

2005 No. 2025

PENSIONS

**The Pension Protection Fund (Investigation by PPF Ombudsman
of Complaints of Maladministration) Regulations 2005**

Made - - - - - *20th July 2005*

Coming into force in accordance with regulation 1(2)

ARRANGEMENT OF REGULATIONS

1. Citation, commencement and interpretation
2. Reference of a referable matter
3. Time for making a reference
4. Form and content of a reference
5. Procedure on receipt of a reference
6. Duty to investigate and determine a referable matter
7. Conduct of investigation: general
8. Written representations and right to request an oral hearing and be heard
9. Supplementary statements and amendment and withdrawal of a reference
10. Time and place of oral hearings
11. Attendance at oral hearings
12. Oral hearings usually to be held in public
13. Costs and expenses
14. Reaching and giving determinations and consequential directions
15. Combining references or references and reviews
16. Representation
17. Restriction on use of documents and information provided for investigations
18. Miscellaneous powers of the PPF Ombudsman
19. Irregularities
20. Substituted service

Whereas a draft of this instrument was laid before Parliament in accordance with section 316(2)(i) of the Pensions Act 2004(a) and approved by resolution of each House of Parliament;

Now, therefore, the Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 214(1), (2)(a) to (j) and (1), 315(2)(a), (4) and (5) and 318(1) of the Pensions Act 2004(a), and of all other powers enabling him in that behalf, by this instrument, which contains regulations made before the end of the period of six months beginning with the coming into force of the provisions of that Act by virtue of which they are made(b), makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pension Protection Fund (Investigation by PPF Ombudsman of Complaints of Maladministration) Regulations 2005.

(2) These Regulations come into force on the day after the day on which they are made.

(3) In these Regulations—

“the Act” means the Pensions Act 2004;

“the applicant”, in relation to a reference, means the person who made the relevant complaint about the referable matter that is the subject of the reference or, if that person was acting as the representative of another person, that other person;

“Investigation Committee” means the committee of the Board referred to in section 208(3)(b) of the Act (investigation by the Board of complaints of maladministration);

“referable matter” has the meaning given by regulation 2(3);

“the referring party” means the person who makes the reference under regulation 2 (but see regulation 16 (representation));

“relevant complaint” has the meaning given by section 208(2) of the Act (meaning of “relevant complaint”).

Reference of a referable matter

2.—(1) This regulation applies where, following a decision by the Board on matters complained of in a relevant complaint, those matters complained of—

(a) have been investigated by the Investigation Committee and a decision given by it under regulations made under section 208(3)(b) of the Act; or

(b) have been the subject of an application for such an investigation and decision by the Investigation Committee on which no decision has been given by that Committee by the relevant date.

(2) Any referable matter may be referred to the PPF Ombudsman by—

(a) the applicant; or

(b) any other person to whom regulations made under section 208(4)(d)(ii) of the Act require notice of the decision to be given or, if that person is required to be given notice as the representative of another person, that other person.

(3) For the purposes of these Regulations a matter is a referable matter if it is a matter that—

(a) has been the subject of a relevant complaint in respect of which the Board has given a decision under regulations made under section 208(3)(a) of the Act; and

(b) either—

(i) has been the subject of an investigation by the Investigation Committee in respect of which it has given a decision under regulations made under section 208(3)(b) of the Act; or

(a) Section 318(1) is cited because of the meaning there given to “prescribed” and “regulations”.

(b) See section 317(2)(c) of the Pensions Act 2004 which provides that the obligation under section 317(1) of that Act for the Secretary of State to consult such persons as he considers appropriate before making regulations by virtue of the provisions of the Act (other than Part 8) does not apply where regulations are made before the end of the period of six months beginning with the coming into force of the provisions of that Act by virtue of which they are made.

- (ii) has been the subject of an application for such an investigation and decision by the Investigation Committee on which no decision has been given by that Committee by the relevant date.
- (4) In this regulation “the relevant date” means—
- (a) the date on which the Investigation Committee is required to give the decision under regulations made under section 208(4)(c)(ii) of the Act; or
 - (b) if, on an application made to him by the applicant, the PPF Ombudsman is of the opinion that—
 - (i) there is no real prospect of the Investigation Committee giving the decision by that date; and
 - (ii) the matter should be investigated and determined by him,
 the date he notifies to the applicant and any other person to whom regulations made under section 208(4)(d)(ii) of the Act require notice of the decision to be given as being the date by which he considers it reasonable that the decision should have been given.

Time for making a reference

3. A reference under regulation 2 must be sent to the PPF Ombudsman—
- (a) in the case of a referable matter within regulation 2(3)(b)(i), before the end of the period of 28 days beginning with the date that notice of the Investigation Committee’s decision under regulations made under section 208(4)(d)(ii) of the Act was sent to the referring party; and
 - (b) in the case of a referable matter within regulation 2(3)(b)(ii), before the end of the period of 28 days beginning with—
 - (i) the date that is the relevant date for the purposes of that regulation; or
 - (ii) the date on which the relevant date is notified to the person making the reference under regulation 2(4)(b),
 whichever is the later.

Form and content of a reference

- 4.—(1) A reference under regulation 2 must be made in writing and must include—
- (a) the name and address of the referring party;
 - (b) a copy of the relevant decision;
 - (c) the date on which notice of that decision was given;
 - (d) the grounds on which the reference is made; and
 - (e) if a representative has been appointed under regulation 16 to make the reference on behalf of another person, that person’s name and address and whether that address is the address to be used for the purposes of the reference.
- (2) In paragraph (1) “the relevant decision” means—
- (a) in the case of a referable matter within regulation 2(3)(b)(i), the decision of the Investigation Committee mentioned in that regulation; and
 - (b) in the case of a referable matter within regulation 2(3)(b)(ii), the decision of the Board mentioned in regulation 2(3)(a).
- (3) The reference must be signed and dated by the referring party.
- (4) Where the reference is transmitted by means of an electronic communications network, the reference is treated as having been signed for the purposes of paragraph (3) if the identity of the referring party as the person responsible for making the reference can be established from the reference in such manner as the PPF Ombudsman directs for the purposes of this paragraph.

(5) In paragraph (4) “electronic communications network” has the same meaning as in section 32 of the Communications Act 2003(a) (meaning of electronic communications network and services).

Procedure on receipt of a reference

5.—(1) As soon as practicable after receiving a reference that is duly made in accordance with regulations 3 and 4, the PPF Ombudsman must—

- (a) send a written acknowledgement of its receipt to the referring party and the Board; and
- (b) if the PPF Ombudsman considers that a person other than the referring party may be significantly adversely affected by his determination in relation to the matter, notify that person—
 - (i) that a reference has been made;
 - (ii) of the grounds on which the reference has been made;
 - (iii) that the reference and any other documents relating to the reference that are sent to the PPF Ombudsman at any stage in the investigation of the reference, including any written representations made by the person under regulation 8, will be available for inspection at the offices of the PPF Ombudsman;
 - (iv) that such representations will be copied to the referring party and the Board;
 - (v) of the person’s rights under regulations 8 and 11; and
 - (vi) of the effect of regulation 14(6).

(2) The acknowledgement must state the date on which the reference was received.

(3) The acknowledgement sent to the referring party must include a statement—

- (a) that any information or documents provided in support of the reference will be—
 - (i) copied to the Board;
 - (ii) made available for inspection by any person notified under paragraph (1)(b);
- (b) of the referring party’s rights under regulations 8 and 11; and
- (c) of the effect of regulation 14(6).

(4) The acknowledgement sent to the Board must be accompanied by a notification of the grounds on which the reference has been made.

(5) The notification under paragraph (1)(b) must be made in writing, but subject to that may be made in such manner as the PPF Ombudsman considers appropriate.

(6) Unless paragraph (7) applies, as soon as practicable after receiving a reference that is not duly made in accordance with regulations 3 and 4 the PPF Ombudsman must inform the referring party that the reference was not duly made and that he will not be investigating the matter in question.

(7) This paragraph applies if—

- (a) the reference is duly made in accordance with regulation 3 but not regulation 4;
- (b) the PPF Ombudsman is satisfied that the referring party can amend the reference so that it is duly made in accordance with regulation 4 within such period as the PPF Ombudsman requests; and
- (c) the reference is so amended.

Duty to investigate and determine a referable matter

6.—(1) Where a reference of a referable matter is duly made in accordance with regulations 3 and 4, the PPF Ombudsman must—

(a) 2003 c.21.

- (a) investigate the matter; and
 - (b) determine what action, if any, the Board should take.
- (2) The determination must be reached and given before the end of the relevant period.
- (3) In paragraph (2) “the relevant period” means—
- (a) the period of 2 months beginning with the date on which the PPF Ombudsman concludes his investigation in relation to the matter; or
 - (b) such longer period, beginning with that date, as he considers appropriate having regard to the referred matter involved, but not exceeding 6 months.
- (4) In any case where the Board—
- (a) states in writing that it does not oppose the complaint of maladministration involved in the referred matter;
 - (b) withdraws its opposition to the complaint; or
 - (c) fails to comply with a request from the PPF Ombudsman for information relating to the referred matter before the end of the period within which he has requested the information to be given,

the PPF Ombudsman may determine the matter forthwith without any further investigation.

Conduct of investigation: general

7.—(1) For the purposes of investigating the referred matter, the PPF Ombudsman may consider any evidence before him.

- (2) The PPF Ombudsman may—
- (a) conduct an oral hearing about the matter;
 - (b) investigate the matter on the basis of the written evidence before him without holding an oral hearing;
 - (c) consider evidence relating to the matter which was not before the Board or, as the case may be, the Investigation Committee;
 - (d) refer any question which arises out of the matter to a person who, in the PPF Ombudsman’s opinion, is able to provide an expert opinion in relation to that question; and
 - (e) without prejudice to his powers under regulation 15, where references are made on the same or substantially the same grounds and are supported by the same or substantially the same evidence, deal together with any issues arising in respect of two or more references made to him if those issues are the same or substantially the same.

(3) The PPF Ombudsman may by notice in writing require any person who in the PPF Ombudsman’s opinion is able to produce documents necessary for the purposes of the investigation, to produce such documents in such manner, at such place and within such period as is specified in the notice.

(4) But no person may be compelled for the purposes of any investigation or determination to give evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the court.

- (5) In paragraph (4) “the court” means—
- (a) in England and Wales, a county court; and
 - (b) in Scotland, the sheriff.

(6) Subject to the provisions of this regulation and any provision to the contrary in these Regulations, the procedure for conducting an investigation of a referred matter is such as the PPF Ombudsman considers appropriate in the circumstances of the case and, in particular, he may—

- (a) obtain information from such persons and in such manner;
- (b) make such inquiries; and

(c) give such directions as to the conduct of any oral hearing,
as he thinks fit.

Written representations and right to request an oral hearing and be heard

8.—(1) The referring party, the Board and any person notified of the reference under regulation 5(1)(b) may—

- (a) make written representations to the PPF Ombudsman in respect of the referred matter;
- (b) request the PPF Ombudsman to hold an oral hearing about the referred matter; and
- (c) be heard or represented at any such oral hearing.

(2) Written representations must be sent to the PPF Ombudsman before the end of the period of 28 days beginning with the day on which the PPF Ombudsman sends written acknowledgement of the receipt of the reference to the persons to whom it is required to be sent under regulation 5(1) (“the acknowledgement day”).

(3) Where written representations are duly sent to the PPF Ombudsman in accordance with paragraph (2) by the referring party or the Board, he must as soon as practicable after receiving them—

- (a) send a copy of those representations to the Board or, as the case may be, the referring party; and
- (b) make those representations available for inspection by any person notified of the reference under regulation 5(1)(b).

(4) Where written representations are duly sent to the PPF Ombudsman in accordance with paragraph (2) by a person notified of the reference under regulation 5(1)(b), the PPF Ombudsman must as soon as practicable—

- (a) send a copy of those representations to the referring party and the Board; and
- (b) make those representations available for inspection by any other person so notified under regulation 5(1)(b).

(5) A request to the PPF Ombudsman to hold an oral hearing must be made in writing and be sent to the PPF Ombudsman before the end of the period of 28 days beginning with the acknowledgement day.

(6) On receiving such a request, the PPF Ombudsman—

- (a) must consider it; and
- (b) if he considers that it is not appropriate to hold such a hearing, must give his reasons in writing to the person making the request.

Supplementary statements and amendment and withdrawal of a reference

9.—(1) The referring party may at any time during the investigation of a reference by the PPF Ombudsman, if the PPF Ombudsman consents, submit a supplementary statement in writing in respect of the reference.

(2) The PPF Ombudsman must, as soon as practicable after receiving such a statement—

- (a) send a copy of it to the Board;
- (b) give notice of its submission in such form and manner as he considers appropriate to any person notified of the reference under regulation 5(1)(b); and
- (c) make it available for inspection by any such person.

(3) If the PPF Ombudsman consents, the referring party may at any time during the investigation of a reference by the PPF Ombudsman—

- (a) withdraw the reference or supplementary statement; or
- (b) amend the content of the reference or supplementary statement.

(4) Such a withdrawal or amendment must be made by giving notice in writing to the PPF Ombudsman.

(5) The PPF Ombudsman must, as soon as practicable after receiving such a notice—

- (a) send a copy of it to the Board;
- (b) give notice of it in such form and manner as he considers appropriate to any person notified of the reference under regulation 5(1)(b); and
- (c) in the case of an amendment, make it available for inspection by any such person.

Time and place of oral hearings

10.—(1) If the PPF Ombudsman decides that it is appropriate to hold an oral hearing in connection with the investigation of a referable matter that has been referred to him, he must fix the time and place of the hearing, having due regard to any representations made to him by the referring party and the Board about the time and place that would be convenient for them.

(2) The PPF Ombudsman must send a notice of the time and place to—

- (a) the referring party;
- (b) the Board;
- (c) any person notified of the reference under regulation 5(1)(b); and
- (d) any other person the PPF Ombudsman considers appropriate.

(3) The notice—

- (a) must be sent not later than 21 days before the date of the hearing or by such later time as the referring party and the Board agree; and
- (b) may be given in such manner and take such form as the PPF Ombudsman considers appropriate.

(4) The PPF Ombudsman must include with the notice a statement explaining—

- (a) the purpose of the hearing;
- (b) the rights of the referring party, the Board and any person notified of the reference under regulation 5(1)(b) to—
 - (i) make oral representations at the hearing;
 - (ii) call witnesses at the hearing to give evidence that is relevant to the matter being investigated; and
 - (iii) send written representations to the PPF Ombudsman not later than 14 days before the date of the hearing if they do not intend to attend the hearing;
- (c) that any person notified of the hearing may appoint a person to act on his behalf; and
- (d) that if the referring party, the Board or a person notified of the reference under regulation 5(1)(b) fails to—
 - (i) attend the hearing; or
 - (ii) send written representations to the PPF Ombudsman at least 14 days before the date of the hearing,

the PPF Ombudsman may decide the matter without providing a further opportunity for that person to make oral or written representations in respect of it.

(5) If the PPF Ombudsman considers it necessary to alter the time or place of the hearing, he must give the persons mentioned in paragraph (2) notice of the alteration not less than 7 days before—

- (a) the date on which the hearing was to have taken place; or
- (b) if it is earlier, the date on which it is to take place after the alteration,

or at such later time as the referring party and the Board may agree.

(6) The PPF Ombudsman may, if he considers it necessary, adjourn the hearing.

(7) In any case where the hearing is adjourned, no further notice need be given by the PPF Ombudsman under this regulation if the time and place at which the hearing will be reconvened are announced before the adjournment.

Attendance at oral hearings

11.—(1) At an oral hearing—

- (a) the referring party;
- (b) the Board;
- (c) any person notified of the reference under regulation 5(1)(b); or
- (d) any person appointed by a person within sub-paragraphs (a) to (c) to act on his behalf at the hearing,

may call witnesses to give evidence that is relevant to the matter being investigated.

(2) Not later than 14 days before the date of the hearing the referring party, the Board and any person notified of the reference under regulation 5(1)(b) must—

- (a) inform the PPF Ombudsman in writing about—
 - (i) whether that person intends to be represented at the oral hearing; and
 - (ii) whether that person or any person so appointed intends to call any witnesses to give evidence at the hearing and, if so, the names of those witnesses; and
- (b) if that person or any person so appointed intends to call a witness at the hearing, provide the PPF Ombudsman with an outline summary in writing of the evidence of the witness.

(3) If any person notified of the time and place of a hearing under regulation 10 fails to attend the hearing, the PPF Ombudsman may—

- (a) adjourn the hearing; or
- (b) conduct the hearing and determine the matter based on the evidence before him.

(4) The PPF Ombudsman has the same power as the court—

- (a) in respect of the attendance and the examination of witnesses, including examination of witnesses abroad; and
- (b) in respect of the production of documents.

(5) But the PPF Ombudsman may at an oral hearing receive evidence of any fact which appears to him to be relevant, notwithstanding that the evidence would be inadmissible in civil proceedings before the court, and must admit evidence which would be admissible in such proceedings and is relevant.

(6) In paragraphs (4) and (5), “the court” means—

- (a) in England and Wales, a county court; or
- (b) in Scotland, the sheriff.

Oral hearings usually to be held in public

12.—(1) An oral hearing must be held in public unless in the opinion of the PPF Ombudsman it is appropriate for the hearing, or any part of it, to be held in private.

(2) Where a hearing, or any part of a hearing, is held in private, the PPF Ombudsman may permit any person to attend the hearing or, as the case may be, the part held in private.

(3) A person whose conduct has disrupted or is likely to disrupt a hearing may be excluded by the PPF Ombudsman.

Costs and expenses

13.—(1) Where under regulation 7(2)(d), the PPF Ombudsman refers a question which arises out of a matter referred to him to a person who, in his opinion, is able to provide an expert opinion

in relation to that question, the PPF Ombudsman may pay that person such amount as he considers reasonable in respect of costs or expenses reasonably incurred by that person in connection with that referral.

- (2) Where an oral hearing is held, the PPF Ombudsman may pay—
- (a) the referring party;
 - (b) any person notified of the reference under regulation 5(1)(b);
 - (c) any witness who has been requested to attend the hearing and give evidence;
 - (d) any person to whom notice of the hearing was sent under regulation 10(2)(d); or
 - (e) any person appointed under regulation 10(4)(c);

such amount as the PPF Ombudsman considers reasonable in respect of costs or expenses reasonably incurred by that person, with the prior approval of the PPF Ombudsman, in connection with the person's attendance at the hearing.

- (3) Where an oral hearing is held and the PPF Ombudsman is of the opinion that —
- (a) the referring party, the Board, any person notified of the reference under regulation 5(1)(b) or any person to whom notice of the hearing was sent under regulation 10(2)(d) acted vexatiously;
 - (b) the conduct of the referring party in making or pursuing the reference was unreasonable; or
 - (c) the conduct of the Board in opposing the allegation of maladministration involved in the referred matter was unreasonable,

he may direct the person who acted, as the case may be, vexatiously or unreasonably to pay any such person as is mentioned in paragraph (2)(a) to (e) such amount as the PPF Ombudsman considers reasonable in respect of costs or expenses reasonably incurred by that person, with the prior approval of the PPF Ombudsman, in connection with the person's attendance at the hearing.

(4) A direction may be given to the referring party under paragraph (3) despite the fact that he has withdrawn the reference.

(5) Before giving a direction to a person under paragraph (3), the PPF Ombudsman must give the person an opportunity to make representations.

Reaching and giving determinations and consequential directions

14.—(1) If the PPF Ombudsman determines that the decision of the Investigation Committee or, as the case may be, the Board about the referable matter referred to him was reached correctly, he must—

- (a) determine that it is not appropriate for the Board to take any action in relation to the matter; and
- (b) give the Board any directions he considers appropriate.

(2) If the PPF Ombudsman determines that that decision was not reached correctly, he must—

- (a) determine what action, if any, the Board should take in relation to the matter; and
- (b) give the Board such directions as he considers appropriate under paragraph (3).

(3) The PPF Ombudsman may direct the Board—

- (a) to pay such compensation as he considers appropriate to such persons as he considers have sustained injustice in consequence of the matters complained of and specifies in the direction;
- (b) to take, or refrain from taking, such other steps as he may so specify.

(4) The determination and directions must be in writing and must include—

- (a) a statement of the reasons for them; and
- (b) an explanation as to whether and, if so, to what extent the Board is directed to—

- (i) vary or revoke a determination, direction or other decision previously made by the Investigation Committee or, as the case may be, the Board; or
 - (ii) revoke such a determination or direction or other decision and replace it with a different determination, direction or other decision.
- (5) The PPF Ombudsman must—
- (a) give notice of the determination and any directions to—
 - (i) the referring party;
 - (ii) the Board; and
 - (b) notify the following persons of them in such form and manner as he considers appropriate—
 - (i) any person notified of the reference under regulation 5(1)(b); and
 - (ii) any person to whom he has directed that compensation is to be paid.
- (6) Subject to section 217 of the Act (determinations of the PPF Ombudsman), the determination and directions are final and binding on the persons to whom notice or notification is given under paragraph (5)(a) or (b).
- (7) The Board has power to do anything that the PPF Ombudsman directs under this regulation.
- (8) If the Board is directed under this regulation to—
- (a) vary a determination, direction or other decision previously made by the Investigation Committee or, as the case may be, the Board; or
 - (b) replace such a determination or direction or other decision with a different determination, direction or other decision,

it must send a copy of the varied or replacement determination, direction or other decision to the PPF Ombudsman, the referring party and any person notified of the reference under regulation 5(1)(b).

Combining references or references and reviews

15.—(1) Where—

- (a) two or more references are made to the PPF Ombudsman in connection with the same referable matter; and
- (b) the references are made on the same or substantially the same grounds and are supported by the same or substantially the same evidence,

for the purposes of these Regulations he may treat them as a single reference and make a single determination with directions, and references in these Regulations to the reference are to be read accordingly.

(2) Such a single determination may relate to all the references or the PPF Ombudsman may—

- (a) treat one or more of the references as representative of them all; and
- (b) make a single determination with directions relating to the representative reference or references.

(3) Where a reference (“the first reference”) has been determined under these Regulations, the PPF Ombudsman may make determinations and give directions on the same basis in respect of other references if they are made on the same or substantially the same grounds and supported by the same or substantially the same evidence as the first reference.

(4) For the purposes of paragraph (3) it does not matter whether the other references were made before or after the first reference.

(5) Where it appears to the PPF Ombudsman appropriate to do so, he may include in one determination—

- (a) his determination of a reference under these Regulations; and

(b) his determination of a reference of a reviewable matter following a reconsideration decision under regulations made under section 207(1)(b) of the Act or by virtue of section 207(3)(b) of the Act in respect of the matter.

(6) If the PPF Ombudsman proposes to exercise the powers under paragraph (1), (2), (3) or (5) he must notify the relevant persons of the proposal and of those persons' rights under paragraph (8).

(7) The notification under paragraph (6) may be made in such manner and take such form as the PPF Ombudsman considers appropriate.

(8) Any relevant person may make written representations to the PPF Ombudsman before the end of the period of 14 days beginning with the day on which the relevant persons are notified under paragraph (6), objecting to the proposal as respects the reference in relation to which he is a relevant person.

(9) On receiving such representations about a reference, the PPF Ombudsman—

(a) must consider them; and

(b) if he considers that it is appropriate to exercise the powers in question in relation to the reference in the way proposed in the notification, give his reasons in writing to the relevant person making the representations.

(10) For the purposes of this regulation a person is a relevant person in relation to a reference if he is—

(a) the referring party;

(b) the Board; or

(c) a person notified under regulation 5(1)(b) in respect of the reference or required to be so notified.

Representation

16.—(1) A person within regulation 2(2)(a) or (b) may appoint a person to act as his representative for the purposes of these Regulations by sending written notice of the appointment to the PPF Ombudsman.

(2) Where a person within regulation 2(2)(a) or (b)—

(a) dies;

(b) is a minor; or

(c) is otherwise incapable of acting for himself,

the PPF Ombudsman may allow a person to represent, or to continue to represent, him for the purposes of these Regulations.

(3) In any case where by virtue of this regulation a representative is acting on behalf of a person for the purposes of these Regulations, any reference to the person in these Regulations is to be read as a reference to the representative acting in his capacity as such, except where the context otherwise requires.

Restriction on use of documents and information provided for investigations

17. It is a condition of the supply or making available for inspection of any document or other information under these Regulations that any person to whom it is supplied or made available for inspection may only use it—

(a) for the purposes of the reference;

(b) if the PPF Ombudsman proposes to exercise or has exercised his power under regulation 15(1), (2) or (3) in respect of the reference, for the purposes of any other reference as to which he is exercising that power; or

(c) if the PPF Ombudsman proposes to exercise or has exercised his power under regulation 15(5) to include in one determination—

- (i) his determination of a reference under these Regulations; and
 - (ii) his determination of a reference of a reviewable matter following a reconsideration decision under regulations made under section 207(1)(b) of the Act or by virtue of section 207(3)(b) of the Act in respect of the matter,
- for the purposes of the reference of the reviewable matter.

Miscellaneous powers of the PPF Ombudsman

18.—(1) The PPF Ombudsman may—

- (a) extend any period of time for doing any act under these Regulations, except the period of 6 months for giving a determination under regulation 6(3)(b) or a notice under regulation 10(3) or (5); and
 - (b) at any stage of an investigation under these Regulations—
 - (i) order any reference or written representation received by him to be struck out or amended on the ground that it is trivial, frivolous, scandalous or vexatious; or
 - (ii) order the discontinuance of any investigation if he considers it appropriate to do so.
- (2) Before making an order under paragraph (1)(b), the PPF Ombudsman must—
- (a) send notice that he proposes to make it to the referring party or, as the case may be, the person who made the representation; and
 - (b) give him the opportunity to show cause why such an order should not be made.

Irregularities

19.—(1) Any irregularity resulting from failure to comply with any provisions of these Regulations concerning any proceedings does not of itself render the proceedings void.

(2) Clerical mistakes in any determination made or direction given under these Regulations or any error in such a document arising from an accidental slip or omission may be corrected by the PPF Ombudsman by certificate under his hand.

Substituted service

20.—(1) This regulation applies if—

- (a) any person to whom any document is required to be sent or delivered for the purposes of these Regulations—
 - (i) cannot be found;
 - (ii) has died and has no known personal representative; or
 - (iii) is out of the United Kingdom; or
 - (b) for any other reason service on such a person cannot be readily effected.
- (2) The PPF Ombudsman may—
- (a) dispense with service on such a person; or
 - (b) make an order for substituted service on such other person and in such form and manner (whether by advertisement in a newspaper or otherwise) as he considers appropriate.

Signed by authority of the Secretary of State for Work and Pensions.

Philip A. Hunt
Parliamentary Under-Secretary of State,
Department for Work and Pensions

20th July 2005

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for matters (“referable matters”) to be referred to, and investigated and determined by, the PPF Ombudsman if they have been the subject of a complaint of maladministration about which there has either been an investigation and decision by both the Board of the Pension Protection Fund and a committee of the Board under the Pension Protection Fund (Maladministration) Regulations 2005 (S.I. 2005/650) or such an investigation and decision by the Board and an application for an investigation and decision by such a committee without a decision having been given by the committee within the required time.

The Board of the Pension Protection Fund is established by section 107 of the Pensions Act 2004 (c.35) (“the Pensions Act”) to provide compensation to members of certain occupational pension schemes in the event of insolvency of the scheme’s sponsoring employer and where the pension scheme is underfunded at a certain level. The PPF Ombudsman is established by section 209 of the Pensions Act.

Regulation 2 provides for referable matters to be referred to the PPF Ombudsman, specifies who may make the reference and defines what matters are referable.

Regulation 3 provides a time limit of 28 days for making a reference.

Regulation 4 makes provision about the form and content of a reference.

Regulation 5 requires the PPF Ombudsman to acknowledge receipt of a reference to the parties to the reference and notify any person who may be significantly adversely affected by his determination of the reference.

Regulation 6 requires the PPF Ombudsman to investigate and determine matters referred to him. It sets a time limit within which the PPF Ombudsman must give his determination.

Regulation 7 makes provision about the conduct of investigations by the PPF Ombudsman, enabling him to hold an oral hearing or to dispose of the referred matter on the basis of written evidence before him, to obtain an expert opinion in connection with any question arising from a reference and to require production of documents.

Regulation 8 provides for the making of written representations and the right to request and be heard at an oral hearing. It requires the PPF Ombudsman to notify specified persons of any written representations he receives.

Regulation 9 enables a person making a reference to deliver a supplementary statement to the PPF Ombudsman in connection with the reference, and to withdraw or amend a reference or supplementary statement.

Regulation 10 provides for the notices to be given about the time and place of oral hearings in respect of matters referred to the PPF Ombudsman.

Regulation 11 provides for the PPF Ombudsman to be given notice of any people who propose to attend an oral hearing and of whether those people intend to call any witnesses, and summaries of their proposed evidence. It provides for an oral hearing to be continued or adjourned in any case where a party to the reference, a witness or other person notified of the date fixed for the hearing fails to attend.

Regulation 12 provides for oral hearings to be held in public subject to specified exceptions.

Regulation 13 makes provision for the PPF Ombudsman to pay the costs and expenses of experts whose opinion is sought, and costs and expenses associated with attendance at oral hearings and to make an order for costs against the referring party, the Board or any person required to be notified of the making of the reference.

Regulation 14 sets out the PPF Ombudsman's duties and powers on giving a determination, including the power to direct the Board to revoke, vary or replace a determination or direction given by it or to pay compensation to specified persons. It specifies the form and content of determinations and directions, to whom notice of them must be given and on whom they are binding, and provides that the Board has the power to do anything required by them.

Regulation 15 enables references made on the same or similar grounds to be dealt with together and a single determination to be given in respect of them all or in respect of one or more cases treated as representative of them all. It also permits other references to be dealt with on the same basis after such a single determination has been given. It also allows a single determination to be given on a reference under these Regulations and a reference of a reviewable matter following a reconsideration decision. In all these cases an opportunity to object is given to the referring parties, the Board or any person required to be notified of the making of the references.

Regulation 16 makes provision for a person making a complaint about maladministration to appoint a person to act as his representative for the purposes of the Regulations and for the PPF Ombudsman to appoint a person to act as a person's representative in cases where the person dies, is a minor or is otherwise incapable of acting for himself.

Regulation 17 provides that documents or information supplied or made available for the purposes of a reference are supplied or made available on the condition that they will only be used for those purposes or, if that reference is combined with others under regulation 15, for the purposes of those other references.

Regulation 18 provides for the PPF Ombudsman to extend any period of time for doing an act under the Regulations subject to certain exceptions.

Regulation 19 provides for the effect of irregularities resulting from a failure to comply with these Regulations or any clerical errors in a determination or direction given by the PPF Ombudsman. It also provides for the correction of any accidental errors occurring in any such document.

Regulation 20 makes provision for substituted service.

As these Regulations are made before the expiry of the period of six months beginning with the coming into force of the provisions of the Pensions Act by virtue of which they are made, the requirement for the Secretary of State to consult such persons as he considers appropriate does not apply.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.

2005 No. 2025

PENSIONS

The Pension Protection Fund (Investigation by PPF Ombudsman
of Complaints of Maladministration) Regulations 2005

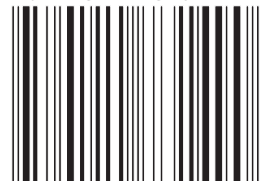
£3.00

© Crown copyright 2005

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E1132 7/2005 151132T 19585

ISBN 0-11-073149-2



9 780110 731490