

THE PENSIONS ACTS 1990-2004

Complaint to the Equality Tribunal of discrimination in occupational pensions or benefits

(See Notes attached)

Part 1. Details of complainant

Complainant's name:	
Complainant's address:	
Complainant's contact phone number:	
Complainant's fax number / email (if available):	

Part 2: Details of complainant's representative

Name:	Phone number:
Address:	Fax number/email:

Part 3: (For completion by the Tribunal only)

Case reference number:	Date of receipt at Tribunal:
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Part 4: Description of claim; (please tick the box(es) applicable):

Not allowed to join an occupational pension scheme (<i>discrimination in access to an occupational pension scheme</i>)	
Allowed to join, but treated less favourably within the occupational pension scheme (<i>discrimination in the rules of an occupational pension scheme</i>)	
Victimised (including dismissal) for pursuing or supporting rights related to occupational pension (see Notes)	
Dismissed in relation to other occupational pension matters	
Discrimination in relation to an occupational benefit other than occupational pension (see Notes)	
Other (tick here, please give details in reply to Part 9)	

Part 5: Claims by “dependants” of scheme members (see Notes)

If you are not a member (or seeking membership) of the pension scheme yourself, but are entitled to benefits as a “dependant” of a member who has died (e.g. as their widow/er you are entitled to a widow/er’s pension following their death), please state:

Name and date of death of the member:
Your relationship to them:

Part 6: Ground(s) on which discrimination is claimed; (please tick box(es) as applicable:

<i>Gender (male or female)</i>	<input type="checkbox"/>
<i>Marital status (single, married, separated, divorced, or widowed)</i>	<input type="checkbox"/>
<i>Family status (parent or acting parent of a child aged under 18; parent or resident primary carer of a person with a disability needing continuing care)</i>	<input type="checkbox"/>
<i>Sexual orientation (heterosexual, homosexual/gay/lesbian, bisexual)</i>	<input type="checkbox"/>
<i>Religion (including religious belief, background or lack of belief)</i>	<input type="checkbox"/>
<i>Age (only if over 16, see Notes)</i>	<input type="checkbox"/>
<i>Disability (see explanation in Notes)</i>	<input type="checkbox"/>
<i>Race (colour, nationality, ethnic origins, national origins)</i>	<input type="checkbox"/>
<i>Membership of the Traveller community</i>	<input type="checkbox"/>

Part 7: Details of respondents:**a) Employer or former employer: (If you are self-employed, please go to part 8)**

Name:	
Address:	
Phone number:	
Fax number/email:	
Are you still employed there? (circle correct answer)	Yes No
If no, please give date when your employment with them ended.	

Date when discriminatory act first happened:

If pension-related dismissal, date of dismissal:

Date when discriminatory act last happened:

Part 9: Signature

Signature of complainant or representative: -----

Date: -----

Completed forms should be returned promptly to:

The Equality Tribunal, 3, Clonmel St, Dublin 2.

Tel: 01-4774100 LoCall: 1890 34 44 24 Fax: 4774141

EXPLANATORY NOTES

(This Form and Notes are provided as a practical plain-language aid, to ensure that both parties and the Tribunal have clear information on what the complaint is about. The Form and Notes are neither legal advice nor a legal interpretation, and the language used may not be as accurate as the exact text of the legislation. Some of the relevant definitions from the Act are set out in full below. The full text of Part VII, Pensions Acts 1990-2004 (as amended by the Social Welfare (Miscellaneous Provisions) Act 2004) is available at www.equalitytribunal.ie, or from the Government Publications Office.)

1. What is covered by the Pensions Acts: occupational pensions schemes

This form is for complaints of discrimination in **occupational pensions** (broadly speaking, pensions provided by employers for their own employees¹).

Complaints of discrimination in **other aspects of employment** should be made under the Employment Equality Acts (Form EE.1).

The Equality Tribunal cannot deal with complaints of discrimination in **social welfare pensions**: contact the Department of Social and Family Affairs (lo-call number 1890 50-00-00, website www.sfa.ie) for information on how to make a complaint about those.

The Pensions Acts 1990-2004 provide that the principle of equal pension treatment is that there shall be no direct or indirect discrimination on any of the discriminatory grounds listed in this form, in any rule of an occupational pension scheme. The Acts also provide for a number of exceptions to this general rule.

They define a scheme as any occupational pension scheme or arrangement which provides or is capable of providing “occupational benefits” in relation to employed (or self-employed) persons. There are some specific exceptions, such as schemes financed by a member’s voluntary contributions.

Occupational pensions and occupational benefits

The Pensions Acts 1990-2004 essentially define “occupational benefits” as benefits in the form of pensions, payable in cash or in kind in respect of:

- a) termination of service
- b) retirement, old age or death
- c) interruptions of service by reason of sickness or invalidity
- d) accidents, injuries or diseases arising out of or in the course of a person’s employment
- e) unemployment
- f) expenses incurred in connection with children or other dependants
- g) for employees, any other benefit corresponding to a benefit provided by virtue of the Social Welfare Acts, the Maternity Protection Act 1994, or the health Acts 1947 to 2001 which is payable to or in respect of the member as a consequence of his employment

However, any such benefits which are “remuneration” covered by the Employment Equality Acts 1998-2004 are excluded from the scope of the Pensions Acts. (The

¹ Pension schemes for the self-employed may be covered in some circumstances.

Employment Equality Acts generally cover all forms of pay except pensions, which are specifically excluded from their scope).

This means that normally, *occupational pensions complaints* will be decided under the Pensions Acts 1990-2004 (using this form) and *complaints about any other sort of benefits in employment* will be decided under the Employment Equality Acts 1998-2004 (using form EE.1). If you are not sure which of these Acts applies in your case, you may make a complaint using both forms, and the Tribunal will decide which Acts apply.

2. Confidentiality and replying to a complaint

Please note that once a complaint has been accepted for investigation, the complaint form and any other information received by the Equality Tribunal in the course of an investigation is copied to the other party. For example, the complaint form will be copied to the respondent(s) who have then an opportunity to reply in writing. This is done in order to ensure that each party is fully informed of the case made by the other, in accordance with natural justice.

Decisions, including relevant details of the evidence presented, are published as required by law. Otherwise, the details held by the Tribunal on individual cases are treated as confidential to the parties concerned. In cases raising particular sensitivities, such as those involving sexual orientation or particular disabilities, the decision may be published in a form which does not identify the individual concerned.

(See the Tribunal's *Guide to Procedures in Employment Equality Cases* for more information. It is available on www.equalitytribunal.ie, or by contacting the Tribunal directly.)

3. Time limits

The Pensions Acts 1990-2004 provide that any complaint must be referred to the Equality Tribunal "*within six months of the termination of the relevant employment.*" Normally this will mean within six months of the date when the employee left the employment.

The Director of the Equality Tribunal can extend this to 12 months from termination of employment, if there is "reasonable cause" to do so. The complainant must apply to extend time, setting out convincing reasons why there is reasonable cause to extend time.

4. Explanation of terms²:

"age" is defined as including all ages over the mandatory school attendance age (presently 16)

"complainant" means the person making a complaint (for example, the employee)

² If the explanation is given in italics, it is quoting the exact wording of the Acts. Other explanations given are general plain-language ones which are subject to the exact wording of the Acts in each case. All explanations given refer to the situation under the Pensions Acts **from 5th April 2004, when the legislation was amended**. Incidents which occurred before that date will be decided according to the definitions in the Pensions Acts before that date, which may differ from the definitions given here.

“dependants” This term is not defined in the Pensions Acts.

“disability” is defined as follows: —

“(a) the total or partial absence of a person's bodily or mental functions, including the absence of a part of a person's body,

(b) the presence in the body of organisms causing, or likely to cause, chronic disease or illness,

(c) the malfunction, malformation or disfigurement of a part of a person's body,

(d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or

(e) a condition, illness or disease which affects a person's thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour,

and shall be taken to include a disability which exists at present, or which previously existed but no longer exists, or which may exist in the future or which is imputed to a person”;

“dismissal” includes “constructive dismissal”, that is, where the person is not actually dismissed by the employer, but where it is reasonable for them to refuse to continue working in the job because of the employer’s behaviour;

“family status” is defined as “responsibility—

(a) as a parent or as a person in loco parentis in relation to a person who has not attained the age of 18 years, or

(b) as a parent or the resident primary carer in relation to a person of or over that age with a disability which is of such a nature as to give rise to the need for care or support on a continuing, regular or frequent basis,

and, for the purposes of paragraph (b), a primary carer is a resident primary carer in relation to a person with a disability if the primary carer resides with the person with the disability”;

“occupational benefits” is defined as:

“benefits (other than remuneration to which sections 19 and 29 of the Employment Equality Acts 1998-2004 apply), in the form of pensions, payable in cash or in kind in respect of—

(a) termination of service,

(b) retirement, old age or death,

(c) interruptions of service by reason of sickness or invalidity,

(d) accidents, injuries or diseases arising out of or in the course of a person’s employment,

(e) unemployment, or

(f) expenses incurred in connection with children or other dependants,

and, in the case of a member who is an employee, includes any other benefit corresponding to a benefit provided by virtue of the Social Welfare Acts, the Maternity Protection Act 1994 or the Health Acts 1947 to 2001 which is payable to or in respect of the member as a consequence of his employment;

“occupational benefit scheme” is defined as—

“(a) in relation to self-employed persons, any occupational pension scheme or arrangement which is comprised in one or more instruments or agreements and which provides, or is capable of providing, occupational benefits in relation to self-employed persons in any description of self-employment within the State, but does not include—
(i) any individual contract made by or on behalf of a self-employed person, or
(ii) any scheme for a self-employed person which has only one member, or
(iii) any scheme in so far as benefits are financed by contributions paid by the members on a voluntary basis, or
(b) in relation to employed persons, any occupational pension scheme or arrangement which is comprised in one or more instruments or agreements and which provides, or is capable of providing, occupational benefits in relation to employed persons in any description of employment within the State, but does not include—
(i) any insurance contract made by or on behalf of an employed person to which the employer is not a party, or
(ii) any scheme in so far as benefits are financed by contributions paid by the members on a voluntary basis”;

“occupational pension” is not defined in the Pensions Acts;

“occupational pension scheme” is defined³ as; *“any scheme or arrangement*
(a) which is comprised in one or more instruments or agreements, and
(b) which provides or is capable of providing in relation to employees in any description of employment within the State, benefits, and
(c) (i) which has been approved of by the Revenue Commissioners for the purpose of Chapter II of Part I of the Finance Act, 1972, or
(ii) the application for approval of which under Chapter II of Part I of the Finance Act, 1972, is being considered, or
(iii) which is a statutory scheme to which section 17 of the Finance Act, 1972 applies, or
(iv) which is a scheme other than a scheme specified in subparagraph (i), (ii) or (iii) and where the benefits are paid in whole or in part out of moneys provided from the Central Fund or moneys provided by the Oireachtas, or
(v) which has been approved by the Revenue Commissioners for the purpose of one or more of the following, that is to say, section 32 of the Finance Act, 1921, or section 34 of the Finance Act, 1958, or sections 222 or 229 of the Income Tax Act, 1967.”

“respondent” means the person(s) or organisation(s) against whom the complaint is made;

“Traveller community” is defined as *“the community of people commonly so called who are identified (both by themselves and by others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland”;*

³ Pensions Acts 1990 section 2, as amended by section 53 Social Welfare Act 1992

“trustees” is defined⁴ as including both the trustees of an occupational pension scheme established under a trust, and the administrator of an occupational pension scheme not established under a trust;

“victimisation” is defined as occurring where –

“the dismissal or other adverse treatment of an employee by his employer occurs as a reaction to—

(a) the employee notifying the Director or the Board of an alleged breach of this Part,

(b) a complaint of a breach of the principle of equal pension treatment made by the employee to the employer,

(c) any proceedings by a complainant,

(d) an employee having represented or otherwise supported a complainant,

(e) the work of an employee having been compared with that of another employee for any of the purposes of this Part,

(f) an employee having been a witness in any proceedings under this Part,

(g) an employee having opposed by lawful means an act which is unlawful under this Part, or

(h) an employee having given notice of an intention to take any of the actions mentioned in the proceeding paragraphs”.

⁴ Pensions Act 1990, section 2.