

**SPEECH DELIVERED BY THE PENSION FUNDS ADJUDICATOR AT THE
PENSION LAWYER'S ASSOCIATION ON 2 MARCH 2015**

I am certain that as I stand here before you, you are wondering what new issues / problems I could possibly share with you. That is because we have had a relatively calm period where the general malaise that afflicts this industry persists in one form or another.

Whilst my office might have succeeded in eliminating the historical backlog, our statistics tell us that the number of complaints lodged with us on an annual basis has not decrease. Instead, the complaints are increasing at a rate of approximately 5% per annum. The trends have also continued along the same lines; withdrawal benefits, retirement benefits, death benefits, surplus, causal event charges, delay in the transfer of benefits etc.

Therefore we have to ask ourselves, what is it that we are doing incorrectly or are not willing to do correctly. Maybe it is even easier to reflect on whether the lack of consequences on our actions is what leads some of the funds / administrators and boards to act with such impunity. Frankly the fact that some of you as administrators continue to hold your licenses is an indictment on those that should hold you accountable for the misery that you continue to inflict on pension fund members.

My talk will seek to clarify trends as they occur and hopefully those of you that have been in this business for some time will easily be able to identify the culprits as I go along. That might actually ensure that you not only pay attention to what I am saying but actively participate in the process - If only by trying to eliminate yourself from what is being said.

Communication remains the one key lapse that ensures that the complaints to my office increase. The kind of communication where a fund member stays in an industry and when administration of his industry sector fund changes hands, his benefit as reflected on his statement is significantly different between two administrators assures my office a steady increase in complaints. For years industry funds and bargaining council funds keep those that are marginalised ever on the

fringe – whilst administration costs ostensibly to rectify the problems increase unabated. At the Private Security Sector Provident Fund they have an administrator allocating contributions on a system that ostensibly cannot handle intermittent contribution patterns, there is a dedicated attorney dealing with the constant stream of complaints, there is a company visiting employers to do a reconciliation of contributions, there is back office and front office, call centre, yet members cannot get a simple benefit statement. People that can ill-afford a phone call or transportation costs are made to incur unnecessary costs in pursuit of their benefits.

It is important to communicate, if only to indicate that everything is well or forewarn that something might have gone wrong. I am aware of the complexities of operating a large umbrella fund or operating a fund where literacy of fund members – let alone financial literacy is a problem. That is no excuse not to impart knowledge for members to actively engage with their benefits, and exercise their rights.

It should not come as a surprise to a fund member to learn that their fund is being terminated or liquidated owing to the employer's failure to pay contributions over an extended period of time. Whilst it might be clean /clinical / not messy to liquidate a fund – often appointing an in-house employee as a liquidator, this process often leaves members in a far worse off position. The propensity to liquidate for unpaid contributions without putting the regulator to the test in terms of the steps that are supposed to be taken to recoup outstanding contributions means that funds and administrators are not willing to ensure enforcement.

There is a trend to elevate administrative processes undertaken to pay out benefits to the level of rules often postponing the payment of a benefit to a later date. The Act is very clear as to when benefits accrue, therefore to try and say members must wait for up to six months before their benefits can be paid out is irresponsible and unlawful.

I am not agitating that industry funds pay out benefits to members that resign from one employer to another within the industry where there is no break in service. However, where there is such a break in service, funds cannot interpret a rule that clearly states “remain in service” to include re-employment within the industry where

there was a break in service. Especially, given the lack of proper adherence to section 7 of the Act regarding record keeping and the propensity to employ tracing agents at members' cost where a former member "suddenly" cannot be found. As an industry and a profession geared towards interpreting rules, we are busy creating an unclaimed benefits problem that is never going to benefit fund members and beneficiaries.

The wilful registration of ambiguous rules does everyone a disservice and the ethics thereof cannot be over emphasised. An omission in terms of regulatory oversight for the period before 2008 when bargaining council funds were not under the Act means that at the Road Freight and Logistics Provident Fund, after spending millions over a period of years, ostensibly doing a data reconstruction, no one can hold them accountable for outstanding contributions.

I remain concerned about the allocation of death benefits. Apart from the unnecessary delays in finalising the death benefits, the following issues are of concern:

- The treatment of nominees.

Section 37C(1)(bA) is clear regarding instances where a member has dependants and has also designated nominees. This section does not come second to section 37C(1)(a). What the board needs to do is to complete their investigation and at the end thereof they must have identified dependants and nominees (if any) and their financial circumstances, in these instances it is always crucial to determine the financial status of the dependants and their maintenance needs as this is what will guide the board in its consideration of the nominee.

The regularity with which funds ignore nomination forms even where there is sufficient funds to honour the maintenance needs of the dependants; which brings me to assessing dependency.

- Assessing dependency

The financial status of each dependant is required to determine the reasonable maintenance needs of the beneficiaries. It cannot be that we create an artificial automatic entitlement to a benefit by the mere occupation of a particular relationship with the deceased; be it spouse, child, mother etc.

Great care has to be exercised to take into account the total financial picture of beneficiary/nominee to every extent possible. Which in itself requires that what the beneficiaries allege must be substantiated and verified

In addition to this, we do need to observe a semblance of cultural awareness, within the prescripts of the law of course. We cannot ignore the existence of multiple and extended family arrangements.

Last, but not least – there is a myriad of examples of behaviour by funds and administrators that are negating the purpose of retirement funds in favour of business interest. In this regard, I am not saying that profit must not be made from administering or providing any other value adding service to a fund for that matter. What I am saying is that retirement funds must be operated for the purpose for which they were set up for.

- Operating funds with unregistered rules
- Registering rules that lock members into funds, holding them to ransom whilst providing poor service and poor returns
- Not granting exemptions to employers and members that want to belong to funds other than the industry one.
- Requesting retrospective approval of rules that have a negative impact on the benefit entitlements of members.
- Payment of death benefits to minor children.

From my office's point of view, we continue to soldier on amongst great animosity and acrimony from some of you. However, I must say that we have also seen relations improve to the benefit of all stakeholders.

We have just come from a two-day strategic review and planning session last week – it was not a team building session but a “bricks and mortar” review of what we did correctly, what we need to change, what we need to be aware of and most importantly how do we continue to add value - I am assuming that we are of some value as it is.

We will soon be launching a new website meant to be user-friendly for yourselves and also provide a platform for yourselves to communicate with us, provide feedback to any requests.

In the next year we will again hold Roadshows in the remaining Provinces to raise awareness on the office’s mandate.

I am relatively comfortable with the current turnaround times. I used the word “relatively” because we only have to review some internal processes to ensure proper case management monitoring and would realise additional marked improvement.

We will also be reviewing our complaint’s management process. What I have noted is that as our areas of lapse decline and we become better, efficient and proficient in some issues – new areas of contention arise. I am talking to the persons mostly responsible for looking for new areas of conflict. I have noted increased challenges to the process that we follow: it is inquisitorial in nature, however depending on what is at stake, I have noticed the propensity to challenge this and therefore we have to adapt our processes to cater for all likelihood as the denial or desire to curb the inquisitorial nature of our process might result in our processes becoming adversarial and cumbersome, which is not what the legislature intended.

I am thankful to all those that have constructively engaged with our office and assure you that we do listen. We might not respond immediately, publicly or in a visible manner – however every complaint we receive does result in some internal action or review plus acknowledgement.

To those that have provided information for matters that have otherwise prescribed – I also thank you. As you have seen from our determinations, even where you have not raised prescription as a defence, we act within the law and would never hold anyone liable more than what the law requires of us.