

1995 No. 1053

PENSIONS

The Personal and Occupational Pension Schemes (Pensions Ombudsman) (Procedure) Rules 1995

Made - - - -

10th April 1995

Coming into force

10th May 1995

The Secretary of State for Social Security in exercise of the powers conferred by section 149(2) and (3) of the Pension Schemes Act 1993(a) and of all other powers enabling him in that behalf, after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992(b), hereby makes the following Rules:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Personal and Occupational Pension Schemes (Pensions Ombudsman) (Procedure) Rules 1995 and shall come into force on 10th May 1995.

(2) In these Rules—

“complaint” means a complaint falling within ► section 146(1)(a) and (b) ◀ of the Pension Schemes Act (complaint of maladministration); ◀

► “complainant” means a person by or in respect of whom the complaint is made or dispute is referred under section 146(1) of the Pension Schemes Act; ◀

“dispute” means a dispute falling within ► section 146(1)(c) and (d) ◀ of the Pension Schemes Act (dispute of fact or law);

“party to the investigation” means, as the case may be, the ► ◀ complainant or the respondent (as defined in these Rules) and “party” and “Parties” shall be construed accordingly;

“the Pension Schemes Act” means the Pension Schemes Act 1993;

“respondent” means—

- (a) a person responsible for the management of a personal or an occupational pension scheme, or
- (b) any other person to whom Part X of the Pension Schemes Act applies as it applies to a person responsible for the management of a personal or an occupational pension scheme (c) ◀
- (c) to whom the complaint or dispute relates

Words in defn. of “complaint” added by rule 2(1)(a) of S.I. 1996/2638 as from 6.4.97.

Defn. “complainant” added by rule 2(1)(b) of S.I. 1996/2638 as from 6.4.97.

Words in defn. of “dispute” added by rule 2(1)(c) of S.I. 1996/2638 as from 6.4.97.

Words deleted from defn. of “party to the investigation” by reg. 2(2) of S.I. 1996/2638 as from 6.4.97.

Defn. of “respondent” amended by rule 2(1)(e) of S.I. 1996/2638 as from 6.4.97.

Provision of details of complaint made or dispute referred

2.—(1) ► A complainant ◀ shall give details of the complaint made or dispute referred in writing.

(2) The details shall include—

- (a) the name and address of the ► ◀ complainant;
- (b) the name and address of the respondent;
- (c) the facts relating to the complaint or dispute;

Word deleted from reg. 2 by rule 2(2) of S.I. 1996/2638 as from 6.4.97.

(a) 1993 c. 48.

(b) 1992 c. 53.

(c) See section 146(4) of the Pension Schemes Act 1993 and S.I. 1991/588 regulation 2 as amended by S.I. 1994/1062.

Rules 2-6

Word deleted by rule 2(2) of S.I. 1996/2638 as from 6.4.97.

- (d) whether or not the complaint or dispute has been brought to the attention of the Occupational Pensions Advisory Service Limited^(a);
- (e) the name, address and profession of the representative (if any) of the ►◄ complainant and whether such address is the address for correspondence to the complainant for the purposes of the investigation.

Amendment of details and delivery of supplementary statement

3. The ►◄ complainant may with the leave of the Pensions Ombudsman (which leave shall not be unreasonably refused) at any time—

- (a) submit a supplementary statement;
- (b) amend the details of his complaint or dispute or his supplementary statement.

Withdrawal of complaint or dispute

4. The ►◄ complainant may withdraw his complaint or dispute—

- (a) at any time before the end of fourteen days from the date he receives a copy of the reply referred to in paragraph (3) of rule 6 by sending to the office of the Pensions Ombudsman a notice stating he so withdraws signed by him or his representative; or
- (b) thereafter with the leave of the Pensions Ombudsman which leave shall not be unreasonably refused.

Acknowledgement and supply of copy documents by Pensions Ombudsman

5.—(1) Upon receiving details of a complaint or dispute the Pensions Ombudsman shall send to the ►◄ complainant or his representative an acknowledgement of receipt.

(2) Where the Pensions Ombudsman proposes to investigate the complaint or dispute, he shall forthwith supply a copy of the details of the complaint or dispute together with any amendments or supplementary statements, written representations or other documents received from the ►◄ complainant or his representative to the respondent.

(3) Where the Pensions Ombudsman does not propose to investigate the complaint or dispute, he shall forthwith inform the ►◄ complainant or his representative that he does not propose to conduct an investigation.

Action by the respondent on receipt of a complaint or dispute

6.—(1) Upon receiving a copy of the details of a complaint or dispute the respondent shall deliver to the Pensions Ombudsman a written reply acknowledging receipt of the details and stating—

- (a) the facts relating to the complaint or dispute, whether or not the respondent opposes the allegations made in the complaint or dispute and any details on which it relies in opposing those allegations;
- (b) whether in the opinion of the respondent, any other person has a direct interest in the subject matter of the complaint or dispute and if so the name and address of such other person;
- (c) the name, address and profession of the representative (if any) of the respondent and whether such address is the address for correspondence to the respondent for the purposes of the investigation.

(2) The respondent shall deliver to the Pensions Ombudsman a sufficient number of additional copies of the reply to enable the Pensions Ombudsman to

(a) A company limited by guarantee under the Companies Act 1985 (c. 6): registered number 2459671 whose address for correspondence at the date of the coming into force of these Rules is 11 Belgrave Road, London SW1V 1RB.

provide a copy to ►¹the complainant◄ and any other person named by the respondent as having a direct interest in the subject matter of the complaint or dispute.

¹Word substituted by rule 2(2) of S.I. 1996/2638 as from 6.4.97.

(3) Every such reply shall be signed by or on behalf of the respondent and shall be delivered at the office of the Pensions Ombudsman not later than twenty-one days after the date on which the copy of the details of the complaint or dispute was received by the respondent from the Pensions Ombudsman.

(4) The respondent may in its reply, or in a separate notice to the Pensions Ombudsman submitted within the twenty-one day period referred to in paragraph (3) request—

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

Amendment or reply by the respondent

7.—(1) The respondent may with the leave of the Pensions Ombudsman (which leave shall not be unreasonably refused) at any time—

- (a) submit a supplementary statement;
- (b) amend any reply or supplementary statement.

(2) The respondent shall deliver to the Pensions Ombudsman a sufficient number of additional copies of any amended reply or supplementary statement to enable the Pensions Ombudsman to provide a copy to the ►¹◄ complainant and any other person named by the respondent as having a direct interest in the subject matter of the complaint or dispute.

Failure to reply and absence of opposition

8. If no reply is received by the Pensions Ombudsman within the period referred to in paragraph (3) of rule 6 or any extension of that period allowed by the Pensions Ombudsman, or if the respondent states in writing that it does not oppose or withdraws its opposition to the allegations the Pensions Ombudsman may, in any such case where there is no other opposition to the allegations, determine the complaint or dispute forthwith.

Disclosure of documents and other material

9.—(1) ►¹The complainant◄ and respondent shall send or deliver to the Pensions Ombudsman by such date as the Pensions Ombudsman may specify a copy of any document or other material on which he intends to rely.

(2) The respondent shall, subject to paragraph (3), in addition send to the Pensions Ombudsman a sufficient number of copies of any such document or other material to which paragraph (1) applies to enable the Pensions Ombudsman to provide a copy to any other party to the investigation.

(3) The respondent need not send the additional copies referred to in paragraph (2) where the document or material or a copy thereof is already in the possession of the other parties or the Pensions Ombudsman already holds a sufficient number of copies.

(4) Where a document or other material is obtained by the Pensions Ombudsman pursuant to a request made by him to any party to the investigation, the Pensions Ombudsman shall supply a copy to each of the other parties to the investigation.

(5) It shall be a condition of the supply of any document under this rule that a party to the investigation shall use the document supplied only for the purposes of the investigation.

Notice of requirements in the event of an oral hearing

10.—(1) Where the Pensions Ombudsman considers it appropriate for an oral hearing to be held in connection with any investigation conducted by him, he shall, with due regard to the convenience of the parties to the investigation, fix the time and place of any such hearing and, not less than twenty-one days before the date so fixed (or such shorter time as the parties agree), send to each party a notice of the time and place of such hearing.

(2) The Pensions Ombudsman shall include in or with the notice of hearing—

- (a) information as to attendance at the hearing of the parties and witnesses, the bringing of documents and the right to representation by another person;
- (b) a statement explaining—
 - (i) the right of any party to the investigation, who does not attend and is not represented, to make representations in writing; and
 - (ii) the possible consequences of non-attendance.

(3) The Pensions Ombudsman may, if it is necessary in the circumstances, alter the time and place of any oral hearing and he shall give the parties not less than seven days (or such shorter time as the parties agree) notice of any such alteration, provided that any altered hearing date shall not (unless the parties agree) be before the date notified under paragraph (1) of this rule.

(4) Where the Pensions Ombudsman adjourns any oral hearing, providing that the time and place of the reconvening of the hearing are announced before the adjournment, no further notice shall be required.

Action of party to the investigation in relation to any hearing

11.—(1) Each party to the investigation shall inform the Pensions Ombudsman whether or not he intends to attend or be represented at the hearing and whether or not he intends to call witnesses.

(2) If any part to the investigation does not intend to attend or be represented at the hearing, he may send to the Pensions Ombudsman additional written representations.

Hearings to be in public subject to exceptions

12.—(1) All hearings by the Pensions Ombudsman shall be in public except where by reason of the disclosure of any matter that relates to intimate personal or financial circumstances, is commercially sensitive, consists of information communicated or obtained in confidence or concerns national security, it is just and reasonable for the hearing or any part thereof to be in private.

(2) ►¹◀

(3) The Pensions Ombudsman, with the consent of the parties to the investigation, may permit any other person to attend any hearing which is held in private.

(4) Any person whose conduct has disrupted or is likely to disrupt the hearing may be excluded by the Pensions Ombudsman.

Failure of parties to the investigation to attend any hearing

13.—(1) If a party to the investigation fails to attend or be represented at a hearing of which he has been duly notified, the Pensions Ombudsman may—

- (a) conduct the hearing and determine the complaint or dispute in the party's absence; or
- (b) adjourn the hearing.

¹Rule 12(2) omitted by para. 67 of Sch. 1 to S.I. 2008/2683 as from 3.11.08.

(2) Before deciding to dispose of any case in the absence of a party, the Pensions Ombudsman shall consider any representations in writing submitted by that party in response to the notice of hearing.

Representation at any hearing

14. At any hearing, any party to the investigation, if an individual, may conduct his case himself (with assistance from any person if he wishes) or may appear and be represented by any person whether or not legally qualified, provided that, if in any particular case there are good and sufficient reasons for doing so, the Pensions Ombudsman may refuse to permit a particular person to assist or represent the party at the hearing.

Procedure at any hearing

15.—(1) At the beginning of any hearing the Pensions Ombudsman shall explain the order of proceeding which he proposes to adopt.

(2) Subject to this rule, the Pensions Ombudsman shall conduct the hearing in such manner as he considers appropriate to the clarification of the issues before him and generally to the just handling of the investigation; he shall so far as seems appropriate seek to avoid formality in the hearing.

(3) The parties to the investigation shall be heard in such order as the Pensions Ombudsman shall determine. They shall be entitled to give evidence, to call witnesses, to question any party to the investigation or witnesses and to address the Pensions Ombudsman both on the evidence and generally on the subject matter of the investigation.

(4) Evidence before the Pensions Ombudsman may be given orally or where the Pensions Ombudsman considers appropriate by affidavit or written statement, but the Pensions Ombudsman may, if it is appropriate, at any stage of the hearing require the personal attendance of any deponent or maker of a written statement.

(5) The Pensions Ombudsman may receive evidence of any fact which appears to him to be relevant notwithstanding that such evidence would be inadmissible in proceedings before a court of law, but shall not refuse to admit any evidence which is admissible at law and is relevant.

► Payment of travel and subsistence expenses and compensation for lost earnings

Reg. 15A inserted by rule 2(3) of S.I. 1996/2638 as from 6.4.97.

15A.—(1) Where the Pensions Ombudsman considers it appropriate for an oral hearing to be held in connection with an investigation conducted by him, he may, having regard to the particular circumstances of the case, make payments in respect of allowances, fees and expenses in accordance with the following provisions of this rule.

(2) In this rule, “specified” in relation to any amount means the amount determined by the Secretary of State from time to time and notified by him to the Pensions Ombudsman.

(3) Sub-paragraphs (a) to (c) of paragraph (4) apply only in respect of complaints or disputes in which the complainant is an actual or potential beneficiary of a personal or an occupational pension scheme.

(4) Subject to paragraph (3), travelling expenses actually and reasonably incurred may be paid to the following—

- (a) in a case where the complainant attends the hearing, that person;
- (b) in a case where the complainant cannot, for reasons of ill health or incapacity, attend the hearing but is represented at the hearing by a relative or friend who is not receiving any form of remuneration in connection with his involvement in the complaint or dispute, that relative or friend;
- (c) in a case where the complainant requires, for reasons of ill health or incapacity,

to be accompanied at the hearing by an attendant, that attendant;

- (d) a witness, other than a medical or other expert witness, attending the hearing where an application has been made in writing to the Pensions Ombudsman and the Pensions Ombudsman certifies that, in the circumstances of the case, the attendance of the witness is necessary or desirable.

(5) An allowance in respect of day and, where applicable, overnight subsistence may be paid at the specified rate to the persons and in the circumstances mentioned in paragraph (4).

(6) An allowance in respect of travel and subsistence expenses may be paid in advance of a hearing to the persons and in the circumstances mentioned in paragraph (4) where the Pensions Ombudsman is satisfied that such persons would not otherwise be able to attend the hearing.

(7) Compensation in respect of lost earnings may be paid, subject to the specified daily maximum, to the persons and in the circumstances mentioned in paragraph (4) where the Pensions Ombudsman is satisfied that—

- (a) by attending the hearing, such persons have experienced an interruption in employment which results in a reduction in their gross earnings; and
- (b) had such persons not attended the hearing, their gross earnings in respect of the period of interruption of employment would not have been less than the amount claimed.

(8) A claim for travel and subsistence expenses or, as the case may be, for compensation in respect of lost earnings must be made in writing to the Pensions Ombudsman and must be accompanied by full particulars and evidence of the expenses and lost earnings claimed.

(9) In any case where the Pensions Ombudsman considers it appropriate to hold an oral hearing in connection with an investigation conducted by him, he must immediately provide to an actual or potential beneficiary and, on request, to any other person full particulars of the arrangements made for the payments of specified travel and subsistence expenses, including information about advance payments and compensation in respect of lost earnings.◀

Miscellaneous powers of the Pensions Ombudsman

16.—(1) The Pensions Ombudsman may—

- (a) extend the time appointed by or under these Rules for doing any act, notwithstanding that the time appointed may have expired;
- (b) subject to paragraph (2) below, at any stage of the investigation order to be struck out or amended any written representation on the grounds that it is scandalous, frivolous or vexatious;
- (c) subject to paragraph (2) below, order the discontinuance of any investigation if he considers it appropriate to do so.

(2) Before making any order under paragraph (1)(b) or (c) above, the Pensions Ombudsman shall send notice to the investigation against whom it is proposed that any such order should be made giving him an opportunity to show cause why such an order should not be made.

Irregularities

17.—(1) Any irregularity resulting from failure to comply with any provisions of these Rules shall not of itself render the proceedings void.

(2) Clerical mistakes in any written statement of a determination (including any direction made under section 151(2) of the Pension Schemes Act) or errors arising in such a document from an accidental slip or omission, may be corrected by the Pensions Ombudsman by certificate under his hand.

Method of sending or delivering documents etc

18.—(1) Any document required or authorised by these Rules to be sent or delivered to any person shall be duly sent or delivered to that person—

- (a) if it is sent to him at his proper address by post;
- (b) if it is sent to him at that address by facsimile or other similar means which produce a document containing a text of the communication, in which event the document shall be regarded as sent when it is received in a legible form;
- (c) if it is delivered to him or left at his proper address.

(2) The proper address for the Pensions Ombudsman is the address of the office of the Pensions Ombudsman.

(3) The proper address of any other person to whom any such document is to be sent or delivered shall be the address given by that person or, if none, the last known address of that person or, in the case of an incorporated company or body, the registered or principal office of that company or body.

Substituted service

19. If any person to whom any document is required to be sent or delivered for the purpose of these Rules cannot be found or has died and has no known personal representative, or is out of the United Kingdom, or if for any other reason service on him cannot be readily effected, the Pensions Ombudsman may dispense with service on such person or may make an order for substituted service on such other person in such other form (whether by advertisement in a newspaper or otherwise) as is reasonable.

Signed by authority of the Secretary of State for Social Security.

10th April 1995

William Hague
Minister of State,
Department of Social Security

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules make provisions as to the procedure to be followed where a complaint or dispute relating to an occupational or personal pension scheme is referred to the Pensions Ombudsman under Part X of the Pension Schemes Act 1993.

The Rules make provision as to the form of any reference; the giving of notice; the submission of documents and other evidence and the conduct of the investigation, including any hearing that might be held.

An assessment of the cost of business of complying with these Rules has been prepared and copies may be obtained from the Department of Social Security, Room 11/18, The Adelphi, 1-11 John Adam Street, London WC2N 6HD. A copy has been placed in the library of each of the Houses of Parliament.