



The Quarterly DIGEST

From the Adjudicator's Desk

Once more, the Auditor General South Africa (AGSA) has awarded the Office of the Pension Funds Adjudicator (OPFA) a clean audit for the 2023/4 financial year. Also remarkable is the fact that having stripped out issues beyond the OPFA's control from the performance outcomes, we were able to achieve 13 out of 14 outcomes, a 93% achievement rate.

Whilst celebrating the achievement, the OPFA did not take its foot off the pedal. For the quarter ending June 2024, we were able to finalise 1 962 matters within six months; 6% above our benchmark of 85%. This first quarter achievement took place even as the OPFA moved to strengthen its capacity by filling 6 vacant positions – an involved process that often takes managers away from their complaints' resolution responsibilities. Our internal training interventions are also bearing fruit with increased productivity and the promotion of internal staff into senior positions.

A considerable amount of time was spent on a process reengineering exercise to ensure that the OPFA further maximises its resources. In the next two months we will implement its recommendations which will address some of the feedback from the stakeholder survey recommendations. The OPFA will also partially automate the drafting of section 13A and withdrawal benefit determinations. The automation will free our assistant adjudicators to focus on more value-adding work.

All this whilst we also hold our breath as to the effects of the implementation of the two-pot system. For this, we have implemented internal training for staff and acquired two contractors to assist with telephone enquiries. For us, the solutions will have to be on-the-go as we observe the process.

Enjoy the read, we are hard at work; for you.



Muvhango Lukhaimane,
Pension Funds Adjudicator

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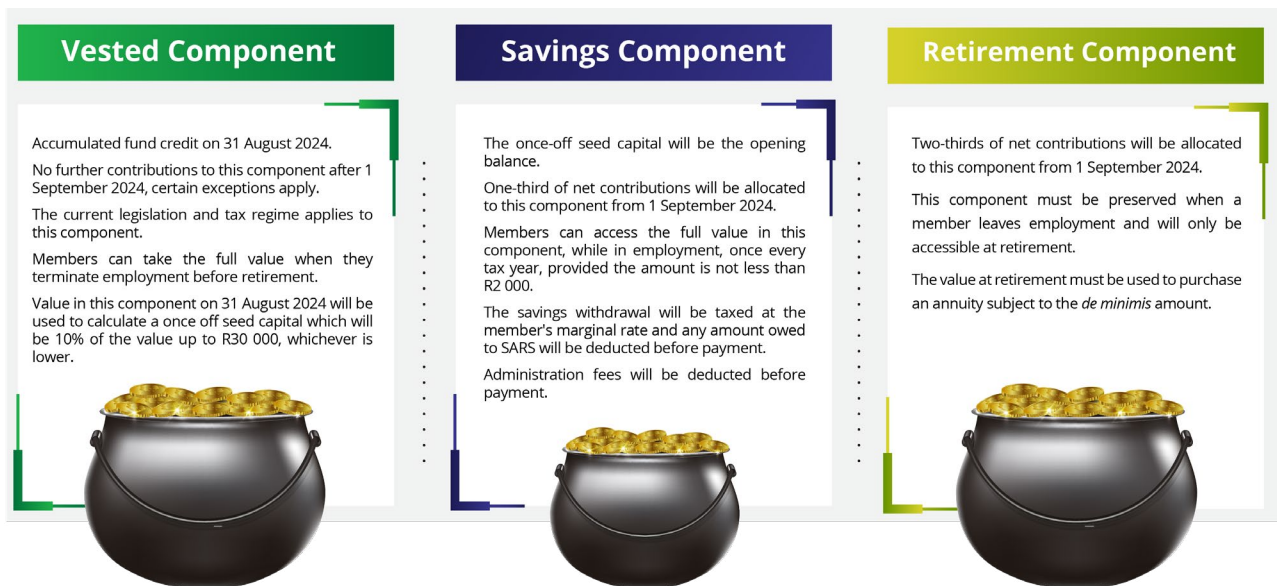
Nondumiso Ntshangase, Senior Legal Advisor

Ready, Steady, Two-Pot System

The President's recent signing of the Pension Funds Amendment Act, 2024 marks a significant milestone in the implementation process for the Two-Pot retirement system. This retirement reform aims to balance the need for access to accumulated retirement savings during working years for emergencies with the preservation of retirement savings until retirement.



Illustration of the Two-Pot System



The respective components will be created through the amendment of fund rules. Therefore, it is crucial for funds to timely register their rule amendments with the Financial Sector Conduct Authority (FSCA) and ready their systems for implementation. As we approach implementation date, it is critical to address immediate issues that, if unresolved, could result in an increase in the number of complaints during the early stages of implementation.

Typically, members engage with the Office of the Pension Funds Adjudicator (OPFA) when they leave employment and are dissatisfied with the value of their benefits. On or after 1 September 2024, members will have a once-off seed capital, which will reflect as an opening balance in the savings component. Members can claim this amount from implementation date, subject to the fund obtaining a tax directive and in line with the fund's administration payment timeframes. All members of retirement funds to which the

Two-Pot system applies will have a right to claim their savings withdrawal benefit subject to the minimum withdrawal amount. Financially distressed members will likely take advantage of this option, potentially leading to a higher number of withdrawals than usual.

If these members are unable to claim their savings withdrawal benefits, they are likely to lodge complaints with the OPFA. Where a member has not lodged an internal complaint with a fund, the OPFA will first refer the complaint to the fund in terms of the "Refer to Fund" process for the fund to resolve the complaint with the member. It is important that funds ensure that they have resources to deal with these complaints within the 30-day timeframe. Funds should utilise the Refer to Fund process as an opportunity to strengthen relationships with members and provide information. If the issue cannot be resolved between the parties, the OPFA will investigate the complaint.

Analysing data related to Two-Pot system complaints and enquiries can help funds identify information gaps. This will enable funds to tailor their ongoing communication to address these gaps. Although funds and administrators have been preparing, their readiness will be evident in the volume and nature of complaints received after implementation. Many of these anticipated complaints could be mitigated through effective communication with members in line with the Treating Customers Fairly principles and the guidance provided by the FSCA. It is crucial that communication not be a compliance exercise but ensure that members understand the Two-Pot system and its impact on their benefits. As the implementation date approaches, funds may need to direct specific communication to certain member categories to address any issues that might give rise to complaints.

Specific issues requiring immediate attention: Members with less than R2 000 in their Savings Component

- Members can only withdraw their savings withdrawal benefits if the amount in the savings component is at least R2 000. Funds should communicate the claim process and the minimum withdrawal amount to members to manage expectations. Where funds are able to provide benefit statements that illustrate the members' balance as of 31 August 2024, this could assist members in understanding whether they will qualify to claim a savings withdrawal benefit. It is also crucial for members to understand, that although they may not be able to withdraw immediately after the implementation date, they may be eligible at a later stage as their value in the savings component increases.

Non-compliance with section 13A of the Pension Funds Act

- Employers failing to remit pension fund contributions could impact members' ability to claim their savings withdrawal. Non-compliance could result in values being below the minimum withdrawal amount of R2 000 or a reduced seed capital than expected. Funds with non-compliant employers must take the necessary legal steps as per FSCA Conduct Standard 1 of 2022 to ensure the collection of arrear contributions.
- Funds with unallocated contributions must also ensure the timely allocation of those contributions to ensure that members are able to access their savings withdrawals from implementation date.

Tax deductions and administration fees

- Savings withdrawal benefits will be taxed at marginal rates, and any amount owed to SARS will be deducted

before payment. Funds should advise members to be aware of their tax obligations with SARS and clearly communicate administration fees to ensure members understand the net amount they will receive. Certain members might decide against a savings withdrawal if they fully understand the deductions and the impact on their net payment.

Members of Provident funds who were 55 or older on 1 March 2021

- Members of Provident and Provident Preservation funds who were 55 or older on 1 March 2021, and remained in the same fund, may opt into the Two-Pot system within 12 months of the implementation date. Funds must ensure targeted communication to this group to inform them of the 12-month opt-in window, as missing this period could lead to complaints when these members wish to opt into the Two-Pot system at a later stage.

Exemption of qualifying Legacy Retirement Annuity Policies

- The definition "savings component" and "retirement component" in the Income Tax Act does not apply to legacy retirement annuity policies that have been approved by the FSCA for exemption. On 19 July 2024, the FSCA published for comment a draft RF Notice on determining conditions that exclude legacy retirement annuity policies from applying the Two-Pot system. Policies that do not meet the conditions must apply the Two-Pot system. It is crucial that timely communication is directed to affected members on why the fund is relying on the conditions to be excluded from the Two-pot system, the impact this will have on members and the rationale for the exclusion.

In conclusion, attention to these specific issues can minimise the number of complaints, especially during the early stages of implementation. The way retirement funds handle the implementation of the Two-Pot system will significantly affect members' trust and confidence in the retirement system. The OPFA has created an internal Two-Pot Response Plan to ensure amongst other things adequate resources for handling Two-Pot system related complaints and enquiries, stakeholder engagement, and staff training. As we navigate one of the most significant reforms in the retirement industry, we urge funds and administrators to take the necessary steps to ensure members understand their benefit entitlements and are equipped to make informed financial decisions, leading to positive outcomes for their future.



The Adjudicator and Cost Orders



Fikile Ledwaba, Assistant Adjudicator

Complainants approach the Adjudicator to investigate and decide on complaints lodged in terms of the Pension Funds Act No 24 of 1956 (the Act). The Adjudicator is empowered to dispose of complaints in terms of the Act. Section 30E of the Act provides that to achieve his or her main object, the Adjudicator:

(a) shall, subject to paragraph (b), investigate any complaint and may make the order which any court of law may make;

The OPFA is a forum that allows unrepresented litigants to challenge decisions of retirement funds and employers who participate in them, which they otherwise may not have pursued in the ordinary courts due to the cost of litigation in South Africa. After investigating a complaint as defined, the Adjudicator may “make the order which any court of law may make”, which shall be deemed to be a civil judgment. Any party who feels aggrieved by a determination of the Adjudicator may apply to an appropriate High Court for relief in terms of section 30P of the Act.

Parties to proceedings before the Adjudicator at times may request her to make cost orders or she may deem it fit to issue a cost order depending on the circumstances. The Financial Services Tribunal (Tribunal) in the matter of *Cohen v The Pension Funds Adjudicator and Others* (decided on 25 April 2019) had held that the Adjudicator has no powers to order cost. The Tribunal stated that it was unaware of any provision in either the Act or the Financial Services Regulation Act that gives the Adjudicator the power to award costs.

The matter was recently settled by the constitutional court in the matter of *Mudau v Municipal Employees Pension Fund and Others* (CCT 142/22) [2023] ZACC 26; 2023 (10) BCLR 1165 (CC) (2 August 2023) at para 77) wherein the constitutional court stated that the Adjudicator should only in rare circumstances make a cost order. In this matter, the complainant was aggrieved with the calculation of his withdrawal benefit. The benefit was calculated in terms of a rule that had been submitted to the Financial Sector Conduct Authority for registration but had not yet been registered. The Adjudicator ordered that the benefit should be calculated in accordance with the existing rule since a rule that had not yet been registered cannot be applied.

The Adjudicator’s decision was taken on appeal to the High Court in terms of section 30P which ruled in favour of the Adjudicator. The fund then appealed to the full bench of the High Court which resulted in the same outcome. An appeal was upheld at the Supreme Court of Appeal in favour of the fund.



while cost orders have been awarded in some instances, Hunter et al explain that as a matter of practice, an Adjudicator seldom grants cost orders. Such cost orders will only be made when parties' actions are found to be frivolous, vexatious or unreasonable.

The matter was then appealed to the Constitutional Court which unanimously found in favor of upholding the Adjudicator's determination. In its ruling when dealing with the issue of cost orders the Constitutional Court stated that "while cost orders have been awarded in some instances, Hunter et al explain that as a matter of practice, an Adjudicator seldom grants cost orders. Such cost orders will only be made when parties' actions are found to be frivolous, vexatious or unreasonable"

In the matter of *Van Vuuren v Central Retirement Fund* (2000) 6 BPLR 66 (PFA), the complainant sought a cost order based on an attorney-client scale against the fund. The Adjudicator stated that "*the respondent was mistaken in his belief that the Act does not allow the Adjudicator to make a cost order. Section 30E allows the Adjudicator to make any order a court of law may make. The ordinary courts regularly make cost orders. Thus, there is nothing in the Act precluding the Adjudicator from making a cost order*".

In the above matter, there were no grounds for a cost order. The Adjudicator also indicated that a cost order will normally only be made against a party if its actions are found to be frivolous, vexatious, or unreasonable.

There have been instances where the Adjudicator issued cost orders. The matter of *Jones v National Technikon Retirement Fund* (2002) BPLR 2960 (PFA) is of particular interest. The matter concerned a fund's allocation decision following the death of its member. The complainant, a spouse, was aggrieved with the fund's decision to allocate her 70% of the death benefit. The deceased had nominated her as the sole beneficiary. The complainant argued that the trustees should have honoured the deceased's wishes. During the proceeding, it became apparent that the fund had made a settlement offer to the complainant which would effectively allocate 100% of the death benefit to her and she was further warned of the risk of a cost award should she not accept the offer. The Adjudicator found that it would be unfair for the fund to have to bear the legal costs incurred pursuant to the rejected offer. The complainant was directed to pay the fund's cost of suit on a scale between party and party calculated in accordance with the magistrate court tariff from the date of receipt offer to the date of the ruling.

Similarly, in the matter of *Kolb v University of Natal Retirement Fund* (2) (2002) 6 BPLR 2100 (PFA), the Adjudicator ordered a complainant to pay the cost to the respondents. The issue here concerned the method used to calculate the returns credited to the complainant's fund credit. A preliminary determination was issued calling on the respondents to show cause why the final order, which included a cost order should not be granted. The complainant conceded that the fund calculation was correct. On the issue of the cost order, he denied that his complaint was frivolous or trivial. He submitted that had the respondents provided him with the same response as that submitted by the expert witness the matter would have been settled and he denied that he had inundated the respondents with voluminous correspondence on the subject matter of the complaint.

The Adjudicator found that the complaint was frivolous, trivial, and unreasonable. It was pointed out that that the lodging of the complaint undermined the aim of the Adjudicator. The complainant withdrew the complaint and requested that no order of costs be made. However, it was held that where a litigant withdraws a complaint, he is in a similar position to an unsuccessful litigant. The complaint was dismissed, and a cost order was granted against the complainant.

In *Macevele v Metal Electroplating Provident Fund* (2002) 10 BPLR 3938 (PFA) the Adjudicator issued a cost order against an employer. In addition, the Adjudicator expressed displeasure at the employer's consistent failure to respond to queries addressed to it. No response at all was received regarding the complaint. The Adjudicator ordered the employer to pay the fund's cost in defending the matter.

Conclusion

The Adjudicator performs both an administrative function as well as a judicial function and it may award cost orders just as any court of law. However, it is only in those exceptional circumstances where a party's conduct is found to be frivolous, vexatious, or unreasonable that the Adjudicator may make such an order.



Realignment of the Financial Ombud

Nondumiso Ntshangase, Senior Legal Advisor



Financial consumers contribute significantly to the South African financial sector through products and services purchased from financial institutions, including retirement funds. The financial ombud system helps to address the imbalance of resources and expertise that exists between consumers and financial institutions, by providing financial consumers with a free, accessible, relatively informal and flexible way to resolve complaints against financial institutions – as an alternative to the courts. An effective ombud system fosters trust and confidence in the financial system.

National Treasury reform proposals:

A 2021 Diagnostic review by the World Bank Group, commissioned by the National Treasury and the Financial Sector Conduct Authority, found that despite the strengths of individual ombud schemes, the overall system in South Africa was complex, not accessible, inefficient, and ineffective, making it difficult to navigate for consumers. The World Bank recommended far-reaching reforms to streamline and consolidate the system.

In February 2024, the National Treasury published its policy response to the World Bank proposals, in its paper titled **“A simpler, stronger financial sector ombud system”**, accepting many of the key World Bank recommendations.

The National Treasury has indicated that the reformed financial sector ombud system will comprise a new National Financial Ombud Scheme (NFO) which will be independent of both industry and government, a reformed Retirement Fund Ombud (RFO) (a new name for the Pension Funds Adjudicator), and a modified Ombud Council (OC). In this model, the new NFO scheme will absorb the current FAIS Ombud, and will also have overarching jurisdiction over

financial sectors currently not fully covered by the ombud system.

However, these reforms will require new legislation and will still take some time to implement.

Interim ombud system improvements:

In anticipation of the proposed reforms, four previously separate financial sector industry ombud schemes: the Credit Ombud, the Ombudsman for Banking Services, the Ombudsman for Long-term Insurance, and the Ombudsman for Short-term Insurance, embarked on a voluntary amalgamation project to form a new, consolidated industry ombud scheme titled the National Financial Ombud Scheme (NFO). On 1 March 2024, the Ombud Council recognised the NFO as an industry scheme under section 194 of the Financial Sector Regulation Act, No. 9 of 2017. The NFO began taking complaints from the recognition date.

This amalgamation is an interim step towards the broader reforms proposed by the National Treasury. The NFO is likely to form the basis of the broader NFO (“NFO 2”) that

the National Treasury is aiming for. The NFO will therefore, in due course, absorb the JSE Ombud and will eventually absorb the FAIS Ombud (once the necessary "NFO 2" legislation has been enacted). In the interim, the FAIS Ombud is in discussions with the NFO to explore opportunities for aligning processes and systems where feasible.

The formation of the NFO marks a significant milestone in the reform of the financial ombud system. This will have a positive impact on consumers who might not know the appropriate forum to attend to their complaint. Although the FAIS ombud and the Office of the Pension Funds Adjudicator (OPFA) remain separate from the NFO at this stage, the ombud schemes are engaging and collaborating to increase access and visibility for consumers, ensuring that the system is easier to navigate for consumers.

For more information on the NFO visit <https://nfosa.co.za/>.

Pension Funds Adjudicator to remain separate for medium term:

The OPFA remains separate from the proposed NFO 2, as the National Treasury considers the transition of the OPFA to the NFO complex at this stage. This transition is likely to occur at a later stage, once the future NFO 2 has been operational for a while. Once necessary legislation is in place, the OPFA's name is expected to change to the Retirement Funds Ombud to align with other legislative changes in the pipeline. Until then, the OPFA continues to handle retirement fund related complaints in terms of the Pension Funds Act.

Information on how to lodge a complaint with the OPFA can be found on the last page of this newsletter.



NFO
National Financial Ombud Scheme
South Africa

If your bank, insurer, or credit provider has treated you unfairly, there's a new, easier way to complain. Contact the National Financial Ombud Scheme. **It's free.**

[Contact Us](#)

0860-800-900 nfosa.co.za

The NFO brings together the expertise of four previous ombud schemes. The NFO is recognised by the Ombud Council

CREDIT OMBUD OMBUDSMAN ombud for consumers Ombud Council

My Journey at the OPFA: Steve Mphela



I am Steve Mphela, and at 23, began my adventure with this incredible organisation as a Legal Intern on 01 March 2023.

During my time as a legal intern, I had the opportunity to learn extensively about our organisation's values and the intricate workings of our operations. Starting in the New Complaints Unit (NCU), I gained valuable experience in handling various complaints and supporting stakeholders. This initial exposure laid a solid foundation for my journey ahead.

Eager to expand my skills, I moved to case management, where I delved into serving funds and employers while meticulously investigating complaints. This phase not only challenged me but also reinforced my passion for our mission and the importance of attention to detail.

As my internship concluded on 29 February 2024, I embarked on a new chapter. Two months later, I applied for a Case Officer position within this office, driven by my dedication to its cause and my desire to contribute further. I was incredibly honored to be offered the position of Case Officer, starting from 1 June 2024.

This journey has taught me invaluable lessons in dedication and perseverance. It is proof that hard work and always striving to do your best do not go unnoticed. I am truly grateful for the opportunities and support I have received from my colleagues and mentors along the way.

I am excited about the future and look forward to continuing to grow within this organisation. As I look all around me, I see other colleagues in senior positions that started where I did, and this is an inspiration to me. Thank you all for being part of my journey, and I am eager to contribute even more to my new role as a Case Officer.



OPFA in Kwa-Zulu Natal

Zimasa Majola, Communications Practitioner

To view report, please visit: www.pfa.org.za

STAKEHOLDER SATISFACTION SURVEY REPORT



The OPFA conducted roadshows in KwaZulu Natal as part of its efforts to raise financial education awareness across all nine provinces. From 6-8 June 2024, the OPFA exhibited its services at the Comrades Marathon Expo in Durban.

The Comrades Marathon is one of the largest sporting events in Africa and attracts a diverse crowd of participants including financial institutions, health service providers, nutrition brands, sporting companies, and various government departments.

Throughout the three-day event, the OPFA delegates engaged with numerous attendees, addressing queries on existing cases, and providing guidance on pension fund related matters. Visitors were also keen to find out how the two-pot retirement system will assist them. The team distributed promotional material, including brochures and pamphlets.

To coincide with Youth Month, the OPFA conducted a community radio interview at Intokozo FM in Umlazi. This initiative was aimed at broadening the OPFA's reach within the community, to disseminate information to listeners about the organisation and its essential role in resolving pension fund related complaints. To further affirm its commitment to stakeholder engagement and financial education inclusion, the OPFA extended its outreach efforts to the local community through a mall activation at the Bridge Shopping Centre in KwaMashu. With an estimated foot-count of 1.85 million shoppers per month, the shopping centre was an ideal platform to connect with the community of KwaMashu and ensure that OPFA is accessible to all.

In conclusion, the OPFA's participation in the Comrades Marathon Expo, along with its outreach activities in KwaMashu and the community radio interview in Umlazi, was a resounding success. By exhibiting its services, fostering dialogue, raising awareness, and extending its reach into

the local community, the OPFA effectively raised awareness about its mandate, promoted financial literacy and a deeper understanding of pension fund rights and responsibilities for members and beneficiaries.

Looking ahead, we remain committed to safeguarding consumers, resolving complaints in a procedurally fair, economical and expeditious manner and prioritising stakeholder engagements. In the coming quarter, join us for further financial education initiatives and be on the lookout for our Money Smart Week initiatives taking place in Gauteng.





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.

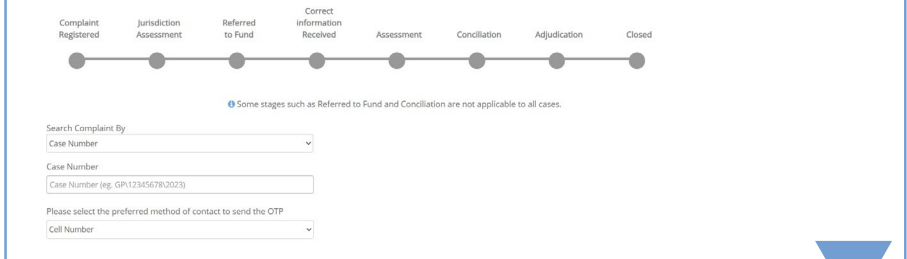
You may lodge a complaint in one of the following ways:

- **Visit our offices at:**
4th Floor, Block A, Riverwalk Office Park, 41 Matroosberg Road, Ashlea Gardens, Pretoria, 0181
- **Submit your complaint online:**
<https://www.pfa.org.za/complaints>
- **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
- **For queries contact:**
012 748 4000 / 012 346 1738

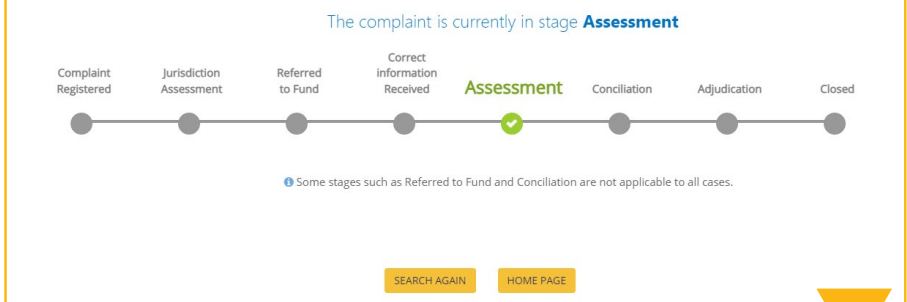
1. Go to the PFA website <https://www.pfa.org.za/> and click Check Complaint Status



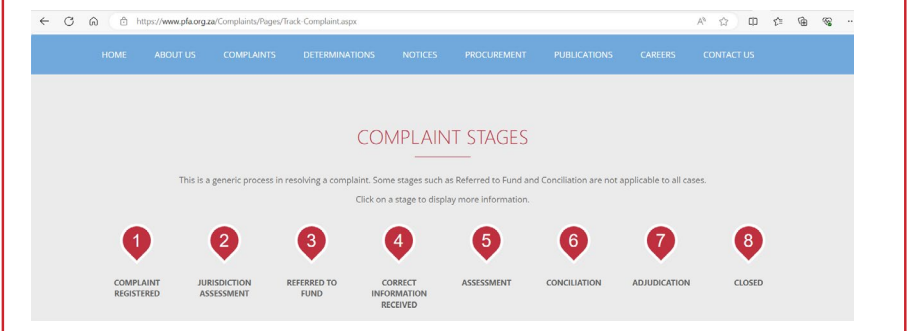
2. Enter the ID/Passport Number or case reference number and Search.



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.



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