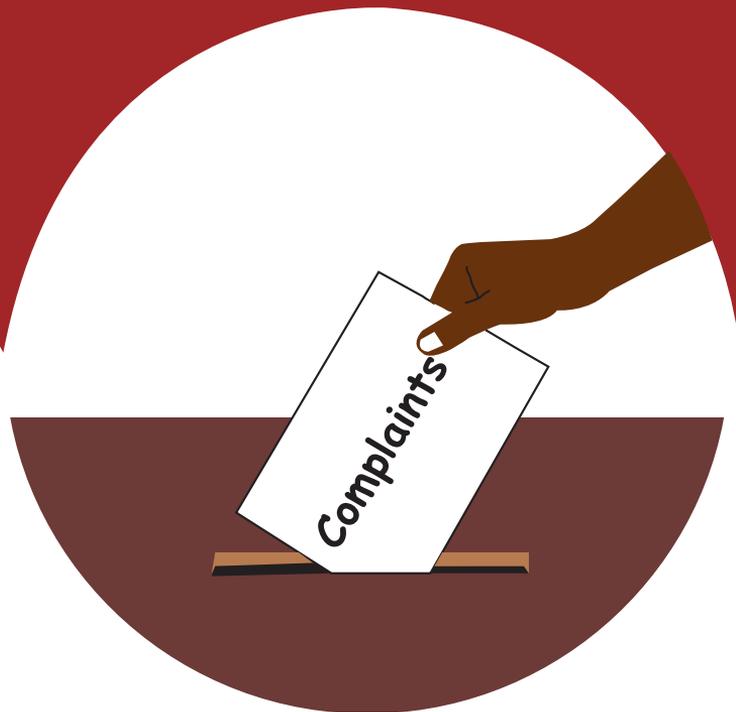


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# A Guide to Retirement Benefits Complaints

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## **CORE MANDATE**

- (i) Regulate and supervise the establishment and management of retirement benefits schemes.
- (ii) Protect the interests of members and sponsors of schemes.
- (iii) Develop and promote the retirement benefits sector.
- (iv) Advise the Government on matters relating to retirement benefits.
- (v) Implement all Government policies relating thereto.

## **VISION**

A dynamic and secure retirement benefits sector.

## **MISSION**

To develop and safeguard the retirement benefits sector in Kenya through excellence in service delivery

## **CORE VALUES**

- (i) Firmness and fairness.
- (ii) Transparency and accountability.
- (iii) Innovation and dynamism.
- (iv) Proficiency in quality service delivery.
- (v) Integrity.

## **QUALITY POLICY**

Developing and safeguarding the retirement benefits sector through:

- (i) Commitment to continued excellence in service delivery.
- (ii) Upholding professionalism, integrity and sensitivity to stakeholder interests.
- (iii) Operating a quality management system within the framework of ISO 9001:2008 standard.
- (iv) Continual improvement of the quality management system.

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The Retirement Benefits Authority is a Government Agency set up to regulate the retirement benefits industry in Kenya. The Authority's mandate is provided in Section 5 of the Retirement Benefits Act, as under:

- (i) Regulation and supervision of the establishment and management of schemes.
- (ii) Protection of interests of members and sponsors of schemes.
- (iii) Promotion of development of the retirement benefit sector.
- (iv) Advising the National Treasury on the sector.
- (v) Performing functions as conferred by this Act, or any other written law.

The Authority is a semi-autonomous public institution answerable to the National Treasury on the management of disputes, the Authority acts as an impartial adjudicator.

As part of its mandate, the Authority investigates and makes decisions on complaints or disputes between parties to retirement benefits schemes, especially trustees and members. The Authority's decision is subject to appeal before the Retirement Benefits Appeals Tribunal by any aggrieved party. Where there is no appeal, the Authority's decision is enforceable as a supervisory response to the matter in dispute. In this regard, the Authority has constituted a qualified and experienced team to handle all complaints and make a prudent decision in matters of disputes.

Trustees of a scheme and any service providers may be subject to criminal proceedings if they fail to comply with the Authority's directives.

The Authority does not levy charges for the services it offers.

Contact us:

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Authority Rahimtulla Tower,  
13th Floor, Upper Hill Road  
P. O. Box 57733 – 00200 ,Tel: 0202809000  
Mobile: 0726600001/0735339132  
Toll Free: 0800720300 (Safaricom)  
E-mail: [info@rba.go.ke](mailto:info@rba.go.ke) [complaints@rba.go.ke](mailto:complaints@rba.go.ke)  
Website: [www.rba.go.ke](http://www.rba.go.ke)

## Complaints and Disputes

Any party to a scheme, especially a member, who feels aggrieved by the decision of a trustee or other service provider, can file a complaint with the Authority within three days of the date of the decision. The Authority shall then process the complaint within 30 days from the date of receipt of all the required documents. Once the Authority makes a decision, a communication will be sent to the parties on the findings and a directive on steps to be taken to settle the dispute.

Complaints and disputes must be based on breach of the Retirement Benefits Act and Regulations and legislation setting up the scheme, or its trust deed and rules. The breach of these laws, regulations and scheme rules occasion an injustice on the part of the complainant.

Maladministration will be deemed to involve bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude, arbitrariness, and so on. It is not enough merely to disagree with a decision, as the complainant must have reason to believe that the decision was not properly made or implemented.

Injustice does not necessary imply financial loss. It may include, among other issues, distress, delay or inconvenience.

### Who can lodge a Complaint to RBA?

- (i) Members or ex-members of occupational or personal retirement benefits schemes.
- (ii) Spouses or dependants of members or former members.
- (iii) Anyone claiming to be a member or former member, or the spouse or dependant of one, as long as their complaint is about that claim.
- (iv) Persons entitled to pension credits following divorce from a scheme member.
- (v) Representatives appointed upon the death of persons in categories (i) to (iv).
- (vi) A suitable person representing the interests of a minor, or one unable to act for themselves in categories (i) to (iv).

(vii) Trustees or managers of occupational retirement benefits schemes.

(viii) Employers in relation to occupational retirement benefits schemes.

## **Whom can a Complaint be Against?**

Members and former members, or anyone else in categories (i) to (vi) above, can complain against:

- (i) Any or all of the trustees of a scheme, including former trustees.
- (ii) The manager of the scheme or the body that runs the scheme or, for insured schemes, in limited circumstances, the insurance company.
- (iii) An employer (but only about the employer's role in relation to the scheme, not general employment matters)
- (iv) An administrator of an occupational retirement benefits scheme, which means any person or body concerned with the scheme's administration.

Trustees can complain against:

- (i) Trustees or managers of another scheme.
- (ii) An employer in relation to the scheme.

If a majority of trustees agree, they may lodge a dispute against other trustees of the same scheme.

- (i) A statutory independent trustee can lodge a complaint against or a dispute with other trustees of the same scheme.
- (ii) If the trustee is a sole trustee, it can refer a question to the Authority concerning its functions.

Employers can, in relation to a scheme, complain against:

- (i) The trustees, or
- (ii) The service providers of the scheme, i.e., the manager, custodian or external administrator.

## **Retirement Benefits Schemes Serviced by RBA**

The Authority is mandated to receive complaints from all types of schemes falling under the Retirement Benefits Act. However, the Civil Service Pension Scheme is not under Retirement Benefits Authority.

There are two types of schemes as envisaged in the Retirement Benefits Acts, and which RBA deals with. These are:

- (i) **Occupational retirement benefits schemes.** These are schemes established by an employer, whether in the public or private sector, and membership which arises from employment with the employer or a connected group of employers.
- (ii) **Individual retirement benefits schemes.** In these schemes, membership does not arise from employment at any particular organization.

The Retirement Benefits Authority shall not deal with or investigate the following:

- (i) Complaints about the Civil Service Pension Scheme (Government pension) or other Government benefits. Such complaints should be taken up by the office of the Director of Pensions.
- (ii) Complaints about the way financial services business (outside fund management and custody) is carried out by organizations and people regulated by the Central Bank of Kenya, Commissioner of Insurance, Capital Markets Authority or bodies approved by them. Generally, this implies that the Authority will not deal with the way financial products are structured, sold and marketed.
- (iii) Complaints or disputes already subject to court proceedings dealing with matters other than those on retirement benefits (an employment tribunal counts as a court).
- (iv) Complaints or disputes that arose before the 8th of October 2000, when the regulations featured in Retirement Benefits Act came into force.

Additionally, the Authority shall not investigate matters that are subject to regulation by the Industrial Court. There are certain matters regulated by the Employment Act, which may form part of terminal benefits (but are not retirement benefits) that the Retirement Benefits Authority cannot make rulings on.

Also, the Retirement Benefits Authority shall not investigate any complaint that has been, or is being, investigated by any other tribunal or body that was in existence prior to the enactment of the Retirement Benefits Act.

## What does the Retirement Benefits Act stipulate on Complaints?

Section 46 (1) of the Retirement Benefits Act No. 3 of 1997 states that “Any member of a scheme who is dissatisfied with a decision of the manager, administrator, custodian or trustees of the scheme may request, in writing, that such decision be reviewed by the Chief Executive Officer with a view to ensuring that such decision is made in accordance with the provisions of the relevant scheme rules, or the Act under which the scheme is established.”

The Authority’s complaint-handling procedure is less formal than, for example, the court, as it is intended that the least acrimonious solution is reached. However, to ensure that all the parties are treated fairly, and that the Authority’s involvement is efficient and for the Benefit of all parties, there are procedures which have to be followed, as set out in the sections that follow.

## What to do before Lodging a Complaint

The complaint or dispute should always first be taken up in writing with the people or bodies thought to be at fault. All occupational retirement benefit schemes are required by law to have a formal internal dispute resolution procedure, usually an arbitration process. Where the requirement applies, if the trustees or managers have not been given the opportunity to issue their decision, then the Retirement Benefits Authority cannot deal with the matter.

Members, ex-members, spouses and dependants who wish to complain against the trustees or managers of the scheme should write to them asking for the procedure to be approved. The formal internal dispute resolution requirement may not apply to complaints against employers or administrators, but attempts should still be made to resolve the problem by writing to them.

The Retirement Benefits Authority expects individuals who intend to complain to first seek dialogue with their scheme sponsor or trustees. In many instances, the dispute may arise due to lack of communication between the parties or misinterpretation of clauses in the scheme trust deed and rules. There is also the option of obtaining advice from lawyers, accountants and pensions advisers who can try to resolve the problem, corresponding with the scheme authorities as necessary.

The Authority may also help with the internal dispute resolution procedures if the complainant is not sure of the procedure to follow, and will offer suggestions on the quickest approach for handling matters without recourse to the Authority’s complaints resolution process.

If the Authority believes that a complaint should be referred to the scheme’s

internal dispute resolution mechanism, the same shall be referred to the scheme's Trust Deed and Rules and relevant advice provided to the complainant.

## **Time Limits**

As a general rule, complaints and disputes should usually be made in writing to the Retirement Benefits Authority within three years of the act or omission complained about or disputed. If the complainant was not aware of the matter at the time, the three years will run from the time he/she knew or ought to have known about the act or omission.

The Authority may extend the time limit if the complaint is made outside the three-year period, but only where it decides that any further delay beyond three years is reasonable. In particular, time spent going through an internal dispute resolution procedure will usually be treated as a good reason for delay in processing a complaint having delayed in lodging a complaint. However, complaints should be lodged to the Authority as soon as possible. The complainant does not have to assemble all the evidence at the onset, as the Authority's office can undertake an investigation and call for the evidence in due course.

## **How to Lodge a Complaint**

- (i) First, the complainant should check, using the preceding sections of his leaflet, that he/she is entitled to lodge a complaint, that the complaint is against the right people or organization, and that the Retirement Benefits Authority will be able to deal with the complaint.
- (ii) The complainant should then obtain and complete a complaints form, which should be used to lodge the complaint. The forms can be obtained from the Retirement Benefits Authority's office or website- [www.rba.go.ke](http://www.rba.go.ke). (this does not apply to trustees, managers or employers wishing to complain who may do so in writing).
- (iii) Complaints will also be accepted by telephone or e-mail, but must be followed by a completed claim form. When sending the form to the Authority, the complainant should supply all relevant information in his/her possession, including copies of letters. Wherever possible, the complainant should retain copies of all documents.
- (iv) The complainant does not need to forward the correspondence through a lawyer or other professional adviser to the Retirement Benefits Authority, provided that he/she gives written authority for them to release to the Authority every information that he/shesent to them. The form contains

a space for the complaints to give such authority to them. The complaint should also let the Retirement Benefits Authority have copies of all letters relating to the scheme's internal dispute resolution procedure.

- (v) The complainant may have another party for example, a lawyer, accountant or trade union representative, or a friend or family member, draft the complaint for them as long as they have the complainant's written authority for representation, whose copy should be availed to the Retirement Benefits Authority. The complainant will have to meet the costs of employing a professional party, as the procedures are tailored to make paid representation unnecessary

## **What happens next?**

The Retirement Benefits Authority's staff will acknowledge receipt of the complainant's letter and, where applicable, ask for further information relating to the case. Once the Authority obtains all the relevant documents, the complainant processing will commence and all correspondence copied to the complainant. If the complaint cannot be processed, the Authority will provide an explanation accordingly.

The procedure for investigating and deciding on complaints is partly set down in statute, and partly subject to the Authority's decisions. The following description fits most cases, but there may be variations.

## **Deciding on Complaints**

In a few cases, on reviewing the complaint, the Chief Executive of the Retirement Benefits Authority may conclude that the Authority cannot uphold it. Should this be the case, the decision will be explained to the complainant.

If the complainant does not accept the explanation, he/she may lodge an appeal with the Retirement Benefits Appeals Tribunal, challenging the decision of the Authority. This appeal must be made within 30 days of receiving the decision of the Authority. The complainant may contact the Tribunal Clerk for further information on filing an appeal.

If there is possibility that the complaint can be upheld, a full investigation will commence. This applies to most complaints. The Complaint Form and all the papers provided by the complainant will be sent to the parties named as respondents for them to respond in writing. The Authority's office may proceed to ask for specific documents. Details of the complaint may also be sent to any other party that has an interest in its outcome. Any responses will be sent to

complainants for comments. The respondents also all have an opportunity to comment on each others' responses. Afterwards, as considered necessary, the Authority's Chief Executive may ask further questions and/or seek further documentations.

When adequate information is available, the Authority shall arrange for the issuance of preliminary recommendations to the complainant and the respondents, including any directions deemed necessary at that stage to resolve the matter. Directions may, but will not always, include payment of money. The preliminary recommendations do not have any legal backing and are only issued to give an impression to all the parties on the way the Authority is inclined to decide the matter. The Authority will take into account any comments made on the preliminary recommendations before issuing the final verdict. The verdict shall not be bound by the preliminary recommendations.

The directions issued by the Chief Executive are final and binding to all the parties, including the complainant. The directions can only be contexted through an appeal to the Retirement Benefits Appeals Tribunal, and on a point of law to the High Court of Kenya and the Court of Appeal. The parties to an appeal may include the complainant as well as the Retirement Benefits Authority. If there is no appeal, should the Authority's directions not be carried out, the decision can be enforced by the law court.

## **How long does the process take?**

Because complaints may be quite complicated, and every concerned party has to be given a chance to present their views in writing, investigations may take quite a while. The average period is about 30 days, although some take less time.

## **Hearings**

At present, the Retirement Benefits Authority does not have to summon all sides to a hearing to help decide a particular issue or issues. If, however, the complainant believes a meeting would be appropriate, he/she may ask for one. If this does not happen before the Authority determines the case, the complainant may not be able to lodge a complaint later to the effect that no meeting was held. If the complainant request an oral hearing, the Authority may or may not consent. It is for the Authority to decide whether it is an appropriate case in which to hold a hearing. The Authority ordinarily holds an oral hearing in the following circumstances:

- (i) Where there are differing accounts of a particular material event, and the credibility of the witnesses needs to be ascertained.
- (ii) Where the honesty or integrity of a party has been questioned, and the party concerned has requested a hearing.
- (iii) Where there are disputed material and primary facts which cannot properly be determined from the documentation alone.

The Authority may, however, deem it appropriate to hold a meeting in a case which does not fall under any of the above categories, and may do so even if one has not been requested by the complainant or any other party to an investigation. If an oral hearing is held, then it will be in private, i.e., not open to the general public (unless there are good reasons why this should not be).

The respondents (as well as the complainant) will be entitled to be present and to keep proceedings fairly informal representation by lawyers or other appropriate person is allowed but not encouraged. An invitation to a hearing is not a summons and therefore the respondents may decline to appear.

## **Confidentiality**

Whilst an investigation is in progress, the litigating parties must treat all correspondence and documents received as confidential. However, for the purposes of the investigation the Retirement Benefits Authority may disclose information about the complainant and details of the complaint or dispute, including, where appropriate, copies of documents and correspondence, to any person or body deemed necessary in handling the case.

When the investigation is complete, the direction itself is not confidential, and may be disclosed to others by the parties, or by the Authority. The Authority may publish the direction, or a report on it.

## **Follow Up**

The Authority shall copy correspondence relating to the case to the complainant, but the latter may call to establish the progress. Should the complainant visit RBA offices, it will be useful to make an appointment to ensure that the relevant officer is ready with the required information, and sets aside time to meet him/her.

## RBA Charter

One of the roles of the Retirement Benefits Authority is to provide impartial, efficient and effective method of resolving complaints and disputes concerning retirement benefits arrangements referred to it. The Authority will write the complainant wherever possible in plain English, although at times it will be necessary to refer to legislation or to court judgments. The Authority will deal courteously and constructively with all parties getting in touch with it.

If one makes an initial enquiry or complaint, the Authority shall:

- (i) Acknowledge within seven working days of receipt.
- (ii) Advise him/her on what to do if we cannot deal with the matter.

If a complaint or dispute is accepted for investigation, the Authority shall:

- (i) Process it as quickly as possible (the target is that the average time of all investigations from application to final decision will not be more than 30 days.
- (ii) Review the file at least weekly to minimise delays.
- (iii) Keep all parties informed on progress and, if delays cannot be avoided, inform the complainant the likely time scale.

The complainant may:

- (i) Call or visit on normal working days between 8.15 a.m. and 5.00 p.m.
- (ii) Beyond these hours leave a message on answer-phone, to be handled the next working day. The Authority will answer the telephone promptly and connect the client to the relevant officer.

**NB:** In case a client is unhappy with the authority's service, he/she should accordingly alert the person handling the case.

For formal complaints about RBA services (but not about decisions reached), the client may write to:

The Chief Executive,  
The Retirement Benefits Authority,  
Rahimtulla Tower,  
13th Floor Upper Hill Road,  
PO Box 57733-00200  
City Square, Nairobi

The Authority shall:

- (i) Acknowledge the letter within seven working days, and a full reply can be issued within 10 working days.
- (ii) Reply in full within 14 working days. If this is not possible an explanation will be provided accordingly outlining when a full response will be issued.





Retirement Benefits Authority

*Safeguarding your retirement benefits*

**[www.rba.go.ke](http://www.rba.go.ke)**

For more details please contact:  
The Retirement Benefits Authority  
Rahimtulla Tower 13th Floor, Upper Hill Road  
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0722 509939/0735 339132  
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