

Local Government Pension Scheme

Internal Dispute Resolution Procedure (IDRP)

Scheme members' guide: What to do if you have a complaint: and the rules for settling disputes

Summary

This guide is to help you to understand and use the Local Government Pension Scheme (the scheme) rules for settling complaints. For the purpose of this guide we will call these rules 'the dispute rules'.

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Introduction


If you are a member of the scheme or the dependant of a person who was a member, you can use the dispute rules to settle any disagreement or complaint you may have about the decisions that have been made about you under the scheme rules. The next section explains what we mean by 'decisions'.

You can also use the dispute rules to help to settle any complaint you may have about the way your case has been dealt with, but please read the section headed 'Complaints about maladministration' on page 4.


Many issues can however be resolved informally following discussions with your employer or the County Council as the pension scheme administrator. They may be caused by misunderstandings or wrong information, which can be explained or put right easily. An informal enquiry of this kind may save you a lot of time and trouble.


If you are not sure which scheme benefits you are entitled to, or you have a problem with your scheme benefits, please either phone the number on the letter your employer or the County Council's Pensions Team sent you.

You can contact the County Council's Pensions Team

In writing – 

East Block, F Floor
County Hall, Lewes
East Sussex,
BN7 1UE

by telephone on 03002 001 022 

or via email at pensions@eastsussex.gov.uk. 

Your enquiry will be dealt with as quickly and efficiently as possible.

Decisions

From the day you start a job with an employer who is in the scheme, both your employer and East Sussex County Council (the administering authority that looks after the Fund your employer is in) have to make decisions under the scheme rules that affect you and possibly your dependants.

Once you are a member of the scheme, decisions will continue to be made about such things as the rate of contributions you must pay and what pay they must be based on; whether and, if so, how much you can pay in extra contributions to improve your benefits and, if you have been in the scheme before, how your previous membership counts and the effect new membership has on any pension you may already be getting from the scheme.

When you leave the scheme your employer and your administering authority will make further decisions about the benefits you can expect, what pay they are to be based on and what membership counts for them. When you die, they will decide what death benefits can be paid, who they can be paid to and how much they will be.

How and when you should be told about decisions

Every time your employer or administering authority makes a decision about you under the scheme rules they must write to you as soon as they can to tell you about it. If the decision is that you are not entitled to a pension scheme benefit they must also tell you why they have reached that decision. If their decision is about the amount of your pension scheme benefit, they must tell you how they have worked it out. They must also tell you where you can apply for further information and give you the name, address and job title of the person appointed by them to consider any complaint you may wish to make. In the scheme rules this person is the 'adjudicator'.

When you die they must give similar details to your surviving dependants about any benefits they become entitled to.

The formal complaint procedure has two stages. Many complaints are resolved at the first stage. Any complaint you make should be treated seriously, and considered thoroughly and fairly.

At any stage during the formal complaint procedure you can contact the Pensions Advisory Service (TPAS) for information and advice (see the "What TPAS Can Do To Help" section on page 11).

What to do when you are told of a decision

When you (or your dependants) are told of a decision you should check, as far as you can, to see if you think it is based on the right details and that you agree with it.

If you are not happy with the decision you have the right under the dispute rules to have the decision looked at afresh at the first stage by the adjudicator, and if you are not happy with their decision, have it reviewed at the second stage by East Sussex County Council. If you are still unhappy following the County Council's decision, you can then take your case to the Pensions Ombudsman.

You also have the right to use the dispute rules if your employer or the County Council should have given you a decision but you have not been given one.

There is no charge made for investigating any complaint at any stage under the dispute rules - the only expenses you will have to meet are those of your own (or your representative's) in relation to time, stationery and postage.

For complaints against your employer, you should write to your employer / former employer

Only if your complaint is against a decision made by East Sussex Pension Fund should you write to East Sussex County Council.

It is recommended that you use the Application Form as it will help you to include all the required details

Complaints about maladministration

It may be that your complaint is about something other than a decision that has to be made in relation to your pension scheme benefits. For example, if you feel that there has been some maladministration in the way your case has been dealt with.

The following are some examples of maladministration:

- Unreasonable delays in letting you know about or paying your pension benefits.
- Failure to let you know about changes in your pension entitlement or changes in the scheme rules that may affect you.
- Failure to give you adequate or timely information that you need to enable you to make informed decisions about your rights and benefits in the scheme.

If you feel you have suffered due to maladministration you **must** first use the dispute rules for this type of complaint but, even if the adjudicator or your administering authority decides that there has been maladministration, neither of them has the power to award compensation for any loss you feel you may have suffered. However, you will then be able to take your complaint to the Pensions Ombudsman (see page 12) who does have the power to award compensation in such cases.

Who can use the dispute rules?

You have the right to use the dispute rules if:

- You are **a member of the scheme**. This includes members who are paying into the scheme and those who have now left but who get a pension from the scheme or whose benefits are preserved in the scheme or who simply have some membership left in the scheme, or
- You are **a prospective member of the scheme**. This means that, though you are not a member now you could become one by opting in, or by your employer bringing you in or agreeing to let you join, or by simply staying in your job for a long enough period of time, or
- You are **the widow, widower, child or other dependant** of a person who fell into one of the categories above before he or she died, or
- You are a **surviving non-dependant beneficiary of a deceased member of the scheme**, or

- You think that you either might or ought to fall into one of the above categories, or
- You do not fall into one of the above categories now but you did at some time during the last six months.

Using someone else to represent you

Under the dispute rules, you can if you wish ask someone else to make and carry on your complaint for you. A trade union representative or an adult son or daughter will often be happy to help in this way. You will however need to give the person you choose your written authority to act for you by signing a simple statement to that effect.

If the complaint is about any benefits due in relation to your death, your personal representative (the person dealing with the estate) can make and carry on the complaint.

If the person who is entitled to make the complaint is a child, or is for some other reason not capable of making and carrying on the complaint him or herself, the complaint can be made and carried on by a member of his or her family or by another suitable person.

Stage One of the Dispute Rules - Applying to the Adjudicator

The adjudicator

The adjudicator is not necessarily completely independent of employers or East Sussex County Council. The adjudicator could be an employee of one of them. However, the role of an adjudicator is to deal with complaints in an unbiased way *as an individual*, not as an employee or agent of the County Council or employer. So, when dealing with a complaint the role of the adjudicator, is to *act independently* and make the decision purely on the facts of the case as they appear.

To help maintain the adjudicator's personal independence, they are not allowed to deal with a complaint if they had anything to do with making the original decision that is complained about. In a case like that, the complaint will have to be sent to another adjudicator to deal with.

When the adjudicator receives a complaint they must gather all the facts relevant to the complaint, taking advice from professionals (such as doctors and actuaries) as necessary and seeking the views of both the complainant and the Pensions Team the County Council or the employer. He or she must then look at all the facts and the relevant scheme rules and decide whether or not the original decision was correct. If the adjudicator decides that the decision was not correct they must give a new decision of their own which will override and replace the original decision made by the employer or County Council as the administering authority.

Some decisions are made by employers or the County Council 'in the exercise of discretions'. This means that they have a choice about the decision they make rather than simply looking at the scheme rules and deciding how they apply.

If you make a complaint about a discretionary decision, the adjudicator will investigate it in the same way as any other complaint but, in this case, the adjudicator has no power to overturn the decision. What the adjudicator has to do however, is to ensure that the discretion has been exercised reasonably and to insist on the decision being reconsidered, with account being taken of all proper considerations, if they find that it was not taken in a reasonable and transparent manner in the first place.

When to apply to the adjudicator

If you want to use the dispute rules you must make your complaint to the person appointed by the body that took the decision against which you wish to complain. If you go straight to the County Council or the Pensions Ombudsman they will simply refer you back to the decision making body.

You must make your application to the adjudicator within 6 months after you were told of the decision you are complaining about. If your complaint is that a decision was not made, you must make your application within 6 months of the time the decision ought to have been made. You should not therefore leave things too long before writing to the adjudicator. If you have not had a reply to an informal enquiry in a reasonable length of time, you should make your formal complaint to the adjudicator without waiting any longer for a reply.

The adjudicator can extend the 6 months' time limit for a reasonable period where there are special circumstances.

How to apply to the adjudicator

Your application to the adjudicator **must** be in writing. You can apply directly to the adjudicator at the address given in the decision letter from your employer or from the County Council's Pensions Team. Or if, for example, your complaint is that a decision has not been made, you can write to the County Council's Pensions Team and ask them to pass your application on to an adjudicator.

It is recommended that you use the Application Form as it will help you to include all the required details.

What details the adjudicator needs from you

In all cases you must explain your complaint as fully as you can and provide copies of any documents you think may be helpful. Ideally you should provide a copy of the letter or notice from your employer or from the County Council's Pensions Team telling you about that decision.

If you are the scheme member or prospective member, you must state in your application

- your full name
- your address
- your date of birth
- your National Insurance number
- the full name of your employer. (If you are employed by a council, this should be the name of that council, not the department you work in).

If you are the spouse, child or other dependant of the scheme member you must state in your application

- your full name
- address
- date of birth
- relationship to the member
- the member's full name
- address
- date of birth
- national insurance number
- former employer's name

If you are the member's or the dependant's representative you must state in your application the member's or dependant's details as above together with your own name and address and the appropriate address for correspondence. You must also send evidence of your authority to act for the complainant.

Finally, either you as the complainant or your representative on your behalf must sign the application.

Further information you may be asked to provide

The adjudicator may need to write to you to ask you for more information or explanation to ensure that he or she understands your complaint and is able to make a proper decision.

If the state of your health has a bearing on your complaint, you may also be asked to attend a medical examination or to give consent for your medical records to be released to a doctor chosen by the adjudicator. You will not have to pay any medical charges.

When you can expect the adjudicator's decision

The adjudicator should either give you a decision within two months of receiving your written complaint or write to you at the end of two months telling you the reasons for the delay in reaching a decision. He or she will also inform you of the date he or she expects to be able to let you know the outcome.

If you get neither a letter giving the adjudicator's decision nor a letter giving the reason for the delay within three months from the date you made your application or if you don't receive the adjudicator's decision within one month of the date given in the initial communication to let you know the decision, you can apply directly to East Sussex County Council without waiting any longer. (See 'Stage two of the dispute rules – applying to East Sussex County Council').

What the adjudicator must tell you

The adjudicator must write to you (or your representative) to let you know their decision. He or she must also write to your employer if they made the decision complained of, and to your administering authority. In this letter the adjudicator must state:

- What the decision is. The adjudicator could either confirm the original decision or replace that decision with a new decision of his/her own, and
- the particular scheme rules taken into account in reaching that decision, and
- that you and the body that took the original decision against which you are complaining about, each have the right to ask your administering authority to review the adjudicator's decision within the next 6 months.

What power the adjudicator's decision has

The adjudicator's decision is binding on all parties. This means that, if the adjudicator's decision is contrary to that of the body that took the original decision, they must deal with your case on the basis of the decision made by the adjudicator.

Stage Two of the Dispute Rules - Applying to your Administering Authority

You can ask the pension scheme administering authority (East Sussex County Council) to take a fresh look at your complaint in any of the following circumstances:

- you are not satisfied with the adjudicator's first-stage decision,
- you have not received a decision or an interim letter from the adjudicator, and it is 3 months since you lodged your complaint,
- it is one month after the date by which the adjudicator told you (in an interim letter) that they would give you a decision, and you have still not received that decision.

This review must not be undertaken by a person involved in the first stage decision.

For the purposes of stage two of the pension dispute procedure in the East Sussex Pension Fund the person responsible for the LGPS is:-

Mr Philip Baker

Assistant Chief Executive
East Sussex County Council
County Hall,
St Anne's Crescent
Lewes
East Sussex
BN7 1UE

It is recommended that you use the Application Form as it will help you to include all the required details

Who Can Apply To The Administering Authority?

If you are unhappy with the adjudicator's decision in stage one of the disputes procedure you can ask East Sussex County Council as the administering authority to take a further look at the facts of the case.

When a complaint is made to East Sussex County Council, the adjudicator will be asked for copies of all the evidence, correspondence and other documents obtained during the investigation under stage one of the disputes procedure. East Sussex County Council will also gather whatever other information, views and professional advice they think necessary.

A second decision must then be made on the basis of the scheme rules, and taking due account of the facts and evidence they have obtained, whether or not the adjudicator's decision was correct. If it is decided that it was not, the second decision must replace the adjudicator's decision.

As is the case for adjudicators (see page 6), if the original decision was made in the exercise of a discretion and East Sussex County Council decides that it was not taken in a reasonable manner, they can only insist on the body that took the decision which you are complaining about reconsider its decision - they cannot replace the original decision with a decision of their own.

When and how to apply to East Sussex County Council

If you want to refer your complaint under stage 2 of the dispute rules to East Sussex County Council you must do so within 6 months of the date of the adjudicator's letter telling you of their decision under stage one of the dispute rules. If you are referring your complaint to East Sussex County Council because you have not had a reply from the adjudicator within the appropriate time limits you should do it as soon as you can after the adjudicator's time limit is up. You should make your application to East Sussex County Council in writing.

What East Sussex County Council needs from you

East Sussex County Council will need the same personal details about you or your representative and/ or the scheme member as the adjudicator required:

If you are the scheme member or prospective member, you must state in your application

- your full name
- address
- date of birth
- national insurance number
- and the full name of your employing authority. (If you are employed by a council, this should be the name of that council, not the department you work in.)

If you are the spouse, child or other dependant of the scheme member you must state in your application

- your full name
- address
- date of birth
- relationship to the member

and the member's

- full name
- address
- date of birth
- national insurance number
- former employer's name.

If you are the member's or dependant's representative you must state in your application the member's or dependant's details as above together with your own name and address and the appropriate address for correspondence. You must also send evidence of your authority to act for the complainant.

You must enclose a copy of the letter you got from the adjudicator telling you of the decision about your complaint. You must also state in your letter to East Sussex County Council that you wish them to reconsider the adjudicator's decision and explain why you are unhappy with the adjudicator's decision.

As with complaints to the adjudicator, it is possible that East Sussex County Council will write to you to ask for more information so that they can fully understand your complaint, or if your health is a factor in the complaint, that they will ask you to attend a medical examination or consent to the release of your medical details to another doctor.

When you can expect a decision from East Sussex County Council?

East Sussex County Council must write to you to let you know their decision within two months of the date your complaint is received or they must write to you at the end of two months to let you know when a decision is likely to be reached and the reason for the delay.

What East Sussex County Council must tell you

When East Sussex County Council writes to let you know the decision they must also tell you whether their decision confirms or replaces the adjudicator's decision and must tell you the particular scheme rules used in reaching the decision.

They must also point out that both the Pensions Advisory Service (TPAS) and the Pensions Ombudsman are able to assist with problems to do with the scheme that have not been resolved under the dispute rules. You must also be given the addresses of TPAS and the Pensions Ombudsman.

What the Pensions Advisory Service (TPAS) can do to help

TPAS offer a free service to assist all members of pension schemes. They have local advisors who can help to explain and obtain more information about your pension for you.

If you would like the Pensions Ombudsman to consider a complaint, you should normally contact TPAS first. If TPAS cannot sort out your problem themselves and they believe that there has been some maladministration or that a decision made by East Sussex County Council is wrong, they will possibly recommend that you make a formal complaint to the Ombudsman.

At any time if you are having difficulties in resolving your complaint, you may wish to contact TPAS.

TPAS can provide free advice and information to explain your rights and responsibilities. To get information or guidance, you can look at the website on www.pensionsadvisoryservice.org.uk or you can contact TPAS by phone, post, email or fax.

The Pensions Helpline phone number is: 0300 1231047

Lines are manned Monday to Friday 9am to 5pm.

Outside of these times, you can leave your number and someone will phone back later.

You can write to: TPAS

11 Belgrave Road

London

SW1V 1RB

Alternatively, you can use the online query form on the TPAS website.

Applying to the Pensions Ombudsman

Applications to the Pensions Ombudsman can only be made after you have used stage one and stage two of the dispute resolution procedure

The Pensions Ombudsman can investigate complaints of maladministration or disputes of fact or law about decisions that have been made about your pension but you must go through the procedures laid down in stages one and two of the disputes rules first. This means that you must first take your complaint to the adjudicator and then to East Sussex County Council before the Pensions Ombudsman will investigate it.

The Pensions Ombudsman can also investigate complaints or disputes about the handling of a case either by the adjudicator or East Sussex County Council.

The Pensions Ombudsman's address is:

11 Belgrave Road,

London

SW1V 1RB,

telephone 020 76302200

Email – enquiries@pensions-ombudsman.org.uk

Time limits under the Internal Dispute Resolution Procedure

Stage of the Procedure	Person responsible	Time limit
You have received a decision on your benefits under the pension scheme from your employer/administering authority, and there seem to be good grounds for complaining.	The adjudicator under the first stage of the procedure.	6 months from the date when you were notified of the decision ¹
You have received a first stage decision on your complaint from the adjudicator, but you are not satisfied.	The relevant administering authority under the second stage of the procedure.	6 months from the date of adjudicator's decision
You made your complaint in writing to the adjudicator, with all the information they needed but, 3 months later, you have not received their decision on your complaint or any interim reply.	The relevant administering authority under the second stage of the procedure.	9 months from the date when you submitted your complaint.
You received an interim reply to your complaint to the adjudicator, within 2 months of applying to them. Their reply promised you a decision by a specified date but, one month after the specified date, you still have not received their decision.	The relevant administering authority under the second stage of the procedure.	7 months from the date by which you were promised you would receive a decision
Your complaint is that your employer or administering authority have failed to make any decision about your benefits under the pension scheme	The adjudicator under the first stage of the procedure	6 months from the date when the employer or administering authority should have made the decision ² .
Your complaint went to the administering authority under the second stage of the procedure. You received their decision but you are still not satisfied.	The Pensions Ombudsman. (Note that the Ombudsman will normally expect you to have asked TPAS for help first.)	3 years from the date of the original decision about which you are complaining.

Stage of the Procedure	Person responsible	Time limit
<p>You received an interim reply to your second stage complaint to the administering authority, within 2 months of applying to them. Their reply promised you a decision by a certain date but, by that date, you still have not received their decision</p>	<p>The Pensions Ombudsman. (Note that the Ombudsman will normally expect you to have asked TPAS for help first.)</p>	<p>3 years from the date of the original decision about which you are complaining.</p>

1

The adjudicator can extend the 6 month time limit for a reasonable period where there are special circumstances.

2

The adjudicator can extend the 6 month time limit for a reasonable period where there are special circumstances.