

Pension Lawyers Association Conference 2005

Maintenance

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- 1. Problems encountered by funds who receive faulty maintenance orders.**
- 2. What should funds do about faulty maintenance orders?**



Problems encountered by funds

- 1. Fail to name fund.**
- 2. Request to employer to stop payment of benefit to member.**
- 3. No authority to request details of member's benefit.**



Problems encountered by funds

- 4. Rely on fax from clerk of the court as authority to withhold payment of benefit.**
- 5. Uncertainty regarding attachments in respect of future maintenance.**
- 6. Order to pay a benefit, where the member has not exited the fund.**



Problems encountered by funds

Predicament for funds in choosing whether to :

- comply with PFA and protect members; OR**
- comply with faulty maintenance order and give effect to rights of children and spouses.**



What should Trustees do?

Assuming that the maintenance order is not valid – what course of action is available to the Trustees?



What should Trustees do?

- the cases referred to are High Court matters. However these cases have not conferred additional powers on maintenance courts to issue attachment orders in respect of future maintenance.



What should Trustees do?

- **in the cases referred to, there was an interpretation of the proviso to section 37A to state that funds had an unfettered discretion to pay the member's benefit to a dependant, beneficiary, guardian or trustee. However, it is more likely that this exception was only meant to apply on a member's death.**



What should Trustees do?

- **In cases where such orders are made against provident funds, there is the obvious difficulty, in that most provident fund rules do not allow for periodical payments. There are also concerns regarding the investment, cost and administration of such payments.**



What should Trustees do?

- 1. Advise Applicant of reasons why the fund cannot comply with the order.**
- 2. Advise member of reasons why the fund cannot comply with the order.**



What should Trustees do?

- 3. Fund applies to court to have the order set aside or varied.**
- 4. Fund and member apply jointly to court.**



What should Trustees do?

If the fund complies with a faulty order:

- members could have a claim for loss suffered;**
- fund could rely on its communication to member, (however there is a difficulty where the fund was aware of the invalidity of the order).**



What should Trustees do?

If the fund does not comply with a faulty order:

- non member spouse could institute contempt of court proceedings (civil judgement);**
- if they do not want to comply, must apply to court for it to be set aside or varied.**



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Thanks and Questions

