

ABERDEEN CITY COUNCIL

# PENSION FUND

Guide to the Internal Dispute Resolution Procedure

**THE LOCAL GOVERNMENT PENSION SCHEME**  
(LGPS) – SCOTLAND

[Scottish version, April 2009]

## INFORMATION AND DISCLAIMER

The information in this Guide is based on the Local Government Pension Scheme (Scotland) Regulations 2008 (effective from 1st April 2009) and other relevant legislation. It applies to people who were contributing members of the Local Government Pension Scheme on 1st April 2009 or who have since joined the Scheme. The booklet was up-to-date at the time of publication in 2009. It is for general use and cannot cover every personal circumstance, nor does it cover specific protected rights that apply to a very limited number of employees. In the event of any dispute over your pension benefits, the appropriate legislation will prevail as this guide does not confer any contractual or statutory rights and is provided for information purposes only.

This Guide is to help you to understand and use the Local Government Pension Scheme internal dispute resolution procedure.

Aberdeen City Council is the administering authority. This means that the Local Government Pension Scheme is administered locally by Aberdeen City Council who guarantee to pay pension benefits.

More detailed information about the Local Government Pension Scheme is available from:

Aberdeen City Council Pension Fund  
Pensions Section  
AECC – 2<sup>nd</sup> Floor  
Balgownie One  
Conference Way  
Bridge of Don  
Aberdeen AB23 8AQ

Helpdesk: (01224) 814949  
Fax: (01224) 814969  
Email: [pensions@accpf.org.uk](mailto:pensions@accpf.org.uk)  
Website: [www.accpf.org.uk](http://www.accpf.org.uk)

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## **INTRODUCTION**

The Pensions Act 1995 requires all occupational pension schemes to have a formal Internal Dispute Resolution Procedure (IDRP). This booklet describes Aberdeen City Council Pension Fund's formal procedures for settling disputes and disagreements. We hope that most problems can be dealt with informally, but we recognise that sometimes this is not possible.

### **Members**

Members, prospective members, or the widow, widower, partners or dependents of a deceased member ("members"), have access to the dispute procedure, which is a two-stage appeal process. A member can use the dispute procedure to settle any disagreement or complaint they may have about the decisions that have been made about them under the Scheme rules. A member can also use the dispute procedure to help to settle any complaint they may have about the way their case has been dealt with.

There is no charge made for investigating any complaint at any stage under the dispute procedure.

These arrangements do not apply if any court or tribunal proceedings have started or if the Pensions Ombudsman has begun an investigation (pages 9 and 10 explain the role of the Pensions Ombudsman).

### **Using someone else to represent a member**

Under the dispute procedure, a member can ask someone else to make and carry on the complaint for them. A trade union representative or an adult son or daughter will often be happy to help in this way. However the person chosen must be identified in writing by the member as acting on their behalf.

If the person who is entitled to make the complaint has died, his or her personal representative (usually the person dealing with the estate) can make and carry on the complaint on his or her behalf. If the person who is entitled to make the complaint is a child, or is for some other reason not capable of making and carrying on the complaint him or herself, the complaint can be made and carried on by a member of his or her family or by another suitable person.

### **Complaints about maladministration**

If the complaint is about something other than a decision, for example if the complaint relates to maladministration, the complaint can be made directly to the Pensions Ombudsman (see page 10) without first taking it to the Appointed Person and the Scottish Ministers.

The following are examples of maladministration:

- Unreasonable delays in letting a member know about or paying pension benefits
- Failure to advise a member about changes in their pension entitlement or changes in the Scheme rules that may affect them
- Failure to give adequate or timely information that is need to enable a member to make informed decisions about their rights and benefits in the Scheme.

A member can also use the dispute procedure for this type of complaint but, even if the Appointed Person or the Scottish Ministers find that there has been maladministration, they do not have the power to award compensation for any loss the member may have suffered, whereas the Pensions Ombudsman can order that compensation be paid.

## **Employers**

### **Decisions by Employers**

The Local Government Pension Scheme Regulations require employers to make decisions, known as “first instance decisions”, and inform their employees of these decisions. The following are some examples of “first instance decisions” employers are required to make:

- On commencing employment the employer must decide whether or not the employee is eligible to be a member of the Scheme.
- The employer must decide the rate of pension contributions that the member must pay into the Scheme. This rate changes each year in line with statutory guidance and is based on the member’s full time equivalent rate of pay.
- When Scheme membership ceases, the employer decides what benefit the member is entitled to.

The employer may decide that an employee is not entitled to a benefit, for example if early retirement on the grounds of ill-health is considered but the employer’s independent medical adviser has reported that the member does not meet the criteria for ill health retirement under the Regulations.

### **Resolving Disputes**

A Scheme member or prospective Scheme member who has a complaint relating to Scheme membership, entitlement to benefits, or any decision that has been made by that employer which affects their benefits should in the first instance contact the employer giving them the opportunity to resolve the dispute.

If a complaint cannot be resolved by the employer the member can invoke the two-stage Internal Disputes Resolution Procedure (IDRP) by completing the appropriate IDRP appeal form (copy attached at Appendix A ). Any complaints received under the Internal Disputes Resolution Procedure must be made **in writing within six months of the date the member is notified of the decision which is being appealed against.**

#### **Stage 1 Appeal**

Under Stage 1 of this procedure the complaint should be directed to the person nominated by the member’s employer to consider the first stage of the appeal (the Appointed Person). The Appointed Person must be independent and must not have been involved in any capacity in the decision against which the member is appealing. The Appointed Person will either uphold or dismiss the appeal but must first consult with Aberdeen City Council Pension Fund to ensure any determination made is in accordance with the Regulations.

The Appointed Person must respond to a complaint within two months of receiving it or inform the member of the reason for any delay and when they may expect a decision.

#### **Stage 2 Appeal**

If the member is not satisfied with the decision of the Appointed Person nominated by the employer to consider the appeal, there is a further right of appeal under Stage 2 of IDRP to the Scottish Ministers which must **be made in writing within six months of the Stage 1 determination.**

Following the Stage 1 determination the employer also has the right of appeal to the Scottish Ministers if they do not agree with the Appointed Person’s determination. If a member does not agree with the decision of the Scottish Ministers they have the right of further appeal to the Pensions Ombudsman.

If there is no Stage 2 appeal then the decision of the nominated person is binding.

It is the responsibility of the employer, when a decision is made, to give the member details of their right of appeal against that decision, the time limits for making such an appeal, the Appointed person nominated by the employer and the process to be followed.

## **Administering Authority**

### **Decisions by the Administering Authority**

The Local Government Pension Scheme Regulations require the administering authority to make decisions, known as “first instance decisions”, and inform Scheme members of these decisions. The following are some examples of “first instance decisions” the administering authority is required to make:

- Provision of information regarding the Scheme
- Calculation and payment of benefits
- Calculation and treatment of transfer benefits
- Determination of to whom benefits should be paid in the event of a member’s death

### **Resolving disputes**

A Scheme member or prospective Scheme member who has a complaint relating to information received, the calculation and payment of benefits, or any decision that has been made by Aberdeen City Council Pension Fund as administering authority which affects their benefits, should in the first instance contact the Pension Fund Manager, giving them the opportunity to resolve the dispute.

To contact the Pensions Manager please write to:

The Pensions Manager  
Aberdeen City Council Pension Fund  
2<sup>nd</sup> Floor, Balgownie One  
Conference Way,  
Bridge of Don  
Aberdeen  
AB23 8AQ

or email:

[Pensions@accpf.org.uk](mailto:Pensions@accpf.org.uk) for the attention of the Pensions Manager

If a complaint cannot be resolved by the Pensions Manager a member can invoke the two-stage Internal Disputes Resolution Procedure (IDRP) by completing the appropriate IDRP appeal form (Appendix A). Any complaints made under the Internal Disputes Resolution Procedure must be made **in writing within six months of the date the member is notified of the decision which is being appealed against.**

### **Stage 1 Appeal**

Under Stage 1 of this procedure the complaint should be directed to the person nominated by the **administering authority** (the “Appointed Person”) to consider the first stage of the appeal. The Appointed Person must be independent and must not have been involved in any capacity in the decision against which the member is appealing. The Appointed Person will either uphold or dismiss the appeal.

The role of the Appointed Person is to ensure that any decisions made by the Aberdeen City Council Pension Fund as administering authority which have affected a member's pension rights have been made in accordance with the Local Government Pension Scheme (Scotland) Regulations. In reaching a decision the Appointed Person may ask for further information or ask anyone involved to clarify points which are referred to in the application.

Aberdeen City Council as the administering authority has appointed Mrs Jane MacEachran, City Solicitor to be the Appointed Person for decisions made by the Aberdeen City Council Pension Fund. To contact Mrs MacEachran, write to:

Mrs Jane MacEachran  
City Solicitor  
Resources Management  
Aberdeen City Council  
Town House  
Broad Street  
Aberdeen AB10 1AH

The Appointed Person must respond to a complaint within two months of receiving it, or inform the member of the reason for any delay and when they may expect a decision.

It is the responsibility of the administering authority, when a decision is made, to give the member details of their right of appeal against that decision, the time limits for making such an appeal, the Appointed Person nominated by the administering authority and the process to be followed.

## **Stage 2 Appeal**

If the member is not satisfied with the decision of the Appointed Person nominated by the administering authority to consider the appeal, there is a further right of appeal under Stage 2 of IDRPs to the Scottish Ministers which must **be made in writing within six months of the Stage 1 determination.**

Following the Stage 1 determination the administering authority that made the decision which is under appeal also has the right of appeal to the Scottish Ministers if they do not agree with the Appointed Person's determination. If a member does not agree with the decision of the Scottish Ministers they have the right of further appeal to the Pensions Ombudsman.

## **Discretions**

Some decisions are made by employers or administering authorities "in the exercise of a discretion". This means that they have a choice about the decision they make rather than simply looking at the Scheme rules and deciding how they should be applied.

If a complaint is made about a discretionary decision, the Appointed Person will investigate it in the same way as any other complaint but, in this case, the Appointed Person does not have the power to overturn the decision. What the Appointed Person can do, however, is to ensure that the discretion is being exercised reasonably and to insist on the decision being reconsidered if it is found that the decision was not taken in a reasonable and transparent manner.

The following are some examples of "discretionary decisions" employers and administering authorities are required to make:

- Whether to grant additional pension to an active member (by up to £5000 p.a.) (Employer discretion)
- To whom a death grant should be paid in the event of the death of a Scheme member (Administering Authority discretion)

## HOW TO APPEAL

### Stage 1 – Employer or Administering Authority

The application to the Appointed Person must be made in writing, whether it is to the employer's or administering authority's Appointed Person, within six months of the date the member is notified of the decision which is being appealed against.

There is a form in Appendix A of this Guide, "Application to The Appointed Person", which we recommend is used to make the application, whether appealing to the employer's or administering authority's Appointed Person.

#### What details the Appointed Person needs

In all cases members must explain the complaint as fully as possible, enclosing copies of any relevant documentation. In particular, if the complaint is about a decision that has been made, a copy of the letter or notice of decision from either the employer or administering authority advising of the decision should be sent to the Appointed Person.

Scheme members or prospective members must provide in their application the following:

- full name
- address
- date of birth
- National Insurance number
- full name of your employing authority (if appealing to the administering authority )

Spouse, child or other dependent of the Scheme member must provide:

- full name
- address
- date of birth
- relationship to the member
- the member's full name, address, date of birth, National Insurance number
- the name of the employer or former employer (if appealing to the administering authority)

Member's or dependent's representative must provide:

- the member's or dependent's details as above
- representative's own name and address and the appropriate address for correspondence
- written evidence of authority to act for the complainant.

#### What else may be required?

The Appointed Person may need to ask for more information. For example, if the state of the member's health has a bearing on the complaint, they may be asked to attend a medical examination or to give consent for medical records to be released to a doctor chosen by the Appointed Person. This will be done at no cost to the member.

#### Timescale for the Appointed Person's decision

The Appointed Person should either give a decision within two months of receiving a written complaint, or write to the member at the end of two months explaining the reasons for the delay in reaching a decision and giving a date by which the member may expect to hear the outcome.

If a member receives neither a letter giving the Appointed Person's decision, nor a letter giving the reason for the delay, within three months from the date that the application was made, or if the member fails to receive from the Appointed Person a decision within one month of the date by which they were told they could expect an outcome, a member can apply directly to the Scottish Ministers without waiting any longer.

## **Stage 2 – Scottish Ministers**

If a member is not satisfied with the decision of the Appointed Person there is a further right of appeal under Stage 2 of IDRP to the Scottish Ministers which must be **made in writing within six months of the Stage 1 determination.**

Following the Stage 1 determination the employer or administering authority who made the decision which is under appeal also has the right of appeal to the Scottish Ministers if they do not agree with the Appointed Person's determination. If there is no Stage 2 appeal then the decision of the Appointed Person is binding.

### **The Role of the Scottish Ministers**

The Scottish Ministers are totally independent of employers, administering authorities and Appointed Persons. At Stage 2 the Ministers will require copies of all papers which were submitted at Stage 1 and a copy of the Stage 1 decision. The Scottish Ministers may also request further evidence and professional views; for example they have the power to request a further expert opinion in medical cases if they think it necessary. The Ministers must also respond to a complaint within two months of receiving it or let the member know the reason for any delay and when a member may expect a reply.

Appeals should be made in writing to:

The Scottish Ministers                      Tel: 01896 893 000  
Scottish Public Pensions Agency      Fax: 01896 893 214  
7 Tweedside Park  
Tweedbank  
Galashiels TD1 3TE

### **Appealing to the Pensions Ombudsman**

If a member is unhappy with the decision made by the Scottish Ministers, they can take the case to the Pensions Ombudsman even if they were not the one who complained to the Scottish Ministers.

For example, a member may have made a complaint to the Appointed Person which was resolved to their satisfaction but referred on to the Scottish Ministers by the employer. If the Scottish Ministers then overturned the Appointed Person's decision, the member could complain to the Pensions Ombudsman about the Scottish Ministers' decision.

### **TPAS AND THE PENSIONS OMBUDSMAN**

#### **The Pensions Advisory Service (TPAS)**

Members may contact TPAS for help at any time if they are having difficulty in sorting out a complaint under the dispute rules. Usually the Pensions Ombudsman will not investigate a complaint until TPAS has been consulted. TPAS has a network of volunteer advisers who can answer queries and try to resolve problems, corresponding with the Scheme authorities as necessary.

TPAS can also help with the internal dispute resolution procedure and they will explain if they think that someone other than the Pensions Ombudsman should be asked to deal with the matter. If they recommend to a member that a complaint should be made to the Pensions Ombudsman, they will help the member through the process. The services of TPAS are free.

TPAS can be contacted through the local Citizen's Advice Bureau or directly at:

The Pensions Advisory Service  
11 Belgrave Road  
London  
SW1V 1RB

#### **The Pensions Ombudsman**

Telephone: 0845 601 2923  
Fax: 020 7592 7000  
Website: [www.pensionsadvisoryservice.org.uk](http://www.pensionsadvisoryservice.org.uk)  
Email: [enquiries@pensionsadvisoryservice.org.uk](mailto:enquiries@pensionsadvisoryservice.org.uk)

The Pensions Ombudsman investigates and decides complaints and disputes about the way that pension Schemes are run. His role and powers have been decided by Parliament, and he is appointed by the Secretary of State for Work and Pensions. He is completely independent and acts as an impartial adjudicator. There is no charge for using the Pensions Ombudsman's services.

The Pensions Ombudsman's decision is final and binding on all the parties to the complaint or dispute. It can be enforced in the Courts. His decision can only be changed by appealing to the appropriate court on a point of law.

The Pensions Ombudsman can be contacted at:

The Pensions Ombudsman  
11 Belgrave Road  
London  
SW1V 1RB

Telephone: 020 7834 9144  
Fax: 020 7821 0065  
Website: [www.pensions-ombudsman.org.uk](http://www.pensions-ombudsman.org.uk)  
Email: [enquiries@pensions-ombudsman.org.uk](mailto:enquiries@pensions-ombudsman.org.uk)

### **The Scottish Public Services Ombudsman**

The Scottish Public Services Ombudsman can also be contacted if a member is dissatisfied with the outcome of an application under the Scheme's appeal procedures. He will investigate cases only when the complainant has already exhausted the formal complaints procedure of the organisation concerned.

The Scottish Public Services Ombudsman can be contacted at:

Scottish Public Services Ombudsman  
Freepost EH641  
Edinburgh  
EH3 0BR

Telephone: 0800 377 7330  
Fax: 0800 377 7331  
Email: [ask@spsso.org.uk](mailto:ask@spsso.org.uk)  
Website: [www.spsso.org.uk](http://www.spsso.org.uk)

## APPENDIX A - APPLICATION TO THE APPOINTED PERSON

You can use this form to apply to the Appointed Person if you have a disagreement or complaint about a decision that has been made about you under the Scheme rules, or a complaint about the way your case has been dealt with.

Please write clearly in ink using block capitals.

### 1. Member's Details:

If you are the member (the person who is or was in the Scheme) please give your details in the first box. You can then go straight to other side of the form and ignore the rest of this page.

If you are the member's dependent (for example spouse, civil partner, nominated co-habiting partner or eligible child) or if you are representing the person with the complaint, please give the member's details in the first box, then see below.

Full Name	
Address	
Date of Birth	
Employer	
National Insurance Number	

### 2. Dependent's Details:

If you are the member's dependent and the complaint is about a benefit for you, please give your details in this box. If the complaint is about a benefit for a dependent and you are the dependent's representative, please give the dependent's details in this box:

Full Name	
Address	
Date of Birth	
Relationship to member	

### 3. Representative's Details:

If you are the member's or dependent's representative, please give your details in this box:

Full Name	
Address	
Whose address should letters go to?	

#### 4. Your Complaint:

Please give full details of your complaint in this box. Please try to explain exactly why you are unhappy, giving any dates or periods of Scheme membership that you think are relevant. If there is not enough space please use a separate sheet, writing your name and National Insurance number (or if you are not the member, the member's name and National Insurance number) at the top, and attach it to this form.

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I would like the Appointed Person to look into my complaint and make a decision about it.

I am a:

- member/prospective member/former member\*
- dependent of a member/prospective member/former member\*
- member's/prospective member's/former member 's/dependent's representative\*

\* delete as appropriate.

Signed:

Date:

Please enclose a copy of any notification you got from your employer or administering authority about the decision you are complaining about, together with any other letter or notification that you think might be helpful. When you have completed the form, send it to the relevant Appointed Person.