

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE PENSIONS BOARD AND THE PENSIONS
OMBUDSMAN**

1. Parties

This Memorandum of Understanding is made on the 19th day of September, 2006 between the Pensions Board ("the Board"), Verschoyle House, 28/30 Lower Mount Street, Dublin 2 and the Pensions Ombudsman ("the Ombudsman") of 36 Upper Mount Street, Dublin 2, to be together referred to as "the Parties".

The Pensions Board was established under Part II of the Pensions Act, 1990("the Act").

The Office of the Pensions Ombudsman was established under Part XI of the Act.

2. Purpose

The purpose of this Memorandum is to set out the respective responsibilities of the Board and the Ombudsman so that the Memorandum can be used by staff of the Board and of the Ombudsman to determine whether any matter under their consideration more properly falls within the Board's or the Ombudsman's remit. It also sets out the arrangements for co-operation and exchange of information between the Parties within statutory limits.

3. Functions of the Board – in relation to the monitoring and supervision of occupational pension schemes and PRSAs

- a) Investigating compliance by the trustees of occupational pension schemes with the provisions of the Act;
- b) Investigating the state and conduct of pension schemes and auditing occupational pension schemes under the Board's Disclosure and Compliance Strategy
- c) Prosecuting breaches of the Act;

- d) Monitoring compliance of defined benefit schemes with the funding standard;
- e) Approving PRSA Providers and products jointly with the Revenue Commissioners;
- f) Supervising the production, marketing, selling and ongoing operation of PRSA products and the activities of PRSA Providers;
- g) Monitoring compliance of employers with the mandatory PRSA access obligations of the Act and monitoring compliance of the Providers in respect of approved products under the Board's PRSA Compliance Strategy.

4. Functions of the Ombudsman

The primary functions of the Ombudsman with respect to occupational pension schemes and PRSAs are to:

- a) investigate complaints that an individual has suffered a financial loss because of some failure in the administration of a pension scheme or a PRSA.
- b) Investigate disputes of fact or law in relation to occupational pension schemes and PRSAs. Such disputes usually arise as part of a complaint of maladministration.

The Ombudsman may not investigate a dispute of fact or law that arises in relation to an act done by or on behalf of a person responsible for the management of an occupational pension scheme or PRSA if and to the extent that the dispute of fact or law relates to a matter which may be determined by the Board in accordance with sections 38, 53, 58, 64A and 81G of the Act. (*The Board's powers to make determinations are outlined in Appendix 1*)

5.1. Co-operation between the Parties where a complaint involves both an allegation of financial loss and a breach of the Act

A complaint by an individual to either the Board or the Ombudsman may involve a breach of the Act and contain an element of financial loss suffered as a result of an act of maladministration.

5.2. Complaint received by the Board

The Board has two options where an aspect of the complaint relates to financial loss :-

- (1) to advise the complainant to contact the Ombudsman
- (2) to refer the complaint directly to the Ombudsman

That part of the complaint if any relating to a failure to comply with the Act or otherwise falling within the remit of the Board shall continue to be examined by the Board.

5.3 Complaint received by the Ombudsman

Where a complaint of the type referred to in 5.1 is received by the Ombudsman, the Ombudsman will advise the individual making the complaint to contact the Board regarding that aspect of the complaint which involves a breach or potential breach of the Act or otherwise falling within the remit of the Board.

The Ombudsman may decide to refer a complaint directly to the Board where he is of the opinion that there may have been a breach of the Act by a person responsible for the management of an occupational pension scheme or PRSA.

6. General co-operation

Both the Board and the Ombudsman will seek to maintain strong and constructive relationships with each other in order to contribute to promoting the best interests of beneficiaries or potential beneficiaries of occupational pension schemes and Personal Retirement Savings Accounts (PRSAs) and to the efficient and effective handling of complaints. They also recognise the importance of close co-operation and

communication between them. In particular, they acknowledge the mutual benefits of recognising or acting upon recurring or persistent problems encountered by complainants in the interests of all beneficiaries or potential beneficiaries of occupational pension schemes and Personal Retirement Savings Accounts (PRSAs).

Neither party will seek to advise a complainant as to how the other party may discharge its functions under the Act.

7. Sharing of information by the Parties

Under section 134 of the Act, the Board has discretion to transfer information held by it for the purposes of the Act to the Ombudsman. Under the same section of the Act, the Ombudsman has discretion to transfer information held by it for the purposes of Part XI of the Act to the Board.

Where it becomes apparent to either the Board or the Ombudsman in carrying out their respective functions that either party possesses information which is likely to be significant to the other party's statutory functions or obligations, the party possessing the information will transfer the information to the other party. Each party will seek to provide the other with any additional information on request, as appropriate.

The Board may contact the Ombudsman to ascertain whether he possesses any relevant information in relation to an occupational pension scheme or PRSA which is being examined by the Board and such information, if any, shall be made available by the Ombudsman at the request of the Board. Similarly the Ombudsman may contact the Board to ascertain whether it possesses any relevant information in relation to an occupational pension scheme or PRSA which is under examination by the Ombudsman and such information, if any, shall be made available by the Board at the request of the Ombudsman.

8 Pensions Ombudsman Regulations 2003 S.I. No. 397 of 2003

The Ombudsman may in respect of any occupational pension scheme or PRSA which he is investigating contact the Board to find out whether prior to 2nd September 2003 a person with whom the Ombudsman is now dealing made a complaint or referred a dispute to the Board. If so, the Ombudsman may write to the Board requesting the Board to confirm whether it is satisfied that, prior to 2nd September 2003 it had completed or terminated an examination of the matter giving rise to the complaint or dispute and the Board will respond in writing.

9. Confidentiality

The Parties recognise that the exchange of information between them will be an important contribution to the efficient and effective handling of complaints. The Board and the Ombudsman acknowledge that subject to Section 24 of the Act in respect of the Board and Section 145 of the Act in relation to the Ombudsman the information exchanged between the Parties may become the subject of investigations and examinations carried out by the Parties and may form part of reports or determinations issued by the Parties.

The Parties further acknowledge the need for discretion to be applied when using the information exchanged in the interests of individual complainants and the confidential nature of certain information.

In particular legal, actuarial or other professional advice received by either of the Parties shall not be shared with any third party without the specific consent of the original recipient of such advice.

Regard shall be had to the fact that documents relating to the examination or investigation of a complaint or a dispute by the Ombudsman's office are excluded from the Freedom of Information Acts 1997 and 2003.

10. Meetings

The Parties will meet regularly (at appropriate levels of seniority), and not less than annually, to discuss matters of mutual interest and will communicate routinely between meetings on such matters of shared interest that may arise in the course of day to day business.

11. Not legally binding

Notwithstanding any other provision of this Memorandum, this Memorandum is not intended to create legally binding relations between the Parties but rather to outline the intentions of the Parties (which shall not be legally binding) regarding co-operation between them. This Memorandum shall not be construed so as to restrict the performance by Parties of their functions or exercise by them of their powers.

This Memorandum shall not operate to make a Party liable to any person in damages or otherwise for anything done or omitted for which it would not otherwise be so liable.

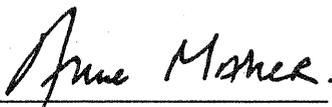
12. Review of this Memorandum

The Parties may review this Memorandum at the request of either Party. This Memorandum may be varied at any time by consent of both Parties. Any variation agreed shall be in writing, shall be signed by the signatories of this Memorandum or their respective successors or by their authorised representatives and shall be introduced on a date agreed by the Parties.

13. Term of the Memorandum

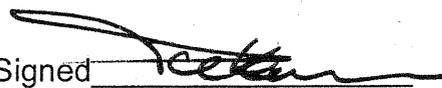
This Memorandum of understanding will be effective from the date of signing. The parties will continue to monitor the operation of this Memorandum and will review it from time to time as necessary.

Signed:



Chief Executive of the Pensions Board

Signed



The Pensions Ombudsman

APPENDIX I

POWERS OF THE BOARD TO MAKE DETERMINATIONS THE ACT

Section of the Act	Description of Board's determination function on application to it
<p>38 PART III of the Act <i>Preservation of Benefits Provisions</i></p>	<ul style="list-style-type: none"> - Whether PART III or any regulations under PART III conflicts with the scheme rules. - Whether a scheme is a defined benefit or defined contribution scheme for the purposes of PART III, or - Whether a member's service may be treated as terminated for the purposes of Part III
<p>53 PART IV <i>Funding Standard Provisions</i></p>	<ul style="list-style-type: none"> - Whether PART IV or any regulations under PART IV conflicts with the scheme rules. - Whether a scheme is a defined benefit or defined contribution scheme for the purposes of PART IV
<p>58 PART V <i>Disclosure Provisions</i></p>	<ul style="list-style-type: none"> - Whether PART V or any regulation under PART V conflicts with the scheme rules. - Whether a scheme is a defined benefit or a defined contribution scheme for the purposes of PART V
<p>59A(3) PART VI <i>Trustee of Scheme Provisions</i></p>	<ul style="list-style-type: none"> - Whether a trustee satisfies the requirements under Section 59A of the Act. Section 59A relates to qualifications of trustees. <p>This application may be made by a trustee, a person to whom the application relates or the Board may determine the issue on its own initiative as part of its supervisory function.</p>
<p>64A PART VI <i>Trustee of Scheme Provisions</i></p>	<ul style="list-style-type: none"> - Whether PART VI or any regulations under PART VI conflicts with the scheme rules - Whether a scheme is a defined benefit or defined contribution scheme for the purposes of

Section of the Act	Description of Board's determination function on application to it
	PART VI
81G PART VII <i>Equal Treatment Provisions</i>	- Whether a scheme is a defined benefit or defined contribution scheme for the purposes of PART VII