



# The Quarterly DIGEST

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## From the Adjudicator's Desk

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Muvhango Lukhaimane,  
Pension Funds Adjudicator

The quarter October to December 2024 saw new complaints increase by 34% compared to the same period in 2023. This is a marked increase that may only be ascribed to the implementation of the two-pot system. As at 31 January 2025, the OPFA received 8 512 complaints for the financial year.

The awareness created by the various stakeholders on the implementation of the two-pot system meant that most retirement fund members had the opportunity to check on their retirement fund benefit status and where required do one or more of the following:

- Update contact details
- Update beneficiary details
- Adjust investment portfolios
- Increase member contributions
- Follow-up on employer non-compliance with the payment of contributions

These activities bode well for the overall management of retirement funds as member engagement is otherwise low.

The OPFA stretched its resources as indicated in the stakeholder activity section to implement various outreach and communication initiatives aimed at improving member awareness and engagement of their overall rights and responsibilities as retirement fund members.

The top five queries regarding two-pot from high to low were:

- Delay in payment
- Next withdrawal date
- Tax payable

- Update personal details
- Withdrawal date

The fact that four months into implementation, members are already enquiring about the next opportunity to withdraw from the savings pot, means that administrators/funds must be prepared in order to avoid delays in payment.

The OPFA remains resolute and committed to its task. All efforts will be made to ensure that the complaints' resolution turnaround times remain acceptable to our stakeholders.

The behemoth that is the non-payment of contributions by employers continues to roll on. However, it is hoped that the various interventions underway by National Treasury, the FSCA, the Auditor General South Africa, Organised Labour, the Department of Employment and Labour, and the Standing Committee on Finance will soon bear fruit.

Lastly, I will be wrapping up my tenure as the fifth Pension Funds Adjudicator. It has been a pleasure and an honour to serve in the position. I hope to see some of you at the various upcoming industry events where we will continue to share our experiences and learnings in the service of our members.



## POPIA cannot be used to justify withholding death benefit investigation reports from the Adjudicator

by Nondumiso Ntshangase, Senior Legal Advisor

### Introduction

Trustees bear an onerous responsibility to equitably allocate death benefits among a deceased member's beneficiaries. This process requires thorough investigations which involve the collection of personal information. When disputes arise the Pension Funds Adjudicator is often called upon to assess whether the trustees have acted appropriately and within the bounds of the law. One pressing question is whether the Protection of Personal Information Act (POPIA) can be used as a justification for withholding investigation reports from the Adjudicator. This article explores the intersection of POPIA with the Adjudicator's complaints handling process and highlights the importance of providing all relevant information to the Adjudicator.

### Trustees' role

Section 37C of the Pension Funds Act (the Act) imposes three primary duties on trustees, namely:

- Identify all potential beneficiaries of the deceased member.
- Decide on a fair and equitable distribution of the benefit among the identified beneficiaries.
- Determine the most appropriate method of payment.

The Pension Funds Adjudicator has provided significant guidance through determinations to assist trustees in fulfilling these duties. In *Sithole v ICS Provident Fund and Another [2000] 4 BPLR 430 (PFA)*, the Adjudicator outlined key considerations for making an "equitable distribution" among dependants. These include:

- the age of the dependants;
- the relationship with the deceased;
- the extent of dependency;
- the wishes of the deceased placed either in the nomination form and/or his last will;
- financial affairs of the dependants including their future earning capacity potential;
- future earning capacity; and
- amount available for distribution.

Trustees must consider all relevant factors, exclude irrelevant ones, and exercise discretion without rigidly adhering to a policy.



*...the Adjudicator, during the course of proceedings, is entitled to obtain information from any person who holds the relevant information, such as a fund, rather than directly from the data subject...*

## POPIA

### Investigations and evidence required

To discharge their duties, trustees must conduct thorough investigations and collect necessary evidence from beneficiaries. This information is documented in an investigation report, which helps trustees make informed decisions. The report typically includes personal information as defined under Section 1 POPIA. Trustees have a duty under POPIA to safeguard this information and ensure it is used solely for its intended purposes.

Beneficiaries dissatisfied with trustees' decisions often approach the Adjudicator, seeking to set aside the allocation made by the trustees. In such matters, the Adjudicator's role is to assess whether the trustees acted rationally, reasonably, and in accordance with the law. It is not the Adjudicator's duty to determine the "fairest" distribution but rather to determine whether the board has acted rationally and arrived at a proper and lawful decision (*see Ditshabe v Sanlam Marketers Retirement Fund & Another (2) [2001] 10 BPLR 2579 (PFA)*).

In *Semenya and Others v Old Mutual Superfund Pension Fund and Others (Financial Service Tribunal, PFA 31/2024)*, the Tribunal remarked that the Adjudicator should insist on investigation reports. This would ensure that sufficient information is available to the Adjudicator to confirm the fund's reasoning behind an allocation.

### Can POPIA justify withholding the investigation report?

Funds sometimes cite POPIA as a reason for withholding investigation reports from the Adjudicator. Section 12(1) of POPIA, as a default, requires the responsible party to collect personal information directly from the data subject.

However, in terms of Section 12(2) of POPIA, it is not necessary to collect personal information directly from the data subject under specific circumstances, including legal proceedings in any court or tribunal. This means that the Adjudicator, during the course of proceedings, is entitled to obtain information from any person who holds the relevant information, such as a fund, rather than directly from the data subject (i.e., the beneficiaries).

Section 15(3)(c)(iii) of POPIA also permits further processing of personal information when required for legal proceedings. Accordingly, trustees should provide the Adjudicator with necessary information, such as investigation reports, as part of the complaint process where the essence of the complaint requires such.

### Safeguarding Personal Information

To safeguard personal information, the Adjudicator has developed and implemented policies in accordance with POPIA. These policies are available on the OPFA website. The Adjudicator is required to keep a permanent record of the proceedings in terms of section 30L and such a record is accessible on request by the public in terms of section 30L(2).

### Conclusion

During the complaints process, trustees must provide the Adjudicator with all relevant information considered when making a decision. POPIA does not justify withholding such information, as such information may be provided in proceedings conducted by a tribunal. This ensures that sufficient information is available to the Adjudicator to confirm the fund's considerations on an allocation.



## Wrongful withholding due to spouse's wrong-doing

by Atlegang Tshidi (Assistant Adjudicator)



The complainant of *A Buys v Sentraalsuid Aftreefornds ("fund") & Another (PFA/WC/00109585/2024)* concerns the withholding of a withdrawal benefit. Mrs Buys, the complainant, worked for her employer from 13 February 2006 until 19 September 2022 and contributed to the fund.

Her husband ("Mr Buys") was employed by the same employer. In August 2022, Mr Buys admitted guilt for defrauding the employer of approximately R14 million. The employer requested Mrs Buys to take a polygraph test.

However, she resigned with immediate effect on the advice of her legal representative to avoid possible self-incrimination. The employer requested the fund to withhold Mrs Buys' fund benefit in terms of section 37D(1)(b) as it suspected that she was also involved in the fraud together with her husband.

The fund indicated that Mrs Buys was its member until 01 October 2022 when she resigned and a fund benefit was due to her. However, upon processing her benefit, her profile was flagged with an instruction to withhold the benefit pending a fraud case. The fund advised that upon investigation, it was established that the employer alleged that Mrs Buys' was involved in fraud and theft together with her spouse, causing the employer damage of R13,8 million. The employer advised the fund that it opened a criminal case against Mr Buys and that Mrs Buys resigned before it had the opportunity to question her regarding her involvement.

The employer used Mr Buys' admission of guilt to claim from Mr and Mrs Buys' joint estate as they were married in the community of property. Furthermore, the Directorate for Priority Crime Investigation, commonly known as the "Hawks," was also investigating Mr and Mrs Buys. Based on the information before the fund, it found that the withholding of Mrs Buys' withdrawal benefit was justified.

The Adjudicator had to determine whether the fund's withholding of Mrs Buys' withdrawal benefit was lawful in terms of section 37D(1)(b) of the Act.

As stated above, the purpose of section 37D(1)(b) of the Act is to afford employers relief in instances where an employee has caused damage to an employer through theft, fraud, or misconduct. Therefore, section 37D(1) requires a member to have caused damage to the employer by reason of any theft, dishonesty, fraud or misconduct in order for a fund to lawfully withhold a member's benefit.

From the facts provided, there was no indication that Mrs Buys caused any damage to the employer. It must be noted that the employer did inform the fund that Mrs Buys resigned before it could conduct a polygraph test in order to address the allegations made against her. However, this does not constitute any theft, dishonesty, fraud or misconduct from Mrs Buys. The fund should have also considered that the employer did not state what allegations (theft, dishonesty, fraud or misconduct) were brought against Mrs Buys. The Adjudicator noted that Mrs Buys is a person of interest

in a case being investigated by the Hawks and referred to the findings in *DSV Flexi Retirement Fund (Pension Section) v Pillay and Others* PFA 62/2020, which held that criminal proceedings on their own are not sufficient to justify the withholding of a member's benefit.

The Adjudicator also referred to the matter *Fundsatwork Umbrella Provident Fund v Ngobeni and Another* PFA 64/2020 where the FST held that a fund is not entitled to withhold payment because a criminal case has been opened or even upon conviction as a conviction is not a judgment against a member that quantifies compensation in respect of damage caused, and costs are not awarded against persons convicted.

The Adjudicator found that the Hawks' investigation into Mr and Mrs Buys is not sufficient reason to justify withholding Mrs Buys' withdrawal benefit, considering that the employer has not stated any intention to initiate a civil claim against the complainant in order to claim the alleged financial loss since Mrs Buys left its employment in September 2022.



*The Adjudicator found that the continued withholding of Mrs Buys withdrawal benefit is unlawful and the fund should pay her withdrawal benefit.*

This case is a reminder to funds to ensure that when receiving requests from employers to withhold members' benefits, they must first ensure that the requirements of section 37D(1)(b) are met and that the member actually caused damage to the employer by committing theft, dishonesty, fraud or misconduct. Failure to do so results in the unlawful withholding of benefits.



## Note from a Case Officer



### My journey at the OPFA

by Refiloe Moshelo (Case Officer)

After joining the OPFA, from within the public sector, I could not have imagined the volume of work that awaited me as a Case Officer and the need to quickly understand the pension funds industry. The transition from my previous employer to the OPFA has been great as I have learnt a lot, and every day, the organisation continues to enrich me.

The primary job of a Case Officer is to investigate complaints that have been lodged against employers or funds. That may be due to the failure of the parties (employer/fund) to adhere to the Pension Funds Act and perform their duties. In the same light, as a Case Officer, you must always be wary of making promises to complainants or the various stakeholders you engage with as there are many dependencies in the processes.

The Case Officer's duty is to investigate complaints fully without making assumptions or taking only what the complainant has put before the OPFA, as that will result in a matter being sent for adjudication without being fully investigated. One of the challenges during the investigation stage is the lack or delay in responses from funds and employers. This has resulted in most complainants being wary of the OPFA's efficiency in resolving complaints and assisting them. The delay is due to poor administration of funds and sometimes failure in fund's quality control processes where responses do not address all the issues.

However, even with such hiccups, my duty as a Case Officer remains to reassure the complainant and inform them of the status of the investigation and provide updates. That alone makes me appreciate my job and has made me realise that sometimes complaints arise due to a lack of communication between the various stakeholders, thus resulting in misunderstandings.

I look forward to continued learning, serving and assisting complainants in resolving pension fund complaints.

## Office of the Tax Ombud Survey

Have you been affected by e-Filing profile hijacking? Please help the Office of the Tax Ombud by completing the e-Filing profile hijacking survey at <http://bit.ly/efiling-survey>, or visit <https://www.taxombud.gov.za/> for more information. #BeASmartTaxpayer



# The Ombud Council Explained

by Avitha Nofal, Head: Regulation and Oversight and Lesego Senne-Sibilanga, Communications Officer (Ombud Council)



## Who is the Ombud Council?

The Ombud Council was established by the Financial Sector Regulation Act, 2017 (FSR Act) with a mandate to:

Assist in ensuring that financial customers have access to, and are able to use, affordable, effective, independent and fair dispute resolution processes for complaints about financial institutions in relation to financial products, financial services, and services provided by market infrastructures.

Our vision is to ensure that a **known, trusted and easily accessible ombud system** exists for all in the financial sector. The Council started limited operations in May 2021 and became operationally independent from April 2024.

## Why does the Ombud system matter?

Financial customers have the right to fair treatment by financial institutions, the right to lodge complaints if they are not treated fairly, and the right to know how to access and use the ombud system to address such issues.

### The Ombud system:

- helps many financial customers resolve complaints and in doing so, supports consumer confidence in financial services. In FY 2023/ 2024, over 40,000 formal complaints were handled and at least R545 million returned to customers across all schemes.

- resolves complaints flexibly, with minimum formality (no lawyers required) – for FREE.
- enhances financial inclusion for vulnerable and disadvantaged customers.
- provides for an automatic ‘add-on’ advantage of using licensed financial institutions and providers.
- gives substance to the Treating Customers Fairly (TCF) framework – ombuds are not confined only to contractual provisions but have a fairness mandate.
- enables proactive identification of emerging conduct risks through complaint data and trends.
- shares information with regulators enabling risk-based supervision and evidence-based regulatory responses.

## What does the Ombud Council do?

The Council:

- Monitors performance of all financial ombud schemes (statutory and industry schemes)
- Recognises industry ombud schemes and approves their governing rules
- Promotes co-operation and co-ordination between ombud schemes, and resolves jurisdictional overlaps
- Promotes awareness of and publicises ombud schemes and what they do, and supports financial inclusion
- Facilitates access to schemes and supports financial inclusion



# Ombud Council

Ensuring an accessible and trusted financial sector ombud system



*The Ombud Council is the regulatory authority over the financial sector ombud system and has a full suite of regulatory, supervisory and enforcement powers over ombuds and ombud schemes...*

- Protects the independence of ombud schemes
- Keeps the Minister of Finance informed about complaint and conduct trends
- Anything else reasonably necessary to achieve its objective.

## What powers does the Ombud Council have?

The Ombud Council is the regulatory authority over the financial sector ombud system and has a full suite of regulatory, supervisory and enforcement powers over ombuds and ombud schemes:

- Making Ombud Council Rules (binding subordinate legislation) which impose obligations on ombuds and ombud schemes
- On-site inspections, information gathering
- Designating schemes to deal with certain complaints where there is a jurisdiction gap
- Enforcement tools (in regard to ombuds and ombud schemes): Directives, suspending/ revoking recognition, enforceable undertakings, administrative penalties (fines), debarment.

The Ombud Council published Ombud Council Rules for the Ombud for Financial Services (FAIS Ombud), on 1 July 2024. The Rules are binding regulatory instruments made under the FSR Act. The new Rules increased the amount of compensation the FAIS Ombud may award for financial prejudice or damage, from the previous longstanding maximum of R800,000 to a maximum of R3,5 million. In addition, the Rules revoked and replaced previous Rules on proceedings of the FAIS Ombud made in 2003 under the Financial Advisory and Intermediary Services Act (FAIS Act). They covered practical procedural matters regarding the operation of the FAIS Ombud's office. Generally, the new Ombud Council Rules serve the same purpose, although they update outdated terminology, refine aspects of the FAIS Ombud's jurisdiction, and effect process improvements based on practical experience.

The OPFA submitted its Ombud Council Rules regarding their complaints handling process. The Council intends to commence with the review of the rules in due course.

## What can the Ombud Council not do?

- The Ombud Council is not an ombud scheme and does not handle financial customer complaints against financial institutions.
- The Council does not act as an appeal / escalation forum if customers are unhappy with an ombud scheme's decision on their complaint.

The Ombud Council will however consider complaints that an ombud scheme has not followed relevant financial sector laws or its own governing rules, or has otherwise followed a materially inappropriate process.

## Which ombud schemes does the Ombud Council oversee?

### Statutory ombud schemes:

- Office of the Pension Funds Adjudicator (OPFA);
- Office of the Ombud for Financial Services Providers (FAIS Ombud);

### Industry ombud schemes:

- National Financial Ombud (NFO)<sup>1</sup>
- Johannesburg Stock Exchange Ombud (JSE Scheme).

## How does the Ombud Council create visibility of the schemes it oversees?

The Council's approach to promoting awareness of ombud schemes is a collaborative one, partnering with the consumer awareness and education initiatives of other stakeholders, particularly the Financial Sector Conduct Authority and the ombud schemes which the Ombud Council oversees.

The need for a baseline survey to assess the level of awareness, understanding, and usage of the financial ombud system among financial services customers has been identified by the Council and will commence in the coming financial year.

<sup>1</sup>The National Financial Ombud is a recognised industry scheme that was established and recognised by the Ombud Council on 1 March 2024 through the amalgamation of four previously recognised industry ombud schemes: the Credit Ombud; Ombudsman for Banking Services; Ombud for Long-term Insurance Ombud; and the Ombud for Short-Term Insurance. The NFO comprises four divisions, each representing the sectors served by the previous schemes.

## Quarterly Stakeholder Engagements

*Driving impact through effective stakeholder engagement*

In the previous quarter, the organisation participated in several outreach activities to align with our stakeholder engagement objectives and promote the services provided by our office. These activities included exhibitions, radio interviews, mall activations, and a taxi rank activation. Below is an overview of the activities conducted throughout the quarter.

In October 2024, the OPFA participated in the Institute of Retirement Funds Africa (IRFA) annual conference in Cape Town. This event brought together legal and financial services experts, trustees, principal officers, and key stakeholders to discuss the latest developments in the pension fund industry. The OPFA showcased its services throughout the conference, engaged with attendees, and provided them with valuable information.

The exhibition served as an excellent platform to connect with a diverse audience of individuals and stakeholders. Additionally, the Pension Funds Adjudicator, Ms Muvhango Lukhaimane, gave an industry update on the pension fund landscape, shared recent annual statistics and emphasised the importance of transparency and fairness in resolving complaints.

In November, the OPFA continued its quarterly roadshows by visiting the Eastern Cape. They conducted mall activations at the Motherwell Shopping Centre in Motherwell, Gqeberha and Kuyasa Centre in Mdantsane, East London. During these activations, the OPFA engaged with members of the public, answering questions and sharing information on how the organisation helps complainants resolve their disputes.

To further amplify its reach, the OPFA targeted commuters through a taxi rank activation in Mdantsane. Designed for individuals who rely on public transport, it reached a broader audience, including working professionals. By focusing on a high-traffic area, the OPFA could engage directly with commuters from diverse backgrounds. These activations were both impactful and valuable in connecting with people who might not typically have the time or opportunity to visit our offices or participate in other engagement activities.

*These activations were also a powerful reminder of the OPFA's commitment and dedication to reaching all corners of society and ensuring that everyone, regardless of their circumstances, has access to the support and resources they need.*

As part of our broader outreach strategy, the Adjudicator participated in a series of radio interviews, further broadening the OPFA's reach to audiences across South Africa. Through various radio stations, including popular national and community-based radio stations, the OPFA communicated directly with listeners about its mandate and the importance of having an independent body that helps resolve pension fund-related complaints. The interviews also provided an opportunity for the Adjudicator to discuss key determinations, statistics and the various forms of lodging complaints. Additionally, the interviews allowed the organisation to emphasise the importance of timely and accurate communication with employers and pension funds administrators, particularly when issues arise.

In conclusion, the OPFA remains committed to building stronger relationships with stakeholders across South Africa. We look forward to continuing these initiatives in the next quarter and expanding our reach to even more communities across the country.

As always, we encourage pension fund members, administrators, and anyone with questions or concerns to contact us directly. Should you wish for the OPFA to visit your area, please contact us on 012 748 4000 or email: [opfacomunications@pfa.org.za](mailto:opfacomunications@pfa.org.za).

### CHECK YOUR COMPLAINTS STATUS ONLINE

Did you know that you can check the status of your complaint directly on our website?

"To view your status, click on '[Check Complaint Status](#)' or '[Track Your Complaint](#)' under the Complaints page."





# Outreach Activities



In October, the OPFA exhibited during the IRFA Conference in Cape Town.



The OPFA staff engaging with conference attendees.



The OPFA advising stakeholders during the mall activation in Motherwell, Gqeberha.



The OPFA informed listeners about the mandate of the office at Eksé Community Radio station in Gqeberha.



During the Eastern Cape Outreach, the OPFA spoke to consumers during a taxi rank activation in Mdantsane.



Mr Kutama assisting a member of the public during the mall activation in Mdantsane, East London.



## 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**



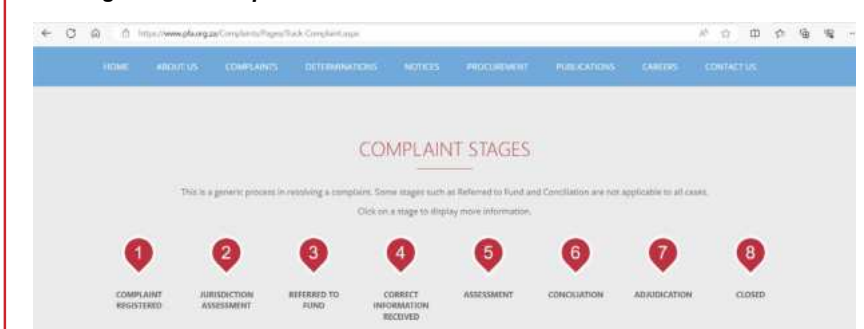
**2. Enter the ID/Passport Number or case reference number and Search.**



**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.**



## 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:**  
4<sup>th</sup> 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](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
- **For queries contact:**  
012 748 4000 / 012 346 1738



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