

(4) In this section “acting as an insolvency practitioner” shall be construed in accordance with Article 3 of the Insolvency (Northern Ireland) Order 1989, but disregarding paragraph (5) of that Article (exclusion of official receiver).

144 Staying court proceedings where a complaint is made or a dispute is referred

(1) This section applies where—

- (a) a complaint has been made or a dispute referred to the Pensions Ombudsman; and
- (b) any party to the investigation subsequently commences any legal proceedings in any court against any other party to the investigation in respect of any of the matters which are the subject of the complaint or dispute.

(2) Where this section applies, any party to the legal proceedings may—

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- (a) if the proceedings are in the High Court, at any time after an appearance has been entered and before delivering any pleadings or taking any other step in the proceedings;
- (b) if the proceedings are in the county court, at any time after the civil bill or other originating process has been served and before taking any other step in the proceedings,

apply to the court to stay the proceedings.

- (3) On an application under subsection (2) the court may make an order staying the proceedings if it is satisfied—
 - (a) that there is no sufficient reason why the matter should not be investigated by the Pensions Ombudsman; and
 - (b) that the applicant was at the time when the legal proceedings were commenced and still remains ready and willing to do all things necessary to the proper conduct of the investigation.
- (4) For the purposes of this section the parties to an investigation are—
 - (a) the authorised complainant in question;
 - (b) the trustees or managers of the scheme in question;
 - (c) any person against whom allegations are made in the complaint or reference; and
 - (d) any person claiming under a person falling within paragraphs (a) to (c).

145 Procedure on an investigation

- (1) Where the Pensions Ombudsman proposes to conduct an investigation into a complaint made or dispute referred under this Part, he shall give—
 - (a) the trustees and managers of the scheme concerned, and
 - (b) any other person against whom allegations are made in the complaint or reference,
 an opportunity to comment on any allegations contained in the complaint or reference.
- (2) The Department may make rules with respect to the procedure which is to be adopted in connection with the making of complaints, the reference of disputes, and the investigation of complaints made and disputes referred, under this Part.
- (3) The rules may include provision—
 - (a) requiring any oral hearing held in connection with such an investigation to take place in public, except in such cases as may be specified in the rules; and
 - (b) as to the persons entitled to appear and be heard on behalf of parties to an investigation, as defined in section 144(4).
- (4) Subject to any provision made by the rules, the procedure for conducting such an investigation shall be such as the Pensions Ombudsman considers appropriate in the circumstances of the case; and he may in particular obtain information from such persons and in such manner, and make such inquiries, as he thinks fit.

146 Investigations: further provisions

- (1) For the purposes of an investigation under this Part or under any corresponding legislation having effect in Great Britain, the Pensions Ombudsman may require—

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- (a) any trustee or manager of the scheme concerned, or
 - (b) any other person who, in his opinion, is able to furnish information or produce documents relevant to the investigation,
- to furnish any such information or produce any such documents.
- (2) For the purposes of any such investigation the Pensions Ombudsman shall have the same powers as a county court in respect of the attendance and examination of witnesses (including the administration of oaths and affirmations and the examination of witnesses abroad) and in respect of the production of documents.
 - (3) No person shall be compelled for the purposes of any such investigation to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before a county court.
 - (4) If any person without lawful excuse obstructs the Pensions Ombudsman in the performance of his functions or is guilty of any act or omission in relation to an investigation under this Part which, if that investigation were a proceeding in a county court, would constitute contempt of court, the Pensions Ombudsman may certify the offence to a county court.
 - (5) Where an offence is certified under subsection (4) the court may inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of the person charged with the offence and hearing any statement that may be offered in defence, deal with him in any manner in which the court could deal with him if he had committed the like offence in relation to the court.
 - (6) To assist him in an investigation, the Pensions Ombudsman may obtain advice from any person who in his opinion is qualified to give it and may pay to any such person such fees or allowances as he may with the approval of the Department of Finance and Personnel determine.
 - (7) The Pensions Ombudsman may refer any question of law arising for determination in connection with a complaint or dispute to the Court of Appeal.

147 Determinations of the Pensions Ombudsman

- (1) Where the Pensions Ombudsman has conducted an investigation under this Part he shall send by ordinary post a written statement of his determination of the complaint or dispute in question—
 - (a) to the authorised complainant in question; and
 - (b) to the trustees or managers of the scheme in question;and any such statement shall contain the reasons for his determination.
- (2) Where the Pensions Ombudsman makes a determination under this Part or under any corresponding legislation having effect in Great Britain, he may direct the trustees or managers of the scheme concerned to take, or refrain from taking, such steps as he may specify in the statement referred to in subsection (1) or otherwise in writing.
- (3) Subject to subsection (4), the determination by the Pensions Ombudsman of a complaint or dispute, and any direction given by him under subsection (2), shall be final and binding on—
 - (a) the authorised complainant in question;
 - (b) the trustees or managers of the scheme concerned; and
 - (c) any person claiming under them respectively.

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- (4) An appeal on a point of law shall lie to the Court of Appeal from a determination or direction of the Pensions Ombudsman at the instance of any person falling within paragraphs (a) to (c) of subsection (3).
- (5) Any determination or direction of the Pensions Ombudsman shall be enforceable as if it were a judgment or order of the county court.
- (6) If the Pensions Ombudsman considers it appropriate to do so in any particular case, he may publish in such form and manner as he thinks fit a report of any investigation under this Part and of the result of that investigation.
- (7) For the purposes of the law of defamation, the publication of any matter by the Pensions Ombudsman—
 - (a) in submitting or publishing a report under section 145(6) of the Pension Schemes Act 1993 or subsection (6) of this section, or
 - (b) in sending to any person a statement under subsection (1) or a direction under subsection (2),shall be absolutely privileged.

148 Power to apply county court rules

Without prejudice to the generality of section 145, rules made by the Department under this section may, to any extent and with or without modifications, apply any county court rules to proceedings under or by virtue of this Part.