

## Determination by the Ombudsman

A final and binding Determination has been issued by the Ombudsman. In this factsheet we explain about:

- Publication of the Determination
- Complying with the directions in the Determination
- Payment of interest
- What you can do if the Ombudsman has not decided in your favour
- Appealing the Determination

### Publication of the Determination

Ombudsman Determinations are published on our website and are generally anonymised and have the name of the person making the complaint as well as any other identifying personal data removed – unless such data is essential for understanding the decision or there is another reason why we consider it is appropriate to publish it.

If we are considering not anonymising a decision, or we are asked to do so by a party, we will ask you and the other parties involved in the case for their comments. However, ultimately, it will be a matter for the Ombudsman to decide on a case-by-case basis.

If you have any issues with this please contact the Adjudicator assigned to your case.

### Complying with directions

If the Ombudsman has upheld the complaint the Determination will probably include directions against one or more parties, saying what steps they must take to put matters right. They now have to comply with those directions unless they:

- successfully appeal against the Determination; or
- pending an appeal hearing, apply for the Determination to be stayed by the Court (in Scotland the equivalent term is *sisted*), which effectively means that it is put on hold.

If there is an appeal by another party you will know because you will be served with Notice of Appeal.

Directions made by the Ombudsman can be enforced against a person who has failed to comply with them. Where to take enforcement action is generally as follows:

- in England and Wales, in a County Court - the appropriate one being the nearest to the party that has not complied;
- in Northern Ireland, through either the Enforcement of Judgments Office or the County Court depending on the nature of the Ombudsman's directions to be enforced;
- in Scotland, through the Sheriff Officer.

If you think enforcement action is necessary you will need to take the necessary steps yourself. You should contact the investigator in the Ombudsman's office who handled your case for more information.

### **Directions that include payment of interest**

These will refer to "the base rate for the time being quoted by the reference banks". This is published monthly on the Bank of England's website under 'Statistics - Interest & Exchange Rates Data, Wholesale Interest and Discount Rates'. Select 'Average of UK banks' base rates', then 'End of the Month' and then select 'Show Data'. The base rate is defined under regulation 6 of The Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996 (No 2475).

## If the Ombudsman has not decided in your favour

Because the Determination is final and binding the Ombudsman cannot change it, except for minor errors (such as typing mistakes). There is no point in writing to the Ombudsman further at this stage to ask for the decision to be changed. If you want it changed you must appeal to the appropriate court. You can only appeal on a point of law. If you propose to appeal you may want to consult a solicitor or talk to your local Citizens' Advice Bureau or law centre.

## About Appeals

Appeals are to the Chancery Division of the High Court in England and Wales, the Court of Session in Scotland or the Court of Appeal in Northern Ireland.

The Ombudsman has directed for England and Wales that the person wishing to appeal must lodge the appeal within 28 days after the date of an Ombudsman determination. Different time limits apply in Scotland and in Northern Ireland and local advice should be taken.

In England and Wales, appeals require the permission of the High Court. This means that an appellant will need to satisfy the Court that the appeal has a real prospect of success or that there is some other compelling reason why it should be heard. The Appellant's Notice Form (N161) contains a section which deals with permission to appeal. There is no similar requirement at present for appeals in Scotland or Northern Ireland.

If you appeal the Ombudsman should not be listed as a respondent in the Notice of Appeal<sup>1</sup>. The respondent to an appeal should be the party or parties on the "other side" of the matter determined by the Ombudsman<sup>2</sup>. However, you **must** send the Ombudsman a copy of the Notice of Appeal<sup>3</sup>. Failure to send the Ombudsman a copy of the Notice of Appeal may have adverse financial implications for you. The High Court suggests that where the appellant is an unrepresented individual, the respondent should also take it upon themselves to confirm that the Ombudsman has been served with the Notice of Appeal. Occasionally the Ombudsman may decide to be represented at the appeal (although the Ombudsman will only take this decision after receipt of the Notice of Appeal). For example if, in the Ombudsman's opinion, being represented would assist the Court to come to the right decision, or if the outcome of the appeal might affect how the Ombudsman's powers can be exercised. If the Ombudsman is represented, it will be for this purpose, not to support either side.

If you appeal and the Court decides that the Ombudsman's decision should be upheld then it is expected that the normal principle will apply, which is that you, as the unsuccessful party, should pay the costs of the successful party.

If an appeal is lodged against you, you will be served with Notice of Appeal. You will then have to decide whether you wish to be represented (or appear in person) at the appeal. If you are represented (or appear), and the Court decides that the Ombudsman's decision should be changed, then you may have to pay some or all of the costs of the appeal. If you decide

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<sup>1</sup> Unless appeal lodged in Scotland or Northern Ireland and by way of case stated

<sup>2</sup> Moore's (Wallisdown) Ltd v Pensions Ombudsman and others [2001] All ER 299 at paras 71-82; [2002] Pensions LR 73 at paras 75-77

<sup>3</sup> Practice Direction 52D, paragraph 3.4 (which relates to Civil Procedure Rule 52.4(3))

**not** to be represented (or appear) it is **not expected** that you would be required to pay any of the costs.

It may also be possible for you to apply to the court to have costs recovery limited in the appeal.<sup>4</sup>

## **Further Information**

Further useful information can be found as follows:

- The Handbook for Litigants in Person. This is produced by the Judiciary and can be found at [www.judiciary.gov.uk](http://www.judiciary.gov.uk).
- The Community Legal Service Directory which can be found at [www.clsdirect.org.uk](http://www.clsdirect.org.uk)
- [www.justice.gov.uk/about/hmcourts](http://www.justice.gov.uk/about/hmcourts)
- [www.gov.uk/government/organisations/hm-courts-and-tribunals-service](http://www.gov.uk/government/organisations/hm-courts-and-tribunals-service)
- <http://scotland-judiciary.org.uk/16/0/Court-Structure>
- [www.courtsni.gov.uk](http://www.courtsni.gov.uk)

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<sup>4</sup> Under 52.9A of the Civil Procedure Rules (orders to limit the recoverable costs of an appeal)