



# Pension Schemes Act 1993

## 1993 CHAPTER 48

### PART X

#### INVESTIGATIONS: THE PENSIONS OMBUDSMAN

#### 146 Functions of the Pensions Ombudsman.

(1) [<sup>F1</sup>The Pensions Ombudsman may investigate and determine the following [<sup>F2</sup>matters]—

- (a) a complaint made to him by or on behalf of an actual or potential beneficiary of an occupational or personal pension scheme who alleges that he has sustained injustice in consequence of maladministration in connection with any act or omission of a person responsible for the management of the scheme,
- (b) a complaint made to him—
  - (i) by or on behalf of a person responsible for the management of an occupational pension scheme who in connection with any act or omission of another person responsible for the management of the scheme, alleges maladministration of the scheme, or
  - (ii) by or on behalf of the trustees or managers of an occupational pension scheme who in connection with any act or omission of any trustee or manager of another such scheme, allege maladministration of the other scheme,

and in any case falling within sub-paragraph (ii) references in this Part to the scheme to which the complaint relates [<sup>F3</sup>are references to the other scheme referred to in that sub-paragraph],

[<sup>F4</sup>(ba) a complaint made to him by or on behalf of an independent trustee of a trust scheme who, in connection with any act or omission which is an act or omission either—

- (i) of trustees of the scheme who are not independent trustees, or
- (ii) of former trustees of the scheme who were not independent trustees, alleges maladministration of the scheme,]

*Status: Point in time view as at 30/06/2012.*

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- (c) any dispute of fact or law <sup>F5</sup>... in relation to an occupational or personal pension scheme between—
    - (i) a person responsible for the management of the scheme, and
    - (ii) an actual or potential beneficiary,
 and which is referred to him by or on behalf of the actual or potential beneficiary, and
  - (d) any dispute of fact or law <sup>F6</sup>... between the trustees or managers of an occupational pension scheme and—
    - (i) another person responsible for the management of the scheme, or
    - (ii) any trustee or manager of another such scheme,<sup>F7</sup>and in a case falling within sub-paragraph (ii) references in this Part to the scheme to which the reference relates are references to each of the schemes,
  - (e) any dispute not falling within paragraph (f) between different trustees of the same occupational pension scheme,
  - (f) <sup>F8</sup>any dispute, in relation to a time while section 22 of the Pensions Act 1995 (circumstances in which Regulatory Authority may appoint an independent trustee) applies in relation to an occupational pension scheme, between an independent trustee of the scheme appointed under section 23(1) of that Act and either—
    - (i) other trustees of the scheme, or
    - (ii) former trustees of the scheme who were not independent trustees appointed under section 23(1) of that Act, and]
  - (g) any question relating, in the case of an occupational pension scheme with a sole trustee, to the carrying out of the functions of that trustee.]]
- <sup>F9</sup>(1A) The Pensions Ombudsman shall not investigate or determine any dispute or question falling within subsection (1)(c) to (g) unless it is referred to him—
- (a) in the case of a dispute falling within subsection (1)(c), by or on behalf of the actual or potential beneficiary who is a party to the dispute,
  - (b) in the case of a dispute falling within subsection (1)(d), by or on behalf of any of the parties to the dispute,
  - (c) in the case of a dispute falling within subsection (1)(e), by or on behalf of at least half the trustees of the scheme,
  - (d) in the case of a dispute falling within subsection (1)(f), by or on behalf of the independent trustee who is a party to the dispute,
  - (e) in the case of a question falling within subsection (1)(g), by or on behalf of the sole trustee.
- (1B) For the purposes of this Part, any reference to or determination by the Pensions Ombudsman of a question falling within subsection (1)(g) shall be taken to be the reference or determination of a dispute.]
- (2) <sup>F1</sup>Complaints and references made to the Pensions Ombudsman must be made to him in writing.]
- (3) <sup>F1</sup>For the purposes of this Part, the following persons (subject to subsection (4)) are responsible for the management of an occupational pension scheme <sup>F10</sup>or a personal pension scheme]—
- (a) the trustees or managers, and
  - (b) the employer;

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but, in relation to a person falling within one of those paragraphs, references in this Part to another person responsible for the management of the same scheme are to a person falling within the other paragraph.

<sup>F11</sup>(3A) . . . . .]

(4) [<sup>F1</sup>Regulations may provide that, subject to any prescribed modifications or exceptions, this Part shall apply in the case of an occupational or personal pension scheme in relation to any prescribed person or body of persons where the person or body—

- (a) is not a trustee or manager or employer, but
- (b) is concerned with the financing or administration of, or the provision of benefits under, the scheme,

as if for the purposes of this Part he were a person responsible for the management of the scheme]

[<sup>F12</sup>(4A) For the purposes of subsection (4) a person or body of persons is concerned with the administration of an occupational or personal pension scheme where the person or body is responsible for carrying out an act of administration concerned with the scheme.]

(5) The Pensions Ombudsman may investigate a complaint or dispute notwithstanding that it arose, or relates to a matter which arose, before 1st October 1990 (the date on which the provisions under which his office was constituted came into force).

(6) The Pensions Ombudsman shall not investigate or determine a complaint or dispute—

- [<sup>F13</sup>(a) if, before the making of the complaint or the reference of the dispute—
  - (i) proceedings in respect of the matters which would be the subject of the investigation have been begun in any court or employment tribunal, and
  - (ii) those proceedings are proceedings which have not been discontinued or which have been discontinued on the basis of a settlement or compromise binding all the persons by or on whose behalf the complaint or reference is made;]

(b) if the scheme is of a description which is excluded from the jurisdiction of the Pensions Ombudsman by regulations under this subsection; or

(c) if and to the extent that the complaint or dispute, or any matter arising in connection with the complaint or dispute, is of a description which is excluded from the jurisdiction of the Pensions Ombudsman by regulations under this subsection.

(7) The persons who, for the purposes of this Part are [<sup>F14</sup>actual or potential beneficiaries] in relation to a scheme are—

- (a) a member of the scheme,
- (b) the [<sup>F15</sup>widow, widower or surviving civil partner], or any surviving dependant, of a deceased member of the scheme;

[<sup>F16</sup>(ba) a person who is entitled to a pension credit as against the trustees or managers of the scheme;]

[<sup>F17</sup>(bb) a person who has given notice in accordance with section 8 of the Pensions Act 2008 (right to opt out of membership of an automatic enrolment scheme);]

(c) where the complaint or dispute relates to the question—

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- (i) whether a person who claims to be such a person as is mentioned in [F18 paragraph (a), (b) [F19, (ba) or (bb)]] is such a person, or
- (ii) whether a person who claims to be entitled to become a member of the scheme is so entitled,

the person so claiming.

(8) In this Part—

“employer”, in relation to a pension scheme, includes a person—

- (a) who is or has been an employer in relation to the scheme, or
- (b) who is or has been treated under section 181(2) as an employer in relation to the scheme for the purposes of any provision of this Act, or under section 176(2) of the M1 Pension Schemes (Northern Ireland) Act 1993 as an employer in relation to the scheme for the purposes of any provision of that Act;

[F20: “independent trustee”, in relation to a scheme, means—

- (a) a trustee of the scheme appointed under [F21 section 23(1) of the Pensions Act 1995 (appointment of independent trustee by the Regulatory Authority)],
- (b) a person appointed under section 7(1) of that Act to replace a trustee falling within paragraph (a) or this paragraph;]

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

- (a) who is or has been in pensionable service under the scheme, or
- (b) who is or has been treated under section 181(4) as a member in relation to the scheme for the purposes of any provision of this Act or under section 176(3) of the M1 Pension Schemes (Northern Ireland) Act 1993 as a member in relation to the scheme for the purposes of any provision of that Act;

“Northern Ireland public service pension scheme” means a public service pension scheme within the meaning of section 176(1) of that Act;

“pensionable service” in this subsection includes pensionable service as defined in section 176(1) of that Act;

“trustees or managers”, in relation to a pension scheme which is a public service pension scheme or a Northern Ireland public service pension scheme, includes the scheme’s administrators.

#### Textual Amendments

- F1** S. 146(1)-(4) substituted for s. 146(1)-(4) (1.6.1996 for specified purposes, 6.4.1997 in so far as not already in force) by [Pensions Act 1995 \(c. 26\)](#), **ss. 157(2), 180(1)**; [S.I. 1996/1412](#), art. 2(2), Sch. Pt. 2; [S.I. 1997/664](#), art. 2(3), Sch. Pt. 2
- F2** Word in s. 146(1) substituted (1.12.2000) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), **ss. 53(9)(a), 86(1)(b)(2)** (with s. 83(6)); [S.I. 2000/3166](#), art. 2(2)(c)
- F3** Words in s. 146(1)(b) substituted (1.12.2000) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), **ss. 53(9)(b), 86(1)(b)(2)** (with s. 83(6)); [S.I. 2000/3166](#), art. 2(2)(c)
- F4** S. 146(1)(ba) inserted (1.12.2000) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), **ss. 53(2), 86(1)(b)(2)** (with s. 83(6)); [S.I. 2000/3166](#), art. 2(2)(c)
- F5** Words in s. 146(1)(c) repealed (1.12.2000) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), **Sch. 9 Pt. III(3)** (with s. 83(6)); [S.I. 2000/3166](#), art. 2(2)(c)(e)
- F6** Words in s. 146(1)(d) repealed (1.12.2000) by [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#), **ss. 53(9)(c), 86(1)(b)(2), Sch. 9 Pt. III(3)** (with s. 83(6)); [S.I. 2000/3166](#), art. 2(2)(c)(e)

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- F7** Words in s. 146(1) substituted (1.12.2000) by Child Support, Pensions and Social Security Act 2000 (c. 19), **ss. 53(3)**, 86(1)(b)(2) (with s. 83(6)); S.I. 2000/3166, art. 2(2)(c)
- F8** S. 146(1)(f) substituted (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 12 para. 24(a)**; S.I. 2005/275, art. 2(7), Sch. Pt. 7
- F9** S. 146(1A)(1B) inserted (1.12.2000) by Child Support, Pensions and Social Security Act 2000 (c. 19), **ss. 53(4)**, 86(1)(b)(2) (with s. 83(6)); S.I. 2000/3166, art. 2(2)(c)
- F10** Words in s. 146(3) inserted (1.12.2000) by Child Support, Pensions and Social Security Act 2000 (c. 19), **ss. 53(5)**, 86(1)(b)(2) (with s. 83(6)); S.I. 2000/3166, art. 2(2)(c)
- F11** S. 146(3A) repealed (1.12.2000) by Child Support, Pensions and Social Security Act 2000 (c. 19), **Sch. 9 Pt. III(3)** (with s. 83(6)); S.I. 2000/3166, art. 2(2)(e)
- F12** S. 146(4A) inserted (6.4.2005) by Pensions Act 2004 (c. 35), **ss. 275(1)**, 322(1) (with ss. 275(2)(3), 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
- F13** S. 146(6)(a) substituted (1.12.2000) by Child Support, Pensions and Social Security Act 2000 (c. 19), **ss. 53(6)**, 86(1)(b)(2) (with ss. 53(10), 83(6)); S.I. 2000/3166, art. 2(2)(c)
- F14** Words in s. 146(7) substituted (6.4.1997) by Pensions Act 1995 (c. 26), **ss. 157(3)**, 180(1); S.I. 1997/664, art. 2(3), Sch. Pt. 2
- F15** Words in s. 146(7)(b) substituted (5.12.2005) by The Civil Partnership (Pensions and Benefit Payments) (Consequential, etc. Provisions) Order 2005 (S.I. 2005/2053), art. 1(3), **Sch. para. 16**
- F16** S. 146(7)(ba) inserted (1.12.2000) by Child Support, Pensions and Social Security Act 2000 (c. 19), **ss. 53(7)(a)**, 86(1)(b)(2) (with s. 83(6)); S.I. 2000/3166, art. 2(2)(c)
- F17** S. 146(7)(bb) inserted (30.6.2012) by Pensions Act 2008 (c. 30), **ss. 66(2)**, 149(1); S.I. 2012/1682, art. 2, Sch. 2
- F18** Words in s. 146(7)(c)(i) substituted (1.12.2000) by Child Support, Pensions and Social Security Act 2000 (c. 19), **ss. 53(7)(b)**, 86(1)(b)(2) (with s. 83(6)); S.I. 2000/3166, art. 2(2)(c)
- F19** Words in s. 146(7)(c)(i) substituted (30.6.2012) by Pensions Act 2008 (c. 30), **ss. 66(3)**, 149(1); S.I. 2012/1682, art. 2, Sch. 2
- F20** Words in s. 146(8) inserted (1.12.2000) by Child Support, Pensions and Social Security Act 2000 (c. 19), **ss. 53(8)**, 86(1)(b)(2) (with s. 83(6)); S.I. 2000/3166, art. 2(2)(c)
- F21** Words in s. 146(8) substituted (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 12 para. 24(c)**; S.I. 2005/275, art. 2(7), Sch. Pt. 7

#### Commencement Information

- I1** Ss. 1-187 in force at 7.2.1994 by S.I. 1994/86, **art. 2**

#### Marginal Citations

- M1** 1993 c. 49.

**Status:**

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