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Alert - Office of the Pension Funds Adjudicator ('OPFA') and new procedures for retirement funds

All retirement funds need to be aware of the new procedures for dealing with complaints from fund members to the OPFA. The OPFA has announced she will apply the new procedures with effect from 1 September 2020. The new requirements are a reputational risk factor for funds, as funds that fail to comply will be 'named and shamed' on the website of the OPFA and may be investigated by the Financial Sector Conduct Authority ('the FSCA').

Section 30A (1) of the Pension Funds Act ('the Act')

Section 30A (1) of the Act says that the complainant may approach the fund or the employer before going to the OPFA.

1.1 The OPFA has complained that her office is inundated with complaints from members of retirement funds, to the point where she and her staff are finding it difficult to function

effectively. She claims this is because in practice most complainants approach the OPFA in the first instance rather than approaching the fund concerned and asking the fund to resolve the problem internally. She believes retirement funds must be given the opportunity to resolve the complaint directly with the complainant.

1.2 Going forwards, the OPFA will first ask the complainant if the complaint has been lodged with the fund or the employer and if the 30-day period referred to in Section 30A (2) of the Act has elapsed.

In terms of Section 30A (2) of the Act, the fund or the employer must properly consider and reply to a written complaint from the complainant in writing within 30 days from receipt of the complaint.

If yes, the complainant must provide proof of his written complaint and of the fund's written response. If not, the complainant will be sent back to the fund.

1.3 Funds must have an effective internal complaint resolution procedure. The onus is on the board of trustees (or the employer) not the administrator, but the Adjudicator says that typically the complaint is dealt with by the administrator and not very well.

Also, funds are taking an average of 90 days to respond, which she regards as unacceptable.

1.4 The OPFA must be informed by the fund that the complaint has been resolved to the satisfaction of the complainant within 30 days. If such confirmation is not received, the OPFA will investigate the complaint without the complainant needing to re-lodge his or her complaint.

If the fund is not able to resolve the complaint within the 30-day period, the fund is required to notify the OPFA accordingly.

2. Consequences for Funds

The OPFA will actively follow up with funds once they are aware of a complaint from a fund member.

Funds that fail respond to a complaint in writing and advise the OPFA of the outcome of the complaint within the 30-day period will be published on the website of the OPFA. The next step will be for the FSCA to investigate as the Adjudicator is of the view that the fund is in breach of the Pension Funds Act.

3. Section 30E of the Act

Section 30 E (1) (b) of the Act states that the OPFA

'may, if it is expedient and prior to investigating a complaint, require any complainant first to approach an organization established for the purpose of resolving disputes in the pension funds industry or part thereof, and approved by the Authority'.

Apart from bargaining councils, Mr Naheem Essop of the OPFA has confirmed that he is not aware of any other organisation that has currently received approval for this purpose from the FSCA.

4. Section 30H of the Act

In terms of this section of the Act, if civil proceedings have already been instituted before the complainant lodges his/her complaint with the OPFA, she has no power to intervene.

Comment

It is crucial that to avoid reputational risk and possible repercussions in the form of an FSCA investigation, funds are aware of the new procedures and make every effort to comply by dealing effectively with a complaint from a fund member within the 30-day period.

If the complaint cannot be easily resolved, funds must at the very least acknowledge the complaint in writing, advise the OPFA of the complaint and explain why it is not capable of being resolved by the fund's internal dispute resolution processes.