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Ref: **NICC5558**

*Judgment: approved by the Court for handing down
(subject to editorial corrections)*

Delivered: **12/05/2006**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

BETWEEN:

MARY PATRICIA McCOLLUM

Applicant/Respondent

and

CIVIL SERVICE PENSIONS (NORTHERN IRELAND)

Respondent/Appellant

Before: NICHOLSON LJ, CAMPBELL LJ and SHEIL LJ

NICHOLSON LJ

Introduction

[1] This is an appeal which arises out of a determination by the Pensions Ombudsman on 5 July 2005. It involves consideration of the Principal Civil Service Pension Scheme (Northern Ireland) ("the Scheme") and of legislation relating to social security benefits. Behind the legal technicalities lies an unhappy chapter in the life of Mrs McCollum, the applicant and respondent in this appeal.

[2] She was born on 7 April 1955 and she is a married woman. She worked as a social security officer for the Social Security Agency ("the Agency") from 28 October 1974 until she was forced to retire on medical grounds on 3 June 1999. This is a branch of what is now known as the Department of Finance and Personnel. On 20 August 1996 she sustained an industrial accident at her place of work as a result of abuse by her manager according to the appellant. In consequence she suffered from mental problems, not least depression; hence her retirement on medical grounds in June 1999. This brief statement is not intended to be complete. We have not been given the details of the harassment or when it commenced nor any

information about her mental problems or when they began. She was on sick leave from 9 October 1997 and received sick pay up to 17 April 1998.

[3] A Statutory Sick Pay (SSP) and Incapacity Benefit form was signed by her on 2 April 1998. It was stamped as received by the Agency on 7 April 1998. It would appear that at that time her entitlement to SSP and the date on which it would cease was in doubt. Her entitlement to Incapacity Benefit also required clarification and she needed to make a claim for it.

[4] The Agency appear to have filled in Section 1 of the form. At page 3 they stated "I cannot pay you SSP after 27 April 1998" (Personnel Branch had already told her so). They gave as their reason "You will soon have been getting SSP for 28 weeks or you have already had SSP for 28 weeks". At page 6 they stated that the first day of sickness was 9 October 1997. This section of the form was signed by a pay clerk on 27 March 1998 and contained an acknowledgement that they must continue to pay SSP until 27 April 1998.

The next three sections of the form were filled in by the respondent. She claimed incapacity benefit from 28 April 1997 (she may have intended to claim only from 1998). Nothing may turn on this. She indicated that she was suffering from stress reaction. At page 11 of the form there was a requirement to send a medical certificate from her doctor and she stated on the form: "Personnel Branch get these and I hope pass them on to you."

On the same page of the form there was a question: Do you think you are sick because of an accident at work while working for an employer? She deleted the words "an accident at" because she regarded the abuse or harassment as deliberate and did not wish to concede that it was not. There were two boxes for the answer to the question, a No box and a Yes box. She ticked the Yes box. The form then contained a printed statement: "You may be able to get Industrial Injuries Disablement Benefit. We will send you leaflet N1L6 Industrial Injuries Disablement Benefit. This will tell you about the benefit and how to claim it."

The next question was: Do you think you are sick because of an industrial disease caused by conditions at work while working for an employer? If you are not sure whether the disease is an industrial disease, tick Yes. She ticked the Yes box. Again the form contained a statement. "You may be able to get Industrial Injuries Disablement Benefit. We will send you leaflet N116 Industrial Injuries Disablement Benefit and how to claim it. We will also send you leaflet NIL2 if you have an industrial disease which will tell you about prescribed diseases."

Again she made some deletions to the question, crossing out the words "industrial disease caused by" because she was claiming that her mental state was caused by conditions at work and was not a "disease".

[5] We pause at this stage to point out that the Agency failed to send the respondent either of the leaflets which they had undertaken to send. In consequence she did not claim Industrial Injuries Disablement Benefit (IIDB) to which she was entitled in 1998. For reasons which will become apparent she was did not claim it until 2002. It was at least partly as a result of that sorry lapse by the Agency that this case has ended up in the Court of Appeal in 2006. We entertain no doubt that if the respondent had received the leaflets she would have claimed and been awarded IIDB from April 1998 or October 1998. The Agency promised to send the leaflets. She was mentally unwell. It was accepted by the Social Security Commissioner that she was not well enough to make application for IIDB unless reminded of her entitlement and told how to do it. That is to say, she was too ill to realise that she had to apply for or was entitled to IIDB and that illness was caused by her manager for whose actions the Agency and, ultimately, the Department were legally liable. The Agency eventually conceded in correspondence that she should have been sent the leaflets. We reject the excuse given by them that the slight amendments to the questions made by her contributed to the failure to send the leaflets. We are satisfied that the failure to send the leaflets was at the least a negligent oversight. But we have to remind ourselves that the Agency and the administrators of the Scheme are separate branches of the Department and that the Agency's failure to send the leaflets or inform Mrs McCollum that she should claim for IIDB arguably may not be laid at the door of the administrators of the Scheme.

[6] According to the appellant she was awarded incapacity benefit from 28 April 1998. But for the purposes of a Temporary Award under the Scheme in April 2002 Incapacity Benefit was treated as notional for the period upto 3 June 1999. Moreover the close links between the Branch administering the Scheme and the Agency can be seen from the fact that the Agency paid the Temporary Award and the final award was paid out of the "funds" of the Scheme. The members and their employers have to pay contributions and the Scheme affects employees of other Departments. The Scheme was set up under Article 3 of the Superannuation (NI) Order 1972. We were not told and we cannot detect from an examination of the scheme whether there is a separate fund administered by the appellant which is separate from the other funds of the Department.

The relevant portion of the Scheme

[7] Appendix 15 of Section II of the Scheme contains the former Section 11 rules of that part of the Scheme in force before 1 October 2002. It applies to persons such as Mrs McCollum employed in the Civil Service. Rule 11.3 provides for payment of benefits under qualifying conditions which were fulfilled by her. Eligibility for benefit is dealt with by Rule 11.6. Scales of benefits are dealt with by Rule 11.7 which states:

“The annual allowance under rule 11.6 will be the amount which when added to the benefits specified below will provide an income of not less than the guaranteed minimum shown in the table below and appropriate to the circumstances of the case.

...

The benefits to be taken into account are:-

- (i) any occupational pension payable to him out of public funds or for which all or part of the contributions are so payable ...
- (ii) any of the national insurance benefits specified in rule 11.8(iii) which are payable to him
- (iii) ...”

There is then set out a table of Guaranteed Minimum Income which is stated to be a Proportion of Pensionable Pay. The length of service or reckonable service (if long) is shown but need not be set out here. Where there is total impairment (more than 75% impaired) the Guaranteed Minimum Income as a Proportion of Pensionable Pay is stated to be 85%. If the total of benefits payable under (i), (ii) and (iii) above exceeds the guaranteed minimum income ascertainable from the table no annual allowance is payable under rule 11.6.

We set out so much of Rule 11.8 (i) and (iii) as are relevant. Rule 11.8 commences:-

“The pensions and benefits referred to in rule 11.7 are taken to be of the following amounts as at ... the date of ceasing to hold office or the date the annual allowance under this section begins.

- (i) the annual amount of any occupational pension payable from public funds, or for which all or part of the contributions are payable from public funds or the annual amount of any personal pension or state earnings-related pension to which the person may be entitled consequent on his having opted out of the scheme; and any other periodical payment

provided for in any section of this scheme other than this section;

(ii) ...

(iii) the annuity value or the annual value, as appropriate, of any rights which have accrued or probably will accrue from the injury by way of industrial disablement benefit, sickness benefit, invalidity pension or incapacity benefit ...

(iv) ...”

Rule 11.10 illustrates the complete control which the Department exercises over the Scheme and its administrators.

[8] The Department of which the Agency and the branch which administers the Scheme are branches, through its Superannuation Branch sent a letter on 27 January 1997 to all Establishment Officers and Industrial Personnel Officers relating to Injury Awards under Section 11 of the Scheme. With the letter there were sent instructions to be read in conjunction with section 11 of the Scheme.

The first paragraph of the instructions dealt with an extension of sick leave with full pay up to a maximum of six months. Thus it appears that Mrs McCollum obtained an extension of sick leave with full pay from April to October 1998. Either she did not receive Incapacity Benefit for that period or it was deducted because it was received or was notionally deducted. The instructions are a commentary on the Scheme. It is pointed out that Rule 11.6(iii) enables temporary allowances to be paid to a person whose earning capacity has been impaired because of a qualifying injury and who has incurred sick leave at half pay, sick pay at pension rate or unpaid sick leave. It is stated at paragraph 11 of the document:-

“The temporary allowance is the amount needed to bring the total of his sick pay (if any), occupational pension payable from public funds (if any) and social security benefits accruing from the injury up to 85% of his pensionable pay at the date he incurs half pay, pension rate of pay or no pay, as appropriate.”

At paragraph 12 it indicates how a temporary allowance should be calculated and gives an example of a Temporary Injury Award at paragraph 13. At paragraph 15 it deals with Social Security Benefits. It states:-

“Account must be taken of the annuity value or annual value as appropriate of any rights which have accrued or probably will accrue in respect of the qualifying injury by way of the following benefits.

...

Disablement Benefit (including Reduced Earnings Allowance) – This benefit is payable to those who suffer loss of faculty because of an industrial injury or disease. The amount of pension payable depends on the Social Security Agency assessment of disablement. The benefits takes the form of an allowance, payable weekly, where the assessment of disablement is 20% or greater. There is now no benefit payable where the assessment is less than 20%; however in those cases determined by the Social Security Agency prior to 1986 there may be an entitlement to a gratuity. Reduced Earnings Allowance is payable if the person concerned cannot return to their regular occupation or do work of the same standard due to the effects sustained in an accident which occurred prior to 1 October 1990. There are other benefits paid with Disablement Benefit – Constant Attendance Allowance, Exceptionally Severe Disablement Allowance – but rule 11.8(iii) excludes these benefits from being taken into account when determining an award of injury benefit.

Social Security Agency leaflet “Which Benefit” (FB 2) gives a brief description of each of these benefits. It also gives advice as to how to obtain more detailed information. Note: The Social Security Agency now require the member’s authorisation before releasing details of the benefits in payment.”

It then deals with Incapacity Benefit which replaced Sickness Benefit and Invalidity Benefit from 13 April 1995. We set out in full paragraphs 16 to 19:

“16. Care should be taken to ensure that details of all benefits are obtained from the Social Security Agency. A statement must be obtained from SSA about whether or not the person concerned has

made a claim and whether they have an entitlement to a particular benefit. (See Forms IJ2(A) and IJ2(B) at Annexes 2 and 3 can be used to obtain benefit details). A consent form (see Annex 8) should be obtained from the member allowing the SSA to disclose this information.

17. It is important to note here that Rule 11.8(iii) provides that account will be taken of benefits which have accrued 'or probably will accrue' from the injury. This provision allows a 'notional entitlement' to benefit to be taken into account when assessing injury benefit. That is, where there is a potential entitlement to benefit but the individual makes no claim, then in determining the level of injury benefit payable, the amount which it is considered would have been payable had a claim been made will be taken into account.

The notional benefits are determined as follows:

Sickness Benefit - the basic rate of benefit and any extra benefit for dependants (ie spouse and/or children)

Invalidity Benefit - the basic rate of invalidity pension and invalidity allowance and any extra benefit for dependants (ie spouse and/or children)

Industrial Disablement Benefit - the 20% rate of disablement pension and the full rate of Reduced Earnings Allowance.

From 13 April 1995

The notional benefits should be determined as follows:-

Incapacity Benefit

Short-term Lower Rate - the basic rate and any extra benefit for dependents.

Note: child dependency increase will only be paid if the claimant is over state pension age.

Short-term higher Rate - the basic rate and any age allowance plus any extra benefit for dependants.

Long-term Incapacity Benefit - the basic rate and any age allowance plus any extra benefit for dependants.

Industrial Disablement Benefit - the full rate of disablement pension and the full rate of Reduced Earnings Allowance.

18. Whenever a notional entitlement to Social Security Agency benefit(s) is taken into account when determining the amount of injury benefit; the person should be advised to make an immediate claim for that benefit from the Social Security Agency and that failure to make an early claim may result in the loss of benefit. The person must also be advised that his case will be reviewed if the Social Security Agency do not award benefit at the same rate as the notional rate or if the claim is disallowed.

19. It is important to note here the Social Security Agency impose strict time limits on benefit claims. If a person established an entitlement to benefit (eg Reduced Earnings Allowance) but no actual benefit was payable because the claim was time-barred, the injury benefit award should not normally be revised and the notional entitlement will stand for so long as

the Social Security Agency award of benefit remains extant.”

The impression conveyed by these instructions and the next document to which we will refer is that the Scheme is overseen or administered by the Superannuation Branch or the Personnel Branch or by both branches of the Department and that the Scheme’s administrator is likely to be a member of one of those branches.

It may be appropriate to set out Article 3 of the Superannuation (Northern Ireland) Order 1972 at this stage. The Ministry was then known as the Ministry of Finance and the Department of Finance and Personnel is its successor in title. It reads:-

“3.(1) The Ministry -

- (a) may make, maintain, and administer schemes (whether contributory or not) whereby provision is made with respect to the pensions, allowances or gratuities which, subject to the fulfilment of such requirements and conditions as may be prescribed by the scheme, are to be paid, or may be paid, by the Ministry to or in respect of such of the persons to whom this Article applies as it may determine;
- (b) may, in relation to such persons as any such scheme may provide, pay or receive transfer values;
- (c) may make, in such circumstances as any such scheme may provide, payments by way of a return of contributions, with or without interest; and
- (d) may make such payments as it thinks fit towards the provision, otherwise than by virtue of such a scheme, of superannuation benefits for or in respect of such of the persons to whom this Article applies as it may determine.

...

(2) Before making any scheme under this Article the Ministry shall consult with persons

appearing to the Ministry to represent persons likely to be affected by the proposed scheme or with the last-mentioned persons.

- (3) This Article applies to persons serving –
- (a) in employment in the civil service; or
 - (b) in employment of any the kinds listed in Schedule 1; or
 - (c) in an office so listed.”

[9] The next document which we have is a letter from Personnel Branch of the Agency to Mrs McCollum dated 3 April 2002. We have not been furnished with what went before in the form of correspondence or discussions.

The letter states that there has been delay because Personnel Branch have been awaiting details from Incapacity Benefits Branch and Industrial Injuries Branch. They are “now in a position to fully implement your Temporary Injury Award”. It would appear that Personnel or Superannuation Branch or both are administering the Scheme. What is relevant is that the Branches must or ought to have known that Mrs McCollum had not applied for Disability Benefit. A breakdown of the Award is set out as follows:-

- “1. Due 85% of pensionable pay with effect from:
- 8 October 1998 (full paid sick leave was paid up to 7 October 1998)
Pensionable pay = £16762 - 85% = 14247.70
 - 21 January 1999 (half paid sick leave was paid up to 20 January 1999)
Pensionable pay = £14372.65
2. 85% of pensionable pay less any benefits (this includes notional benefits) as described in my letter of 19 February 2002.
- (a) Incapacity Benefit (notional)
 - From 28 April 1998 - £57.70 per week x 52.1666 = £3010.0128
 - From 13 October 1998 - £71.50 per week x 52.1666 = £3729.9119
 - (b) Disablement Benefit (notional)

- From 24 April 1998 - £31.41 per week x 52.1666 = £1638.5529

3. Calculation of Temporary Injury Allowance 8 October 1998 to 3 June 1999.

- 8 October 1998 – 12 October 1998

Half pay	=	£ 8503.50
Incapacity Benefit	=	£3010.0128
Disablement Benefit	=	£1638.5529

Total		<u>£13152.0657</u>
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85% £14247.70 - £13152.0657 = £1095.6343 per annum"

There are then set out figures for the period 13 October 1998 – 20 January 1999. For some reason Incapacity Benefit is shown as £3010.0128 for the period 8 October-12 October 1998 and from 13 October 1998-3 June 1999 as £3729.9119. For the first of these two periods the difference between 85% of pensionable pay and the relevant deductions is shown as £375.7352 per annum and for the second period it is shown as £2488.4499 per annum. There is also a reference to pensions increase.

It is apparent that as between the guaranteed minimum income under the scheme and the amount received by Mrs McCollum there are arrears. The letter states: "I have informed pay section who will calculate any arrears due to you and forward a payment as soon as possible."

There is a paragraph which reads:

"Although we have taken into account Notional Disablement Benefit, if it is not awarded or awarded at a lesser amount we will refund any monies due. Please advise us immediately you receive a decision in respect of this benefit from Industrial Injuries Branch and we will then reconsider your award."

[10] As Personnel Branch had been in correspondence with Industrial Injuries Branch over an unspecified period they must or ought to have known that Mrs McCollum had not applied for Disablement Benefit in 1998. They must or ought to have known that the strict time limits meant that she would not be entitled to it. They must have been aware that they had been instructed by letter of 27 January 1997 to obtain a statement from the Agency about whether or not "the person concerned" has made a claim and whether they have an entitlement to a particular benefit. They must have been aware

that "whenever a notional entitlementis taken into account" the person should be advised to make an immediate claim for that benefit.

[11] Our examination of the Scheme and the "Scheme Administrator" satisfies us that the Scheme is controlled by the Department, that the Administrator is answerable to the Department and that the Scheme is not an independent Pensions Scheme with trustees answerable to their members or with separate funding. All the monies for all the branches of the Department appear to come from the general funds allocated to the Department. But we cannot be sure.

[12] We have noted that in the letter of 3 April 2002 there is a reference to Incapacity Benefit (Notional) and yet the documents before us indicate that Mrs McCollum was entitled to it because she made a claim to it in good time. This suggests that there is flexibility as between Branches.

[13] It is apparent that Mrs McCollum was alerted by the letter of 3 April 2002, although it contained no reference to the fact that she had not applied for disablement benefit. She realised then that she must or might well be entitled to it, since it was being "notionally" deducted from her guaranteed minimum income. On 15 April she applied for it and her form was received on 17 April 2002. She stated on the form that she was receiving her Civil Service Pension and that Section 11 of the Scheme was currently being processed. Her submission which was enclosed with the form was not disclosed to us. She was present at the hearing but effectively took no part as she did not wish to incur costs.

[14] On 29 April 2002 "Civil Service Pensions" which, Mr O'Donoghue QC candidly admitted, had no legal personality, wrote to Mrs McCollum informing her that she had been awarded an Injury Award under Section 11 of the Scheme amounting to £292.76 with effect from 4 June 1999 and rising by small amounts to £310.95 with effect from 8 April 2002. This annual allowance was in accord with the "guaranteed minimum income" of the Scheme, subject to deduction of notional industrial disablement benefit which, as they must have been aware, had not been claimed by Mrs McCollum until 15 April 2002. The reference to the fact that this claim had not been processed is a clear admission that they were aware of the lateness of the claim. We do not have information about the reference to "the amount of your settlement considered to be in respect of loss of earnings has been offset against the Injury Lump Sum of £4268.28 together with an amount of £64.65 from arrears of Annual Injury Allowance." The Scheme provides for the award of an Injury Lump Sum in appropriate circumstances.

[15] On 22 October 2002 the Agency wrote to Mrs McCollum informing her that she was entitled to Disablement Benefit from 23 January 2002 to 24 August 2004 at the weekly rate of £22.58 (£22.96 from 10 April 2002) based on

a provisional medical assessment of 15 per cent. Mrs McCollum wrote to the Agency on 24 October 2002. She requested payment of the arrears of notional entitlement withheld from her since 1998 by the Agency and the "Civil Service Pensions Office". She pointed out that when she went on sick leave she completed form SC1 and ticked the box that she considered her illness to be an industrial injury and did the same when she claimed Incapacity Benefit in April 1998. She appealed the decisions in relation to Disablement Benefit made by the 11 D B Office and under the scheme. She pointed out that the Incapacity Benefit form stated that she would be sent a leaflet about 11 D B if she ticked the 'yes' box but received no leaflet. She claimed that it had taken from October 1997 to January 2002 for the Northern Ireland Civil Service to acknowledge that she suffered an Industrial Injury.

[16] She went through the various stages of Internal Dispute Resolution. The administrator of the Scheme referred to the administrator's group as "the Branch". This suggests yet again that the Scheme is administered by a branch of the Agency or the Department and that the Scheme is not an independent Scheme. The administrator relied on rule 11.8(iii) as entitling "the Scheme" to deduct notional awards of disability pension.

[17] The Appeal Tribunal disallowed her appeal on the grounds that her claim for disablement benefit was not made within the time limit for claiming and there was no provision for extending time for good cause. It was stated that it was "good customer practice to issue a leaflet".

[18] The Social Security Commissioner dismissed her appeal from the Appeal Tribunal.

He referred to section 1(1) of the Social Security Administration (Northern Ireland) Act 1992 which provides that no person shall be entitled to any benefit unless "(a) he makes a claim for it in the manner and within the time prescribed in relation to that benefit by regulations under this Part of this Act" The prescribed time limit for claiming is three months. The Commissioner dealt with the failure of the Department to send a leaflet to Mrs McCollum and concluded that as a general rule a failure by the Department to supply information does not absolve an applicant for benefit from making a claim. He stated that he saw "nothing in the present case which takes it out of that general rule". He pointed out that the claim fell to be dealt with under the current regulations and not under the previous ones which allowed a degree of back dating for what was known as "continuous good cause". He stated that he fully understood her sense of grievance. However his powers were limited.

[19] She appealed to the Pensions Ombudsman who in his decision set out Rule 11.7 and Rule 11.8(iii). In his rehearsal of material facts he pointed out that Mrs McCollum applied for a Injury Award in April 1998 which was

refused. Following an appeal, he stated, she was granted an Injury Award back dated to 8 October 1998, the date at which she first became entitled to the award. She was informed that an amount for Disablement Benefit had been deducted. Her claim in April 2002 for Disablement Benefit sought to have it backdated to October 1998 but due to rules requiring claims to be made within defined time limits it was granted only from 23 January 2002. We comment that if she was refused an Injury Award in April 1998 as he states, the procedure by which she eventually obtained an award was regrettably delayed. As can be seen from the letter notifying her of the temporary award in 2002 she became aware of the need to apply for disablement benefit as a result of it.

He concluded that the purpose of the Injury Award was to ensure that individuals injured in the circumstances set out in the Scheme received a minimum level of income.

He held that when Rule 11.8(iii) was read alongside Section 1(1) of the 1992 Act no right to disablement benefit existed if an application was made out of time and therefore there could not be an accrued right to the benefit.

[20] Mr O'Donoghue QC has submitted to us that there is a distinction to be drawn between the accrual of a right to benefit and an entitlement to benefit. There is an analogy to be drawn, he argues, between the accrual of a right or cause of action for damages which one is bound to win and the entitlement to those damages by reason of the issue of proceedings. Put another way, as at 8 October 1998 Mrs McCollum fulfilled the Contributions and Benefits (Northern Ireland) Act 1992, namely that she "suffered as a result of a relevant accident from loss of physical or mental faculty" and that during the period from 8 October 1998 to 22 January 2002 Industrial Injury Disablement Benefit accrued to her but she was debarred from claiming entitlement because she did not make her claim for it until April 2002. We are reluctantly driven to the conclusion that this argument is sound and that the appellant is entitled under the Scheme to deduct from what would otherwise be the minimum level of income for which the Scheme provides the amount of those benefits which the respondent could have obtained if she had applied for them within the prescribed time limits.

We feel compelled to accept that there is a legal difference between "accrual" of rights and "entitlement" to rights. The Department has set up a vastly complicated system of benefits and a very elaborate system of applying for them. It has also set up a complicated Scheme to provide pensions for civil servants and is entitled to require members to comply with the terms of the Scheme.

We are not impressed by the argument that the "notional amount" deduction has been a standard practice. But we do consider that the non-payment of the

11 D B was not as a result of ineligibility but because application for same was required to be made within time limits.

We have taken into account the point made by the Ombudsman that the purpose of the Scheme is to provide a minimum income as pension and that the construction which we have placed on Rule 11(8)(iii) results in a reduction in that minimum income. But we are driven to the conclusion that the wording of the Rule requires us to hold that the appellant's argument is correct. The pension is not intended to be a substitute for benefits which would otherwise have been payable but for failure to apply.

The functions of the Pensions Ombudsman

[21] Part X of the Pensions Schemes (Northern Ireland) Act 1993 sets out the functions of the Pensions Ombudsman by Section 142.

“142.-(1) The Pensions Ombudsman may investigate and determine any complaint made to him in writing by or on behalf of an authorised complainant who alleges that he has sustained injustice or in consequence of maladministration in connection with any act or omission of the trustees or managers of an occupational pension scheme or personal pension scheme.

(2) The Pensions Ombudsman may also investigate and determine any dispute of fact or law which arises in relation to such a scheme between –

- (a) the trustees or managers of the scheme, and
- (b) an authorised complainant,

and which is referred to him in writing by or on behalf of the authorised complainant.”

Other relevant subsections are (7) and (8).

“(7) The persons who, for the purposes of this Part are “authorised complainants” in relation to a scheme are –

- (a) a member of the scheme;

(8) In this Part –

“member”, in relation to a pension scheme, includes a person –

(a) who is or has been in pensionable service under the scheme, or

“trustees or managers”, in relation to a pension scheme which is a public service pension scheme or a United Kingdom public service pension scheme, includes the scheme’s administrators;

[22] The respondent may well have suffered injustice in consequence of maladministration in connection with acts or omissions of the Scheme's administrators. She made a complaint in writing to the Ombudsman as an authorised complainant and we believe that it is wide enough in its terms to warrant an investigation into the following matters:

1. The rejection of the application for an Injury Award in March or April 1998 which was apparently refused in June 1998.
2. The failure to make a Temporary Award or a Final Award until April 2002.

We record that the Social Security Commissioner in his decision of 19 October 2004 refers to the fact that Mrs McCollum was medically examined on 3 October 2002. In a letter dated 18 November 2002 appealing the decision of the Principal Service Pensions (NI) Office for which the Scheme's administrator must, in our opinion, take responsibility Mrs McCollum pointed out that it had taken from October 1997 to January 2002 for the Northern Ireland Civil Service to acknowledge that she suffered an Industrial Injury. During this period five psychiatrists examined her and agreed that she had mild to moderate depression. This was the result of harassment or abuse by the manager of Mrs McCollum, as admitted by the appellant, but only admitted in April 2002.

3. The fact that Mrs McCollum claimed incapacity benefit in April 1998 which was apparently agreed to be paid, according to the appellant from April or October 1998. Those dealing with a Scheme such as this should be, in our opinion, familiar with Industrial Injuries caused by physical or mental harassment or abuse, that is to say, mental illness. Apparently one of her

claim forms, SSC1 completed in October 1997 is missing. See her letter of 18 November 2002.

4. The documents referred to at paragraph 8 of this judgment. These are not intended to be exhaustive. Although Mrs McCollum worked as an Income Support officer in the Agency it has been accepted by the Social Security Commissioner that her mental ill-health prevented her from realising that she should apply for Disablement Benefit. In our opinion the appellant should not be entitled to try to go behind this finding.

5. It appears that Mrs McCollum made a legal claim which was settled in 2001 or early 2002. By holding back a Temporary Award for Industrial Injury until after the settlement of the claim the Scheme's administrators may have achieved two things. Firstly, Mrs McCollum was in a much less advantageous position as to her claim. Secondly, she was not made aware of how an Award was or would be made, namely, by deduction of "notional" disablement benefit for which she had not claimed. Arguably, she should at the very least have been told how the award would be made up and why her claim was holding it up. In our opinion there is nothing in the wording of the Scheme which would justify holding it up until a claim was settled: see, for example, paragraphs 27 and 28 of the instructions referred to at paragraph [8] of this judgment. The admission that she had suffered an industrial accident would have strengthened her case significantly. Members make contributions to the Scheme and, in our opinion, it should be administered for their benefit.

[23] We allow the appeal and remit the complaint to the Pension Ombudsman. He is, of course, under no obligation to give weight to any opinion expressed by us. He will be able to obtain information which has not been furnished to us. We are confident that he will not feel fettered by what we have said in reaching his independent conclusions.