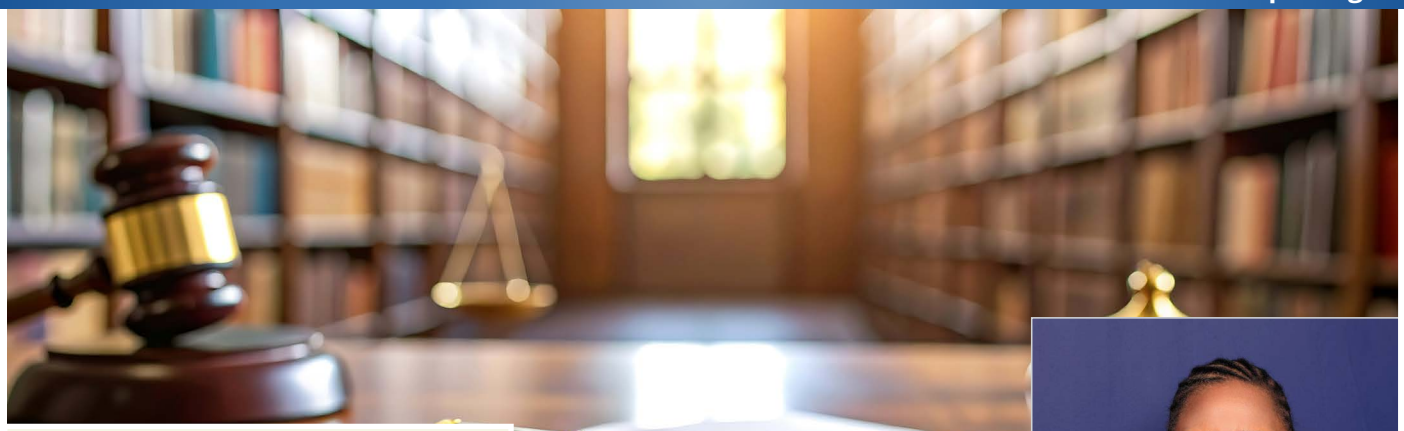
ISSUE - JULY 2025

The Quarterly DIGEST

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Ms Muvhango Lukhaimane
Pension Funds Adjudicator

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From the Adjudicator's Desk

The Office of the Pension Funds Adjudicator is hard at work to ensure that the transition to the next Adjudicator is smooth and the organisation agile and adaptable to change.

The way we have carried out our mandate thus far, especially in the recent past has cemented the saying "change is a constant". Therefore, to yourselves as stakeholders, you should expect nothing less but improvements and working together going forward.

The OPFA's audited results for 2024/25 indicated a 100% achievement of goals, including finalising 93% of our complaints within six months (exceeding our target of 85%) and, of course, a clean audit. The OPFA also paid suppliers on average in approximately six days. As these matrices indicate, the OPFA takes its mandate and the overall government service delivery objectives seriously. Make sure you read all about it in our Annual Report, once released.

We are starting to see the complaints related to the second round of two-pot withdrawals with the new tax year. Most administrators have hinted at having underestimated the first round of withdrawals. It is hoped that information sharing by funds and administrators will continue to empower members on decisions relating to two-pot withdrawals.

The OPFA stakeholder engagements continue in full swing, and should you wish us to visit your community, contact us on our platforms.



Given Maswanganye
Assistant Adjudicator

The board's failure to adhere to the *audi alteram partem* rule constitutes procedural unfairness

Boards of funds are often faced with disputes between a participating employer in the fund and its member over whether the employee/member committed the misconduct that the employer claims in cases involving withholding benefits.

When an employee's actions cause the employer financial loss due to theft, dishonesty, fraud, or misconduct, the employer has the right to request the fund to withhold the employee's pension benefit while it pursues legal action against such employee. The difficulty arises when the employer appears to have a *prima facie* case against the employee, while the employee firmly denies the accusations against him. The jurisprudence surrounding the withholding of benefits in terms of section 37D continues to evolve, providing trustees with much needed guidance on how to effectively carry out their duties when deciding whether to withhold a member's benefit.

Legislative framework

Section 37D of the Pension Funds Act 24 of 1956 ("the Act") protects employers from financial losses caused by the employee's misconduct. The Act permits certain deductions from an employee's pension benefit, including the possibility for an employer to request compensation for losses or damages resulting from an employee's dishonesty, fraud, theft, or misconduct. Prior to withholding benefits, a retirement fund must determine whether the employer has a *prima facie* case based on the employee's conduct, which amounts to theft, dishonesty, fraud, or misconduct.

When exercising its discretion, a fund is expected to assess the potential harm to an employee who may urgently require access to his pension benefits if he is found innocent at a later stage against the validity of the employer's claim. In the matter of *Fundsatwork Umbrella Pension Fund v NP Matjiane and Another* (PFA 39/2020) FST – 11 February 2021, held

> "The potential rejudice to the employee who may urgently need access to his funds dictates that civil proceedings that must at least have been instituted, otherwise the provisions of section 37D will be abused by employers who have no genuine claim against the employee and have no serious desire to pursue a compensation claim."

As a result, the board is expected to evaluate the employer's claim, ensure that the employee receives complete information about the employer's allegations, and allow the employee adequate time to respond. The board cannot simply assess the evidence presented by the employer, which, if accurate, would indicate harm resulting from the employee's conduct, to fulfill the criteria established by the Supreme Court of Appeal in the *Highveld Steel and Vanadium Corporation Ltd v Oosthuizen* [2009] 1 BPLR 1 (SCA). What is required is that the retirement fund invites the employee to comment on the case presented by the employer. If the employee provides a compelling response and evidence, it will be more difficult for the fund to grant the employer's request.

Procedural requirements and duties

Following receipt of the request from the employer, the board is required to take the following into account:

- To consider the interests of both the employer and employee thoughtfully, fairly, and equitably. The trustees must fairly evaluate both the employer's claim and the member's case.
- If the employee challenges the withholding, they will be asked to respond to the employer's assertions and detail the damage they will suffer if the benefit is withheld.

In the matter of *T Van Schalkwyk v DSV Flexi Retirement Fund-Pension and Provident Section PFA/GP/00101812/2023/GM,* the complainant averred that he resigned on 27 July 2023.

The employer performed a random polygraph test on all employees. The results revealed that he failed the test. The employer subsequently requested the fund administrator to withhold the payment of his provident fund due to a fraud allegation.

The fund indicated that the complainant did not pass a polygraph test before leaving the employer's service. The polygraph examination was performed to assess if the complainant exploited his role for monetary benefit, conspired with others for the same purpose, or obtained financial advantage. The fund invited submissions from both the complainant and the employer. The fund requested the employer, among other things, for additional information regarding the fraud allegations and if the employer has filed a civil case against the complainant. From the complainant, the fund requested his answer to the fact that a criminal complaint was filed against him by the employer. It is apposite to note that the letter to the complainant from the fund contained no details of the allegations levelled against him by the employer. It simply provided that the fund was informed by the employer that the complainant resigned after admitting fraud and that the employer laid a criminal complaint against the complainant with the South African Police Service.

The complainant responded to the fund, lamenting the lack of specific details in the allegations against him and requesting additional information so that he could respond fully. He denied the accusations against him and stated that he suffered financial harm as a result of the fund withholding his benefits.

The legal question before the Adjudicator was whether or not the withholding of the complainant's withdrawal benefit is consistent with section 37D(1)(b)(ii) of the Act and therefore lawful.

The fund decided to withhold the benefit while the investigation into this matter was underway. Furthermore, it was also made without affording the complainant an opportunity to respond to the detailed allegations which the fund received from the employer, as well as a copy of the summons from the employer.

The employer provided the Adjudicator with a copy of the summons, and same was forwarded to the complainant for reply; however, failed to do so. The Adjudicator did not have all the information relating to the decision to withhold the benefit.

In *casu,* the Adjudicator held that before deciding to withhold, the fund should have asked the member to provide submissions on whether the benefit should be withheld. The case exemplifies how compliance with the *audi alteram partem* rule ensures both procedural fairness, by giving the employer and member a fair opportunity to present their submissions, and substantive fairness, by ensuring that the fund's decision to withhold the benefit was proportionate to the misconduct. The case, like others, demonstrates that retirement funds are expected to ensure fairness and due process by considering both the member's and the employer's perspectives before making decisions related to benefit withholding.

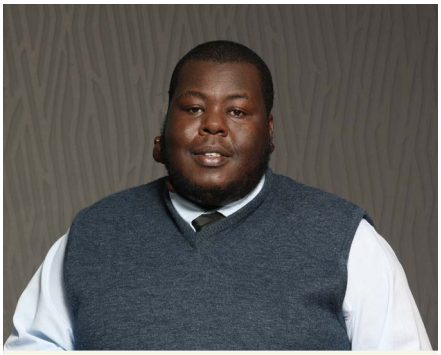
> ... the employer's compliance with the *audi alteram partem* rule does not discharge the separate independent obligation of the fund to afford the member a similar opportunity to respond.

The principle of procedural fairness was endorsed in the Financial Services Tribunal (FST) decision in *Rand Mutual Assurance Co Ltd v TJ Begwa* and others (Case No PFA19/2024- 15 August 2024), it emphasised that compliance with the *audi alteram partem* rule is essential for procedural fairness. Furthermore, the employer's compliance with the *audi alteram partem* rule does not discharge the separate independent obligation of the fund to afford the member a similar opportunity to respond.

Conclusion

The fund's failure to comply with the *audi alteram partem* rule constitutes procedural unfairness, and such failure is detrimental to the fund's decision to withhold the member's benefit. Therefore, it is equitable for the fund to reconsider its decision to withhold the member's benefit and order the fund to comply with the *audi alteram partem* rule before re-exercising its discretion.





Sibusiso Nkosi
Case Officer



Note from a Case Officer

Since joining the Office of the Pension Funds Adjudicator (OPFA) on 1 July 2022, I have been entrusted with a role that is both technically demanding and meaningful. As a Case Officer, I am at the forefront of justice in the pension law industry.

My core responsibility as a Case Officer is to carefully assess complaints and investigate complaints lodged by complainants. These cases often involve situations where members feel they have been unfairly treated by their employers or pension funds. I take a thorough approach to each complaint, carefully analysing the details and examining all supporting documents. This process allows me to form a comprehensive understanding of the complaint and identify any gaps that need to be addressed for the case to progress. My focus goes beyond simply collecting facts; I ensure that all information is accurate, relevant, and clearly structured to highlight the key issues at the heart of the dispute.

Once I have gathered all the necessary information, I compile and present it in a clear, structured, and accessible format for the Adjudication team. This allows them to proceed directly to drafting a determination without unnecessary delays or outstanding documentation. In essence, I serve as the critical link between the complainant's experience and the legal resolution. While my contribution often takes place behind the scenes, it is instrumental in ensuring the process remains efficient, thorough, and fair. The accuracy and completeness of the information I provide plays a direct role in supporting the Adjudicator's ability to deliver sound and just outcomes.

But beyond process, my job carries purpose. I engage daily with some of the most vulnerable members of our society. These are individuals who have been denied what is rightfully theirs, often by employers who exploit their lack of awareness or resources. At the OPFA, we act as watchdogs of the system, applying corrective measures to ensure pension fund members are not denied their hard-earned savings. The work that we do brings real-life impact, and I take pride in having a hand in delivering justice.

Working in this niche industry has deepened my passion for pensions law. Each case challenges me to grow, and each resolution reinforces the importance of the work we do. I am grateful to be part of a team that is committed to protecting financial dignity, one case at a time.

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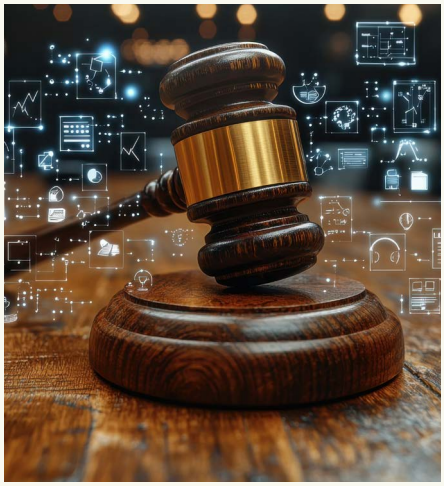
OFFICE OF THE TAX OMBUD
Ensuring fairness

Building Financial Confidence:

How the Ombud Council and the OPFA are Driving Consumer Awareness

Ombud Council
Ensuring an accessible and trusted financial sector ombud system

Promoting Awareness of Pension Rights and Recourse



The Ombud Council supports the OPFA through collaborative consumer education initiatives aimed at improving public understanding of financial rights and available redress. During difficult economic times customers need to know their retirement savings are safe and need to understand how to get help if things go wrong.

The Ombud Council works closely with the OPFA and other financial ombud schemes to raise awareness about consumer rights, improve access to redress, and promote financial literacy. A key part of this work is consumer education, particularly in the context of widespread confusion about what ombud schemes are and can do.

Real Cases, Real Lessons



Muvhango Lukhaimane, Pension Funds Adjudicator

A recent highlight in the Ombud Council's consumer education work is the **"Know Your Ombud: Real Stories, Real Solutions"** video series, which is now nearing its conclusion. The eight-part series, created in partnership with financial journalist Maya Fisher-French, features real-life case studies from across the ombud system. Importantly, the series includes insights from the OPFA and features the Pension Funds Adjudicator, Muvhango Lukhaimane. Episodes are available to watch or listen via YouTube, Facebook, LinkedIn, and on mayaonmoney.co.za.

The series has helped to humanise the complaint-handling process by showcasing actual outcomes, giving viewers a clearer understanding of each financial ombud scheme's role, jurisdiction, and procedures. It is especially helpful for customers who are unfamiliar with financial terminology or who may be hesitant to approach a financial ombud scheme.

National Campaigns Driving Awareness

Following the video series, attention now turns to **Money Smart Week South Africa (MSWSA),** taking place from 25 to 31 August. This national campaign, led by the Financial Sector Conduct Authority (FSCA), brings together public and private sector organisations to educate the public on financial matters. The OPFA and the Ombud Council will be participating, continuing efforts to raise awareness about the redress mechanisms available to financial customers.

During MSWSA, the Ombud Council will highlight the role of ombud schemes like the OPFA, explaining when and how to lodge a complaint and what outcomes customers can reasonably expect. These engagements, both online and in-person, are designed to build customer confidence and encourage confident use of the ombud system.

Supporting a Fairer System

These initiatives form part of the Ombud Council's broader commitment to making the ombud system more visible, accessible, and understood by the public. This includes promoting consistent complaint-handling practices across schemes, encouraging early resolution, and helping more South Africans navigate the redress process with confidence.

As the OPFA continues its work in resolving pension-related complaints, the Ombud Council remains committed to ensuring that customers are aware of their rights and the channels available to enforce them.



OPFA empowers stakeholders through education and awareness

During this quarter, the Office of the Pension Funds Adjudicator (OPFA) carried forward the momentum built in the previous quarter, continuing its commitment to stakeholder engagement through initiatives focused on consumer education and awareness.



The OPFA participated in the 2025 Rand Show showcasing its services and interacting with members of the public.



The OPFA presenting to community members in Phalaborwa during the FSCA Unclaimed Benefits Campaign (UBC).



Mr Godfrey Mashigo and Ms Lalita Jadoonandan advising a complainant in Khayelitsha as part of the FSCA Unclaimed Benefits Campaign.

The quarter began with a strong presence at the annual Rand Show in April, where the OPFA showcased its services and interacted directly with members of the public. This year's participation was particularly notable due to the collaboration with the Ombud Council, the FAIS Ombud and the National Financial Ombud Scheme South Africa (NFOSA). This joint effort provided a unified front in promoting accountability and transparency in the financial sector.

Over 620 individuals from various provinces visited the OPFA's exhibition stand, where they received information about the office's mandate and complaint processes, and in some cases, were able to check the status of existing complaints. These face-to-face engagements proved invaluable in enhancing the organisation's visibility and reputation with the public.

Building on this momentum, the OPFA also participated in key industry conferences, including the Pension Lawyers Association (PLA) and the BATSETA conference. During these events, the Adjudicator delivered updates on industry developments and outlined the OPFA's complaints handling processes. These engagements not only increased awareness of the OPFA's work but also strengthened relationships with retirement funds, administrators, legal professionals, and pension fund members. By addressing real challenges faced by pension fund members, the OPFA deepened understanding of its role and encouraged greater collaboration within the industry.

In June 2025, the OPFA intensified its outreach efforts by joining the FSCA's Unclaimed Benefits Campaign (UBC) in Khayelitsha and Phalaborwa. These engagements reached approximately 625 community members, many of whom had limited access to our services. Together with the FSCA, the OPFA provided financial literacy education and assisted individuals in claiming unclaimed benefits, making a meaningful impact in marginalised communities.

Extending beyond its physical events, the OPFA conducted a total of five (5) broadcast interviews across various platforms to inform and educate the public on critical determinations and issues impacting the retirement fund industry. These took place on SAFM, Radio Islam, Phalaborwa Community Radio, and the YouTube platforms EBNet. In collaboration with the Ombud Council, the Adjudicator conducted an interview on the Maya on Money podcast, addressing important topics such as death benefits, two-pot system and benefit statements, reaching diverse audiences. These media activities reached an estimated audience of 2.4 million people.

Conclusion

Overall, the first quarter of the financial year demonstrated the OPFA's dedication to bridging the gap between pension fund members and the services available to them. Through strategic stakeholder engagement, both in-person and via media, the OPFA brought its services to communities that need it most. As the year progresses, consumer education and awareness will remain central to the OPFA's stakeholder engagement strategy, and the organisation looks forward to making an even greater impact in the next quarter.



WE ARE NOW MORE ACCESSIBLE!

The OPFA is expanding its reach to Johannesburg!

We are excited to announce the opening of our satellite office at the National Financial Ombud Scheme South Africa (NFOSA) premises in Johannesburg, making it easier for complainants and stakeholders to access our services.

You can visit us every Wednesday and Friday, from 08h00 to 16h30.

Physical Address: 110 Oxford Road, Houghton Estate, Johannesburg, Gauteng, 2198

Contact Number: +27 12 748 4000 **Email Address:** enquiries@pfa.org.za



HOW TO LODGE A COMPLAINT WITH THE OPFA

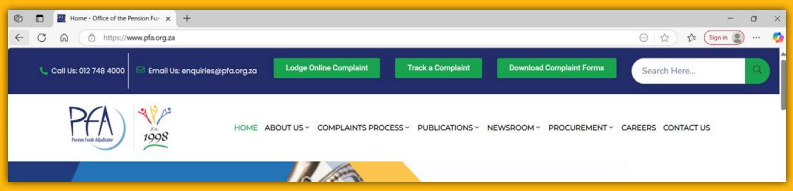
The OPFA's services are provided free of charge. A complaint must be lodged using an official complaint form.

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

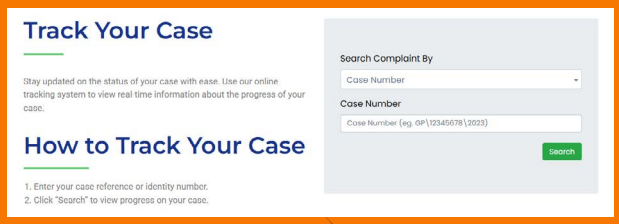
- **Visit our offices at:**
  4th Floor, Block A, Riverwalk Office Park, 41 Matroosberg Road, Ashlea Gardens, Pretoria, 0181
- 110 Oxford Road, Houghton Estate, Johannesburg, Gauteng, 2198
- **Submit your complaint online:**
  https://www.pfa.org.za/submit-a-complaint/
- **Email your complaint to:**
  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 / 0800 74 4444

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

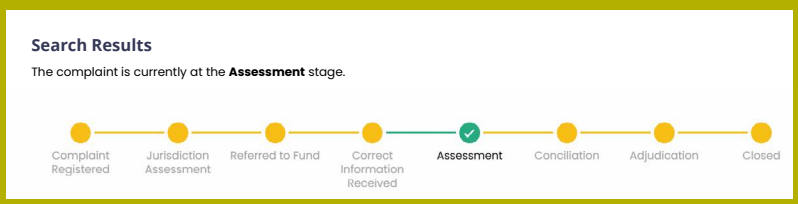
01 **Go to the OPFA website https://www.pfa.org.za/ and click Track a Complaint.**



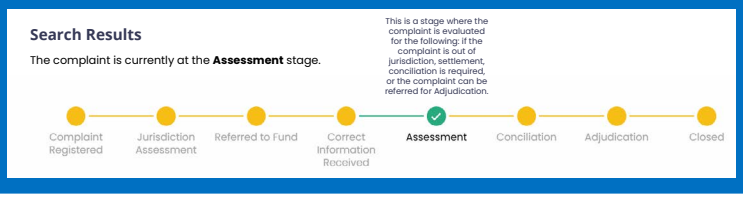
02 **Enter the ID/Passport Number or case reference number and Search.**



03 **The current stage of the case will be displayed.**



04 **Refer to the complaint stages for more information about the stage of the complaint.**



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