

## **Submission of the Pensions Ombudsman to the Joint Committee on Public Service Oversight and Petitions, 24<sup>th</sup> September 2014**

### **Office of the Pensions Ombudsman – Overview**

The Office of the Pensions Ombudsman was established by Part XI of the Pensions Act 1990, as inserted by the Pensions (Amendment) Act 2002. The Pensions Ombudsman is a statutory officer and the employees of the Office are civil servants in the service of the State.

The Pensions Ombudsman investigates and decides complaints and disputes from individuals about their occupational pension schemes, Personal Retirement Savings Accounts (PRSAs) and Trust Retirement Annuity Contracts [for groups of self-employed persons] and awards redress where maladministration has resulted in financial loss. He is completely independent and impartial.

Our aim is to resolve complaints impartially, informally and quickly. If we cannot assist with a particular complaint, we will explain why and may suggest other avenues for resolving the matter. There is no charge to the public for the service.

As part of the Public Service Reform Plan, the Government decided in 2013 that the Office of the Pensions Ombudsman (OPO) and the Financial Services Ombudsman Bureau (FSOB) would amalgamate. This will be dealt with further below.

Determinations of the PO are binding on all parties to a complaint or dispute, subject to appeal to the High Court. However, my preference is for less formal intervention or mediation where possible, as this generally achieves faster and better results.

I was originally appointed in 2003 and reappointed in 2009. I was due to retire on age grounds in 2013, but was reappointed to assist with the proposed merger of the two Offices.

### **How the Office Works**

A person can complain to the Pensions Ombudsman if they believe they have suffered financial loss because of poor administration of an Occupational pension scheme, PRSA or Trust RAC.

Those eligible to complain are:

- a member, a former or potential member
- a surviving dependant or legal personal representative of a deceased member
- a person claiming to be a member or a surviving dependant
- a widow or widower of a deceased member or contributor.

If the person eligible to complain dies, or is under 18 years old, or otherwise unable to act for himself, then the complaint may be made by that individual's personal representative; or by a relative or other suitable person, including, for example, a Trade Union official, a public representative an agency such as Citizens' Information. Without claiming to be at a financial loss, anyone eligible to complain can refer a dispute of fact or law to the Pensions Ombudsman.

Complaints are usually made against those responsible for the management of occupational pension schemes and PRSAs. A complaint may be against those who are (or have been) trustees, managers, employers, former employers and administrators (including PRSA providers).

The Pensions Ombudsman also investigates disputes of fact or law concerning pension schemes, between members and others entitled to benefit from the schemes, and trustees or managers or employers. The question of jurisdiction is to be determined by the Pensions Ombudsman, and that determination is final.

To succeed with a complaint, it is not enough that the complainant doesn't agree with a decision by those managing a scheme or a PRSA - they must have reason to believe that the decision was not properly made or implemented and must have sustained actual financial loss in order to obtain redress. Redress in this case is limited to the actual loss of scheme benefit, and there is no facility to make an award for inconvenience or even expense incurred in pursuing a complaint. Even where there is no financial loss, the Pensions Ombudsman may give whatever directions he considers necessary or expedient for the satisfaction of a complaint or dispute. However, no determination may be made which has the effect of changing the rules of a scheme or granting the complainant more than the rules entitle him to. Neither may he substitute his decision for one properly taken under a discretionary power.

**Disputes of fact or law** usually arise out of a complaint of poor administration, without needing a separate investigation. Whether a complaint involves bad administration or a dispute of fact or law is for the Pensions Ombudsman to decide. He cannot investigate any matter that is before a court.

### **Examination of a Complaint**

When he receives a complaint submission, the Pensions Ombudsman must then decide whether the matter is one that he can deal with. If the Ombudsman cannot investigate a complaint or dispute the complainant will be told as soon as the preliminary examination of the case is finished. This could happen because the matter is not on the list of matters the Pensions Ombudsman is allowed to look at, or because the time-limits set out in the Pensions Act have expired. If there is another Ombudsman or authority that may be able to look at the complaint, the Pensions Ombudsman may seek permission to forward the details to that other body. If the Ombudsman does decide to investigate the complaint or dispute, the complaint may be asked for further information. Other parties to the complaint or dispute must be sent copies of the submission made to the Ombudsman,

and parties are required to name any other person whom they consider may be affected by the outcome of the complaint or dispute.

Generally speaking, investigations are conducted by correspondence and telephone. The Pensions Ombudsman may hold an oral hearing under oath if there are matters that cannot be ascertained from the papers in the case; if the good name of someone is impugned; or if the credibility of witnesses needs to be tested. In practice, oral hearings are rare. Statements or admissions made by parties in the course of an investigation may not be used against them in a criminal prosecution.

### **Preliminary View**

The amount of time it takes to investigate will depend on how complicated the matter is. When the Pensions Ombudsman is near the end of an investigation, he may give a "Preliminary View" to all parties to the complaint or dispute. This will list the facts as they have been found during the investigation and the Ombudsman's view on how he is likely to rule on the matter. At that stage the parties will have a chance to provide any further information or evidence that they feel is important to the case. The Pensions Ombudsman will not give a preliminary view in all cases - only those where he feels it right to do so. The Ombudsman will then make a final ruling of the issue that is the subject of the complaint or dispute. Financial redress may be awarded in a case where the Pensions Ombudsman decides that the complainant has suffered a loss of entitlement due to the poor administration of a pension scheme or a PRSA. The Pensions Ombudsman may make a ruling even if the complaint is withdrawn during the investigation. A determination, if made, is legally binding on all parties, subject to the right of appeal to the High Court. If a determination is not complied with, action for enforcement may be brought in the Circuit Court, either by the aggrieved party, or by me.

I also have power to bring prosecutions against persons who have been requested, and have failed, to provide documents or information in the course of an investigation. Failure to comply with such requests is a criminal offence under the Pensions Acts. I can also bring an action in the Circuit Court to compel discovery of information; unless that information is the subject of legal or professional privilege.

Jurisdiction of the Pensions Ombudsman extends to all occupational pension schemes, including those of the Public Service, and those responsible for the administration of schemes include employers, trustees and a great many bodies which provide services to pension schemes.

### **Concerns and Challenges**

There is currently a Steering Group, comprising representative of both OPO and FSOB, the Departments of Finance, Public Expenditure and Reform, and Social Protection working on the legislative, administrative, logistical and other measures that will be needed to achieve the

amalgamation of the Offices. The legislation governing the two offices is complex and there are differences between them in terms of time limits, jurisdiction, etc, many of which will have to be retained for legal and technical reasons. The work involved in preparing for the merger will place significant additional demands on both offices. Meantime OPO has suffered from staff shortages, as vacancies have not been filled and the number of complaints received has remained steady for the past couple of years, although the numbers are not as high as they were in 2012.

In the context of the review, the powers of the Ombudsmen are being examined in details and, when this examination is completed, recommendations will be made on legislative changes that will be required.

Currently, “back office” functions are provided to OPO by the Department of Social Protection, including payroll, payments and accounts, IS services and HR backup. It is expected that these functions will be provided in the future by resources already available to FSOB.

The Pensions Ombudsman has absolute privilege in terms of the law on defamation in respect of any report he may publish in relation to an investigation. However, case studies published in Annual Reports of the office are drafted in a manner which protects the anonymity of parties.

The Office is subject to the Freedom of Information Acts, but the files concerning examination and investigation of complaints and disputes are exempt. I am, however, concerned about attempts by some individuals to use Data Protection legislation as a back door to seek information which would not be available under Freedom of Information, and which has been given to us in the course of an investigation on a strictly confidential basis.

The budget of the Office is small (about €1 million), but a major item is legal expenses, which cannot be predicted in advance. So far most appeals have been won by the Office, and costs recovered have been paid to the Exchequer. Some costs may not be recoverable, as when a lay litigant brings an appeal and does not have the means to pay legal costs. I am also concerned at the number of appeals brought by arms of the State itself. Regardless of the outcome of such appeals, the costs of both sides have to be borne by the taxpayer.

I will be happy to respond to any questions which members of the Committee may wish to put to me.

## Statistics 2013

Cases received 2013: 1884 (2012: 2189)

Detailed investigation files opened: 463 (601)

Cases reopened: 45 (36)

On hand at year end: 222 (369)

Breakdown: Public sector, 35% (40%); Private sector, 65% (60%)