



An tOmbudsman Seirbhísí  
Airgeadais agus Pinsean  
Financial Services and  
Pensions Ombudsman

**Private & Confidential**

**Mr. Michael Meegan and Mr. Colm Casserly,**  
Mandate Trade Union,  
Mandate Head Office,  
O'Lehane House,  
9 Cavendish Row,  
Dublin 1

Ref.: Valeo Foods Employees Complaint - Kelkin  
Retirement & Death Benefits Plan and the Wardell  
Roberts Ltd. Retirement & Death Benefit Plan

15 April 2021

**BY EMAIL ONLY**

***Please quote the reference below in all correspondence to this office and refrain from using staples as all documents received are scanned.***

**Re: Complaint to FSPO**  
**Reference number: 21/109243**

**Dear Mr. Meegan and Mr. Casserly,**

I wish to acknowledge receipt of your recent submissions to this Office, dated 13 April 2021, in relation to the above-referenced matter.

I have reviewed your submissions, and I am writing to inform you that there are a number of impediments to the progression of an examination of this matter in this Office. I will set these out below.

The complaint you have brought to this Office seems to be in relation to certain Mandate and SIPTU Trade Union Members' (in the Sales and Administration Teams in Valeo Foods) dissatisfaction with the notice period for the winding up of the above-referenced defined benefit schemes, and the lack of "*consultation and correspondence*" in advance.

It is important that you understand that Financial Services and Pensions Ombudsman (FSPO) can only investigate complaints pursuant to our governing legislation, the ***Financial Services and Pensions Ombudsman Act 2017***<sup>1</sup> ('the Act'), and as such, there are a number of limitations in terms of the types of complaints the FSPO can examine in relation to pension schemes.

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<sup>1</sup> A full copy of the Financial Services and Pensions Ombudsman Act 2017 is available via our website at [www.fspo.ie](http://www.fspo.ie) under "Legal References".

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An tOmbudsman Seirbhísí Airgeadais agus Pinsean, Teach Lincoln, Plás Lincoln, Baile Átha Cliath 2, D02 VH29.  
Teil: + 353 (0)1 567 7000 Ríomhphost: [eolas@osap.ie](mailto:eolas@osap.ie) Láithreán gréasáin: [www.osap.ie](http://www.osap.ie)

Financial Services and Pensions Ombudsman, Lincoln House, Lincoln Place, Dublin 2, D02 VH29.  
Tel: + 353 (0)1 567 7000 Email: [info@fspo.ie](mailto:info@fspo.ie) Website: [www.fspo.ie](http://www.fspo.ie)

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I note that on the submissions, there does not seem to have been set out a specific act of misconduct by the Trustees of the schemes alleged, or any specific breaches of the terms of the schemes, that has apparently given rise to an alleged financial loss by the Complainants, per the 2017 Act.

For ease of reference, in relation to pension complaints, the conduct examinable by the FSPO is set out in **Section 44 (1) (b)**, and limited as follows:

*“Section 44 (1) Subject to section 51(2), a complainant may make a complaint to the Ombudsman in relation to the following:*

*[...]*

*(b) the conduct of a pension provider involving—*

- (i) the **alleged financial loss** occasioned to a complainant by an act of maladministration done by or on behalf of the pension provider, or*
- (ii) any **dispute of fact or law** that arises in relation to conduct by or on behalf of the pension provider”*

[My emphasis added.]

As such, it seems the current complaint, in relation to the alleged lack of notice of the scheme wind-up, and apparent lack of “*consultation and correspondence*” in advance, is not a matter which this Office can examine.

In addition, as the matter pertains to a collective dispute brought by you as trade union representatives on behalf of a group of member employees, it is also beyond the jurisdiction of the FSPO.

This is because a group of employees does not constitute an eligible “*complainant*” under **Section 2** of the 2017 Act. We investigate complaints brought by individual complainants in relation to the conduct of Providers (typically an act or omission by the Provider that allegedly occurred at a particular point in time). **Section 2** of the Act sets out the following:

*“Section 2*

*[...]*

*“complainant” means a person who makes a complaint under section 44(1) that is—*

- (a) a consumer,*
- (b) an actual or potential beneficiary,*
- (c) a person acting on behalf of an actual or potential beneficiary, or*
- (d) a person of a class specified in regulations made by the Minister under section 4;*

*[...]*

*“consumer”, in relation to a pension product, means an actual or potential beneficiary of an occupational pensions scheme, a trust RAC or a PRSA who believes they have suffered financial loss because of maladministration of the scheme, trust or PRSA, as the case may be”*

As such, the FSPO cannot determine “*class action*” or collective disputes.

Finally, the subject matter and collective nature of this complaint is possibly more appropriate to a Labour Court determination, or indeed, an investigation by the Pensions Authority if there

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is an alleged breach of the Pensions Act, and so we decline jurisdiction under *Section 44 (2)*, as there is a more suitable alternative forum or tribunal:

*“Section 44 (2) A complainant may not make a complaint under subsection (1) where—  
[...]*

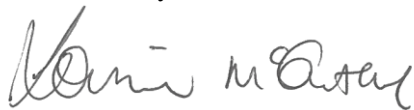
*(c) the conduct complained of relates to a matter that—*

*(i) is within the jurisdiction of the Workplace Relations Commission or the Pensions Authority, or an alternative suitable forum or tribunal”*

Therefore, for all of the reasons set out above, it is with regret that I must inform you that this Office cannot examine the matter you have brought to us, and as such, I will close our file.

If I can provide any further information, please do contact me anytime.

Yours sincerely,



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**LOUISE MCCARTHY**  
**HEAD OF CUSTOMER EXPERIENCE AND INNOVATION**

**Louise.McCarthy@fspo.ie**