



12 May 2004

Each Chief Executive
Each Voluntary Hospital

Each Chief Executive
Each Nominated Health Agency



**DEPARTMENT
OF HEALTH AND
CHILDREN**
AN ROINN
SLÁINTE AGUS LEANAÍ

Quality and Fairness
A Health System for You

Pension Ombudsman – Procedures for Internal Resolution of Disputes

Dear Sir

Please find attached circular 21/2004, which sets out procedures for the internal resolution of complaints and disputes in relation to the superannuation entitlements of persons to which the Voluntary Hospitals Superannuation Scheme or the Nominated Health Agencies Superannuation Scheme applies.

To summarise, the following procedures apply. If an employee makes a complaint or is unhappy with a determination provided by the Superannuation Section of the Department of Health and Children they can exercise their right to appeal the determination. In this case an officer (a grade higher than the initial officer) will carry out an internal review of the determination. The original officer dealing with the query will not be involved in the review. The complainant will be informed that they reserve the right to refer the complaint or dispute to the Pensions Ombudsman following the internal review. The Department will respond to the complainant within three months. A statement stating that the determination is not binding upon any person unless the complainant assents in writing to be bound by it will also issue.

Following the internal review, a person can decide to refer their complaint to the Pensions Ombudsman who if he decides to investigate, will contact the Department of Health and Children for the relevant papers to assist in his deliberations.

If you have any queries in this regard please do not hesitate to contact us.

Yours sincerely

Patsy Carr
Superannuation Section
Personnel Management and Development

Circular Ref: 21/2004

12 May 2004

To: Chief Executive
Each Voluntary Hospital

Chief Executive
Each Nominated Health Agency



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Pensions Ombudsman – Procedures for Internal Resolution of Disputes

Dear Sir,

1. The Office of the Pensions Ombudsman has been established under Part 3 of the Pensions (Amendment) Act, 2002. Part 3 of the 2002 Act and the Pensions Ombudsman Regulations, 2003 (the 2003 Regulations) made thereunder provide for the establishment of procedures for internal resolution of disputes in relation to pensions and for the investigation and determination by the Pensions Ombudsman of complaints and disputes which are not resolved at the internal review stage.
2. The Ministerial appeals process provided for under article 34 of the Voluntary Hospitals Superannuation Scheme 1969 (amended 1977), article 25(1) of the Voluntary Hospitals (Non Officers) Superannuation Scheme 1985 and article 24 (1) of the Nominated Health Agencies Superannuation Scheme 1981 (amended 1986) only arises at the time of a person's retirement when his/her pension entitlements are determined. On appeal, the Minister may only make such provision as should, in the Minister's opinion, have been made by the employer in accordance with the Scheme. The scope of the 2003 Regulations is wider in that cases involving alleged financial loss due to maladministration and disputes of fact or law are covered. Therefore, an employee could invoke those provisions at any time before his/her retirement, e.g. if he/she felt that he/she had been overcharged in relation to arrears of pension contributions due to administrative delays on the part of the Superannuation Section of the Department of Health and Children or any other Authority nominated or designated by the Minister.
3. The Minister for Health and Children has decided that the new procedures provided for under the Pensions (Amendment) Act, 2002 and the 2003 Regulations should replace the more limited appellate function of the Minister in relation to VHSS/NHASS pensions. It is proposed that the right of appeal to the Minister should not apply in respect of any person ceasing to hold office or employment after **24 October 2003** and that the new internal review procedure and possible subsequent reference to the Pensions Ombudsman should be introduced in its place. Procedures for the internal resolution of complaints and disputes by the Superannuation Section of this Department are now in place. The Minister's appellate function and that of the Minister for Finance in relation to all aspects of VHSS and NHASS pensions is being similarly ended.

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4. The new arrangements mean, therefore, that where –

- ❑ any actual or potential beneficiary alleges that he or she has sustained financial loss under the VHSS/NHASS caused by an act of maladministration occasioned by the Superannuation Section of this Department, or
- ❑ any dispute of fact or law arises in relation to an act occasioned by the Superannuation Section of this Department regarding the administration of the VHSS/NHASS scheme

an actual or potential beneficiary may make a complaint or refer a dispute to the Superannuation Section of this Department and seek a determination in relation to such complaint or dispute. It should be noted that, having regard to section 131(5) of the Pensions (Amendment) Act 2002, a complaint or dispute means a complaint or dispute, the act giving rise to which was done on or after 13 April 1996 (date of enactment of the (Pensions) Amendment Act, 2002).

In general, this means that the Department of Health and Children will be responsible for internal examination and determination of -

- *complaints and disputes in respect of persons pensionable at any time after 24 October 2003 and*
- *complaints made and disputes referred after 24 October 2003 in respect of persons who ceased to hold office or employment on or before 24 October 2003 where there is no right of appeal to the Minister in relation to such complaints and disputes.*

5. The 2003 Regulations set out procedures in relation to internal resolution of disputes. Taking account of these Regulations, the procedures in so far as voluntary hospitals and nominated health agencies are concerned are as follows:

- an application for a determination in relation to a complaint or dispute shall be submitted to the Superannuation Section of this Department in writing and signed by or on behalf of the actual or potential beneficiary and shall set out the particulars of the complaint or dispute in respect of which a determination is sought, including –
 - the full name, address and date of birth of the actual or potential beneficiary
 - the address to be used for the service of documents in connection with the complaint or dispute
 - a statement concerning the nature of the complaint or dispute with sufficient details to show why the actual or potential beneficiary is aggrieved, and
 - such other information as the Superannuation Section of this Department may reasonably require
- the Superannuation Section of this Department shall make a determination in relation to a complaint or a dispute and notification of that determination shall be issued to the complainant in writing **within three months** from the date on which all the particulars of the complaint or dispute were received
- where a complaint is made or a dispute is referred to the Superannuation Section of this Department, the determination of such complaint or dispute shall be made by a member of the staff whose rank is higher than that of the person whose action/decision gave rise to such complaint or dispute; in addition, any member of staff whose action/decision gave rise to such complaint or dispute will have no involvement in the determination of the complaint or dispute
- the notification of the determination shall include –

- a statement of the determination
- a reference to any legislation, legal precedent, ruling of the Pensions Board, ruling or practice of the Revenue Commissioners or other material relied upon
- a reference to the provisions of the scheme relied upon and, where a discretion has been exercised, a reference to the provisions of the scheme which confer such discretion
- 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
- a statement that the complainant may have a right to refer the complaint or dispute to the Pensions Ombudsman.

Section 132(4) of the Pensions Act, 1990 (as inserted by section 5 of the Pensions (Amendment) Act, 2002) and article 5(3)(b)(ii)(D) of the Pensions Ombudsman Regulations, 2003) provide that any determination made at internal review stage 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. A statement to this effect will be included in the notification of the determination issued to the complainant (see above).

6. When notifying an individual of his or her superannuation position, the individual will -

- ❖ be supplied with full details of the amount and method of calculation of any entitlements or liabilities and/or full details of the basis for any decision made by the Superannuation Section of this Department and
- ❖ be informed of his/her right to apply to the Superannuation Section of the Department for a determination in relation to any dispute or complaint together with the procedures relating to same.

In addition, the employer should invite the person concerned to contact them or the Superannuation Section of the Department of Health and Children if there is any issue, which he or she wishes to have explained in greater detail. While this facility will in no way interfere with the person's right to make a complaint/refer a dispute and seek a determination, it should enable basic queries or misunderstandings to be addressed at source in a timely fashion. A sample form is appended to this circular letter, which may be of assistance where a person decides to make a complaint or refer a dispute to the Superannuation Section of this Department. On receipt of an application for a determination in relation to a complaint or a dispute, the matter will be fully investigated and the procedures outlined in paragraph 5 above will be followed.

As part of the internal review determination notification process, each complainant will be informed that he/she may have a right to refer the complaint or dispute to the Pensions Ombudsman and that further information can be found in an information booklet available from the Office of the Pensions Ombudsman (current address is 36 Upper Mount Street, Dublin 2 telephone 01 6471650).

This information booklet *What can the Pensions Ombudsman do for You*, and two other booklets *Disputes Resolution Procedures - Guidance notes for Trustees and Administrators* and *Instructions and Guidance for Respondents* are also available on the Pensions Ombudsman's website:

http://www.pensionsombudsman.ie/docs/publications/pubs_index.htm

7. The Department of Health and Children are obliged to make a return to the Pension Ombudsman of all such determinations referred to it on a yearly basis.

Investigation of complaint/dispute by the Pensions Ombudsman

8. (a) Should, following an internal review determination, a person decide to refer a complaint or dispute to the Pensions Ombudsman, the Pensions Ombudsman will, provided he has decided to investigate such complaint or dispute, forward details of the complaint or dispute and any supplementary documentation to the respondent (i.e. the Department of Health and Children).
- (b) In the event the Pensions Ombudsman contacts the employer directly, the employer should forward to the Superannuation Section of the Department a copy of any correspondence (complaints, responses from other parties, preliminary conclusion, etc.) from the Pensions Ombudsman **immediately on receipt of such correspondence** (this is very important having regard to the 21 day time limit which applies in relation to complaints referred by the Pensions Ombudsman).

Any queries in relation to this circular letter should be directed to the Superannuation Section of the Department - telephone (01) 6354259/6354261.

Yours sincerely



Patsy Carr
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Superannuation Section
Personnel Management and Development
Tel: 01 6354291

**VOLUNTARY HOSPITALS SUPERANNUATION SCHEME
(OFFICERS AND NON-OFFICERS)
NOMINATED HEALTH AGENCIES SUPERANNUATION SCHEME**

**APPLICATION FOR DETERMINATION IN RELATION TO A COMPLAINT/DISPUTE
UNDER THE PENSIONS OMBUDSMAN REGULATIONS 2003**

1 Name: _____

2 Address: _____

3 Name of (Last) Employer: _____

4 Grade (or Former) Grade: _____

5 What are the grounds for your complaint/dispute?
Please set out the grounds for your complaint/dispute in the box below – these should include sufficient details to show why you are aggrieved (please continue on a separate sheet if necessary)

Signed: _____

Date: _____

Please send this completed form and any relevant material to:

Superannuation Section, Department of Health and Children, Hawkins House, Dublin 2