



# The Quarterly DIGEST

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## FROM THE ADJUDICATOR

**Muvhango Lukhaimane**



The first quarter of the 2023/2024 financial year ended on 30 June 2023 and the complaint statistics continue to reflect recovery to pre-Covid levels. The office received 2 310 complaints from April to June 2023.

With the courts and the Financial Sector Tribunal (FST) having clarified the application of prescription to outstanding retirement fund contributions, the implementation from our side is firmly underway. This has had a significant impact on what members can recover. A notable portion of complaints involving section 13A compliance and withdrawal benefits were affected by prescription with only a portion of the claim falling within the OPFA jurisdiction. What is further concerning is that some funds have done nothing to recover outstanding contributions from errant participating employers and would rely on prescription when filing responses to complaints. If ever there was an example of a failure on the part of boards to recognize their responsibilities, this is one such instance.

In the quarter to June, 1 695 complaints dealt with withdrawal benefits and section 13A matters. In 713 instances where we had sufficient information to grant an

order sounding in money, R20 002 578.13 excluding late payment interest was granted in favour of complainants.

On the death benefits front, the OPFA is starting to receive complaints related to claims that arose from Covid-related deaths. This Tribunal cannot overemphasise the need for boards of management to exercise their discretion reasonably. Covid 19 bought on a once-in-a-lifetime situation. This means that when looking at all the facts and circumstances during the section 37C investigation into dependants / beneficiaries; funds must take the exceptional circumstances brought on by Covid 19 into consideration. It cannot be business as usual when everyone is aware of the impact that hospitalization/ isolation had on the ability of those affected to communicate aspects related to their financial circumstances.

Last, but not least, the office welcomes the appointment of Mr Naheem Essop as our Deputy Pension Funds Adjudicator from 1 August 2023. I am sure as our valued stakeholder, you join me in welcoming him to this role and will offer him the necessary support and cooperation in discharging his duties.

# Meet our Deputy Pension Funds Adjudicator



Naheem Essop

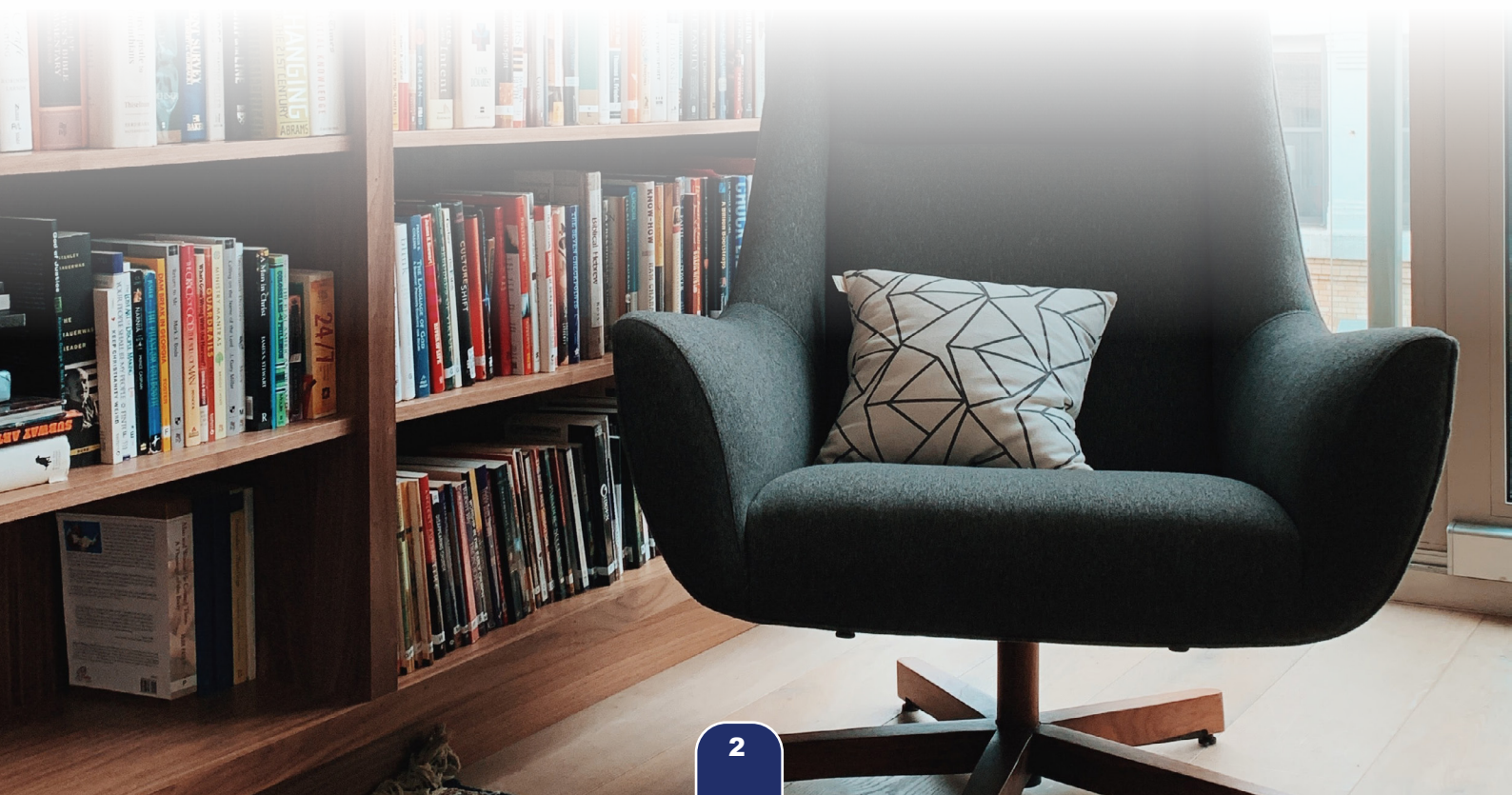
**W**e are excited to announce the appointment of Mr Naheem Essop as the Deputy Pension Funds Adjudicator with effect from 1 August 2023. Naheem has been serving the OPFA since April 2020 as the Senior Legal Advisor and has developed a good understanding of the environment and the demands of the organisation. He will continue to support the Adjudicator to fulfil her object, now in a different role as Deputy Pension Funds Adjudicator.

Naheem joined at the OPFA from the FSCA where he served in the Retirement Funds Division since 2015. Prior to that, Naheem practiced as an attorney where he represented certain municipal funds.

In an industry where almost everyone knows each other, Naheem is no stranger. He has developed a strong reputation for promoting ethics and championing independence and objectivity in the governance of retirement funds. At both the FSCA and the OPFA, he has been actively involved in various legal developments and initiatives relating to retirement funds.

It is truly a pleasure to have someone of Naheem's caliber in this role.

***"I look forward to working with all of our stakeholders in achieving the object of fair outcomes for complainants. May the Almighty always guide our Office in our sincere efforts."* – Naheem Essop**







# Duties of the Board to communicate with members and beneficiaries

Mashudu Matovheke (Assistant Adjudicator)

**A**s a member of a retirement fund, you have a right to be provided with information regarding your retirement benefit at least once a year by your retirement fund. This information is important for you to understand the status of your retirement savings and to plan for retirement. It will also tell you whether your employer has been meeting its obligations insofar as paying your contributions to the retirement fund is concerned. It is often found during investigations that members are not provided with information regarding their benefits.

Section 7D of the Pension Fund's Act No. 24 of 1956 ("the Act") provides that one of the duties of the board of a retirement fund is to:

***ensure that adequate and appropriate information is communicated to the members and beneficiaries of the fund informing them of their rights, benefits and duties in terms of the rules of the fund, subject to such disclosure requirements as may be prescribed;***

Retirement funds account to their members by, inter alia, furnishing them with benefit statements on a regular basis to give them information regarding their benefits, contributions, investment portfolios and other relevant information. Therefore, a benefit statement plays a very important role of providing members with vital information regarding their benefits in the event of death, withdrawal, disability, retirement and other relevant information relating to the fund's assets.

## DUTIES OF THE BOARD TO COMMUNICATE WITH MEMBERS AND BENEFICIARIES *(continued)*



In *Wentworth v GG Umbrella Provident Fund* 2009 1 BPLR 87 (PFA) par 26 the Adjudicator set out the minimum essential content of benefit statements. This includes the following:

- Details of the fund, for example fund name and its registered address;
- Personal details of the member, for example member's name, date of birth, date of admission;
- Details of benefit, pensionable salary, date of calculation, benefit that becomes payable on retirement, death, withdrawal, disability and the formula based on current salary;
- Details of a member or beneficiary's total accrued benefit, his/her vested accrued benefit or earliest date on which the accrued benefit will become vested;
- An explanation of any permitted disparity that may be applied in determining accrued benefits;
- A statement which explains how the benefit is calculated and the investment risk involved;
- Details of contributions by both the member and the employer;
- Any deductions made from the benefits;
- Information relating to transfer from other funds and section 14 transfers.

In *Mahlangu v Soweto City Council Pension Fund* 2009 BPLR 190 (PFA) the Adjudicator concluded that the entitlement of members and beneficiaries of funds to be provided with adequate information is linked to the fund's fiduciary duty towards them. The frequency of providing such benefit statements is normally set out in the fund's rules.

Retirement funds are also duty bound in terms of Conduct Standard 1 of 2022 (RF) to notify you in writing when your employer has failed to pay over contributions on your behalf. This notification allows you to take action to ensure that your contributions are paid, including lodging a complaint with the OPFA. Remember, you have a maximum of 3 years to lodge your complaint with the OPFA from the date on which you become aware of the non-payment.

The failure by a fund to provide relevant information required by a member or a beneficiary for the exercise of his/her rights constitutes a breach of the fund's fiduciary duties towards its members. In *Lediga v Bosal Afrika Group Provident Fund and another* [2001] 7 BPLR 2211 (PFA) at 2216G–H, the Adjudicator held:

***“The failure by a pension fund, in the absence of appropriate justification, to provide relevant information required by a complainant for the exercise of his/her rights constitutes a breach of the duty to act in good faith and amounts to an improper exercise of powers and maladministration of the fund as contemplated in the definition of a complaint”***

A member's right of access to information is limited to information which is relevant or appropriate. Therefore, some information may not be disclosed to you by your retirement fund. Legally privileged information, private personal information, confidential information the disclosure of which may cause harm, or information the disclosure of which may be unlawful, may not be appropriate information to be disclosed by your retirement fund. Whether or not a member is entitled to certain information will depend on the circumstances. The *dictum* was reiterated in *Shahim v Shahim Provident Fund* 2009 1 BPLR 75 (PFA) where the Adjudicator held:





***“In casu, it is clear that the information which has been requested by the complainant as set out in paragraphs 3.1–3.3 relates to the personal information of former and existing members of the respondent. It follows therefore that the respondent has quite correctly refused to produce such information to the complainant. Moreover, the complainant has made out no case to suggest that such information relates to any dispute or any matter in question which affects his rights, interests or expectations arising under the fund. Instead, he seeks a general order that all such information should be disclosed regardless of its relevance. Without justification of its relevance, I decline to make such an order.”***

In *City Council of Pretoria v Joint Municipal Pension Fund* 2000 1 BPLR 29 (PFA) the Adjudicator held that

***“The duties of the board in such a situation are to ensure that adequate and appropriate information is communicated. The information contained in the flyer is hardly adequate and its appropriateness is questionable when one considers that many employees of the complainant are not possessed of a high standard of***

***education. Members of a pension fund who are expected to make a decision likely to have an enduring impact on their lives and livelihood are entitled to be advised unequivocally of the tax and benefits consequences of their decision.”***

In most instances funds indicate that benefit statements are forwarded to the employers for onward provision to the members. This method should be avoided as non-compliant employers will likely not provide members with benefit statements that disclose their failure to timely pay provident fund contributions.

In terms of Conduct Standard 1 of 2022 (RF), a retirement fund must have the personal contact information of its members and therefore, it is advisable that the funds provide members with benefit statements directly.

## **Conclusion**

The board of a fund has a duty to provide members, former members and beneficiaries with adequate information regarding their benefits. Having regard to the number of complaints that the Adjudicator receives, there is an indication that the funds do not provide members with information regarding their benefits, which is contrary to section 7D(1)(c) of the Act and not in the best interest of its members.

If you have not received your benefit statement from your retirement fund in the last year, please contact your fund and enquire about same and if you are dissatisfied with the response, feel free to lodge a complaint with the OPFA.



# NOTE FROM A CASE OFFICER



**A**s a Case Officer at the OPFA, I am entrusted with acknowledging complaints, serving respondents to afford them an opportunity to address same by filing responses. This process entails interaction, back and forth, with the parties to either resolve matters at my level through settlements or to move them to adjudication when not resolved. As such, establishing good stakeholder relationships with funds, administrators and employers is critical in this process.

The advent of Covid-19 brought about a change in the mode of lodging complaints. Most complainants have now taken the opportunity to create and lodge complaints through our website and email. This has improved accessibility to our office and represents a visible shift from the heavy reliance on postal services which usually delays the delivery of important information to and from complainants.

The introduction of the online tracking of complaints function on our website enables complainants to obtain quicker updates on progress in their complaints and has resulted in a reduction in the number of calls received by Case Officers. The improvement is visible in the volume of calls received by me and my colleagues whist specifically intended for Case Officers investigating complaints.

In addition, through the role and the organisation's drive to equip its employees with skills beyond their immediate roles, I am also exposed to the drafting of determinations involving Private Security Sector Provident Fund. This sharpens my awareness of what is expected at my level in order to forward matters that contain all the necessary information for the adjudication team to finalise.





## HERE'S A STEP-BY-STEP GUIDE TO CHECK THE COMPLAINT STATUS ONLINE:

### HOW TO LODGE A COMPLAINT WITH THE OPFA?

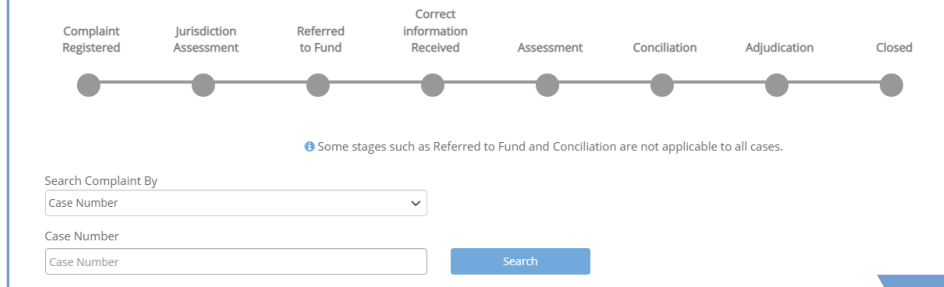
The OPFA's services are provided free of charge. A complaint must be lodged using an official complaint form. You may lodge a complaint in one of the following ways:

- Visit our offices at:  
4th Floor, Block A, Riverwalk Office Park, 41 Matroosberg Road, Ashlea Gardens, Pretoria
- Submit your complaint online:  
<https://www.pfa.org.za/Complaints/Pages/Lodge-a-Complaint.aspx>
- Email your complaint to:  
[enquiries@pfa.org.za](mailto:enquiries@pfa.org.za)
- Fax your complaint to:  
086 693 7472
- Post your complaint to:  
Office of the Pension Funds Adjudicator, PO Box 580, Menlyn, 0063

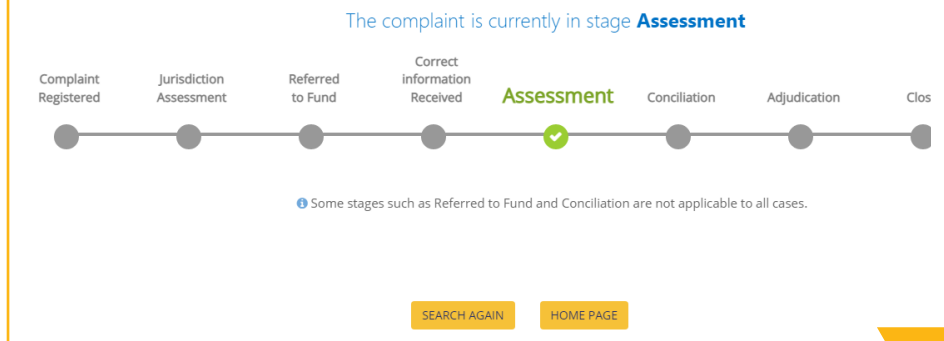
#### 1. Go to the PFA website <https://www.pfa.org.za/> and click Check Complaint Status



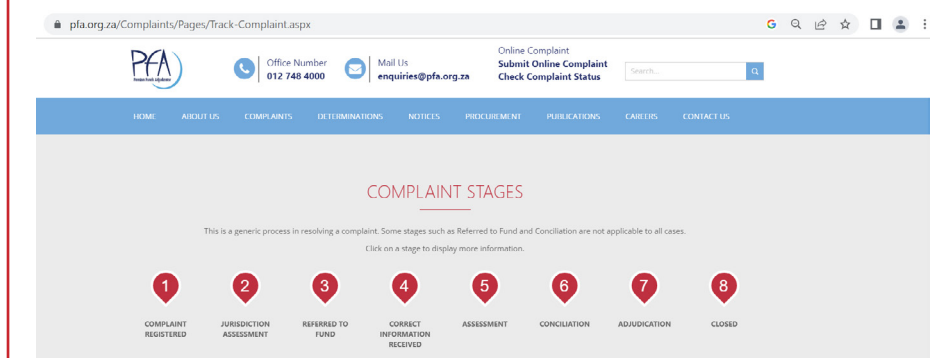
#### 2. Enter the ID/Passport Number or case reference number and Search.



#### 3. The current stage of the case will be displayed.



#### 4. Refer to the complaint stages for more information about the stage of the complaint.



Block A, 4th Floor,  
Riverwalk Office Park,  
41 Matroosberg Road,  
Ashlea Gardens, Pretoria, 0081

012 748 4000  
012 346 1738  
[www.pfa.org.za](http://www.pfa.org.za)

[enquiries@pfa.org.za](mailto:enquiries@pfa.org.za)  
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