

Complaints made and Disputes referred by Employers, Trustees or Managers

Guidance Note for Applicants

The Pensions Ombudsman may investigate and determine complaints and disputes brought to him by employers, trustees or managers of occupational pension schemes¹. This Guidance Note explains by whom and against whom disputes and complaints may be brought, as well as the procedures to be used.

1. Jurisdiction

Complaints must be of maladministration, though it is not necessary for consequential injustice to be alleged. **Disputes** must be of fact or law.

- Trustees or managers may make a complaint against or refer a dispute with any trustee or manager of a different scheme
- Trustees or managers may make a complaint against or refer a dispute with an employer in relation to the same scheme
- Trustees may refer a dispute with other trustees of the same scheme as long as the dispute is referred by at least half of them
- An independent trustee² may make a complaint against or refer a dispute with against other trustees of the same scheme
- A sole trustee may refer a question concerning its functions
- An employer may make a complaint against or refer a dispute with the trustees or managers in relation to the same scheme

2. Applications

Applications by complainants (which term includes those referring a dispute) must be in writing and must include:

- the name and address of the complainant and the capacity in which they are bringing the complaint or dispute,
- the name and address of the respondent and their capacity,
- the facts relating to the complaint or dispute,

¹ Section 146 of the Pension Schemes Act 1993, as amended by the Pensions Act 1995

² A trustee appointed under either section 23(1)(b) or section 7(1) of the Pensions Act 1995

- the name, address and profession of the representative (if any) of the complainant and whether it is the address for correspondence to the complainant for the purposes of the investigation
- whether the matter is known to have been brought to the attention of any other regulatory authority (whether or not by the complainant or respondent)
- whether any legal proceedings are known to have commenced in relation to the same subject matter
- any relevant documents and correspondence, with sufficient copies for the Ombudsman to retain one set and for him to send one to (each of) the respondent(s).

3. Investigation and Determination

If the complaint is within the Pensions Ombudsman's remit and he agrees to investigate it, his investigation will follow the relevant statutory rules³.

Accordingly, the respondent(s) will be invited to comment on the subject matter, and the complainant will be invited to comment on the response.

Further enquiries may be made, with opportunity for the parties to comment, until the Pensions Ombudsman is able to determine the complaint or dispute. As a rule he will do so provisionally, giving the parties a last opportunity to comment. However, new submissions should not ordinarily be left until this stage.

When, after this, the Ombudsman issues his Determination, it is final and binding on the parties, subject to appeal to the High Court⁴ on a point of law.

³ The Personal and Occupational Pension Schemes (Pensions Ombudsman) (Procedure) Rules 1995 (SI 1995/1053) as amended by the Personal and Occupational Pension Schemes (Pensions Ombudsman) (Procedure) Amendment Rules 1996 (SI 1996/2638)

⁴ Court of Session in Scotland. Court of Appeal in Northern Ireland