

Superannuation Schemes in the Universities – Appeals Process to Higher Education Authority

Section 5 of the Fifth Schedule of the Universities Act 1997 states that

“If a dispute arises as to the claim of any person to, or the amount of, any pension, gratuity or allowance payable in pursuance of a scheme under this Schedule, it shall be submitted to An tÚdarás¹ for determination by An tÚdarás subject to the agreement of the Minister² and the Minister for Finance.”

1. Persons who may make an appeal

An actual or potential beneficiary, or a person acting on his or her behalf, may apply to An tÚdarás for a determination in respect of -

- (a) a complaint relating to circumstances in which he or she believes he or she has sustained financial loss caused by an act of maladministration, or
- (b) any dispute of fact or law that arises in relation to an act,

done by or on behalf of a person responsible for the management of a Scheme or amended Scheme submitted to or approved by An tÚdarás with the consent of the Minister and the Minister for Finance under the Fifth Schedule of the Universities Act 1997. This appeals process will apply to all superannuation schemes which have been approved under the Fifth Schedule of the Universities Act 1997.

2. Application Process

An application shall be in writing, signed by or on behalf of the actual or potential beneficiary and shall contain the following details -

- (a) the full name, address and date of birth of the actual or potential beneficiary,
- (b) the address to be used for service of documents in connection with the application,
- (c) a statement concerning the nature of the complaint or dispute with sufficient details to show why the actual or potential beneficiary is aggrieved,
- (d) a statement confirming that all internal institutional review mechanisms have been exhausted,
- (e) a copy of correspondence between the appellant and University, and
- (f) such other information as An tÚdarás may reasonably require.

An tÚdarás reserves the right to contact the person’s University for other information which it feels necessary to consider for appeal

¹ An tÚdarás um Ard-Oideachas – Higher Education Authority

² Minister for Education and Science

3. Determination

- (a) An tÚdarás with the consent of the Minister and the Minister for Finance shall make a determination in relation to an application and notify in writing the complainant of the determination within 3 months from the date on which all the details specified in paragraph (2) are received by An tÚdarás.
- (b) The notification under subparagraph (a) shall include -
 - (i) a statement of the determination,
 - (ii) a reference to any legislation (other than this Scheme), legal precedent, ruling of the Pensions Board, ruling or practice of the Revenue Commissioners or other material relied upon in making the determination,
 - (iii) a reference to the provisions of this Scheme relied upon in making the determination and, where a discretion has been exercised, a reference to those of its provisions by which such discretion is conferred,
 - (iv) a statement that the determination is not binding upon any person unless, upon or after the making of the determination, the person assents, in writing, to be bound by it, and
 - (v) a statement that the applicant should check whether or not the complaint or dispute is one in respect of which the Pensions Ombudsman has jurisdiction to investigate under section 131 of the Pensions Act 1990 (No. 25 of 1990) and that further information can be found in an information booklet available from the office of the Pensions Ombudsman (and the statement shall include details of the address of that office).
- (c) An tÚdarás shall forward all documentation received from the appellant to the Department of Education and Science and the Department of Finance within two weeks of receipt of an application. Both Departments shall consult An tÚdarás to ensure they have the full facts of the case and the scheme rules. The role of the Departments is to make determinations, not conduct investigations.
- (d) From the time a person commences the appeal process until a determination has issued, there should be no comment on the case other than confirmation that the complaint is being examined. This approach is necessary given the quasi-judicial process involved and applies to PQs, representations, FOI requests and similar requests.

The appeals process will have regard to the general requirements for an appeals process set out in Appendix 1 – this includes detailed information on internal dispute resolution procedures and referral to the Office of the Pensions Ombudsman.

June 2009

**Superannuation Schemes in the Universities – Appeals Process to Higher
Education Authority**

APPENDIX 1

P18/227/98

9 February 2009

To: All Heads of Department and all Personnel Officers

Public Service Pension Appeals

A Chara

I refer to this Department's letter of 7 February 2008 and to previous correspondence about public service pension appeals which involve a referral to the Minister for Finance.

In general the appeal process for appellants from State Bodies is still lengthy and cumbersome and rarely completed within the timeframe prescribed in the Pensions Ombudsman Regulations. In an effort to improve the process, not only for the appellants, but also for those dealing with the appeals, I am writing to clarify certain aspects of the appeal process and the respective roles of this Department, the referring Department and, as applicable, the relevant State Body. The attached Information Note and Checklist refer. The attachments replace the Guidelines which issued on 7 February 2008.

This letter and attachments should be circulated to relevant officials in your Department and to all Bodies under the aegis of your Department, which have pension schemes where the Minister for Finance is part of the appeal process.

You are reminded that the pension appeal process is provided for in legislation. It is, therefore, extremely important that appeals are dealt with promptly and in accordance with the correct procedures.

If you have any queries, please send them, by e-mail, to John O'Connell (HEO) at oconneja@finance.gov.ie. [This is to avoid confusion with John O'Connell who is the Assistant Secretary in the Pensions area.]

Yours sincerely

Cloda Ryan

Cloda Ryan
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National Pensions Policy and Public Service Pension Appeals
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Public Service Pension appeals – Information Note

Legislative Position

1. There is legislative provision for pension appeals. The office of Pensions Ombudsman was established by statute in 2002 [the Pensions (Amendment) Act 2002, which amended the Pensions Act 1990]. The 2002 Act and the subsequent Regulations made under that Act, principally the Pensions Ombudsman Regulations 2003 (SI No 397 of 2003), give the Pensions Ombudsman the authority to investigate and determine complaints and disputes relating to pension benefits.

2. Section 5(2) of the Regulations provides that the following may be referred to the Pensions Ombudsman:

a complaint made to a relevant person by or on behalf of an actual or potential beneficiary who alleges that he has sustained financial loss occasioned by an act of maladministration done by or on behalf of a person responsible for the management of that scheme or, as appropriate, PRSA;

any dispute of fact or law that arises in relation to an act done by or on behalf of a person responsible for the management of the scheme or, as appropriate, PRSA, and that is referred to a relevant person by an actual or potential beneficiary.

3. The 2003 Regulations (as amended) provide that the trustees of every scheme shall establish procedures for dealing with complaints and the resolution of disputes arising between actual or potential beneficiaries and persons responsible for the management of the scheme (Internal Dispute Resolution – IDR).

4. In doing so in the case of a public authority scheme, the trustees should note that the procedures include reference to the relevant person. “*Relevant person*” in the case of a public authority scheme is defined in the Regulations as “*the Minister or Ministers to whom there is a right of appeal*”. A public authority scheme is defined in paragraph 2(1) of the Regulations as

(i) a statutory scheme to which section 776 of the Taxes Consolidation Act 1997.. applies and in relation to which an appeal may be made to a Minister or Ministers, or

(ii) a scheme where benefits are paid in whole or in part out of moneys provided from the Central Fund or moneys provided by the Oireachtas and the rules of which provide that an appeal may be made to a Minister or Ministers”.

5. The arrangements for appeals and IDR with regard to **Civil Service** schemes are set out online at <http://www.cspensions.gov.ie/superAnnHBs.asp> in the Civil Service Superannuation Handbooks and will be updated as necessary.

6. In most **public service bodies**, in addition to the Pensions Acts legislation, there is a provision in the legislation setting up the Body that

“If any dispute arises as to the claim of any person to, or the amount of, any superannuation benefits payable in pursuance of a scheme or schemes under this

section, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance, whose decision shall be final.”

In more recent legislation, the appeals provision has been simplified to leave open the option as to whether either Minister has a role in the appeal process, by providing that:

“A scheme made under this section shall make provision for appeals.”

7. The provision in legislation is then usually reflected in the public service Body’s superannuation scheme, on the lines of:

“If a member or former member is aggrieved by the failure or refusal of the Body to make an award under this Scheme or by the amount of any award made, he may appeal to the Minister who shall refer the dispute to the Minister for Finance whose decision shall be final”.

8. Schemes which reflect the more recent legislation would generally provide for much more limited Ministerial involvement, if any.
9. Some schemes specify time limits within which a person can lodge an appeal. However, even if the appeal is outside such time limits, the person may still have the right of appeal to the Pensions Ombudsman.
10. Time limits for making complaints covered by the Pensions Ombudsman are:

(a) Where the act giving rise to the complaint or dispute took place **on or after 28 April 2003**,

(i) 6 years since the date of the act giving rise to the complaint or dispute
or

(ii) 3 years since the complainant became aware, or should have been aware, of the act giving rise to the complaint or dispute.

(b) Where the act took place **before 28 April 2003**, the Pensions Ombudsman may investigate it if it took place **on or after 13 April 1996**. Under no circumstances can any act be investigated which took place before that date.

11. In summary, a person may have a right to appeal under the pension scheme of which they were a member, and/or the legislation which set up the Body which employed them, in addition to their rights under the Pensions Ombudsman legislation. While there may be legal complexities, the appeal process should be made accessible to appellants and clearly explained to them at the outset.

Dealing with disputes over pension benefits

12. If a person has a complaint or query about the amount of his/her pension, the first step is for the employing/former employing Body to check the records to ensure that the pension has been calculated correctly by reference to (i) the reckonable service, (ii) reckonable remuneration, (iii) the terms of the pension scheme of which the person is/was a member and (iv) where applicable, that all appropriate pension increases have been applied. The pension benefits that have been paid and are in payment should also be verified. The

response to the person should be comprehensive and, where relevant, should explain clearly how the pension benefits were calculated and should quote the relevant rule or term of the superannuation scheme and explain how it is applied in the particular case.

13. If the person's complaint or query has not been resolved, the person should be informed of the pension appeal process. See, however, points 14 and 21-23 below.
14. Many disputes have been referred to this Department recently which relate to the non-payment of pension increases. The general provision in public service schemes is that the Body may increase pensions, subject to the approval of the parent Minister and the Minister for Finance. This means that, under the terms of such schemes, pension increases are, in the first instance, at the discretion of the Trustees and/or Body (depending on the scheme). This should be clearly explained to anyone who appeals against an increase not being applied to his/her pension, before directing him/her towards the pension appeal process.
15. If the person lodges a pension appeal, the case should be re-examined promptly by the Body, by someone who was not involved in the initial examination. This is to establish that there is in fact a dispute between both parties before the matter is referred elsewhere. If, notwithstanding the re-examination, the matter has not been resolved, the provisions of the appropriate pension scheme (ie the scheme from which the pension is in payment or of which the person is a member) and the provisions of the legislation setting up the Body should be checked to see if there is provision for Ministerial appeal.
16. If there is *no provision for Ministerial appeal* in either the enabling legislation or the scheme, the person should be given a formal determination under the Body's IDR including the information that s/he may refer the dispute to the Pensions Ombudsman.
17. If there is *provision for Ministerial appeal*, the appeal should be forwarded to the appropriate Minister and the appellant so informed. Where there is no provision for appeal to the Minister for Finance, the person should be given a formal determination made by the appropriate Minister, including the information that s/he may refer the dispute to the Pensions Ombudsman.
18. In addition to the most common formats of Ministerial appeals, as set out above, there are also some schemes which provide that the Minister for Finance should give consent to, or be consulted on, a determination to be made by another Minister. In such cases, the other Minister should not make any determination until after such consent or consultation.
19. If there is provision for *appeal to the Minister for Finance*, the legal advice given to this Department is that the referring Department has to obtain the necessary information and details to present the complete appeal, both from the appellant's point of view and the management point of view, to the Minister for Finance for determination. Making a determination is a quasi-judicial process, so it is important that the Minister for Finance be seen to be totally without bias in making his eventual determination; s/he should not ordinarily become involved in gathering information. The role of the Minister for Finance is to make determinations, not conduct investigations.
20. Therefore, the referring Department should consult with the Body concerned, asking them to set out the position regarding the facts of the case and the relevant scheme rules, along

with details of any further information needed from the appellant. Once all necessary information has been received – see Checklist attached - the papers should be forwarded to the Department of Finance.

Disputes of a more general nature

21. In public service pension appeals, the primary focus is on whether or not the person has received pension benefits which are in accordance with the terms of the relevant scheme. Pension appeals to the Pensions Ombudsman have a wider remit and can also take into account issues such as maladministration.
22. If, as in many cases, a person claims that s/he is entitled to a benefit (eg a pension increase) on the basis of custom and practice, or by reference to another person or group in similar circumstances, or to whom s/he has been traditionally linked, or on the basis of terms of employment, or assurances given in the past, whether written or oral, such issues are primarily matters which should be dealt with by the Body, with legal advice being sought where appropriate. It is possible that the person may claim maladministration. Such claims should be carefully examined by the Body. If the matter is not resolved, the claim should be forwarded to the parent Department and then to this Department, as such matters can be appealed to the Pensions Ombudsman.
23. Where a person claims that s/he has an entitlement to a term or condition (or increase) by virtue of the legislation which set up the Body which employed him/her (particularly where a compulsory transfer out of the Civil Service was involved and there is a “*no less favourable guarantee*”), that is a matter in the first instance for the Department which is responsible for the legislation in question (usually the parent Department for the Body), with legal advice being sought where appropriate.

Time limits for IDR

24. Departments should be aware that, under the 2003 Regulations, the Minister for Finance is obliged to make a determination in relation to the complaint or dispute within three months from the date on which all the necessary information was received. This is a short timescale and, in order to ensure that it is met, it is essential that the Body deal promptly and appropriately with the complaint and that the parent Department promptly examine the complaint to ascertain and obtain all necessary information and background documentation before submitting the appeal to the Department of Finance.
25. If the time limits are not met, the Pensions Ombudsman can deem the IDR to be exhausted or allow such extra time as s/he considers reasonable. This power has already been invoked in a public service pensions appeal. This is highly undesirable from a customer service point of view. In the case of pension appeals, our customers are, for the most part, older members of our society, who are living on reduced incomes having ceased employment. Delays are also highly undesirable from the point of view of public service pensions policy. The Pensions Ombudsman could be deciding on important principles, with service-wide implications, without having been provided with the full information on which to base such a decision and without the public service management concerns having been presented for consideration. For that reason, he has indicated he is reluctant to deem the IDR process to be exhausted and will normally do so only where he considers the delay to be prejudicial to the interests of the complainant.

26. In cases where there are genuine difficulties in meeting the time limits, the Department of Finance should be alerted in sufficient time to give consideration to the possibility of seeking an extension of the time limit from the Pensions Ombudsman.
27. This need for prompt action does not obviate the usual requirement that care and diligence be exercised in these matters, particularly where confidential or personal information is being considered.

Restriction on comment while formal appeal is under consideration

28. From the time a person commences the appeal process until a determination has issued, there should be no comment on the case other than confirmation that the complaint is being examined. This approach is necessary given the quasi-judicial process involved and applies to PQs, representations, FOI requests and similar requests.

National Pensions Policy and Public Service Pension Appeals
Sectoral Policy Division
Department of Finance

9 February 2009

Public Service Pension appeals – Checklist for referral to D/Finance

1. From which superannuation scheme is the appellant's pension being paid and does that scheme have provision for appeal to or involvement of the Minister for Finance? If there is no provision for appeal to or involvement of the Minister for Finance, the appeal should not be sent to the Department of Finance.
2. Is the nature of the complaint/dispute such that it is a pension appeal?
3. Is the appeal within any time limits specified in the relevant scheme and/or those specified by the Pension Ombudsman?
4. In the case of each appeal for which the Minister for Finance is responsible for issuing a determination, the documentation submitted to the Department of Finance should include the following:
 - a) the full name, address and date of birth of the appellant
 - b) the contact address to be used in connection with the complaint or dispute
 - c) a statement from the appellant concerning the nature of the complaint or dispute with sufficient details to show why s/he is aggrieved, and
 - d) such other information as the Minister for Finance may reasonably require.
5. In relation to (d), the other information should include:
 - e) a copy of all correspondence/documentation submitted by appellant in support of his/her appeal
 - f) a copy of all correspondence between the appellant and the Department/Body in relation to the issue in question (including that pre-dating the appeal, where relevant)
 - g) a copy of all correspondence between the parent Department and the Body in relation to the issue in question
 - h) a copy of all other relevant correspondence, including representations, parliamentary questions, previous correspondence with this Department)
 - i) a summary of the issue(s) in dispute, clearly identifying the superannuation scheme and/or Act under which the appeal is being made and the particular provision(s) of that scheme/Act which is in question
 - j) a copy of the superannuation scheme/Act (or relevant sections of the scheme/Act) under which the appeal is being made
 - k) a copy of the correspondence which issued to the appellant at the time of his/her retirement

- l) if the person's appeal is about a provision which is not explicitly in the scheme, the basis on which the appeal is being made should be stated and a copy of all relevant documentation (eg local agreements) should be included
 - m) if the claim refers to being treated differently than others in a similar position, the Body should state whether the appellant was treated differently from others and, if so, the reasons for the different treatment
 - n) all other details which are appropriate to the matter under appeal [eg where relevant, the person's date of retirement, grade, salary, reckonable remuneration, reckonable service and pension at retirement, the person's employment contract, increases which have been applied to the person's pension since retirement, options exercised by the appellant, legal advice obtained by the parent Department or Body]
 - o) a detailed account of the steps taken so far to resolve the dispute and a statement to the effect that the parent Department is satisfied that it has ensured that all the documentation necessary for the appeal to be fully considered by the Minister for Finance is being submitted with the appeal.
6. A copy of the material being forwarded to the Minister *[excluding any legal advice or references to same, or any other documentation which would not be released under FOI]* should be sent to the appellant at the same time, informing them that their appeal has been submitted to the Minister for Finance. A copy of that letter to the appellant (excluding enclosures) should be included in the documentation sent to the Department of Finance.
7. The address to which appeals should be submitted is National Pensions Policy and Public Service Pension Appeals Section, Department of Finance, Government Buildings, Upper Merrion Street, Dublin 2.

National Pensions Policy and Public Service Pension Appeals
Sectoral Policy Division
Department of Finance

9 February 2009