

## In Perspective

1/2026



### Pension Funds Adjudicator Case

#### Two pot retirement system – quantum of savings withdrawal and tax directives

*Dikgang (Complainant) v South African National Blood Service Provident Fund (the Fund) and another<sup>1</sup>*

The Complainant has been a member of the Fund since 1 December 2020.

In September 2024, he applied for a savings withdrawal benefit under the two pot retirement system in the amount of R13 558.77 (the total of his savings component). He was paid a savings withdrawal benefit of R7.81. He subsequently lodged a complaint with the Adjudicator regarding the calculation and payment of his savings withdrawal benefit.

The Fund confirmed that a tax directive was obtained from SARS, including:

- R3 525.08 in tax on the savings withdrawal benefit, and
- An IT88 directive for R10 033.69 relating to arrear tax.

An **IT88 directive** is a binding instruction from SARS requiring a retirement fund to withhold and pay over arrear or outstanding tax when a benefit becomes payable.

The Adjudicator confirmed that a fund has no authority to act outside its rules or contrary to binding tax directives. She held that the Fund could not lawfully disregard or override a SARS IT88 directive and that any dispute regarding tax deductions must be pursued directly with SARS, not the Fund. The complaint was dismissed.

- Retirement funds are obliged to comply with all SARS tax and IT88 directives.
- Funds cannot amend, reverse, or ignore tax deductions imposed by SARS.
- Tax disputes fall outside the jurisdiction of the Pension Funds Adjudicator.

### Financial Services Tribunal case

#### No undue delay proven in processing an investment switch

*Ismail (Applicant) v UWC Retirement Fund (the Fund) and others<sup>2</sup>*

The Applicant was a deferred member of the Fund. On 3 February 2022 he asked that his retirement benefit be moved from the Fund's Conservative Portfolio to the

Nedbank Money Market Portfolio. The administrator informed him that the portfolio he requested was not one of the Fund's standard investment options. As a result, the instruction could not be processed automatically and had to be referred to the Board for approval. The Applicant repeated his request on 15 February 2022, and this became the valid instruction the Fund could act on. The Board approved the request on 24 February 2022 and the switch was finalised on 25 February 2022.

The Applicant claimed that the delay caused him to lose approximately R105,000 and that the Principal Officer had given his financial adviser incorrect information. The Tribunal found no evidence of this. It also found that the Fund acted within its rules, that it processed the valid instruction within a reasonable time, and that the Applicant's initial request was invalid because it fell outside the Fund's investment mandate.

The Tribunal further held that the Fund is a defined contribution fund and does not guarantee investment returns. Any losses arising from market movements remain the member's responsibility, not the Fund's.

The application for reconsideration was dismissed.

A switch outside a fund's investment options is not valid until the Board approves it. Execution timelines run from the date of a valid instruction, and the fund is not responsible for market losses in a defined contribution environment.

- Timing for execution runs from the date of a valid instruction, not from the member's initial request.
- Funds cannot be held liable for market losses when acting within their rules.

### Pension Funds Adjudicator case

#### Deferred retirees vs late retirement

*Van Niekerk v Old Mutual Superfund Pension Fund (the Fund) and another<sup>3</sup>*

A member of the Fund retired in October 2019, deferred his pension, and ceased contributions to the Fund. He passed

<sup>1</sup> [2025] 2 BPLR 23 (PFA)

<sup>2</sup> PFA76/2023

<sup>3</sup> PFA/EC/00122192/2025/NB - [2025] 3 BPLR 46 (PFA)

away in August 2020. A death benefit was paid to his spouse (the Complainant), but no insured risk benefit was payable as the deceased member was classified as a deferred retiree, which excluded him from risk benefits under the Fund's rules.

The Complainant argued that the deceased member continued providing consultancy services and should have been eligible for risk benefits. She requested the Pension Funds Adjudicator to investigate the non-payment of the risk benefit.

The Fund stated that the deceased member had opted to defer his retirement, ceased contributions, and was no longer covered for risk benefits. The employer confirmed that the deceased member retired in October 2019 and transitioned to consultancy work on an ad hoc basis as and when his services were required. His consultancy agreement ended in April 2019 due to the COVID-19 pandemic, and he was not an employee at the time of his death.

The Adjudicator found that the deceased member was correctly classified as a deferred retiree, as he had ceased contributions to the Fund and was no longer employed at the time of his death. The Fund's rules did not provide risk benefits for deferred retirees, and the death benefit was paid in accordance with the Pension Funds Act and the Fund's rules.

Although the deceased member passed away on 19 August 2020, the complaint was not time-barred because the Complainant only became aware of the non-payment of the risk portion on 21 January 2022 and filed the complaint on 5 January 2025, which was within the permissible three-year period.

The complaint was dismissed as the Complainant failed to establish entitlement to the risk benefit.

**It is important for employers and funds to communicate clearly to members when they are still providing services to the employer after their retirement. Members should understand whether they are required to contribute to their fund and whether they still qualify for risk benefits.**

## Financial Services Tribunal Case

### Death benefits must be distributed in terms of section 37C – Not via estates

*C O'Connor (Applicant) v Discovery Retirement Annuity Fund (the Fund) and others<sup>4</sup>*

The Applicant challenged the Fund's decision to allocate the deceased member's entire retirement annuity death benefit to his adult son. The Applicant is the sister of the deceased's late life partner and was also the deceased's business partner. She argued that her late sister, who passed away after the death of the member, should have received the benefit as the deceased's life partner, and since she inherited her sister's estate, she believed she was entitled to the death benefit.

The Fund confirmed that the deceased member had only one legal dependant, his adult son, even though he was not financially dependent on the deceased and was estranged

from the deceased member. Section 37C provides that a child remains a dependant even if financially independent or estranged. The deceased's ex spouse had been nominated long ago but confirmed she was not financially dependent and did not wish to claim. The Applicant could not prove financial dependency, and being a business partner does not qualify a person as a dependant in terms of the Act.

The Applicant argued that her late sister - as the deceased's life partner - would have inherited the retirement annuity and therefore she, as heir to her sister's estate, should now receive the benefit. However, the Adjudicator found that retirement fund death benefits do not form part of a deceased member's estate. They must be distributed in accordance with section 37C of the Act and cannot be inherited through a will or estate succession. In addition, the Applicant's late sister passed away before the Funds were even notified of the death of the member, and therefore she could not be considered a dependant at the required time.

The Tribunal found that the Fund conducted the required investigation, identified the only legal dependant within the 12 month period, and applied their discretion correctly. There was no evidence that the Applicant qualified as a dependant, nor was there any basis to challenge the decision to allocate 100% of the benefit to the deceased's son. The Tribunal therefore upheld the Pension Funds Adjudicator's determination and dismissed the reconsideration application.

- Death benefits from retirement funds do not form part of a deceased member's estate and therefore cannot be inherited.
- Being a business partner does not make a person a dependant.
- Receiving a salary from the deceased reflects employment, not dependency.
- Section 37C includes adult, financially independent, and even estranged children. Case law confirms that estrangement does not disqualify a child from receiving a benefit.

## High Court Case

### The right of a retirement fund to refer matters to the Financial Services Tribunal

*Discovery Life Provident Umbrella Fund (the Fund) v Financial Services Tribunal (Tribunal)<sup>5</sup>*

#### • The complaint at the Pension Funds Adjudicator

A member of the Fund passed away in August 2020, leaving behind his minor son and his mother. Following a section 37C investigation, the Fund determined that the deceased had financially supported both dependants during his lifetime and accordingly resolved to allocate 60% of the death benefit to his mother and 40% to the minor child.

His mother subsequently lodged a complaint with the Pension Funds Adjudicator (Adjudicator), disputing the allocation to the child on the basis that the deceased was allegedly not the child's biological father and that the child's mother refused to consent to paternity testing.

<sup>4</sup> CASE NO: PFA32/2024

<sup>5</sup> Discovery Life Provident Umbrella Fund v Financial Services Tribunal and Others (132345/2023) [2025] ZAGPPHC \_\_\_\_ (GP) (10 October 2025)

The Adjudicator found the Fund's investigation to be inadequate, set aside the allocation, and directed the Fund to obtain a paternity test (subject to consent) and thereafter reconsider the allocation based on the child's status as a legal or factual dependant.

- **Financial Services Tribunal reconsideration**

The Fund applied to the Tribunal for reconsideration but the Tribunal dismissed the application on the basis that the Fund lacked *locus standi* as it was not a "person aggrieved".

*Locus standi* means the right to bring an action or to be heard in a given forum.

The FSRA permits only a "person aggrieved by a decision" to apply to the Tribunal for reconsideration. The High Court confirmed that this phrase must be interpreted in line with the legal grievance test, not in its ordinary linguistic meaning.

- **High Court review**

The Fund then sought to review the decision in the High Court, which agreed with the Tribunal's ruling and confirmed that the Adjudicator's determination did not affect any legal rights of the Fund that would give it the right to bring the matter before the Tribunal or court.

The legal grievance test requires that a decision must adversely affect a party's own legally recognised rights or legal position, and not merely impose inconvenience, cost, or dissatisfaction, to give a party the right to bring the matter before a court or tribunal. The Fund is simply required to carry out its statutory duties under the law and make a new allocation.

The application to the High Court was therefore dismissed with costs.

**Important points to take into account in cases where the Adjudicator sets aside and refers section 37C death benefit allocation cases back for reconsideration:**

- Reconsideration applications by funds will almost always be dismissed.

- The correct approach for funds is to comply with the decision instead of challenging it, unless the fund is in its own right an aggrieved party.
- Only beneficiaries, dependants, employers, or others with affected rights may approach the Tribunal for reconsideration.

## OPFA Communication 2 of 2025 - Death Benefits Jurisdiction

The Office of the Pension Funds Adjudicator (Adjudicator) on 24 October 2025 issued Communication 2 of 2025 clarifying their jurisdiction relating to death benefit distributions.

The board of a retirement fund has broad discretion to decide how death benefits are distributed but must base decisions on a thorough investigation of all relevant facts.

If a board fails to exercise its discretion properly, the Adjudicator can set aside the decision and order a new investigation or reconsideration. These orders are binding and the original decision becomes void.

In exceptional cases, if all facts are clear and the correct distribution is obvious, the Adjudicator may substitute the board's decision with a new one. This is exceptional and the fund's discretion is usually respected.

When the Adjudicator sends the matter back, the board must act promptly, conduct any further investigation needed, and issue a new decision. The board cannot rely on its original decision and must communicate the revised outcome to beneficiaries.

The board's new decision may be similar to the original one but must consider any new factors raised by the Adjudicator. Anyone unhappy with the new decision can lodge a new complaint with the Adjudicator. The Adjudicator's jurisdiction is not limited by previous decisions.