

*IIPM*

# Pensions Ombudsman

## An Update



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9 December 2010

# Time Limits

- If event complained of occurred before “Appointment Day” (28 April, 2003), time limit is six years back from date of signature of 2002 Act – i.e., 13 April 1996.
- If post- Appointment Day, either
  - Six years from the date of the event, or
  - Three years from the date complainant knew or ought to have known....

This can be extended, but no extension for pre-Appointment events



# This is being tested...

- Complaint regarding failure to pay benefits
- Benefit vested (Leaving through no fault) many years ago
- Benefits surrendered by ER/Trustee in March 1996
- I have taken the view that “action” in this case is failure to pay the benefits when they fell due under the rules – ongoing trustee duty, not discharged
- Trustee has appealed - Initial hearing became in effect a JR, question of jurisdiction. Judgment awaited



# Before a Complaint is Taken

- Internal Disputes Resolution
- Complaint in writing
  - To trustees (Occupational Pension Scheme and Trust RAC)
  - To Minister (Public Authority)
  - To Provider (PRSA)

# Unless.....

- Dispute or complaint already subject to investigation by the Board
  - Which certifies
  - “completed or terminated.....”
- Scheme in Winding Up
- Frozen Scheme with no Employer trading
- From 2006, if PO thinks it appropriate to waive –  
Regulations amended – but this option is available only in the private sector

Prolonged delays in IDR process in Public sector



# Complaint Considered by “Appropriate Person”

- Notice of Determination in writing
  - Conditions to be met
    - WHAT HAS BEEN DECIDED....
    - WHAT IS RELIED UPON IN DECIDING....
    - THAT COMPLAINANT IS NOT BOUND.....
    - BUT CAN TAKE THE PROBLEM ONWARDS

# Practice Varies

- Some schemes have good and established IDR processes –e.g.,
  - Expert adjudicator recommends solution
  - Committee considers and recommends
- If not, advice is available
- IR machinery may not be suitable for Pensions
- Trustees and HR people need to understand IDR requirement may not suit established “Grievance Procedures”
- Employment grievance procedures not open to ex-employees, pensioners, dependants

# Failure to Operate IDR

- Breach of the Pensions Act
- Criminal Offence
- But sanction on employer / trustee does not give redress to the complainant
- PO has discretion after the expiry of three-month deadline

“to deem the process to be exhausted within its terms”

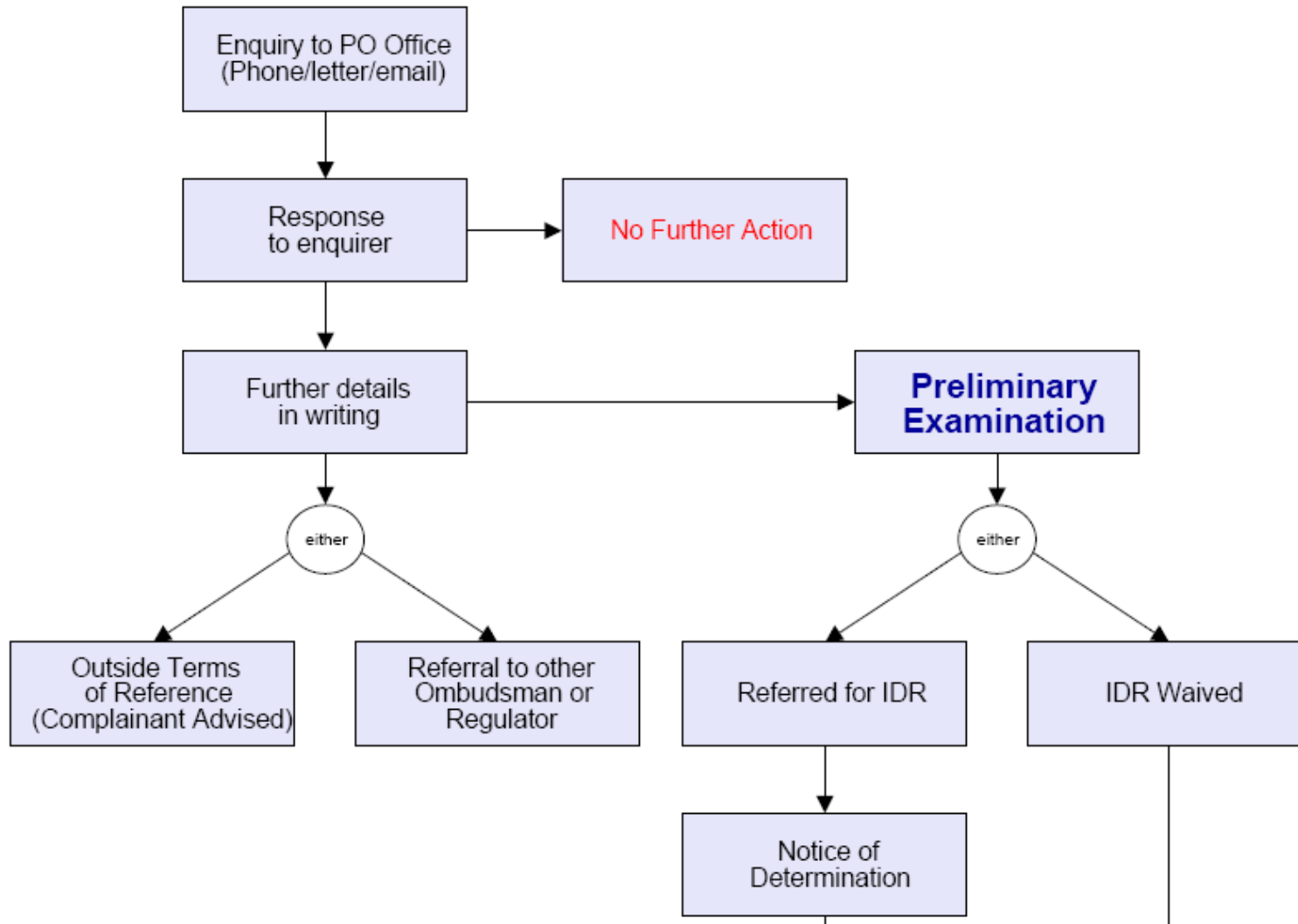
I would prefer not to have to do this....

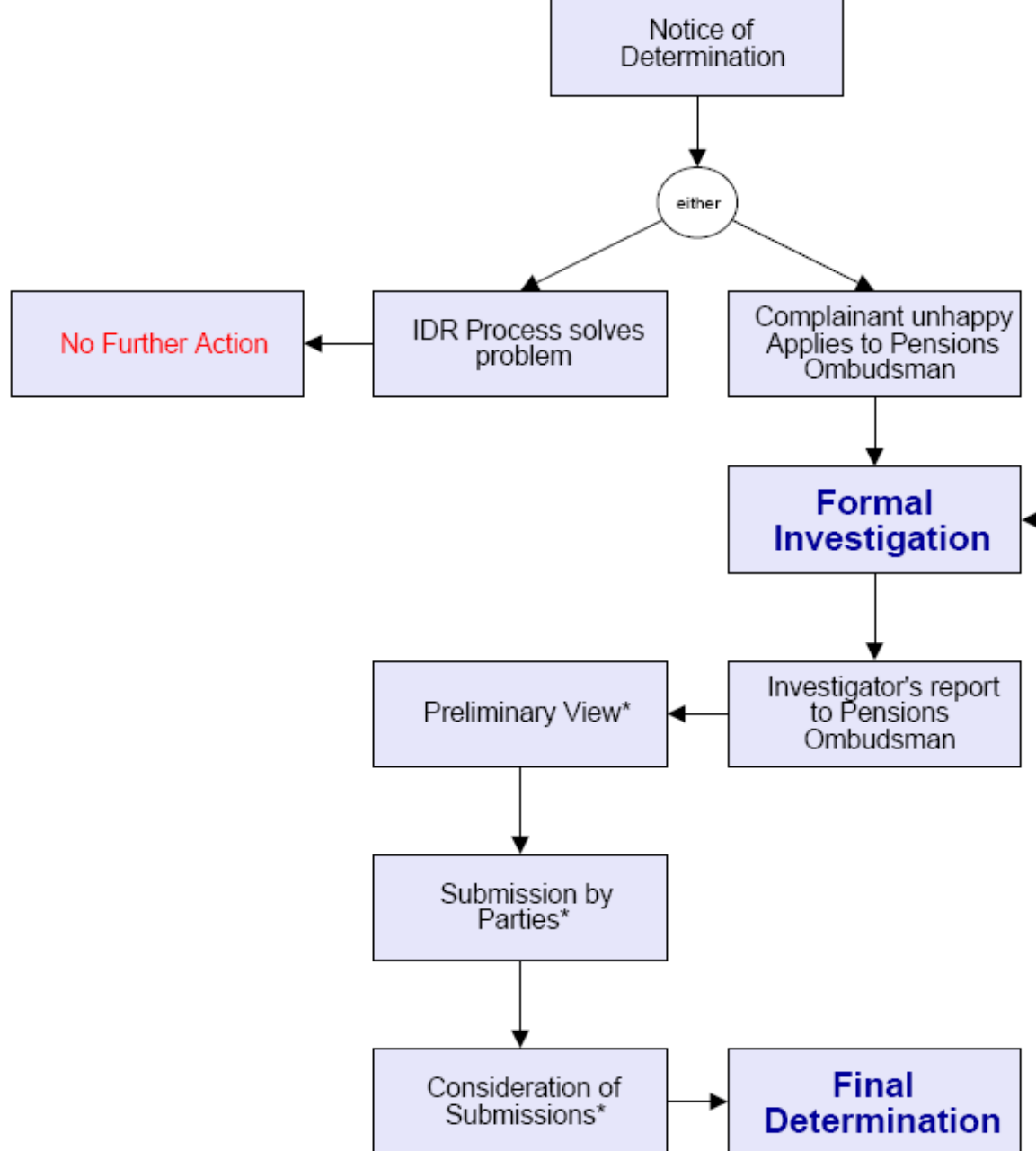


# When a complaint is received...

- Preliminary Examination
  - Is IDR required or to be waived?
  - Is the complaint within terms of reference?
  - If not: divert to DSFA, FSO, Pensions Board, Financial Regulator, Equality Tribunal
    - MOUs
  - If within jurisdiction, can the problem be solved quickly – intervention, mediation, even explanation?

## How a Complaint is Processed





occurs only in cases where the Pensions Ombudsman considers it desirable

# Complaints

- Public Sector, 47%
  - But some may be generic
- Private Sector, 53%
- PRSAs – 6
- Total complaints, 2004: 298.
- 2005: 389 (+31%)
- 2006: 439 (+13%)
- 2007: 515 (+17%)
- 2008: 758 (+47%)
- 2009: 1760 (+71%)
- 2010: Down about 25%

# Main Types of Complaint

- OTOR:
  - Referral to Ombudsman, Regulator, or out of time
- Failure to remit contributions (106)
- Calculation of Benefits: (97)
- Fund values (35)
- Problems with Winding-up (20)
- Purchase of added years (public sector) (43)
- Disclosure of information (24)
- Failure to grant early retirement – solvency issues and ill health (37)

# Types of Complaint -2

- Legacy issues from Public Service in case of “privatised” services
  - Insistence on Civil Service status
- Solvency issues in funded Semi-States
- Some Public sector schemes now c/o NTMA
  - Discretions exercised in the past now being revisited?

# Types of Complaint -3

- “Outsourcing” of medical examination to occupational health services
- Must be clear who makes decision – trustees/ minister etc – NOT the occupational health service
- And that all medical evidence is taken into account
- One case where medical report was signed by the (unqualified) Office Manager

# Another case on Appeal and JR

- Death in Service case in CWPS
- Permission given for Judicial Review
- Determination also appealed
- JR application alleges flawed procedures
  - Request to remit back to OPO
  - Judgment awaited
- Appeal may go to hearing if JR unsuccessful
  - NB: Total involved is less than €70,000!



## Off the Hook?

- Mother complained - deceased son's contributions not paid – no DIS benefit
- Employer said complaint withdrawn
  - Suspect intimidation – complainant later very emotional on phone - I refused to allow withdrawal
- No co-operation from Employer
- Delaying tactics
  - “good authority” that scheme doesn't pay on suicide – it does

# On the Hook

- Told legal representative that I would hold Director personally liable if Board was successful against him
- Pensions Board brought successful prosecution against Company and Director
- Determination issued
- [Circuit Court has already upheld one case of personal liability on appeal]

# The Worst case of all....

- CWPS death in service
- 3 employers, not clear which company employed deceased member
- Oral hearing, established Company B as employer
- Determination against Company B
  - €63500
- Appealed to the High Court!

- Company negotiated with Complainant during appeal process
  - Agreed on payment by instalments
- First instalment cheque bounced
- Cheque and information sent to an Garda Síochána –employer’s solicitor notified
- Complainant received bank draft for €63,500
- Company and Directors will be named in Annual Report

# Other Problems

- Failure to wind up promptly – fall in value of assets
- AVCs not administered with main scheme benefits
- Public service AVCS – pensionable -v- actual service
- Early Retirement – ill health and normal

# Disclosure of Information

- Many complaints lie in failure of communication
- Do we need all the disclosure?
- Are statements of reasonable projection reasonable – or potential trouble in time to come?
- Useful information should include details of how money is invested, reminders to members to review

# Misquotation

- A number of recent cases involve incorrect quotation of benefits, leading to unrealistic expectations

- Benefits revalued when they didn't qualify

I cannot award more than the “loss of scheme benefit”, so cannot oblige trustees to meet expectations

# Not all complaints are serious

- Not pensioned on all of his service – shortfall in benefits
  - Misinformation on transferred service – overstated by 100 days
  - “loss” was €3.38 per fortnight
  - I cannot compensate for loss of expectation
- Civil servant missing pension credit for ONE day of his service
  - It was a strike day
- One man complained that trustees hadn't told him inflation would erode the value of his pension



# Commission Refunded. but Member unhappy

- Member and broker agreed “NIL” commission
- No such contract available
- Insurer made manual adjustment for some years, then system broke down
- Insurer refunded excess commission on my request
- Member still unhappy, no system for preventing payment of renewal commission
- Renewal commission €2.84 per month – complaint rejected

# Legal Proceedings

- Apart from appeals and JR, prosecutions in the District Court for failure to comply with requirement for information
  - 9 convictions this year
  - Fines €200-3500; costs €1300- 2300
  - One under appeal to Circuit Court
- Power of Enforcement
  - Primary enforcer should be the Complainant
  - Application to circuit Court
  - Minister's Power to apply now given to PO

# Questions?