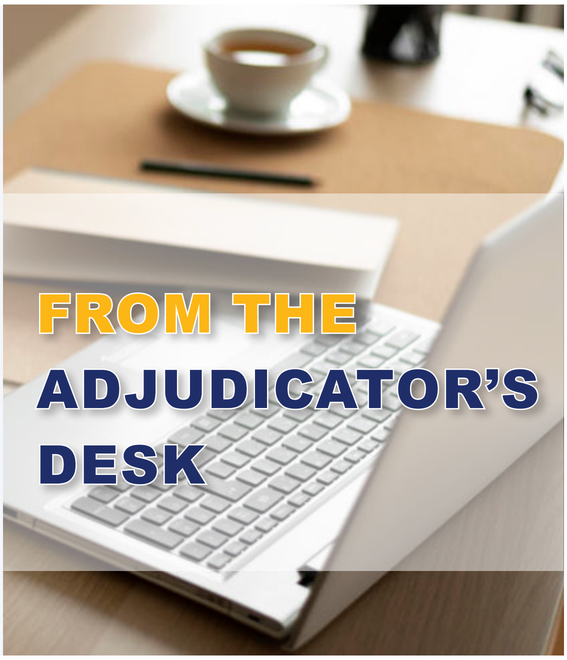
ISSUE – JANUARY 2024

Pension Funds Adjudicator

Est. 1998

The Quarterly DIGEST

Muvhango Lukhaimane,
Pension Funds Adjudicator



FROM THE ADJUDICATOR'S DESK

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INSIDE THIS ISSUE

On 31 December 2023, the OPFA bid farewell to one of its longest serving, exemplary staff members Sylvia Arendse. Sylvia had served the OPFA for 19 years as an Office Assistant, during which period she embodied the purpose and spirit of an office like ours. This office and the stakeholders that it serves were privileged to have someone of Sylvia's caliber in our midst discharging an otherwise lonesome task with precision, enthusiasm, dignity and always with a smile.

I am sure that I speak for everyone when I say the office will not be the same without you, Sylvia. May you have a restful retirement.

On the complaints front, we received 2 314 new complaints in the quarter to December and finalised 2 341 complaints as follows; 1 308 determinations, 359 settlements, 393 out of jurisdiction, 209 abandoned, 17 withdrawn and 55 duplicates.

In order to improve our turnaround times and effectively manage our human resources, the OPFA is investigating a process to automate a portion of the complaints' resolution process. This will free up our professionals to focus on other involved complaints.

We have published for comment on our website a draft policy on expedited complaints and vulnerable complainants. The policy is intended to guide us on a consistent approach to dealing with the most vulnerable in society that approach our office for assistance.

During the quarter, the office appointed a new Case Management Team Leader (Mr Lehlohonolo Lucky Rabotapi) and Senior Legal Advisor (Ms Nondumiso Ntshangase) both of whom will form part of the OPFA Management Committee.

Much progress has been achieved in the transitional arrangements occasioned by the amendments in legislation resulting in the Adjudicator being the Accounting Authority of the OPFA. For an organization our size that is funded through member levies, it is always important to ensure that where there are structural and process changes implemented, these are cost effective whilst maintaining, if not improving good governance and service delivery efficiencies.

The quarter ahead leading to the end of our financial/ performance year will be focused on finalising as many matters as possible whilst accelerating the attraction and training of new employees to fill some of our case management teams' critical vacancies.

The OPFA wishes all its stakeholders another productive year. At least as a leap year, it gives us an extra day to deliver a much needed service to you all.

NEW BUDGET PROCESS

Wonder Dila
Financial Manager

On 24 March 2023, the Minister of Finance, the Honourable Mr. Enoch Godongwana published proclamations no. 3186 and 3187 in the Government Gazette No. 48291, on the commencement of Levies Act and certain provisions of the Financial Sector Regulation Act 9 of 2017 (FSR Act) that amend the Pension Funds Act, 1956 ("Pension Funds Act") as they relate to funding and governance requirements of the Office of the Pension Funds Adjudicator, with effective dates of 01 April 2023 and 01 June 2023, as applicable.

Currently the OPFA is funded in terms of section 30R of the Pension Funds Act by imposing levies on the pension funds industry as detailed in the Levies Act. The levies are the main contributor to the OPFA's revenue base and as such, the costs associated with the disposal of complaints are funded primarily from the levy income.

Amongst the changes brought by the proclamations was to the Pension Funds Act: **Section 30R: Funds of Adjudicator,** where it states that, *"The funds of the Adjudicator shall consist of funds accruing to the Adjudicator in terms of the Levies Act on the grounds of a budget submitted to, and approved by, the Minister of Finance ("Minister")".* Previously, the OPFA was funded by the Financial Sector Conduct Authority ("FSCA") on the grounds of a budget submitted to it that required approval by the FSCA Commissioner. The new funding model reinforces the independence of the OPFA as a statutory ombud scheme from the FSCA in its operations and the manner in which it is funded.

The other notable change brought by the proclamations was in **Section 30T: Accountability,** where it states that, *"The Adjudicator is the accounting authority of the Office of the Pension Funds Adjudicator".* After dissolution of the Financial Services Board, the FSCA Commissioner was made the interim accounting authority of the OPFA with governance committees assisting in the oversight functions of the OPFA. Effective 01 April 2023, the Pension Funds Adjudicator assumed the new role and this necessitates a review in the organisational design, processes, governance framework and budgeting to ensure not effective governance but also adequate resources to carry out the mandate of the OPFA.

The Levies Act provides for the imposition of financial sector levies on supervised entities for the funding of the OPFA as per newly amended section 30R of the Pension Funds Act. Schedule 5 of the Levies Act (Annexure C) provides for the formula of the financial sector levy in respect of the funding of the OPFA. Section 237(1)(b) of the FSR Act provides that, the OPFA, as a financial sector body, may impose levies in accordance with the FSR Act, read with the Levies Act to fund its operations.

In terms of section 239(1) of the Financial Sector Regulation Act, 2017 ("FSR Act"), the Office of the Pension Funds Adjudicator ("OPFA") as a financial sector body, must for each financial year prepare and adopt:

(a) a budget in accordance with section 248 that includes an estimate of its expenditure;

(b) a proposal for the fees that will be charged and levies that will be imposed by the financial sector body; and

(c) projected estimates of its expenditure for next 2 financial years.

In terms of section 240 of the FSR Act, Part 1 of Chapter 7, with the exception of section 100, applies with the necessary changes to the adoption of the budget, estimates of expenditure as well as the levy proposal as provided for in section 239. As such, in adopting the budget and determining levies, the OPFA must publish the following documents for public comment:

(a) the budget, including estimates of expenditure;

(b) the levies proposal for the relevant financial year;

(c) the projected estimates of its expenditure for next 2 financial years; and

(d) an explanation of the budget, estimates of expenditure and levies proposal, and of the variation of the budget, estimates of expenditure and the fees and levies proposals against the budget, estimates of expenditure and the levies proposal adopted for the previous financial year (section 240(2)(b) of the FSR Act).

The OPFA must publish the levies that have been imposed in the register and on its website in terms of section 237(2) of the FSR Act; and the Minister must amend the Schedules to give effect to the increase of the or may amend the Schedules to the Levies Act as contemplated in section 10(2)(a) of the Levies Act to give effect to a proposal for levies made by the OPFA in terms of section 239(7)(b) of the FSR Act. This must then be submitted to the parliament, and if Parliament approves or adopts the amendments, the Minister must then publish them in the Gazette and the Schedule will take effect on the publication date in accordance with section 10(1)(e) of the Levies Act.

It is also noteworthy that section 12(1) and (2)(a)(iv) of The Financial Sector and Deposit Insurance Levies Act 11 of 2022, still imposes the responsibility for collecting levy amounts on the FSCA and allocating to the OPFA the amount determined in accordance with section 4, in respect of Schedule 5 of the Act.

In conclusion, the proclamations published by the Minister of Finance, have necessitated the development of the new budgeting process which is aimed at not only ensuring that the OPFA raises sufficient levies to cover its operational requirements, but also provides key stakeholders with an opportunity to engage with the budgeting process of the OPFA.

NEW EMPLOYEE ANNOUNCEMENTS

Lehlohonolo Rabotapi

Lehlohonolo has joined the Case Management Team as the **Senior Assistant Adjudicator – Team Leader,** with effect from 01 December 2023.

He brings to OPFA over 20 years' experience in the Regulatory Environment. He also brings more than 15 years of leadership experience from various organizations including the KZN Department of Economic Development and Tourism as a Senior Manager: Consumer Protection Services, The Community Schemes Ombud Services as a Provincial Ombudsman, and recently The National Consumer Tribunal as a Registrar.

Lutendo Tshifularo

We welcomed Lutendo to the role of **Risk and Compliance Officer** in December 2023. She brings to OPFA more than 10 years of combined experience in Risk, Compliance, Governance, Ethics and Business Continuity Management. Lutendo is also an Associate member of the Institute of Risk Management South Africa (IRMSA).

Provincial Ombudsman, and recently The National Consumer Tribunal as a Registrar.

Qabuka September

Qabuka joined the ICT team as the **ICT Operations Coordinator** in December 2023 following a successful completion of an IT internship program.

A graduate from the Nelson Mandela University of Technology, Qabuka has contributed significantly to the implementation of protocols that have improved efficiencies in the OPFA ICT team, as well as at his previous employer where he was also intern. After approximately 3 years in the OPFA ICT Team, he is ready and well equipped to take on this next challenge.

Lindokuhle Dlamini

Lindokuhle joined Early Resolution Team as a **Case Officer** in November 2023.

He brings to OPFA more than 4 years of experience in the legal environment with experience from the National Consumer Tribunal and Moeketsi Modiba Attorneys. He studied LLB at the University of the Witwatersrand.

Lindokuhle loves music, soccer and gaming. He is a huge soccer fan and enjoys producing music and deejaying in his spare time.

Lesley Ratsebe

Lesley returned to the OPFA to join the Case Management Team as a **Case Officer** in November 2023.

No stranger to the OPFA as he started his career with us as an intern. Now armed with 4 years of relevant experience we have no doubt he will bring the much-needed value to the team of Case Officers and OPFA as a whole.

QUARTERLY STAKEHOLDER ENGAGEMENT ACTIVITIES

Zimasa Majola
Communications Practitioner

Mall activations have become an integral part of stakeholder engagements within the Office of the Pension Funds Adjudicator (OPFA). They provide a conducive environment for face-to-face stakeholder interaction. This enables the OPFA to connect with relevant stakeholders, establish trust, and promote good rapport.

In the third quarter, the OPFA conducted two educational outreach events at the Seshego Circle Centre and Paledi Mall in Polokwane. Throughout these activations, we actively engaged the local community to provide information, and address challenges related to pension fund matters.

These interactive sessions involved providing the community with information, *inter alia,* regarding how to lodge complaints, the information required in lodging complaints and the measures that members may take to protect their benefits. The team also provided timely feedback and assistance on existing complaints.

Overview of Polokwane Outreach

According to individuals who visited the stands, their complaints stem from a limited access to information, the unavailability of appropriate communication channels, and a general lack of awareness about their pension fund benefits rules, and procedures.

Among the cases reported, a security guard claimed that his employer was deducting contributions from his salary but allegedly failed to forward same to the pension fund.

In another case, a man expressed dissatisfaction over a payout he received from his pension fund. He stated that the fund excluded the interest he had accumulated over time, demanding that he be paid the surplus too.

Lastly, a mother claimed that her daughter's former employer refused to give her withdrawal forms upon resignation. From the outreach, it was evident that there were several pension fund related challenges facing the community members. Mall activations not only serve as a proactive effort to educate and empower members of the public, but they also present an excellent opportunity for the organisation to gather valuable insight and feedback enabling us to address complaints more efficiently.

Throughout the activations, the organisation attracted a significant number of pension fund members, checked several complaints on the spot and received positive feedback from stakeholders, with many expressing their appreciation for the opportunity to seek advice and discuss their concerns in person.

As the team distributed pamphlets to the public, it was clear that a lot of people did not know about the OPFA and found the activations highly informative, interactive, and engaging.

In conclusion, the outreach not only facilitated valuable interaction, but also empowered the public with knowledge and awareness. By conducting these outreach activities, the OPFA continues to demonstrate its commitment to engaging with stakeholders, therefore making its services more accessible to a wider audience.

The activities also help to raise awareness about the roles and functions of the Pension Funds Adjudicator and to ensure that relevant information is disseminated effectively. Without accountability and the necessary remedies in place, many stakeholders are left despondent.

You are most welcome to invite us to your wellness days or your community.

RECENT DEVELOPMENTS ON THE APPLICATION OF THE *IN DUPLUM RULE* TO INTEREST PAYABLE ON ARREAR CONTRIBUTIONS

Nondumiso Ntshangase
Senior Legal Advisor

The Pietermaritzburg High Court, in the case of *Municipal Workers Retirement Fund v Umzimkhulu Local Municipality and Others (11458/2015) [2023] ZAKZPHC 80*, ruled on the application of the *in duplum rule* in relation to interest on arrear contributions payable in terms of section 13A (7) of the Pension Funds Act, 1956 ("Act"). In the judgement, the High Court dismissed the argument presented by the employer, Umzimkhulu Local Municipality, seeking to rely on the *in duplum rule* in determining the amount of interest payable to the fund.

Essentially, the *in duplum rule* is a common law principle which provides that interest on a debt ceases to run when the total amount of arrear interest equals to the outstanding principal debt.

Section 13A of the Act prescribes the contributions payable to a fund and the way such contributions must be paid to the fund in respect of members. Furthermore, section 13A (7) provides for the interest payable on arrear contributions and states as follows:

> *"(7) Interest at a rate as prescribed shall be payable from the first day following the expiration of the period in respect of which such amounts were payable on—*
>
> *(a) the amount of any contribution not transmitted into a fund's bank account before the expiration of the period prescribed therefor by subsection (3) (a) (i);*
>
> *(b) the amount of any contribution not received—*
>
> *(i) by a fund before the expiration of the period prescribed therefor by subsection (3) (a) (ii); or..."*

On 19 August 2022, the Financial Sector Conduct Authority issued FSCA Conduct Standard 1 of 2022 (RF) - Requirements related to the Payment of Pension Fund Contributions. At section 5 of the Conduct Standard, the FSCA prescribes as follows:

> *"5. Interest on late payments*
> *(1) For purposes of section 13A(7) of the Act, compound interest on late payments or unpaid amounts –*
>
> *(a) must be calculated from the first day following the expiration of the period in respect of which such amounts were payable until the date of receipt by the fund; and*
>
> *(b) is prescribed to be the prime rate plus 2 percent."*

Whilst the Conduct Standard is silent on the application of the *in duplum rule* to late payment interest, it is interesting to note that the original draft of the Conduct Standard that was issued for comment contained a reference to the *in duplum rule* which was subsequently removed in the final issued version.

In paragraph 13 and 14 of the *Municipal Workers* (supra) judgment, Mgadi J stated the following:

"[13] The first respondent relies on Da Cruz v Bernardo 2020 (2) SA 185 (GJ) para 57, wherein it was held that where interest is calculated with reference to a rate stipulated in an agreement, whether the agreement is a loan agreement or another type of agreement, the interest which accrues on the debt cannot exceed the capital sum of the debt. It, further, refers to Paulsen and Another v Slip Knot Investment 777 (Pty) Ltd 2015 (3) SA 479 (CC) wherein the court held that in duplum rule is not suspended by litigation. In DA Cruz v Bernado at p186 it is stated: 'The in duplum rule broadly speaking, provided that arrear interest ceased to accrue once the sum of the unpaid interest equalled the amount of the outstanding capital. The question in the present matter was whether the rule applied to liquidated debts-like the present- in respect of which there was no law or agreement governing the calculation of the rate of interest, but which instead, in terms of the common law, bore mora interest and accordingly fell within the purview of s1(1) of the Prescribed Rate of Interest Act 55 of 1975. The section provided that the type of debt in question attracted interest as calculated 'at the rate contemplated in subsection (2)(a) as at the time when such interest begins to run' unless a court of law, on the ground of special circumstances relating to the debt, orders otherwise.'

[14] I agree with the applicant that its claim for interest is statutorily regulated, it does not arise out of a contractual relationship. The statute imposes liability for the payment of interest, stipulates a rate of interest applicable, and when it accrues, therefore, it is not mora interest, and it is not interest regulated by the provisions of the Prescribed Rate of Interest Act. The court in this matter has no power to order otherwise as envisaged in the provisions of the Prescribed Rate of Interest Act."

In summary, the High Court held that since the interest in question is statutory interest, and does not arise from a contractual relationship, it cannot be limited by the application of common law rule. It emphasised that the Court lacked the powers to interfere in respect of the interest charged, as it would with interest prescribed in terms of the Prescribed Rate of Interest Act. Accordingly, the High Court ordered the Umzimkhulu Local Municipality to pay the prescribed the amount of interest claimed by the fund without applying the *in duplum rule.*

In the April 2023 issue of the OPFA Quarterly Digest, the OPFA stated that the *in duplum rule* applies to arrear contributions, payable in terms of section 13A. The OPFA based its reasoning on the relevant case law applicable at the time, including the *Slip Knot Investments* decision by the Constitutional Court, since there was no direct interpretation on the issue from the Courts at the time. Considering the recent High Court judgment in *Municipal Workers* (supra) dealing directly with the issue of late payment interest in terms of section 13A, the OPFA considers itself bound by the Court's ruling and will accordingly abide by same.

2023/24 OPFA Stakeholder Satisfaction Survey

The purpose of the survey is to:

- measure our stakeholders' perception and knowledge of the organisation, and assess the impact the OPFA has on stakeholders;
- determine the level of satisfaction of stakeholders on the work done by the OPFA; and
- identify ways of improving and enhancing the service engagement and offerings of the organisation.

The targeted participants of the survey are previous clients and stakeholders of the OPFA.

We would love to hear from you! To participate in the survey, please visit:

https://www.opfasurvey.org.za

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:

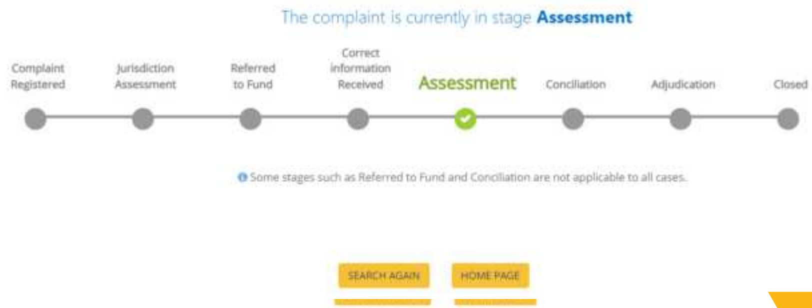
- **Visit our offices at:**
  4th Floor, Block A, Riverwalk Office Park, 41 Matroosberg Road, Ashlea Gardens, Pretoria
- **Submit your complaint online:**
  https://www.pfa.org.za/Complaints/Pages/Lodge-a-Complaint.aspx
- **Email your complaint to:**
  enquiries@pfa.org.za
- **Fax your complaint to:**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

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

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

enquiries@pfa.org.za
OPFA SA
opfa_sa