

# Disputes Resolution Procedures

Guidance notes for Trustees and  
Administrators



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## Introduction

The *Pension Ombudsman Regulations, 2003* (SI 397 of 2003) require that all occupational pension scheme trustees and PRSA providers put in place procedures for dealing with complaints and disputes that come under the jurisdiction of the Pensions Ombudsman. These regulations took effect on 2 September 2003.

The regulations do not prescribe in detail the requirements for such a procedure. It is therefore left to pension scheme trustees and PRSA providers to determine the details of their own internal disputes resolution (IDR) procedure.

However, PRSA providers are required to submit the details of their procedures for dealing with complaints and disputes, as part of the approval process, when they are submitting their products to the Pensions Board and to the Revenue Commissioners.

The purpose of this booklet is to give some guidance to the trustees and administrators of Occupational Pension Schemes on the requirements of the regulations and on appropriate structures for the internal resolution of complaints or disputes.

## Why have an IDR Procedure?

An internal disputes resolution (IDR) procedure gives members, former members and others who are entitled to raise complaints a formal method of doing so. It is hoped that a good many problems can be solved with good will and can be dealt with, without the need to approach the Office of the Pensions Ombudsman. Trustees and PRSA providers must draw attention to the existence of the IDR procedure in all relevant documents distributed to members /contributors.

The outcome of an IDR procedure is not binding on any party to a dispute. The right to complain to the Pensions Ombudsman is still there if an individual is dissatisfied with the determination made at the end of the IDR procedure. It should be noted that IDR procedures are not limited to complaints and disputes within the Pensions Ombudsman's jurisdiction. Once set up they can - and should - be used on a voluntary basis to deal with all types of complaint. IDR procedures should also be applied to complaints and disputes that fall outside the statutory time limits that apply to complaints to the Pensions Ombudsman.

## What are the minimum requirements?

The regulations require that an IDR procedure must be established by the trustees of an occupational pension scheme and by the provider of a PRSA. The procedures established should be designed to deal with complaints made by actual or potential beneficiaries and disputes arising between actual or potential beneficiaries, and those responsible for management of the pension scheme or PRSA.

A *“complaint”* for this purpose is one that is made by, or on behalf of, an actual or potential beneficiary, who alleges that he or she has sustained financial loss and that that loss has been occasioned by an act of maladministration done by or on behalf of a person responsible for the management of the scheme, or PRSA, as appropriate.

A *“dispute”* is one of fact or law, referred by an actual or potential beneficiary, that arises in relation to an act or omission by or on behalf of a person responsible for the management of the scheme or PRSA. Certain matters cannot be decided by the Pensions Ombudsman. In particular, questions of whether a scheme is a defined benefits or a defined contribution scheme and certain other matters regarding the Pensions Act must be decided by the Pensions Board, while the Board and the Director of Equality Investigations must decide certain matters concerning equal treatment of men and women.

The complaint is made to a *“relevant person”*. This is defined as the trustees of a pension scheme (other than a public authority scheme); the provider of a PRSA; and, in the case of a public authority scheme, the Minister or Ministers to whom an appeal may be made under the scheme rules.

## The Procedure:

Subject to a very few exceptional instances (see “Exceptions”, below) every IDR procedure should stipulate that the details of any complaint or dispute should be set out in writing, giving

- the full name, address and date of birth of the person bringing the complaint
- the address to be used for the service of documents, if that is different from the person’s home address.

Ideally, any documentation that supports the claimant’s case should be forwarded with the complaint or dispute. The person to whom the complaint is brought is entitled to request additional information in relation to any complaint or dispute.

The statement of complaint, which should be signed by the person making it, should set out the nature of the complaint or dispute and should provide enough detail to show why the person bringing the complaint is aggrieved.

# How is the Dispute Dealt With?

## *Structure of IDR Procedures*

There are no structures laid down by law for dealing with complaints or disputes in occupational pension schemes or PRSAs. In some cases, there will be structures already in place for dealing with complaints. Typically, public sector pension schemes have procedures in place for appeals to one or more Ministers and the existence of these procedures satisfies the requirement under the Pensions Act for an internal disputes resolution procedure.

PRSA providers are obliged to include an IDR procedure in the specifications of all PRSAs submitted for approval to the Pensions Board and the Revenue Commissioners.

Where no formal structure exists, trustees should decide on a method of dealing with complaint or dispute which best suits the size and circumstances of their scheme. Ideally, the trustees should have an independent person available to them, to whom the task of making a judgement on a complaint or dispute can be given. The advantage of having an independent person is that it ensures that a complaint or dispute is not reviewed by somebody who has been involved in the subject matter of the disagreement in the past. The independent person could be an outside professional, such as a lawyer, an accountant, an actuary or pension consultant who is not concerned in the matter under dispute. Instead of an independent person there might be a small committee, representative of different interests. Scheme trustees must decide for themselves what structure is best suited to the scheme's circumstances.

The job of the independent person is to consider the details of the complaint or dispute and to suggest what might be done to solve the problem.

However, it is important to note that the independent person cannot change the decision of the trustees where the trustees have used their discretionary powers. In this situation the independent person must remit back the decision to the trustees for further consideration. If the dispute or complaint involves someone other than the trustees, the independent person may make a recommendation, which the trustees can then forward to the party concerned, as a suggested solution to the problem. Implementation of any suggested solution implies that it must be accepted by all concerned.

### *Determination of the Issues*

The recommendation of the independent person should be given in writing to the *“relevant person”*, who makes the final decision on the complaint or dispute and who must then forward a formal *“notice of determination”* to the person who has complained. This notice must be given in writing within 3 months from the date on which all the particulars required under the disputes resolution procedure have been received.

### *What should be in the Notice of Determination?*

The notice of determination should include the following:

- A statement of what has been decided. This may be a decision to make a payment or take some other action that resolves the problem brought forward by the complainant. Alternatively, it may be a rejection of the complaint or confirmation of a previous decision.
- A reference to any legislation, legal precedent, ruling of the Pensions Board or ruling or practice of the Revenue Commissioners that is relied upon in coming to the determination.
- A reference to any other material relied upon.

- A reference to any provisions of the scheme trusts or rules (or terms of the PRSA contract in the case of a PRSA) relied upon in coming to the decision.
- Where a discretionary power has been exercised, a reference to any provisions of the scheme trusts or rules (or conditions of a PRSA) which confer that discretionary power.
- A statement that the determination itself is not binding on any person unless the person assents in writing to be bound by it.
- A statement that the Pensions Ombudsman may have jurisdiction under Section 131 of the Pensions Act to investigate the matter further and that further information can be obtained from the Office of the Pensions Ombudsman.
- The address of the Pensions Ombudsman.

### *Non-Binding Nature of IDR Procedure*

The complainant and respondent(s) are not bound by the outcome of the IDR procedure, unless they assent in writing, either at the time of the making of the determination or subsequently, to be bound by it. The complainant may merely refuse to accept its conclusions, or the respondent may fail to implement a solution suggested. Either way, it is open to the complainant to bring forward his complaint or dispute to the Pensions Ombudsman, who may then decide to investigate the matter, which will result in an order binding on all parties.

### *Exceptions to the Requirement for IDR:*

There are a few exceptions to the requirement for a *full* IDR procedure. These exceptions relate broadly to schemes in winding-up and certain schemes that are “frozen”.

### *Schemes in Winding-Up*

Where a scheme was in the process of being wound-up before the Pensions Ombudsman regulations were made by the Minister (2 September, 2003), and where the Pensions Ombudsman is satisfied that the parties to the complaint or dispute have made reasonable efforts to resolve it, then the complaint can be considered by the Pensions Ombudsman without resort to further dispute resolution procedures.

### *Frozen Schemes with No Employer Trading*

The same situation obtains in relation to a “frozen” scheme, where the scheme itself was frozen prior to the making of the Pensions Ombudsman regulations; but only if all of the participating employers in that scheme have already ceased to trade at the date the complaint is made.

## *Complaints Already Submitted to the Pensions Board*

Finally, in the case of any complaint or dispute that was submitted to the Pensions Board and the Board confirms that, prior to 2 September, 2003, it had completed or terminated an investigation of the matter giving rise to the complaint or dispute, no further processes need to be gone through before submitting the complaint or dispute directly to Office of the Pensions Ombudsman. Where a complaint form indicates that the matter has already been considered by the Pensions Board, the Office of Pensions Ombudsman will request confirmation of this from the Pensions Board.

For further information,  
please telephone 01-6471650  
or visit the website at:  
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# Bealaí oibre le Conspóidí a Réiteach

## Nótaí Treorach



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## Réamhrá

Thug Acht na bPinsean, 1990, a leasaíodh, cead don Aire Gnóthaí Sóisialacha agus Teaghlaigh rialacháin a dhéanamh a chuireann iachall ar iontaobhaithe scéimeanna pinsin agus ar sholáthraithe Scorchuntas Taisce Pearsanta, 'sé sin PRSA, bealaí oibre a chur in ionad. Déileálann na bealaí oibre seo le gearáin agus conspóidí a thagann faoi réir Fhear an Phobail um Pinsin. Tháinig na rialacháin (*S.I. 397 de 2003*) i bhfeidhm ar 2 Meán Fómhair 2003.

Na rialacháin sin a rinne an tAire, ní leagann siad amach na riachtanais go sonraitheach don bhealach oibre. Fágтар faoi iontaobhaithe na scéimeanna pinsin agus sholáthraithe an PRSA na sonraí a bhaineann leis an mbealach oibre chun conspóidí inmheánacha a réiteach.

Chomh fada agus a bhaineann sé leis na PRSAanna, is gá do na soláthraithe na sonraí dá mbealaí oibre chun déileáil le gearáin agus conspóidí a chur isteach, mar chuid den phróiseas aontaitheach, nuair a bhíonn siad ag cur na dtáirgí go An Bord Pinsean agus go dtí na Coimisinéirí Ioncaim.

Is í an aidhm atá leis an leabhrán seo roinnt treorach a thabhairt do iontaobhaithe agus riarthóirí Scéimeann a Pinsean Ceirde i dtaobh riachtanais na rialachán agus ar na struchtúir cuí le gearáin nó conspóidí a réiteach go himmheánach.

## Aidhm an Bhealaigh Oibre IDR

Tugann bealach oibre le conspóidí inmheánacha a réiteach, 'sé sin an IDR, modh foirmeálta do bhaill, iarbhaill agus daoine eile atá i dteideal gearáin a dhéanamh sula dtéann siad go Fear an Phobail um Pinsin. Táthar ag súil gur féidir mórchuid fadhbanna atá inréitithe le dea-thoil a réiteach gan cuairt a thabhairt ar oifig Fhear an Phobail um Pinsin. Ní mór do iontaobhaithe agus do sholáthraithe PRSA aire a dhíriú ar an mbealach oibre IDR, go bhfuil a leithéid ann, ins na cáipéisí a dháiltear ar na baill / na ranníocóirí.

Níl ceangal ar aon pháirtí glacadh le toradh an bhealach oibre IDR. Tá cead gearán a dhéanamh le Fear an Phobail um Pinsin, má ta an duine míshásta leis an gcinneadh a tháinig ag deireadh an bhealaigh oibre IDR. Ní mór a thabhairt faoi deara nach bhfuil na bealaí oibre IDR teoranta do na gearáin agus na conspóidí a thagann faoi réir Fhear an Phobail um Pinsin – is féidir agus is cóir iad a úsáid go deonach le haghaidh an uile shaghas gearáin. Is gá iad a úsáid le haghaidh na conspóidí siúd atá lasmuigh de na teorainneacha ama a bhaineann le gearáin a chur faoi bhráid Fhear an Phobail um Pinsin.

## Cad Iad Na Riachtanais Is Lú?

Éilíonn na rialacháin go mba cheart do na hiontaobhaithe ar scéim pinsin ceirde agus do sholátharaí PRSA bealach oibre IDR a thionscnamh. Ba chóir go mbeadh na bealaí oibre úd curtha in oiriúint chun déileáil le gearáin ó fhíor-thairbhithe nó ó thairbhithe folaigh agus le conspóidí a thagann chun cinn idir fíor-thairbhithe nó tairbhithe folaigh agus iad siúd atá freagrach as bainistiú na scéime pinsin nó PRSA.

Ciallaíonn “gearán” sa chomhthéacs seo ceann atá déanta ag fíor-thairbhithe nó tairbhithe folaigh, nó ar a shon. Líomhnaíonn sé nó sí go bhfuil sé / sí thíos leis maidir le cailteanas airgid agus go bhfuil an scéal amhlaidh de bharr gníomh míriartha a rinne duine a bhí freagrach as bainistiú scéime, nó PRSA, nó a rinneadh thar ceann an duine sin, de réir mar is cuí.

Ciallaíonn “conspóid” rud a bhaineann le fíric nó le dlí agus cuireann fíor-thairbhithe nó tairbhithe folaigh ar aghaidh í. Tagann conspóid chun cinn i dtaca le gníomh nó faillí a dhéanann duine atá freagrach as bainistiú scéime nó PRSA, nó thar ceann an duine sin. Ni féidir le Fear an Phobail um Pinsin cinneadh a ghlacadh ar ábhair áirithe. Ceisteanna go háirithe i dtaobh stádas scéime, ‘se sin an bhfuil sé ina scéim shochair shainmhínithe nó ina scéim ranníocaí shainmhínithe, agus ábhair áirithe eile mar gheall ar Acht na bPinsean, nach mór do Bhord Pinsean cinneadh a ghlacadh fúthu.

Is gnó don Bhord agus don Stiurthóir Comhionannais um Imscrúduithe cinneadh a ghlacadh faoi dhéileáil chomhionann idir fir agus mná.

Déantar an gearán le “duine cuí”. Is e an sainmhíniú air sin ná iontaobhaithe scéime pinsin (seachas scéim údaráis phoiblí); solatharaí PRSA; agus, i gcás scéim údaráis phoiblí, an tAire nó na hAíre gur féidir achomharc a dheanamh faoi rialacha na scéime.

## An Bealach Oibre:

Faoi réir roinnt an-bheag eisceachtaí (féach “Eisceachtaí”, thíos) caithfidh gach bealach oibre IDR coinníoll a leagan amach nach mór sonraí gearáin nó conspóide ar bith a chur i scríbhínn, leis an eolas seo a thabhairt:

- an t-ainm agus sloinne iomlán, seoladh agus dáta breithe an duine atá i mbun an ghearáin
- an seoladh atá le húsaid le cáipeisí a chur chuige, má tá difríocht idir sin agus seoladh baile an duine

Moltar pé soláthar fianaise dhoiciméideach a thacaíonn le cás an éilitheora a chur ar fáil leis an iarratas. Is féidir leis an duine go gcuirtear an gearán nó an conspóid ina láthair a leagadh síos cén t-eolas breise go mba mhian leis a fháil i dtaca le gearán nó conspóid ar bith.

Ba cheart an ráiteas gearáin a bheith sínithe ag an an té atá i mbun an ghearáin a dhéanamh. Ba cheart fosta go ndéanfadh sé cur síos ar mhianach an ghearáin nó na conspóide agus go leor sonraí a thabhairt chun an chúis go bhfuil an gearán á dhéanamh a léiriú.

# Conas a Láimhseáltar an Chonspóid?

## *Struchtúr Bhealaí Oibre an IDR*

Níl aon struchtúir leagtha síos sa dlí do na bealaí oibre is gá chun déileáil le gearáin nó conspóidí i scéimeanna pinsean ceirde agus PRSAanna. I gcásanna áirithe, beidh struchtúir i bhfeidhm cheana féin chun gearáin a laimhseáil. Go hiondúil, bíonn bealaí oibre i bhfeidhm sna scéimeanna pinsean poiblí le hachomhairc a dhéanamh do Aire amháin nó do níos mó Airí. Sásaíonn na bealaí oibre seo na riachtanais faoi Acht na bPinsean do bhealach oibre inmheánach le conspóidí a réiteach.

Caithfidh soláthraithe an PRSA bealach oibre an IDR a chur isteach sna sainchuntais a ghabhann leis na PRSAanna ar fad a chuirtear isteach le ceadú Bhord na bPinsean agus na gCoimisinéirí Ioncaim.

Mura bhfuil aon struchtúr foirmeálta i bhfeidhm, ba cheart do na hiontaobhaithe cinneadh a ghlacadh faoin mhodh is fearr a oireann do mhéid agus cúinsí a scéimeanna le gearáin nó conspóidí a láimhseáil. Ar bhonn idéalach, ba ceart do na hiontaobhaithe duine neamhspleách a bheith ar fail dóibh. Is dósan is féidir an gnó a thabhairt le breith a dhéanamh i dtaobh gearáin. Gabhann buntáiste le duine neamhspleách a cheapadh óir is féidir a dheimhniú nach ndéanann duine a bhí bainteach le hábhar an easaontais roimhe seo athbhreithniú ar an ghearán nó ar an gconspóid. D'fhéadfadh proifisiúnaí seachtrach, mar shampla, dlíodóir, cuntasóir, achtúire, nó comhairleoir pinsean nach bhfuil bainetech leis an ábhar conspóideach feidhmiú mar dhuine neamhspleách. D'fhéadfadh fiú coiste beag, ionadaíoch de na spéiseanna difriúla, feidhmiú in ionad dhuine neamhspleách. Is ar iontaobhaithe na scéime a thiteann sé cinneadh a ghlacadh dóibh féin ar an struchtúr is fearr a oireann do chúinsí na scéime.

Tá sé tábhachtach a thabhairt faoi deara, áfach, nach féidir leis an duine neamhspleách cinneadh na n-iontaobhaithe a athrú má glacadh leis an cinneadh sin i bhfeidhmiú cumhachtaí do réir a dtola ag na h-iontaobhaithe. Is gá sa chás seo a cinneadh a tharchur ar ais go dtí na h-iontaobhaithe le machnamh breise a dhéanamh.

Má bhaineann an chonspóid le duine eile seachas na hiontaobhaithe, tig leis an duine neamhspleách moladh a dhéanamh mar réiteach a d'oibreodh i leith na faidhbe. Ansin is féidir leis na hiontaobhaithe an moladh sin a chur ar aghaidh go dtí na páirtithe cuí. Sul ar féidir aon bhealach réitigh a chur i bhfeidhm, ní mór do gach duine atá bainteach leis glacadh leis.

## *Foirceannadh na Ceiste*

Ba cheart moladh an duine neamhspleáigh a thabhairt i scríbhinn go dtí an *'duine cuí'*. Déanann sé / sí an cinneadh deireannach i dtaobh an ghearáin nó na conspóide agus caitheann sé / sí *'fógra foirceanta'* a chur go dtí an duine a rinne an gearán. Ní mór an fógra a thabhairt laistigh de thrí mhí ón dáta a bhfuarthas na sonraí ar fad is gá faoin bhealach oibre le conspóidí a réiteach.

## *Ábhar an Fhógra Fhoirceanta*

Ba cheart na rudaí seo a leanas a bheith istigh san fhógra foirceanta:

- Ráiteas ar an cinneadh. B'fhéidir gur glacadh cinneadh íocaíocht a dhéanamh nó gníomh eile a réitíonn an fhadhb a thug an gearánaí chun cinn. Ar an láimh eile, b'fhéidir go ndiúltaítear don ghearán nó ndaingnítear cinneadh a ghlacadh roimhe sin.
- Tagairt do reachtaíocht, fasach, rialú de chuid Bhord na bPinsean nó rialú nó cleachtas na gCoimisinéirí Ioncaim a rabhthas ag brath air le teacht ar an fhoirceannadh.
- Tagairt do aon ábhar eile a rabhthas ag brath air.

- Tagairt do aon soláthair de iontaobhais na sceime nó rialacha ( nó téarmaí de chonradh an PRSA i gcás PRSA) a rabhthas ag brath air ar an mbealach chun an cinneadh a ghlacadh.
- Nuair a fheidhmítear cumhacht de réir tola, tagairt do aon soláthair de iontaobhais na scéime nó rialacha (nó coinníollacha PRSA) a bhronann an cumhacht sin de réir tola.
- Ráiteas nach bhfuil an foirceannadh féin mar cheangal ar aon duine ach amháin má aontaíonn an duine i scríbhinn go mbeidh sé mar dhualgas air a bheith ceangailte leis.
- Ráiteas go mb'fhéidir go mbeadh dlísne ag Fear an Phobail um Pinsin faoi Chuid 131 d'Acht na bPinsean imscrúdú breise a dhéanamh agus gur féidir eolas breise a fháil ó Oifig Fhear an Phobail um Pinsin.
- Seoladh Fhear an Phobail um Pinsin.

## ***Nádúr Neamhcheangailte Bhealach Oibre an IDR***

Níl ceangal ar an ghearánaí ná ar an fhreagróir, ná ar na freagróirí glacadh le toradh bhealach oibre an IDR, ach amháin má aontaíonn siad i scríbhinn a bheith ceangailte leis, nuair a dhéantar an foirceannadh, nó ina dhiaidh sin.

D'fhéadfadh an gearánaí diúltú glacadh lena chonclúidí, nó b'fhéidir go dteipfeadh ar an fhreagróir an moladh a cuireadh chun cinn a fheidhmiú.

Slí amháin nó slí eile, tá sé oscailte don ghearánaí a ghearán nó a chonspóid a thógail ar aghaidh go dtí Fear an Phobail um Pinsin. Is féidir leis cinneadh a ghlacadh an t-ábhar a fhiosrú ar a mbeidh ordú mar thoradh air sin agus beidh ceangal ar na páirtithe ar fad glacadh leis.

## *Eisceachtaí do na Riachtanais le haghaidh an IDR*

Tá cúpla eisceacht don riachtanas le haghaidh bhealaigh oibre iomlán an IDR. I gcoitinne, is iad na heisceachtaí ná scéimeanna i riocht ghlindeála suas agus scéimeanna áirithe atá “reoite”.

## *Scéimeanna i Riocht Ghlindeála Suas*

Nuair a thosaigh scéim an próiseas a ghabhann le glindeáil suas sula raibh na rialacháin déanta ag an Aire, (2 Meán Fómhair, 2003) agus i gcás go bhfuil Fear an Phobail um Pinsin sásta go bhfuil iarrachtaí réasúnta déanta ag na páirtithe i leith an ghearáin nó na conspóide, ansin is féidir le Fear an Phobail um Pinsin breathnú ar an ghearán gan dul i dtuilleamaí bealaí oibre breise chun an chonspóid a réiteach.

## *Scéimeanna Reoite gan aon Fhostóir i mBun Trádála*

Baineann an scéal céanna le scéim “reoite” nuair a rinneadh an scéim féin ina scéim reoite sular tháinig rialacháin Fhear an Phobail um Pinsin ar an saol, chomh fada agus gur stop na fostóirí ar fad atá páirteach sa scéim de bheith ag trádáil roimh an dáta a rinneadh an gearán.

## ***Gearáin Atá Curtha ar aghaidh Cheana go dtí an Bord Pinsean***

Ar deireradh, i gcás aon ghearáin nó conspóide a cuireadh ar aghaidh go dtí an Bord Pinsean agus deimhníonn an Bord go raibh an imscrúdú ar an ábhar críochnaithe nó gur cuireadh deireadh leis as ar tháinig an gearán nó an chonspóid roimh 2 Meán Fomhair, 2003, ní gá dul trí tuilleadh próiseas sula gcuirtear an gearán ar aghaidh díreach chuig Oifig Fhear an Phobail um Pinsin. Nuair a thugann foirm don ghearán le fios go bhfuil an t-ábhar tar éis a bheith breithnithe ag an mBord, iarrfaidh Fear an Phobail um Pinsin deimhniú ón mBord.

Chun eolas breise a fháil,  
cuir glaoch fóin le do thoil ar 01-6471650  
nó téir go dtí an suíomh Gréasáin:  
**[www.pensionsombudsman.ie](http://www.pensionsombudsman.ie)**



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